WORKER RIGHTS CONSORTIUM

To: WRC Affiliate Colleges and Universities
From: Scott Nova and Laura Gutierrez
Re: Remediation of Severance Pay Violations at Han Embroidery Ltd (Bangladesh)
Date: April 28, 2016

This memo reports on the Worker Rights Consortium's (WRC) findings and recommendations concerning severance pay violations at Han Embroidery Ltd (Han Embroidery) – a factory in Savar, Bangladesh, involved in the production of university logo goods – and on efforts to achieve remediation. We are pleased to report that US$72,157 in unpaid severance and notice pay will be distributed to former Han Embroidery employees over the next two weeks and that this will constitute remediation in full of university labor code violations. Zephyr Graf-X (Zephyr), a collegiate licensee and the factory's largest buyer, has taken appropriate action in this case to ensure that the violations are corrected and the workers made whole.

Han Embroidery closed on October 25, 2015, without paying legally owed severance pay and notice pay. At the time of its closure, Han Embroidery employed 168 workers, many of whom were members of the Han Embroidery Ltd. Workers Employees Union, which was affiliated to the National Garment Worker Federation (NGWF).

Prior to its closure, Han Embroidery embellished collegiate licensed apparel and other apparel products, primarily as a subcontractor to the manufacturer Han Apparel Ltd (Han Apparel). Han Apparel is located at the same address as Han Embroidery, and is still in operation. Zephyr discloses Han Apparel as a supplier of collegiate licensed apparel. Han Embroidery had not been disclosed by Zephyr; however, workers were able to identify logos of WRC affiliate universities and reported that they had embroidered these logos onto hats as part of their work.[1]

[1] The WRC believes that Han Embroidery is effectively owned and controlled by Han Apparel, although Han Apparel management has denied this relationship. While the ownership of the factory has been under dispute, it has no bearing on the applicability of university labor rights protections. Since Han Embroidery was a supplier of collegiate licensed apparel to Zephyr, university labor codes cover the workers at this facility – regardless of whether it performed collegiate production as a subsidiary of Han Apparel or as a subcontractor.

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On October 26, Han Embroidery workers filed a complaint with the WRC. After investigating the workers' allegations, and concluding that the factory had failed to pay legally mandated benefits to workers, the WRC contacted Zephyr regarding this violation of university codes of conduct. Zephyr in turn engaged with Han Apparel which has agreed to provide the severance due to workers. As a result of the intervention of the WRC and the engagement of Zephyr, Han Apparel will be distributing the US$72,157 that is owed to workers, beginning on April 29, 2016.

Factory Closure

Han Embroidery was formally closed on October 25, 2015. Prior to closure, factory management had provided workers with contradictory information as to the factory's continued operations. While management had posted a notice three months prior indicating that the factory would close, workers report that managers made repeated statements to workers that the factory would continue operating at a different location or under new management. By September 17, the factory had suspended production; workers were still required to report to work, however, and were not told that the factory would close imminently. Rather, by the time of the closure, managers had told workers, during multiple all-staff meetings, that the factory would be relocating, and that workers would be able to continue their employment. This proved not to be true; after the factory closed its doors, there was no further indication from management that Han Embroidery would continue any of its operations, or that any workers would be able to continue their employment.

On October 25, 2015, the Han Embroidery workers reported to the factory as usual and were directed by management to go to the Han Apparel office, which was located in the same building as Han Embroidery. Han Apparel management provided them with their final wages and an additional amount equivalent to 30 days of their base wage.

Failure to Provide Adequate Legally Required Severance Pay

Bangladeshi law requires that when workers are terminated due to economic layoffs (e.g., a factory closure), the affected employees must be paid compensation in the amount of 30 days wages for each year of service, calculated based on the worker's basic wages.[2] The law further requires that the employer must either provide one month's advance notice of the retrenchment or pay the workers an additional 30 days' wages.[3]

After gathering and reviewing worker testimony and relevant documentation, the WRC concluded that the Han Embroidery workers were owed both the severance pay (one month's

[2] *See*, Bangladesh Labor Act 2006, Article 20(a).
[3] *See*, Bangladesh Labor Act 2006, Article 20(c).

wages per year) and notice pay (one additional month of wages.) As workers had been terminated as part of a mass economic layoff, they were clearly entitled to the severance pay. And, while the factory had posted a closure notice several months prior to closure, the effect of this posting as legal notice was subsequently nullified by factory managers' repeated statements that workers would not, in fact, be terminated in October. Thus, workers were owed an additional month of pay in lieu of advance notice.

Workers testified, and a review of factory documents confirmed, that the workers had only received 30 days' wages at the time of closure. Therefore, each Han Embroidery worker is legally owed a total amount of: (a) 30 days' wages per year of service with the factory; plus (b) an additional 30 days' wages, in lieu of notice of retrenchment; minus (c) the 30 days' basic wages they already received.

At the time of the factory's closure, workers were required, as a precondition for receiving their payments, to sign statements stating that they had "no further claims" upon the factory. While obligating workers to sign such documents in exchange for payment is common practice in cases of factory closures in Bangladesh, these waivers are legally void. Bangladesh's Contract Act states that contracts may not "defeat the provisions of any law;"[4] these waivers would "defeat" the right to compensation granted to workers under the Labor Act, and so are invalid. Despite management's effort to protect itself from future claims by requiring workers to sign away their legal rights, workers were still entitled to the terminal payments that they had earned.

By failing to provide workers with the full amount owed to them under Bangladeshi law, Han Embroidery violated both Bangladeshi law and university codes of conduct, which require payment of legally mandated compensation and compliance with all local labor laws.

Licensee Response

The WRC contacted Zephyr on January 11, 2016, regarding Han Embroidery's failure to provide legally required terminal payments to its workers and to clarify the relationship between Zephyr and Han Embroidery.

Zephyr, responding to the WRC, acknowledged the relationship to Han Embroidery and provided two reasons for its failure to disclose Han Embroidery as a collegiate supplier. First, Zephyr reported, the company was not aware that Han Embroidery was involved in the manufacturing of their products until an audit by Zephyr of Han Apparel conducted in September 2015. Second, Zephyr's management reported that it had not been aware that the company was required to disclose not just its direct suppliers, but also subcontracted facilities.

[4] The Contract Act, 1872, Ch. II ("...Void Agreements"), Article 23, ("The consideration or object of an agreement is lawful, unless it is ... of such a nature that, if permitted, it would defeat the provisions of any law.").

The WRC clarified that the labor standards provisions of university licensing agreements cover subcontractors as well as direct suppliers. Since Han Embroidery was embellishing university licensed apparel, Zephyr was responsible for disclosing the factory and for ensuring that it followed university labor standards – regardless of whether the factory was a direct supplier or subcontracted facility. Zephyr then acknowledged its responsibility, under university labor codes, for labor rights compliance at Han Embroidery.

The WRC provided Zephyr with an analysis of Bangladeshi legal requirements, as they pertain to terminal compensation at Han Embroidery, and, after further discussions, Zephyr informed the WRC in early February that it was committed to ensuring full payment of severance at the factory.

The WRC then worked with Zephyr, and with NGWF (the workers' union representative), based on personnel information for Han Embroidery workers that was provided by the management of Han Apparel, to calculate the exact amount owed to each affected worker. Zephyr subsequently informed the WRC that it had secured a commitment from Han Apparel to provide the necessary funds.

Distribution Plan

All parties agreed that 168 former employees of Han Embroidery are legally owed a total of US$72,157 – an average of $430 per employee. This represents more than six months' basic wages.

In consultation with NGWF, the WRC developed and proposed a plan for distribution of the funds. Distribution can be somewhat challenging in severance cases, since workers have dispersed. Workers have to be contacted, a suitable distribution point identified, safeguards established to ensure that funds go only to the eligible workers, and so forth. Zephyr agreed to the WRC's distribution plan in March, and the WRC and Zephyr have worked together to finalize all details.

Under the agreed plan, workers will be able to obtain the money they are owed on April 29 and May 5 (workers can come on their preferred date) at Han Apparel, with Han management processing the payments, subject to oversight and observation by the WRC, Zephyr and NGWF. The WRC and NGWF have worked jointly to contact as many of the eligible workers as possible. Once the distribution process is complete, the WRC will provide an updated and more detailed report on this case.

Conclusion

Failure to pay severance pay and other terminal benefits that are required under national law is a common form of wage theft in the garment industry and one that is particularly damaging to workers. When a factory closes without paying severance, workers are left without income and without the funds to tide them over until they can find a new job. Severance is a legal requirement in most apparel exporting countries because there are no public programs to provide income support to people who become unemployed and because low wages make it effectively impossible for many workers to amass any savings. When employers shirk this obligation, workers in most cases have nothing to fall back on.

While Zephyr erred in not disclosing Han Embroidery as a collegiate supplier, the company's prompt recognition, in response to the WRC's findings, of its obligations under university codes, and the company's willingness to fulfill those obligations, will ensure that the former workers of Han Embroidery receive the severance they earned. This will repair the harm done to these workers at the time of factory closure and provide them and their families with funds that will significantly improve their economic and social prospects.

The WRC has engaged with a number of licensees and other brands, including Nike,[5] adidas,[6] the Dallas Cowboys,[7] Hanesbrands (owner of licensees Knights Apparel and Gear for Sport),[8] and Russell Brands[9] in recent years to successfully press for the remediation of severance violations. Each case in which a licensee ensures that this type of violation is remedied – whether the licensee requires its supply chain partners to provide the funds, as in this case, or provides the funds itself – constitutes another step towards eliminating this form of wage theft among university licensed apparel suppliers and in the apparel industry more broadly.

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[5] *See*, Greenhouse, Steven, "Pressured, Nike to Help Workers in Honduras," *New York Times* (July 26, 2010), http://www.nytimes.com/2010/07/27/business/global/27nike.html, *and* WRC, "Workers at PT Kizone Still Owed $1.8 Million; No Action from adidas and Dallas Cowboys" (July 26, 2011), http://www.workersrights.org/university/memo/072611.html.

[6] *See*, Brettman, Allan, "Adidas settles with Indonesian workers over PT Kizone," *The Oregonian* (April 24, 2013), http://www.oregonlive.com/playbooks-profits/index.ssf/2013/04/adidas_settles_with_indonesian.html.

[7] *See*, WRC, "Report re PT Kizone (Indonesia): Status Update" (May 15, 2012), http://www.workersrights.org/Freports/WRC%20Update%20re%20PT%20Kizone%20(Indonesia)%205-15-12.pdf.

[8] *See*, WRC, "Remediation of Severance Pay Violations at MDR/CCC (El Salvador)" (April 29, 2015), http://www.workersrights.org/Freports/WRC%20Memo%20re%20MDR%204.29.15.pdf.

[9] *See*, WRC, "Case Summary: Confecciones Gama (El Salvador)" (November 25, 2013), http://www.workersrights.org/freports/WRC%20Memo%20re%20Gama%2011.25.13.pdf, *and*, WRC, "Remediation of Severance Pay Violations at MDR/CCC (El Salvador)" (April 29, 2015), http://www.workersrights.org/Freports/WRC%20Memo%20re%20MDR%204.29.15.pdf.