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**WORKER RIGHTS CONSORTIUM
FINDINGS, REMEDIATION,
AND STATUS REPORT
HORIZON OUTDOOR (CAMBODIA) CO. LTD**



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I. Introduction and Executive Summary

The following report concerns the Worker Rights Consortium’s (“WRC’s”) investigation of freedom of association violations at Horizon Outdoor, a garment factory located in Kampong Chhnang, Cambodia that, at the time, was disclosed as a manufacturer of collegiate licensed products for VF Corporation’s JanSport brand.¹ VF Corporation is the sole buyer from the factory, which currently produces for several of the former’s non-collegiate brands, including Vans, Eastpak and The Northface. Horizon Outdoor employs roughly 4,700 workers at this factory.

In late August 2017, the WRC received a complaint from the Cambodian labor organization, Worker Union Federation (“WUF”), stating that Horizon Outdoor had terminated an employee who was the general secretary of a union at the factory that is affiliated with the WUF, in violation of Cambodia’s labor laws that prohibit dismissal of such workers without prior authorization from government labor authorities.

Workers at the factory also charged that Horizon Outdoor’s management was colluding with another union at the factory which is affiliated with the Worker’s Rights and Benefits of Federation of Trade Union (WRBFTU), an employer-friendly labor federation, to undermine the WUF-affiliated union at the facility. The employees also reported that Horizon Outdoor had announced its intention to terminate 50 other workers at the factory, including five other employees who were officers and/or founding members of the WUF-affiliated union.

When, despite the clearly retaliatory and unlawful nature of the employer’s actions, the Cambodian labor ministry refused to take action to restore workers’ rights,² the union brought the violations at

¹ In April 2017, VF Corporation announced that its licensed sports products division was being acquired by Fanatics, Inc. However, at the time the WRC was notified of labor rights violations at Horizon Outdoor, in August 2017, current factory disclosure information identified Horizon Outdoor as a supplier of JanSport collegiate licensed products to VF Corporation. *See*, WRC, “Factory Database: Horizon Outdoor (Cambodia) Co. Ltd.,” *available at*: <https://www.workersrights.org/factory-database/?id=12175674>. Therefore, the WRC considered the factory’s labor practices to still be subject to university labor codes of conduct, and neither Horizon Outdoor nor VF Corporation contested this determination.

² Following Horizon Outdoor’s termination of the employee who was the WUF-affiliated union’s general secretary, the WUF filed a complaint with Cambodia’s labor ministry, which convened a conciliation meeting between the parties on August 28, 2017. Despite the fact that this meeting left the dispute unresolved, the ministry failed to refer the case to the country’s Arbitration Council, thereby preventing the case from being independently adjudicated. Such omissions by the labor ministry have become routine under the country’s 2016 Law on Trade Unions (“Trade Union Law”), which the ministry has interpreted as restricting standing in disputes before the Arbitration Council to only those unions with “Most Representative Status” within an enterprise – a problematic requirement in Cambodia where, as at Horizon Outdoor, employers often collude with those unions that the former believe will be likely to do their bidding, and thereby assist these employer-influenced unions to attain such status. *See, e.g.*, Human Rights Watch, “Work Faster or Get Out: Labor Rights Abuses in Cambodia’s Garment Industry,” (March 11, 2015) *available at* <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry>. The labor ministry’s position on this issue, however, appears to be neither dictated by the Trade Union Law nor

the factory to the attention of the WRC. As discussed below, the WRC's subsequent investigation of the union's complaint confirmed that Horizon Outdoor's termination of the worker who was the WUF-affiliated union's general secretary had, in fact, violated Cambodian labor law and international labor standards and, thereby, university codes of conduct.

The WRC also found that the other threatened terminations announced by the company had discriminatorily targeted workers on account of their union activities, an additional violation of workers' legal and associational rights. Finally, the WRC found that the company's collusion with the union affiliated with the employer-aligned WRBFTU also interfered with workers' freedom of association rights.

The WRC recommended accordingly that Horizon Outdoor: (1) reinstate the employee union officer to his former position at the factory and pay him back wages from the date of his dismissal to the date of his reinstatement, (2) rescind its announcement of the pending termination of 50 other employees, and (3) cease its collusive activities with the WRBFTU. The WRC also shared these findings and recommendations with the factory's sole buyer, VF Corporation, which encouraged the management of Horizon Outdoor to take a cooperative approach to addressing these issues with the WRC.

To its credit, Horizon Outdoor responded promptly and positively to the WRC's recommendations, reinstated the dismissed employee, and provided him with back pay. The company also withdrew its announcement concerning its plans to terminate the 50 other workers, including the five other union activists. Finally, the WRC has not received any further reports of collusion between the factory management and the employer-linked WRBFTU.

II. Methodology

The WRC's investigation of charges of freedom of association violations at Horizon Outdoor

consistent with the country's general labor code. First, the Trade Union Law only gives unions with Most Representative Status exclusive rights to *negotiate* with employers. It does not speak to the question of other unions' rights to bring claims before the Arbitration Council. *See*, Trade Union Law Article 54 (1) (“[T]he most representative status of a union is recognized in the framework of the enterprise or establishment. For the purpose of the collective bargaining or collective labor dispute resolution, the most representative status union has the exclusive right to *negotiate*.” (emphasis added)). Second, Cambodia's general labor law requires the ministry to refer any collective dispute that is not resolved through conciliation to the Arbitration Council. *See*, Labor Code of March 13, 1997 (“Labor Code”), Articles 309 and 310, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_150856.pdf. Third, restricting the right to bring claims before the Arbitration Council in this manner strip many garment workers of any ability to have violations of their rights under the labor code adjudicated, since most Cambodian workplaces do not have *any* union with Most Representative Status, and the labor code establishes the Arbitration Council as the body with jurisdiction to hear disputes over the interpretation and application of these rights.

included:

- Interviews with Horizon Outdoor workers and managers having firsthand knowledge of the reported violations; and
- Review of relevant documentary evidence, applicable labor laws, international labor standards, and brand codes of conduct.

III. Findings concerning Violations of Freedom of Association

A. Unlawful and Retaliatory Termination of Employee Union Officer

In late August 2017, workers at Horizon Outdoor established and elected officers for a union affiliated with the WUF. Under Cambodian law, employees who have been elected to union office and/or are the founding members of a union may not be dismissed by their employer for a defined period of time unless that employer first obtains authorization to terminate the employee from the Cambodian labor authorities.³

According to factory workers, immediately following the union's establishment, Horizon Outdoor's managers repeatedly interrogated the four employees who recently had been elected as the union's president, vice president, general secretary, and treasurer concerning their union activities. These managers, along with an official of the employer-aligned WRBFTU, also reportedly offered to monetarily compensate the four union leaders if they would cease their associational activities in support of the WUF and join the WRBFTU-affiliated union at the factory. The WRBFTU is known in the Cambodian labor relations field for actively assisting employers in undermining independent unions.

Following the refusal of the WUF employee union officers to accept the inducements of Horizon Outdoor and the employer-aligned WRBFTU to cease their independent associational activities, company managers began to actively retaliate against these workers. On August 15,

³ See, Trade Union Law, Articles 43 (“[T]he dismissal of a shop steward or of a shop steward candidate can only be carried out after authorization from the Labor Inspector.”) and 67 (“[A]ll workers who stand as candidates for elected [union] leadership [and] management positions shall enjoy the same protection from victimization and dismissal as shop stewards. Such protection begins 45 (forty-five) days prior to the election and ends 45 (forty-five) days after the election if he or she is not elected. In order to enjoy such protection, the union shall notify the employer of the candidacy and submit a copy to the Ministry in charge of Labor, by any certified means. The employer shall only be required to comply with these provisions once for each election of union leadership. From the time that the application for a registration is submitted, founders or workers who voluntarily become members of the union during the application period shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 (thirty) days following the date on which the Ministry in charge of Labor has officially issued a union registration. Beyond the date specified in the preceding paragraph, this protection shall be extended to the leader, vice leader and secretary of the union. In order to enjoy such protection, the union shall notify the employer by any certified means, of the names of the individual persons to be protected. A copy of this notification shall also be sent to the Ministry in charge of Labor.”).

2017, Horizon Outdoor dismissed the WUF-affiliated union's general secretary by refusing to renew his employment contract.

Horizon Outdoor claimed that the reason for the worker's termination was that the company needed to reduce the number of factory employees due to a reduction in orders from the company's buyers. However, regardless of the veracity (or lack thereof) of this justification, the dismissal of this employee union officer violated Cambodian law, as the company had not obtained prior authorization for this action from the relevant labor authorities, which the statute clearly requires.⁴

In a meeting at the factory with the WRC on September 14, 2017, Horizon Outdoor management failed to provide any additional justification for its dismissal of the employee who was the WUF-affiliated union's general secretary. Instead, the company simply claimed that it had legal discretion whether or not to renew the contracts of any of its employees whom it has hired under short-term contracts (known in Cambodia as "Fixed Duration Contracts" or "FDCs").

Contrary to the management's claims, however, and as previously noted, Cambodian labor law prohibits the dismissal of employees who are elected union officers, without prior approval of the labor authorities, which Horizon Outdoor did not obtain in this case.⁵ Moreover, Cambodian labor law requires employees who have worked at a company for two or more years to be employed under an open-ended contract (known in Cambodia as an "Unlimited Duration Contract" or "UDC)."⁶ Given that the employee who was terminated had worked at the factory for more than two years, Horizon Outdoor's employment of this worker under a short-term contract represented, in itself, a violation of the labor law, rather than, as the company claimed, a justification for his termination.

In addition, the WRC also found, based on the timing of the worker's dismissal and the company's prior expressions of both opposition to the WUF-affiliated union and desire that the employee cease his union activities, that Horizon Outdoor's decision not to renew his employment contract was motivated by antiunion retaliation rather than a genuinely valid business justification (i.e., reduced production levels). Therefore, this decision also violated the prohibition under Cambodian law against taking into account an employee's membership in a

⁴ Id.

⁵ Id.

⁶ See, Labor Code, Article 67 (2) ("[T]he labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration."); and, *in re Jacqsintex*, Cambodia Arbitration Council Award 10/03 (July 23, 2004) ("The Arbitration Council finds that contracts of employment of fixed duration shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years."), available at http://www.arbitrationcouncil.org/awards/10.03-Jacqsintex_E.pdf.

union when making decisions concerning hiring and dismissal.⁷

Cambodia's Arbitration Council, which has statutory authority to interpret the country's labor law,⁸ has made clear that this prohibition applies in cases where the employer refuses to renew a worker's short-term employment contract on account of his or her union activities.⁹

Retaliatory termination of workers who are elected union officers through discriminatory refusal to renew short-term employment contracts has been widely recognized as a tactic commonly used by Cambodian factory owners to undermine workers' exercise of associational rights.¹⁰ Such retaliation contravenes the prohibition under international labor standards on discrimination against employees on account of their union activities.¹¹

Given these clear findings, WRC concluded that Horizon Outdoor's termination of the employee who was the general secretary of the WUF-affiliated union violated both Cambodian law and international labor standards, as well, by extension, university codes of conduct.

B. Threatened Mass Termination of Other Employee Union Officers and Members

Also in August 2017, but subsequent to terminating the employee who was the WUF-affiliated

⁷ See, Labor Code, Articles 12 (“...[N]o employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.”) and 279, (“[E]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”).

⁸ The Arbitration Council is the leading body authorized under Cambodian law to adjudicate labor disputes and interpret the country's labor law. See, Arbitration Council, *Our Role*, <http://www.arbitrationcouncil.org/Aboutus/TheArbitrationCouncil/Ourrole/tabid/225/language/en-US/Default.aspx>.

⁹ See, *in re Jacqsintex*, *supra*, n. 6 (“... [T]he employer is strictly prohibited from terminating or not hiring a worker for reasons of union membership or participation in union activities in accordance with Arts. 12 and 279 of the Labor Law. In these circumstances both the decision not to renew a contract of fixed duration and the decision to terminate a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity . . .”).

¹⁰ See, e.g., Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (Yale Law School: August 2011) (“Yale Law School Report”), available at http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf; also, Human Rights Watch, *supra*, n. 2, and Fair Action, “A Short-Term Solution: A Study of the Use of Fixed Duration Contracts in the Cambodian Garment Industry,” (September 2015), available at http://fairaction.se/wp-content/uploads/2015/09/A-Short-Term-Solution_Fair-Action.pdf.

¹¹ ILO Convention 98 (Right to Organize and Collective Bargaining) (“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. . . . Such protection shall apply more particularly in respect of acts calculated to-- . . . cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities. . . .”), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO.

union's general secretary, Horizon Outdoor also announced its intention to dismiss an additional 50 workers from the factory, including five employees who were among the same union's founding officers and members. In the case of these employees as well, Horizon Outdoor asserted that its reason for dismissing them was a reduction in production levels at the factory.

The WRC asked Horizon Outdoor management to explain the method by which the latter had selected for dismissal these 50 employees, out of the factory's total workforce of 4,700 employees. Horizon Outdoor responded that these employees had been selected at random from the plant's overall production workforce.

As with the termination of the worker who was the WUF-affiliated union's general secretary, the WRC found that the company's intended dismissal of the five employees who were officers and/or founding members of the union was unlawful on multiple grounds. First, the inclusion of these employees among the 50 workers whom the company selected for layoff violated the prohibition under the country's labor law on employers dismissing workers who hold such positions in newly formed unions for a defined period of time, unless the employer first obtains authorization to terminate the employee from the Cambodian labor authorities.¹²

Second, the WRC concluded that the company's claim that the management had selected the 50 employees slated for layoff at random, from among the factory's total workforce, and had not targeted employees who were officers and/or founding members of the union was not credible. Employees who were officers and/or founding members of the WUF-affiliated union represented 10% (five out of 50) of the workers who were selected for dismissal. However, in the factory's total workforce, the 13 employees, in all, who were union officers and/or founding members of the WUF-affiliated union made up only 0.28% of the 4,700 of workers in total who were employed at the facility.

Based on these statistics, employees who were among the union's officers and founding members had a 42% chance of being selected by the company for layoff, while workers who were not union activists had a less than one percent chance of being so chosen. Having

¹² See, Trade Union Law, Articles 43 (“[T]he dismissal of a shop steward or of a shop steward candidate can only be carried out after authorization from the Labor Inspector.”) and 67 (“[A]ll workers who stand as candidates for elected [union] leadership [and] management positions shall enjoy the same protection from victimization and dismissal as shop stewards. Such protection begins 45 (forty-five) days prior to the election and ends 45 (forty-five) days after the election if he or she is not elected. In order to enjoy such protection, the union shall notify the employer of the candidacy and submit a copy to the Ministry in charge of Labor, by any certified means. The employer shall only be required to comply with these provisions once for each election of union leadership. From the time that the application for a registration is submitted, founders or workers who voluntarily become members of the union during the application period shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 (thirty) days following the date on which the Ministry in charge of Labor has officially issued a union registration. Beyond the date specified in the preceding paragraph, this protection shall be extended to the leader, vice leader and secretary of the union. In order to enjoy such protection, the union shall notify the employer by any certified means, of the names of the individual persons to be protected. A copy of this notification shall also be sent to the Ministry in charge of Labor.”).

conferred with a professional statistician, the WRC determined that there was a significant statistical overweight of employees who were officers and/or founding members of the union among the 50 workers whom the company selected for dismissal.

The WRC was informed by the statistician that the chance that employees who are among the union's officers and founding members would randomly comprise such a disproportionate share of the workers who were selected for termination was less than 0.5%. Stated differently, the statistician's conclusion was that the chance that these results reflected an intentional targeting by the company of employees who were union activists, rather than a random selection of employees from among the total workforce, was greater than 99.5%.

Based on this statistical analysis—which demonstrated that the company's selection of employees for dismissal was not actually at random, as Horizon Outdoor claimed, but, instead, targeted workers who were union officers and/or founding members of the WUF-affiliated union—the WRC concluded that this action by the company was also motivated by antiunion retaliation rather than a genuinely valid business justification (reduced production levels). Therefore, the company's announcement of its intent to dismiss these workers, as well, violated the prohibition under Cambodian law against employers taking into account an employee's membership in a union when making decisions concerning hiring and dismissal,¹³ including whether or not to renew a worker's short-term employment contract.¹⁴

C. Interference with Free Choice of Union Membership

As discussed above, Horizon Outdoor's managers colluded with an official of the employer-aligned WRBFTU in offering to monetarily compensate four workers who recently had been elected as the president, vice president, general secretary, and treasurer of the WUF-affiliated union at the factory, if the latter would cease their associational activities in support of the WUF and, instead, join the WRBFTU-affiliated union at the factory. Offering financial inducements to employees to join a union favored by the employer and withdraw their support from a union chosen by the workers, themselves, is a clear violation of associational rights

¹³ See, Labor Code, Articles 12 (“...[N]o employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.”) and 279, (“[E]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”).

¹⁴ See, *in re Jacqsintex*, *supra*, n. 6 (“...[T]he employer is strictly prohibited from terminating or not hiring a worker for reasons of union membership or participation in union activities in accordance with Arts. 12 and 279 of the Labor Law. In these circumstances both the decision not to renew a contract of fixed duration and the decision to terminate a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity . . .”).

under both Cambodian law and international labor standards, as well, by extension, university codes of conduct.¹⁵

IV. Remediation and Current Status

The WRC recommended to Horizon Outdoor's management and VF Corporation that the factory correct and remedy the violations of associational rights that the WRC had identified by:

- Reinstating the employee who was the general secretary of the WUF-affiliated union with full back pay from the date of his dismissal to the date of his reinstatement;
- Cancelling the announced layoff of factory employees, which the WRC had found to target the union's other officers and founding members; and
- Ceasing its collusion with the WRBFTU in soliciting and offering to provide compensation to the employee officers of the WUF-affiliated union to abandon the latter organization and, instead, support the WRBFTU's affiliate union at the factory.

To its credit (and that of the factory's buyer, VF Corporation), the Horizon Outdoor's management readily agreed to the reinstatement of the union's general secretary with full back pay, which was implemented on October 2, 2017.

Moreover, later in the same month, Horizon Outdoor announced the cancellation of its previously threatened layoff of 50 other factory employees, including five other officers and/or founding members of the WUF-affiliated union. Finally, to date, the WRC has not received any further reports from workers of collusion between the factory management and the WRBFTU to interfere with the employees' associational rights.

The WRC will continue to monitor developments related to freedom of association and other labor rights issues at this facility. The WRC has also been carrying out a broader assessment of labor practices and working conditions at Horizon Outdoor, and will present further findings and recommendations in the near future.

¹⁵ See, Labor Code, Article 280 ("Acts of interference are forbidden . . . [including] measures tending to provoke the creation of worker organizations dominated by an employer . . . or the support of worker organizations by financial or other means, on purpose to place these organizations under the control of an employer . . ."); *and*, ILO Convention 98 (Right to Organize and Collective Bargaining), Article 2 ("Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents . . . in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers . . . with the object of placing such organisations under the control of employers . . . shall be deemed to constitute acts of interference within the meaning of this Article.").