



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
F&D, S.A. de C.V. (EL SALVADOR)
FINDINGS, RECOMMENDATIONS AND
STATUS UPDATE**

March 24, 2014

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I. Introduction

This report details the Worker Rights Consortium's ("WRC") investigation of labor rights compliance at the garment factory F&D, S.A. de C.V. ("F&D") in San Marcos, El Salvador from October 2012 through March 2014. F&D is located in the San Marcos International Free Zone industrial park. F&D's sole customer for its garment production is the North Carolina-based apparel company, Hanesbrands, Inc.

The WRC conducted an onsite investigation of F&D in April 2013 pursuant to the WRC's role as the independent monitor for the City of Los Angeles ("the City") of compliance with the City's Anti-Sweatshop Ordinance¹ ("the Ordinance") for apparel and other goods procured by the City. SanMar Corporation ("SanMar"), which is a Washington-based supplier to City vendors Galls, Inc. and BUI Uniforms, has disclosed that it purchases apparel made by F&D for the City. F&D's sole direct customer, to the WRC's knowledge, is Hanesbrands and the WRC believes that SanMar purchases this apparel from Hanesbrands. SanMar then supplies the apparel to Galls and BUI Uniforms for sale to the City.

The WRC has been monitoring labor rights compliance at F&D since receiving a complaint in 2009 from the union, Sindicato de la Industria Textil Salvadoreña ("SITS"), a labor organization affiliated to the Federación Sindical de El Salvador ("FESS"). In addition to presenting the results of the WRC's 2013 investigation of the factory for the City, this report details the findings of the WRC's previous monitoring in response to the SITS complaint, the WRC's recommendations to F&D and Hanesbrands to correct the violation identified at that time, and the company's response, in order to provide necessary context for the WRC's latest findings, particularly as to respect for workers' associational rights.

The WRC identified violations of the Ordinance at F&D in the following areas: (1) health and safety, (2) discrimination, (3) wages and hours of work, (4) verbal abuse of employees, and (5) freedom of association. The Ordinance is intended to assure that "the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City."² Specifically, it requires that city contractors "comply with all applicable wage, health, labor, environmental, and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination" of the countries where their garments are manufactured. In addition, contractors are required to "comply with all human and labor rights and labor

¹ Los Angeles Administrative Code, Division 10, Article 17.

² Id. at §10.43.

obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled.”³

The findings and initial recommendations presented in this report were presented on June 28, 2013, to F&D’s management, Hanesbrands, SanMar, and the City of Los Angeles. Upon receipt of these findings and recommendations, Hanesbrands engaged intensively with both F&D management and with the WRC with specific regard to the new evidence and recommendations presented in Section III of this report. This report contains the WRC’s findings and recommendations, the response and corrective actions taken by F&D as a result of the engagement with the WRC and Hanesbrands, and outstanding recommendations for corrective actions that must be taken in order to achieve full compliance with the Ordinance in these respects.

As detailed in Section III, significant improvements have been achieved at this facility since the WRC shared its findings and initial recommendations on June 28, 2013. After nearly four years of significant violations of workers’ freedom of association and efforts by management to prevent workers from exercising their right to form a union, factory management is now meeting regularly with the union in meetings facilitated by an ombudswoman selected jointly by F&D management, the union, the WRC, and Hanesbrands. In addition, after extensive engagement by Hanesbrands, factory management has addressed a range of violations related to safety on the job, discrimination, and correct payment of wages. Despite these gains, not all violations have been fully addressed; this report offers recommendations for additional actions that will bring the factory fully into compliance with the Ordinance in these areas. Continued engagement by Hanesbrands and the WRC will be necessary in order to solidify the gains achieved so far and ensure continued compliance.

II. Background: Previous Findings, Recommendations and Remediation (October 2009 – January 2013)

In October 2009, workers at the F&D plant formed a local union affiliated to the SITS. Workers reported that they decided to form a union to respond to workplace problems such as unpaid overtime, restrictions on workers’ visits to the bathroom, and verbal abuse from supervisors.

Shortly after its formation, the SITS union submitted a complaint to the WRC alleging violations of workers’ right of freedom of association. WRC investigators documented a range of violations of this right at F&D including coercion, threats, harassment, and bribery of workers to induce

³ Id. at § 10.43.3.

them to resign from the SITS union, formation of a company-sponsored union, and other acts of discrimination against the SITS union and those employees who were its members.

In June 2010, the WRC contacted Hanesbrands to recommend measures it should require F&D to take to remedy these violations. As a result of Hanesbrands' involvement, F&D addressed several workplace problems that did not concern freedom of association (such as scheduling of vacation periods and calculation of vacation bonuses). The violations of freedom of association, however, went largely uncorrected.

In August 21, 2012, the WRC contacted Hanesbrands regarding continued labor rights violations at F&D. Hanesbrands' response is reviewed at the end of this section.

A. Sources of Evidence

The WRC's findings concerning violations of workers' rights at F&D during this period are based on the following evidence:

- Multiple offsite interviews, between May 2010 and June 2012, with approximately fifteen workers at F&D who are line operators at the factory and members of the SITS union's leadership committee.
- A meeting on June 29, 2010, with F&D representatives Carlos Liu and Ena Susana Escobar.
- Approximately three meetings between 2010 and 2012 with a Salvadoran labor lawyer with knowledge of the labor rights environment at F&D.
- Phone calls and email communications in 2010 and 2011 with Hanesbrands' Director of Global Labor and NGO Relations Brad Grider.
- A review of documents relevant to the alleged labor rights violations, including:
 - Official minutes by the Salvadoran Ministry of Labor of Ministry-facilitated meetings between the SITS union and the factory management.
 - A police report and forensic exam concerning a physical attack on a worker inside the plant on February 1, 2012.
 - A third-party complaint filed with the Fair Labor Association ("FLA") in February 2011 concerning alleged labor rights violations at F&D; a June 2011 FLA interim report concerning its inquiry into the complaint; the FLA's final

report issued in April 2012; and an April 2012 report by the Grupo de Monitoreo Independiente de El Salvador (“GMIES”) of an investigation it conducted at F&D on behalf of the FLA.

- A review of the applicable labor and human rights standards implicated by the labor rights violations reported by workers at F&D, including relevant Salvadoran labor law, ILO Conventions, and Hanesbrands’ Global Standards for Suppliers.

B. Findings Concerning Freedom of Association (October 2009 – August 2012)

The WRC reviewed allegations from the SITS union and its members employed at F&D in the following areas related to respect for workers’ associational rights: (1) coercion, harassment and bribery of workers who are members of the SITS union, (2) F&D’s formation of a company union, and (3) discrimination against employees who were SITS union members.

1. Coercion, Harassment and Bribery of Workers to Resign from the Independent Union and Quit their Jobs

The WRC received numerous allegations of incidents in which F&D workers were harassed, coerced or bribed by factory management to resign from the SITS union and their jobs at the factory. Specifically, F&D employees reported that company management offered workers who were SITS union members the payment of severance benefits, on occasion along with large additional sums of money, in return for their resigning from both the union and their jobs at the factory. In addition, F&D management allegedly participated directly in the harassment of employees who were SITS members and failed to discipline other workers who were members of a company-sponsored union (discussed more in depth in the following section) when the latter physically and verbally abused employees who were SITS union leaders and members.

Incidents of Harassment of Workers who were SITS Union Members

Employees who were members of the SITS union reported that on multiple occasions male managers followed female workers into the factory bathroom and pressured these workers to resign from the SITS union. One female worker stated that, in January 2011, she was followed into the women’s bathroom by F&D’s male Maintenance Manager, who then asked her if she was planning to resign from the union.

In late October 2010, one week after the SITS union held a protest outside the F&D plant, a union member was reportedly followed into a market across the street from the factory and approached by a person she did not know, but who appeared to be a gang member. This person

handed the worker a mobile phone and said “they want to talk to you.” The worker took the phone but, feeling fearful, quickly handed the phone back to the person and walked away. Although the person who accosted her did not identify himself, the worker assumed that this incident was related to her union activities at F&D as it occurred near the factory and shortly after public union activity. The union member’s assumptions are reasonable given that, in El Salvador, it is not uncommon for union activists to receive threats of violence under these circumstances.⁴

In February 2012, a worker who is a SITS union member was followed into the bathroom, physically assaulted, and verbally abused by a leader of a rival union set up by the company to undermine the SITS union, an employee named Idalia Palma. F&D management failed to cooperate with police in an investigation of this incident or to discipline Palma. Palma had followed this employee into the bathroom on multiple previous occasions and verbally abused her. In the February 2012 incident, Palma also physically assaulted her.

The worker who was the victim in this incident testified that she reported it to the company’s Human Resources Manager, Susana Escobar. Witnesses reported that Escobar responded by laughing at the worker and refused to take any disciplinary action against Palma. As documented in a police report provided to the WRC, the worker then went to the local police concerning the incident. When a police inspector came the factory to interview Palma, F&D management told him that neither any Human Resources staff nor Palma, herself, were still at the factory. Other workers who were inside the plant at the time of the inspector’s visit, however, reported later that Palma was, in fact, still in the factory. The injuries sustained by the worker in this attack resulted in her taking several days of sick leave.⁵

Bribery of Workers to Resign from the Company and the SITS Union

The WRC received reports of fifteen cases in which F&D management paid money to workers who were members or leaders of the SITS union in exchange for the latter resigning from the union and their jobs at the company. Workers estimated that no fewer than fifty employees who were SITS union members resigned from the company as a result of such practices between 2009 and 2012.

Not surprisingly, the WRC was not able to obtain exact details of what company officials said or paid to each worker who resigned from the factory and the SITS union under these circumstances. Moreover, because blacklisting of former union members is common in the

⁴ See discussion, *infra*, at III (B) (5).

⁵ This incident is also noted in the GMIES/FLA report on F&D mentioned above. GMIES, *Research Report: F&D Factory Case14* (Apr. 2012), available at <http://www.fairlabor.org/report/fd-sa-de-cv-el-salvador>.

Salvadoran apparel industry, and the WRC's policy is to maintain the confidentiality of workers affected by labor rights violations unless otherwise authorized, the WRC is not including in this report the names of the former workers. Below, however, are details of some representative cases:

- A. A female worker who was a member of the SITS union was paid severance benefits in return for her resignation from the company in fall 2009.
- B. Also in fall 2009, a male employee who was a member of the SITS union was offered US\$3,000 in return for his resignation from the company.
- C. A female worker who had received threatening phone calls advising her to resign from the SITS union was paid severance benefits in return for her resignation from the company in May 2010.
- D. A male worker who was a SITS union member resigned from the plant in May 2010, after having made statements implying that he was being paid as much as US\$2,000 to leave the company.
- E. Two male workers and one female worker who were members of the SITS union were paid severance benefits in return for their resignation from the company in May 2010.
- F. A female worker who was a member of the SIT union was paid severance benefits to secure her resignation from the company in September 2010.
- G. A female SITS union member employed at the company was paid an unknown amount of money in return for her resignation in October 2010.
- H. A female worker reported that in November 2010, she received a phone call from the company's Warehouse Manager offering her severance pay plus an additional US\$100 if she would resign from both the SITS union and her job. The Manager told the worker that he had asked company representative Danilo Arevalo if the company could offer her more, but was told that this was all it could offer. This account of the incident was mutually corroborated by several witnesses who overheard the telephone conversation between the worker and the manager on a speakerphone.
- I. A female worker who was a SITS union member was paid severance benefits in order to secure her resignation from the company in January 2011.
- J. A female employee who was a SITS union leader was paid an unknown amount of money in return for her resignation from the company in March 2011.
- K. A male employee who was a SITS union member was paid US\$1,500 in exchange for his resignation from the company in November 2011.
- L. A male worker who was a SITS union member was paid US\$2,000 in return for his resignation from the company in February 2012.
- M. A female employee who was a SITS union member was paid an unknown sum of money to secure her resignation from the company in March 2012.
- N. A female worker who was a SITS union member was paid an unknown sum of money in return for her resignation from the company in April 2012.

It is important to note that under Salvadoran law, workers are not ordinarily entitled to severance benefits if they voluntarily leave their posts.⁶ Eligibility for severance benefits is limited to a specific set of circumstances defined in Articles 53, 58 and 59 of the Labor Code when the employer ends the employment contract without cause before its actual date of expiration, or the employee ends the employment contract unilaterally before its expiration due to illegal actions on the part of the employer, such as putting the employee's life or health at risk or failing to comply with the terms of the contract within time limits stipulated by the labor courts.

Moreover, under ordinary circumstances, even workers in El Salvador who are legally entitled to severance benefits are rarely paid them in full. Because the usual outcome of ending employment is that workers are illegally denied all or part of the severance benefits they are owed, the fact that workers, here, were offered full severance benefits, despite the fact that they were voluntarily leaving their posts, represents a form of coercion, even if no other compensation was offered. The fact that several workers allegedly also received large additional payments from the company further indicates that management engaged in bribery to induce union members to leave their jobs.

Salvadoran Law and International Labor Standards Regarding Bribery, Coercion and Harassment of Union Members to Withdraw their Union Affiliation

The incidents described above indicate a pattern and practice of conduct by F&D management that clearly violates Salvadoran Labor Law and international labor standards.

Article 205 of the Salvadoran Labor Code prohibits any infringement upon workers' freedom of association and specifically states that it is illegal to "impede an interested party from forming part of the constitution of a union or coercing someone to do so."⁷ Offering money to workers who are union leaders and members in exchange for their rescinding their union membership and resigning from the factory constitutes a violation of Salvadoran law. In addition, the law prohibits "repressive actions,"⁸ such as harassing employees who are union leaders regarding their union activities and failing to take action when workers are the subject of abuse in the factory by managers and other workers because of their union membership.

It is important to note that the fact that the workers in question "resigned," rather than having been dismissed, does not bear on the illegality of the factory management's conduct. Under

⁶ Labor Code of the Republic of El Salvador, Article 54 ("If the termination of the contract is by mutual accord, neither party will be responsible."). All translations of Salvadoran labor laws and regulations in this report are informal translations by the WRC.

⁷ Id., Art. 205.

⁸ Ibid.

applicable codes of conduct, a worker's resignation from employment, if it occurs as a result of coercion, violates freedom of association and employers may not offer severance benefits or other payments to induce a worker who is a union member to leave his or her employment.⁹

2. Establishment of a Company Union

Starting in December 2010, workers began reporting to the WRC that F&D's management had formed a committee whose purpose was to undermine workers' effort to organize with the SITS union. This committee was led by employee Iلسya Magali Cortez. Workers reported that the committee told them that it could help address their workplace issues because the committee had the support of F&D's management. Workers informed the WRC that the committee's members were given special privileges, such as meals paid for by the company, loans from the employer, and invitations to company sporting activities and excursions and outings.

The SITS union learned in November 2011 that the company-sponsored committee had registered as a union under the name Sindicato de Trabajadores de la Empresa F y D ("STEFyD"). As is detailed below, workers – including former members of STEFyD – state that it was advised in this process by the Salvador labor confederation, Federación Nacional de Trabajadores ("FENASTRAS"), an organization which has a long history of colluding with employers to destroy or prevent the formation of independent labor unions. F&D workers interviewed by the WRC have consistently reported that the company sponsored the worker committee that became STEFyD.

Evidence Gathered Regarding Management Involvement in the STEFyD Union

Workers reported to the WRC that F&D granted members of STEFyD benefits and privileges that it did not extend to other employees, such as participation in company-sponsored activities and access to loans. In addition, Danilo Arevalo, who was, at the time, an "advisor" to F&D's management, and is now a manager for the firm, reportedly met regularly with the leaders of the STEFyD in his office in the factory near the production area. Workers reported that between mid-2011 and mid-2012, Arevalo met with this group in his office two to three times per week for a period of one half hour to one hour at a time.

⁹ See, e.g., FLA, *Monitoring and Compliance Benchmarks, (Freedom of Association)*, Nos. 10 ("Employers shall not in any way use violence against, threaten, intimidate, harass or abuse workers seeking to form or join workers' organizations or workers participating or intending to participate in union activities, including strikes.") and 14 ("Employers shall not offer or use severance pay in any form or under any other name as a means of contravening the right to freedom of association, including attempts to prevent or restrict union formation or union activity, including strikes.").

Other attendees at these meetings were factory managers who, workers reported, paid certain employees to throw rocks and sticks and yell insults at SITS union members when the SITS union held rallies outside the factory. In May 2010, October 2010 and December 2011, one of the managers who attended the meetings in Arevalo's office, Hugo Orlando Rivas, reportedly led a group of workers in shouting threats to SITS union members such as "you are going to die" and "we are going to finish you off."

According to the SITS union, the company's Electricity and Maintenance Manager, who is named Ernesto, sat for a time on STEFyD's leadership committee. Workers believe Rivas may also have held a position in STEFyD's leadership, but report that STEFyD ultimately removed company managers from its leadership and membership rolls in order to comply with Salvadoran law.¹⁰

F&D's management directly supported the formation of the STEFyD union by granting its leaders special privileges that allowed them to recruit employees to join STEFyD during their work time. STEFyD leader Cortez was transferred from her position as a line worker and assigned to the job of maintaining production tallies, a position in which she was allowed to move throughout the plant and spend the majority of her working hours recruiting other workers to join STEFyD, in part, by offering them the opportunity to apply for loans of money from the company – for which they were only eligible if they joined STEFyD (further details below). Similarly, Arevalo also reportedly offered loans to workers under the condition that they first resign from the SITS union.¹¹

Workers reported that Cortez conducted STEFyD union business during working hours with the full knowledge and cooperation of F&D management and that certain other STEFyD union members were also permitted to move about freely to speak with workers about joining their union. By contrast, members of the SITS union reported that they were only permitted to move through the plant as required by their job duties.

Finally, employees who were leaders of the SITS union reported that when they met with F&D's human resources staff concerning problems at the factory regarding one of its members, these managers would summon a representative of the STEFyD union who would defend the position of the company. In one reported incident, a worker who was a SITS union member was called to a meeting in the plant's Human Resources Office regarding quality issues in her production module (i.e., work group) during which STEFyD's Cortez attempted to pressure her to sign a written disciplinary warning.

¹⁰ See, Labor Code, Arts. 206 (prohibiting unions consisting of both employers and workers) and 225(5) (prohibiting confidential employees and management representatives from serving as union leaders).

¹¹ The company reportedly has since discontinued the practice of making such loans.

Background Information: Role of the FENASTRAS Labor Federation in Establishing Company Unions in El Salvador

Further evidence that the STEFyD was established at F&D as a company union to interfere with employees' organizing of the independent SITS union is the role of the FENASTRAS labor federation in advising the leadership of STEFyD. The FENASTRAS labor federation has a long and well-documented history of colluding with Salvadoran employers to establish company-sponsored unions that interfere with workers' exercise of associational rights.

Professor Mark Anner of Pennsylvania State University, an expert on Latin American labor relations, has written extensively about FENASTRAS' activities in this regard. According to Anner, beginning in the early 1990s, "[FENASTRAS'] strategy was to approach workers in the midst of labor conflicts and agree to negotiate severance pay on their behalf. In exchange for their services, FENASTRAS leaders would keep a percentage of the entire severance-pay package. . . Employers liked the arrangement because they were able to rid themselves of a unionization attempt."¹² "In other cases," Anner reports, "FENASTRAS formed unions and then, according to the [factory] owner[s], demanded monthly payments from the company in exchange for not causing disruptions and for preventing other unions from unionizing the workforce."¹³

As far back as 1994, the Salvadoran press reported that "[M]aquila owners are saying that they have been extorted by [FENASTRAS general secretary Juan Jose] Huezo and that, in exchange for money, he will help them avoid problems with unions."¹⁴ The same article reported that two factory managers met with Huezo and that "the general secretary of FENASTRAS assured that there would be 'labor peace' in exchange for certain monthly payments."¹⁵

Eventually, Anner writes, "other factory owners made pacts with FENASTRAS unions. One owner told me that if he could avoid labor conflicts by making monthly payments, of course he would do it. . . ."¹⁶ Another expert on Central American labor relations, University of California Santa Barbara Professor Ralph Armbruster-Sandoval, has written of FENASTRAS' Huezo: "It has been widely reported that he has signed various 'sweetheart' deals with *maquila* owners to establish, in exchange for bribes and financial gain, pro-management *seccionales* (i.e. 'company unions,' also sometimes called *sindicatos blancos*) that do not focus on improving wages and working conditions of *maquila* workers."¹⁷ By 2000, two international union federations had

¹² Mark Anner, *Solidarity Transformed: Labor Responses to Globalization and Crisis in Latin America* 102 (Cornell University Press: 2011).

¹³ Id. at 103.

¹⁴ *La Primera Plana*, "Más controversias en torno a Juan J. Huezo" (Mar. 24, 1994).

¹⁵ Ibid.

¹⁶ Anner, *supra*, n. 12 at 103.

¹⁷ Ralph Armbruster-Sandoval, *Globalization and Cross-Border Labor Solidarity in the Americas: the Anti-Sweatshop Movement and the Struggle for Social Justice* 73 (Routledge: 2005).

expelled FENASTRAS as a result of its practice of colluding with employers to subvert independent worker organizing.¹⁸

In El Salvador, workers frequently denounce FENASTRAS as an entity that assists employers, for a price, in undermining freedom of association. In March 2011, a group of Salvadoran women textile workers issued a public statement that declared, “We denounce the General Secretary of FENASTRAS, Juan Jose Huezo, and his wife who sell the lists of [union] members at a high price to the owners of the companies that request them.” The statement, which was posted on a Salvadoran political opinion website, also charged that FENASTRAS and a law firm with which it had partnered “have agreed to carry out acts of extortion against companies.”¹⁹

Salvadoran Law and International Labor Standards Regarding Management Interference with and Domination of Workers’ Unions

Both Salvadoran law and international labor standards prohibit employers from interfering with workers’ associational rights by discriminating against any given trade union, or being involved in the formation or administration of a union. Article 205 of the Salvadoran Labor Code prohibits “acts that have the final outcome of impeding a union’s constitution or lead to its dissolution or to subject it to employer control.” In addition, International Labor Organization (ILO) Convention 98 in its Article 2 states that trade unions should be protected against “any acts of interference”²⁰ by the employer and that “acts which are designed to promote the establishment of worker organizations under the domination of employers...shall be deemed to constitute acts of interference within the meaning of this Article.”²¹

Furthermore, ILO Convention 87 guarantees workers “the right to establish and . . . join organizations of their own choosing.” This right is violated when an employer or government entity discriminates in favor of one labor organization over another.²² The ILO Committee on Freedom of Association, the highest international body responsible for interpreting this right, has stated that “employers should refrain from any discrimination between trade union organizations,

¹⁸ *La Prensa Gráfica*, “De Profesión, Sindicalista” (Oct. 15, 2000).

¹⁹ *Simpatizantes FMLN*, “Obreras de Maquilas Denuncian a Dirigente Sindical Juan Jose Huezo” (Mar. 3, 2011) (unofficial WRC translation), <http://www.simpatizantesfmln.org/blog/2011/03/08/obreras-de-maquilas-denuncian-a-dirigente-sindical-juan-jose-huezo/>.

²⁰ ILO Convention 98, Art. 2 (“(1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other . . . in their establishment, functioning or administration. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers . . . shall be deemed to constitute acts of interference within the meaning of this Article.”).

²¹ *Ibid.*

²² ILO Convention 87, Art. 1.

especially as regards recognition of their leaders who seek to perform legitimate trade union activities.”²³

In the case of F&D, the facts discussed above indicate that:

- F&D management played a significant role in the formation of STEFyD at the company through its sponsorship and patronage of the “employee committee” which evolved into the STEFyD union;
- F&D management and the STEFyD coordinated activities, particularly through the role of company “advisor” Arevalo and Ernesto, the company’s Electricity and Maintenance Manager, who sat on STEFyD’s leadership committee; and
- F&D granted special privileges and benefits to STEFyD’s leadership and members. This facilitated STEFyD’s recruitment of members, and was coordinated with the company’s efforts to induce workers to resign from the SITS union. In particular, the company granted STEFyD leader Cortez privileges to recruit members for her union throughout the factory on company time, using as an inducement a company-financed loan program which was only offered to workers who joined her union. At the same time, company “advisor” Arevalo also offered employees company-financed loans on the condition that they resign from the SITS union.

The company’s role in the formation of STEFyD, its influence in that union’s activities, and the patronage and favoritism it provided for that union’s leaders all constituted violations of Article 205 of the Salvadoran Labor Code, ILO Conventions 98 and 87, and applicable codes of conduct, including Hanesbrands’ own Global Standards for Suppliers and the FLA Workplace Code of Conduct.

3. Discrimination Based on Union Membership

The SITS union also reported to the WRC a series of incidents of alleged discrimination against workers on account of their membership in the SITS union. Some examples are outlined below:

Discrimination against SITS Members through the Company’s Loan Program

The WRC gathered mutually corroborative evidence that workers were offered personal loans from the company by Danilo Arevalo, who was originally referred to by the company as its “advisor” and subsequently identified as a company manager, and STEFyD leader Cortez.

²³ ILO, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, ¶ 343 (5th ed. rev. 2006) (“ILO CFA Digest”).

Multiple employees who are SITS union members reportedly were told that in order to apply for the loan they first had to resign from the SITS union and join the STEFyD:

- One worker who is a SITS union member stated that, in July 2011, she approached Cortez, the head of STEFyD, to request a loan to help with expenses for her son who had suffered an accident and was hospitalized. The worker reported that it was common knowledge among workers that Cortez was responsible for taking the initial application for such loans and that anyone interested in such a loan was required to go to her. When the worker approached Cortez, she was told that she would not be eligible for a loan because she was a member of the SITS union but that if she resigned from the SITS union then she could get the money. Initially the worker declined, but, two weeks later, her circumstances became so dire that she returned to Cortez to tell her that she would resign from the SITS union. Cortez then provided the worker with a form letter to which she only had to add her name in order to resign from the SITS union. After filling out the letter, the worker also joined the STEFyD, which she was told was necessary in order to receive the loan. When, by late Summer 2011, the worker had not yet received the loan, she approached the factory's owner, Carlos Liu, to inform him of her request for the loan. The worker reported that Liu was initially hostile towards her when she requested the loan, telling her that she should go to the SITS union for help, but, when she explained that she had resigned from the SITS union and had joined STEFyD, Liu's attitude changed and he agreed to grant her the loan. Although she did eventually receive the loan, the worker was later fired on January 5, 2012.
- Another worker reported to the WRC that, in September 2011, she approached Cortez about applying for a loan, but was told that in order to qualify she would have to change her union membership from the SITS union to STEFyD. This worker decided not to pursue the loan because she did not want to leave the SITS union. She was subsequently approached at her work station approximately five times by Cortez who continually asked her when she was going to drop her SITS membership and join STEFyD in order to qualify for the loan. The worker decided to not pursue the loan.
- In January 2011, a worker who was a SITS union member told the WRC that when he approached Danilo Arevalo about a loan from the company, Arevalo refused, telling the worker, "the factory doesn't have any work and it's the [SITS] union's fault. Talk to Rosa [a SITS leader] and ask her for an explanation because it's the [SITS] union that is causing this problem."

Other Discrimination against the SITS Union and Workers who are SITS Union Members

The WRC also received allegations of other acts of discrimination against the SITS union and workers who were its members, including exclusion of SITS union members from company recreational and sporting events, refusal of company managers to meet with the SITS union, and targeting of SITS members at times of production-related pay cuts and layoffs. The WRC was unable to gather sufficient direct testimony or documentary evidence to corroborate these allegations. However, the detailed nature of the allegations together with the numerous other violations of workers' associational rights that were substantiated suggests that the allegations should be viewed as credible. These allegations are as follows:

- The SITS union alleges that when the company laid off workers as a result of production cutbacks, members of the SITS union were targeted for dismissal over workers who are not SITS members. In October 2010, the union placed on file with the Ministry of Labor a list of approximately 40 union members. The union suspects that Ministry officials sent this list to the plant, which is a common practice in El Salvador, because in the weeks following submission of the list at least ten of the workers on this list were fired or pressured to quit. Unless F&D were able to document that it fired 25% of its entire workforce during this same period of time, this act would tend to indicate that union members were targeted when workers were selected for dismissal. As in other cases, several workers reported to the SITS union that they were told that they would get financial compensation in addition to their severance if they resigned.
- Workers report that plant supervisors speak in a derogatory manner to union members. For example, workers report that a supervisor named Lucy frequently says that SITS union members are "lazy" and are "looking for problems all the time."
- The SITS union reports that the factory did not respond to the union's requests for meetings to resolve workplace problems.
- Workers report that the factory management grouped SITS union members into certain modules (production teams) consisting primarily of SITS union members. Then, these workers report, the factory assigned these modules frequent style changes and more complex operations which lowered these teams' efficiency, thereby reducing the amount of money that workers on these teams were able to earn through production bonuses. Workers further report that company management tried to create conflict among the members of these modules by blaming certain employees for working slowly and thereby keeping the module from earning the bonuses. Members of these modules also stated that STEFyD leader Cortez told the SITS union members that, "you should beat [a union leader] up when you get outside, because her work is so slow." The SITS union reported that one of these modules had, among its original twelve members, four members of the union's leadership committee and six rank-and-file union members. Due to the pressure

placed on these employees, however, all but one of the union members in this module have resigned.

- The SITS union reports that when manager Arevalo organized company sporting activities and excursions, SITS union members were either denied the opportunity to sign up for them or simply not informed about the events. Previously, such events were open to all workers and announced on the company bulletin board.

Salvadoran Law and International Labor Standards Regarding Discrimination against Union Members

Article 205 of the Salvadoran Labor code explicitly prohibits discrimination against employees on the basis of union membership.²⁴ As noted above, SITS members reported that they faced discrimination due to their union membership in the form of: (1) being disproportionately affected by layoffs, (2) being denied benefits provided to STEFyD union members, such as loans and recreation activities, (3) being subjected to verbal harassment, and (4) being concentrated in modules with lower production bonuses. The WRC finds that through this pattern and practice of discriminatory conduct, F&D violated Salvadoran law, international labor standards, and applicable codes of conduct, including HanesBrands' own Global Standards for Suppliers and the FLA Workplace Code of Conduct, with which F&D, as a supplier of HanesBrands, a FLA member firm, is required to comply.

Also, as mentioned above, the ILO's Committee on Freedom of Association, which is the highest international authority on the subject of workers' associational rights, has explicitly pointed out that employers should not exercise discrimination regarding "legitimate trade union activities."²⁵ The fact that F&D management meets regularly with STEFyD, but fails to respond to the SITS union's request to meet to resolve conflicts in the factory, even though, as a legal matter, both unions are on equal footing, represents a violation of this principle. The act of providing benefits to workers, such as the former loan program, through only one of the worker organizations present in the factory, and requiring resignation from the SITS union as a condition of accessing these benefits, also represented an act of discrimination against the SITS union and the workers who are its members.

C. Renewed Intimidation and Threats against Employee Union Leaders and Members (October 2012 – January 2013)

²⁴ Labor Code, Art. 205 ("It is prohibited of all people to: ... Discriminate against workers for reasons of their union activities or take repressive actions against them for the same reason...").

²⁵ ILO CFA Digest at ¶ 343.

1. Defacement of Employee Work Stations and Theft of Personal Property

On Monday, October 15, 2012, approximately twenty SITS union members and supporters arrived at work to find obscene insults and intimidating anti-union messages written at their work stations. These phrases were written on pieces of a SITS union T-shirt that had been cut into pieces and defaced. The shirt commemorated an official of the FESS union federation, to which the SITS union is affiliated, who was recently deceased.

A piece of the shirt that bore the dead union leader's name was defaced with the phrase "Because of this son of a bitch we are all screwed;" on other pieces of the t-shirt other references to the late union official were written stating "Rest in peace you fucking thief" and "The devil is giving payback for this faggot." (See Illustrations 7-11.)

Other pieces of T-shirt were defaced with phrases such as "lowlife bitch" and "slut." Another was cut out in the shape of male genitals. The SITS union members and supporters whose work stations had been defaced also found that many of their work tools and personal possessions (toothbrushes, combs, etc.) had been taken.

The workers reported to the WRC that they had found their work stations defaced when they arrived in the plant tat Monday morning. Some employees, including production workers, had been in the factory on Saturday, but no production work had occurred on Sunday. It is difficult to imagine, therefore, how the defacement could have been perpetrated without at least the tacit complicity of the factory management.

Following a complaint by the SITS union, and communications between the WRC and Hanesbrands concerning the incident, the company stated that it would conduct an internal investigation. The company provided the WRC with the results of this investigation, although no final conclusions were noted in the documents provided.

The company's report states that eleven workers filed complaints about finding cloth with obscenities and insults at their workstations and/or discovering that their work tools and personal possessions had been stolen. The company's investigation results state that it is unclear how the union T-shirt was obtained by the perpetrators, and that the Secretary-General of the SITS union, employee Rosa Evangelina Granados, had provided different explanations of where it might have come from.

At the time of the incident, there were no security cameras covering the production floor. Cameras which previously had been installed in the factory's locker area did not show a union T-shirt being taken from that area.

The company's report suggests that the SITS union, itself, or a "third party" connected to it had concocted the incident, defacing the relevant work stations "in order to create the need for

actions against the company.” No evidence is cited for this supposition. The document ends by noting that the company is still collecting evidence.

As the WRC noted to Hanesbrands at the time of this incident, the investigation conducted by the company could be credited as objective since the company’s management had previously demonstrated hostility to the SITS union and was, itself, suspected to have participated in or allowed the defacement. The WRC suggested that a joint investigation of the incident be conducted by the WRC and Hanesbrands. Hanesbrands initially agreed to take this step, but did not respond to subsequent requests from the WRC to proceed with a joint inquiry.

It is worth noting that GMIES’ 2012 report for the FLA cites the lack of management response to incidents of this kind as a longstanding problem at the factory. GMIES writes that, “some workers have suffered acts of physical and verbal violence as well as theft of belongings within the factory and management has not carried out respective investigations to find those responsible and apply the corresponding sanctions.”²⁶ They note four cases in 2011 and 2012, three of which involved physical attacks or theft committed against SITS leaders, in which management took no investigative or disciplinary action. While in this case the factory did conduct an investigation, the investigation reached no conclusions and led to no accountability.

The WRC provides new recommendations as to threats and intimidation in the plant in section III (B) (5) of this report.

2. Death Threats against Worker Leader of Independent Union

In early 2013, following a work stoppage conducted by the SITS union over the issue of increased production quotas, F&D employee and SITS union leader Rosa Evangelina Granados was subjected to a series of anonymous threats. WRC investigators interviewed Granados and a number of other workers and witnesses to the relevant incidents, and received mutually consistent testimony concerning the following.

On Friday, January 18, at about 5:00 pm, a man approached Granados and three other women workers while they were walking from the factory to a nearby bus stop. The man, whom neither Granados nor the other workers had seen before, physically blocked the women’s path and said specifically to Granados, “They don’t want to see you at F & D anymore,” and, “I’m not kidding, if you don’t do what you are told, then they are going to take your life.”

The man demanded Granados’ mobile phone and examined it before returning it. One of the workers who was with Granados said that she saw one of F&D’s production managers parked in his car on the side of the road about one half block from where the incident took place.

²⁶ GMIES, *supra*, n. 5 at 13.

Approximately 7-10 minutes after this incident, after Granados had reached a friend's house, her mobile phone rang and the caller said that "I'm the one who just saw you" and that Granados should "collaborate." Granados hung up; she told the WRC that the call was clearly meant to intimidate her.

Subsequently that evening, Granados received a text message telling her, again, to "collaborate." Her phone rang again the same evening at approximately 7:00 pm and 7:30 pm, but she didn't answer it.

The next day at about 1:00 pm, Granados received another threatening call on her mobile phone. This time, she was with the General Secretary of the FESS union confederation, and handed her phone to him. He spoke with the caller, and the caller told him, "You are going to die too."

There is insufficient evidence to link any F&D personnel to these threats. F&D managers indicated to the WRC that they do not believe that these incidents actually occurred. However, as noted elsewhere in this report, F&D management has clearly articulated hostility to the SITS union and to Granados, specifically, to the WRC and to other parties.

Reports of threats, not to mention actual incidents, of violence, particularly against union leaders, must be viewed as highly credible in the context of Salvadoran society and politics. Although there has been a recent decline in violence in the country following a 2012 truce between rival criminal gangs, El Salvador's murder rate in 2011 was the second-highest in the world, and murder-for-hire remains a common criminal enterprise.²⁷

Moreover, there is a well-documented history of killings of trade unionists in El Salvador, which reached its peak during the country's civil war in the 1980s.²⁸ More recently, in January 2010, Victoriano Abel Vega, the general secretary of the municipal workers' union in the city of Santa Ana, was murdered by unknown armed men after receiving death threats.²⁹

Following the threats to Granados, the WRC recommended that F&D make it clear to its own managers and employees that it will not tolerate any involvement in threats of any kind against employees or their union representatives. As noted above, the WRC provides new recommendations as to threats and intimidation in the plant in section III (B) (5) of this report.

²⁷ U.S. State Dept. Bureau of Consular Affairs, *Travel Warning: El Salvador* (Jan. 23, 2013), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5871.html.

²⁸ Chris Norton, "Specter of Terror in El Salvador: Trade Unions Targeted," *Christian Science Monitor* (Apr. 21, 1989), <http://www.csmonitor.com/1989/0421/opast.html>.

²⁹ International Trade Union Confederation, *Annual Survey of Violations of Trade Union Rights: El Salvador* (2013), <http://survey.ituc-csi.org/El-Salvador.html?edition=336#tabs-4>.

D. Recommendations

On August 21, 2012, the WRC recommended that Hanesbrands work with F&D to ensure that the company takes the actions listed below. Some of these recommendations had also been included in the WRC's June 2010 memo to Hanesbrands, but had not been implemented as of the sending of the August 2012 communication. These are noted below.

- Eliminate all support and special preferences for STEFyD, including favoritism for and meetings with its leaders, preference for its members to participate in special programs and activities, and privileges for its leaders to move freely around the plant during working hours and on company time to recruit members – privileges which the company has not granted to workers who are members and leaders of the SITS union.
- Issue a statement to its workforce, both verbally and in writing, stating that workers at F&D have the right to join a union of their choosing and that management will in no way interfere with this choice or take any adverse action of any kind against any worker in relation to this choice. (This recommendation was first made in June 2010; it was not implemented between June 2010 and August 2012.)
- Regularly attend monthly meetings with the SITS union facilitated by the Ministry of Labor to discuss problems at the plant. Senior management should be present at all of these meetings in order to facilitate decision-making processes at the time of the meeting and avoid creating further delays in addressing the issues presented by the workers and their representatives. (This recommendation was first made in June 2010; it was partially implemented between June 2010 and August 2012.)
- Formally communicate to the workers that *all employees* are entitled to participate in the company's loan program, regardless of their union membership statuses, and make clear the process and evaluation criteria for loan applications. The task of distributing and receiving applications should be removed from the hands of Danilo Arevalo and the worker, Cortez, as these individuals are clearly linked to STEFyD.
- Refrain from any action that leads or could reasonably be expected to lead to violence or threats of violence against workers related to their associational activities.
- Stop all harassment and discrimination, both inside and outside of the factory, of workers who are SITS union members, and clearly communicate to supervisors that such behavior will no longer be tolerated and will result in disciplinary action.

- Fully cooperate with police investigations regarding any past or future threats and violent acts against employees who are SITS union members.
- End the practice of concentrating workers who are SITS members in a small number of production modules. Meet with the SITS union to discuss a fair way to reassign union members in a way that does not allow production managers to discriminate against employees who are SITS union members in their production and bonuses.

It is worth noting that in June 2010, the WRC had also recommended that F&D also offer all former employees who had been members of the SITS union's leadership committee and had left the company due to threats or offers of money immediate reinstatement to their original positions, with no loss of seniority, and with full back pay to the date of their separation. Given the circumstances surrounding their departures, the WRC recommended that the company should communicate to these workers that there will be no negative consequences for them or their families if they return to work and that the factory management will do everything possible to ensure their safety and well-being. Finally, the WRC recommended that workers who do not accept reinstatement should receive back pay for all days between the date of dismissal and the date when the reinstatement offer was made.

In August 2012, the WRC did not repeat this recommendation because the former workers could no longer be located and contacted. Prompt remedial action is necessary in cases of this type of retaliation exactly because effective remediation grows more difficult as time passes. Without timely remediation of violations, associational rights are denied not only to the individual workers who were directly affected, but also to the general workforce, who receive the message that, if they exercise their associational rights, they, also, will be subject to termination, or pressured to resign, without effective recourse. No such timely remediation occurred in this case, which has made more difficult the subsequent task of restoring in the factory an environment conducive to freedom of association.

E. Response by Hanesbrands and F&D

Hanesbrands developed a corrective action plan with F&D management to respond to the WRC's recommendations. This corrective action plan has been partially implemented.

According to Hanesbrands, it took the following steps to address the WRC's August 2012 recommendations:

- Informed F&D management that it should not demonstrate a preference for one union over another.

- Worked with F&D to create a freedom of association statement to be communicated to employees and supervisors.
- Observed monthly meetings between F&D senior management and the SITS union that were facilitated by the Ministry of Labor.
- Implemented multiple freedom of association trainings with managers at F&D.
- Informed F&D management that workplace violence will not be tolerated, and that the company must cooperate with police inspections related to incidents of violence at the workplace.

Hanesbrands also informed the WRC that it had received assurances from F&D's top management that the factory would constrain its managers and supervisors from further violations of workers' associational rights and that it would cooperate with Hanesbrands on the steps outlined in the corrective action plan.

Hanesbrands also stated that it would work with F&D to develop a fair procedure for granting loans to workers. Both managers and workers subsequently reported that rather than the program being improved, it has been eliminated. In many cases, this would be an inappropriate remedy, as it could lead to a perception by workers that if they request fair processes or speak out against discriminatory practices, the company will retaliate by eliminating privileges or benefits. However, in this case cancellation of the program does not appear to have had such negative consequences, as the WRC has not heard reports that this has had a chilling effect on associational activities at the factory.

Finally, Hanesbrands stated that it would work with the SITS union and F&D management to address the union's claims that its leaders and members were being clustered in one production line and denied a fair opportunity to earn production bonuses. WRC interviews with the SITS union leaders confirm that Hanesbrands consulted them as to an appropriate resolution to this issue and that the SITS leaders stated a preference to remain clustered on one production line with assurances that this line would receive equal treatment. While some improvement has been reported by both Hanesbrands and the SITS leadership in the opportunities afforded to this line to earn bonuses, continuing problems with this arrangement are detailed below.

As is further detailed in the final section of this report, Hanesbrands' intervention has led to some other improvements at the plant, but has not been successful in addressing the fundamental ongoing violations of workers' associational rights.

III. Assessment for the City of Los Angeles: Findings, Recommendations, and Remediation (April 2013 – March 2014)

This section discusses the initial findings and recommendations of the assessment for the City of Los Angeles of the factory's overall labor practices that the WRC initiated in April 2013. The WRC communicated these findings and recommendations to F&D, Hanesbrands, SanMar, and the City in June 2013. This section also details the corrective actions subsequently taken by F&D in response, as a result of engagement by Hanesbrands. Finally, this section also notes the outstanding corrective actions necessary to achieve full compliance with the Ordinance in the relevant areas.

Although SanMar, unfortunately, did not respond to the WRC's findings and recommendations concerning F&D, its apparent source of apparel from the factory, Hanesbrands, did contact the WRC to discuss appropriate remedial measures to address the violations that had been identified. On July 25, 2013, Hanesbrands, F&D management, WRC, F&D workers who were members of the SITS union, and the workers' advisors from the SITS met in San Salvador to discuss remediation.

Perhaps the most significant remedial measure agreed upon at the meeting in San Salvador was the hiring of an independent ombudswoman charged with facilitating regular meetings between the union and management and with monitoring further labor rights developments at the factory, particularly, F&D's progress towards fulfilling its commitments to correct the violations documented below. The person selected to fill the role of ombudswoman, which is discussed in more detail below, is Ena Lilian Nuñez, an experienced lawyer and labor relations specialist, who, to the WRC's knowledge, had no previous relationship with F&D management or with the SITS union. She began to serve as the ombudswoman at F&D in September 2013.

Nuñez is charged with collaborating with F&D management and employees who are SITS union leaders to establish regular and ad hoc meetings in order to work through labor issues and develop a new foundation for union-management relations based on mutual respect. The parties agreed that SITS union members, management representatives, the WRC, and Hanesbrands can all bring issues concerning labor issues at F&D to Nunez' attention.

Nuñez visits the plant on a weekly basis to review progress towards commitments agreed upon by the union and the company, participate in regular meetings between the SITS union and management, and address new issues that arise at the factory. She reports approximately twice a month to representatives of the WRC and Hanesbrands concerning her work. Nuñez also has conducted a workshop on workplace harassment for supervisors and managers and has investigated complaints from the union.

Núñez has been hired to serve as ombudswoman for a fixed term, at the end of which the stakeholders will assess whether there is a need to continue her services. While the parties agreed that her fees would be paid by F&D, they also established that Núñez would be accountable to all of the stakeholders.

Following Núñez's selection as ombudswoman, on October 9, 2013, F&D management and the SITS union signed an agreement memorializing the commitments outlined at the July 25 meeting. The ombudswoman witnessed the signing and has been monitoring compliance with the specific points referenced in the agreement.

On March 10, 2014, the WRC recommended that Núñez be retained to continue in her role as ombudswoman. All of the other parties concurred, and on March 19, 2014, Hanesbrands and F&D committed to extend Núñez's engagement for an additional six months. After six months, the parties will reassess the need for her services

A. Sources of Evidence

The WRC's findings concerning violations of workers' rights at F&D during this period are based on the following sources of evidence:

- Interviews with F&D management;
- Ongoing communications with representatives of Hanesbrands;
- In-depth interviews with 13 F&D production employees, that were conducted offsite from the factory;
- A review of factory records and written policies, including payroll records, employment contracts, and personnel policies;
- A physical inspection of the factory conducted on April 30, 2013, and a follow-up inspection of identified problem areas on July 26, 2013;
- Interviews with representatives of the two labor unions that have members at the factory;
- A review of relevant labor laws of El Salvador, international labor standards, and corporate codes of conduct.

B. Findings and Recommendations

1. Health and Safety

Fire Safety

Findings

WRC investigators noted a number of impediments to the safe evacuation of the factory in case of fire or other emergency. Specifically, several aisles on the factory floor were blocked by workstations and tables in a manner that would hinder evacuation. Workers report that these obstacles are obvious as they cause congestion in the aisles when workers leave the building at the end of their regular workday. (See Illustration 1 in Annex.)

The WRC also observed that workstations in the factory also were placed extremely close to each other, further hindering egress. In interviews, workers noted that it was difficult to maneuver around their workstations.

Workers also indicated that the factory's emergency exits, of which there are only two, are inadequate. One worker reported an incident that occurred approximately two months before the WRC's inspection, in which, following a short circuit in the factory's electrical wiring, the workers ran to leave the building fearing a resulting fire. To escape, workers jumped over benches and left the building through the factory's loading docks, jumping from the docks, which lack any stairs, to the ground. A worker who was pregnant at the time of the incident reported that she nearly fell and injured herself while attempting to leave the building.

Similar risks are posed in a narrow area outside the factory where employee lockers and tables are located. This area is several feet above the ground and has bars separating it from the street. When packed with workers accessing their lockers, this area also could be difficult for workers to exit safely in case of emergency. (See Illustration 2)

The ability of workers to exit the facility safely and quickly is of particular concern at F&D as both workers and management reported incidents when ventilation fans and sewing machines have caught fire, including at least one requiring evacuation of the building. Factory management stated that these fires were a result of fluctuations in the electrical power supplied to the factory by the free trade zone authority.

Regarding the factory's physical layout, Salvadoran workplace safety regulations specifically require that "aisles must be kept unobstructed to prevent accidents from falls or blows," and that

“all workplaces should have... facilities for building evacuation in case of fire.”³⁰ In addition, relevant regulations also state that factory aisles must be at least one meter in width and that “the separation between machines and other apparatus should be sufficient that workers can carry out their labor and should be no less than 80 centimeters.”³¹

Initial Recommendations (June 2013)

This investigation did not include a technical review of the factory’s electrical systems and machinery. However, given the previous incidents of electrical fires, the WRC recommends that F&D engage a qualified industrial safety expert to determine what improvements should be made to the factory’s electrical systems and equipment (including the ventilation system and sewing machines) to minimize the risk of future fires. If electrical power surges are, as reported by the factory management, an ongoing problem, F&D should take steps to minimize the likelihood that these result in fires.

F&D management should ensure that factory aisles are unobstructed, that workers have adequate room to maneuver around their work stations, and that the layout of these work stations and aisles is in compliance with Salvadoran law. In addition, F&D management should ensure that there are adequate exits for all workers to safely exit the plant in emergencies, which may require providing stairs in the area of the loading docks and expanding means of egress through the locker area.

Status Update and Remediation

The October 9, 2013 agreement signed by the company and by the union stated that F & D would hire an electrical engineering firm in order to evaluate the company’s electrical systems. While the company informed the union and the ombudswoman that this study was, in fact, carried out, it informed these parties that it was unwilling to share a copy of the report with the union or any other stakeholders – despite the union’s insistence that it do so in order to comply with the agreement. The company gave the union a “summary report” that was created by the company itself, based on the contents of the engineering firm’s findings. The WRC has not received a copy of the electrical engineering firm’s report or of the F&D summary report.

F&D management committed, however, to upgrade and repair all of the factory’s wiring. On July 25, 2013, the factory reported that the majority of this work had been completed. On March 14, 2014, factory management reported that 90% of the work was done, and that the rest would be completed by the end of April.

³⁰ General Regulation on Safety and Hygiene in the Workplace, Decree No. 7, 1971, Arts. 47 and 59, available at: <http://www.temasactuales.com/assets/pdf/gratis/ELSohsReg.pdf>.

³¹ General Regulation for the Prevention of Risks in the Workplace, Decree No. 89, 2012, Art. 7.

The October 9 agreement also stated that the company would maintain the factory aisles free of obstruction. Both the union and the ombudswoman, based on her observation during her weekly visits to the plant, reported to the WRC that the company has, in fact, been working to keep the aisles clear and, when workers report obstructions in the aisles, management promptly rectifies these problems.

F&D management also committed in the October 9 agreement to request an inspection of the factory by the local fire department in order to identify areas needing improvement in terms of fire safety, and to provide the results of this inspection to the union, the WRC, and Hanesbrands. F&D has reported that the inspection did take place, but has not shared the written results of the inspection with the union, the ombudswoman or the WRC. Rather, factory management provided the union and the ombudswoman what it represented as a summary of the results. F&D management has also informed the ombudswoman that it will work with the San Marcos International Free Zone, which owns the factory building, to add an additional exit to the building.

HanesBrands informed the WRC on March 19, 2014, that F&D management had committed to provide the full original reports from the fire safety audit and the electrical inspection to the union at the next labor-management meeting, w currently scheduled for March 24.

Current Recommendations

The WRC expects F&D to fulfill its commitments to complete the repair of the wiring system by the end of April 2014 and to provide the fire safety audit and electrical inspection reports to the union at the next union-management meeting. Upon receipt of these reports, WRC will review these reports to assess whether the company has taken all necessary remedial actions in this area.

Ventilation

Findings

While the WRC's inspection took place on a relatively cool day for the area, temperatures inside the factory were notably hot by mid-afternoon. Workers report that the factory reaches significantly higher temperatures on other days, and that, even on those days, the factory's ventilation fans sometimes are not used at their maximum power.

Salvadoran law states that “The temperature and relative humidity of indoor work must be kept within bounds that do not cause harm or discomfort to the health of workers”.³² Below, the WRC provides recommendations to enable the company to ensure that it is in compliance with this standard.

Initial Recommendations (June 2013)

The WRC recommends that F&D management post thermometers in the work areas of the factory that reach the highest temperatures during the workday. These thermometers should be publicly posted so that workers can observe the temperature at any time. Based on data collected from these thermometers, F&D should ascertain whether it is necessary to improve its cooling systems.

Status Update and Remediation

In the October 9 agreement, the company committed to promptly install thermometers in the warmest areas of the plant, to ensure that the temperature would not rise above 28 degrees Celsius (82.4 degrees Fahrenheit), and, when necessary, to keep its ventilation fans running during workers’ meal breaks.

The union reports that thermometers were installed in the plant in November and December 2013. However, the union recently informed the ombudswoman and the WRC that they believed that, rather than decreasing over time, average temperatures inside the plant were increasing. The union reports that its members have repeatedly observed thermometer readings above the 28 degree threshold, including temperatures up to 45 degrees Celsius (113 degrees Fahrenheit) during the hottest part of the day. The ombudswoman also reports that she has seen thermometer readings indicating temperatures up to 34 degrees Celsius (93 degrees Fahrenheit).

On March 19, 2014, Hanesbrands informed the WRC that F&D management had committed to contact the Ministry of Labor to request that the Ministry officially retest the temperature. Such a test will be particularly useful if it is performed during the hottest times of day; workers report that a prior reading by the ministry was taken in the morning, when the factory was still comparatively cool.

Hanesbrands also reported that the company had submitted a plan for improving the plant’s ventilation and climate control to the management of the San Marcos International Free Zone, which owns the building, and is currently awaiting its approval.

³² General Regulations on Safety and Hygiene in the Workplace, Art. 19.

Current Recommendations

The WRC recommends that F&D management make its best efforts to promptly obtain approval from the free trade zone's management to make improvements in ventilation and climate control in the plant, and complete these improvements within thirty days from the date that approval is granted. Subsequent to the installation of these measures, continued temperature monitoring will be necessary to assess whether the new equipment has reduced the temperature to the levels dictated by Salvadoran law.

Ergonomics

Findings

El Salvador's General Regulation on Safety and Hygiene in the Workplace states that "employers are required to provide workers with adequate seating to the kind of work they perform."³³ The chairs that workers at F&D use are made of inadequate materials and are not designed for sewing machine operators.

These chairs lack lumbar support and cannot be adjusted to an individual worker's height or size, a problem which is compounded by the fact that the height of the tables at which sewing machine operators work also cannot be adjusted.

Moreover, the bases of the chairs workers use also lack wheels or swivels. Workers report that during the workday, the chairs can become hot to the point that they cause workers physical pain that remains after they finish work.

Workers also indicated that broken chairs are not fixed promptly by the factory management. One worker reported that after her seat developed a crack, she had to tape it to minimize the discomfort it caused to her. She stated that she has been requesting for three months that the chair be repaired or replaced, with no results.

Initial Recommendations (June 2013)

F&D should review the plant's ergonomic environment and equipment, retaining an outside expert if necessary, and make changes necessary to prevent discomfort and long-term injuries to workers. This includes supplying production workers with ergonomic chairs that provide lumbar support, are adjustable horizontally and vertically, and have wheels and a swivel base, as well as ensuring that work surfaces are adjustable to each worker's height.

³³ Id at 54.

Status Update and Remediation

At the July 25 meeting, Hanesbrands committed to instruct F&D personnel in the ergonomics practices implemented in Hanesbrands' directly-owned plants. Since this commitment, Hanesbrands' personnel in El Salvador have provided at least one ergonomics training to F&D personnel.

In the October 9 agreement, F&D committed to purchase ergonomic chairs for the workers on the factory's production floor no later than March 2014. In mid-March 2014, factory management reported to the ombudswoman and the union that it was in the process of shopping for the chairs, and would be installing these improved chairs not only at F&D, but also at Hermanos Textiles, another plant owned by the same firm.

On March 19, 2014, Hanesbrands informed the WRC that F&D management had reached an agreement with a manufacturer to provide the chairs, and that the chairs would be installed within no more than 90 days.

Current Recommendations

The purchase of ergonomically sound, adjustable, wheeled chairs will represent a major step forward in protecting the long-term health of F&D workers. The WRC continues to recommend that this step be promptly completed.

In addition, the WRC recommends that, when the chairs are introduced, F&D management engage in best practices to maximize the positive impact of this improvement. This will include providing appropriate training to ensure that workers understand how to adjust the chairs in an ergonomically appropriate manner, and assessing whether other changes to work areas are necessary in order to realize the full positive impact of the chairs.

Production Equipment and Protective Equipment

Findings

Both worker reports and visual inspection of the factory indicate that poor maintenance of machinery and inadequate safety equipment pose risks to workers at F&D.

As noted above, multiple workers reported observing electrical fires from the factory's sewing machines. It was not clear from the workers' testimony whether these fires were a result of lack

of maintenance, faulty wiring, or, as F&D's management stated, power surges in the factory's electrical supply..

Workers expressed concern that the sewing machines were poorly maintained and operated unpredictably. WRC investigators observed that a number of sewing machines were tagged as having oil leaks, but were still in operation.

One area of particular concern is the lack of adequate needle guards on some sewing machines. Needle guards on sewing machines are a fundamental safety measure for workers in apparel production. One worker testified that she had been pressed by her supervisor to keep working without a needle guard after the guard on her machine broke. Only after she refused to work without it, and sat without working for several hours, did the factory replace the needle guard.

Other workers also described problems with broken needle guards on their sewing machines. Workers reported that the factory fashions its own improvised needle guards, which are less durable and stable than standard needle guards. If dislodged, workers reported, these needle guards have sharp edges which, themselves, can injure workers.

Only a minority of production workers at F&D were wearing protective masks on the day that the WRC visited the factory. Management informed the WRC that masks were provided to workers on Mondays and Wednesdays, and that employees can also obtain masks at other times if necessary. Workers, however, reported that they are required to queue and sign their names for masks, and that, sometimes, the line for masks is so long that they cannot obtain one before they have to start work. Regardless of the reason for the workers not wearing masks, it presents a serious safety risk.

A report provided by the factory to the WRC indicates how many workers in the plant have suffered injuries or illnesses in a given month. The WRC reviewed reports for January, February, and March 2013, and found that a significant majority of the reported cases of illness (143 of 170) involved respiratory problems. This provides additional cause for concern regarding inadequate ventilation and supply of protective equipment in the plant.

The Salvadoran General Regulation on Safety and Hygiene in the Workplace states that workplaces must take “the necessary measures to protect workers and employees from any accident that could be caused by... machinery, its accessories, mechanical transmissions, and power conductors.”³⁴ The same regulation goes on to state that “All protective equipment for both machines, and for the workers, will be provided by the employer. It is mandatory for employers to maintain and replenish protective equipment that deteriorates with use.”³⁵

³⁴ Id. at Art. 55, ¶ 1a.

³⁵ Id. at Art. 73.

Similarly, the factory's own work rules, *Internal Labor Regulations of F&D, SA*, dated January 8, 1996, state that, "the company will adopt and put into practice in the workplace all safety and hygiene measures that it considers adequate in order to protect the life, health and physical integrity of its workers."³⁶

Initial Recommendations (June 2013)

Sewing machines should be maintained in good working order and locked, tagged out, and replaced when not in proper working order. Workers should not be penalized or castigated for reporting problems with machines or safety equipment, or refusing to work on malfunctioning or dangerous machines. When workers who report safety problems are abused by supervisors, or encounter delays in repair or replacement of their machines – which makes it more difficult for them to obtain production bonuses– this creates a powerful disincentive for workers to report damaged, and potentially dangerous, machines. This, in turn, increases the risk of workplace accidents.

Effective, industrial-quality needle guards should be installed on all sewing machines. When needle guards are broken or dislodged, sewing machines should be locked and tagged out, and the needle guards should be promptly repaired or replaced, before workers are instructed to resume use of the machine.

F&D should ensure that workers wear protective masks that are appropriate to their duties. As one necessary measure towards this end, the company should ensure that there is an adequate supply of masks and that workers have adequate opportunities to obtain them.

Status Update and Remediation

In the October 9 agreement, the company agreed to improve the design of the needle guards it uses, with support from Hanesbrands. Hanesbrands committed to provide an opportunity for F&D staff to observe practices at a Hanesbrands-owned plant and learn improved safety techniques from Hanesbrands staff. At the time of the publication of this report, the ombudswoman reported that F&D had designed an improved needle guard and was in the process of installing the newly designed guards on workers' sewing machines.

In the October 9 agreement, the company committed to undertaking a study regarding the presence of particulate matter in the air in the plant, the results of which were to be shared with all stakeholders. The agreement stated that, if the type and level of particulate matter was

³⁶ Id. at Art. 34.

determined to pose a health risk to employees, workers would be required to use face masks. F&D had initially pledged, at the July 25 meeting, to ensure that this test was performed by August 30. The company has informed the union and the ombudswoman that two particulate matter studies were carried out, albeit belatedly, during November 2013 and January 2014.

F&D management refused, however, to share a copy of the full report with the union or other stakeholders, despite the union's insistence that it do so in order to comply with the agreement. The company gave the union a "summary report" created by the factory management based on the contents of the outside firm's findings. This summary indicates that the study found that the level of particulate matter at F&D exceeds relevant health and safety standards.

Hanesbrands representatives stated on March 14 that they believe that the results of this test are inaccurate and that they believe particulate matter levels are unlikely to be at this level, which they describe as significantly higher than other comparable factories. Hanesbrands representatives reported that they were consulting with their internal health and safety experts to identify next steps to ensure that levels of particulate matter at F&D are appropriately assessed and remedied as necessary. On March 19, 2014, that F&D management had committed to provide the union with a copy of the full report at the next union-management meeting, which is currently scheduled to take place on March 24.

The October 9 agreement also states that the factory's Hygiene and Safety Committee will oversee the distribution of masks to workers. The union reported that masks are being made available to the workers, upon request, but that many workers prefer not to use them, especially given the high temperatures in the factory. The union has requested that the Hygiene and Safety Committee continue to educate workers about the importance of using the masks. In the absence of the results of the particulate matter study, the WRC cannot assess either the risks to workers' health resulting from failure to wear masks or whether the masks provided give adequate protection from these risks.

The union reported to the WRC that significant issues remain regarding the maintenance of the plant's sewing machines, although some steps have been taken to correct them. These steps include the placement of a repair log at each work station so that the factory's mechanics can make note of any repairs that they conduct, and a weekly inspection of each machine's oil and filters. The union has continued to bring complaints to the ombudswoman and to the factory with regards to poor maintenance of the sewing machines.

Current Recommendations

The WRC expects F&D to fulfill its commitment to provide the full report on the particulate matter study to the union at the next labor-management meeting. In addition, the WRC

recommends that Hanesbrands undertake any additional testing, if desired, within a period of no more than thirty days and that, promptly upon completion of such testing, Hanesbrands present all parties with the full results and a plan for any necessary remediation. The WRC may also provide further recommendations upon receipt of the existing test results or any additional tests performed by Hanesbrands.

While long-term remediation of this issue likely will require other measures that reduce the level of airborne particulate matter, use of masks may be a helpful interim precaution. It is worth noting that workers' reluctance to wear face masks is clearly influenced by the excessive heat levels in the plant. Reductions in ambient temperature in the workplace are likely to increase workers' willingness to wear personal protective equipment.

The WRC has not reached new findings as to whether the current sewing machine maintenance practices are adequate. The WRC encourages factory management and the union to engage directly via the ombudswoman process to address any remaining issues regarding machine maintenance.

Conditions and Capacity of Bathrooms

Findings

Workers consistently cited the condition of the factory's bathrooms as a concern in interviews. (See Illustration 3) Workers reported that the bathrooms were dirty and that the floors were usually wet, rendering these areas both unhygienic and dangerously slippery. As one woman said, "Two weeks ago, I slipped because the floor was full of water. Even though I step carefully, my feet often slide. In that case, I was not injured because a coworker grabbed me." Another woman said, "The toilets are always overflowing with their dirty contents." Workers understood the wet floors to be a result of broken and overflowing tanks and of leaks in pipes.

Workers also reported irregular access to toilet paper. According to employees, on some days, a worker is stationed outside the bathroom to provide toilet paper to employees from 8:00 am to 11:30 am, and from 2:00 pm to 4:30 pm. Workers report that the employee stationed outside the bathroom provides only a limited, inadequate amount of toilet paper to each person, and that when asked for more paper, she says she is under orders to provide only that amount.

Workers related that in February a woman worker who asked for more toilet paper was told by the person handing out toilet paper, "You all go to shit so much, why do you think we are going to give you more toilet paper?" Another worker reports, "Only when there are inspections do they [the management] put liquid soap in the bathrooms. When they do provide soap, it is more water than soap – maybe just one quarter part soap and three quarters water." Other employees

commented that because there are no paper towels in the bathrooms, workers cannot wipe their faces or necks on hot days.

The WRC inspection largely confirmed workers' reports concerning the factory's bathrooms. The floors in both women's bathrooms became increasingly wet during the day of the inspection. There was no soap in the bathroom, although there was one empty soap bottle. There was also no toilet paper: while, for a portion of the work day, an employee was stationed outside the bathrooms to distribute toilet paper, for other significant periods of the work day, there was no access to any toilet paper. There were no paper towels in the bathrooms or any other means for workers to dry their hands.

As is typically the case in El Salvador, used toilet paper in the F&D bathrooms was thrown into small trash bins in each stall, instead of into the toilet, itself, in order to protect the plumbing systems from becoming clogged. Used sanitary materials are placed in these bins as well. However, in the case of F&D, the trash bins in each stall were uncovered, which is not the usual practice. These small uncovered trash cans were overflowing with bits of cloth and toilet paper that were soiled, bloody, and wet, an extremely unhygienic situation for workers.

Salvadoran labor regulations speak specifically to workplace bathroom standards and state that, "in the toilet facilities for use by women, there must be waste containers with lids or other appropriate devices. Each bathroom must have the necessary toilet paper."³⁷ Conditions at F&D clearly do not meet this standard.

A review of the complaints submitted by workers through the factory's "suggestion box" indicates that workers repeatedly have expressed concerns about the factory's bathrooms being dirty, closed when workers need them, and unsafe due to slippery wet floors. F&D's posted response to a complaint submitted in June 2012 is that, "If everyone does their part we will have clean bathrooms, without risk of a workplace accident. Remember: it depends on all of you for the bathrooms to be as you deserve or suggest." This is not an adequate response to F&D's legal obligations to provide safe and sanitary washrooms for its employees, as, in particular, the supply of toilet paper and covered waste receptacles is the company's responsibility, not its workers'.

Workers also reported that there were an insufficient number of toilets in the factory. They stated that access to the bathrooms was further impeded by the fact that a number of toilets were consistently broken and locked to prevent usage, and that this meant that workers had to wait in line to use the bathroom. The WRC confirmed that in each of the factory's two women's bathrooms, more than one-third of the 26 stalls were locked and evidently broken, and one of the five stalls for men was also locked and broken. (See Illustration 4) While the factory's cleaning

³⁷ Id. at Art. 36.

schedule ensures that at least one of the two bathrooms is always in open, if multiple toilets in the open bathroom are not functioning, this leaves an inadequate number of toilets for workers to use.

Salvadoran law also requires that workplaces with 100 or fewer workers provide one toilet for every 15 female employees and one toilet for every 20 men. Those workplaces that employ more than 100 workers must fulfill this requirement and add one additional toilet for every 20 female employees and one additional toilet for every 25 male employees.³⁸ In our initial communications to F&D, the WRC questioned whether the facility had an adequate number of toilets to meet this standard. F&D reports a total workforce of 752 workers, of which approximately 70% are female. According to this formula, it should have no less than 27 toilets for women and nine toilets for men.³⁹ F&D indicated to the WRC that, in addition to the toilets on the factory floor reviewed by the WRC, additional toilets are located in the office area of the plant, bringing the total up to the legal minimum. However, the prevalence of non-functioning toilets remained a concern.

Facilities for hand-washing at the factory are also inadequate. The Salvadoran General Regulation on Safety and Hygiene in the Workplace requires that, “All workplaces should maintain an adequate hand-washing system in the following proportion: Establishments with more than 100 workers should have one sink for every 20 workers or fraction greater than 10. Each sink should provide liquid or solid soap.”⁴⁰ The regulation law goes on to stipulate that, “individual towels... shall be provided for each sink. These can be replaced by other hand-drying apparatus, approved by the National Department of Social Welfare.”⁴¹

Under this formula, F&D must have at least 38 sinks. In actuality, the factory has significantly fewer than this and, as noted above, soap and towels are not provided as required.

Initial Recommendations (June 2013)

F&D should comply with the Salvadoran General Regulation on Safety and Hygiene in the Workplace. F&D should ensure that sufficient numbers of toilet stalls and sinks are kept in

³⁸ General Regulations for the Prevention of Risks in the Workplace. The WRC interprets this to mean that for the first hundred workers, the ratio of toilets to workers must be 1 toilet : 15 women and 1 toilet : 20 men, and for the remaining workers, the ratio must be 1 toilet : 20 women and 1 toilet : 25 men.

³⁹ Urinals can be substituted for some but not all of these toilets. General Workplace Safety and Hygiene Regulations, Art. 40 (“All workplaces will have at least one urinal and an additional urinal for each 50 men or fraction greater than 25, when the establishment employees 100 workers or less. In establishments of more than 100 workers there should be one for every 70 workers or fraction greater than 35. For each urinal provided, a men's toilet can be eliminated but in no case should the total number of toilets be less than one third of the specified number.”).

⁴⁰ Id. at art. 37.

⁴¹ Id. at 38.

working order. Bathrooms should be kept clean, with dry floors. Workers should have access to adequate amounts of toilet paper, soap, and paper towels in the bathrooms at all times. The trash bin in each stall should be covered and should be adequate in size to contain the trash that is generated.

Status Update and Remediation

The union reported that, in December 2013, the company installed new toilets, replacing damaged units, for both men and women. The company committed in the October 9 agreement to ensure that all bathrooms have soap and toilet paper and that a sufficient number of trashcans with lids are provided. Furthermore, the company agreed to inspect the bathrooms daily as well as continuing to have the bathrooms cleaned twice per day.

The union and the ombudswoman reported that, following the publication of the WRC's report, the company improved the cleanliness of the bathroom, by ensuring that bathrooms are now inspected for cleanliness three times a day. The workers and ombudswoman indicated, however, that the trashcans in the bathroom still usually do not have lids. Workers report that lids are sometimes placed on the trashcans, including when the company is expecting an inspection, but are then removed. The WRC reiterated on March 10, 2014, that the company should ensure that the trash cans are covered. Hanesbrands reported on March 19, 2014, that F&D had committed to promptly procure trash cans with attached lids, in which the lid can be raised through a foot pedal or another equally hygienic arrangement.

The parties also reported that workers are now provided with toilet paper and hand soap. The ombudswoman has reported that soap dispensers were initially installed, but, perhaps because these were no longer functioning, soap is now provided in disposable plastic water bottles. The soap that is provided is diluted with water.

Current Recommendations

The WRC recognizes that F&D has made significant advances with regards to the conditions of employee restrooms. The WRC expects that F&D will fulfill its commitment to ensure that trash cans are covered in compliance with Salvadoran law. In addition, the WRC recommends that soap be provided in an appropriately hygienic manner, e.g., through dispensers or hand pumps, and at an adequate level of concentration.

Restrictions on Bathroom Access

Findings

Multiple workers reported that supervisors restrict their visits to the bathroom. While there are no official limits on bathroom visits, multiple workers reported that they are scolded and harassed for their visits to the bathroom. One employee described a supervisor blocking the employee's path to the bathroom, saying that she could not go to the toilet because there was no one to cover her workstation. This worker stated that one supervisor sometimes enters the bathroom to chase employees back to the work floor. Another woman worker said, "My supervisor always scolds us when we ask permission to go to the bathroom. It depends on the supervisor; some never like to give permission to go to the bathroom."

Another worker reported that approximately three months before the WRC's inspection, while standing in line in the bathroom, she was told by a company manager that she was missing too much work. The factory's Human Resources Manager said to her, "Why are you going to the bathroom so much? It is taking so much time. If you drink more than three liters of water, it's bad for you, and will harm your health." The worker reported that a doctor had told her to drink more water for her kidneys, and the Human Resources Manager told her that this was wrong, and that drinking so much water is bad for her knees and feet.

Workers also report that the limited number of bathrooms and toilets leads to long lines of waiting workers at certain times, which means that each bathroom visit takes a longer time, resulting in further castigation from management. Factory managers told the WRC, however, that workers are not discouraged from using the bathroom. This claim, however, did not appear credible in the face of the consistent, detailed and mutually corroborative testimony to the contrary from employees.

Unreasonable restrictions on bathroom usage are harmful to workers' health⁴² and dignity, and are a violation of international labor standards of good practice.⁴³

⁴² See, U.S. OSHA, Memorandum on Interpretation of 29 C.F.R. § 1910.141(c) (1) (i) (Apr. 6, 1998) ("OSHA Memorandum") ("[M]edical studies show the importance of regular urination, with women generally needing to void more frequently than men. Adverse health effects that may result from voluntary urinary retention include increased frequency of urinary tract infections (UTIs), which can lead to more serious infections and, in rare situations, renal damage (see, e.g., Nielsen, A. Waite, W., 'Epidemiology of Infrequent Voiding and Associated Symptoms,' *Scand. J Urol Nephrol Suppl.*, 157). UTIs during pregnancy have been associated with low birth weight See, Naeye, R.L., 'Causes of the Excess Rates of Perinatal Mortality and the Prematurity in Pregnancies Complicated by Maternity Urinary Tract Infections,' *New England J. Medicine* 300-315, 819-823 (1979). Medical evidence also shows that health problems, including constipation, abdominal pain, diverticulitis, and hemorrhoids, can result if individuals delay defecation (see National Institutes of Health (NIH) Publication No. 95-2754, July 1995).").

⁴³ See, ILO Recommendation 164 (Occupational Safety and Health) §10(f) ("[T]he obligation [is] placed on the employer [. . .](f) to ensure that work organisation, particularly with respect to hours of work and rest breaks, does not adversely affect occupational safety and health."). For a detailed discussion of access to toilets as a health and safety issue, see, e.g., OSHA Memorandum, *supra*, n. 45 ("[T]he language and structure of the general industry sanitation standard reflect the Agency's intent that employees be able to use toilet facilities promptly. The standard requires that toilet facilities be 'provided' in every workplace. The most basic meaning of 'provide' is 'make

Initial Recommendations (June 2013)

Supervisors should be instructed to allow workers reasonable access to the bathrooms. This access should not be conditioned on whether employees' workstations can be covered while they are using the bathroom.

Status Update and Remediation

The company committed in the October 9, 2013 agreement to allow workers reasonable access to the bathrooms. Workers active in the SITS union reported that they enjoyed adequate freedom to visit the toilets, but reported that they had observed supervisors pressuring newer workers not to visit the restroom frequently. F&D management claims that it no longer places unreasonable restrictions on bathroom access.

Current Recommendations

While recognizing that there has been significant progress regarding bathroom access, the WRC recommends that F&D management reiterate to supervisory staff that all workers should be given full access to the bathroom at any time.

Uneven Floor in Warehouse

Findings

The floor in the warehouse section of the plant is damaged, creating an uneven surface and indentations in the floor in at least one area. This surface poses a safety risk for workers pushing heavy carts of materials.

Initial Recommendations (June 2013)

The floor should be repaired to provide a smooth surface that does not pose a safety risk.⁴⁴

Status Update and Remediation

available.' ... Toilets that employees are not allowed to use for extended periods cannot be said to be 'available' to those employees. ... Timely access is the goal of the standard.'").

⁴⁴ General Workplace Safety and Hygiene Regulations, Art. 5

In the October 9 agreement, the company agreed to repair the uneven floor in the warehouse while the plant was closed down for the December vacation. The union and the ombudswoman reported that this repair was carried out as scheduled.

Reasonable Accommodation for Pregnant Employees

Findings

The factory management reported that there are no alternative work assignments (i.e., light duty) for pregnant women. The Labor Code of El Salvador states that employers cannot compel pregnant workers to engage in work that requires “physical efforts incompatible with their state.”⁴⁵ ILO Recommendation 191, which deals with protections for pregnant workers, notes that pregnant women should receive alternative job assignments when their normal work involves “physical strain due to prolonged periods of sitting or standing.”

Initial Recommendations (June 2013)

F&D should provide pregnant women with alternative temporary work assignments where warranted by health and safety concerns. These alternative assignments should not unreasonably affect their compensation and should not impact their ability to return to their original positions after childbirth and maternity leave.

Status Update and Remediation

The October 9 agreement states that the company will work with the ombudswoman and with the union to agree upon reasonable accommodations in working conditions for pregnant workers. The ombudswoman reported that the pregnant workers who perform their work from a standing position are now provided the option of sitting in a chair while working. Pregnant workers are also assigned lockers in an area that is less crowded, to reduce the amount of jostling and shoving that they are subjected to before and after work and during breaks, when the general locker areas become crowded.

Pregnant workers are also given special consideration while entering and exiting the plant. Generally, the plant instructs women to queue up at one door, and men to queue up at another door. Given the smaller number of men working in the plant, the men’s door is less crowded. Pregnant workers are allowed to stand in this line. The ombudswoman reports that factory management and the union are discussing additional forms of consideration for pregnant

⁴⁵ Labor Code, Art. 110.

workers, including a proposal from the union that pregnant workers be able to temporarily trade positions with workers in less physically demanding jobs.

Current Recommendations

The WRC recognizes that the company has made strides in this area and encourages management to continue its discussions with the union, facilitated by the ombudswoman, to address any remaining issues.

2. Discrimination

Discrimination Based on Disability

Findings

Multiple workers reported that newly hired employees are required to undergo blood tests. Factory managers stated that the blood tests are for syphilis, and specified that they are not for pregnancy or HIV/AIDS. The WRC requested samples of tests results from these exams, but was not provided such documentation, and so cannot conclude whether the tests are in fact for syphilis or whether the company is actually testing new employees for other diseases or for pregnancy.

The WRC is not aware of any legitimate reason to test workers for syphilis, as this disease is communicable only via bodily fluids.⁴⁶ Such a test, if used for screening workers for employment, violates workers' rights under the U.N. Convention on the Rights of Persons with Disabilities,⁴⁷ which El Salvador ratified in 2007.

As, under Salvadoran law, any international convention ratified by the government holds legal force, the test also violates national law

The Ministry of Labor of El Salvador also has specified that the Salvadoran Constitution and labor law prohibit tests for pregnancy and HIV/AIDS.⁴⁸ If F&D is in fact testing workers for these conditions, that would also constitute a violation of Salvadoran law.

⁴⁶ See, e.g., Centers for Disease Control and Prevention, *Syphilis – CDC Fact Sheet*, available at: <http://www.cdc.gov/std/syphilis/STDFact-Syphilis-detailed.htm>.

⁴⁷ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, A/RES/61/106 (2007), Arts. 5(2) and 27(1), available at <http://www.un.org/disabilities/convention/conventionfull.shtml>.

⁴⁸ Ministry of Labor of El Salvador, *Circular sobre la Prohibición de Solicitar Pruebas del VIH y de Embarazo*, Circular No. 001/05 (2005) (specifying that tests for HIV/AIDS and pregnancy violate Article 2 of the Constitution of El Salvador, ILO Convention 111, and Article 30 of the Salvadoran Labor Code), available at <http://168.243.227.19/default.asp?ACT=5&content=147&id=70&mnu=70>.

Initial Recommendations (June 2013)

Unless F&D can demonstrate a legitimate and legal reason to screen workers for syphilis, such testing should be discontinued. Workers should not be subjected to any medical testing to be used for discriminatory purposes, and should be fully informed of the nature of any medical tests which they are required to undertake. All blood tests performed on workers at time of hire should be discontinued unless F&D can demonstrate a legitimate business-related and nondiscriminatory reason to require them.

Status Update and Remediation

In the October 9 agreement, the company committed to suspending the use of blood tests as part of its hiring process. However, worker testimony indicates that newly hired workers are still subjected to blood tests. The WRC has also received allegations that workers were required to pay for these tests.

After being contacted on March 10, 2014, F&D management initially denied that such tests have occurred. However, after repeated engagement by Hanesbrands, factory management stated that while such testing had been discontinued at F&D, it continued at their other facility, Hermanos Textiles, and that the testing of F&D employees was a result of workers being transferred between the plants. Hanesbrands reported to the WRC on March 21 that it had communicated to F&D that such testing must cease at both F&D and Hermanos Textiles. Hanesbrands also reported that its representatives and the ombudswoman would communicate to the medical personnel charged with running the F&D and Hermanos Textiles factory clinics that such testing should no longer be performed and that, if they are requested to do this, they should report such requests to the ombudswoman or Hanesbrands.

Current Recommendations

The WRC recommends that any workers who have been required to pay for blood tests at the time of hiring have this money returned to them. While Hermanos Textiles is not covered by the WRC inspection or the Ordinance, given F&D management's statement that such testing did occur at Hermanos Textiles until very recently, the WRC recommends that, as a matter of legal compliance, the cessation of such testing be implemented at both F&D and Hermanos Textiles.

The WRC notes that ongoing monitoring of compliance on this point may involve document review as well as worker interviews. The WRC expects that F&D management will cooperate promptly with any further requests for documentation regarding this issue.

3. Wages and Hours of Work

Inaccurate Time Clock

Findings

F&D workers' arrival and departure from the factory is monitored using cards that are swiped in an electronic timekeeping system. (See Illustration 5) Workers reported to the WRC that the clock used in this system was often set inaccurately, so that if they clock in exactly at their start time they will be recorded as arriving five minutes late. This is particularly a concern for workers because while they receive overtime for working after their shifts end, they do not receive extra pay for arriving early, and because they are penalized for being late.

When the WRC visited the factory, investigators checked this electronic clock repeatedly, and noted that it was five minutes fast. Both investigators used cell phones with clocks that are automatically updated via GPS, and their observations were mutually consistent. These observations confirm workers' allegations that the factory time clock is not accurate.

As a result of the inaccuracy of the time clock, workers are being denied compensation to which they are entitled under the terms of their employment.

Initial Recommendations (June 2013)

F&D should ensure that the factory's time clock is set accurately and that the time shown on this clock and other clocks in the factory are consistent.

Status Update and Remediation

In the October 9 agreement the company agreed to adjust the time clocks, in the presence of a union representative, such that all clocks would be synchronized with the time that is broadcasted by the Salvadoran television station, Channel 10.

The union reports that the time clocks were, in fact, synchronized in the month of August 2013, but that a union representative was not present when this occurred. That said, the union leaders reported to the WRC that they were satisfied with the outcome of the company's action and that the adjustment made to the time clock had been effective in eliminating inaccurate recording of workers' arrival times.

Compulsory Overtime

Findings

Workers provided mutually consistent testimony that they are compelled to work overtime on a daily basis. In assessing F&D's compliance with laws and standards related to work and hours, it is necessary to note that production workers' compensation at F&D may be calculated in one of two ways, depending on whether a given module (work group) reaches its production targets.

Each module is provided with daily targets. If the group, working together, achieves the full week's target, all members of the module receive a bonus for the week. If the group does not achieve the full week's target, no workers receive the bonus. However, each worker who performed overtime hours is entitled to receive compensation for those hours at the legal overtime rate. Factory management stated to the WRC that in all cases, bonuses are set so that workers receive higher compensation for making the bonus than if they were compensated for the number of hours worked in compliance with laws on overtime pay. The WRC did not independently evaluate the accuracy of this statement.

Workers report that they often must work extra hours in order to meet assigned production goals and receive a weekly bonus. They report that they often experience significant pressure from supervisors to work extra hours, particularly if their team has not reached its production target. Multiple workers reported that they were told by supervisors that it was obligatory to work until 6:00 pm, and that supervisors were angry with them if they refused to work extra hours. They quoted supervisors as stating, "If you don't want to work, go home [i.e., quit your job] – you don't get to do what you want to do, you have to do what we say."

One worker reported that supervisors said angrily to a group of workers, "When you come to look for work, you say that you have available time. Now, why do you say no [to overtime]? Why don't you want to work the extra hours?" Another worker said that she was called into the office after she refused to work overtime. A third employee reported that a manager said that "the door is very wide, that there was work for us to do and [that] if we didn't want to do it, it would be better if we left the factory." A fourth worker described a plant-level manager yelling at workers for not making their production goals by Friday, and telling them they would have to come in on Saturday.

A sign posted on the factory wall reinforces workers' understanding that Saturday overtime is mandatory, saying "Employees who have to work on Saturday to complete the week's production target cannot look for other people or pay them to substitute for these hours." (See Illustration 6)

According to factory managers, employees at F&D normally work from 7:00 am to 5:00 pm on Monday through Thursday, and 7:00 am to 4:00 pm on Friday. Workers have a lunch period

from 12:00 pm to 1:00 pm, and one break from 9:15 am to 9:30 am. Workers only swipe their time cards at the beginning and end of the day. Management noted that workers often work one extra hour at the end of each work day from Monday to Friday to meet production goals, and sometimes come in on Saturday for the same purpose.

Managers stated that workers decide for themselves whether or not to work extra hours to reach their production target. One supervisor stated that she tries to motivate workers to work hard to achieve the bonus by reminding them about the money and how important it will be for their children. However, mutually corroborative, credible testimony from a number of F&D production workers leads the WRC to conclude that managers and supervisors apply significant pressure on workers to compel them to achieve the production targets, including by working additional hours where necessary.

These practices by company managers violate both Salvadoran law and F&D's own stated company policy, as provided to the WRC. Article 11 of this policy notes that "Outside the regular work schedule, the workers will work overtime when there is mutual agreement with the company, understanding that overtime can only be agreed upon on an occasional basis when special or necessary unforeseen circumstances require it. Overtime will be paid at a rate of 200%." Similarly, Article 170 of the Salvadoran Labor Code states that overtime may only be "occasional, when unforeseen, necessary, or special circumstances require."

Initial Recommendations (June 2013)

All overtime should be voluntary. Production goals should be set such that workers can achieve the goal within normal working hours.

Status Update and Remediation

In the October 9 agreement, the company stated that overtime hours were, in fact, performed on a voluntary basis. While factory management denied any coercion, it did agree to review the process by which workers are approved to work overtime to ensure that there were no problems with this process.

The ombudswoman reported that, to the best of her knowledge, workers were no longer required to perform overtime. Rather, the plant now requires all workers to leave the plant by 5 p.m.

Underpayment of Overtime

Findings

Worker testimony and a review of payroll data indicated that overtime work was only recorded after a worker has worked at least a certain amount of overtime. While the WRC initially understood this threshold to be 60 minutes, F&D management clarified that the threshold was 30 minutes, and that all overtime was rounded to the nearest 30 minutes.

As has been noted elsewhere,⁴⁹ this type of timekeeping system denies workers compensation for significant amount of time that they have worked. Salvadoran law requires that “all work in excess of the normal work day” be compensated at 200% of workers’ normal wage rate.⁵⁰ The law does not say that the first 29 minutes, or even the first five minutes, are exempt from this requirement. Failure to pay workers for the full period of overtime they work is a violation of both applicable law and any reasonable standard of fairness.

Particularly given that an electronic timekeeping system is in use, there is no reason that workers should be denied pay for any amount of overtime they perform. And as workers often work at least one hour of overtime per weekday, plus additional time on Saturday, workers could lose nearly six hours’ pay per week under the company’s prior system.

Initial Recommendations (June 2013)

Overtime should be rounded to the nearest minute, rather than the nearest hour, unless F&D can demonstrate why such a system would be overly onerous.

Status Update and Remediation

At the July 25 meeting, F&D management stated that the factory had already shifted to a system in which overtime was paid to the minute, rather than to the half-hour. Factory management also stated that workers were only paid for overtime when it was authorized by supervisors. The factory agreed to review the overtime permission process and possibilities for errors that could lead to workers being underpaid.

The ombudswoman has confirmed that, although she could speak to the company’s prior practice, it is, in fact, paying overtime rounded to the nearest minute and not to the nearest hour. The union reported that the workers’ overtime is now being paid correctly in this respect.

However, workers reported to the WRC in March 2014 that a new issue had arisen with respect to payment of overtime. As noted above, the factory has significantly curtailed the use of overtime. Due to continued pressure to meet production quotas, however, many workers now

⁴⁹ Scott Nova and Isaac Shapiro, “Polishing Apple,” Economic Policy Institute Briefing Paper (Nov. 8, 2012), available at <http://www.epi.org/files/2012/polishing-apple-fla-foxconn-apple-undue.pdf>.

⁵⁰ Labor Code, Arts. 169 and 89.

begin work an hour early, in order to meet their quotas for the day. Workers report that this hour from 6 a.m. to 7 a.m. is not paid.

F&D management has stated that the factory doors are opened at 6 a.m. to reduce congestion from too many workers attempting to enter at the same time, and that employees are starting work early on their own initiative. On March 19, 2014, Hanesbrands reported to the WRC that it had reiterated to F&D management that all work time must be paid, including any work before 7 a.m.

Current Recommendations

F&D should ensure that all hours of work are paid, and that overtime is paid at the premium rate required by Salvadoran law. If supervisors are allowing workers to begin work before their regular clock in time, workers should be instructed to “clock in” at that time. Furthermore, the WRC recommends that the union, F&D management, and the ombudswoman further discuss how to ensure that all work time is paid.

Paid Sick Leave

Findings

Testimony from both workers and management, along with a review of payroll documents, collectively demonstrate that F&D is not providing workers with compensation when they miss work on account of illness, as is required by Salvadoran law. Salvadoran employers are required by law to enroll workers into the national healthcare system, the Salvadoran Institute of Social Security (“ISSS”). The cost of enrollment in the system is shared: the employer makes a contribution for each worker, a contribution is deducted from the worker’s paycheck, and the government makes a contribution towards the cost of the worker’s healthcare.

When a worker becomes ill or is injured, she visits an ISSS clinic and provides her employer with written confirmation of her visit along with the number of days of absence from work that the ISSS physician has prescribed, a number which is determined based on the severity of the worker’s illness or injury. Article 307 of the Labor Code of El Salvador clearly states that the employer is responsible for paying workers 75% of their total usual wages for the first three days of work missed as a result of illness or accident. Subsequent days of absence are reimbursed at the same 75% rate by the ISSS.⁵¹

⁵¹ Law on Social Security, Art. 24.

However, workers provided testimony that F&D is not compensating them for their first three days of sick leave. The Salvadoran Ministry of Labor has repeatedly noted that this practice of F&D violates Salvadoran law. When workers have complained to the Ministry about this practice, it has repeatedly ordered the factory to provide these funds to the workers and, in at least one case, to remedy its general practice of failing to pay sick leave.

In August 2012, the Ministry responded to several worker complaints on this issue. In at least one case, the Ministry noted that the company had failed to comply with its orders within the required timeframe.⁵² In May 2013, the Ministry again found that the company violated Article 307 of the Labor Code by failing to pay a worker her sick pay at a rate of 75% of her regular pay. While those workers who have brought cases to the Ministry have received the payments that were due to them, the majority of workers, who do not complain continue to be denied these funds to which they are entitled under Salvadoran law.

In addition, F&D management confirmed that it only allows the workers a three-hour window during the workday in which to visit the ISSS clinic. If a visit to the clinic takes the worker more than three hours, the worker's pay is docked for the additional time she is absent from her job. Given the length of time that it takes for workers to travel by public transportation to the ISSS clinics and to wait to be seen by a doctor (reportedly, sometimes as many as eight hours), F&D's requirement that workers visit the clinic within a period of three hours is unreasonable.

F&D's own Internal Labor Regulations state that the company will "Grant permission for the worker to go to the Salvadoran Institute of Social Security in the case that he/she is sick or has an accident. In this case, the worker will present proof of the time that he/she entered and left ISSS and if there is a significant difference of the time with regards to the company's time clock the worker will be docked the time not worked." This more flexible policy is inconsistent with the management's current practice of only allowing workers a three-hour window to visit the ISSS clinic.

Initial Recommendations (June 2013)

F&D should compensate workers at a rate of at least 75% of their standard compensation for their first three days of sick time authorized by the ISSS. F&D should also eliminate the three-hour limit for paid visits to ISSS.

Status Update and Remediation

⁵² Ministry of Labor, Inspection Reports (F&D, S.A. de C.V.) (Aug. 14-16, 2012).

In the October 9 agreement, the company agreed to pay the workers for the time that they were visiting the ISSS clinics plus a reasonable amount of travel time to and from the clinic. Furthermore it agreed to pay the workers 75% of their base pay for their first three days of sick leave.

The union and the ombudswoman reported that the company is now paying the workers 75% of their first three days of sick leave.

Current Recommendations

No further recommendations at this time.

4. Verbal Abuse

Findings

Workers consistently reported that they are subjected to verbal abuse by managers and supervisors. Much of this abuse is related to pressure to meet performance targets. Workers reported that their machines frequently breakdown and that they often encounter abuse when they report these breakdowns to their supervisors and request new machines or repairs. Workers who are members and leaders of the SITS union also reported that insults and verbal abuse are directed at them as union leaders; this retaliatory conduct by company managers is discussed below in the section on violations of freedom of association.

The WRC's findings in this area echo those of the Ministry of Labor, which has also found that supervisors treat workers in a manner that violates Salvadoran law. Specifically, on May 16, 2013, a Ministry of Labor inspection found that manager Hugo Orlando Rivas had engaged in shouting, verbal mistreatment, mockery and name calling towards employees who are SITS union leaders and members, and that supervisor Lucia Romero had engaged in verbal mistreatment and shouting. The Ministry of Labor found these incidents to violate Article 29(5), of the Labor Code of El Salvador, which states that the obligations of employers include "refraining from physically or verbally mistreating" workers.

An audit conducted by GMIES at the request of the FLA released in April 2012⁵³ also noted verbal abuse at the plant. GMIES stated that they had first identified verbal abuse as a violation in a prior investigation of F&D in December 2010, and that while this abuse had been discussed in labor-management meetings, this misconduct had since continued.

⁵³ GMIES, *supra*, n. 5.

Workers reported a number of other incidents of abuse to WRC investigators. On one occasion, supervisor Rivas reportedly said to a worker, “You go to work, you lazy woman. I pity you because you are a woman and so I’m not going to kick your ass. If you want proof, bring your husband here and you’ll see how pretty I’ll make him look.” Workers also reported supervisors calling them “brats” and “not good for anything,” and saying to them, “If you don’t feel like working, go find another job.” When speaking with WRC investigators, several women workers were unwilling to repeat the words used by supervisors because they said these words were obscenities which they would not say themselves.

Supervisor Lucia Romero was cited as particularly abusive. One worker reported that Romero often yells, “Listen lady, you hurry up - you are here to work and not to waste time,” and hitting the table with her hand and yelling “Hurry up!” Romero also says, according to this worker, “What the hell! Hurry up and don’t be so lazy. You are all pure shit.” Another worker reports that in November 2012, while she was moving a table that was blocking her work station, Romero grabbed the worker’s chair and pulled it, almost knocking the worker off of it. A third worker says that when an increase in production quotas was reversed earlier this year, Romero said to the workers she supervises, “Shit! I don’t know what you want! You have work – tell me what else you want! You want to be paid for nothing?” The same worker reported that Romero often swears at workers when their machines break down.

Factory management has acknowledged that there had been verbal mistreatment of workers in the past, but stated that they believed this year would show marked improvement in the company’s practices in this area. However, in interviews conducted in May and June 2013, workers continue to report incidents of verbal abuse by supervisors and managers. In one case, workers report that a manager yelled at a group of workers for not meeting their production goals, saying, “If anyone doesn’t want to work here, then they should be brave enough to say it to my face.”

Workers reported other similar incidents of verbal abuse to the WRC but requested anonymity in order to avoid retaliation. As noted, abusive treatment of workers violates Article 29 of the Salvadoran Labor Code.

Initial Recommendations (June 2013)

F&D should ensure that workers are not treated in an abusive manner by supervisors or managers. Management should communicate to supervisors that verbal abuse of workers will not be tolerated and should apply progressive discipline, up to and including termination, to supervisors who engage in such behavior.

Status Update and Remediation

The SITS union has reported to the WRC that verbal abuse by supervisors and managers towards line workers has been significantly reduced. While there are still occasional complaints of verbal mistreatment, workers indicate that, overall, the level of verbal abuse by supervisors and managers has diminished.

5. Freedom of Association

Freedom of association encompasses workers' rights to form, join and participate in the union of their choice without interference from their employer. These rights are guaranteed by two of the ILO core conventions, Convention 87 on Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining. Both of these conventions were ratified by El Salvador in 2006.

As noted above, there are two labor unions present at F&D. The first is the union that was formed by workers as a factory-level chapter of the SITS, a national garment workers organization that is affiliated to the labor federation, FESS. The other union at the factory is the STEFyD, which recently reported that it has affiliated with the labor federation, FESTES.

As we have discussed previously and reprise below, the WRC has determined that the STEFyD was formed and continues to operate with the sponsorship of F&D's management with the primary purpose of interfering with and undermining workers' exercise of freedom of association through the independent SITS union. As already noted, the WRC reported to the City, SanMar and Hanesbrands in June 2013 that despite some improvements in the company's labor relations practices – following previous interventions by the WRC and Hanesbrands – violations of workers' freedom of association were still continuing at the plant.

Since that time, however, significant improvements in the environment for freedom of association at the factory have been achieved. While the company's past violations of workers' associational rights have had chilling effects that are difficult to fully remedy – at least in the short-term – overt acts of discrimination and retaliation against employees who are union members and leaders have been significantly curtailed. The ombudswoman, who was selected following the WRC's June 2013 recommendations, has played a key role in promoting compliance with principles of freedom of association and, in particular, facilitating labor-management dialogue at the plant.

Those forms of discrimination against and interference with the exercise of associational rights that the company does continue to practice towards workers who are members or leaders in the SITS union are discussed below.

Discrimination against Employee Union Members and Leaders

Workers report to the WRC that F&D managers and supervisors continue to discriminate against SITS union members and leaders by assigning them more difficult work with higher production quotas, thereby reducing their pay relative to that of other workers.

Hostility towards SITS Union and Employee Union Leaders and Members

During meetings with the WRC, F&D repeatedly expressed its hostility towards the SITS union and employees who are its leaders and members. While such statements do not, in themselves, violate freedom of association, they confirm that the company possesses a motive for discriminatory treatment of employees who are union members and leaders. For example, during a visit by the WRC to the factory, F&D attorney Marden de Jesus Monterrosa presented the WRC with a five-page document criticizing the SITS union and individual employees who are union leaders. In this document, he states that “far from demanding real rights for workers, [the SITS union] demands compliance with their ‘whims.’” Monterrosa continues, “To date in 2013, [employee union leader] Granados, the members of the union leadership, and their members have engaged in actions that are against the normal functioning of the company, that compromise the income of every worker, workers who are responsible and honest and fulfill their responsibilities as workers every day.” Monterrosa writes that the union acts “to create problems” and “sets a bad example for other workers.”

Similarly, supervisor Lucia Romero told the WRC that some modules work groups) are composed of “union people [who] don’t work and are disrespectful.” She specifically singled out the module containing the employees who comprise the leadership board of the SITS union.

Segregation in Work Assignments

As previously discussed, SITS union leaders and members reported that they are grouped by the company in modules which assigned are given assignments that are more difficult to perform and production targets that are more difficult to meet, than those given to other modules. In other words, the union leaders and members alleged that the company assigns them to certain modules on account of their offices or membership in the SITS union, and then gave those modules less desirable work assignments as a form of retaliation for their union activities.

F&D management initially acknowledged clustering SITS union members in certain modules, claiming that it did so because union leaders often requested permission to miss work to attend union-related functions. During later meetings with the WRC, F&D management provided conflicting testimony regarding this practice. For example, F&D Production Manager Lorena Strich stated that members of the two unions are mixed in among other workers to such a degree that it would be impossible for managers or supervisors to single out the leaders or members of

either union in a discriminatory fashion. Strich's statement was contradicted, however, by the previously-noted comment of F&D supervisor Romero that some modules are composed of "union people [who] don't work and are disrespectful," and her singling out in this respect a module containing the entire leadership board of the SITS union. Moreover, in discussions with the WRC, Hanesbrands also acknowledged that the SITS union leadership is clustered in one of the factory's modules and cited F&D's management as the source of this information.

Discrimination in Work Assignments

The WRC found some anecdotal evidence to support the claims of SITS union leaders and members that the modules to which they are assigned were given more difficult work with higher production quotas. For example, several F&D employees who were formerly members of the STEFyD union reported to the WRC that since having left that organization and, in some cases, joined the SITS union, they had received more difficult work assignments, with higher production targets, and that, as a result, they received bonuses less frequently.

In another case, an employee who is a SITS union member and is assigned to a module with a disproportionate number of other SITS members reported previous comments by a supervisor indicating that the employees in this work group were being targeted by the company for retaliation because of their associational activities. After employees in this module participated in a brief work stoppage, their supervisor allegedly warned, "This module is in our sights."

F&D management denied that modules with a high number of SITS members are subjected to discrimination in the work they are assigned. During the WRC's visit to the factory, managers asserted that the modules to which SITS union leaders are assigned received production bonuses, and that this indicated that these modules were not being given more difficult production quotas.

Conclusion

Despite some assertions to the contrary by factory managers, the WRC did find that F&D has clustered SITS union members and leaders in certain modules on account of their union membership and activity. This practice of the company makes it *possible* that F&D discriminates collectively against SITS union members and officers with regard to work assignments and, as a possible result, compensation. Finally, company managers' continuing expressions of hostility toward the SITS union, specific employees who are union leaders, and the union's activities, confirmed that F&D possesses a strong motive to discriminate against the module in which SITS union leaders and members are clustered.

Based on the very limited anecdotal evidence available, and without access to per worker compensation and production data, however, it was difficult to determine satisfactorily whether

such discrimination in work assignments is actually occurring. Modules at F&D vary in the numbers of workers assigned to them, the styles of garments they produce, and the production targets they are given. Production targets for particular styles of garments vary, in turn, based on the complexity of the item being manufactured.

For this reason, the WRC requested from F&D copies of company records indicating “production targets, production records, and bonus payments for each module for all periods from September 2012 to [the] present day.” Perhaps for the same reason, F&D did not comply with this request.

While there was insufficient evidence for the WRC to reach clear findings that SITS union members and leaders actually are being discriminated against in their work assignments – and harmed in their earnings – by being grouped in particular modules, the WRC still concluded that the practice of clustering these workers in this manner s violated employees’ associational rights. As noted, clustering workers’ on the basis of union membership makes it *possible* for the company to harm employees in this fashion. Moreover, the company’s open hostility to the SITS union and its leaders meant that workers *could* reasonably conclude that F&D’s managers do discriminate against the modules made up of SITS union members and leaders in this way.

Therefore, any worker considering whether to join (or resign from) the SITS union could rightfully fear that membership in the union would mean assignment to a module where her earnings might be negatively affected. Such a situation is inconsistent with the ability to *freely* choose union membership which is at the core of the right to freedom of association.⁵⁴ While F&D’s managers might claim that the modules where SITS union members are clustered receive equivalent work assignments, the assertion that SITS members are ‘separate but equal’ rings hollow in the face of the company’s open hostility to the union and its leaders. As a result, restoration of freedom of association at F&D requires that remedial measures be taken to counteract the chilling effect of the company’s segregation of the SITS union members.

Initial Recommendations (June 2013)

F&D should ensure that there is no discrimination against members of the SITS union, including in the assignment of styles and production targets, the speed with which supervisors and other staff address machine breakdowns and assign replacements for vacant posts, and other practices impacting workers’ compensation.

The WRC recommends that the practice of concentrating SITS union leaders in particular modules be ended and that workers be reassigned in order to rebalance the proportion of union

⁵⁴ ILO Convention 87, Art. 2 (stating that workers “shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”).

leaders on any given module. Bearing in mind the SITS union's allegations of discrimination, the fact that the decisions regarding any reassignments to rectify the current situation will be necessarily subjective, and the fact that the SITS union in the past has been reluctant, understandably, to see its members reassigned by F&D's management, the WRC recommends that these reassignments be agreed upon directly among factory management, the SITS union leaders, and the workers subject to these reassignments. A jointly-appointed ombudsman could also be of service in monitoring this process and assessing the effectiveness of the negotiated solution.

Status Update and Remediation

Workers who are members of the SITS union report that discrimination against SITS members in the factory has significantly decreased. The company is, according to the ombudswoman and the union, acting with more impartiality regarding workers' line assignments and the work assigned to each production line. Workers who are officers in the SITS union are no longer clustered in a small number of production modules, where, as noted above, they were at greater risk of discrimination. Contrary to the WRC's recommendation, however, management did not involve the union in discussions about where to relocate the SITS union leaders. The SITS union reports, nevertheless, that it is satisfied that the new placements are not discriminatory.

F&D management also committed in the October 9 agreement to address an additional issue not covered by the WRC recommendations but raised by workers in the July 25 meeting in San Salvador. Workers alleged during this meeting that the SITS union was not appropriately represented on the factory's health and safety committee. The company committed in the October 9 agreement to restructure the existing health and safety committee in order to include the participation of representatives of both unions as well as representation of non-union workers.

In subsequent meetings with the SITS union and the ombudswoman, the company initially took the position that it could not legally make any changes to the list of committee participants. However, the ombudswoman asked the Ministry of Labor to intervene in the process and clarify the correct interpretation of the relevant law. Following the Ministry's clarification that the company could and in fact should revisit the membership of the committee, the company facilitated new elections in order to ensure that both unions, as well as non-union workers, are represented on the committee. The committee was reconstituted with its new members on February 18, 2014.

As of the date of this report, workers from the SITS union report that they have brought one allegation of discrimination to the attention of factory management and the ombudswoman. This

case may serve as a test for the office of the ombudswoman in addressing individual allegations of discrimination.

F&D's Sponsorship of the STEFyD as a Company Union

Findings

As discussed, workers at F&D have reported that, since 2010, company management has orchestrated and sponsored the formation of the STEFyD union at the company in order to interfere with and undermine workers' organizing of the independent SITS union. Such employer creation of and support for a favored union as a rival to a labor organization formed independent of, and opposed by, company management constitutes a clear violation of freedom of association under international labor standards, as it interferes with workers' ability to freely join a union of their own choice.⁵⁵

This section discusses new evidence obtained during the WRC's assessment of F&D for the City that further confirms not only that F&D's management created the STEFyD, but also that the STEFyD continues to be guided by and to enjoy preferential treatment from company management. During this investigation, employees who are former members of the STEFyD union provided important new testimony on this subject to the WRC.

Background

As already discussed, in December 2010, the WRC learned from workers at the factory that F&D management had formed a committee of workers, led by employee Ilsa Magali Cortez, whose purpose was to oppose the organizing efforts of the SITS union. Workers reported that committee members told them that this group could help to address workplace problems because it had the support of their employer.

Workers also informed the WRC that members of the company-sponsored committee were given special privileges by F&D, such as paid meals, loans of money, and invitations to company-funded sporting activities and outings. In November 2011, the WRC learned from workers that the company-sponsored committee had formalized its existence as a labor union, the STEFyD, of which employee Cortez was now the chief officer. During the WRC's April 2013 visit to the plant, WRC investigators were informed that the STEFyD union had demonstrated to the F&D management's satisfaction that the STEFyD represented the majority of F&D workers.

New Evidence (June 2013)

Workers interviewed by the WRC testified that company managers, including Danilo Arevalo, were present at the founding assembly of STEFyD in January or February 2010. This meeting

⁵⁵ See ILO Convention 98, Art. 2.

reportedly was held on the factory premises after the end of the workday. Manager Arevalo reportedly dominated the union's founding meeting, shouting at a worker who made a suggestion with which Arevalo disagreed.

According to workers' testimony, company management continued to be involved in the STEFyD union following its founding, with managers, including Arevalo, continuing to attend and participate in its leadership meetings. In order to comply with legal formalities, however, managers who were initially listed among the union's founding membership were later removed from its official leadership. STEFyD union members reportedly were coached by factory management in what to tell outside auditors regarding F&D's labor practices. Prior to the FLA's inspection of the factory in early 2012, manager Arevalo called several STEFyD union leaders to his office to instruct them to coach the union's members to tell the FLA's auditors that F&D did not discriminate among employees based on which union they have joined, and that employees who were members of the SITS union were simply lazy.

Worker testimony gathered by the WRC during this investigation also confirmed that F&D confers privileges on the STEFyD union that it does not grant to the SITS union. STEFyD-sponsored activities, such as a trip to the beach in late 2011, reportedly were paid for using funds the company provided to the STEFyD. Workers also testified that STEFyD employee union leader Cortez promised employees that if they joined that union they could receive loans from a company program run by manager Arevalo.

Workers also confirmed that the company continued to permit the STEFyD union to hold weekly meetings and other events on the factory premises, while denying similar permission to the SITS union. SITS employee union leader Granados has reported that her organization has requested permission from the factory management to hold similar gatherings at the plant, but that these requests have been rejected by the company.

Workers also reported that F&D management continued to allow STEFyD leaders to move freely about the factory during the workday to engage in union business, including the recruitment of new union members, while refusing the same privilege to the leaders of the SITS union. When SITS union leaders attempt to speak to workers, they report, they are often prevented from doing so or harassed by supervisors. For example, in March 2013, a supervisor named Blanca reportedly yelled at a SITS employee union leader who was speaking with a worker on another line about a workplace problem, shouting, "What are you here to do? You aren't good for anything!"

Another worker reported that in July 2012, supervisors Veronica Torres and Hugo Orlando Rivas yelled at her while she was speaking to another union member regarding a workplace issue. Torres told her, "You take advantage of things because you are part of the union. Who knows who you think you are!" Rivas then added, speaking to Torres, "Take her to Human Resources

because it's impossible to deal with these people." Rivas then, as previously noted, said to this worker, "You go to work, you lazy woman. I pity you because you are a woman and so I'm not going to kick your ass. If you want proof, bring your husband here and you'll see how pretty I'll make him look."

Similarly, supervisors Lucia Romero and Concepcion Romero are reported to have repeatedly told SITS union leaders to stay away from the workers they supervise, telling them, "Get away from our [production] lines! We don't want to see you here!" and "Don't come and tell lies to my people." By contrast, workers reported that STEFyD leaders continue to move about the plant during working hours without any interference from F&D management.

During the WRC's investigation, STEFyD's Cortez and manager Arevalo testified to the WRC regarding the formation of the STEFyD union. Cortez acknowledged that the idea to form the union came from F&D's management. Cortez stated that she and other employees approached the company's Human Resources Department expressing concerns about labor relations in the plant, in particular, the tactics of the SITS union.

Cortez said that F&D management told her and her coworkers that they could form another union that would serve as a counterweight to the SITS union. While Arevalo concurred that the STEFyD union had been formed as a counterpoint to the SITS union, he denied that he or other company managers had played a role in the formation of the STEFyD union. The WRC, however, finds Arevalo's denial unpersuasive in the face of extensive consistent, mutually-corroborative testimony from employees as to Arevalo and other managers' direct and ongoing role in the establishment and sponsorship of the STEFyD union.

Further evidence that the STEFyD union is a creature of F&D's management whose purpose is to interfere with workers' associational rights is STEFyD's relationship with other Salvadoran labor organizations with a history of colluding with employers in this fashion. Specifically, former members of STEFyD report that the Salvadoran labor federation FENASTRAS and its president, Juan Jose Huezo, acted as advisors to STEFyD's leadership, including its top official, Cortez. As discussed above, the FENASTRAS federation has a well-documented record of assisting employers in creating company-dominated unions in order to interfere with workers' attempts to organize independent labor organizations.

F&D's sponsorship of the STEFyD union is a violation of workers' rights to freedom of association under Salvadoran labor law, which prohibits employers from "trying to influence their employees with regard to their exercise of the right of association."⁵⁶ It is also a violation of ILO Convention 98, Article 2, which states that worker organizations must be free of

⁵⁶ Labor Code, Art. 30 ¶ 4.

interference from employers. Article 2 specifies that “acts which are designed... to support workers' organisations by financial or other means” constitute prohibited interference. The ILO Committee of Experts on the Application of Conventions and Recommendations has specifically noted that the practice by Salvadoran employers of establishing such company-sponsored unions constitutes an obstacle to workers’ genuine exercise of freedom of association.⁵⁷

F&D management has claimed that it treats the STEFyD and SITS union equally and, therefore, that it is respecting its workers’ associational rights. This claim is belied, however, by the consistent mutually corroborative testimony of workers at the company indicating that factory management played a direct role in the formation of the STEFyD union and continues to support and show favoritism and grant preferences to that union. F&D cannot be said to respect workers’ freedom of association while it continues to give recognition and support to a union in its workplace that is a creature of the factory’s own management.

Initial Recommendations (June 2013)

In light of both the WRC’s previous findings concerning this issue and the new findings detailed above, F&D management should not treat the STEFyD as a legitimate representative of its employees. However, given the fact that the STEFyD has been registered with the Ministry of Labor and demonstrated majority status, F&D is required by Salvadoran law to extend certain privileges and recognition to that union.

Therefore, the WRC recommends that:

- Except as expressly mandated under Salvadoran law, F&D should refrain from offering privileges, opportunities, or recognition to the STEFyD union.
- Where F&D is obligated under Salvadoran law to provide certain privileges or opportunities to STEFyD, and is not legally prohibited from providing the same privileges or opportunities to a non-majority union, the company should provide these to the SITS union as well.
- To the extent permitted by Salvadoran law, F&D management should extend to the SITS union all privileges that it has previously extended to STEFyD. For example, F&D should grant the SITS union the privilege of holding meetings and other events in the factory and should meet directly with the SITS union without the presence of STEFyD to

⁵⁷ ILO Committee of Experts on the Application of Conventions and Recommendations, *Observation Concerning Convention 98, El Salvador* (2012), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2319001.

discuss workplace issues.

Status Update and Remediation

In the October 9 agreement, the company agreed to provide no benefits to the STEFyD union beyond those outlined by the law. Furthermore, it committed to offering the same opportunities to participate in sporting and social events and meetings to SITS members that it currently provides to STEFyD members. The company also agreed to hold regular meetings with the SITS union. These regular meetings between SITS and F&D management are, as mentioned above, occurring approximately two times per month. The union reports that some of the preferential treatment formerly awarded to STEFyD members has been eliminated, but alleges that certain STEFyD members continue to enjoy privileges. The WRC has not investigated these allegations.

The ombudswoman reports that the situation with regards to the treatment of the two unions has been improving, and that opportunities have been available to SITS union that were formerly only offered to the STEFyD union. However, the SITS union continues to bring issues to the company's attention that may signal unfair treatment, a situation that the ombudswoman will continue to monitor.

Surveillance of Employee Union Members and Leaders

Findings

Workers reported that F&D recently installed surveillance cameras on the factory's production floor and other locations in the facility. During the WRC's inspection of the factory, F&D managers informed the WRC that the cameras had been installed at the request of the company's customer, Hanesbrands, in order to prevent theft of materials and apparel.

Hanesbrands representative Teddy Mendoza stated that the cameras were installed on the factory's own initiative, but indicated that Hanesbrands viewed this measure as an appropriate response to the theft problem.

Employee leaders of the SITS union have alleged to the Salvadoran Ministry of Labor, F&D management, and the WRC that the cameras are being used to surveil employee union leaders. Factory management claimed to the WRC that this was not the case, and that the cameras were used strictly for theft prevention. F&D also noted that the Ministry of Labor had conducted an inspection of the factory and concluded that the cameras were not being used for illegitimate purposes.

Visual inspection by the WRC determined that while the majority of cameras were placed on the perimeter of the factory, in appropriate locations for deterring theft, one camera is posted on an

internal support column located near a production module staffed largely by workers who are SITS union members and leaders.

Evidence provided by F&D's own management revealed that the company is using the cameras to surveil union leaders during the workday. As noted above, during the WRC's visit to the factory, F&D attorney Monterrosa presented the WRC with a five-page document criticizing the SITS union and individual leaders. This document included a number of still photographs taken by the surveillance cameras depicting union leaders engaging in what Monterrosa stated were violations of factory policies and discussing issues on the work floor with supervisors. (For example, see Illustration 12.) The majority of these photographs were taken by the camera located near the module to which the union leaders have been assigned. This indicates that, counter to management's claim that the cameras are being used strictly for theft prevention, the cameras are also being used to monitor the behavior of union leaders.

The use of cameras to subject union leaders to a higher level of scrutiny than other workers, including monitoring their interactions with other workers and supervisors, constitutes a violation of workers' associational rights. It is a form of discrimination against union leaders and serves to dissuade other workers from exercising their associational rights by speaking with these employees on the factory floor.

Surveillance cameras also have been placed in the factory conference room that is used for labor-management meetings and for workers to speak with outside visitors, including the Ministry of Labor and the WRC. Placement of cameras in this area constitutes an obstacle to employees' ability to provide information about working conditions to outside investigators without fear of retaliation and, thus, to investigators' ability to obtain truthful information in this subject from factory workers. As such, they are a violation of Article 30, Paragraph 11, of the Salvadoran Labor Code, which states that "employers are prohibited from taking any direct or indirect act to restrict the rights contained in this Code."

Initial Recommendations (June 2013)

Arrangement of surveillance in the factory should reflect the company's stated justification for their use – theft prevention. Unless F&D management can provide evidence that this purpose requires that cameras be aimed at production modules which have a higher proportion of employees who are union members or leaders than other work areas have, these modules should not be subjected to more surveillance. Areas where workers meet with outside inspectors, including the Ministry of Labor, the WRC, and other monitoring bodies also should not be subject to video surveillance.

With regard to labor-management meetings, if the union objects to meetings being videotaped, factory management should, upon the union's request, turn off any camera covering the area where the meeting is held and allow the union to verify that this has been done.

Status Update and Remediation

In the October 9 agreement, the company agreed to review the location of the security cameras along with the union and the ombudswoman in order to review whether the location of the cameras constituted discriminatory surveillance of union members, and if so, to agree upon new locations for the cameras.

On November 8, 2013, the ombudswoman reviewed the location of the cameras and confirmed that several cameras were trained on the worksites of workers who were members of the SITS union. The union reports that one camera was removed the day before this review. The company made a verbal commitment to the ombudswoman on that date that it would adjust the cameras to end the discriminatory surveillance of union members.

Both the union and the ombudswoman report that the cameras have not yet been adjusted appropriately. The ombudswoman reported that one camera is still pointed at a production line that includes a worker who is a SITS leader.

Current Recommendations

The WRC recommends that F&D management meet with union representatives and with the ombudswoman in order to propose a new arrangement for the placement of security cameras that eliminates the possibility for the cameras to be used in a discriminatory fashion. When an arrangement is reached for the placement of the cameras that the SITS union and the ombudswoman agree is nondiscriminatory, the company should promptly move the cameras to the agreed-upon locations.

Freedom of Association Statement

Findings

In 2012, in response to communications by the WRC to Hanesbrands and the latter to F&D, the company agreed to issue a statement to workers making clear that F&D would respect their right to join the union of their choice. This statement was one of a number of commitments made by F&D to address past violations of freedom of association at the factory that had been documented by the WRC. The WRC made clear that the statement should be reviewed in advance by both the SITS union and by the WRC in order to ensure that it would be understandable to workers and adequately express a position of respect for workers' associational rights.

Hanesbrands committed to provide this document to the WRC by November 9, 2012, but despite repeated requests, did not do so. The WRC obtained a copy of the statement from factory

management, however, during the inspection of the factory. While the statement was factually accurate, the WRC did not find that it was written in a manner that would maximize employees' understanding of its content. The ombudswoman has independently expressed the same concerns.

Factory management reported that this statement was posted publicly in a number of locations in the factory, including the bathrooms, so that workers could review it. Several workers interviewed by the WRC, however, reported no knowledge of the statement and, by the time of the WRC's inspection, it was no longer posted in the facility.

Initial Recommendations (June 2013)

The company's statement on freedom of association should be reviewed in conjunction with the SITS union and the WRC to ensure that it is clearly understandable to the workers and expresses a position of respect for workers' associational rights. The statement should be issued to workers in the same manner that other key company policies and developments are communicated, including additional posting of a revised statement in the factory and verbal announcement by managers to workers.

Status Update and Remediation

In the October 9 agreement, the company committed to working with the union to review the language of the freedom of association statement and agree upon language for a new statement to be distributed to workers. The union and the ombudswoman report that, to date, the company has not done so. The ombudswoman reports that when she proposed language that would be easier for workers to understand, the company balked at changing the statement and suggested that, instead of changing the language, she perform trainings for workers. However, the company has also dragged its feet on implementing these trainings. To date, the company has neither revised the statement nor implemented freedom of association trainings.

Current Recommendations

The company should work promptly with the SITS union members and with the ombudswoman to come to an agreement on the language of the freedom of association statement, which should be distributed to all workers in writing, announced over the factory's public address system, and then posted in several visible locations around the plant.

If the company chooses to hold freedom of association trainings, it is essential that these trainings be designed in consultation with the SITS union. When executed unilaterally by factory management without adequate consultation with unions, freedom of association trainings and

statements can have a detrimental effect, indicating to workers that the company is still unwilling to tolerate workers' decision to form an independent union.

Based on the WRC's experience, the following are essential elements of trainings on freedom of association:

- Such trainings must be conducted on paid work time, and workers' pay must not be deducted for time spent in the training. Where workers' pay is based on their level of production, management must ensure that the time spent on the training is factored into their compensation such that workers are not penalized financially for attending the training.
- Where an independent union is present in the factory, the union must be consulted on the curriculum for the training and have the opportunity to make a presentation as part of the training.
- Such trainings are most effective when carried out in groups of less than 50 workers, rather than with the full workforce at a single time.

To properly conduct such a training requires several hours. Successful trainings are often a half-day, or about four hours in length. An effective training should not simply discuss national or international standards regarding workers' associational rights, but also discuss the specific history of the particular plant, and management's commitment to respect freedom of association.

The WRC recommends that any training implemented at F&D incorporate these best practices. In this case, there is one independent union present in the factory, the SITS union, and that union should be involved in any trainings as described above. The WRC can recommend expert trainers and resources upon request.

Intimidation and Threats Against Employee Union Leaders and Members

As noted in Section II(C) above, F&D has failed to respond adequately to past incidents of threats, intimidation, and even violence against employees who are leaders of the SITS union. During its April 2013 site visit, the WRC continued to gather information regarding the management's response to these incidents and their continuing impact on employees, which were still mentioned repeatedly by workers in their testimony as to the labor relations climate in the plant. For this reason, the WRC provides below new recommendations for measures to remedy these violations.

Initial Recommendations (June 2013)

The difficulty of identifying the individuals responsible for threats made to employees outside the plant on account of their associational activities makes it even more important to hold perpetrators of other violations of freedom of association accountable when they are identified. The WRC reiterates its previous recommendation that F&D must make it clear to its own

managers and employees that it will not tolerate any involvement in threats of any kind against employees or their union representatives. F&D should refrain from statements that endanger Rosa Evangelina Granados or other union members by making them a target for violence.

Given the recurrence of incidents of threats, intimidation, and even violence at F&D, and F&D's failure to date to identify and punish the perpetrator in any of these cases, the WRC recommends that an ombudsman be appointed jointly by the WRC and Hanesbrands in order to investigate and resolve any future cases of this kind. This ombudsman could also be called upon to investigate future cases of discrimination against employee union leaders, such as those described elsewhere in this report.

Status Update and Remediation

As noted above, an ombudswoman has been appointed and has been engaging in regular meetings with the union and management on a range of issues. This represents a significant step forward in labor-management relations overall, as well as offering a venue for remediation of specific issues.

The most significant obstacle to progress in the union-management meetings facilitated by Nuñez has been the reluctance of the key decision maker at F&D, factory owner Carlos Liu, to participate regularly in these meetings. For the first five months of the meetings, Liu was absent from the majority of meetings.

In her regular reports to the WRC and Hanesbrands, the ombudswoman reported that remediation was often significantly delayed by the professed inability of the company representatives present in these meetings to make decisions on the part of management. Due to the absence of a decision maker on the side of factory management, issues lingered unresolved for weeks or months, over multiple meetings, without factory managers reaching the necessary decisions to resolve disputes or implement remedial measures.

Following repeated engagement by the WRC and Hanesbrands, Liu has attended meetings with the STIT union and the Ombudswoman more regularly since February 2014. The WRC is concerned, however, that Liu continues to cancel and postpone these meeting with excessive frequency.

An additional challenge is the behavior in these meetings of one of F&D's management representatives, attorney Monterrosa. Monterrosa has participated in all of the meetings between the company and the union that have been held following the publication of the WRC's initial report. Both the union and the ombudswoman report that Monterrosa's behavior in these

meetings does not indicate a willingness to discuss workplace issues in good faith, but rather a palpable hostility to the union that sometimes takes the form of open mockery.

On March 10, 2014, the WRC noted to Hanesbrands and F&D that Monterrosa's unwillingness to engage in good faith dialogue with the union poses a significant obstacle to the functioning of this process, and thus an obstacle to the remediation of the violations identified by the WRC. In the interest of maximizing the likelihood that this process will succeed in remediating past violations of worker rights at the plant, the WRC recommended that F&D management remove Monterrosa from his role as liaison with the union and assign this role to a member of the management who is more willing to participate in the process in good faith. Hanesbrands reported that its representatives discussed this issue with F&D, and that, while he has not agreed to remove Monterrosa from his role in these meetings, Liu has committed to take the leading role in these meetings and ensure that Monterrosa's role is limited.

As noted above, the WRC also encouraged the other parties to continue to retain the ombudswoman, and all parties have agreed to do so. The WRC will continue to monitor this process and to maintain regular communications with the ombudswoman and with Hanesbrands to ensure that constructive dialogue between the parties continues. Since these findings were presented in June 2013, the WRC has not received any additional allegations of threats or intimidation against SITS union leaders or members.

Current Recommendations

These labor-management meetings, and the role of the ombudswoman, have been and continue to be a key element of the remediation for past violations of workers' associational rights. The union, factory management, Hanesbrands, and the WRC share an appreciation for the role played by the ombudswoman and an understanding that her role has been crucial in achieving gains in compliance and improvements in labor-management dialogue. The commitment to continue the ombudswoman in her current role for the next six months is very positive, and will allow her to ensure that the outstanding points of non-compliance are addressed, to continue facilitating communication between the SITS union and F&D management, and to solidify the improvements in labor relations already made at F&D.

The WRC notes that participation in good faith by factory management is key to this process and thus to the remediation of past violations. It is crucial that Carlos Liu regularly attend these labor-management meetings so that issues raised in the meetings can be promptly addressed. In addition, the WRC remains concerned regarding Monterrosa's role in undermining this process. If Liu's participation does not effectively address Monterrosa's counter-productive impact on the process, then the only path to full compliance will be removing Monterrosa from the meetings. The WRC will continue to monitor management's good-faith engagement in this process.

IV. Appendix: Photographs of Factory Interior⁵⁸

Illustration 1 (Fire Safety: Obstructed Aisles)



Illustration 2 (Fire Safety: Locker Area)



⁵⁸ Photographs in Illustrations 1-6 were taken by the WRC on April 30, 2013.

Illustration 3 (Conditions and Capacity of Bathroom)



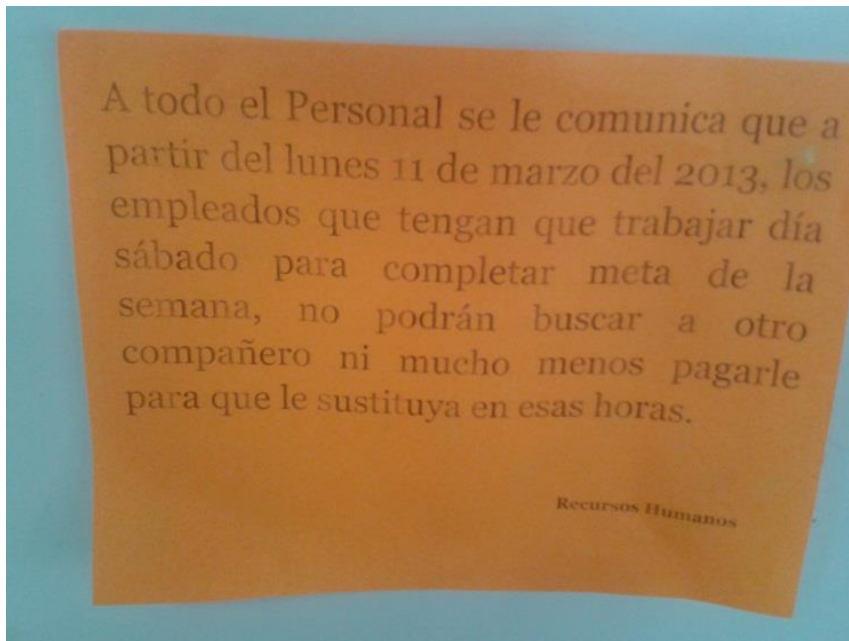
Illustration 4 (Condition and Capacity of Bathrooms: Locked Door to Broken Toilet)



Illustration 5 (Inaccurate Time Clock)



Illustration 6 (Forced Overtime) (“Employees who have to work on Saturday to complete the week’s production target cannot look for other people or pay them to substitute for these hours.”)



Illustrations 7-10 (Defacement of Work Stations and Theft of Personal Property)

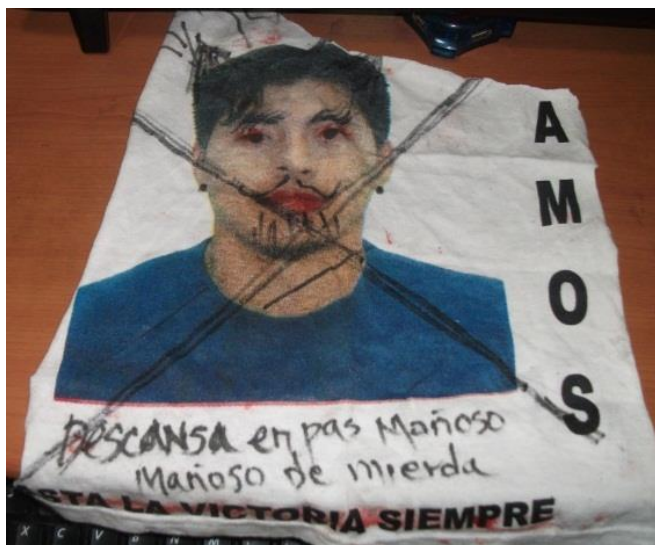




Illustration 11 (Surveillance of Employee Union Members and Leaders)⁵⁹



⁵⁹ Surveillance photo provided by F&D management.