WORKER RIGHTS CONSORTIUM

WORKER RIGHTS CONSORTIUM ASSESSMENT
JOEANNE DOMINICANA (DOMINICAN REPUBLIC)
FINDINGS, RECOMMENDATIONS AND STATUS

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I. Introduction:

The following is a report of the findings and recommendations of the Worker Rights Consortium's investigation of alleged violations of the Dominican Labor Code and university codes of conduct at the JoeAnne Company International factory (henceforth JoeAnne Dominicana) located in Santiago, Dominican Republic. JoeAnne Dominicana is disclosed as a supplier of university licensed goods for Franklin Sports and produces non-collegiate apparel for adidas and Fruit of the Loom.

The WRC conducted an investigation in response to a complaint filed by employees at JoeAnne Dominicana in February 2013 alleging that they were dismissed in retaliation for exercising their associational rights. The WRC's investigation found compelling evidence that at least five workers were terminated in retaliation for participating in a meeting on January 24, 2013, with representatives of a union federation, the Federación Dominicana de Trabajadores de Zona Franca (Dominican Federation of Free Trade Zone Workers, henceforth Fedotrazonas). The WRC also found evidence that at least one worker was dismissed for perceived union activities after being seen conversing regularly with identified union leaders and another worker was fired after stating in a meeting with an outside consultant that she believed workers had been fired for attempting to form a union. Dominican law and university codes of conduct prohibit employers from terminating employees in retaliation for exercising their associational rights.

On March 1, 2013, the WRC requested that the factory provide evidence regarding these allegations. On March 7, 2013 the legal counsel for JoeAnne Company International responded to the WRC but failed to provide the information requested or any other exculpatory evidence. Rather, the company's legal counsel stated that JoeAnne Company International would carry out its own investigation and then subsequently take whatever action it considers appropriate. On April 1, 2013 the WRC communicated to the brands producing at JoeAnne that, given the compelling evidence that JoeAnne Dominicana employees were dismissed in retaliation for exercising their associational rights, and given JoeAnne Dominicana's failure to provide any evidence to the contrary, immediate remedial action was both warranted and necessary to prevent any further infringement of workers' associational rights. Franklin failed to respond and Fruit of the Loom and adidas responded that they would await a Fair Labor Association investigation before determining their response.

The WRC urges the brands producing at JoeAnne to ensure prompt remediation of the violations.

II. Methodology

The findings outlined in this report are based on the following sources of evidence:

- Offsite interviews with JoeAnne Dominicana workers;
- Communication with JoeAnne International's management and legal representatives;

- Communication with Franklin Sports, adidas and Fruit of the Loom compliance staff;
- Review of relevant Dominican laws, university codes of conduct, and international labor standards.

III. Findings

The WRC found compelling evidence that JoeAnne Dominicana violated Dominican law and university codes of conduct by dismissing workers in retaliation for their participation in a meeting with the Fedotrazonas union federation. According to credible worker testimony, on Thursday, January 24, 2013, about seven JoeAnne Dominicana employees met at the Fedotrazonas office in Santiago to discuss forming a union. Subsequently, during the week of Monday, January 28, 2013, both supervisors and plant managers began questioning workers who participated in the meeting and threatened to dismiss those who had attended. Workers state that, over the course of this week, most of the workers who participated in the meeting were dismissed. The WRC interviewed five dismissed workers who provided detailed and compelling evidence that their dismissals were motivated by anti-union animus.

Several workers reported to the WRC that they were told at the time of their dismissal that they were being laid off without cause, i.e., for economic reasons unrelated to work performance. At least two workers were told explicitly at the time of their dismissal that they were being dismissed for their involvement in the union. The evidence shows that the actual reason for all of the dismissals was the workers' decision to attend a union meeting. According to credible worker testimony:

- On Monday, January 28, 2013, three of the meeting participants observed another participant in the meeting, known as Justin, as he was approached by three managers and two supervisors.[1] During the conversation, several of the union meeting participants saw Justin and the managers all turn to look at them. They believe that they were being pointed out to management. One worker who participated in the meeting reported that he walked by during the conversation and overheard two of the managers ask Justin "who was it?" and that Justin "…was a good worker" and that they wouldn't fire him.

- Shortly thereafter, on that same Monday, January 28, 2013, two of the workers who participated in the meeting, Marfee Rafael Hiraldo Ulloa and Roberto Sánchez Jiménez, were approached by a supervisor, Socorro, who had been in the conversation earlier that day with Justin. She demanded to know if they were engaged in forming a union. The supervisor wrote down their identification numbers. Mr. Hiraldo was fired later that same day and Mr. Sánchez on the following day.

[1] The three workers interviewed provided mutually corroborative testimony that the same three managers and two supervisors were seen speaking to Justin. The managers were known in the factory by the names Jairo, Rafael, and Aquino, and the supervisors were known as Juana Mendez and Socorro.

- Another meeting participant, Elvin Yonathan Pérez Jorge, testified that he was fired on Wednesday, January 30, 2013. Mr. Perez also testified that when he was dismissed, human resources manager, Ana, told him, "We know who's in your little group."

- Another meeting participant, Yonathan Josue Rosa Pichardo, who reported he was also fired on January 30, 2013, stated that he was approached by his supervisor Juana Mendez who questioned him about his participation in the union and stated that, "It is known that you are involved with the union… and you all will be fired because of the union issue. We know who was in the meeting; we have a report."

The five workers interviewed also reported that several people who they spoke with regularly in the weeks leading up to their dismissals were subsequently dismissed in late January and in February. The WRC was able to speak with one such worker, Altagracia Peña Contreras, who reported that she was fired in late January and was later informed by her supervisor that she had been fired because the management believed she was involved in the union's formation because she spoke regularly with the workers identified as union leaders.

Ms. Contreras reported that, two weeks after her dismissal, she encountered her former supervisor who informed her that she had been dismissed because management intended to dismiss everyone involved in the union organizing effort and that she had been identified as one of the leaders of the union. The former supervisor further stated that the management had planned on blacklisting all of the union leaders including Ms. Contreras, but that he had intervened in her case.

In light of the failure of JoeAnne Company International to provide evidence to the contrary, the evidence gathered by the WRC as to the motive for the dismissals is dispositive. JoeAnne Dominicana employees were specifically targeted for dismissal in response to their efforts to form a union. Such retaliatory dismissals are illegal under the Dominican Labor Code and university codes of conduct.[2] The Dominican Labor Code specifically prohibits employers from dismissing workers in retaliation for their associational activities. Article 333 of the Dominican Labor Code prohibits employers from "[e]xercising retaliation against workers for their union activities [or] firing or suspending workers for belonging to a union...." Established international jurisprudence concerning the protection of freedom of association states that, in these circumstances, remedial action must include, at a minimum, reinstatement of the terminated employees with full back pay from their respective dates of termination.[3]

[2] See, e.g., Collegiate Licensing Corporation, Special Agreement on Labor Codes of Conduct (Jan. 2008) (requiring compliance with "all applicable legal requirements of the country(ies) of manufacture" and "respect [for] the right of employees to freedom of association and collective bargaining").

[3] See, ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*¶ 837 (2006) ("No one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination.").

In addition, another worker reported that she was dismissed in late February, four days after participating in a meeting at the factory where she stated that she believed that workers had been dismissed in retaliation for union formation. This worker, Jennifer Josefina Quezada, reported that on a Monday in late February she was called into a meeting in the factory's conference room with a group of 4 or 5 other workers and an outside consultant to the company, who stated that she was holding meetings with each work module to understand a variety of issues at the factory. After asking several questions about working conditions in the factory, the consultant asked workers if they knew anything about the recent terminations. Ms. Quezada was the only worker to reply that she understood that the workers were terminated because they were involved in forming a union. After her reply the consultant asked for Ms. Quezada's full name and employee identification number. On the following Thursday, Ms. Quezada reports that a co-worker approached her and informed her that he heard she was going to be fired because of her comments regarding the retaliatory dismissals in the meeting. The following day, Ms. Quezada was provided with a notice of dismissal.

Taken in conjunction with the previous pattern of retaliatory dismissals, the evidence shows that Ms. Quezada's dismissal was also retaliatory. Dismissing an employee in retaliation for reporting a labor rights violation is, in addition to being a violation of Dominican law and university labor codes, also a breach of many of brands' own internal non-retaliation policies. For example, adidas states that "...[b]usiness partners must publicise and enforce a non-retaliation policy that permits factory employees to express their concerns about workplace conditions directly to factory management or to us without fear of retribution or losing their jobs."[4]

IV. Factory and Brand Responses and Current Status

The WRC wrote JoeAnne Company International on March 1, 2013, to alert the company to the allegations of retaliatory dismissals and to request that the company provide a list of workers dismissed and/or hired between January 1 and February 15, 2013, and any other information relevant to the allegations. On March 7, 2013, JoeAnne Company International's legal counsel responded, but did not provide the information requested nor any other evidence or information, exculpatory or otherwise. The counselor stated that JoeAnne would carry out its own investigation and inform the WRC of its results. For obvious reasons, this is not a satisfactory response; JoeAnne Company International cannot carry out an independent investigation of itself.

On April 1, 2013, the WRC communicated with the brands producing at Joe Anne, including Franklin Sports, Fruit of the Loom, and adidas. This communication informed the brands of the WRC's findings and recommended immediate reinstatement of the workers who had been wrongfully terminated and the institution of freedom of association (FOA) protocols, such as clear instructions to supervisors and managers to

[4] See, Adidas, Guidelines on Employment Standards (2010) p. 95

cease any anti-union retaliation, disciplinary actions for responsible supervisors and managers and an FOA statement issued to the workforce. Franklin Sports failed to respond. Fruit of the Loom and adidas both responded that they would not take action until an investigation that had been requested from the Fair Labor Association was completed. To date, none of the required remediation has been undertaken by JoeAnne Dominicana or the brands.

Some workers have already been off the job for almost four months. Any further delays will exacerbate the chilling effect on workers' associational rights of the factory's actions and the WRC continues to urge Franklin, Fruit of the Loom, and adidas to ensure that JoeAnne takes the necessary remedial action immediately.

V. Recommendations

The WRC recommends the following actions to remedy the violations outlined above:

- Immediately reinstate the following workers who were subjected to retaliatory dismissals, with retention of seniority rights and with back pay including interest, from their respective dates of dismissal: Roberto Sánchez Jiménez, Marfee Rafael Hiraldo Ulloa, Elvin Yonathan Pérez Jorge, Domingo More Concepción, Yonathan Josue Rosa Pichardo, Altagracia Peña Contreras, and Jennifer Josefina Quezada.

- Provide the WRC with a list of employees dismissed and hired in January-March 2013 in order to identify all workers who may have been subjected to illegal retaliatory dismissals.

- Identify and impose significant disciplinary action upon all managers involved in illegal firings and anti-union retaliation.

- Immediately instruct all managers to cease any retaliatory actions.

- Issue a verbal and written statement to workers, reviewed in advance by the WRC, stating that JoeAnne will respect the right of workers to join the union of their choice and that no worker will suffer any negative consequences for doing so.