



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT of
HANSAE VIETNAM CO., LTD.**

May 6, 2016

I. Introduction

This preliminary report details the findings of the Worker Rights Consortium (WRC) concerning labor practices at Hansae Vietnam Co., Ltd. (“Hansae Vietnam” or “Hansae”), an apparel manufacturing facility located in the Cu Chi Industrial Zone in Ho Chi Minh City, Vietnam. Hansae Vietnam is a producer of university licensed goods for Nike and a producer of non-collegiate goods for several other, mainly US-based, clothing brands. The facility is owned by the Korean corporation, Hansae Co. Ltd., a large global garment manufacturer with other production facilities in Asia and Latin America. Hansae Vietnam reportedly employs in excess of 10,000 workers, who produce a range of knit and woven garments.

Obstacles to the WRC’s Investigation

The WRC has been conducting an assessment of labor practices at Hansae since October 2015. Our assessment has been impeded, however, by Nike’s refusal to facilitate access for the WRC to the factory. The WRC requested such access in this case because the size and complexity of the facility, and the substantial challenges to effective labor rights investigation in Vietnam, make physical inspection of the facility, access to its records, and interviews with its management necessary in order to complete a comprehensive assessment of its labor practices and, where needed, make appropriate recommendations for corrective action. Nike has, since October, consistently refused to facilitate access to Hansae for the WRC. Nike also declined to give its consent to a joint visit to Hansae by the WRC and the Fair Labor Association (FLA),¹ which was proposed in December by Nike licensor Cornell University and accepted by both the WRC and the FLA.²

The WRC has been able to conduct offsite interviews with a substantial number of Hansae workers, a process which we completed at the end of April 2016, and these interviews have yielded sufficient evidence to reach firm findings with respect to some labor rights issues at the factory. However, in addition to delaying the WRC’s investigative efforts by a number of months, Nike’s continued unwillingness to allow an independent inspection of this facility by the WRC has meant that 1) we have been unable to reach findings in some critical areas and 2) where we have reached findings of violations of Vietnamese labor law and university codes of conduct, the picture we have of the scope and nature of these practices in question is, in some cases, not sufficiently detailed and comprehensive so as to allow us to issue detailed recommendations for corrective action.

¹ A factory monitoring organization in which Nike is a participating company, and which, like the WRC, includes universities and colleges among its affiliates.

² Letter from Cornell University President Elizabeth Garrett to Worker Rights Consortium Executive Director Scott Nova (December 24, 2015); Letter from WRC Executive Director Scott Nova to Cornell University President Elizabeth Garrett (January 13, 2016).

For these reasons, and especially in view of the serious labor rights violations that our investigation has now identified at the factory, access to the Hansae facility for the WRC is not only still necessary, but urgently so. We continue to hope that Nike will cooperate in facilitating such access, so that the WRC can complete its investigation, document all violations of university labor codes, and create a robust action plan to remedy the harm such violations have done to workers and promote compliance going forward.

Violations of University Labor Standards at Hansae Vietnam

Based on credible, mutually corroborated testimony from Hansae employees, the WRC has identified numerous violations of both university labor codes and Vietnamese labor law at Hansae Vietnam. These violations include:

- Verbal harassment of workers by managerial personnel, including yelling, swearing, and profane insults;
- Degrading restrictions on workers' use of the factory toilets and harassment of workers attempting to use these facilities;
- Other forms of harassment and abuse, including forbidding employees from yawning at work and subjecting them to disciplinary action when they do so;
- Denial of sick leave, even when ordered by a doctor;
- Forced overtime and the use of fraudulent consent forms to conceal this practice;
- Management domination of the factory's labor union, including the installation of the factory's senior human resources manager as the union's president;
- Discriminatory dismissal of pregnant workers; and
- Management practices – including excessive production quotas, relentless pressure on workers to meet these quotas, and failure to maintain safe temperature levels in factory buildings – that results in numerous and ongoing incidents of workers collapsing unconscious at their work stations.

Of further concern, the WRC also found that Hansae Vietnam's management instructs workers to testify falsely to labor rights monitors and employs other practices designed to deceive monitors concerning the actual working conditions at the factory.

It is important to note that Hansae is a large and complex facility, consisting of 12 different production buildings, each having nearly 1,000 workers, and each with its own management team. It is clear from worker testimony that management practices and working conditions vary somewhat among Hansae's different production buildings. Many practices and conditions that

violate university labor codes (like verbal harassment, forced overtime, and workers collapsing from heat and overwork) are widespread, occurring in most or all buildings, while some practices and conditions (such as formal restrictions on bathroom use) appear to occur in some buildings but not others – or, in the case of the ban on employees yawning, in only one building.

Of course, labor rights violations of the kind identified at Hansae Vietnam are unacceptable, and must be remedied, whether they affect 1,000 workers or 10,000. While licensees are responsible, under university labor codes, for the treatment of all workers in the factories where they make university goods, we have, where possible, indicated in this report whether a particular violation is occurring in one or more of the buildings where Nike goods are reportedly produced.

Worker Strikes at Hansae in Autumn 2015

When the WRC first sought access to Hansae Vietnam in late October 2015, the urgency of our request arose from news of a strike at the factory, involving hundreds of workers. Given the risks involved in any strike by workers in a country where strikes and independent unions are effectively illegal, labor rights monitors generally recognize a major strike as an indication of potentially serious problems at a factory. In communications to universities concerning its refusal to allow the WRC to inspect the factory, Nike tried to reassure universities, telling schools that the strike involved a single, narrow issue, supposedly a “miscommunication” between a non-Vietnamese-speaking manager and workers about a productivity bonus, and that the issue had been swiftly resolved to both workers’ and management’s “mutual satisfaction.”³

Then a second strike occurred, a month later, in the same factory building. Nike again sought to reassure universities, reporting that the second strike was the result of a “further breakdown in communication,” involving the same factory manager who had previously “miscommunicated” with workers, and that the problem had again been resolved.⁴

The WRC’s investigation has revealed that the issues that led to multiple strikes in Building 5 at Hansae, a production facility where workers report that Nike is the largest producer, go far deeper than productivity bonuses and language barriers. According to testimony from workers employed in Building 5, as well as other workers aware of these events, employees went on strike because of a host of cruel, abusive, and illegal practices by senior management, including managers shouting vulgar insults at workers, and other verbal abuse, telling workers that they

³ Letter from Sharla Settlemaier, Nike Vice-President of Sustainable Manufacturing and Sourcing, to universities (December 8, 2015); (the text of this communication was provided to the WRC by Nike)

⁴ Nike subsequently reported that it had asked the FLA to assess whether the resolution of the miscommunication issues had been correctly implemented and whether “additional training to support stronger communication with workers” might be needed. At no point has Nike informed universities that there may be significant violations of university labor standards at Hansae. *See*, letter from Sharla Settlemaier, Nike Vice-President of Sustainable Manufacturing and Sourcing, to Acting Cornell President Michael Kotlokoﬀ (March 25, 2016). Similar communications were sent to a number of other universities.

were prohibited from yawning and then punishing them when they were caught doing so, denying workers permission to attend the funerals of family members, imposing degrading restrictions on workers' use of toilets, and other cruelties. According to a worker involved in the strikes, the second strike ended not because workers considered these issues resolved, but because they feared being fired by Hansae managers if they continued to protest this abusive treatment. Workers report that, after the second strike, the behavior of the most culpable manager improved "a bit," but that the management in Building 5 then also increased already high production quotas, exacerbating existing problems, such, workers having to work through their rest breaks to meet their targets.

As we outline in this report, many of the violations of workers' rights that precipitated the strikes in Building 5 are found in other Hansae factory buildings as well – which helps to explain why, according to worker testimony, there have also been strikes in recent years in Buildings 2 and 12, both of which also reportedly produce for Nike, as well as in other buildings at the factory. These serious and ongoing labor rights violations, which affect workers at numerous production buildings at Hansae, may also help to explain Nike and Hansae's reluctance to allow the WRC into the facility.

II. Methodology

The WRC initiated its assessment of labor conditions at Hansae Vietnam in October 2015 and our research continues through the date of this writing.

The WRC has conducted its assessment of Hansae with the assistance of local investigators who, along with WRC personnel, have conducted in-depth interviews with 25 current employees of Hansae Vietnam, as well as shorter follow-up interviews with employees, both in person and by telephone.

The workers who were interviewed range in age from 22 to 45. Six of these workers are men and 19 are women (a ratio reflective of the demographic make-up of the Vietnamese apparel workforce). Most of the workers interviewed are sewing operators, a classification which makes up the bulk of employment at the factory; the group also includes workers employed in ironing, finishing, and warehouse operations. The WRC interviewed workers from eight of the factory's production buildings, including three buildings where workers report that Nike goods are manufactured.

Workers were interviewed off-site, in locations of their choosing, and under conditions of strict confidentiality, due to workers' fear of reprisal from management if it became known that they had spoken candidly to outside investigators. This methodology is consistent with established best practice in labor rights investigations, which recognizes that workers interviewed inside factories are more vulnerable to intimidation and "coaching" by factory managers, which often

leads to concealment and underreporting of violations.⁵ The WRC also reviewed local Vietnamese media reports concerning events at the factory.

The WRC assessed the factory's labor practices and working conditions in relation to its obligations under:

- University labor codes;
- Vietnamese labor law and regulations, including Vietnam's 2012 Labor Code⁶ and implementing regulations, including the 2012 Labor Hygiene Standards issued by the country's Ministry of Health;⁷ and
- Conventions of the International Labour Organization (ILO) that Vietnam's government has ratified or that are otherwise binding upon it.⁸

III. Findings

A. Health and Safety

University labor codes require employers to maintain a safe and healthy work environment. The Collegiate Licensing Company (CLC) Special Agreement on Labor Codes of Conduct ("the CLC labor code"), for example, states that "Licensees shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of Licensee facilities."⁹ Vietnamese labor law also recognizes that workers have the "right...to work in a safe and healthy environment."¹⁰

⁵ See, e.g., Kishanthi Parella, "Outsourcing Corporate Accountability," 89 *Wash. Law Rev.* 747, 776 (2014), <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1394/89WLR0747.pdf?sequence=1&isAllowed=y>.

⁶ Labor Code of June 18, 2012, Law 10-2012-QH13 ("Labor Code"), available in English translation at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

⁷ Ministry of Health, Labour Hygiene Standards (Oct. 10, 2012).

⁸ Vietnam has ratified 20 Conventions of the ILO, of which 17 concern labour rights and working conditions (the remaining three address government employment policy and Labour Ministry administration). Five of these 17 are among the ILO's "Fundamental Conventions:" Conventions 29 (Forced Labour), 138 (Minimum Age), 182 (Worst Forms of Child Labour), 100 (Equal Remuneration), and 111 (Discrimination (Employment and Occupation)). The remaining 12 are "Technical Conventions:" Conventions 6 (Night Work of Young Persons (Industry)), 14 (Weekly Rest (Industry)), 27 (Marking of Weight (Packages Transported by Vessels)), 45 (Underground Work (Women)), 80 (Final Articles Revision), 116 (Final Articles Revision), 120 (Hygiene (Commerce and Offices)), 123 (Minimum Age (Underground Work)), 124 (Medical Examination of Young Persons (Underground Work)), 155 (Occupational Safety and Health), 187 (Promotional Framework for Occupational Safety and Health), and Maritime Labour Convention, 2006 (MLC, 2006). As an ILO member state, Vietnam is also obligated under the ILO Declaration on Fundamental Principles and Rights at Work (1998) to comply with all "Fundamental Conventions," which additionally include Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining), even though it has not ratified these conventions.

⁹ Collegiate Licensing Company, Special Agreement Concerning Workplace Codes of Conduct ("CLC Code of Conduct"), Sched. I. §II(2)(B)(6).

¹⁰ Labor Code, Art. 5 (1)(b)., *supra*, n. 4.

Most buyer codes of conduct, including Nike's,¹¹ also include a broad protection concerning occupational safety and health.

The WRC's investigation of labor practices at Hansae found, based on credible and mutually corroborated testimony from factory employees, that Hansae Vietnam fails to maintain a safe and healthy work environment and thereby violates university labor codes. Hansae management engages in a set of workplace practices – intense pressure to meet high production quotas, restrictions on rest breaks, and inadequate ventilation and cooling systems – that combine to create an environment where employees frequently lose consciousness and collapse at their work stations.

These incidents occur with alarming frequency at Hansae, and, according to credible worker testimony, are a product of:

- Overwork resulting from high production targets set by the company and its punishment and verbal harassment of workers who fail to meet these targets, which places intense and relentless pressure on employees to produce garments as quickly as possible;
- Workers foregoing part of their lunch break and/or part or all of their brief morning and afternoon rest breaks, because they are unable to meet production targets if they rest;
- Workers refraining from drinking water during the workday, and/or from using the bathroom, again as a means to avoid losing production time;
- The practice by some Hansae managers of restricting morning and afternoon rest breaks to three minutes instead of the five minutes that factory policy reportedly requires;¹² and
- Excessive heat in some factory buildings, especially in the summer months, with temperatures sometimes in excess of 98 degrees Fahrenheit.

Testimony from workers, including workers who, themselves, have fainted on the job in recent months, establishes a clear causal link between the conditions described above and the high incidence of fainting by factory employees that witnesses report.

This problem is widespread at Hansae, with workers from eight different production facilities testifying that fainting is a regular occurrence in their workplaces. The WRC interviewed three workers, all of them women, who reported that they had recently collapsed at work – and we interviewed several additional witnesses who have personally seen other workers faint on the job. Nearly two-thirds of all workers interviewed by the WRC have either fainted, seen others

¹¹ Nike Code of Conduct (August 2010), available at http://www.nikeresponsibility.com/report/uploads/files/Nike_Code_of_Conduct.pdf.

¹² Testimony from Hansae Vietnam worker, interviewed by WRC investigator on March 13, 2016.

faint, or testified that it is common knowledge at Hansae that workers sometimes faint during the workday.

One worker testified that she had witnessed other employees fainting, but had not fainted, herself. However, when the WRC contacted her again several weeks later, we learned that she had collapsed at work on the previous morning.

The exact frequency at which workers faint on the job at Hansae cannot be determined solely from worker testimony, since no individual worker has a comprehensive knowledge of the phenomenon, which almost surely varies in incidence among production buildings. One employee estimates that in the production building where he works, one to two employees faint *per day* during the hottest months of the year. This worker told WRC investigators, “Faintings happens every day, maybe one or two persons. They are carried to the clinic to rest half an hour, and then they [are told to] return to work.” Several other workers concurred with this estimate, with respect to their own production buildings. Another worker estimates that several workers faint per week in her building, but that some months (presumably those with cooler weather and/or lower production levels) can pass with no incidents.

Given the large number of witnesses who testified that fainting occurs frequently at the factory, and given that the WRC identified three workers who themselves have recently collapsed, out of a sample of 25, it is clear that this problem is neither small nor isolated to a particular production building, but is factory-wide, affecting substantial numbers of Hansae workers.

Worker testimonies link the problem of fainting on the job to the high production targets cited by worker after worker and to the pressure managers place on workers to meet these targets. One worker explained, “Some workers get so tired [from overwork] that they faint. Even when they are sick they are not allowed to go home early and this causes people to pass out.” According to almost all of the piece-rate workers the WRC interviewed, production targets are very high at Hansae, relative to the level of production that workers say they can achieve without exhausting themselves.

Hansae management’s strategy for dealing with the difficulty many workers reportedly experience in meeting these production targets is to use a combination of verbal harassment, threats of dismissal, and disciplinary action to push employees to work faster. Employees across production buildings at Hansae testified that persistent failure to meet these targets results in a warning letter from the management and that multiple warning letters (three in total, according to most workers who were able to cite a number) can result in dismissal. In addition, workers testified that managers and supervisors frequently shout and lob insults, often profane, at workers who fall short of the management’s desired production speed. (Verbal harassment is a violation of applicable law and codes in itself and is discussed in greater detail in a subsequent section of this report.) According to worker testimony, managers tell workers they are “as stupid as a cow” and call them “bastards,” among other comparable insults, or simply yell such vulgarities as

“fuck you, asshole.” Commonly, workers reported, these insults are combined with threats of dismissal.

Several workers testified about a manager in Building 5 who insisted that workers never yawn on the job – and who issued disciplinary warning letters, which can lead to dismissal, to any worker who failed to heed this absurd injunction. Indeed, as discussed above, contrary to Nike’s claim that the worker strikes in the fall that took place at Building 5 were exclusively the result of a “miscommunication” concerning bonus payments, employees testified clearly that this manager’s cruel and humiliating treatment of workers was a key precipitating factor in their job action.

The combination of threats of severe disciplinary sanctions, along with verbal abuse and shouting by managers, creates enormous and relentless pressure on Hansae workers to speed production. The majority of workers testified that they must expend great physical effort to meet targets and that, as a result, they are chronically exhausted. Several workers said it is common for them to forego toilet breaks, even when they need to urinate, and/or to forego drinking water, in order to minimize lost production time. Some, though not all workers, testified that it is common to work through brief rest breaks and/or to work through part of their lunch break (though according to workers in two buildings, the power in those buildings is cut during lunch break, so such work is not possible).

The problem of insufficient rest is exacerbated, according to the testimony of many workers, by the management’s efforts to restrict bathroom use. Worker testimony suggests that the tactics utilized vary among production buildings and include following workers into the bathroom to tell them to return to work, photographing workers entering and leaving the bathroom, and, in some cases, forbidding workers to use the toilet at all, except at times specifically designated by management. (The issue of restrictions on bathroom use, another violation of university standards, is discussed in greater detail later in this report.)

Most workers, across factory buildings, testified that temperatures inside Hansae’s production buildings are often very hot, especially during the summer months. Without physical access to the factory, it is impossible for the WRC to determine actual ambient temperatures with confidence, but the commonality and intensity of workers’ testimony on this issue, and specific estimates from witnesses of temperatures that sometimes approach 100 degrees Fahrenheit (one worker testified to having personally viewed thermometer readings as high as 37 degrees Celsius (99 degrees Fahrenheit)), make it clear that temperatures are very high much of the time in many production buildings.

It is also clear that, at some times of year, and in some buildings, temperatures exceed the already high maximum allowed by Vietnamese law. Vietnam’s Ministry of Health has established standards for acceptable workplace temperatures which require, during the hot season, a maximum temperature of 34 degrees Celsius (93 degrees Fahrenheit) for employees

engaged in light labor and 30 degrees Celsius (86 degrees Fahrenheit) for employees engaged in heavy labor – which includes certain types of work involved in apparel and textile manufacturing).¹³ A number of witnesses noted that the factory has ventilation systems and, at least in some buildings, evaporative cooling systems, but that the latter are often not in operation or are ineffective. It is the WRC's conclusion that the dangerously high temperatures described by workers are a precipitating factor in the widespread incidence of physical collapse among Hansae workers.

The unhealthy work environment that results from the management practices outlined above, and which is causing some workers to collapse on the job, is exacerbated by the manner in which Hansae's management responds to workers' physical distress. According to testimony from multiple workers, those who faint are carried by their arms and legs to the clinic (there are reportedly no stretchers on site), or are led there if they regain consciousness quickly, and, once conscious, are usually allowed only a brief respite – reportedly, 30 minutes – before being forced to return to work. Employees who ask to be allowed to go home after fainting on the job are usually denied permission to leave the factory. Requiring workers who have fainted and collapsed on the job to return to high-stress physical labor, in a hot factory, half an hour after they regain consciousness, demonstrates a deeply disturbing disregard for the health, safety and general wellbeing of workers – one also reflected in other practices of Hansae's management (see the section below concerning sick leave).

While the WRC has previously identified cases of workers fainting at other factories,¹⁴ the WRC has never previously encountered an incidence of physical collapse this widespread at any factory in the collegiate supply chain. Not all workers testified that they were aware of co-workers fainting, and the WRC did not obtain testimony from workers in all of Hansae's factory buildings. However, as noted above, nearly two thirds of employee witnesses testified that fainting occurs, and these witnesses were drawn from eight different production buildings, leaving no question that the problem is substantial and widespread. Indeed, even if workers are substantially *overestimating* the number of fainting incidents, there are, at a minimum, at least *several hundred cases* of workers collapsing unconscious at their workstations, from overwork and excessive heat, in the course of a given year at Hansae Vietnam.

¹³ Labour Hygiene Standards, *supra*, n. 5.

¹⁴ See, WRC, Factory Assessment Report, Zongtex Garment Mfg (Cambodia), March 13, 2014, available at: <http://workersrights.org/Freports/WRC%20Assessment%20re%20Zongtex%20%28Cambodia%29%203.13.2014.pdf>.

B. Sick Leave

Vietnamese law requires employers to provide sick leave to workers when so directed, in writing, by the worker's physician.¹⁵ Vietnamese law also prohibits using wage deductions as a form of discipline except to compensate employers for damage caused by employees to machinery.¹⁶ University codes require that licensees ensure that their factories provide all legally mandated benefits to workers, including sick leave, and, more generally, require compliance with all local labor laws.¹⁷ Nike's own code requires that workers be provided with legally mandated sick leave.

According to testimony from Hansae workers, the factory's management restricts workers' access to legally mandated sick leave and docks workers' pay for taking sick days, violating Vietnamese law and university labor codes. Workers from several different production buildings testified that access to sick leave is limited to a number of days determined by *Hansae managers*, rather than being determined by the medical advice of the worker's physician. Workers also reported that they lose their entire monthly "diligence bonus" (a form of attendance bonus common in Vietnam) if they take even a single, officially approved sick day.

1. Denial of Physician-Ordered Sick Leave

Several workers testified, from personal experience, that Hansae denied them the number of days of leave deemed necessary by their doctors, instead, granting only a portion of the medically required period of rest. In one case, the worker, suffering from a back injury, was prescribed, upon diagnosis via x-ray, five days' rest by a physician. When the worker presented the doctor's letter to management, however, the manager told him he could have only two days of rest – the day of work he had already missed to see the doctor and one additional day. The worker quoted the manager, who is not himself a physician, as telling him, "This is not serious, so you can only take one [more] day off."

Another worker was prescribed two days of rest due to dizziness which, she reported, the doctor attributed in part to overwork. She presented the doctor's certificate to Hansae management and was told she would be allowed one day off, the day she had already missed to go to the hospital, and would be required to return to work the next day. She was told "we have no one to replace you, so you have to come to work."

Some workers, convinced that trying to get management to approve sick leave is a fruitless exercise, take sick days, when they must, without permission and suffer the disciplinary

¹⁵ Law on Social Insurance of November 20, 2014, Law 58/2014/QH13 ("Law on Social Insurance"), Article 25 (1), available in English translation at: <http://vietnamlawenglish.blogspot.com/2014/11/vietnam-social-insurance-law-2014.html>.

¹⁶ Labor Code, Article 101.

¹⁷ CLC Code of Conduct, §II(2).

consequences. One worker stated, “I had to go to the hospital last April. Because I knew I wouldn’t get a day off, I just went anyway and got a warning for absence.”

It is important to note that Vietnamese law on sick leave is already restrictive, allowing paid leave only in cases where a doctor determines it is necessary and provides a letter to the employer – making it especially important for employers to fully respect the decisions made by medical professionals. Hansae managers, by overriding doctors’ orders in favor of the factory’s production demands, violates the law and demonstrates disregard for the health and well-being of employees.

2. Illegal Pay Deductions for Use of Sick Leave

Workers also reported that they face substantial economic penalties if they take a sick day. Numerous workers testified that Hansae management deducts a worker’s entire monthly “diligence bonus” of 250,000 VND (11.22 USD) if he or she takes even one sick day – even if the absence is ordered by a doctor and approved by factory management. This practice violates Vietnamese law and thus also violates university codes of conduct that require compliance with all local labor laws. Under Vietnamese law, all wage deductions used as a form of discipline are illegal, except if they serve to compensate employers for damage caused by employees to machinery.¹⁸ Docking workers the equivalent of two days’ pay (at minimum wage) for any use of sick leave also has the effect of deterring workers from using this legally guaranteed benefit and therefore also violates the law in this respect.

It is unclear how widespread the denial of sick leave is at Hansae. Several workers testified that they *can* take prescribed medical leave and others said that they have never attempted to take leave and are therefore unsure what would happen if they did. This likely indicates that there is some variation among production buildings and/or among varying management personnel in the handling of leave requests. It may, alternatively, simply indicate that these requests are handled differently depending on the level of production, and concomitant personnel needs, in the factory at a given moment in time. Many workers, including most who said they are able to take sick leave, reported the loss of their “diligence bonus,” indicating that this illegal pay deduction is applied fairly broadly at Hansae, but it is unclear if the practice is universal.

A comprehensive map of Hansae’s practices in this regard, across time and across production buildings, would require access to factory records (assuming these are accurate) and to interviews with relevant management personnel. While there is sufficient evidence to conclude that Hansae is violating the law with respect to medical leave, Nike’s unwillingness to facilitate access to the factory has, so far, prevented the WRC from determining the full scope of these violations.

¹⁸ Labor Code, Article 101.

C. Forced Overtime

Under Vietnamese law, all overtime must be voluntary.¹⁹ University labor codes all require compliance with such local laws. Nike’s code likewise requires that overtime be “consensual.”²⁰

Testimony from Hansae workers shows that the company is violating the law in this regard. For many workers at the factory, overtime is effectively compulsory.

The standard workday at Hansae Vietnam, as described by most workers, is nine hours. The actual start and end times appear to vary somewhat, but, most commonly, work begins at 7:30 a.m. and ends at 4:30 p.m. Since the statutory workday is eight hours²¹ (and since the mid-day break, which is one hour at Hansae, is considered compensated work time under Vietnamese law²²), Hansae’s standard workday includes one hour of overtime per day (and therefore six hours of overtime per week).²³ This would be lawful if those workers who prefer not to work overtime on a given day were allowed to decline to do so; but this is not the case for many workers at Hansae. On some days, there are also additional hours of overtime, which vary among production buildings.

According to testimony from numerous workers, across production buildings, workers are in many cases not allowed to refuse overtime. Moreover, all workers are *required* to sign a consent form, indicating that they have chosen to perform overtime voluntarily – presumably so that Hansae can show this documentation to auditors as ostensible proof of compliance. Several workers testified that a worker who does not wish to sign this form has to provide a specific reason why he or she cannot work overtime – a requirement that is, on its face, illegal, since the obligation to *justify* the decision to decline overtime is incompatible with a genuinely voluntary system.

In any case, even where workers are able and willing to provide a reason for declining overtime, the frequent response from managers is yelling, shouting, and a refusal to accept the worker’s justification. When asked the consequences that would befall a worker who consistently refused overtime, several workers said that the result would be dismissal, with another suggesting it is a moot point, since no one dares to refuse.

Not every worker testified that overtime is obligatory, although a majority of those interviewed did. Several workers said that it is possible to refuse overtime, though none testified that they had

¹⁹ Labor Code, Articles 8, Clause 3, 106 Clause 8 Item A.

²⁰ Nike Code of Conduct, *supra*, n. 11.

²¹ Labor Code, Article 104 (1).

²² *Id.*, Article 108 (1) (“[A]n employee who works consecutively for 08 hours or 06 hours under Article 104 of this Code, shall be given an intercessional rest break of at least 30 minutes, which shall be included in the working hours.”); Decree 45/2013/NĐ-CP, Article 5 Clause 2; Circular 15/2003/TT-BLĐTBXH, Section II Clause 1.2.

²³ Vietnam’s labor law defines overtime as all hours in excess of 48 in a single week and also sets maximum limits on the number of hours of overtime that employees in the textile industry may perform, as follows: 12 hours per week, 30 hours per month, and 300 hours per year. *See*, Labor Code, Article 106.

personally done so. This variation in worker testimony likely reflects the apparent variation in management practices, on some issues, among different factory buildings and may also be a product of the fact that many workers have never tried to refuse overtime and are therefore testifying on the basis of perception and common knowledge, rather than direct experience. Moreover, as is common in garment factories, although workers want to be able to refuse overtime when health or personal obligations require it, most workers also want the opportunity to work overtime when they are able, since this is the primary means available to them to augment the extremely low wages that prevail in the industry (i.e., a minimum wage of 67 cents an hour – 139.10 USD per month – in the region of Vietnam where Hansae is located²⁴). The wish to have the opportunity to work more overtime on most days is entirely compatible with the wish to be able to refuse overtime when necessary and, indeed, both are common among garment workers, in Vietnam and elsewhere, given the realities of the industry.

Taken as a whole, worker testimony demonstrates conclusively that many Hansae workers are deprived of the right to refuse overtime and that Hansae management maintains a practice of generating false documentation of voluntary consent to overtime, in at least some production buildings.

The experience of one worker demonstrates why the right to refuse overtime matters. One witness shared the story of a co-worker who sought leave to attend the funeral of a family member. Not only did the management refuse to grant leave to her on the day of the funeral, but the worker was also forced to work three hours of overtime on that day, ensuring that she could not be with her mourning family until late in the evening.

D. Freedom of Association

Vietnamese labor law restricts associational rights for all workers through its requirement that all unions in the country be affiliated with the Vietnam General Confederation of Labor (“VGCL”), which, under its own governing rules, describes itself as “a member of the political system under the leadership of the Communist Party of Vietnam.”²⁵ This requirement has been retained under the country’s new trade union law, which took effect on May 1, 2013.²⁶ Since workers are prohibited by law from forming or joining an independent union, Hansae Vietnam, like all factories in Vietnam, violates the requirement, contained in virtually all university labor codes, that employers respect workers’ associational rights, which include the right to form or join a union of their own choosing.²⁷

²⁴ Labor Code, Article 91; Decree 103/2014/NĐ-CP; and Circular 33/2013/TT-BLĐTBXH.

²⁵ VGCL, *Statutes of the Vietnamese Trade Unions* (Nov. 5, 2008), <http://www.congdoanvn.org.vn/english/details.asp?l=1&c=240&c2=240&m=557>.

²⁶ Law on Trade Unions, Law 12/2012/QH13 (Jun. 20, 2012), <http://luatkhaphong.com/Van-ban-Tieng-Anh/Law-No.-12/2012/QH13-dated-June-20-2012-6627.html>.

²⁷ ILO Convention 87 (“Workers ... shall have the right to establish and ... to join organisations of their own choosing without previous authorisation.”).

While Nike’s own labor code gives countries like Vietnam a pass on this issue, requiring respect for associational rights only “to the extent permitted by the laws of the manufacturing country,”²⁸ university codes do not. Indeed, many university codes go further and require proactive steps by licensees to challenge the status quo in their supplier factories in countries where this right is restricted, “tak[ing] effective actions...to achieve the maximum possible compliance” with respect to this fundamental right.²⁹

Like many other employers in Vietnam, Hansae further restricts freedom of association at its factory by having its managers serve as officers of the factory’s union. According to multiple reports from Vietnamese media outlets, Hansae Vietnam’s senior human resources manager, Mr. Vo Van Hung, the company’s chief of human resources, is also the president of the Hansae Vietnam labor union.³⁰ Workers also told WRC investigators that other managers hold official leadership positions in the union – one worker specifically cited a senior manager in Building 2, which produces for Nike, as being a union official. Unfortunately, without access to factory records, the WRC has not been able to document in detail the various union positions held by managerial employees; however, the evidenced gathered is sufficient to conclude that at least some union positions are so occupied, including the highest one. For obvious reasons, having factory managers serve in leadership positions in a labor union that is supposed to represent workers’ interests (representation that matters most in cases where workers’ interests *conflict* with those of management) is a gross violation of workers’ associational rights³¹ – and one that Hansae Vietnam is under no legal obligation to commit, since Vietnamese law does not prohibit the exclusion of managers from union leadership positions.

By failing to challenge this practice, Nike, in addition to violating university code provisions requiring respect for associational rights (which is unavoidable in Vietnam), is also violating the provision of the CLC labor code of conduct³² that requires university licensees, in countries like

²⁸ Nike Code of Conduct, *supra*, n. 11.

²⁹ The Collegiate Licensing Company’s Labor Code Standards, for example, state that licensees, “shall recognize and respect the right of employees to freedom of association and collective bargaining...[and] in countries where law or practice conflicts with these labor standards, Licensees agree to consult with governmental, human rights, labor and business organizations and to take effective actions as evaluated by CLC, the applicable Collegiate Institution(s) or their designee, and the applicable Licensee(s) to achieve the maximum possible compliance with each of these standards.” *See*, Collegiate Licensing Company, at §II(B)(9) and §II(A).

³⁰ Theo Báo Người, “Master Needle: HRM staff to understand the law and justice, otherwise it will cause unpredictable consequences for business,” *Dan Tri* (November 18, 2015) <http://dantri.com.vn/viec-lam/thay-dui-hai-doanh-nghiep-1427225049.htm> (in Vietnamese); Khan Linh, “Troubleshooting Professional,” *Nguoi Lao Dong* (July 23, 2011), <http://nld.com.vn/cong-doan/chuyen-gia-xu-ly-su-co-2011072310290516.htm> (in Vietnamese).

³¹ ILO Convention 98 § 2 (“Workers’ ... organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.... In particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article.”).

³² Where universities have chosen to apply the CLC Code of Conduct to their Nike licensees.

Vietnam, to “take effective actions...to achieve the maximum possible compliance”³³ with the code’s standards. Violations of that provision are avoidable, if a licensee is willing to prohibit such egregious practices as having factory managers run the workers’ union, but Nike has evidently not done so at Hansae Vietnam.

It is important to note that workers at Hansae Vietnam – despite being denied a representative union, despite being saddled, instead, with a union that has factory managers in leadership positions, and despite severe limitations on the right to strike under Vietnamese law – have repeatedly engaged in self-organized strikes³⁴ to challenge abusive treatment and other violations of the labor law, including the strikes that occurred at Building 5 last year. According to worker testimony, these strikes are carried out by workers over the opposition of the official union leadership.

E. Recruitment Violations

Vietnamese law prohibits employers from making workers pay recruitment fees as part of the hiring process; under the law, the employer is required to bear all costs related to recruitment and hiring.³⁵ Since university labor codes require compliance with all local labor laws, university codes also prohibit this practice. Charging recruitment fees is also prohibited by many buyer codes of conduct (though, in Nike’s case, the prohibition applies only to workers migrating from other countries).³⁶

Some Hansae Vietnam managers require some job applicants, primarily those who are male, to pay a fee in order to secure a job at the factory. Since there is no basis under Vietnamese law for the imposition of such fees, and since the solicitation appears to be made by certain managers of their own personal volition, these fees are more properly classified as “bribes,” extorted from workers who are made to understand that their application will be rejected if they do not pay. While this does not appear to be an official policy of the company, it is nonetheless the responsibility of Hansae to prevent illegal practices by managers who cause harm to workers by abusing their authority, and the company has failed to do so in this case. Hansae Vietnam is therefore in violation of Vietnamese law and university codes of conduct.

While about half of those workers who were asked about this practice were not aware of it (the WRC was not able to ask all the workers we interviewed about this issue), seven different workers testified that the practice is common in the case of male workers. Three of these workers

³³ See, CLC Code of Conduct, §II(A).

³⁴ Phuong Kỳ & Trọng Hiếu, “Hundreds of striking workers at the company HANSAE Vietnam,” *Bao Moi* (July 3, 2013) <http://www.baomoi.com/tphcm-hang-tram-cong-nhan-dinh-cong-tai-cong-ty-hansae-viet-nam/c/11387993.epi> (in Vietnamese); Anh Thu, “One executive temporarily suspended from work,” *Hanoi Moi* (August 12, 2005) <http://hanoimoi.com.vn/Ban-in/Phap-luat/68224/t7841%3Bm-273%3Binh-ch7881%3B-cong-tac-m7897%3Bt-giam-273%3B7889%3Bc-273%3Banh-cong-nhan> (in Vietnamese).

³⁵ Labor Code, Article 20 (2).

³⁶ See e.g., Nike Code of Conduct, *supra*, n. 13.

stated that they had personally been required to make these payments; one worker testified that he had done so three times, because he had twice left his job at the factory for personal reasons and later sought to return.

According to worker testimony, the affected applicants are typically required to pay from 2 million to 4 million Dong (from 90 to 180 USD) to obtain employment at the factory. This represents from three to six weeks' wages, at the legal minimum wage – a substantial burden for workers who rarely have any savings and may have to borrow the funds and then devote a significant percentage of their already low wages to paying off the debt. These bribes are a type of wage theft – a practice that comes in many forms in the garment industry and has the effect of deepening the economic hardship of workers whose meager wages already often leave them impoverished.

Workers report that such bribes are usually demanded by managerial employees who receive their job applications, but in some cases by another more senior manager who conveys the demand for a bribe, via a worker who is a relative of the job applicant. One worker who had been forced to pay such a bribe told WRC investigators, “I gave the money directly to the person handling my application. Many workers have to pay to get a job, especially if you are from outside Ho Chi Minh City.”

It is unclear why this predatory practice affects primarily male job applicants – though this may relate to the preference of many factories in Vietnam for hiring female workers for the sewing positions that represent the bulk of factory employment and the resulting relative scarcity of jobs for male workers.

One worker reported that the management in one factory building made an announcement, in recent weeks, that any worker aware of managers demanding bribes from job applicants should report this to the company. The worker expressed skepticism that anyone would do so, given the prospect of retaliation by the managers involved in the practice. It is unclear whether this announcement, which was cited only by this worker, represents a serious effort by management to end this illegal and abusive practice.

F. Harassment and Abuse

University labor codes prohibit abuse and harassment of workers. The CLC labor code, for example, which includes a section devoted to the issue, forbids “physical, sexual, psychological or verbal harassment or abuse” of any employee.³⁷ It further requires that “every employee shall be treated with dignity and respect.”³⁸ Vietnamese labor law also prohibits “maltreatment” of

³⁷ CLC Code of Conduct, §II(B)(8).

³⁸ *Id.*

workers.³⁹ Virtually all corporate labor codes, including the Nike code, also ban all forms of abuse and harassment of employees.⁴⁰

Workers at Hansae Vietnam are subjected to multiple forms of harassment and abuse by company supervisors and managers, in violation of university codes and Vietnamese law, according to credible and mutually corroborated worker testimony:

- Workers are subjected to verbal abuse in the form of managers shouting at workers, insulting them in profane terms, and threatening disciplinary action as a means of humiliation and intimidation.
- Workers are subjected to degrading restrictions on the use of toilets and are sometimes harassed by managers while in the bathroom or while entering or exiting the bathroom.
- Workers in a production building where Nike products are made have been subjected to a tyrannical practice in which workers are forbidden to yawn while working and are subjected to disciplinary action for disobeying this arbitrary rule.

1. Verbal Harassment of Workers

A majority of workers interviewed by WRC investigators testified to having experienced and/or witnessed one or more forms of verbal harassment at Hansae. The WRC received testimony about verbal abuse from workers employed in eight different production buildings, including three buildings reportedly engaged in production for Nike.

Workers report that some managers routinely shout and yell at workers – when workers commit a production error, are perceived as working with insufficient haste or zeal, or seek permission to leave the factory (e.g., seeking to take leave, seeking to decline overtime hours). According to worker testimony, this verbal abuse often involves the use of vulgar insults: with some managers referring to workers as “bastards,” as “stupid,” as “chicken heads,” and similar epithets.

Workers interviewed by the WRC were very reluctant to quote verbatim the vulgarities to which management subjects them – a hesitancy that is common in the worker interview process. Some workers were, however, willing to quote managers directly. In addition to the aforementioned use of the term “bastard,” other profanities attributed to Hansae managers include “asshole,” “fuck you,” and “cow,” the last of these directed specifically at female employees. As a result of workers’ reticence on this subject, it is likely that the complete repertoire of insults utilized by Hansae managers has not come to light, but the examples workers did provide are sufficient to demonstrate the nature of the practice.

³⁹ Labor Code, Article 8, Section 2.

⁴⁰ Nike Code of Conduct, *supra*, n. 11.

Workers testify that it is also common for managers to threaten workers with dismissal if they don't display whatever level of production speed, obedience to management, or schedule flexibility managers are demanding – and to tell them mockingly that they should simply quit. According to one female worker, her manager became enraged when she was struggling to meet a high production target one day and yelled, “If you can't finish, just quit! If you don't know the work, then leave!” Another worker described a recent case of a female co-worker quitting in humiliation after managers yelled at her repeatedly in front of other workers and threatened her with dismissal.⁴¹ Another worker, one who was actually less critical of management than most, nonetheless confirmed management's verbal harassment of workers, citing the example of managers yelling threats of mass layoffs if workers did not work faster.

Workers attribute more of the harassment and abuse to (generally lower level) managers of Vietnamese nationality than to (senior) Korean managers. It is unclear whether this reflects less abusive tendencies on the part of senior managers or merely reflects the fact that workers have more contact with lower level managers.

A number of workers also decried the role of managers they refer to as “specialists,” who, according to workers, are not Vietnamese, but are either Korean or are nationals of other Asian countries, including China, Japan, and the Philippines. Workers were unable to provide a detailed explanation of the exact role of these “specialists,” but some described them as “technical experts” and workers made clear that the specialists have significant managerial authority, outranking direct supervisors.

Workers from several different production buildings reported that the specialists are the biggest offenders in terms of verbal harassment and abuse, testifying that is common for specialists to yell, swear, and treat workers rudely. Said one worker, “The specialists are very impolite and use coarse speech and yell.” This worker did not discount the possibility that workers deserved criticism, but expressed the reasonable opinion that this criticism should be not be expressed disrespectfully (as is, in fact, prohibited by Vietnamese law and university labor codes).

2. Abusive Restrictions on Toilet Access

Another form of abuse to which Hansae workers report being subjected is degrading restrictions on the use of the factory's toilets. As discussed in the prior section in this report concerning the problem of employees fainting from a combination of overwork, high heat levels and insufficient rest, many workers report that they take only one or two brief bathroom breaks per day, and sometimes none, because any time away from their work stations causes them to miss what they describe as excessive production targets and therefore face verbal abuse and potential dismissal. In addition to those restrictions, which are an indirect product of the intense pressure on workers

⁴¹ Notably, the witness said she could not put WRC investigators in touch with this worker because the intense work pressure at Hansae had made it impossible to interact with her socially, so she had never gotten to know her, although the worker apparently worked close by the witness..

to produce rapidly, workers also report direct restrictions on bathroom use imposed by some factory managers.

Most commonly, workers describe an informal practice of managers harassing workers who are perceived as using the toilet too frequently or for too long. Workers from several different production buildings told WRC investigators that some managers follow workers to the bathroom, on some occasions actually entering to insist that workers return to their work stations. One worker said that this management harassment means that a worker “can’t go to the bathroom for more than five minutes.”

According to worker testimony, some managers take photographs of workers entering or exiting the bathroom, a practice that serves both to humiliate and intimidate – with workers assuming that the reason managers are taking photographs is to create a documentary basis for dismissal. One worker reported the role of a senior manager and of high-ranking “specialists” in this practice: “Now when workers go to the toilet, sometimes the vice-manager or some of the specialists will follow and take pictures of the workers. They don’t care whether they have been to the toilet for long or not.”

In addition to the practice of informal harassment, several workers testified that in the areas, or production lines, where they work, toilet access is officially limited, usually to two brief visits per day, at times determined by management. There is sufficient evidence from worker testimony to conclude that this practice exists in at least some parts of some production buildings, though the number of worker reporting it is modest. One of the places where workers report the practice is Building 5, which produces Nike goods and, as discussed earlier, was the scene of multiple strikes in the fall of 2015. Worker testimony indicates that a policy restricting bathroom visits to a maximum of two per day was one of the abuses that led to the worker protests.

The common practice of harassing and photographing workers who are attempting to enter the bathroom to relieve themselves, and the less common practice of officially restricting the freedom of workers to do so, are serious forms of psychological abuse that have no place in any garment factory and are clearly illegal under the Vietnamese law⁴² and clearly barred by university labor codes.⁴³ Moreover, in combination with the de facto restrictions on toilet use that arise from intense and relentless production pressures, these informal and formal managerial restrictions define a work environment in which large numbers of Hansae workers are often unable to go to the bathroom when they need – a circumstance that is not only degrading, but physically unhealthy.

⁴² Labor Code, Article 8 (2).

⁴³ Collegiate Licensing Company, §II (B)(8).

3. Punishment for Yawning

A particularly perverse form of abuse, apparently restricted to Building 5, and also a precipitating factor in last year's strikes, is a managerial policy forbidding workers in that building from yawning in the workplace. According to worker testimony, including that of workers who directly experienced this abuse, those workers who "violated" the ban on yawning were subjected to official disciplinary warnings (of the type that can ultimately lead to dismissal). While this practice has apparently been limited to a single production building, it is a building that houses many hundreds of workers, all apparently subject to this cruel, degrading, and arbitrary form of managerial abuse.

G. Pregnancy Discrimination

It is illegal under Article 155 of the Vietnamese labor code "to dismiss a female employee or unilaterally terminate the employment contract of a female employee due to the employee's marriage, pregnancy, maternity leave, or her nursing a child under 12 months of age."⁴⁴ Such discrimination is therefore illegal under university labor codes, which require compliance with local law and which also include, in most cases, their own explicit provisions barring gender discrimination and, in some cases, specifically barring discrimination based on pregnancy,⁴⁵ a prohibition also found in Nike's code.⁴⁶

A substantial number of the Hansae workers interviewed by the WRC, including half of women workers interviewed, testified that it is the practice of Hansae management not to renew the contracts of pregnant workers who are on short-term labor contracts. According to some workers, management also sometimes dismisses pregnant workers on long-term contracts or pressures them to resign. Two workers testified to having multiple personal acquaintances who were dismissed, forced to resign, or had their employment contracts non-renewed after becoming pregnant. These practices violate Vietnamese law and university labor codes.

Under Vietnamese law, workers who are pregnant or are nursing a child under 12 are entitled to a number of protections and benefits that impose financial and logistic costs on the employer, including limitations on hours of work, a requirement that light duty work be provided with no loss of pay, a prohibition on subjecting the worker to disciplinary measures, and an entitlement to an additional 60 minutes of break time, with full pay, during each workday.⁴⁷ Factory managers therefore have a substantial financial incentive to minimize the number of pregnant workers in their employ.

⁴⁴ Labor Code, Article 155 (3).

⁴⁵ Collegiate Licensing Company, §II (B)(7).

⁴⁶ Nike Code of Conduct, *supra*, n. 11.

⁴⁷ Labor Code, Articles 155-159.

One Hansae worker described the case of a pregnant co-worker who, after her pregnancy became known, was required by management to train another worker to do her job; when the training was successfully completed, the pregnant workers was dismissed. The same witness described another co-worker who was pressured to resign half way through her pregnancy and, after being threatened with punitive transfer to another production building, agreed to do so. A different witness stated that she has several acquaintances who had become pregnant while on one-year employment contracts at Hansae and that none of their contracts had been renewed.

It is not fully clear how widespread this pregnancy discrimination is at Hansae. Workers in several different production buildings testified to being aware of this practice, but workers in some buildings stated that they are not aware of such a practice. The majority of workers who testified to the existence of the practice understand it to apply mainly to workers on short-term contracts, whose employment is far easier for management to discontinue.⁴⁸ One worker testified that management in her building appropriately provides light duty for pregnant workers.

The evidence strongly supports the conclusion that some Hansae managers engage in pregnancy discrimination in some cases. How consistently across different factory buildings, and across time, cannot be determined from available evidence. A fuller picture of the scope of this violation will require access to factory records.

H. Failure to Cooperate Honestly with Labor Rights Inspection

University labor codes – and virtually all corporate codes, including Nike’s⁴⁹ – require factories to submit to monitoring of their labor practices. Implicit in this requirement is that the information provided in the context of the monitoring process will be honest and accurate.

In addition to the problem of Hansae and Nike’s refusal to cooperate with WRC monitoring, worker testimony shows that Hansae fails to cooperate honestly with factory monitoring *in general* – and instead uses various means of deception to present a false picture of working conditions and labor practices to monitors. In addition to the above-described practice of *requiring* all workers to sign what are supposed to be voluntary overtime consent forms, worker testimony shows that Hansae management engages in other means of deception in the context of labor rights inspection. Several workers report that it is routine for managers to make modifications in advance of auditor visits, including unlocking doors that are normally kept

⁴⁸ It is important to note, however, that under Vietnam law, a worker may not be employed on a short-term contract more than twice; after the second short-term contract, the contract must be switched to a contract for an “indefinite” period of time. *See*, Labor Code, Article 22 (2). Thus, in addition to violating laws that clearly prohibit discrimination against pregnant employees, Hansae may also be violating laws regarding contract terms. Without access to the factory, however, and being unable to conduct an audit of personnel records, it is impossible for the WRC to discern the nuances of the pregnancy discrimination / no contract renewal situation and issue comprehensive recommendations.

⁴⁹ Nike Code of Conduct, *supra*, n. 11.

locked, requiring all workers to wear masks and gloves (whereas the use of this personal protective gear is not otherwise strictly enforced), and reducing the temperature in factory buildings – thus providing for workers the appearance of a level of comfort and safety that workers do not normally enjoy. Workers also testified that managers tell workers they must only say positive things about the factory if they are interviewed by auditors. One worker told the WRC’s investigators that, if she were interviewed at work, she would never be able to provide the candid information about problems at the factory that she was providing to us off-site.

IV. Possible Violations Where a Determination Cannot be Made Without Factory Access

The WRC found evidence of violations in a number of other areas where it is not possible to reach firm findings because of the lack of access to factory records, management interviews, and Hansae’s physical plant. These include:

Off-the-Clock Work: There is evidence that some employees work during their lunch breaks, which, under Vietnam’s labor code, must be paid break time; however, a firm conclusion as to whether these workers are being deprived of legally mandated compensation can only be reached with a fuller understanding of the factory’s pay practices. This requires access to time and payroll records, to official factory policies, and to human resources personnel.

Fire Safety Violations: A number of workers reported that the factory padlocks exit doors in their buildings, while workers in other buildings say doors are not locked during the workday. The fact that some workers report that these doors are locked is cause for serious concern, and warrants a thorough examination of fire safety systems and practices, which cannot be conducted without physical access to all Hansae production buildings.

Denial of Family Leave: One worker recounted a disturbing experience, in which she was unlawfully denied leave to care for a seriously ill child and was forced to resign. Under Vietnamese law, workers have the right to take up to 20 days of paid leave to take care of a sick child under the age of three, or 15 days off to care for a sick child between the ages of three and seven.⁵⁰ Requesting this leave also requires certification from a competent health establishment.⁵¹ The worker in this case qualified for leave and presented the required medical certificate to management. Management refused to grant the leave. The worker reported that she had no choice but to resign. Later, she reapplied for work at Hansae and was rehired, but lost her seniority (as well as the pay she would have received during the leave period). This case, in and of itself, constitutes a violation of law and university codes; however, because the WRC’s investigation yielded evidence of only this single specific incident, a finding is not warranted at this point. However, a review of factory records would likely shed sufficient light on the issue to allow for a firm determination and, if needed, a recommendation for remedial action.

⁵⁰ Law on Social Insurance, Article 27.

⁵¹ Id., Article 25.

Unsafe Food: Many witnesses complained of food in factory canteens that is both poor in quality and spoiled, including, in some instances, being infested with what witnesses describe as “worms.” While this testimony is cause for concern, reaching a firm conclusion as to whether food being served is unsafe would require access to the factory in order to physically examine samples of the food.

Coerced Resignation: Many workers testified that it is common for managers, when they wish to get rid of a disfavored worker, to tell the worker she or he must resign, rather than to dismiss the worker for cause. Testimony on this issue is insufficiently detailed for the WRC to determine whether this practice is resulting in any actual loss of legally mandated benefits to workers. Inspection of personnel records, and review of factory policies concerning terminal compensation, through access to the factory, is necessary in order to conclude whether legal violations are taking place.

Physical Abuse: The WRC heard testimony from two workers who reported witnessing acts of corporal punishment at Hansae Vietnam. Local Vietnamese-language news reports⁵² also make reference to physical abuse of workers at the factory in the past, including a case where a Korean manager beat and kicked 20 women workers in 2005.⁵³ This evidence is insufficient for a finding that Hansae is violating prohibitions under Vietnamese law and university codes of conduct on physical punishment. The WRC is working to gather additional worker testimony on the question; this aspect of the investigation would also be aided by access to the factory to review the disciplinary records of Hansae managerial employees.

V. Next Steps

As outlined in this report, the WRC has documented numerous violations of workers’ rights at Hansae Vietnam, including violations that are causing demonstrable physical harm to workers; yet Nike’s unwillingness to facilitate access to the factory has prevented us from determining the full extent and scope of these violations and, therefore, from issuing a sufficiently comprehensive and robust set of remedies. The severity of the abuses that have now been identified underscore the urgency of a thoroughgoing onsite assessment of this large and complex production facility, including an across-the-board occupational safety and health inspection. This requires access to the factory’s physical plant, access to relevant electronic and paper records, and access to factory managers for the purpose of interviews. So long as Nike continues to block access to the factory, it will not be possible for the WRC to complete this thoroughgoing review and identify the extent and scope of all violations of university codes of conduct.

⁵² See, e.g., Phương Kỳ & Trọng Hiếu, “Hundreds of striking workers at the company HANSAE Vietnam,” *Bao Moi* (July 3, 2013), *supra*, n. 30.

⁵³ Anh Thu, “One executive temporarily suspended from work,” *Hanoi Moi* (August 12, 2005).