WORKER RIGHTS CONSORTIUM

Case Update Summary: Thai Garment Export (Thailand)
January 5, 2010

I. Introduction

Thai Garment Export is an apparel factory located in Samut Sakhorn, Thailand. The factory is owned by the Hong Kong-based multinational garment conglomerate TAL Group. According to disclosure data provided to WRC affiliate universities, Thai Garment Export produces collegiate licensed apparel for Cutter & Buck, Ashworth, and Nike. Thai Garment Export is required to comply, therefore, with the codes of conduct of both those companies and the universities whose licensed apparel the factory produces. Since the beginning of 2009, Thai Garment Export also has been disclosed by the company 5.11 Tactical as a supplier of apparel for employees of the city of Los Angeles, and is thereby subject to that city's sweat-free procurement ordinance. These codes of conduct uniformly also require the factory's compliance with Thai labor laws.

The WRC has previously reported on code of conduct compliance issues at Thai Garment Export. A compliance assessment carried out by the WRC in 2007 identified serious code of conduct violations in the areas of freedom of association and women's rights. The factory agreed to implement the WRC's recommended remedial steps, resulting in significant improvements in its practices in these areas. In the area of freedom of association, the factory reinstated a group of workers who unlawfully had been terminated for their efforts to form a trade union at the facility, and it ceased its harassment and intimidation of union supporters. In the area of women's rights, Thai Garment Export management took measures to ensure that pregnant workers are provided with proper accommodations in the workplace to protect their health and safety. The WRC's December 2007 report on Thai Garment Export can be accessed here.

Subsequent to publication of the WRC's 2007 report, Thai Garment Export commenced good faith negotiations with representatives of the workers' newly-formed union, the Ruamjai Relations Workers Union, concerning a variety of workplace issues. This process culminated in the signing of a collective bargaining agreement on June 14, 2008. The factory's progress in the area of labor relations was recognized by the Thai Ministry of Labor, which accredited Thai Garment Export with a Thai Labour Standard 8001 certificate in July 2008 and presented the company with the Ministry's "Best Labor Relations" award in September 2008.

Labor relations at the factory took a negative turn, however, at the end of 2008. First, the

5 Thomas Circle NW Fifth Floor Washington, DC 20005
(202) 387-4884 Fax: (202) 387-3292
wrc@workersrights.org www.workersrights.org

company and union reached an impasse in negotiations concerning issues related to working hours at the facility. Then, in early 2009, the company announced plans to carry out a mass layoff in March. The union believed the company was not carrying out plans for the layoff in a transparent manner and feared that discrimination against union members would occur as part of this process. The union submitted a complaint to the WRC concerning the situation.

With a view toward addressing potential deterioration in the labor rights environment at a factory where notable progress in this area had been made, the WRC undertook an inquiry concerning the layoffs. This update reports on the WRC's findings and its efforts toward remediation with respect to the layoff issue.

II. Findings

As part of its inquiry, the WRC carried out interviews with workers and management representatives during February and March 2009 and reviewed documents provided by both parties. The WRC's findings were as follows:

A. Decision to Layoff Workers

Thai Garment Export asserted that it had suffered a significant loss of orders from U.S. buyers, as had other apparel sector employers, during the global economic crisis. As a result, the company decided to reduce its workforce by 742 workers at the Samut Sakhorn facility and by roughly 500 workers at a facility located in Nonthaburi, Thailand. Both facilities are unionized. There was also a small reduction of the workforce in the third nonunionized facility located in Prachinburi.

The WRC found the economic justifications presented by the company to be credible. The WRC did not find any testimonial or documentary evidence to suggest that the company's decision to lay-off employees in Samut Sakhorn was motivated by anti-union animus or any other discriminatory purpose.

B. Layoff Procedures and Implementation

While the WRC found that the company's decision to lay-off employees did not violate Thai law or relevant codes of conduct, there are a number of areas in which the procedure by which the lay-off was conducted fell short of recognized standards for best practice in such circumstances.[1] The WRC notes, however, that, in certain other aspects, the lay-off

[1] The experiences of governments and multi-stakeholder organizations of trade unions, NGOs, and apparel companies with mass layoffs and factory closures have led to the development of agreed-upon standards for best practice in such cases, including the MFA Forum ("MFAF") "Guidelines for Multinational Corporations," and the Organization for Economic Cooperation and Development ("OECD") "Guidelines for Managing Responsible Transitions." These standards incorporate, in relevant part, the following principles:

- Advance Notice: "In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective

procedures adopted by Thai Garment Export were substantially superior to standard employer practice in the Thai apparel export sector.[2]

Significantly, these measures served to mitigate the impact of the layoff in respect to freedom of association and the rights of women workers – those areas where the company had code of conduct compliance problems in the past. To its credit, the company committed from the outset that it would not layoff any pregnant workers or elected union representatives, two groups which have protected employment status under Thai labor law. The company also agreed to provide all dismissed workers with a severance payment equivalent to three months of salary over and above its legally mandated severance obligations.

Those areas where the WRC found that the layoff procedures adopted by Thai Garment Export did *not* meet international standards for best practice are discussed below:

1. Announcement of the Layoff

The WRC found that factory management did not address the downsizing with employees in a transparent manner, which caused unnecessary tension in the workplace, and subsequently failed to engage with workers and their representatives in meaningful negotiation to address the situation.

By mid-February 2009, there were widespread rumors at the factory concerning a potential mass layoff of employees. However, no official announcement by management concerning the issue had been made. Tensions concerning the issue reached a boiling point when roughly 1000 workers engaged in a spontaneous work stoppage on February 18, 2008, demanding clarity on the company's intentions. Ultimately, an official from Provincial of Department of Labour Protection and Welfare was called to the scene and mediated an agreement whereby if workers would return to work, the company would not penalize them for the work stoppage, and management would provide information the

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lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken." (OECD)

- Consultation: "The employer should consult with workers' representatives and give serious consideration to alternative measures proposed by workers." (MFAF)

- Communication: "The employer should provide workers' representatives with all of the information they need to understand the... motivation of the firm to downsize." (MFAF)

- Challenge: ["]Workers should be allowed to challenge mass redundancies when there is evidence that no such necessity exists or to contest the manner of dismissals. An impartial body should be empowered to examine the decision.["] (MFAF)

[2] Article 43 of the Thai Labor Protection Act (1998) prohibits termination of employees due to pregnancy. Likewise, Article 52 of the Act prohibits the termination of employee committee members, who are appointed by the union, without prior approval of the Thai labor courts.

following day concerning its layoff plans.

Over the next several days, multiple meetings were held between managers and employees concerning the layoffs. On February 19, the day after the work stoppage, management held a brief meeting with workers to explain its plans for the layoff, including how workers would be selected for dismissal, the reasons for the decision to layoff, and the benefits the company would provide to those workers who would be dismissed. Management also posted a notice in the factory concerning its layoff plans.

2. Consultation with Worker Representatives

Following these meetings, the company and the union met twice in mediation sessions supervised by the Thai Department of Labor Protection and Welfare. The union proposed to the company, as an alternative to management's layoff plan, that the factory, first, offer workers the opportunity to volunteer to be dismissed and receive the company's severance package, before pursuing involuntary layoffs. The company rejected this proposal, insisting that its process for selecting workers for layoff was fair and that the company wished to use its discretion to keep workers who were skilled in multiple manufacturing operations.

On February 24, after holding a second meeting with the union, the company moved forward with its plan for selecting workers for dismissal and notifying them of the company's decision. The company distributed an individualized letter to each worker indicating whether the worker would keep her job or be laid-off. Some workers were given only a week's notice of their dismissal.

The WRC concluded, based on the speed with which the company executed its layoff plans that it did not engage in good faith consultations with the union, and did not genuinely consider either the union's proposals or the option of working with the union to develop a mutually acceptable lay-off process.

Moreover, the company refused to provide the union with a list of all workers who were being laid-off. As a result, the union had to conduct a survey of workers to determine which employees were being dismissed. The union reported that it found, based on its survey, that the company had selected union members disproportionately in choosing whom to layoff. In response, the union filed complaints in March 2009 to the labor committee of the Thai parliament and to TAL Group's headquarters in Hong Kong.

3. Selection of Employees for Layoff

The WRC confirmed that the union was accurate in alleging that, compared to the factory workforce as a whole, a disproportionate number of union members had been laid-off. Upon further investigation, however, the WRC determined that the primary reason for the disproportionate number of union members affected by the layoff was that the union had a particularly strong membership base in the section of the factory that produces t-shirts, which was completely eliminated in the layoff.

T-shirt production for export is rapid declining in Thailand due to the country having higher production costs than its competitors in the region. Thai Garment Export's decision to eliminate this particular section, therefore, had a rational economic basis. The WRC did not find any testimonial or documentary evidence to indicate that, despite the existence of this economic rationale, anti-union animus was also a factor in the decision to eliminate t-shirt production at the factory. As detailed below, however, the WRC found that the process for selecting individual workers for lay-off, while not clearly influenced by anti-union animus, was overly-subjective and prone to abuse.

When the WRC asked Thai Garment Export for details concerning the process of selecting individual workers for layoff, factory management explained that managers, supervisors and line leaders carried out individualized assessments of each employee using the following weighted criteria: work attitude (40%), efficiency (30%), possession of multiple job skills (20%), and attendance (10%).

When the WRC asked to see records of how these assessments were conducted, management was not able to produce them. Instead, managers presented only a spreadsheet with the various ratings for each employee. Management asserted that line leaders and supervisors had assigned the "attitude" score to each worker under their supervision. However, when the WRC asked several supervisors about this, they testified they had never participated in any such evaluation, raising the question of whether such a process actually had been carried out.

The WRC observed that the company's decision to weight "attitude" as 40% of each worker's score meant that this highly subjective measure – one where low scores might easily reflect workers' willingness to exercise freedom of association – was the single greatest factor determining a worker's fate, with greater weight than more objective factors such as "efficiency," "job skills," and "attendance." The WRC found no evidence, however, of any case in which a particular worker's exercise of freedom of association led to his or her receiving a low score for "attitude" and thus being selected for layoff.

Subsequent conduct by management also tended to run against the conclusion that union members were targeted intentionally for layoff. First, as detailed below, management agreed to reconsider any of the layoffs if the affected workers wished to contest their selection. Second, when production levels at Thai Garment Export later rebounded in May and June 2009 and the factory, once again, needed a larger workforce, there were no instances reported of discrimination against union members who sought to be rehired.

4. Treatment of Pregnant Workers

The WRC found that; even though management had committed that no workers who were pregnant would be laid-off, fourteen pregnant workers were among the employees who received termination notices on February 24, 2008. To its credit, when management was informed of this mistake by the workers' union, it acted swiftly to retract the dismissal notices to these workers. While the WRC found no evidence that management

was aware of these workers' pregnancies, the mistake was facilitated by management's undue haste in carrying out the selection process and failure meaningfully to involve the union. This error further undermined workers' confidence in the fairness of the layoff process.

5. Appeal Process

The WRC found that the "appeal process" that management announced would be made available to workers was not credible or meaningful. Management explained to the WRC that those workers who received a layoff notice would be given four days prior to their dismiss in which to meet with the factory's human resources managers if the employees did not understand the reason they were selected for layoff or wished to challenge their selection. Management claimed that 130 workers, nearly a quarter of those dismissed, had taken advantage of this appeal process.

When the WRC interviewed workers regarding the appeal process, however, workers testified that they did not that believe that such complaints would have any effect on the company's ultimate decisions. This appeared to be a reasonable conclusion on the workers part, as, when workers did appeal, management simply explained the basis for selecting them for layoff and stated that there would be no reconsideration of this decision. Once workers learned that the appeals process was a sham, there was, naturally, a precipitous drop-off in interest among workers in using it. To state the obvious, an appeal process is not meaningful if there is no possibility of reversing the decision that is being questioned.

III. Remediation

The WRC met with Thai Garment Export on March 25, 2009 to discuss the issues outlined above and the WRC's recommendations to correct the problems that had been identified. The WRC's principle recommendation was that the company should halt the layoff and start anew with a credible process. Management did not agree, maintaining that its process was thorough and fair. However, the company did agree to give genuine reconsideration to any workers who still had complaints about the layoff process.

The WRC then asked workers and their union if any employees still wished to appeal their selection for layoff. Only three workers came forward and stated that they had been selected for layoff unfairly. The low number of workers who wished to appeal the layoffs may be explained by several factors, including the relatively generous severance package provided by Thai Garment Export workers' belief that an appeal would be fruitless, or the fact that some workers might have found new employment by this juncture.

Over the following months, management and the union negotiated concerning the cases of the three workers. One of the three workers decided to abandon her request for reinstatement for personal reasons. On August 11, 2009, Thai Garment Export informed the WRC that it finally had reached an agreement with the two remaining workers and the union. Under the terms of the agreement, the two workers were to be rehired as new

employees, rather than reinstated. The company agreed that the workers would receive the same salary and benefits they received prior to their dismissals, that they would not need to pay back the severance benefits they had received, and that, although they would accrue seniority from the date of rehire, they would not have to undergo a probationary period. The workers returned to the plant on August 17, 2009 and September 1, 2009. The two workers have reported to the WRC that they have faced no retaliation or discriminatory treatment since returning to work.

Since the layoff was completed, Thai Garment Export has taken several steps to repair its strained labor relations. First, a new HR manager has been appointed; who, worker representatives report, has shown a more open attitude toward engaging with the union. Second, in response to union proposals, Thai Garment Export announced an offer for voluntary early retirement for several groups of workers, including those with chronic and debilitating diseases, those nearing fifty-five, and those wishing to relocate to their home provinces because their spouse lost a job during the economic crisis.

IV. Conclusions

The WRC recognizes that it is at times necessary for factories to reduce their work forces and that the current economic crisis has put many companies in this position. Nevertheless, it is incumbent upon factories to explore, in dialogue and negotiation with worker representatives, potential alternatives to mass layoffs. When such dismissals are unavoidable, the WRC recommends that employees begin by soliciting volunteers and, when this process as been exhausted, to undertake layoffs in a manner that is fair and transparent, based on objective criteria, and carried out with the involvement of worker representatives. In the case of Thai Garment Export, the implementation of such a process would have avoided many of the problems that befell the plant with respect to the layoffs of March 2009.

The WRC recognizes that Thai Garment Export provided workers with severance benefits that significantly exceed legal requirements and the industry norm in Thailand. The company also made something of a course correction when problems concerning the dismissal process were raised by workers and the WRC, and dealt with the small number of workers complaints that ultimately were brought forward. To its credit, Thai Garment Export has taken steps to reestablish constructive labor relations at the factory since the layoff.

Going forward, the WRC encourages Thai Garment Export to continue to develop a positive and constructive relationship with worker representatives as new issues arise. The WRC will remain in contact with the factory's workers and continue to monitor its labor rights environment.

Finally, it bears stating that, despite the problems discussed here, the progress made here in fostering genuine collective bargaining and the meaningful freedom of association distinguishes Thai Garment Export, both in the Thai apparel industry and among garment factories globally. The WRC hopes that Thai Garment Export's customers sustain this

progress by maintaining or increasing their business with the factory.