



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT  
re TOS DOMINICANA (DOMINICAN REPUBLIC)**

**FINDINGS AND RECOMMENDATIONS  
JUNE 6, 2007**

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## **Introduction**

This report outlines the results of an investigation by the Worker Rights Consortium (WRC) of labor practices at TOS Dominicana, a textile factory located in the Dos Rios industrial park, in the city of Bona0, in the Dominican Republic. The investigation was launched in response to complaints received from multiple workers at the facility alleging serious violations of domestic law and university codes of conduct. This document details the WRC's findings and recommendations to date, as well as the response of factory management and its parent company.

TOS Dominicana is owned and operated by Hanesbrands, Inc. (hereafter referred to as "Hanesbrands"). The facility manufactures fabric, primarily for t-shirts; sewing operations are scheduled to be added to the facility later this year. Employing roughly 1,100 workers, the facility is one of the largest textile producers in the Dominican Republic and the region. The fabric is sold to garment manufacturers in the Dominican Republic, including the university logo goods producer Grupo M, to Wal-Mart, and is also used to manufacture Hanesbrands' own line of blank t-shirts. Hanesbrands is a supplier of blank t-shirts to numerous university licensees.

The WRC began its investigation in October 2006. On-the-ground fact gathering was conducted during five separate missions which took place on the following dates: October 29-31 of 2006; February 9-12, 17-19, and 26-28 of 2007; and May 10-12 of 2007.

The WRC found substantial, credible evidence that serious violations of domestic law and university codes of conduct have occurred at TOS Dominicana. These violations include the unlawful coercion of workers to sign new employment contracts and complaint waivers reducing workers' employment rights and benefits, forced and unpaid overtime, failure to pay the legally mandated premium for work at night, verbal harassment and abuse, and the use of a range of illegal means to thwart workers' efforts to exercise their associational rights.

The WRC has notified Hanesbrands of these findings. Unfortunately, Hanesbrands representatives have neither acknowledged that violations have occurred nor committed to take corrective action. In some areas, violations have worsened subsequent to Hanesbrands being informed of the WRC's findings. As noted in the sections below, in the weeks immediately prior to the release of this report there have been some developments indicating that Hanesbrands may be reconsidering its approach. At the same time, the pattern of violations has continued and we therefore see little reason at this juncture to conclude that there has been a significant change in Hanesbrands' perspective.

The WRC hopes that Hanesbrands will direct TOS Dominicana to implement the necessary corrective measures in a timely fashion. We will issue further reports as appropriate regarding developments at the facility.

## **Sources of Evidence**

In the course of this investigation, the WRC gathered evidence from the following sources:

- Offsite interviews with roughly 40 TOS Dominicana workers, including both current and former employees, and both union members and workers who are not members of a union
- Written submissions of evidence from seven workers
- Meetings and other communications with senior executives of Hanesbrands
- Meetings and communications with Hanesbrands' outside legal counsel
- A meeting with the two principal Sub-Directors of Labor at the Dominican Secretariat of Labor
- A meeting with the Labor Recording Officer of the U.S. Embassy in the Dominican Republic
- A review of relevant documents, including employee contracts, pay checks, employee personnel policies, dismissal notices, court documents, medical records, photographic and videographic evidence, and other materials
- An analysis of Dominican labor and employment law

TOS Dominicana and Hanesbrands declined the WRC's request to interview plant managers and review relevant documentation held onsite. The WRC was able, nonetheless, to gather sufficient evidence concerning the key issues of concern from other sources to reach firm conclusions of fact.

## **Allegations Assessed in the Report**

Based upon the worker complaints received, and on preliminary research by WRC staff, the following concerns and allegations were identified for review:

- **ILLEGAL IMPOSITION OF NEW EMPLOYMENT CONTRACTS:** That factory management unlawfully coerced workers to sign employment contracts and complaint waivers changing their terms of employment; that these contracts contain substantively unlawful provisions.
- **FORCED AND UNPAID OVERTIME:** That the factory requires workers to perform mandatory overtime as a component of the factory's basic work schedule; that workers are not paid for work performed beyond the statutory work day and work week at the legally mandated overtime rate.
- **FAILURE TO PAY LEGALLY MANDATED COMPENSATION FOR NIGHT WORK:** That the factory has failed to pay workers the legal night shift premium for work performed during hours identified in Dominican law as part of the night shift.
- **FAILURE TO REPORT WORK-RELATED INJURIES:** That the factory does not report work-related injuries and illnesses to the proper Dominican government agency,

as is required for workers to obtain paid injury leave.

- **VERBAL HARASSMENT AND ABUSE:** That workers are verbally harassed by TOS Dominicana staff.
- **FREEDOM OF ASSOCIATION:** That workers engaged in lawful trade union activism are subjected to aggressive threats, harassment, and surveillance by factory management and supervisory personnel; that union members have been terminated in retaliation for their participation in the union; that the company has sought to terminate union officials illegally, including by means of false allegations brought before the Dominican Labor Court.

The following sections summarize the WRC's findings with respect to each of these allegations and, where appropriate, list recommendations for remedial action.

## **Findings and Recommendations**

### **Illegal Imposition of New Employment Contracts**

#### *Coercion of Workers to Sign Employment Documents*

During October through December 2006, TOS Dominicana management required workers to sign new work contracts altering the terms and conditions of employment under which employees had worked since the facility was opened, as well as labor rights complaint waivers forgoing the right to bring complaints regarding labor practices before courts or non-governmental bodies. The WRC's inquiry found that the manner in which these work contracts were implemented was coercive and therefore unlawful. The separate issue of the substantive legality of the employment documents is discussed in the subsequent section.

Article 147 of the Dominican Labor Code establishes that the contents of an employment contract can only be lawfully modified under three circumstances: a) as a result of stipulations of the Labor Code or subsequent legislation; b) as a result of collective bargaining; or c) by mutual consent. In the case of the employment contracts implemented by TOS Dominicana during late 2006, the circumstances surrounding their implementation did not fall into any of these three categories. Instead, factory management forced workers to sign the new employment contracts under threat of losing their jobs, thereby violating Dominican law.

This conclusion is based on credible testimony from current workers in the plant who described to the WRC their direct experiences of being aggressively pressured to sign the new contracts. Workers testified that, between October and December of 2006, workers were summoned in groups to meet with the facility's human resources director, Ely Ureña. In some cases, Ms. Ureña was accompanied by other TOS Dominicana managers. According to workers, sometimes the groups were small, consisting of three to six workers; in other cases, the meetings were held with entire departments and included

groups of forty to fifty workers or more. During these meetings, Ms. Ureña told the workers that the factory had prepared new contracts for the workers to sign and that the workers were required to sign them. In some cases, she stated that there had been an error with the previous work contracts and thus the new ones were necessary, but that they were identical to the earlier contracts in content (an assertion that, as discussed below, is not accurate). When workers asked if signing the new contracts was mandatory, she replied in the affirmative and stated that anyone who did not sign the contracts would be fired. Workers cited the following as specific phrases used by Ms. Ureña during these meetings:

- “If you don’t want to sign this, there is not a place for you in this company.”
- “Anyone who has a problem with this doesn’t need to work here and won’t work here.”
- “If you don’t sign this, you’re going to cause problems for yourself.”

Workers reported that they were not given time to review the contracts, but were simply told to sign the documents on the spot and go back to work. A substantial number of workers testified to the WRC that they signed the documents out of fear of losing their jobs. A number of those workers said they later regretted having succumbed to this pressure from factory management.

Because workers were coerced to sign the new employment contracts and accompanying complaint waivers, these documents are unlawful and invalid even though they contain language to the effect that the employment arrangement was made by “mutual accord.”

#### *Illegal Provisions in New Work Contracts*

The new employment contracts were not only unlawful as a result of the coercive manner in which they were imposed; the documents contain a number of provisions which themselves violate Dominican law and applicable codes of conduct. Under Dominican law, employers may not unilaterally *remove* benefits provided to a worker under an existing contract without the worker’s consent. In this case, the new employment contracts stripped TOS Dominicana employees of specific rights and benefits to which they were entitled under the original contracts. Additionally, the new work contracts contain added provisions which are illegal on their face.

On the issue of unilateral diminution of benefits, the new contracts had the effect of reducing workers’ rights and benefits in the area of wages in the following ways:

- *Removal of Provisions for Regular Salary Increases:* For workers hired in 2005, the original work contracts provided for raises in salary based on a review of the worker’s performance each month. Contracts for workers hired during early 2006 provided for raises in salary based on a review of the worker’s performance after six months of employment and then after each subsequent year of employment. The new employment contracts do not contain any provisions for salary increases.

- *Reduction in Wages through Change in Payment System:* The original contracts set a monthly salary, with workers paid every week; the new contracts change the factory's compensation system to an hourly wage rate with workers paid every eight days. The change in the payment system has resulted in a real decrease in workers' earnings because the company switched from a weekly schedule to an eight-day schedule without adjusting the pay for each period to account for the fact that the new system involves fewer total pay periods per year (45 pay periods instead of 52). In March 2006, the company began to pay workers the same sum every eight days that they had previously earned every seven days, effectively imposing a 13.5% cut in pay over the course of a year. During October through December of 2006, the company's practice of paying workers every eight days based on an hourly salary was then codified in the new employment contracts. At the time the contracts were implemented, the company did provide a pay raise, with a bonus that had the effect of applying the raise retroactively for three months. However, pay levels after the raise were still well below their level at the beginning of 2006. Thus, the raise represented only a partial solution to the problem, insofar as workers continued to be paid less total compensation under the new contracts than they previously received and the partial correction of wage levels applied retroactively to only part of the period of underpayment.<sup>1</sup>

An additional raise was given shortly before the publication of this report, with no retroactivity. The raise brought the factory's salary levels roughly in line with those in place at the beginning of 2006, if inflation is not taken into account.<sup>2</sup> This second raise was apparently provided in response to the WRC's findings on this issue, which were conveyed to Hanesbrands management in March 2007, and to the demands made of management by the trade union formed at the plant. Although this raise prospectively addresses the problem of decreased wage levels, it does not address the period of March 2006 through May 2007, during which workers received less compensation than that established by their initial work contracts.

In addition to the issues concerning wages, the new contracts omit two key benefits which were included in the original work contracts:

- *Healthcare:* The original contracts provided for a company-established private healthcare plan for workers and their dependents; this provision is absent in the new contract.

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<sup>1</sup> An example helps to clarify the issue. The following figures are based on pay documents and information provided by workers. Prior to March 2006, the factory paid machine operators, the most common post in the factory, 1984.76 pesos every seven days, which amounts to an annual salary of 103,207.52 pesos. After the change in the payment system to the eight-day schedule on March 2, TOS Dominicana continued to pay 1984.76 pesos per pay period, which amounts to an annual salary of 89,314.20 pesos. The change represented a 13.5% pay decrease when taken over the course of a calendar year. On September 15, 2006, the company increased the salary of machine operators to 2143.00 pesos every eight days (representing 96,435.00 annually, over 45 pay periods), still 6.6% below the initial calendar-year salary. A bonus, effectively providing retroactive back pay to July, was also provided at this time.

<sup>2</sup> On May 11, 2007, the company increased the eight-day salary for machine operators to 2293.74 pesos, which amounts to 103,218.30 pesos per year, over 45 pay periods.

- *Life Insurance:* The original contracts provided for life insurance, covered at eighteen times the worker's monthly salary in the case of accidental death or dismemberment; the new contracts provide no provision for life insurance

It bears noting that there has not been a change in the company's behavior in practice with respect to health care or life insurance. The new contracts nevertheless remove the obligation of the company to provide such benefits. It is not known what the company's intentions are with respect to the provision of these benefits in the future. If the company chooses to cease to provide these benefits, management could do so, citing the new contracts as evidence that the change in policy was the product of mutual consent.

As noted, in addition to eliminating or removing benefits to workers provided by the original contracts, the new contracts contain several provisions which are unlawful in the Dominican Republic. These include the following:

- *Unlawful Ban on Second Employment:* The new contracts include an illegal requirement barring workers from obtaining work from another employer. Article 9 of the Dominican Labor Code states that workers have the right to offer their services to more than one employer during different work schedules. Article 3 of the new contract violates this right by requiring TOS Dominicana workers to work exclusively for the company, barring them from agreeing to or initiating employment contracts with any other employer without the prior consent of TOS Dominicana. On this point, Hanesbrands has argued that workers in practice do have second jobs. Independent of the extent to which it has been enforced to date, however, the provision itself is illegal.
- *Unlawful Work Schedule:* The new contracts establish a work schedule known as a 4x4 system. Under this schedule, workers perform twelve-hour shifts on four consecutive days and then are idle for four days before resuming work again. The 4x4 system, as practiced by TOS Dominicana, violates Dominican law and applicable codes of conduct because it entails forced and unpaid overtime. These issues are discussed in greater depth in the following section.

In view of these findings, the implementation of the new employment contracts not only violated Dominican law with respect to the manner in which the contracts were implemented, but violated the law substantively by unilaterally diminishing worker rights and benefits and codifying illegal practices.

## **Recommendations**

The WRC recommends that the factory take the following remedial actions:

- Nullify the new work contracts in light of both the unlawful means through which they were implemented and the unlawful substantive provisions they contain.



- Reinstate the previous work contracts<sup>3</sup>.
- Provide back pay to workers to address the underpayment that has resulted from the new pay system implemented in March 2006.

### **Employment Schedule Entails Forced and Unpaid Overtime**

Article 147 of the Dominican Labor Code establishes that the regular work week is to consist of no more than eight hours per day and no more than forty-four hours per week.<sup>4</sup> Article 203 of the Labor Code establishes that any work performed beyond this amount up to sixty-five hours per week is to be compensated at a rate of 135% of normal pay. Overtime work is to be performed voluntarily, except in the case of extraordinary circumstances which threaten the normal functioning of the company or the safety of workers.

TOS Dominicana requires workers to perform a work schedule which involves both forced and unpaid overtime. Workers at TOS Dominicana are required to work daily twelve-hour shifts (for four successive days) as a mandatory aspect of employment. Thus, the facility's standard work schedule exceeds the statutory limit of eight hours per day. The schedule also, in some weeks, exceeds the legal limit of forty-four hours of work per week.<sup>5</sup> Workers are not paid at the legally established overtime rate for work performed beyond the standard work schedule; instead, they are paid the same amount for this overtime as they are paid for regular work hours. The performance of work beyond the regular legal work schedule is mandatory.

A substantial number of workers interviewed by the WRC testified that they do not like the factory's scheduling system. Workers cited the issue of nonpayment of the legally mandated overtime premium. Workers also state that they are unable to attend educational courses outside of the workplace in order to improve their career prospects, both because the twelve-hour schedule stretches into the evenings when classes are typically held and because the days on which they work change every week. Finally, workers complained that the schedule makes it difficult to obtain child care.

Hanesbrands has stated that the factory obtained approval from the Dominican Labor Secretariat to carry out the 4x4 system, but has not provided the WRC with a copy of any

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<sup>3</sup> At the time this report was issued, the union representing workers at TOS Dominicana had submitted documentation to the Dominican Secretariat of Labor asserting that the union represented more than 50% of the workforce at TOS Dominicana, the level required to oblige the factory to engage in collective bargaining. The verification process is currently underway at the Secretariat. If and when the Secretariat verifies the union's majority status, or if it is verified by a neutral, independent expert, as recommended in this report, TOS Dominicana should negotiate a collective contract with the union, which would replace the individual employment contracts.

<sup>4</sup> The eight hour work day is also established by Convention 1, "Hours of Work (Industry) Convention," of the International Labor Organization, which has been ratified by the Dominican Republic.

<sup>5</sup> Because the 4x4 system entails a different work schedule every week, there are some weeks in which workers perform four shifts and others in which workers perform three shifts. During weeks in which workers perform four shifts, the work schedule involves forty-eight hours of work.

document demonstrating this approval. Senior officials of the Labor Secretariat told the WRC that no such approval has been granted. The Labor Secretariat officials stated that the 4x4 system – as practiced by TOS Dominicana – is in fact illegal, because it violates the aforementioned laws limiting the normal work day to eight hours and the normal work week to forty-four hours. The officials stated that, while workers and managers may reach agreement on a work arrangement that exceeds the normal work schedule, such an arrangement is not legally valid. The Secretariat officials explained that if a legal complaint were brought by workers concerning the 4x4 system, the Dominican Labor Court – which adjudicates such complaints – would have a responsibility to take action regardless of whether the work schedule was established with the consent of workers. This explanation is consistent with a provision of the Dominican Labor Code which establishes that no law or agreement will be considered legitimate if it diminishes in any way the rights afforded to workers by the Code. Principle 5 of the Labor Code reads in full:

“The rights of workers recognized by this law cannot be the object of renunciation or conventional limitation. Any agreement to the contrary is null and void.” (WRC translation)

As a result of this key provision, even if approval for the 4x4 system had been granted by the Secretariat of Labor, such approval would not be legally valid. The Labor Secretariat does not have the power to grant employers the right to violate the Labor Code.

In the case of TOS Dominicana, Hanesbrands has sought to inoculate itself from legal liability by pressuring workers to sign individual waivers relinquishing the right to bring complaints regarding the company’s practices in the area of working hours and schedules. At the time that workers were coerced to sign new employment contracts during late 2006, as discussed above, workers were also coerced to sign documents which contain a sweeping waiver clause. Workers testified credibly that they were coerced to sign this document, along with the new employment contracts, under explicit threat of losing their jobs. When workers were asked if signing the document was obligatory, the factory’s human resources director responded that it was obligatory and that any worker who did not do so would be fired or would otherwise face negative consequences. Provision 4 of the document, titled “Declaracion Jurada” (Sworn Statement), states in full:

“As a consequence of the above, the undersigned, [insert name], declares and recognizes that he/she has no complaint, neither labor, civil, nor criminal, nor of any other kind, past, present or future, against the company TOS Dominicana, its subsidiaries, affiliated companies, headquarters, shareholders, employers, managers, representatives, or agents, in either the Dominican Republic or abroad, with respect to the work day and schedule of work in which services are offered to the above company.” (WRC translation)

As noted, according to the Labor Secretariat and the language of the Labor Code itself, such a waiver does not have legal validity if the underlying practice that the worker is waiving his or her right to protest violates Dominican labor law. The fact that the company coerced workers to sign the document also negates its validity, in view of the Labor Code

provisions discussed above which require that changes in terms of employment be arrived at through mutual accord. Nevertheless, the coercion of workers to sign such a statement may have a chilling effect on the exercise by workers of the right to challenge the company's practices through legal mechanisms. Indeed, interviews conducted by the WRC indicate that such a chilling effect has occurred. A substantial number of workers interviewed expressed regret regarding their having signed the document and stated that they believed that they had relinquished the right to complain regarding workplace problems. At present, no legal complaint has been brought by workers regarding the 4x4 practice. However, the trade union that has been formed by workers at TOS Dominicana has issued a proposal for a collective bargaining agreement which would revert the work schedule to one that falls within the standard work day and work week set out by the Labor Code.<sup>6</sup>

The coercion of workers to sign the document relinquishing complainant rights is of particular concern to the WRC as a labor rights monitoring organization. By prohibiting complaints not only of a labor, civil, or criminal nature, but also of "any other kind," the waiver appears to be so general as to formally prohibit workers from bringing complaints not only before Dominican Courts, but also before non-governmental bodies including code of conduct enforcement agents such as the WRC. Barring complaints to labor rights monitors prevents those organizations from exercising their responsibility to protect the rights of workers.

In response to written concerns from the WRC regarding the complaint waiver, Hanesbrands has stated the following:

"In all countries in which HbI [Hanesbrands Inc.] does business, including the Dominican Republic, there is a resource line available to employees who can call and/or email complaints (anonymously if they desire) in their local language. This has been part of OUI Global Business Practices program for many years and was reinforced as part of the roll-out of the new HbI GBP program last fall. During calendar year 2006, there were 42 calls made to the resource line from the entirety of our Latin American operations. Of those 42, one-third (14) came from Dos Rios [TOS Dominicana]<sup>7</sup>. The employees clearly have a forum in which to voice complaints (now and in the future), and the numbers above indicate they know of its existence."

Contrary to Hanesbrands' position, the right to make a phone call to a company-operated hotline is not an adequate substitute for either the right to seek justice through domestic legal mechanisms or the right to submit a complaint to external labor rights monitors. In this case, the WRC heard substantial testimony to the effect that the concerns brought before the hotline, specifically regarding the factory's scheduling and payment practices, were not addressed or even responded to, underscoring the clear need for externally

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<sup>6</sup> As stated in footnote 3, as of the publication of this report, legal processes were underway to verify the union's assertion of majority representation.

<sup>7</sup> Dos Rios is the name of the Free Trade Zone where TOS Dominicana is located. TOS Dominicana is the only factory operating in this zone at present.

accountable channels of complaint. The complaint waiver is part of what appears to be a broader effort to discourage workers from bringing complaints to outside entities. Managers have publicly criticized and maligned the workers for complaining to the WRC regarding the facility's practices in such areas as compensation and scheduling. Indeed, given the chilling effect created by the company's actions, it has only been with the unusual degree of perseverance and fortitude on the part of the group of TOS Dominicana workers that filed the complaint and proceeded to cooperate with the WRC's investigation process that it has been possible for the investigation to go forward.

## **Recommendations**

The WRC recommends that the factory take the following remedial actions:

- Immediately begin compensating workers at the appropriate overtime rate for all hours worked that qualify legally as overtime. This includes all hours worked in excess of eight hours on a given day and in excess of forty-four hours in a given week. Provide workers with back wages owed for at least the past twelve months or since each worker's start of employment, whichever is the shorter timeframe.
- With respect to the 4x4 shift system, provide workers with the option of working a traditional workweek (eight-hour days, Monday through Friday, and a half day on Saturday) as an alternative. The WRC recognizes that some workers may prefer the 4x4 arrangement or, regardless of their preference, have already organized their lives around it and are not in a position to switch to a new schedule. At the same time, some workers do not wish to work the 4x4 shift, particularly workers who want to go to school at night. The factory cannot legally require the 4x4 shift because it constitutes forced overtime on a daily basis. Therefore, it must give workers a choice between the 4x4 shift and a traditional workweek. The WRC understands that alternative work schedules have been provided at other factories in the garment industry that employ a 4x4 system.

## **Failure to Pay Legally Mandated Premium for Work at Night**

Article 204 of the Dominican Labor Code establishes that employers must pay workers 115% of the normal hourly wage for work performed during a night shift. Article 149 defines a night shift as any shift that includes three or more work hours performed between 9:00 pm and 6:00 am.

TOS Dominicana operates a night shift every night, from 7:00 pm to 7:00 am. Workers who work the night shift are paid vacation pay and severance credit below what is required by law. Under Dominican law, such payments should be made on the basis of the night shift rate for workers whose regular schedule is a night shift.<sup>8</sup> Instead, TOS Dominicana

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<sup>8</sup> The WRC initially reported that workers working the night shift were not being compensated at the proper night shift pay rate. In fact, in terms of direct wage compensation, these workers are receiving the proper rate of pay. The original conclusion was the unfortunate result of Hanesbrands' lack of transparency and its

compensates workers for vacation pay and severance on the basis of the rate paid to workers performing identical work during the day. The factory's practices in this area therefore violate Dominican law.

### **Recommendations**

The WRC recommends that the factory take the following remedial action:

- Compensate employees performing night work shifts at the legally mandated premium of 115% of the normally hourly wage for day shift work for the purposes of vacation pay and severance.
- Provide workers with back wages owed for at least the past twelve months or since each worker's start of employment, whichever is the shorter timeframe.

### **Failure to Report Work-Related Injuries and Illness as required for Payment of Injury Leave**

Law 87-01, adopted in May 2001, established a new system for the provision of paid leave and coverage of medical costs for workers and their family members in the case of work-related injuries and illnesses. The law established an agency within in the Dominican state-run health care system called the Administration for Workplace Hazards ("Administradora de Riesgos Laborales, Seguro Social," or ARLSS). Under the ARLSS-administered system, employers are required to make payments to the government for each employee; the amount of the payment is set based on an assessment of the employer's risk level. Risk factors include the type of work performed at the company as well as the individual employer's track record. When a work-related injury occurs, the employer is responsible for filing a report with the ARLSS, with details regarding the incident and worker in question, within a period of 72 hours. The ARLSS is to then conduct an investigation of the incident. If the work-related nature of the injury or illness is confirmed, the worker has a right to paid injury leave for a period determined by the ARLSS, as well as medical care. These benefits are provided by the ARLSS. However, for workers to receive the benefits, the system depends on employers' reporting workplace injuries faithfully and in a timely fashion.

The WRC's inquiry identified a number of instances in which workers have suffered serious workplace injuries but have not been provided with paid injury leave. These included an instance of a worker suffering a leg fracture after slipping and falling on dust

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policy of basing vacation pay and severance credit for night workers on the lower day time rate of pay, in violation of Dominican law. Due to management's unwillingness to provide access to requested payroll records, the WRC was forced to rely primarily on documents provided by workers pertaining to severance payments and to extrapolate the payment rate for night shift workers from these documents. Since the factory is illegally paying workers severance on the basis of the lower day shift rate, that extrapolation led to the conclusion that the night shift workers were receiving that rate of pay. Had Hanesbrands provided the WRC with access to documentation as requested or had Hanesbrands followed the law with respect to severance payments, this erroneous conclusion would have been avoided.

in the factory, an instance of a worker suffering a serious leg injury when a large stack of fabric being transported by a moving machine collapsed on the worker operating it, and an instance of a worker who suffered a heart attack after a seeking to lift a large barrel of industrial chemicals, among other instances. However, because neither Hanesbrands nor the ARLSS have been willing to provide the WRC with information on individual injury reports, we do not know if the inability of workers to obtain injury leave is a product of malfeasance on the part of the company or the government agency.

It is clear that, due to the pervasive perception on the part of workers that it is the policy of TOS Dominicana that workers are not entitled to paid injury leave, a significant number of workers have chosen to work with serious injuries rather than take leave. Examples of such cases include an incident of a sewing machine operator fracturing a finger while trying to change a roll of cloth in his machine, an incident of a worker suffering an eye injury when a piece of metal was dislodged from a machine and struck him in the eye, and an instance of a pregnant worker slipping on chemicals in the workplace and suffering an injury to the chin, among others. In these cases, workers opted not to report the injuries and request injury leave because they believed that paid injury leave would not be granted and they could not subsist without an income, and/or because they believed they would suffer some form of retaliation from management for reporting the injuries and requesting leave. Several workers testified that supervisors and managers told them that they would not be paid for any days that they are not present in the factory and working, regardless of the circumstances. Workers reported that they had received no training on their rights in this area.

## **Recommendations**

The WRC recommends that the factory take the following remedial actions:

- Immediately provide the WRC with access to company records regarding workplace injuries to determine whether reports on workplace injuries have been made in accordance with the law.
- If it is determined that the company has not properly submitted reports of workplace injuries to the ARLSS, pay back pay to each worker who can demonstrate that he or she has been forced to take leave from work as a result of a work-related injury. If it is determined that the problem resides with the government agency, exercise TOS Dominicana's and Hanesbrands' considerable leverage in the Dominican Republic to compel the government system to promptly provide the benefits to which workers are entitled.
- Carry out an educational program within the factory, including both verbal and written communications, to ensure all workers are aware of their right to injury leave under the law and make clear to workers that the factory will respect this right.
- Undertake a training program for supervisors, managers, and workers in the factory clinic to ensure they understand the factory's obligations with respect to injury

reporting and leave. Ensure that an effective mechanism is in place whereby workers are able to record work-related injuries.

### **Verbal Harassment and Abuse**

The WRC concluded that factory management and supervisory personnel have subjected workers to verbal abuse. Such behavior violates provisions of applicable codes of conduct that prohibit harassment and abuse of employees.

The WRC heard credible testimony from numerous workers that managers on repeated occasions screamed at workers and used derogatory and insulting language in addressing workers. The workers most frequently identified one particular supervisor and one particular manager as behaving in such a way. Workers testified that the supervisor in question routinely derided workers as “maricónasos” (“faggots”) and “mamagüevo” (“cocksuckers”), among various other inappropriate phrases. The verbal abuse on the part of this supervisor is so egregious that workers regard being transferred to his department as a form of punishment. The manager in question was described as frequently yelling at workers as a means of enforcing discipline and engaging in threatening or degrading physical gestures, such as throwing stacks of documents on the floor and making workers pick them up. Several workers complained that they feel they are treated like “animals” in the workplace. While workers spoke most frequently of the particular supervisor and the particular manager mentioned above, workers also cited other managerial personnel for their verbal abuse of workers.

### **Recommendations**

The WRC recommends that factory management take the following remedial actions:

- Ensure that supervisors treat employees with dignity and respect, and that insulting, demeaning, or offensive language is never used as a means of discipline or otherwise.
- Adopt a clear policy prohibiting harassment and abuse, which should state clearly that abusive language, shouting, and corporal punishment will not be tolerated. All supervisors should be provided training on harassment and abuse.

### **Freedom of Association**

Workers’ rights to freedom of association and collective bargaining are protected by Dominican law, international law, and applicable codes of conduct. Article 333 of the Dominican Labor Code bars employers from engaging in a range of practices that impede workers’ efforts to join together in trade unions. These unlawful behaviors include prohibiting workers from joining unions as a matter of company policy; engaging in retaliation against workers because of their participation in a trade union; firing or suspending workers because of their participation in a union; intervening in the creation or

administration of a union through financial or other means; refusing to deal with the legitimate representatives of a trade union; refusing to engage in collective bargaining without a legitimate justification; and using force, violence, intimidation, threats or other forms of coercion against workers with the aim of obstructing the exercise of worker rights protected by the Labor Code. Conventions 87 and 98 of the International Labor Organization, both of which have been ratified by the Dominican Republic, require that that employers respect the rights of workers to associate freely in trade unions and bargain collectively on terms and conditions of employment. University codes of conduct and other applicable codes of conduct further require employers to respect the associational and collective bargaining rights of employees.

As discussed in the following sections, TOS Dominicana management has engaged in an aggressive and sustained campaign to thwart the exercise of associational rights by workers through illegal means, including the use of threats and harassment, surveillance of workers' activities, the mass dismissal of union members, and the repeated targeted dismissal and attempted dismissal of union officers.

The findings reviewed in this section are based on highly credible reports of specific actions by factory management. The WRC confirmed that each of the actions occurred based upon detailed, mutually corroborative testimony from multiple workers. The testimonial evidence is sufficient, in and of itself, to warrant a conclusion that the violations have occurred. However, in many cases, the WRC's findings are also supported by additional source of evidence, including videographic evidence, submissions to government bodies, rulings of government agencies, and notes taken by workers contemporaneous with the incidents in question. Hanesbrands has denied categorically that any improper actions have taken place. In the face of highly credible evidence, and given the inability of Hanesbrands to respond the WRC's findings with respect to any particular incident, the company's denials were not persuasive.

The findings reviewed in this section concern actions of management with respect to the leaders and members of a trade union established by workers at the plant, known as "Sindicato de Trabajadores de la Empresa Dos Rios/ Hanesbrands, TOS Dominicana" ("Union of Workers of the Enterprise Dos Rios/ Hanesbrands, TOS Dominicana;" hereafter referred to as "the union"). The union is associated with a national union federation known as the "Federación Dominicana de Trabajadores de Zonas Francas," or FEDOTRAZONAS (Dominican Federation of Free Trade Zone Workers). The plant-level union was established in July 2006.

### *Threats and Harassment*

The WRC found that TOS Dominicana management has repeatedly threatened and harassed workers with the aim of preventing employees from joining the union. These actions have included threatening workers that the organization of a union in the plant will cause the factory to close, threatening that individuals who join the union will be terminated, informing workers they should not interact with members of the union in the factory and that their actions are being monitored, coercing workers to reject affiliation



with the union by informing them that the company will not tolerate a union as a matter of company policy, and publicly maligning individual workers who serve as leaders of the union. Such actions violate the above mentioned provisions of Dominican law which prohibit employers from infringing on the exercise of associational rights.

The following outlines a number of examples of such actions by management identified through the WRC's inquiry, but is not an exhaustive review. The incidents are presented in chronological order.

- On or around November 23, 2006, the facility's knitting department manager, Ignacio Cuellar, held a mandatory meeting with roughly 100 employees in the knitting department. During this meeting, Mr. Cuellar stated that company will not allow a union in the factory, indicating that it is the policy of the company to prohibit the existence of trade unions.
- On or around November 27, Bienvenidos Polancos, a night shift supervisor, met with a group of workers and told them that overtime had been cancelled because of the union's activity in the factory. After hearing of these statements from other workers in the facility, the union's general secretary, Manuel Pujols, confronted Mr. Polancos and asked if he had made this statement; Mr. Polancos responded, "Yes, and what are you going to do about it?"
- On or around December 9, Hernan Custodio, a supervisor, called Mr. Pujols to his office and told him that he did not want to see him talking to other workers in the cafeteria or on the company bus that takes employees home at night. As a result of this incident, and others, the two principle officers of the union took to eating lunch by themselves in the cafeteria in order avoid endangering other workers.
- In mid-December, the facility's human resources director, Ely Ureña, held a mandatory meeting with roughly 40 workers. During the course of this meeting, Ms. Ureña instructed workers that she would not permit a union in the factory. According to worker testimony, she said specifically that she had not allowed a union at the company where she previously worked, and that she would not allow a union at TOS Dominicana either. She said that if a union was organized, the factory would close down and workers would lose their jobs, and that the union organizers were motivated only for their own personal financial gain. Ms. Ureña also personally singled out and ridiculed the general secretary of the union, Manuel Pujols, who was present during the meeting and who challenged the manager's characterization of the union's motives, stating that the union exists because there are problems at the factory. Ms. Ureña derided the union and Mr. Pujols, stating that the only problem at the factory is the union and that Mr. Pujols has a problem with his head and needs to see a psychologist.
- In mid-December, Maria Virgin, an administrator in the human resources department, approached workers whom she had seen speaking to Mr. Pujols or Julio Angel Castillo, the Secretary of Press for the union, and asked the workers questions including, "Do you belong to the union?" and "Don't you know you could lose your job for that?" Mr.

Pujols, who had heard of this encounter from other workers, confronted Ms. Virgin and asked her if she had said these things. Ms. Virgin confirmed that she had.

- In mid-December, Ms. Ureña told Mr. Castillo that she was planning to put cameras in the cafeteria so that management could see which workers the union members were talking to.
- On or around February 19, 2007, when a worker was circulating a flyer about the union during his lunch break, a supervisor, Meisin Torres, grabbed the flyer out of the worker's hand, ripped it up, and threw it away. The supervisor stated that workers were not permitted to have flyers inside the workplace and disparaged the union as disruptive. (The circulation of flyers is protected by free speech laws in the Dominican Republic, so long as it does not interfere with factory production; in this case the worker was circulating the flyer during his lunch break, which had no disruptive impact on production.)
- On or around February 22, on a date on which the two principle union officials were away from the factory in order to participate in a mediation hearing with management at the Secretariat of Labor (which factory management failed to attend), Ms. Ureña held a mandatory meeting of workers during which she accused the officials of the union and the union federation of being thieves intent on stealing the workers' money and instructing workers that they should not join the union.
- On or around February 23, a workshop was held for new employees at the end of which the factory's general manager, Jose Armando Zelaya, communicated to workers that they would be rewarded for not participating in any organizations (workers interpreted Mr. Zelaya's use of the word "organizations" to be a clear reference to the union). Mr. Zelaya reportedly said that, "Those who are not comfortable with the company's rules should look for other work, but that those workers who stay away from trouble, those who stay away from any kind of organization, will be the workers who are promoted and become supervisors." Mr. Zelaya also indicated to workers that they would not be eligible for a raise following an evaluation process if they participated in outside organizations. Similar statements were made in other such meetings both prior to and after the meeting described above.
- On or around April 18, Ms. Ureña convened a mandatory meeting with roughly 50 workers. During the course of the meeting, Ms. Ureña repeatedly disparaged the union and ridiculed the union's officers. She told the workers that Mr. Pujols had been making false denunciations, with the support of Americans (referring presumably to the WRC); that he had made these denunciations for his own personal gain; and that workers would suffer as a result. Specifically, she claimed that the factory had not built a new sewing facility as planned because of problems caused by the union's complaints and that it was therefore the fault of the union that that some 2,000 workers in the city of Bona0, where TOS Dominicana is located, are not currently employed. She also blamed a wave of firings which had occurred in the days immediately prior to the meeting on the union and threatened that if the union continued organizing, the factory

would need to continue dismissing workers. (These dismissals are discussed at some length below.)

### *Surveillance of Workers*

Management of TOS Dominicana has engaged in surveillance of workers in an attempt to ascertain the identities of workers associated with the union. Such actions have been carried out both inside and outside of the workplace. Surveillance of workers in the context of efforts by workers to exercise associational rights is a form of anti-union harassment. Additionally, such surveillance also represents strong evidence that other actions by management, in particular the dismissal of workers involved in trade union activism, are motivated by anti-union animus.

With respect to surveillance outside of the workplace, the primary incident of this nature occurred on the late afternoon of October 20, 2006. On this date, a group of roughly twenty union members held a meeting in a restaurant in the city of Bonao. The purpose of the meeting was to discuss union affairs and elect new leadership. Since factory management was not aware at this time of the identities of each of the union's members and workers wished not to reveal themselves to management for fear of retaliation, the meeting was held in a private room of the restaurant behind closed doors. During the course of the meeting, a group of managers from TOS Dominicana appeared at the restaurant. One manager, Ely Ureña, who as noted is the facility's human resources director, forced her way into the closed meeting room. As she entered, most workers, fearing that she would identify them, rushed to leave the room through another door. One worker captured the incident on a video-enabled cell phone, footage from which the WRC has reviewed and which confirms the workers' reports of what transpired. The apparent purpose of the manager's action was to see which workers were present in the meeting.

The WRC has also documented numerous instances in which managers have spied on workers inside the factory and communicated to workers that they were being watched. Workers' movements and conversations have been monitored closely by factory managers and workers have been subjected to interrogation by factory managers about whether they are union members after having been seen by managers speaking with union officers inside the factory. In some cases, workers have been fired shortly after being monitored or interrogated. On one occasion, several weeks before the publication of this report, factory managers photographed a group of workers speaking with the general secretary of the facility's union. The following day, this group of roughly ten workers was called to the human resources office and told they were being fired. (The dismissals were aborted at the last minute when an inspector from the Secretariat of Labor was called to the factory by a union officer.) Managers have specifically told union officials that their actions in the factory are being observed and that they should not speak to other workers in the factory cafeteria or on the factory bus.

### *Targeted Dismissals of Union Members*

In mid April 2007, TOS Dominicana management carried out a wave of dismissals targeted at union members. Such action represents a violation of provisions of Dominican law and applicable codes of conduct which prohibit acts of retaliation against workers, and in particular the dismissal of workers, for their participation in a trade union.

Evidence demonstrating that the company singled out workers because of their participation in the union is overwhelming. Between April 12 and 16, TOS Dominicana terminated 31 employees. Of these 31 workers, 29 were union members. These figures are based on a comparison between individuals listed in the legal notices of dismissal deposited by TOS Dominicana with the Dominican Labor Secretariat and the union's internal membership documents, verified by worker interviews. Considering that the union represents, according to its own membership documents, just over a majority of the workforce, there is not another plausible explanation for the fact that nearly all of the workers dismissed during this period were union members other than that the dismissals were related to the workers' participation in the union.<sup>9</sup>

TOS Dominicana had a powerful motivation to dismiss a large number of union members during the period in which the terminations were carried out. During the months leading up the dismissals a series of mediation sessions took place between management and union representatives under the auspices of the Labor Secretariat during which the subject of collective bargaining was discussed. On March 28, 2007, during the final mediation session held before the dismissals, union representatives informed management that the union represented a majority of the factory's workers and therefore held the right (under Article 109 of the Dominican Labor Code) to bargain collectively on behalf of the workforce; they told the management representatives that a collective bargaining proposal

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<sup>9</sup> The following are the names of the 29 union members who were dismissed during this period:

April 12

- Maribel Guzman Marte
- Maria Indira Garcia Acosta
- Enrique Infante Hernandez
- Cristino Tolentino Rosario
- Ray Manuel de la Cruz Santana
- Norberto Suarez Vasquez
- Jose Ramon Ventura Torres
- Edward Radhames Bido Uribe
- Victor Batista Gutierrez
- Luis Alberto Molina Paniagua
- Juan Antonio Lazala Nunez

April 13

- Carlos Jose Garcia
- Jose Antonio Tineo
- Sibely Altagracia Romero Caminero
- Jose Rigoberto Vargas

April 16

- Jose Roberto Fernandez Duran
- Jose Agustin Morales
- Guillermo Peña Portorreal
- Faustino Acosta Genao
- Rosanna Mena Bido
- Dominga Altagracia Fabre Maria
- Yanery Sanchez Acosta
- Sauris Rafael Santos Fajardo
- Martin Orlando Rodríguez Almanzar
- Eugenio Tavarez Rosario
- Jose Antonio Tavarez Taveras
- Gabriel Garcia Ramirez
- Juan Francisco Marte Jiménez
- Jendry Gilberto Rodriguez Ulerio

would be shortly forthcoming. Shortly after this meeting, worker representatives made it known among the workforce that a general assembly would be held on April 19 to finalize an initial bargaining proposal and conclude documents to submit to the Labor Secretariat demonstrating its majority status.<sup>10</sup> Between April 12 and 16, during the week prior to the date of the general assembly, TOS Dominicana carried out the wave of dismissals. During this period, TOS Dominicana had an exceptionally strong incentive to eliminate union members from the factory in order to thwart the collective bargaining process by undermining the union's claim to majority representation. Management's vehement opposition to engaging in collective bargaining with the union was well established at this point, as discussed in previous sections.

The company's official explanation for each of the dismissals – that the facility was undertaking an overall reduction of personnel due to business conditions beyond its control – is clearly false. During the days immediately following the dismissals, the factory hired a substantial number of other workers, estimated between 30 and 40, according to credible, mutually corroborative testimony from workers and community members (Hanesbrands did not provide access to documents needed to obtain the precise figure). The number of new workers hired during this period was roughly equal to or exceeded the number of workers dismissed. This indicates that the claim of an overall reduction of personnel was a pretext. By dismissing union members *en masse* and immediately replacing them with new (and consequently non-union) workers, the company effectively diluted the union's representation among the workforce during a period critical for establishing the union's right under Dominican law to bargain collectively.

Shortly after the dismissals, a key member of management made guilty statements to the workforce regarding the motivation for the dismissals. As noted above, on or around April 18, 2007, the facility's human resources manager, Ely Ureña, convened roughly 50 workers for a meeting. During the course of this meeting, Ms. Ureña specifically blamed the dismissals on the organizing activities of the union and stated that the dismissals would continue to occur unless the union activity ceased.

There is a strong basis to conclude that management was aware, in at least some cases, that the individual workers dismissed were active union members. As described in the previous section, during the months leading up the dismissals, factory management carried out an aggressive campaign of surveillance of worker activities. These included off-site surveillance, including spying on workers during a private union meeting held away from the factory, as well as on-site surveillance of workers' movements and conversations in the workplace. Management made it known to workers it was carrying out this surveillance. Additionally, in the case of a substantial number of the workers dismissed during April 12-16, management made overt threats to the workers prior to their dismissal regarding their participation in the union or their complaints regarding working conditions. The following are several examples:

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<sup>10</sup> The union submitted the collective bargaining proposal to management on April 24, 2007 and submitted a roster of union members to demonstrate its majority status to the Labor Secretariat on May 1, 2007.

- Edward Radhames Bido Uribe was dismissed on April 12. A trainer in the knitting department, he had worked at the facility for one year and seven months. On the evening of April 12, he was called into a meeting with Wilton Toribio, a human resources administrator, Leonel Tejada, a knitting department manager, and Bienvenidos Polanco, a supervisor. He was informed he was being laid off. Mr. Bido was a known member of the trade union in the plant. He was a member of the leadership committee (whose membership was formally presented to management) until September 2006, when members of management convinced him to resign from the union. The managers told him there would be negative consequences if he did not resign and offered him a superior position and a raise in exchange for resigning. Mr. Bido acceded to the pressure to resign, but shortly thereafter rejoined the union and has been an active member since. After rejoining the union, during the months before his dismissal, he was transferred from the C shift, where he and a colleague had led efforts to recruit union members, to the D shift; at the time he was specifically told the transfer was carried out to separate him from the other active union member. Roughly one week prior to his termination, he complained to the human resources department that he had not been paid for an extra day he had worked during the *semana santa* vacation period (the first week of April). In response, the human resources administrator derided him and his participation in the union. Two other workers, both union members, were dismissed alongside Mr. Bido in the same meeting on April 12.
- Carlos Jose Garcia was dismissed on April 13. A trainer in the chemical department, Mr. Garcia had worked at the factory for one year and three months. He had been a member of the union since November 2006. In the months leading up to his dismissal, Mr. Garcia had requested on repeated occasions that he and other workers in the chemical department be provided with basic personal protective equipment, such as gloves, masks, and work clothing. The requests were made because workers in the department were made to work with dangerous chemicals, including hydrochloric acid and peroxide. Mr. Garcia's requests over a period of five months for the protective equipment were met repeatedly with promises to provide the materials which were never fulfilled. On March 28, the most recent occasion on which Mr. Garcia requested the materials, he told the department's manager that he would like to either receive the equipment or be transferred to another department. Several weeks later, he was dismissed.
- Guillermo Peña Portorreal was dismissed on April 16. He was a worker in the cutting department and had been employed at the factory for one year and seven months. He was an active member of the union. Prior to his dismissal, Mr. Pena had been warned on repeated occasions by the director of the cutting department that he should not go near the union or would risk being fired. He had also been instructed by Lister de Leon, the manager of the cutting department, that if he wanted to keep his job, he should stay away from the union. On the morning of April 16, Mr. Pena's supervisor, Meisin Torres, announced to the workforce in the cutting department that workers associated with the union would be fired. Later that day he was summoned to the human resources office for what he was informed would be a meeting about the company's health care policy. When he arrived, there were roughly thirteen other

workers waiting at the office, nearly all of them members of the union. He was called in to meet with human resources director Ely Ureña, who informed him that he was being dismissed.

- Faustino Acosta Genao was dismissed on April 16. He was a trainer in the cutting department and had recently joined the union. On the afternoon of March 7, Mr. Acosta initiated a meeting among coworkers in the cutting department with the department's manager to discuss and seek solutions to complaints regarding labor conditions in the factory. Following this meeting, Lister de Leon, the cutting manager, told Mr. Acosta explicitly that he was going to take responsibility for firing him, citing his complaints regarding the workplace issues (these included a complaint regarding the factory's alleged failure to report a work-related health problem suffered by Mr. Acosta to proper authorities, leading to his inability to obtain injury leave). Mr. Acosta documented the threat made by Mr. de Leon in a statement written shortly after the incident. He was terminated on April 16 by Ms. Ureña and administrator Wilton Toribio. Subsequent to Mr. Acosta's termination, on or around May 20, Mr. de Leon instructed workers in the cutting department that they would be dismissed if it was discovered that they have visited Mr. Acosta in his home.
- Martin Orlando Rodriguez Almanzar was dismissed on April 16. A machine operator in the knitting department, he had been employed at the facility for roughly one year and two months. Mr. Rodriguez' membership in the union was known to management. In late 2006, he had participated in efforts to organize a trade union in the plant, having been unaware that a unionization effort was already underway among other workers. Mr. Rodriguez was a member of the leadership committee of the union he helped found. Shortly after its formation, knitting department manager Ignacio Cuellar told Mr. Rodriguez that it would be better if resigned from the union, claiming that "if there is a union in the factory the plant will disappear." He was also told he could expect a better position in the factory if he resigned. After resigning from the first union, Mr. Rodriguez quickly joined and became involved in the other union, helping to recruit new members. He had been seen by the factory's human resources director Ely Ureña speaking with the union's general secretary, Manuel Pujols, on various occasions in the factory during the period leading up to his dismissal. He reported that four additional workers were dismissed alongside him in the same meeting on April 16, each of them members of the union.

In sum, in view of the fact that nearly all of the workers dismissed during the period in question were union members, that the factory has sought to immediately replace the workers with new non-union employees, that a key member of management has made guilty statements to the workforce regarding the motivation for the firings, that individual worker experiences indicate that management was aware that the workers were union members prior to their dismissal and in some cases had made known their intent to retaliate against the workers for this reason, there are overwhelming grounds to conclude that the clustered firings in mid-April were motivated by anti-union animus. As such, the firings violate workers' rights of association under Dominican law and applicable codes of conduct.

There are also grounds to conclude that additional workers were dismissed for their participation in the union prior to and after the dismissals of mid-April 2007. The WRC may report on additional unlawful firings in subsequent reports.

### *Targeted Dismissals and Attempted Dismissals of Union Leaders*

TOS Dominicana management has carried out an aggressive campaign to terminate the two principal leaders of the union in retaliation for their union activities. The company sought to terminate the workers unlawfully, and then following pressure to reinstate the workers from Dominican authorities and other sources, has continued to seek to dismiss the workers by making false accusations. In the case of general secretary of the union, this has occurred repeatedly. The effort to rid the factory of the union leaders violates aforementioned provisions of Dominican law which specifically prohibit the dismissal of workers for their union activities, as well as other provision of Dominican law and applicable codes of conduct which prohibit the harassment of workers because of their union activities.

Given the importance of these two individuals as leading advocates for workers in the factory, the chilling effect on the exercise of associational rights that would result if other workers believed these leaders were fired as punishment for their union activities, and the statements Hanesbrands has made regarding the workers, the WRC focused considerable attention on investigating the circumstances surrounding the dismissals and attempted dismissals of the workers. The following summarizes the WRC's findings with respect to the cases of each of the two workers.

#### Manuel Pujols

Manuel Pujols is currently the general secretary of the TOS union. A machine operator in the knitting department, he has worked at the facility since early 2006, having worked previously in the textile and garment industry for fifteen years. TOS Dominicana management has sought to terminate Mr. Pujols on three separate occasions: in September 2006, in October 2006, and in March 2007. He has also been the subject of persistent, aggressive threats by factory management. The following summarizes events related to the each of the attempted firings of Mr. Pujols.

1. The first attempted termination of Mr. Pujols occurred on September 7, 2006. That evening, he was summoned by his supervisor, Carlos Jimenez, to the human resources director's office. When he arrived, two security guards were stationed outside the office, and two additional guards were inside the office. In the office, he was told to sit down, and upon doing so, human resources administrator Leonel Fernandez told him that he was being dismissed. When asked the reason for the dismissal, Mr. Fernandez replied that the company no longer needed Mr. Pujols' services and did not need a justification to end his contract. Mr. Pujols protested that he had been a good worker during his seven months of service and had not received any complaint about his job performance until he had assumed the post of general secretary of the union. Mr.



Jimenez confirmed that he had been a good worker, but did not give a reason for the dismissal. Mr. Pujols was then escorted by the security guards to retrieve his possessions from his locker and leave the facility. On September 9, representatives of TOS management appeared at Mr. Pujols' home and told him that there had been an error with his name and that he would be able to return to work on September 12.

The termination of Mr. Pujols on September 7, 2006 was unlawful for two reasons. First, the firing violated Articles 390-394 of the Dominican Labor Code, which prohibit employers from terminating leaders of a registered trade union without obtaining prior authorization from the Dominican Labor Court. This provision, known as *fuero sindical*, is intended to protect union leaders from retaliatory firings. At the time of the dismissal, Mr. Pujols held the position of general secretary of the TOS union. TOS Dominicana had been informed of his status as a union leader and nevertheless fired Mr. Pujols without citing cause or obtaining prior authorization to dismiss him.

Second, the firing violated provisions of applicable codes of conduct and Dominican law which prohibit employers from retaliating against workers for exercising associational rights. Based on the timing of the dismissal and statements made by factory management following the dismissal, there are strong grounds to conclude that Mr. Pujols was singled out and dismissed specifically because of his leadership role in the union and his activism in the workplace. With respect to timing, during the three weeks prior to the dismissal, Mr. Pujols had requested repeatedly that the facility's human resources director provide employees with a pay raise that was stipulated in the workers' employment contracts, a request that was ultimately denied. During this period, Mr. Pujols also assumed the position of general secretary of the union. He was dismissed shortly afterward. Following the dismissal, members of management made a series of statements indicating that the dismissal was related to his union activities and activism. Upon his return to the facility on September 12, he was summoned by knitting director Ignacio Cuellar and human resources administrator Wilton Toribio and interrogated about his reasons for joining the union. During this meeting, Mr. Cuellar told Mr. Pujols that joining a union was not the way to obtain what he wanted and offered him a position as supervisor on the explicit condition that Mr. Pujols resign from the union. Mr. Pujols rejected the offer. Three days later, on September 15, Mr. Pujols was summoned to meet with supervisor Hernan Custodio and human resources director Ely Ureña, who again interrogated Mr. Pujols as to his reasons for joining the union and told him that the union would cause the factory to shut down. During subsequent discussions, Ms. Ureña made explicit threats that she intended to fire Mr. Pujols because of his union activities. Together, the timing of the dismissal and the statements by factory managers following the dismissal represent strong evidence that the firing was motivated by anti-union animus.

2. The second instance in which TOS Dominica management sought to dismiss Mr. Pujols took place in late October 2006. In an October 23 legal petition filed by the company with the Dominican Labor Court seeking to dismiss Mr. Pujols, the reason cited for the dismissal is that, on October 23, Mr. Pujols allegedly "left his area of work

without permission of his supervisor and in an aggressive manner intervened with one of the company's clients, seeking to sabotage the results of inspections that had taken place in the plant, and through this caused and continues to cause great harm and damage to the company" (WRC translation). The petition was ultimately rejected by Dominican authorities on November 17 and Mr. Pujols was not dismissed. Nevertheless, the allegations have since been repeated to the WRC by senior Hanesbrands management, during a period (February and March 2007) in which the factory again sought to dismiss Mr. Pujols. Hanesbrands representatives have also alleged that Mr. Pujols, as well as another key union leader Julio Castillo, physically threatened the security manager during this encounter, among other related allegations. In view of the company's persistent focus on the incident, the WRC conducted extensive investigation into the alleged misconduct of the workers. The evidence gathered is overwhelming to the effect that the company's allegations are false. The investigation also revealed that factory management suborned perjury from a worker to support the false allegations in the Dominican Labor Court. A detailed review of the key events in question follows.

On October 23, both workers – Mr. Pujols and Mr. Castillo – approached a group of managers and executives of Hanesbrands who were walking through the knitting department. The workers were seeking to speak with a Hanesbrands executive named Jim McBride, whom they understood was in the plant on that day, regarding labor conditions in the firm. (The WRC confirmed that Mr. McBride is an executive of Hanesbrands, not a "client" as alleged in the company's legal documents.) The workers testified that, having tried repeatedly to seek a cooperative response from the company's human resources managers and other factory-level managers, and having failed to obtain a meaningful response through use of the company's complaint hotline, they were under the impression that Mr. McBride was in a position to help address the issues. In particular, the workers wished to show Mr. McBride a video of the factory's human resources director seeking to break into a private meeting of the union, ostensibly to identify the union's leaders. The workers were informed by Hanesbrands' security director, Mercedes Ramirez, that Mr. McBride was not onsite but would be at the facility on the following day and the workers could speak with him then. Mr. Pujols and Mr. Castillo proceeded to speak with Ms. Ramirez for roughly twenty minutes, in the full view of other workers in the knitting department. At one point, the group attempted to review the video on a computer in a nearby workshop, also populated by workers. According to witnesses, there is no basis for claims that Mr. Pujols was aggressive during this encounter. Due to the large number of textile machines operating in the room, the participants' spoke in loud voices in order to be heard, as is typical in the department. However, witnesses reported the interaction was calm and ended cordially.

On the following day, October 24, Mr. Pujols and Mr. Castillo were able to speak with Jim McBride in the facility's knitting department. Mr. Castillo summoned Mr. Pujols from the cafeteria during a break from work so that they might both speak with Mr. McBride. The discussion took place through an interpreter and lasted roughly fifteen minutes. The WRC interviewed workers who said they heard every word of the

conversation. During the course of the encounter, Mr. Pujols introduced himself as the general secretary of the facility's union, explained that he wished to share information regarding problems in the factory, and outlined a series of concerns relating to disability leave, the facility's payment schedule, and harassment of the union members, among other issues. Mr. McBride explained that he did not know there was a union in the factory nor that the problems existed and asked why the workers had not raised the issues with human resources. Mr. Pujols and Mr. Castillo explained that they had made such efforts repeatedly, but management at all levels was unresponsive and failed to address the concerns. In concluding the discussion, Mr. McBride thanked the workers and committed to helping to address the concerns they raised. According to witness accounts, the meeting was cordial and there was no aggressive behavior by any of the parties during the encounter.

Of very serious concern, evidence indicates that during the legal proceedings initiated by the company against Mr. Pujols, the facility's human resources director and its outside legal counsel suborned perjury by a production worker to support their claims that Mr. Pujols aggressively intervened in the company's affairs with a client and sabotaged company machinery. In its legal filings with the Labor Court on October 31, 2006, the company's legal counsel cited as a key prospective witness a TOS worker named Jose Augustin Morales. As the company's only non-management witness, he testified in the hearing to the effect that he had seen Mr. Pujols aggressively accost Jim McBride and Mercedes Ramirez and had seen Mr. Pujols destroy factory machinery in an act of sabotage against the company. In the course of investigating this incident, the WRC interviewed and obtained a written statement from Mr. Morales in May 2007. He testified credibly and in detail to the WRC that he had not in fact witnessed the misconduct of which Mr. Pujols was accused. He stated that the company's human resources director, Ely Ureña, and the company's legal counsel, Juan Carlos Ortiz of the law firm Ortiz & Compres, had asked to him to give false testimony in exchange for economic favors. Specifically, he testified that on November 16, the day prior to the hearing, Ms. Ureña and Mr. Ortiz, during a lengthy meeting, instructed Mr. Morales to make the above claims to the judge during the hearing. On November 17, he met again with Ms. Ureña and Mr. Ortiz for one hour prior to the hearing; during this meeting, the company representatives had him rehearse the specific false statements he would make in the hearing. He testified that in exchange for giving the false testimony, he would be offered "whatever he wanted" in the workplace.<sup>11</sup>

In sum, there is no basis for claims that Mr. Pujols acted "aggressively" or inappropriately, as alleged by management in its petition to fire Mr. Pujols. It also

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<sup>11</sup> On April 13, 2007, the company terminated Mr. Morales' employment. Since Mr. Morales provided testimony to the WRC after this date, the WRC was concerned that he might be a disgruntled former employee, and that he might be making false claims regarding his prior testimony against Mr. Pujols, motivated by a desire to retaliate against the company. In light of this concern, the WRC sought testimony from other workers regarding statements made to them by Mr. Morales prior to his dismissal. A number of workers testified credibly, both verbally and in written submissions, that during the months before he was terminated he had repeatedly acknowledged and expressed remorse to other workers for his false testimony and had resumed his participation in union activities. This testimony strongly corroborates Mr. Morales' testimony regarding the actions by the human resources director and legal counsel to suborn perjury by him.

bears noting that, given that it is the stated policy of Hanesbrands to welcome workers to express concerns or complaints about conditions, given that the workers had made numerous efforts to express concerns regarding the facility's labor practices to plant-level management prior to speaking with Mr. McBride, and given that the concerns raised by the workers were in fact valid (as documented at some length in this report), it was particularly inappropriate for the company to seek to dismiss Mr. Pujols for attempting to bring these issues to the attention of a more senior manager. The WRC has seldom come across such a brazen instance of a factory seeking to stifle its own employees' right to raise grievances regarding alleged labor rights violations and doing so through such inappropriate means.

3. Following the initial two failed attempts by TOS Dominicana to dismiss Manuel Pujols, the company has continued efforts to terminate him. During April 2007, the company called an inspector from the Labor Secretariat to the factory to investigate alleged disciplinary infractions by Mr. Pujols, specifically that he had left his work station without authorization. Both incidents involved cases in which Mr. Pujols was seeking to represent union members on emergency health-related grievances in the workplace. According to credible worker testimony, in both cases, Mr. Pujols sought to address the employee grievances during production breaks, when no conflict with his work duties would have arisen. The evidence available indicates that the allegations made by management were baseless and, even if true, they would not be a reasonable basis for dismissal. The company's record of repeatedly attempting to dismiss Mr. Pujols unlawfully, and its record of aggressive harassment of him, strongly supports the conclusion that these efforts by management are part of a calculated campaign to develop pretexts to dismiss him for his leadership role in the union. This conclusion is further supported by detailed testimony from workers who serve or have served as assistants to senior managers of the factory to the effect that the manager in charge of these efforts, human resources director Ely Ureña, has spoken frequently with other managers about her plan to concoct minor disciplinary incidents in order to build a case against Mr. Pujols which would prevail in Dominican Courts.

The repeated efforts to dismiss Mr. Pujols represent a clear pattern of intent to remove him from the factory specifically because of his leadership in the trade union and his efforts to press management to address alleged labor rights violations. The campaign to eliminate Mr. Pujols is one of the most aggressive and persistent the WRC has documented by management at any factory.

#### Julio Angel Castillo

Along with Manuel Pujols, Julio Angel Castillo is one of the two principal officers of the union. Mr. Castillo serves as Secretary of Press and Information. He was elected to this position on October 20, 2006. He is employed as a mechanic in the facility's knitting department, where he holds the position of "team leader" of the mechanic's section.

Mr. Castillo was fired on October 25, 2006. On the evening of this date, Mr. Castillo was called to the office of human resources director Ely Ureña and told he was being

terminated. The reason given at the time of dismissal was that Mr. Castillo had been disrespectful to factory managers; Ms. Ureña conveyed that the order for the dismissal came from the United States. Following this conversation, Mr. Castillo was accompanied by two armed security guards to recover his belongings from his locker and then to leave the factory.

The firing of Mr. Castillo was illegal for both procedural and substantive reasons.

With respect to procedural issues, the firing violated the *fuero sindical* rule of Dominican Labor Code (Article 390-394). As discussed above, this provision requires the employer to seek prior authorization from the Labor Court in order to dismiss leaders of registered trade unions for just cause. In this case, TOS Dominicana fired Mr. Castillo citing just cause (for allegedly for showing disrespect to a member of management, though, as discussed below, a different allegation was made several days later). Prior to carrying out the dismissal, the company did not seek nor obtain authorization from the Labor Court. The firing was therefore illegal on this procedural ground alone, independent of the substantive reasons for the firing.

The WRC's finding on this point was supported by a finding from the Dominican Secretariat of Labor. On October 26 2006, pursuant to a complaint from the union, a Labor Inspector from the Secretariat of Labor visited the factory and met with Ms. Ureña. At this time, Ms. Ureña asserted that she was unaware that Mr. Castillo was a member of the union's Governing Board and therefore protected by the *fuero sindical* rule. The Labor Inspector instructed TOS Dominicana to reinstate Mr. Castillo within twenty-four hours. On October 30, the Labor Inspector returned to the factory and found that the company had not reinstated Mr. Castillo and was refusing to do so. The Secretariat of Labor issued a formal infraction against TOS Dominicana for unlawfully terminating Julio Castillo, "a worker protected by fuero sindical". On November 3, the Secretariat of Labor issued a judgment regarding the dispute, finding in favor of Mr. Castillo and again ordering his reinstatement. The company challenged the finding in the Labor Court, but its petition was rejected.

With respect to the substantive issues, there are overwhelming grounds to conclude that the justifications proffered by factory management were pretexts and that the firing was in fact motivated by a desire to remove Mr. Castillo from the factory because he held a leadership role in the union and had complained about allegedly unlawful labor practices.

First, there are strong grounds to conclude that factory management was aware of Mr. Castillo's identity as a union leader and advocate of worker rights in the factory at the time of his dismissal. Five days prior to the dismissal, on October 20, 2006, Mr. Castillo participated in a private union meeting held at a restaurant in the city of Bonao, at which he was elected Secretary of Press of the union. As noted above, during the course of this meeting, human resources manager Ely Ureña sought to break into the union's meeting room, ostensibly in order to determine the identities of the union's leaders. Additionally, two days prior to the dismissal, on October 23, Mr. Castillo's status as a member of the union's Governing Board was certified by the Secretariat of Labor and presented to factory

management. These and other facts indicate that management knew of Mr. Castillo's status as a union leader at the time of this dismissal.

Second, the conclusion that Mr. Castillo's firing was related to his role as an advocate for worker rights – including in ways beyond his status as union official – is further supported by the fact that the dismissal followed shortly after Mr. Castillo had engaged in a series of actions to call attention to and press management on labor rights issues. The following incidents preceded the dismissal on October 25, 2006:

- On or around October 3, 2006, Mr. Castillo visited the central office of the Secretariat of Labor of the Dominican Republic in Santo Domingo to discuss concerns regarding changes in the company's payment system, which Mr. Castillo believed resulted in an unlawful reduction of workers' pay. According to Mr. Castillo, the Labor Secretariat official concurred with Mr. Castillo's position and agreed to schedule a mediation session with management of TOS Dominicana. At this time, Mr. Castillo was acting in his capacity only as a factory employee; he had not formally associated himself with the union.
- During the following week, on or around October 10, Mr. Castillo informed human resources director Ely Ureña and general manager Armando Zelaya of his meeting with the Secretariat of Labor and requested that they participate in a mediation session facilitated by the Secretariat. The managers initially agreed to participate in such a session, but the proposed meeting did not occur.
- On October 23, as discussed earlier in this report, Mr. Castillo and Manuel Pujols spoke with Hanesbrands security director, Mercedes Ramirez, in the knitting department of the factory. The two workers expressed a desire to talk to a senior executive of the company about labor practices. A number of other factory managers were present during this discussion. The following day, October 24, Mr. Castillo and Mr. Pujols spoke with Hanesbrands senior executive Jim McBride on the floor of the knitting department regarding labor rights issues.

Third, factory management gave shifting and utterly implausible justifications for the dismissal of Mr. Castillo. The initial reason given by TOS Dominicana for the dismissal was that Mr. Castillo had behaved in a disrespectful manner to a member of management. This was the reason given to Mr. Castillo at the time of his dismissal and was given to the labor inspector of the Secretariat of Labor during its visit immediately following the dismissal. After the dismissal was ruled unlawful by the Labor Secretariat inspector, TOS management issued a different set of justifications for the firing to the Labor Court. The company made two different claims at this time: that Mr. Castillo had physically threatened the security director Mercedes Ramirez with a screwdriver on May 23; and that Mr. Castillo, along with Manuel Pujols, had sabotaged tens of thousands of dollars worth of company machinery during an electrical blackout on May 25. The fact that the final justifications were proffered only after the first two were rejected by authorities and the fact that the different sets of justifications were given to differing audiences cast doubt on the credibility of factory management's allegations.

The WRC also investigated the substance of the company's allegations and found them to be baseless. With respect to the allegation that Mr. Castillo was "disrespectful" to factory management during the encounters of October 23 and 24, as discussed above, the WRC heard credible testimony from workers who witnessed the interaction to the effect that both encounters were entirely calm and cordial, and that no aggression or disrespect was shown. With respect to the claim that Mr. Castillo physically threatened the manager with a screwdriver, the WRC carried out a thorough investigation of this claim and found it to be completely fabricated. Detailed testimony from the workers involved in the encounter and witnesses to the incident established that Mr. Castillo did not, at any time during the discussion, make any threat whatsoever to the manager in question. As do all mechanics in the factory, Mr. Castillo did have a tool for adjusting textile machines known as a "llave ala" in a side pocket during the conversation, but at no time did he remove it from his pocket or even touch it. At one point during the discussion, Ms. Ramirez asked Mr. Castillo why he had the tool, to which Mr. Castillo replied that he was a mechanic and asked if he should hand it in. She responded no, that it was fine, and there was no further mention of the tool. As noted above, the witness called to provide testimony supporting management's claims on this point and on the issue of sabotage of factory machinery in the case of Manuel Pujols testified to the WRC that he had been bribed by company management to provide knowingly false testimony. In short, the WRC concluded that no threat of any kind occurred and that the management allegation was fabricated.

With respect to the claim that Mr. Castillo sabotaged factory machinery, the WRC heard substantial and mutually corroborative testimony from workers to the effect that the allegation is preposterous. Individual workers from the department in question, who would have been in a position to witness the alleged crime and see its consequence, gave credible written and verbal testimony that no sabotage had occurred and that any problems found with the machines must have been solely the result of regular use. Additionally, the WRC reviewed a petition signed by more than 80 production workers, including both union members union and non-affiliates, stating that Mr. Castillo did not cause harm to any machines or any persons, as members of management alleged. The company, for its part, provided no credible documentation or evidence to support its claim. The WRC has concluded that no sabotage took place and that the claim was fabricated.

In sum, in view of the fact that overwhelming evidence supports the conclusion that Mr. Castillo's firing violated procedural requirements in the Dominican Labor Code, that the firing was motivated by a desire to rid the workforce of a worker activist and trade union leader, and that none of the various justifications provided by TOS Dominicana or Hanesbrands are credible, the WRC concluded that the firing violated provisions of domestic law and applicable codes of conduct.

The WRC recommended that Mr. Castillo be promptly reinstated to his former position with back pay. As noted, the Secretariat of Labor also ordered TOS Dominicana to reinstate Mr. Castillo; the company's petition for approval of the firing was rejected by the Labor Court. On November 17, 2006, after declining to accept a substantial offer of cash

from factory management on the condition that he agree not to return to the factory, Mr. Castillo was ultimately reinstated at TOS Dominicana.

However, since his reinstatement, Mr. Castillo has been the subject of persistent harassment from factory managers, as discussed above in this report. This has included instances of public degradation in front of the workforce. As in the case of Manuel Pujols, members of plant management have also on various occasions requested investigations from the Secretariat of Labor on dubious grounds, with the apparent intent of building a case to dismiss Mr. Castillo that will be upheld by Dominican Courts. The most recent such incident occurred the week of April 23, 2007 when factory management called for investigation after Mr. Castillo sought, in his capacity as a union official, to intervene in a case of alleged illegal targeted firings of union members.

Additionally, Hanesbrands executives have continued to make the false accusation that Mr. Castillo threatened the Hanesbrands' security director, doing so in written communications to the WRC on February 28 and May 2 and in person on March 23. The fact that Hanesbrands continues to repeat the allegation despite overwhelming evidence that it is false is particularly concerning, as it has the effect of impugning Mr. Castillo's character by characterizing this worker and union official essentially as a violent thug. Hanesbrands has used the false characterization as a means of discrediting the union and justifying the company's failure to respect the right of workers to unionize and to engage with the union in good faith.

## **Recommendations**

The WRC recommends that the factory take the following remedial actions:

- Offer to reinstate with full back pay from the date of dismissal each of the 29 workers who were dismissed illegally during the episode of firings in mid-April 2007. The names of these individuals are listed in footnote 9 on page 19 on this report.
- Make a statement to all of the current employees of the factory, both verbally and in writing, that the factory will respect the rights of workers to associate freely, including the right to join a union of their choosing, and that no worker will be dismissed or otherwise punished for choosing to form, join or support a union.
- Conduct training for all supervisors and administrative staff on freedom of association and the obligation of all management, supervisory and administrative employees to refrain from any coercive action with respect to workers' choices about union representation. The WRC is prepared to assist Hanesbrands in the design of this training.
- Recognize the presence of the TOS union and commence meaningful discussions with its representatives regarding the union's right to carry out lawful activities in the workplace. The union has submitted information to the Secretariat of Labor attesting that it represents greater than 50% of the workforce, the legal requirement under



Dominican law to oblige the factory to negotiate a collective bargaining agreement with worker representatives on behalf of the workforce. In order to avoid unreasonable and unnecessary delays which may result from the Dominican Labor Secretariat carrying out the process of verifying the union's majority status, TOS Dominicana and the TOS union should reach agreement on and invite an independent, neutral expert to carry out the verification process.

### **Response from Hanesbrands to WRC Findings and Recommendations**

Hanesbrands has been fully briefed on the WRC's findings and their evidentiary basis. The WRC has communicated its findings and recommendations to Hanesbrands in written communications and in-person meetings, including a meeting with senior executives of the company.

To date, Hanesbrands has maintained the position that no violations of any kind have taken place and that no remediation of any kind is therefore necessary. This position was outlined in written responses on December 15, 2006 and February 28, 2007. The communication of February 28 states that "We believe we have complied with our legal and contractual obligations to our employee and/or the issues raised [by the WRC] are simply non-issues." As noted at various points during the report, Hanesbrands has not provided a meaningful or substantive reply to the WRC's specific findings or recommendations. In its most recent written communication, on May 2, 2007, Hanesbrands dismissed the WRC's findings as "unsubstantiated allegations."

In the weeks prior to the publication of this report, there have been two developments which indicate that TOS Dominicana and Hanesbrands may be reconsidering their approach. On May 11, the factory provided workers with a pay increase which brought wages roughly to the levels that prevailed March 2006, prior to TOS Dominicana's unlawful reduction of wages. On May 18, the factory posted a notice stating that workers have the right to participate in a union and engage in collective bargaining. While these steps are positive, they do not amount to effective remediation of the violations in question. The pay raise is a partial solution to the problem, but does not address the failure to pay workers' wages in adherence with their work contracts during the previous fourteen months, nor does it address the nonpayment of legally mandated overtime or night shift wages. The posting of a freedom of association statement is likewise welcome, but must be followed by much more comprehensive measures to correct the severe violations that have occurred in this area, including reinstatement of the workers dismissed unlawfully and good faith dealings with the workers' union. The WRC has received no communication from Hanesbrands concerning these recent actions and is therefore unable to know whether these actions do or do not represent the first steps in a genuine remediation effort. However, it is difficult to be optimistic since the recent steps have been accompanied by a continuation of the violations outlined above.

The WRC will issue additional reports and/or updates on this case as circumstances warrant.