



WORKER RIGHTS CONSORTIUM

Case Summary: Calypso, Atlantic and Manufacturas del Rio (Nicaragua and El Salvador) December 19, 2006

During July and September of 2006, the WRC received three separate complaints from worker representatives concerning three factories in Central America owned by a single multinational apparel corporation, known as the Argus Group. The Argus Group is a major supplier of sportswear and other apparel products for university licensees, including Adidas and Russell Athletic, as well as other brands and retailers such as Hanes, Landau, Cintas, Phillips van Heusen, Williamson-Dickie, Wal-Mart, and others. The three factories are Calypso and Atlantic (both located in Nicaragua) and Manufacturas del Rio (located in El Salvador).

The primary violations alleged at each of the factories were very similar. In each case it was alleged that workers who had associated with a trade union had been fired illegally. Other areas of concern included occupational health and safety and overtime. In response to the complaints, the WRC undertook preliminary assessments at each of the three factories. The evidence developed through this initial investigative work was sufficient to warrant the conclusion that practices in violation of the law and applicable codes of conduct had occurred at both Calypso and Atlantic, and that unlawful practices had likely occurred at Manufacturas del Rio. The presence of similar code of conduct violations at all three facilities indicated that the problem was one of corporate policy at the Argus Group.

Ultimately, a positive outcome was reached in each case. After initial resistance on the part of management of the individual factories to cooperate with the WRC's inquiry and carry out corrective action, the Argus Group ultimately took the constructive step of retaining a respected labor lawyer with experience facilitating positive labor relations. This individual was able to confirm the basic findings of the WRC and other organizations involved and address each of the core violations at each of the factories concurrently on behalf of Argus. The WRC contacted Argus' key buyers; although the buyers did not provide any specific information to the WRC as to the nature of their communications with Argus, we presume their intervention played a role in Argus' decision to take a constructive approach to address the situation. The American Center for International Labor Solidarity, the International Textile, Garment and Leather Workers' Federation, and the NGO Witness for Peace were also centrally involved in pressing for remedial action in these cases.

The findings and outcome of the WRC's assessment with respect to each facility are detailed below.

Calypso (Nicaragua)

As noted, the worker complaint centered on the alleged illegal termination of trade union members employed by Calypso. Between July 31 and August 4, the factory terminated at least nineteen workers who were members of a recently established plant-level union, known as the Sindicato Veintiuno de Julio, and who had participated in efforts to press for improvements in labor standards at the factory. Our investigation found that the firing of these workers was unlawful.

In terminating the workers in question, the factory violated a Nicaraguan law which requires an employer to obtain a ruling of just cause by a Nicaraguan Labor Court in order to terminate founding members of a trade union (a rule known as "Fuero Sindical"). The workers filed an application for union recognition on July 24, 2006; from this date forward, for a period of 90 days, all twenty-two founding members were protected from dismissal without cause. However, one week later, on July 31, the factory began terminating the union leaders, without seeking court approval. Within two weeks, nineteen of the union's twenty-two founding members had been summarily dismissed.

The WRC determined that, on their face, these dismissals were unlawful. This finding was confirmed by the Nicaraguan Ministry of Labor. After several weeks of delay beyond the statutory period for action, on August 24, the Ministry of Labor certified the union's leadership committee and on the following day released a report on the case, finding that each of the workers in question was fired in violation of the Fuero Sindical rule, and ordering Calypso to offer immediate reinstatement to all of the affected workers.

Additionally, while the firings would have been illegal under the Fuero Sindical rule even if management's reason for firing the workers was unrelated to their union activities, evidence demonstrated that anti-union animus was the motivating factor. This finding was based on the following evidence: 1) the dismissals were carried out immediately after the formation of the union became known to management; 2) nearly all of the union's founders were dismissed; 3) management officially told the workers that they were being dismissed because the factory was reducing the overall workforce due to reduced production needs; however, in the same time frame as the dismissals, management was actively recruiting and hiring new production workers; 4) workers provided credible testimony that some supervisors had informally communicated to workers that the firings were in retaliation for the unionization effort.

The WRC's inquiry also identified other significant code of conduct violations at Calypso, including forced and improperly compensated overtime; occupational health and safety infractions, including a failure to provide workers with personal protective equipment; and denial of legally mandated health benefits.

On the basis of these findings, the WRC recommended to Calypso management in August that the company offer reinstatement with back pay to the workers in question, take other measures to remediate the harm done to the rights of association of all Calypso workers, and take remedial action with respect to the health and safety, overtime, and health benefits violations. Calypso management, which had been unresponsive to the WRC's efforts to obtain its cooperation with the investigation, also failed to respond initially to the recommendations for remedial action.

However, after roughly five weeks of effort by the WRC to seek Calypso's cooperation, the parent company, Argus, responded by retaining a legal representative, former U.S. Deputy Secretary of Labor Andrew Samet, to handle the case. This development apparently reflected a decision by Argus to take a constructive approach to resolve the labor issues at Calypso; very positive progress was achieved soon after.

After being contracted, Mr. Samet visited Nicaragua and El Salvador on fact finding missions during September and confirmed the central findings of the WRC's inquiry. On October 10, an agreement was reached with the Argus Group regarding remediation at both the Calypso and Atlantic factories (see discussion below for details of the agreement as they pertain to Atlantic). With regard to Calypso, the agreement called for the reinstatement, at their previous positions, with back pay, of those workers who had been terminated inappropriately and who sought to return to the factory. Several of the workers chose to accept significant offers of compensation in lieu of reinstatement (ranging from four to ten months' wages). The agreement also called for management and worker representatives to work together to address worker grievances and labor code compliance issues through monthly meetings and other mechanisms and to arrange for the union to hold a founding assembly within the factory.

Calypso has followed through on the commitments it made in the October 10 agreement. The company did reinstate the workers concerned, with back pay, and provided compensation to those who were not reinstated. The company also allowed for the union's assembly. Calypso made good, for a time, on its commitment to holding periodic meetings with worker representatives to discuss labor issues, and it appeared that a working relationship between management and union representatives was being established. However, the situation has worsened somewhat in recent weeks: acts of anti-union harassment by supervisors have occurred and the company has failed to adhere to the schedule for union-management meetings. In addition, other issues remain to be addressed, including the need for a functional dispute resolution mechanism involving worker representatives in a proper role and the factory's obligation to negotiate a collective bargaining agreement in good faith. The WRC has pressed management to halt the harassment and follow through on its obligations.

Atlantic (Nicaragua)

In the complaint concerning Atlantic, workers alleged that the factory had terminated a group of 26 workers who had formed a trade union and had pressed factory management

to improve labor practices. The allegedly unlawful firings occurred on August 1 and 2. Our inquiry found that the terminations were carried out in violation of Nicaraguan law.

As in the case of Calypso, Atlantic management violated the provision of the Nicaraguan Labor Code which prohibits employers from terminating the founding members of a trade union, unless the employer obtains prior authorization of just cause from Nicaraguan authorities. The facts on this issue were unambiguous. On June 15, 2006, each of the 26 workers in question submitted his or her name to the Nicaraguan Ministry of Labor as part of the union's founding documents. On August 1 and 2, the facility fired each of these 26 workers. The Nicaraguan Ministry of Labor ultimately confirmed the WRC's finding, issuing a report on August 31 finding that the terminations were in violation of the Fuero Sindical law. (As in the Calypso case, the Ministry took longer to act on the case than is mandated by statute.) However, even after this ruling, the company refused to reinstate the workers.

Moreover, as in the Calypso case, the fact pattern demonstrated that the factory had knowingly singled out the workers for dismissal, in retaliation for their decision to form the trade union and press for reform in the factory. At the time of dismissal, the factory claimed that the terminations were due to a general need to reduce personnel as a result of a decrease in orders. A lay off for production reasons is not a plausible explanation for firing all 26 members of a union in the same two day period, while dismissing no other workers. The presence of anti-union animus related to the dismissals was further evidenced by the fact that, subsequent to the firings, factory representatives visited the dismissed workers in their homes and offered reinstatement on the explicit condition that they sign a form renouncing association with the union.

In view of these findings, the WRC recommended that the factory act swiftly to reinstate the dismissed workers. As in the case of the Calypso facility, neither management of Atlantic, nor the parent company Argus Group, was initially responsive to these recommendations. However, the situation at Atlantic was ultimately addressed as part of the same agreement with Argus Group that resolved the Calypso case. The agreement led to the reinstatement of all of the fired Atlantic workers who wished to return to the factory – at their previous positions, with back pay. The agreement also called for periodic labor-management meetings and adherence to an established process for addressing worker grievances and labor rights issues. Atlantic followed through with the commitment to reinstate the workers the following week. Since this period, the WRC's follow-up assessment work has indicated that rights of association are generally being respected in this facility and that ongoing, substantive dialogue between management and worker representatives is taking place. Given the history of this facility, there is clearly a need to for ongoing monitoring. The WRC will continue to assess the situation and provide additional recommendations or updates as appropriate.

Manufacturas del Rio (El Salvador)

At roughly the same time as the complaints were made by workers at the two Nicaraguan factories, the WRC also received a complaint concerning Manufacturas del Rio, in El

Salvador. It was alleged that the factory had unlawfully terminated a group of workers in retaliation for their trade union activities. The violations alleged in this case proved somewhat difficult to investigate because, by the time the complaint was filed by the union federation, STIT (Sindicato de Trabajadores de la Industria Textil or Textile Industry Workers' Union) virtually all of the fired workers had decided to accept severance, were not seeking reinstatement, and, with limited exceptions, were not forthcoming with testimony. As a result, it was not possible to develop a complete picture of the situation at the factory, particularly with respect to events that occurred prior to the recent wave of dismissals that precipitated the complaint. Based on the information available, the WRC was able to construct the following chronology:

Roughly two years ago, workers in the facility formed a union and affiliated with a union federation known as ASTIASYC. Roughly half of the 80 workers who joined this union were terminated during the spring of 2006. Hard evidence of the exact timing and form of these dismissals, and of management's motivation, was not identified. By the summer of 2006, fewer than 45 workers associated with the union remained employed at the facility. At this time, a number of these workers, dissatisfied by the level of support provided to them by ASTIASYC, launched an initiative to disaffiliate with ASTIASYC and affiliate instead with STIT, which is known to both managers and workers in El Salvador as a more activist union. In early August, within weeks of the initiation of the disaffiliation effort, 36 of the union members, who had been spread out among a number of different production modules, were suddenly transferred into a single module. As a result of these transfers, all but a few of the remaining union members were now working in this module. Shortly thereafter, on Friday, August 18, the entire module was laid off (the only module in the factory to suffer this fate). Management told the workers that they were being dismissed because of a decision to reduce personnel as a result of decrease in production; however, the fact pattern revealed this claim as a pretext. Management's clear purpose was to rid the factory of the union. On the following Monday, August 21, additional firings took place. That morning, a group of seven members of the union (representing almost all of the union members still employed at the factory) visited the Ministry of Labor in order to present papers to disaffiliate with ASTIASYC (the first stage in affiliating with STIT). After returning to the factory at lunch time, all of these workers were called into the administration office and fired; again, management offered declining production as a pretext for what were obviously retaliatory dismissals.

In pursuing the union's complaint, the WRC would normally have focused its immediate remediation effort on the issue of reinstatement. However, none of the fired workers were seeking reinstatement; instead, they accepted payment of severance and chose to look for work elsewhere. This outcome, while obviously unsatisfactory from a code of conduct standpoint, made the issue of reinstatement moot. The WRC therefore pressed management, and the Argus Group, on two issues: 1) a cessation of retaliatory actions against workers seeking to exercise their associational rights, and 2) the opening of discussions with STIT as a legitimate representative of workers at the factory. After initial resistance, Manufacturas del Rio management participated in a meeting with the STIT representatives on October 5; the meeting was facilitated by the Argus Group's legal representative. At this meeting, Manufacturas del Rio management committed to

respect the right of workers to join the union, to respect the role of the union to act as a representative of its members, and to engage in ongoing, good faith dialogue with the union on workplace issues. This agreement was part and parcel of the Argus Group's decision to achieve a constructive resolution at all three facilities.

After this meeting was scheduled, but before it took place, the WRC identified and averted a serious threat to the remediation effort at Manufacturas del Rio. The WRC learned that a leader of the newly established chapter of the STIT union had been approached and threatened by the director of an organization that has a long and well-documented track record of coercive acts against trade unionists in El Salvador – including numerous instances violence, and threats of violence, directed toward workers and union representatives. Although the organization calls itself the Committee of Women Workers (Comité de Mujeres Trabajadoras or COMUT), it is well-known in El Salvador as an organization contracted by employers for the purpose of anti-union intimidation. The WRC has been involved in several recent cases in which, according to credible worker testimony, harassment of workers by COMUT has occurred. The appearance of the COMUT representative at the factory provoked fear among workers regarding the potential for violence. The WRC, along with several other labor rights organizations monitoring the case, urged the Argus Group to determine whether Manufacturas del Rio management had, in fact, contracted the services of COMUT and/or the individual who had appeared at the factory – and, if so, to ensure that the relationship was immediately severed and that COMUT was informed that its involvement would no longer be welcomed at the factory. In response, the Argus Group's legal representative confirmed that managers of the factory had recently been in contact with the individual, but that Manufacturas del Rio management would communicate with her again and make clear that it did not want her to continue to contact Manufacturas del Rio workers. Since this time, there have been no reports of further threats or involvement by COMUT.

To date, Manufacturas del Rio management has followed through on its commitment to deal in good faith with worker representatives and has not engaged in further retaliatory actions against union supporters.

There has been significant progress with respect to the issue of freedom of association at the three Argus Group facilities addressed by the WRC's assessments. The agreements reached for the reinstatement of the terminated union members at the two Nicaraguan facilities, and the establishment of formal relations between factory management and worker representatives at all three facilities, represented breakthroughs in the Nicaraguan and Salvadoran contexts, in which constructive industrial relations and respect for union rights are rare. Most importantly, the industrial relations systems birthed in these agreements, if it is maintained, will serve as an effective means for addressing other code of conduct compliance issues at these factories.