



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
INDUSTRIAS SINTETICAS (“INSINCA”)
(EL SALVADOR)**

FINDINGS AND RECOMMENDATIONS

September 28, 2013

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I. Executive Summary

This report details the findings and recommendations of the Worker Rights Consortium (WRC) concerning labor practices at Industrias Sinteticas, a textile manufacturing facility in El Salvador.

Industrias Sinteticas is located in the city of Apopa which is part of the greater metropolitan area of San Salvador, the country's capital. At the time of the WRC's visit to the Industrias Sinteticas factory in September 2013, the factory, which is commonly referred to in El Salvador as "INSINCA," employed roughly 480 persons, including management personnel. INSINCA is a joint venture of the Salvadoran Investment Corporation – the investment arm of the Salvadoran government, generally known by its Spanish acronym CORSAIN – and four Japanese multinational firms, Toray Industries, Inc., Mitsui Co., Ltd., Chory Co., Ltd., and Gisen Co., Ltd.¹

The WRC undertook its compliance assessment of INSINCA pursuant to its role as the independent monitor for the City and County of San Francisco, California ("the City") under the City's Sweatfree Contracting Ordinance ("Ordinance") which sets labor rights standards for manufacturers of apparel, including components of apparel, supplied to the City by the City's vendors.² INSINCA supplies fabric to Burlington Industries ("Burlington"), a division of the North Carolina-based International Textile Group.³

Burlington, in turn, supplies fabric from INSINCA to the Cincinnati, Ohio-based uniform manufacturer, Fechheimer Brothers Company ("Fechheimer"), which is a division of Berkshire Hathaway, Inc., the Omaha, Nebraska investment-holding firm headed by Warren Buffett. Fechheimer is the prime contractor to City vendor Galls, Inc. ("Galls") for manufacturing of uniforms to be supplied by Galls to employees of the City's Municipal Railway Company ("Muni"), the public transit division of the San Francisco Municipal Transportation Agency (SFMTA). As a result, labor conditions at INSINCA are required to meet the standards established for producers of apparel supplied to the City under the Ordinance as a term of Galls' contract with the City to supply uniforms for Muni employees.

The WRC's assessment of INSINCA was conducted by the WRC's Central America representative, who is an experienced labor lawyer, with the assistance of Enrique Medina, a certified industrial hygienist and safety professional based in San Diego, California, and the Asociación Centro de Estudios y Apoyo Laboral (CEAL) (Labor Studies and Support Center), a nongovernmental organization based in San Salvador. The WRC's representative and Medina, the safety expert, inspected the factory on September 24, 2013, and reviewed records which INSINCA management made available for onsite

¹ INSINCA, *About Us*, <http://www.insinca.com/nosotros-en.php>.

² *Codified as*, San Francisco, Cal., Administrative Code ("City Code"), Ch.12.U (2005), as amended, Feb. 11, 2010: <http://www.sfgsa.org/Modules/ShowDocument.aspx?documentid=6894>.

³ INSINCA also supplies other domestic and international customers including, reportedly, Bali Dominicana Textiles, S.A., a Dominican subsidiary of the U.S. apparel company, HanesBrands, Inc., and the Salvadoran Ministry of Education, for which the factory is a leading producer of fabric for student uniforms.

examination. CEAL, under the WRC's supervision, conducted in-depth offsite interviews with INSINCA workers both before and after the inspection.

The City's Ordinance requires manufacturers of apparel supplied to the City to comply with all applicable domestic labor and employment laws of the country where manufacturing occurs, as well as certain additional labor standards including payment of a non-poverty wage and specific protections for the rights of women workers.⁴ The WRC's assessment of INSINCA identified noncompliance with the Ordinance's requirements in the following areas: (1) wages and hours, (2) statutory paid leave, (3) freedom of association, and (4) health and safety.

As detailed in Section III of this report, with respect to each area where violations were identified, the WRC reached the following specific findings:

Wages and Hours

- **Non-poverty wage.** While exceeding El Salvador's legal *minimum* wage, the wage interviewed workers reported receiving consistently fell well short of the requirements of the City's mandatory minimum *non-poverty* wage.⁵ Factory management confirmed that this wage was paid to workers, but added that some workers earn a significantly higher wage. The City's non-poverty wage standard for manufacturers of apparel for the City in El Salvador is \$1.53/hour,⁶ or \$288.51/month, yet workers at INSINCA who were interviewed offsite consistently reported receiving a base wage amounting to \$230-235 per month, a figure roughly 20% lower than the City's non-poverty wage. This wage level was generally consistent with that cited by INSINCA management as the base rate paid to workers at the factory, except for a group of senior employees who reportedly receive a higher rate.
- **Illegal Wage Deductions.** Workers consistently reported that the factory takes large deductions from their wages if they need to go to offsite medical facilities

⁴ See, City Code, Ch. 12.U.2 (j) (defining "Sweatshop Labor" as "work performed by any Worker under terms or conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is performed governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation, including without limitation all laws prohibiting workplace and employment discrimination; (vii) freedom of association; or (viii) building or fire codes. . . [or] any work performed by any person contributing to the provision of Goods to the City and County under a Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child Labor or Slave Labor.") 12.U.3. (a) ("Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor."), (b) (requiring payment of non-poverty wages), (g)-(i) (prohibiting mandatory overtime, harassment and mandatory pregnancy testing or use of contraception).

⁵ See, *id.* at 12.U.3

⁶ See, City and County of San Francisco, *Sweatfree Contracting Ordinance (Administrative Code Chapter 12.U)*, *Current Wage Rates for Overseas* (Dec. 21, 2012), <http://www.sfgsa.org/modules/showdocument.aspx?documentid=8457>.

and exceed the time the management has allotted them for this purpose. As explained further in this report, these deductions, which reportedly can amount to as much as 30% of a worker's weekly wages for a single occurrence, result in workers being denied wages they have earned and are due under Salvadoran law, and, thereby under the City's Ordinance as well.⁷ INSINCA's management denied this was its practice, yet this was contradicted by a majority of the workers who were interviewed.

- **Mandatory Overtime.** A large majority of workers interviewed reported that INSINCA requires them to perform overtime and that the factory management disciplines them or threatens them with loss of employment if they object. INSINCA management claimed that overtime is voluntary, but this was contradicted by mutually consistent and detailed testimony from employees. The City's Ordinance prohibits mandatory overtime except under certain conditions which were not met in this case.⁸

Statutory Paid Time Off

- **Denial of Paid Sick Leave.** El Salvador's social security system, to which INSINCA and its employees contribute, pays workers' wages after they have missed more than three days of work due to illness or injury. Workers reported and INSINCA managers acknowledged, however, that INSINCA fails to pay ill or injured workers for the first three days they miss from work. As explained in this report, Salvadoran law requires the company to provide 50% of their usual wages for these days. This failure to comply with local laws violates the terms of the City's Ordinance.⁹

Freedom of Association

- **Threats of Retaliatory Loss of Employment for Union Membership.** Workers consistently reported that company management communicates to them that it will not permit a union at the factory and, if they join or seek to form a union, the company will refuse to renew their employment contracts, which have a one-year term. These threats have an especially chilling effect on exercise of freedom of association at INSINCA, because many workers are aware that there was formerly a union at the factory, which, in 2002, the management eliminated by temporarily closing the plant, suspending more than 600 employees who were union members, many of whom, upon the plant's reopening, it subsequently refused to re-hire, including all of the union's elected leadership.

⁷ City Code, Ch. 12.U.2.(j), 12.U.3.(a).

⁸ See, *id.* at Ch. 12.U.3.(g) (permitting mandatory overtime only "if each of the following conditions is satisfied: (1) the law of the country of manufacture permits mandatory overtime, (2) the manufacturing facility is party to a collective bargaining agreement that permits mandatory overtime, and (3) the mandatory overtime hours are worked in conformance with the collective bargaining agreement."). As discussed, *infra*, INSINCA was previously party to a collective bargaining agreement, but cancelled this agreement in 2002. Therefore, the exemption does not apply in this case.

⁹ *Ibid.*

- **Threats of Plant Closure and Surveillance of Union Activity.** In addition to the threats of retaliatory dismissal noted above, some workers also reported that managers had made statements threatening that the plant would close if employees formed a union, and had requested that workers inform them if other employees discussed unionization.
- **Company Claim to Respect Freedom of Association Not Credible.** When interviewed by the WRC, INSINCA management misrepresented the well-documented history of previous anti-union retaliation at the factory, and claimed that employees currently were free to choose whether or not to join or form a union. Because, in light of overwhelming evidence to the contrary, this claim lacks credibility, the WRC finds that the company has made threats to employees that violate workers' rights to freedom of association as protected under both Salvadoran law and the City's Ordinance.¹⁰

Occupational Safety and Health

- **30 Health and Safety Violations Identified.** The safety expert who inspected the factory for the WRC identified ten issues that require immediate attention due to their potential to cause serious injury or illness to workers, and 20 other issues that poses potential health or safety hazards, though of a less immediate or serious nature. The 30 hazards identified violated Salvadoran statutory health and safety regulations and, therefore, the City's Ordinance as well.¹¹
- **Most Serious Health and Safety Issues.** The most serious health and safety issues found were risks of fire or explosion from lack of electrical grounding and bonding in the flammable and corrosive chemicals storage areas, risk of hearing damage to workers from exposure to high levels of noise in the spinning and weaving operations, and inadequate machine guarding and material handling precautions in the spinning section, the latter of which have already resulted in injuries to workers as evidenced in the factory's injury data.
- **Other Health and Safety Issues.** Other issues of concern that were identified include lack of proper labeling for some hazardous materials or hazard assessments for many jobs; failure to monitor exposure to volatile chemicals in the dyeing area and textile fibers in the spinning and weaving areas, and non-implementation of the risk prevention management program required by the country's health and safety law.

The violations of the City's Ordinance identified above, as well as the methodology by which the WRC reached these findings, are discussed in further detail in the body of this report. For each finding, the report also provides recommendations for how the identified violation can be remedied and/or corrected going forward. Although the violations identified here are significant, they are highly amenable to remediation and correction by

¹⁰ Id. at Ch. 12.U.2(j)(vii), 12.U.3.(a).

¹¹ Ibid.

INSINCA, with the assistance and involvement of its customers, including Burlington, as well as, Burlington's customer, Fechheimer, and the City's vendor, Galls.

II. Methodology

The WRC began gathering information concerning labor conditions at INSINCA in March 2013 as part of broader research concerning compliance with the City's Ordinance among factories involved in the production of apparel supplied to the City under the Muni employee uniform contract held by Galls, for which Fechheimer is the prime contractor. As part of this outreach, the WRC gathered information from CEAL concerning INSINCA's prior labor relations history, which is discussed in the following section of this report.

In September 2013, the WRC conducted more in-depth research specifically focused on labor conditions at the INSINCA factory, including extensive offsite worker interviews by CEAL, and an onsite factory inspection on Sept. 24, 2013 which was performed by the WRC's Central America Representative with the assistance of certified health and safety expert Enrique Medina.

The WRC's assessment included 20 interviews with current factory employees from a cross-section of work areas and a range of seniority levels in the factory. These interviews were conducted away from the factory site in locations where workers felt comfortable speaking with researchers. Factory managers, including human resources head Rafael Polio, payroll head Rafael Antonio Garcia Cerna, and health and safety head Carina Elizabeth Cancurra were also interviewed during the WRC's September 24 inspection of the factory.

The WRC also reviewed company documents that were made available for visual inspection by INSINCA management on the day of the factory visit. Finally, the WRC's assessment also included a review of Salvadoran labor laws and regulations implicated by the conditions found at INSINCA, including legal opinions concerning the application of these standards that had been obtained during previous WRC factory investigations in El Salvador where similar issues had arisen.

The WRC's findings based on this evidence, and corresponding recommendations for corrective action, are outlined in the following section.

III. Findings and Recommendations

This section details the WRC's findings of noncompliance with the City's Ordinance at the INSINCA factory and, for each finding, provides corresponding recommendations for remedying the violation of and ensuring compliance with the relevant terms of the Ordinance going forward.

A. Wages and Hours

1. Nonpayment of the City's Non-Poverty Wage

a. Findings

Workers interviewed for this assessment consistently reported earning a base wage between \$230 and \$235¹² per month (exclusive of additional payments for overtime or deductions for social security programs). Some of these workers have been employed at the factory in excess of ten years.

INSINCA managers identified the base wage at the factory as \$228.12 per month, but indicated that certain more senior workers are paid wages between \$280 and \$300 per month. The existence of a two-tier salary structure at the plant is consistent with information received from CEAL concerning INSINCA's labor relations history, which indicates that employees hired before 2002, when the factory temporarily closed and then re-opened offering different terms of employment, have a somewhat higher salary scale than employees hired after 2002.

All of the wage levels reported by both INSINCA employees and INSINCA managers, for both junior and senior employees, exceed the current legal minimum wage in El Salvador for workers in the maquiladora sector which was set at is \$187.68 per month in July 2013.¹³ Yet, except for the highest wage level claimed by the company, \$300/month, which was not earned by any of the workers interviewed for this assessment, all of these wage levels fall short of the minimum wage INSINCA is required to pay employees under the City Ordinance's non-poverty wage standard, which is currently set at the hourly equivalent of \$288.51/month.¹⁴

INSINCA management stated that, in addition to their base wage, workers may receive an annual bonus which, they noted, in 2011, was equivalent to one month's salary. Information received from CEAL regarding INSINCA's prior labor practices indicated however that while the employees are eligible to receive two bonuses per year – one payable at yearend and the other payable at the Easter Holy Week ("*Semana Santa*") – their value to employees varies, depending, in the case of the yearend bonus, on their

¹² Since 2001, El Salvador has used the U.S. dollar as its official currency. *Businessweek*, "El Salvador's Greenback Bind" (Oct. 16, 2005), <http://www.businessweek.com/stories/2005-10-16/el-salvadors-greenback-bind>.

¹³ *El Salvador.com*, "Funes Avala Decretos para el Aumento al Salario Mnimo" (Jul. 3, 2013), http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=8012688.

¹⁴ See, City Code, Ch. 12.U.3.(b), and City and County of San Francisco, *Current Wage Rates for Overseas*, *supra*, n. 6 (identifying \$1.53 per hour as the minimum non-poverty wage for El Salvador). By law, regular working hours in El Salvador are 44 hours per week. Salvadoran labor law requires payment of one additional paid rest day per week (known as the *Septimo Dia*, "seventh day"). The minimum wage is set on a monthly basis, from which the minimum daily wage is calculated by dividing the monthly minimum wage into 30 equal parts. Therefore the monthly wage required to provide the City's non-poverty wage rate of \$1.53/hour must be calculated as follows: \$1.53 / hour x 44 hours / week ÷ 7 days / week x 30 days / month = \$288.51 /month.

seniority and, in the case of the Holy Week bonus, on the company's discretion. According to CEAL, the value of the yearend bonus ranges from 10 to 18 days' pay, and while some years the Holy Week bonus is 30 days' pay, some years it is not paid at all.

Regardless of the value of these bonuses, it is clear that their payment to employees does not fully close the gap between the base wage paid to many workers at INSINCA and the non-poverty wage mandated by the City's Ordinance. First, the Ordinance states that the non-poverty wage requirement applies to the "minimum wages" payable to employees, suggesting that bonuses, which are not necessarily a component of "wages," and, in particular, those bonuses whose payment is not legally guaranteed to employees, should not be counted towards compliance with this standard.¹⁵

Second, even if one were to consider the bonuses for which employees are eligible as a component of their "minimum wages," at the base wage cited by INSINCA workers and management (roughly \$230 per month), the maximum reported value of the yearend and Holy Week bonuses – 48 days' pay per year – still does not provide the \$288.51 per month non-poverty wage required under the Ordinance.¹⁶

b. Recommendations

The WRC recommends that the following steps be taken to remedy INSINCA's noncompliance with the City's non-poverty wage requirement:

- Increase workers' base monthly wages by amounts sufficient to provide a pay rate that complies with the City's non-poverty wage requirement for El Salvador.
- Provide workers with back pay for the period of time from the date when the City's non-poverty wage requirement became applicable to the factory's employees (or the relevant statute of limitations) up to the date when wages are increased to a sufficient degree to meet this standard, in amounts equivalent to the difference between the wages actually paid to employees and the amounts workers would have been paid had the factory complied with the non-poverty wage requirement at that time.

Should payment of such back wages and/or the non-poverty wage going forward not be financially feasible for INSINCA, the WRC recommends that Burlington, Fechheimer and Galls assist INSINCA in achieving remediation of the prior violation of, and future compliance with, this standard.

¹⁵ City Code, Ch. 12.U.3.(b) (requiring that "[e]ach Contractor and Subcontractor shall pay at least the following minimum wages to Workers . . .").

¹⁶ $\$230/\text{month} \div 30 \text{ days} / \text{month} \times 48 \text{ days}/\text{year} \div 12 \text{ months}/\text{year} = \$30.67/\text{month}$. $\$30.67/\text{month} + \$230/\text{month} = \$260.67/\text{month}$.

2. Illegal Wage Deductions

a. Findings

Workers in El Salvador must be enrolled in the country's public healthcare system, the Instituto Salvadoreño del Seguro Social (ISSS), which, like similar programs in other countries in the region, provides access to medical care through a network of local public clinics. Workers at INSINCA who were interviewed for this assessment indicated that when they must seek medical care during the workday beyond that which is available onsite from the company itself, INSINCA management grants them a time period ranging from two to four hours long in which to travel to the ISSS clinic, be seen or treated there, and return to the factory.

Employees reported that due to the distance of some ISSS facilities from the factory, difficulties in transportation and lengthy waits at the clinic, they are often unable to return to the factory in the time allotted by factory managers. The majority of workers interviewed indicated that in such instances, the factory's management deducts from their pay not merely the amount of time they exceed the allotted period for visiting the ISSS, or even the total amount of time they are absent from the factory, but, instead, their entire pay for that day – including any hours they actually work that day, either before leaving the factory or after their return. Moreover, a smaller, but still significant, fraction of workers interviewed reported that in such instances (when they exceed the period allotted to them by the company to visit the ISSS) the company also deducts from their weekly pay an *additional day's wages* – the weekly rest day employers are required to pay under Salvadoran law (known colloquially as the “*septimo dia*” (seventh day)).¹⁷ Together, these two deductions can result in the loss to the worker of up to 29% (two-sevenths) of his or her weekly pay.

Both deductions – of wages for the day when the visit to ISSS occurs and of wages for the paid rest day – violate Salvadoran law, and, thereby the City's Ordinance.¹⁸ Employers may only deduct from workers' wages when an employee's absence from work is unjustified, a circumstance that does not describe a worker's need to seek medical care.¹⁹ Moreover, workers' rights to their paid day of rest can only be denied when an employee does not complete his or her work week without a just cause.²⁰

INSINCA's management claims that workers are paid for the entire period of their absences to visit ISSS clinics, even when such visits require missing an entire day's

¹⁷ Salvadoran Labor Code (“Labor Code”), Article 171 (establishing that “[a]ll workers have the right to a paid day of rest for every workweek.”) (unofficial WRC translation).

¹⁸ City Code, Ch. 12.U.2.(j), 12.U.3.(b).

¹⁹ Labor Code, Art. 127 (mandating that “payment of salary should be timely, complete and personal”) and 203 (defining just causes for missing work to include both “leave” granted by the employer and “unforeseen circumstances that keep the worker from attending to his or her work”).

²⁰ Id. at Art. 171 (“All workers have the right to a paid day of rest for every work week. The worker who does not complete his or her work week without offering justified cause will not have the right to the payment established herein.”).

work, so long as employees submit documentation from ISSS verifying the visit. This testimony is contradicted by the fact that a majority of workers interviewed testified consistently that their day's wages are deducted if they exceed the time allotted by the company for visiting the ISSS.

b. Recommendations

The WRC recommends that INSINCA take the following measure to remedy and prevent future occurrences of illegal deductions from the wages of employees who must leave the factory to visit ISSS clinics for medical care:

- Review its records to identify any instances when such improper deductions have been taken and provide back wages to the affected employees in the amount of the deductions.
- Survey or otherwise allow employees the opportunity to identify instances when such deductions have been made and seek back pay for lost wages without fear of retaliation.
- Communicate clearly to employees that the company's policy is to pay for the entire duration of visits to ISSS clinics as long as documentary proof of the visit is provided.

3.Mandatory Overtime

a.Findings

A large majority of the workers interviewed for this assessment reported that INSINCA requires them to perform overtime and that the factory management disciplines them or threatens them with loss of employment if they object. During the WRC's September 24 visit to the factory, INSINCA management claimed that overtime is voluntary, but this was contradicted by testimony from employees that was highly consistent in its description of the forms this coercion takes.

Specifically, employees provided the following testimony with regard to the mandatory nature of overtime work:

- Multiple employees stated explicitly that supervisors tell them that they are "being irresponsible" if they seek to avoid performing overtime.
- Multiple employees stated explicitly that supervisors told them that they "should collaborate" with the company by performing overtime.
- Multiple employees reported that the statements by supervisors reported above were accompanied by threats of termination if employees did not comply by working overtime.

- Another interviewee reported a threat that his or her employment contract would not be renewed if he refused to work overtime, and one employee indicated that s/he knew of two former workers who had been terminated for failure to perform overtime.
- Multiple employees reported that workers who refuse to work overtime are called to the plant office and issued “disciplinary note[s].”
- Multiple employees indicated that if a worker refuses to work overtime managers will become angry or “scold” the worker.

The City’s Ordinance prohibits mandatory overtime except under certain conditions, which include a requirement that the factory requiring overtime work be party to a collective bargaining agreement that permits mandatory overtime.²¹ As previously noted, while INSINCA was, at one time, party to such an agreement, the company, in 2002, cancelled this agreement.²² Therefore, the exception to the Ordinance’s prohibition on involuntary overtime does not apply to INSINCA.

b. Recommendations

In order to remedy its prior violations of the City Ordinance’s prohibition on involuntary overtime and ensure compliance with this provision going forward, INSINCA management should:

- Adopt, maintain and inform all supervisors and managers of a policy that, going forward, performance of overtime must be voluntary on the part of employees and that no employee shall be discriminated against in any way for declining to perform overtime.
- Remove from employees’ files and expunge from their disciplinary records any form of discipline applied because of employees’ refusal to perform overtime, and inform employees in writing when this is done.
- Offer reinstatement and back-pay, from the date of termination to the date of the offer of reinstatement, to any former employee who was terminated for failure to perform overtime, during the last three years.

²¹ See, *id.* at Ch. 12.U.3.(g) (permitting mandatory overtime only “if each of the following conditions is satisfied: (1) the law of the country of manufacture permits mandatory overtime, (2) the manufacturing facility is party to a collective bargaining agreement that permits mandatory overtime, and (3) the mandatory overtime hours are worked in conformance with the collective bargaining agreement”).

²² See, *infra*, at 16.

- Communicate, through a written and verbal announcement to employees, delivered on work-time and posted in the factory for no fewer than 30 days, that performance of overtime is strictly voluntary, and that no employee shall be disciplined or discriminated against in any way for refusal to work overtime.
- In all instances when overtime is requested of employees by company managers, obtain the signature of employees on a record by which the employee can state whether or not that the overtime is worked voluntarily, and maintain such records for inspection by auditors, inspectors and buyers.

B. Statutory Paid Leave

a. Findings

As previously noted, El Salvador’s social security system, the ISSS, to which INSINCA and its employees contribute, pays workers’ wages after they have missed more than three days of work due to illness or injury.²³ Workers interviewed for this assessment uniformly reported, and INSINCA’s managers acknowledged, that INSINCA does not pay workers any wages for the first three days they are absent from work due to illness or injury.²⁴ Some workers indicated that, as a result, employees continue to come to work even when they are sick in order not to lose this income.

Article 33 of El Salvador’s Labor Code establishes the obligation of employers to pay wages to a worker in case of “interruption of work” caused by “unforeseen circumstances” including interruption resulting from illness or injury to the employee, that do not exceed three days.²⁵ The labor code differentiates between “unforeseen circumstances [that] are the responsibility of the employer” for which the employer is obligated to pay the affected workers an amount equal to the full regular salaries that the workers are not receiving during this interruption” and circumstances which are “to the contrary” – i.e., not the responsibility of the employer – for which “the obligation is to pay only an amount equal to fifty percent of said salaries.”²⁶ As illness or injury to the employee is the responsibility of the worker and not the employer (except when the illness or injury is work-related), the lesser obligation applies.

As a result, in cases where workers are absent from work due to illness or injury that is not work-related for less than four days, INSINCA is required to pay employees 50% of

²³ Salvadoran Social Security Regulation, Article 24 (“When an illness means that the worker is unable to work, the insured worker will be entitled to receive a daily, temporary subsidy starting on the fourth day that s/he is on leave from work, according to the certification of physicians at the Institute or others who are authorized by the same.”) (unofficial WRC translation).

²⁴ As previously discussed, most INSINCA workers who were interviewed also reported that the company, additionally, does not pay them any wages for any day in which they miss more than four hours of work in order to visit an ISSS clinic for medical examination or treatment. INSINCA management stated that the company does pay workers these wages if the worker submits written proof of his or her visit to an ISSS clinic.

²⁵ Labor Code, Art. 33 (unofficial WRC translation).

²⁶ Ibid.

their wages for this time. Because the company's acknowledged practice is not to pay any wages to employees in such circumstances, INSINCA is violating its obligations under Salvadoran law and, therefore, the City's Ordinance as well.²⁷

b. Recommendations

In order to remedy its prior violations of Salvadoran law and the City's Ordinance resulting from its failure to pay workers any wages during their first three days of absence from work due to illness or injury, and ensure compliance in this area going forward, INSINCA management should:

- Pay workers 50% of their wages in all future instances when they are absent from work due to non-work-related illness or injury for the first three days of such absences.
- Provide back-pay to workers in the amount of 50% of wages for all instances when they have been absent from work due to non-work-related illness or injury and have not received any payment of wages from INSINCA for the first three days of absence, within the applicable statute of limitations.
- Inform workers by verbal and written announcement to be delivered on work-time and posted in the factory for no less than 30 days that:
 - Such back-pay is available and that workers who believe they are owed such back-pay and do not receive it within thirty days may request its payment and shall not suffer any discrimination as a result.
 - Going forward, the company's policy is to pay workers 50% of their wages in all instances when they are absent from work due to non-work-related illness or injury for the first three days of such absence.

C. Freedom of Association

1. Findings

a. Threats of Retaliatory Dismissal for and Surveillance of Union Activity

A strong majority of the workers interviewed for this assessment consistently reported that company management has communicated to them that it will not permit them to join or form a union at the factory, and roughly half explicitly stated that if they do seek to join or form a union the company will retaliate by causing them to lose their employment.

²⁷ See, City Code, Ch. 12.U.2.(j), 12.U.3.(a).

Specifically, employees gave consistent and mutually corroborative testimony that:

- The company has informed workers that it will not “allow” them to form a union.
- The company has informed workers that if a worker joins or attempts to form a union, the company will not renew his or her employment contract. This is a particularly chilling threat because workers are employed by INSINCA under one year individual contracts that the company has discretion to renew, or not renew, each year.
- Workers also reported that company managers have threatened that the factory will close if employees form a union. This threat is also particularly chilling to workers because, as discussed below, employees are aware that INSINCA previously eliminated a union at the factory by temporarily closing the plant and refusing to rehire hundreds of employees who were union members, including the union’s entire elected leadership.

Employees also reported that company managers have added to the chilling effect of these threats by asking workers to, in effect, inform on other workers who exercise their associational rights. One worker told interviewers,

There are a lot of threats that you won’t get your contract renewed for another year if you are involved with a union. In the administrative offices, they tell us that you should bring your complaints to the office and tell them if you hear about any strikes or unions.

Another worker who was interviewed stated,

The managers and supervisors say that the plant will close if there is a union. [Name of manager] asks office staff to let him know if there is any talk of a union.

Workers made clear that they viewed the company’s threats of retaliatory dismissal as highly credible, and that, because they viewed joining a union as synonymous with losing their jobs and income, they did not feel free to exercise this right. As one worker told the interviewers, “If anyone tried to organize a union, they would be fired. We have children to support.”

b. Past History of Mass Discriminatory Dismissal of Employee Union Members

As mentioned, the company’s threats of retaliatory dismissal are particularly compelling to workers because of the well-documented history of mass termination of union members and aggressive elimination of union representation at the factory by the factory’s management. According to information provided to the WRC by CEAL, which has deep knowledge of Salvadoran labor relations, between 1986 and 2002 workers at INSINCA were represented by the Union of Workers of the Textile Industry (known by

its Spanish acronym, “STIT”). On July 31, 2002, INSINCA, claiming that the firm was reorganizing, suspended employment of 640 of the factory’s employees, all of whom were STIT union members, and temporarily closed the plant.²⁸

INSINCA management reportedly offered the suspended workers severance benefits along with an assurance that they would be re-contacted once the factory reopened, but required, as a condition of receiving the benefits, that the employees sign letters waiving any legal right to re-employment.²⁹ When the factory did resume operations, hundreds of the union members, including all 12 of the STIT union’s elected leaders, were denied rehiring.³⁰ According to CEAL, INSINCA secured approval from two of the union’s officers to rescind the union’s collective bargaining agreement with the company, but, since this rescission was never ratified by an assembly of the union’s membership, it was procedurally invalid.

The mass suspension of union members and effective dismissal of employee union leaders facially violated Salvadoran law. Under the Salvadoran Labor Code, reorganization of production does not provide adequate cause for suspension of employment contracts, and, as in most other Latin American countries, elected union officers in El Salvador are protected from suspension or termination of employment for the duration of their term in office, plus an additional 12 months.³¹ Not surprisingly, however, given that the Salvadoran government is part-owner of the factory, the country’s Labor Ministry and its Labor Courts took no action against INSINCA for the mass dismissal of employee union members and leaders.³²

When interviewed by the WRC, INSINCA’s human resources manager misrepresented this well-documented history and its relationship to the current environment for exercise of freedom of association at the factory, stating:

There was a union here in 2002 and it left because there weren’t a lot of people that supported it. There are 15 or 20 people who were part of the union and continue working at INSINCA and didn’t want to continue with the union. There is freedom of association here. If the workers don’t organize, it’s because they don’t want to or don’t think it’s necessary.

Workers, however, are well aware of the union’s elimination by the company, the mass dismissal of the employees who were its members, and the lessons of this history for current employees. In the words of one worker who was interviewed,

²⁸ AFL-CIO, *Central America: Labor Reports and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)(2003)* (“*Central America: Labor Reports*”), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1006&context=laborunions>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Labor Code, arts. 36-37, 248.

³² AFL CIO, *Central America: Labor Reports, supra*, n. 28,

There used to be a union but [the company] fired the workers. That is what everyone is afraid of. Everyone talks about it. The workers know [the union members] were fired.

c. Conclusion

INSINCA management's threats to workers concerning the consequences should they attempt to reintroduce a union at the factory, and the company's stated desire to monitor any such efforts, are clearly aimed at intimidating workers from exercising their right to join or form a union. Such conduct is a clear violation of El Salvador's Labor Code which explicitly prohibits employers from "Trying to influence workers relative to the exercise of their right to professional association."³³

The threats made by the company are discriminatory in themselves, because company managers do not threaten such retaliation against workers for other associational activities. Indeed, the company publicly celebrates other forms of association by its workers which are not related to unionization, such as athletic and community activities involving employees.³⁴ The retaliation threatened is also illegal, as Salvadoran law also explicitly prohibits "[d]iscriminat[ing] against workers for reasons of their union activities or tak[ing] repressive actions against them for the same reason" or "[a]ttacking in any way the legitimate exercise of the right to professional association."³⁵

Because the company's threats to employees violate workers' rights to freedom of association under Salvadoran law, we conclude that this conduct violates the City's Ordinance as well.³⁶

2. Recommendations

In order to remedy the violations of Salvadoran law and the City's Ordinance resulting from its threats to employees concerning the exercise of freedom of association, INSINCA management should:

- Issue a verbal and written statement to workers, to be delivered on work-time and posted permanently in the factory, stating that INSINCA respects workers' right to join or form a union and that workers will not be monitored, disciplined or discriminated against in any way, including with respect to renewal of their employment contracts, for exercising this right. The contents of this statement should be mutually approved in advance by the City, the WRC, Galls, Fechheimer and Burlington before it is communicated to employees.

³³ Labor Code, Art. 30.

³⁴ See, INSINCA, *NotINSINCA (News)* (reporting positively on various employee activities and the company's support thereof), <http://www.insinca.com/noticias-en.php>.

³⁵ Labor Code, Art. 205.

³⁶ City Code, Ch. 12.U.2(j)(vii), 12.U.3.(a).

- Arrange for an outside labor rights organization, such as a nongovernmental organization or trade union, to provide separate onsite trainings on company time for workers and managers concerning workers’ rights to join and form a union. The provider of these trainings should be mutually approved in advance by the City, the WRC, Galls, Fechheimer and Burlington.

D. Occupational Safety and Health

The WRC’s inspection of INSINCA on September 24, 2013, which was carried out with the assistance of safety expert Enrique Medina, identified a number of conditions in the factory that violated applicable Salvadoran law concerning safety and health in the workplace³⁷ and, thereby, the City’s Ordinance as well.³⁸ We detail these findings below, in each case citing the relevant regulation that is implicated, and providing explicit recommendations for addressing the specific hazards noted.

1. Electrical Safety

a. Explosion Protection

Finding

The electrical installation in the factory’s corrosive materials room, where spontaneously combustible chemicals are kept is not adequately protected against explosion, posing an immediate and serious risk to employee safety.³⁹



Unlabeled gasoline containers in flammable storage room.



Left: Ungrounded thinner drum in flammable storage room. Note spill on floor.



Right: Corrosive storage room, no explosion-proof electrical service.

³⁷ These standards are the Reglamento General de Prevención de Riesgos en los Lugares de Trabajo (General Regulation of the Prevention of Risk in the Work Place) (“General Regulation”) and the Reglamento de Gestión de la Prevención de Riesgos en los Lugares de Trabajo (Regulation of Risk Prevention Management in the Workplace) (“Regulation of Risk Prevention Management”), both of which were adopted in 2012. See *Central America Link*, “El Salvador: Worker Safety Rules” (May 16, 2013),

http://www.centralamericalink.com/en/Legal_Briefs/El_Salvador_Incrementa_seguridad_ocupacional/.

³⁸ City Code, Ch. 12.U.2.(j), 12.U.3.(a).

³⁹ General Regulation, Arts. 200-204, 206, 209.

Recommendation

The factory should install the appropriate explosion-proof electrical system in this area.

b. Static Discharge Protection

Finding

The storage room where flammable fluids, such as thinner, are kept does not have an electrical grounding and bonding system to prevent static discharge when transferring these materials.⁴⁰

Recommendation

Such a system should be installed in this area.

c. Lock-out / Tag-out System

Finding

The inspection found that, while factory mechanics tag electrical machinery under maintenance or repair, the plant lacks a lock-out system to isolate hazardous energy sources in machinery while maintenance is being performed.⁴¹

Recommendation

Such a machine-specific lock-out / tag-out system should be adopted.

2. Fire Safety

a. Fire Extinguishers

Finding

The inspection found that fire extinguishers throughout the factory have expired recharge dates, which potentially poses an immediate safety risk, do not display proof of monthly inspection, and are not identified with wall signage identifying their location.⁴²

Recommendations

Fire extinguishers should be inspected on a monthly basis, replaced as needed and recharged yearly. All fire hoses should be visually inspected on a monthly basis and unrolled and rerolled at least once per year. Signage should be installed to identify the location of all fire extinguishers.

⁴⁰ Id. at Art. 207.

⁴¹ Id. at Art. 80.

⁴² General Regulation, Arts. 109, 118 and 120.

b. Hot Work Permits

Finding

The inspection found that although some preventive measures to contain sparks are employed, the factory lacks a formal permit system to regulate welding in areas of the plant outside the maintenance shop.⁴³

Recommendation

The factory should require a formal Hot Work permit for all activities that can generate electrical sparks, such as welding, cutting or grinding.

3. Hazardous Materials

a. Storage

i. Exterior Storage

Finding

The inspection found that several unlabeled containers and drums filled with waste oil were stored outside of thread manufacturing building directly over a culvert.⁴⁴



Kerosene drum without secondary containment stored outside.

Recommendation

The factory should label all chemical containers and store all hazardous waste and oils in a designated and appropriate waste storage area.



Unlabeled waste oil containers on rain gutter.

ii. Interior Storage

Finding

The flammable storage room lacks any secondary containment, berming or even a spill kit to address spills of hazardous materials.⁴⁵

Recommendation

The factory should install secondary containment measures and a stocked spill kit in this area.

⁴³ Id. at Art. 307.

⁴⁴ Id. at Art. 225.

⁴⁵ Id. at Arts. 200-204.

b. Labeling

Finding

Gasoline containers in the flammable storage room did not have hazard labels, and unlabeled plastic soda bottles are used to hold unidentified chemicals in various other areas, such as the maintenance shop, and utility closets.⁴⁶



Unlabeled thinner container on maintenance cart.

Recommendation

The factory should label all hazardous materials containers, including point of use containers, with hazard labels indicating the content and hazard classification using the NFPA 704 diamond or the HMIS rectangle systems. Only appropriate containers should be used, and use of plastic soda bottles for holding chemicals should be prohibited.

4. Protective Equipment

a. Personal Protective Equipment (PPE)

Findings

The inspection found that the factory's maintenance mechanics, who were cleaning machinery with rags soaked in thinner, were not wearing gloves, even though these had been provided to them.⁴⁷ The WRC also observed that there is no established schedule for changing, or procedure for storing, the cartridges in the respirators worn by employees in the dyeing area.⁴⁸

Recommendations

INSINCA should retrain workers on the mandatory PPE for each job function. INSINCA should also develop a schedule for changing respirator cartridges and provide training on proper care and use of the respirators.

b. Guarding

Findings

The inspection found that several machines have incomplete guards over the belt drives that power them, leaving hazard points.⁴⁹ Hinged guards on belt drives in the batting line for mixing and fluffing raw fibers were open during machine operation.⁵⁰ The latches on the doors to this machinery did not close properly. The shaft ends of the gluers were not



Unguarded "continuas" spinning machines with worker.

⁴⁶ Id. at Arts. 114, 214, 222.

⁴⁷ Id. at Arts. 90-92.

⁴⁸ Ibid.

⁴⁹ Id. at Art. 68.

⁵⁰ Id. at Art. 77.

properly guarded.⁵¹ Finally, there is no barrier guard or emergency stop mechanism for the machines.⁵²



1. Carding machines with inadequate guards showing exposed belt drives. 2. Exposed belt drive on machine in batting area. 3. Unguarded roller shafts on gluer.

Recommendations

The factory should install appropriate guards to cover all hazard points from moving parts. INSINCA should identify and repair all defective guards in operating machinery. INSINCA should install appropriate guards to cover all hazard points from moving parts. INSINCA should install appropriate guards to cover all hazard points from moving parts.

c. Noise Protection

i. Interior

Finding

The inspection found that several workers in the spinning department, in which the sound level is 93 decibels – significantly above the 80 decibels threshold for hearing protection⁵³ – failed to wear any such protection.



Dust vacuuming system and exhaust duct in weaving area.

Recommendations

The factory should assign appropriate hearing protection to all workers, including ear muffs for those who cannot wear in-the-ear plugs. All workers in mandatory hearing protection areas must wear appropriate protection at all times. This measure is particularly important as a number of the workers who were interviewed complained of excessive noise levels inside the facility.

⁵¹ Id. at Art. 68.

⁵² Id. at Art. 71.

⁵³ Id. at Art. 163.

ii. Exterior

Finding

The noise level at the factory's designated emergency evacuation location outside of the weaving building was found to also be above 80 decibels, due to sound from the ventilation system exhaust ducts.⁵⁴

Recommendation

The factory should implement engineering controls to reduce the sound level in the exterior areas, such as reorienting the terminal duct from the side to a top exhaust position.

5. Restrooms

Finding

The employee restrooms in the production areas and the cafeteria were found to have neither air dryers nor towels for drying hands, nor toilet paper.⁵⁵ INSINCA management indicated that each employee is issued a roll of toilet paper for personal use.

Recommendation

The factory should provide either paper towels or hot air dryers, *and* toilet paper in all employee restrooms at all times.

6. Hazard Exposure Assessments

a. Aerosol Agent Exposure

Finding

The inspection found that the factory has not assessed workers' exposure to volatile, particulate, and fiber aerosols,⁵⁶ including the carcinogenic chemical, Durofin M-60, which contains formaldehyde, and is used in the dyeing area mixing room.

Recommendation

The factory should develop and implement an exposure assessment program for such physical and chemical agents in the workplace, especially as a significant number of the workers who were interviewed for this assessment complained of respiratory ailments.

b. Heat Exposure

Finding

The high temperatures and humidity in some work areas, such as the spinning and dyeing buildings, constitute a potential source of thermal stress for employee.⁵⁷

⁵⁴ Id. at Art. 162.

⁵⁵ Id. at Art. 21.

⁵⁶ Id. at Arts. 128-129, 141.

⁵⁷ Id. at Art. 148, §§ 13-14.

Recommendation

The factory should conduct periodic monitoring of temperatures and humidity in work areas, and make the necessary engineering and administrative controls to prevent heat stress and ensure worker comfort. This measure is particularly important as a number of the workers who were interviewed complained of excessive heat in the facility.

c. Job Hazard Assessments

Finding

The inspection found that job hazard assessments (JHAs) were not available for roughly 30% of the jobs performed by workers.⁵⁸

Recommendation

INSINCA should conduct JHAs for all job functions at the facility, and train employees regarding the hazards identified and means of controlling them.

d. Risk Prevention Program

Finding

The inspection determined that INSINCA has not developed the required Risk Prevention Program for the factory.⁵⁹

Recommendation

The company should develop and implement such a program.

7. Materials Handling

a. Dyeing Area

Findings

The inspection found that the hook on the block and tackle used for moving the thread bundles into the dyeing vat in the elevated platform is missing a safety latch, and that the load bearing beam in that area is not marked with the maximum load capacity.⁶⁰

Recommendations

INSINCA should address these problems by inspecting all material handling cranes, block and tackle, chains, slings, hooks and winches to ensure the equipment operates with all safeguards and should mark the beam with the load capacity.

⁵⁸ Id. at Arts. 128-129.

⁵⁹ Risk Prevention Management Regulation, Art. 35.

⁶⁰ General Regulations, Art. 87.

b. Finished Product Area

Finding

The inspection also found that a forklift in the finished product area did not have either the load capacity stenciled on the mast or a fire extinguisher.⁶¹

Recommendation

INSINCA should inspect all forklifts and other material handling equipment daily before each shift to ensure they operate with all safety equipment.

c. Spinning Area

Findings

The inspection determined that heavy wheeled spool carts in the spinning area constitute a risk factor for back strain and injury from manual handling.⁶² These carts reportedly weigh in excess of 60 pounds when full and are easily overloaded. An employee's toe was fractured in a cart incident resulting in a recordable incident with 29 lost work days.

Recommendation

INSINCA should conduct a JHA for handling the manual spool cart to prevent injuries and eliminate ergonomic risk factors.

8. Confined Spaces

Finding

The inspection found that the oven access doors in the fabric drying oven in the dyeing area are not marked with Confined Spaces signs.⁶³

Recommendation

INSINCA should identify and label all confined spaces with proper signage, implement a confined space permit procedure, and train all exposed workers on the appropriate confined space entry procedures.

9. Elevated Areas

Finding

The inspection found that the fixed ladder to the mezzanine level in the thread dyeing area does not have a passive gate to prevent falls.⁶⁴

Recommendation

⁶¹ Ibid.

⁶² Id. at Arts 82-84.

⁶³ Id. at Art. 300.

⁶⁴ Id. at Art. 284.

INSINCA should install a self-closing passive gate that swings towards the platform landing.

10. Emergency Exits

Finding

The inspection found that while signs were posted indicating the location of the emergency exit and the egress route, no evacuation map was posted in work areas.⁶⁵

Recommendation

INSINCA should post evacuation maps in the factory showing exits and gathering points in all work areas.

IV. Conclusion

Although the violations identified here are significant, they are highly amenable to remediation and correction by INSINCA, with the assistance and involvement of its customers, including Burlington, as well as, Burlington's customer, Fechheimer, and the City's vendor, Galls. This process, which should be initiated as soon as possible, should have as its immediate goal, the establishment of a corrective action plan, that is consistent with the recommendations in this report, and agreed upon by all these parties, with time bound commitments for its implementation.

⁶⁵ Risk Prevention Management Regulation, Art. 49.