



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT
re THAI GARMENT EXPORT (THAILAND)**

**FINDINGS, RECOMMENDATIONS AND STATUS REPORT
DECEMBER 21, 2007**

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Introduction

This is a report of the findings, recommendations and status of a Worker Rights Consortium (WRC) assessment of labor practices at Thai Garment Export, a garment factory in Samut Sakhorn, Thailand. Thai Garment Export is part of the Hong Kong-based multinational garment conglomerate TAL Group. Thai Garment Export is reported in university disclosure data as a producer of university logo apparel for Ashworth, Cutter & Buck, and Nike. The factory has also been reported as a past supplier of university licensed product for Tommy Hilfiger Golf, Louisville Golf, and Dodger. The factory employs roughly 3,000 workers.

The WRC undertook this assessment in response to complaints received in December 2006 from employees of the facility alleging violations of Thai law and applicable codes of conduct, primarily in the areas of freedom of association and women's rights. The assessment was carried out during December 2006 and January 2007 with follow up monitoring in June 2007. This report provides a summary of the WRC's findings and recommendations, factory management's response to the findings, and the status of remediation.

The WRC is pleased to report that this assessment has resulted in substantial improvements in working conditions at Thai Garment Export to date. The developments include the reinstatement of employees unlawfully dismissed in retaliation for exercising their associational rights; the commencement, on management's own initiative, of a series of labor rights trainings for lower and middle management that have resulted in more consistent compliance with appropriate labor rights policies throughout the factory; and positive engagement with a newly established union.

This important progress at Thai Garment Export is attributable to good faith efforts on the part of management at the facility to work with the WRC to implement changes. The WRC will remain engaged with Thai Garment Export to ensure that the progress made thus far is sustained and that the outstanding issues are fully addressed.

Given the significant progress made to date, the WRC strongly recommends that licensees and other apparel brands that have used Thai Garment Export in the past continue to source product from the facility. As the WRC has reported in other cases, the ability of a factory to fully achieve and sustain improved working conditions can be seriously jeopardized if the factory is unable to maintain business after remediation occurs. A loss of orders also sends a negative message to other factories in the region that labor rights compliance will not be rewarded with continued business. The WRC hopes that licensees will instead send a positive message by continuing to provide the factory with stable orders at prices sufficient to enable full code compliance.

Sources of Evidence

The WRC's findings and recommendations with respect to Thai Garment Export are based on evidence from the following sources:

- Interviews with Thai Garment Export management, including the factory's code of conduct compliance advisor
- In-depth interviews with 60 production employees
- Interviews with officers from the Samut Sakhorn Provincial Office of Labor Protection and Welfare
- Discussions with Nike Vendor Compliance representative
- A review of official documents and company records

Allegations Assessed

Based on the worker complaints and initial research by the WRC, the following concerns and allegations were identified for review:

- Freedom of Association: That the company had inappropriately dismissed six union founders and the vice president of the factory's Welfare Committee in retaliation for exercising their associational rights.
- Legally Mandated Policies and Procedures: That the company had coerced employees to sign documents agreeing to a change in work rules. That the company had interfered with a recent election of the Welfare Committee.
- Women's Rights: That the company had failed to provide pregnant workers with sufficient accommodations to protect their safety during pregnancy.

Findings, Recommendations and Status

1. Freedom of Association

The WRC found substantial evidence that the management of Thai Garment Export had engaged in acts of interference, intimidation, and retaliation against workers seeking to form and affiliate with a trade union at the facility. These acts included the illegal dismissal of union and Welfare Committee officers and efforts to malign the reputation of a newly established union and its leaders.

Findings

a) Wrongful dismissal of Welfare Committee and union officers

The WRC found that the vice president of the factory's Welfare Committee¹ was wrongfully dismissed on November 4, 2006, and that the six officers of the fifteen-member founding committee of Thai Garment Export's newly registered union were illegally dismissed on December 4, 2006. In both cases the WRC found that these employees were terminated in retaliation for exercising their associational rights and for voicing concerns regarding workplace conditions on behalf of their colleagues, in violation of Thai law and applicable codes of conduct. The evidentiary basis for these findings is discussed in detail below.

i) The Case of the Vice President of the Welfare Committee

In late October of 2006, Thai Garment Export management sought to change the factory's work schedule by adding 20 minutes to the length of the workday in order to allow for one Saturday off per month.² The vice president of the Welfare Committee was an overt opponent of this change, which, under Thai law, required employee approval to implement. In his role as vice president of the committee, he had declined to co-sign a document approving the schedule change. After management coerced a number of employees into signing documents favoring the change (this coercion is discussed in detail later in this report), the vice president—together with three other Thai Garment Export employees—sent a complaint to the Samut Sakhorn Provincial Office of Labor Protection and Welfare. On the following day, the vice president was fired.

Factory management gave two conflicting explanations for this worker's termination. Management reported to the provincial labor authorities that the vice president was terminated as a result of necessary structural adjustments in the production area. Management reported to the WRC that it terminated the vice president due to suspicions that he was partially responsible for a theft that happened at the factory on June 1, 2006. On this date in June, management apprehended a truck—a vehicle that is normally used for

¹ The Welfare Committee is a worker representative body established by Thai labor law to issue recommendations and advice regarding factory policy. (Thai Labor Protection Act, 1998, articles 96-99.)

² The assessment also addressed other aspects of management's effort to implement this schedule change, including violations of applicable legal requirements and coercion of employees to sign documents approving the change. The relevant findings are discussed in detail in section 2 of this report "Legally Mandated Policies and Procedures", beginning on page 9.

transporting fabric scraps out of the factory area for sale elsewhere—full of new materials being smuggled out of the factory. According to management’s own account, a police investigation following the incident found that the vice president was not responsible. Furthermore, management was unable to provide the WRC with any material evidence or credible explanation as to why this employee was likely responsible for the attempted theft. The lack of evidence to support the assertion that the vice president was involved in the theft, along with the fact that management provided a wholly different explanation to the Office of Labor Protection and Welfare, cast serious doubt on the validity of the rationale presented to the WRC.

The lack of a credible explanation regarding the reasons for his termination, along with the identity of the worker and the timing of his dismissal (one day after he lead an effort to file a complaint with local labor authorities) lead the WRC to conclude that the vice president was terminated in retaliation for speaking out against management’s labor policies; such a termination violates Thai law and applicable codes of conduct.

ii) The Case of the Six Union Officers

The six union leaders were terminated shortly after the union’s founding and initial membership recruitment drive. The union, known as the Ruamjai Relations Workers Union, applied for registration with the Ministry of Labor on November 13, 2006, and received notice of its successful registration on November 20. On November 26, the union began recruiting new members by handing out membership application forms outside the factory gate outside of working hours; on this day, the union’s officers reported distributing more than 1,000 membership application forms. On December 4, one week after the union had started to recruit members, six of the union leaders were called into the HR office shortly before then end of the work day and summarily dismissed. The workers were told that the reason for their dismissals was changes in the production structure. After being given their termination notice, the six union officers were immediately escorted out of the factory grounds and were not allowed back inside the production area to gather their belongings or say goodbye to their colleagues.

On December 6, the workday following the dismissals, two officials from Samut Sakhorn Provincial Office of Labor Protection and Welfare met with management and explained that the laid off six union founders should be reinstated. Management refused to comply with the officials’ directive.

When the WRC asked Thai Garment Export management for an explanation for the firing of these union leaders, management replied that it was unaware that the workers were union members at the time of their dismissal. The WRC did not find management’s claimed lack of awareness to be plausible, for two reasons. First, it was clear from employee interviews conducted by the WRC that these six workers were recognized by other workers in the factory as the most outspoken proponents of the union. These six workers had lead the union recruitment effort by openly distributing a large number of union application forms outside the factory’s front door on November 26. Second, the laid-off workers represented six of the fifteen founding members of the union and held the highest positions within the union’s leadership structure: President, Vice President, Treasurer, Assistant Treasurer, Registrar, and Assistant Registrar; in a factory of 3,000 workers, it is simply not plausible that the only six workers to be terminated as a result of

the supposed structural changes would happen to be the most important members in the union leadership.

Regarding management's claim that it had made changes in the production structure that necessitated the layoffs, management was unable to provide the WRC or Labor Protection and Welfare Department officers with any description of the new production structure. Despite repeated requests to learn the details of Thai Garment Export's structural change plans, the WRC was provided only with a vague and rudimentary explanation of the need to reduce the non-sewing workforce. Management told the WRC that these structural adjustments had been underway for two years, but was unable to provide any concrete documentation of changes that had been made or other times when layoffs had been necessary to accommodate the supposed adjustments taking place. Moreover, if the dismissals were part of a larger structural reorganization, advance notice with transparent criteria for dismissals, should have been given to all employees as a matter of good industrial relations.

b) Efforts to malign the reputation of union leaders and use of law enforcement officers to intimidate workers seeking to exercise their rights

On December 7, 2006, Thai Garment Export management distributed a leaflet to all employees inside the factory which insinuated that the six union leaders dismissed on December 4 were implicated in the attempted theft of June 1. The leaflet stated that, "The police investigated the case and found that the employees in the storage room³ were not willing to tell the truth, therefore it is necessary to change the production structure". The text of this leaflet was also read aloud to all employees during work hours over the factory PA system. The WRC found the statement made in the leaflet to be wholly illogical and its conclusion therefore untrue; indeed, in discussions with the WRC, management was unable to provide any explanation as to why the alleged involvement of employees in an attempted theft would necessitate a restructuring of factory production.

Given that the statement made in the leaflet was false, given the identity of the workers (the six union officers) that were the subject of the leaflet, and given the timing of the incident (shortly after the union initiated its recruitment effort), the WRC concluded that the public leaflet and announcement were an attempt by management to damage the reputations of the recently terminated union officers and the union as a whole with the intent of deterring workers from exercising their right to associate with the union.

Furthermore, the WRC was concerned to learn from worker interviews that law enforcement officers were stationed at the factory, at management's request, during this same period. Starting on December 7, the same day that management made the leaflet and announcement regarding the criminal involvement of the six dismissed union officers, factory management also requested that two uniformed local police officers be stationed at the entrance of the factory. A number of workers testified credibly to the WRC that they believed the police had been stationed at the factory as a result of the union organizing effort, and that they were therefore afraid to join the union.

Management told the WRC that the presence of the police officers was not related to the

³ The vice president of the Welfare Committee had worked in the storage room prior to his dismissal. None of the other union leaders, however, worked in that area.

supposed criminal case against the union but rather to protect management against potential threats, as some members of management had reportedly received threatening phone calls. The WRC was unable to verify whether these phone calls or other threats towards management had indeed taken place, and the assessment was therefore unable to reach a conclusion as to whether the stationing of police at the factory was intended to interfere with workers' associational rights, although it is clear from worker testimony that it had this effect.

Recommendations

The WRC recommended that Thai Garment Export management move swiftly to reinstate both the former vice president of the Welfare Committee and the six union officers to their former positions with full back pay and other legally mandated benefits to the time of their respective dismissals. The WRC stressed the importance of conducting these reinstatements immediately, before further harm could be done to the right of employees to form unions freely without fear of dismissal or reprisal.

The WRC also recommended that if management wished to pursue disciplinary or criminal charges against any employees in relation to the June attempted theft, it must do so through the appropriate channels and not in a manner that inappropriately connotes a link between the crime and the formation of the new union.

Regarding the slanderous leaflet and stationing of police at the factory, the WRC recommended that Thai Garment Export management immediately issue a follow-up leaflet and PA announcement to all employees, making clear that the investigation of the June theft case was unrelated to any structural changes or associated layoffs in the factory and that the new union and its officers had not been implicated. The WRC also recommended that management issue an open letter of apology to the union officers for insinuating that they were terminated for their involvement in a crime. Furthermore, the WRC asked management to explain to the workforce that the stationing of police at the factory was not related to the recent formation of the union or the activities of its officers.

Management response and status

Upon being presented with these recommendations, management agreed to reinstate the vice president of the Welfare Committee and the six union founders. These seven workers were reinstated on March 19 with full back pay and other benefits to which they were legally entitled.

Management also agreed to make the recommended announcements regarding the criminal investigation and the stationing of police at the factory. On a subsequent visit in June, 2007, however, the WRC found that management had not made these announcements. The WRC recommended that, in the case that the union felt there were still misunderstandings on the part of workers regarding a connection between the criminal investigation and the union, management should post a statement clarifying this matter. Management agreed to post such a statement if the union so requested it. To date, the union has not made this request.

Since the reinstatement, workers have reported that no further instances of discrimination

against the reinstated six union officers or against other union activists have occurred. While management reserved its right in agreeing to the recommended remediation to eventually pursue criminal charges against the vice president of the Welfare Committee, the company has thus far not taken any legal action.

In addition to carrying out the WRC's recommendations, management also, on its own initiative, started a labor relations training program for its supervisory personnel in order to ensure that company policy on freedom of association is followed throughout the command chain. The WRC considers this a positive proactive step.

2. Legally Mandated Policies and Procedures

The WRC found that Thai Garment Export violated policies established by Thai law in two areas. First, the factory coerced employees into agreeing to a change in work rules in an effort to circumvent the legal requirement that management negotiate any such changes with worker representatives. Second, the factory attempted to interfere with workers' right to elect representatives to the Welfare Committee, in violation of the law.

a) Coercion of Employees to Sign Documents Altering Terms of Employment

Findings

The WRC found that Thai Garment Export management attempted to coerce employees into signing documents consenting to changes in workplace conditions. Article 13 of the Thai Labor Relations Act requires an employer that wishes to change the terms of employment to provide employees or their representatives with written notice of the proposed changes and then negotiate with employees' chosen representatives over the proposal. Instead of following this procedure, Thai Garment Export management organized a factory-wide vote on a proposed change to working hours, and when the results of the election were not favorable to management's proposal, began to pressure workers that had voted against the change to cast new ballots in favor of the proposed policy.

As mentioned previously, in late October of 2006, Thai Garment Export management proposed to extend the regular workday by twenty minutes in exchange for providing one Saturday off each month (the normal work schedule is eight hours per day, six days a week). On October 19, management organized a factory-wide referendum on the proposed change and provided each worker with a ballot on which to mark whether or not he or she supported the new schedule. According to testimony from workers who observed a review of the ballots the following day, the collected ballots showed that a majority of the workers did not support the change in work hours. However, workers were required to list their name and identification number on the ballots, which enabled management to identify those who had opposed the proposal. In the days that followed, workers testified that many of those employees who had voted against the proposal were called into individual meetings with managers where they were pressured, sometimes repeatedly, to sign new ballots in favor of the change in working hours. Out of fear of reprisal or frustration with these repeated requests to change their votes, many workers reported signing the new ballots in favor of the changes. Once a sufficient number of workers changed their votes such that the majority was in favor of the proposed schedule change, management

announced that the new schedule would be implemented.

On November 3, four employees submitted a request to the Samut Sakhorn Provincial Office of Labor Protection and Welfare for an investigation into the planned implementation of the change in working hours. On November 6, two officials from the Labor Protection and Welfare Office came to the factory and explained to management that the process by which the factory was seeking to change the working hours was not acceptable and recommended that management instead discuss the proposed change with the factory's Welfare Committee. On November 8, management announced its decision not to implement the change in working hours.

(As discussed in the previous section, several of the workers who complained to the Labor Protection and Welfare Office were unlawfully dismissed in November and December in retaliation for this and other related efforts to improve working conditions at the factory.)

While the WRC was pleased that Thai Garment Export management abided by the Labor Protection and Welfare officials' recommendation and did not unilaterally implement the change in work hours, the intimidation of workers who exercised their right to oppose the proposal was inappropriate and sent a potentially harmful message to the workforce that the factory would not respect the legal right of workers and their representatives to provide input regarding workplace policies.

Recommendations

To address the damaging effect of the factory's efforts to coerce workers into changing their votes, the WRC recommended that management issue a statement to the workforce apologizing for interfering with workers' choice of how to vote. Going forward, the WRC recommended that factory management formulate a clear policy on how changes to work rules are carried out, in accordance with local law. In the case of referendums, the policy should stipulate that all future ballots will be anonymous, the counting of votes will be carried out in full view of the workforce and the results will be respected.

Management response and status

Management agreed that the referendum process had not been carried out in a manner consistent with good business practices. Given that the union was formed in the factory during the months following the referendum, management decided to cease using referendums as a method of seeking worker feedback on proposed changes to work rules. Instead, management committed to negotiating with the union, as the workers' representative, whenever the factory wished to make any changes. The WRC viewed this as a positive solution to the issue. Agreeing to negotiate with the union also fulfills the factory's obligations under Article 13 of the Thai Labor Relations Act regarding the procedure for lawfully changing the terms of employment.

b) Irregularities and management interference in Welfare Committee elections

Findings

The WRC found that Thai Garment Export management did not follow the appropriate procedure mandated by Thai law in carrying out a recent election of the Welfare Committee. The assessment identified significant irregularities that indicate management was attempting to interfere with workers' right to elect their representatives to the Welfare Committee as established by Thai labor law.

In early 2006, workers were informed by management that elections would be taking place for the Welfare Committee and that each worker should elect a worker from his or her department to represent the department on the committee. In violation of Thai law,⁴ however, there was no process during which workers were invited to stand for election; instead, workers were simply told to write on their ballot the name of any one of their colleagues that they believed would best represent them on the committee. Furthermore, each worker was provided with a ballot with his or her name and factory identification number printed on it. Failure to provide a secret, anonymous ballot is also a violation of Thai law⁵. After all ballots had been cast, the HR Manager and the outgoing Welfare Committee took the ballot box away to an unspecified location and counted the ballots privately. The workforce was later provided with the names of the workers that had received the first and second highest number of votes, but employees were not told the total number of votes either candidate had received, nor the names of other workers who had received votes and the number of votes received by them. Interviews with workers indicated widespread concern over this process. The failure of management to conduct an immediate and public count of the ballots was not in accordance with the Thai legal standards regarding ballot procedures.⁶

Recommendation

Given that legally mandated election procedures were not followed, the WRC recommended that the current Welfare Committee be dismantled and a new election held in accordance with the law, under the supervision of officials from the local office of the Department of Labor Welfare and Protection.

Management response and status

At the time, management expressed concern that dissolving the Welfare Committee at the same time as reinstating the union officers might create tensions between groups of workers in the factory and suggested instead that the current Welfare Committee be permitted to serve until the end of its term in early 2008, at which time new, lawful elections could be held. An alternative solution surfaced in May of 2007, when management and the union announced the formation of an Employee Committee. Under

⁴ Labor Protection Act 1998, section 96, Notice of Department of Labor Welfare and Protection regarding principles and procedures of electing the workplace Welfare Committee, 2001.

⁵ Notice of Department of Labor Welfare and Protection regarding principles and procedures of electing the workplace Welfare Committee, 2001 clause 11.

⁶ Notice of Department of Labor Welfare and Protection regarding principles and procedures of electing the workplace Welfare Committee, 2001, clause 13.

Thai law, the Employee Committee has preferential status over the Welfare Committee with regards to the right to discuss and negotiate on issues of employee welfare and benefits.⁷ The election of the Employee Committee was held on June 15, 2007, and the WRC was invited to observe. The WRC found that the election was held in a fair and transparent manner, in full accordance with the law, demonstrating management's commitment to fair elections of worker representatives.

Shortly after this election, the Welfare Committee decided to dissolve itself, thus resolving the issue of the improper election of its members. The Employee Committee has been provided an office by management and also sits on various other committees at Thai Garment Export such as the Canteen Committee, the Transportation Committee, and the Labor Relations Committee.

3. Women's Rights

Findings

The WRC found that Thai Garment Export failed to make meaningful accommodations for female workers during pregnancy, in violation of university codes of conduct that require factories to provide appropriate services and accommodations to protect the health and safety of pregnant employees.

In some divisions at Thai Garment Export, the assessment found that pregnant workers were rarely transferred to lighter work or provided with the opportunity to switch between seated and standing positions or take more frequent breaks as needed. Furthermore, substantial worker testimony revealed that pregnant workers were often pressured by management to continue working at a fast pace and in physical positions that were uncomfortable or beyond their physical means given their stage of pregnancy. This problem was especially pronounced in the Dipping Section, where chemicals are applied to fabric to make it "wrinkle-free," but also occurred in other divisions to a lesser degree.

Workers recounted one particularly worrisome incident that took place in the factory's Dipping Section in August 2006 involving an employee who miscarried while working, five months into her pregnancy. According to testimony from other workers in this section, this employee had been forced to continue to standing on her feet and iron in a slightly bent position for the first five months of her pregnancy, despite repeated requests to be moved to another work station more appropriate for pregnant workers. While it was impossible for the WRC to verify whether or not the cause of the miscarriage was related to her work assignment, it is possible that the physically stressful environment contributed to the worker being in a poor physical condition conducive to miscarrying. Whatever the reason for the miscarriage, management should have done more to accommodate this worker during her pregnancy. This incident highlights the need for a factory-wide plan for protecting the health and safety of pregnant employees.

⁷ Thai Labour Protection Act, 1998, clause 96

Recommendation

The WRC recommended that Thai Garment Export management develop a factory-wide plan to ensure a safe work environment and appropriate work assignments for pregnant employees. Management should also develop a registration system so the central HR office can have clear information as to how many pregnant workers there are in each section at any given time, in order to be able to provide special accommodation where needed.

Management response and status

Management expressed alarm upon being told of the assessment's findings concerning the situation in the Dipping Section and promised to look into the matter immediately. Management stated that the treatment of pregnant workers identified by the WRC was not in line with company policy. The factory pledged to undertake training of supervisors regarding the proper way to follow company policy while respecting the rights of pregnant workers and to provide training for pregnant workers to increase their awareness of their rights and responsibilities. In April of 2007, a training program was initiated, lead by two factory nurses. The factory agreed to provide the WRC with copies of the training materials used upon request. Management also agreed to develop a central registration system to keep track of pregnant workers. The WRC is conducting follow up monitoring to ensure that management's commitments in this area are carried out.