WORKER RIGHTS CONSORTIUM FACTORY ASSESSMENT

Westtex Apparel (El Salvador)
Findings, Recommendations, and Company and Brand Response

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I. Introduction and Executive Summary

This report details the findings of an investigation by the Worker Rights Consortium (WRC) of violations of freedom of association and their subsequent remediation at Westtex Apparel ("Westtex"), a garment factory located in Ilopango, El Salvador. Westtex has been disclosed for the production of collegiate apparel by the university licensees, 47 Brand, Gorilla Marketing, Luttrell Investments (Image One) and Spirit Clothing Company (Spirit Activewear & Spirit Jersey).[1] Westtex is also disclosed by Spirit as a supplier of apparel licensed by The Walt Disney Company. Finally, Westtex also supplies non-collegiate apparel to Gap and Next Level.

The WRC initiated our investigation at Westtex Apparel in March 2023 after receiving complaints from the labor union federations, Sindicato General de Costureras (SGC), Sindicato de la Industria de la Costura y la Maquila (SINDICOM), and Federación de Asociaciones y Sindicatos Independientes de El Salvador (FEASIES), that five workers from the factory who were elected leaders of those unions had been illegally fired, in violation of university codes of conduct, between June 2021 and March 2023. Workers from Westtex had formed unions at the factory affiliated with these labor federations starting in 2017 in order to address issues of harassment and abuse; production requirements for workers; and unpaid benefits due to workers under the law.

While the WRC was investigating these alleged violations, these unions filed an additional complaint with the WRC alleging that the factory had discriminatorily and unlawfully suspended 13 worker union leaders and members at the factory during July and August 2023. The WRC's investigation of the dismissals and suspensions of these workers found that, in both cases, Westtex had violated the workers' right to freedom of association, as established under Salvadoran law and university codes of conduct.

A. Illegal Firing of Five Worker Union Leaders

El Salvador's labor law protects workers' freedom of association by prohibiting employers from firing workers who have been elected as union leaders for the period of their term of office, plus one-year thereafter, without first obtaining permission of government labor authorities.[2] The SGC union and the SINDICOM union reported to the WRC that one elected worker union leader from each of these unions had been illegally dismissed by Westtex in 2021, during these employees' respective terms in office. In addition, the FEASIES union reported that one elected worker from its union was fired by Westtex on January 6, 2023, and that two other workers, both of whom were within the one-year period following their terms of office, were fired on the same day.

Under Salvadoran law, Westtex was prohibited from terminating any of these five workers during their terms as union officers or the one-year period thereafter without prior authorization from government labor authorities. The WRC's investigation found, and Westtex did not dispute, that the

[1] The licensee, Isaac Morris, had disclosed Westtex Apparel as a supplier of collegiate apparel at the time that worker union leaders were unlawfully dismissed. However, it was no longer disclosing the factory as a supplier at the time the WRC began its engagement with the factory's buyers. When contacted by the WRC, the licensee, Luttrell Investments (Image One), reported that it had ceased sourcing from Westtex in October 2017, and the WRC did not find evidence to the contrary.

[2] Labor Code of El Salvador, Article 248.

company had not requested, much less obtained, authorization from the Salvadoran labor authorities prior to dismissing any of these five workers.

The WRC's investigation, therefore, confirmed that Westtex Apparel violated Salvadoran law, and, by extension, university and buyer codes of conduct, when it dismissed each of these five workers.[3] The WRC recommended that university licensees and other brands sourcing from Westtex Apparel require the factory to remedy these violations by reinstating all five workers and providing them with back wages from the time of each worker's dismissal to the date of his or her reinstatement.

Though the WRC first shared our findings—that the factory's dismissal of these workers violated Salvadoran law and university and brand codes of conduct—with university licensees and other buyers from Westtex in March 2023, these violations were not fully remedied until February 2024.

Several licensees and other brands doing business with the factory failed to take adequate steps to secure corrective action. For example, the licensee, Gorilla Marketing, did not respond in substance to the WRC's communications regarding the violations at the factory.

Moreover, as detailed in Section V of this report, although the university licensee, 47 Brand, along with the brands, Gap and Next Level, required to the factory to reinstate three of the five unlawfully terminated workers and to provide them with back pay, they failed to require reinstatement of and payment of full back pay to the other two workers who had been had illegally fired. However, to its credit, Spirit Clothing Company, which is a licensee of both universities and The Walt Disney Company, did ensure full remediation of the violations through reinstatement of and payment of full back pay to the remaining two workers.

At the time of the publication of this report, all five union leaders have returned to work at Westtex Apparel and have received full payment of the back wages owed to them from the dates of their dismissal to the dates of their respective reinstatements. The WRC therefore considers the violations of Salvadoran law and university and brand codes of conduct related to the dismissals of these five workers to be fully remedied.

B. Unlawful Discriminatory Suspension of 13 Worker Union Leaders

At the end of June 2023, Westtex suspended several hundred workers from the factory for a period of two months, ostensibly due to a delay in delivery to the factory of fabric needed for production for one of its buyers. While the WRC obtained evidence from the factory indicating that the delay in delivery of this fabric provided a valid basis for suspending workers employed on two of the factory's production lines, subsequent investigation revealed that the factory management had used this as a pretext for also suspending, discriminatorily, 13 worker union leaders who were employed in other areas of the factory, whose operations were not affected by the fabric delivery delay.

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[3] Collegiate Licensing Company, Standard Retail Product License Agreement, 2023, Code of Conduct ("CLC Code of Conduct"), (a.)(ii.)(I.) "Freedom of Association and Collective Bargaining: Licensee shall recognize and respect the right of employees to freedom of association and collective bargaining." And, for example, Gap, "Vendor Code of Conduct," Freedom of Association, "The facility shall recognize that workers are free to join associations of their own choosing. The facility shall not interfere with workers who wish to lawfully and peacefully associate, organize, or bargain collectively. The facility shall support that the decision whether or not to do so shall be made solely by the workers."

As a result of this retaliatory conduct, in a suspension of less than 15 percent the total workforce, the factory management included nearly 75 percent of the workers who made up the factory's elected union leadership, the overwhelming majority of whom were not assigned to either of the two production lines affected by the fabric delivery delay. Although these 13 workers, along with the rest of the employees who were suspended, returned to work after a two-month period, the factory's pretextual inclusion of the former in the suspension violated their right to freedom of association, in clear contravention of both Salvadoran law and brand and university codes of conduct.[4]

To remedy Westtex's discriminatory targeting of the worker union leaders for suspension, the WRC recommended to university licensees and other buyers from the factory that the 13 worker union leaders who were not assigned to either of the two specific production lines which were affected by the fabric delivery delay receive full payment of their back wages for the two-month period of the suspension.

The licensee, 47 Brand, and the non-collegiate buyers, Gap and Next Level, engaged with Westtex concerning the suspensions, however, these companies accepted as remediation Westtex offering, to *all* of the factory's workers who had been suspended in June and July 2023, *gift cards* in the amount of $125 per worker, which represented roughly 17 percent of their lost wages for this period. As should be obvious, when workers are unlawfully deprived of wages, compensation in the form of gift cards is not an adequate remedy.

Moreover, these buyers also did not require the factory to pay the remaining 83 percent of the back pay due to the 13 union leaders who had been pretextually and retaliatorily included in the suspension, in violation of their associational rights, and, therefore, failed to substantially remedy the violations of university and buyer codes of conduct that had occurred. To its credit, however, the licensee, Spirit Clothing Company, subsequently did ensure that the 13 workers received the full back pay they were due for the suspension period, achieving full remediation for these violations as well.

[4] Labor Code of El Salvador, Article 30 (5) and Article 205; CLC Code of Conduct; and, for example, Gap Vendor Code of Conduct.

II. Methodology

The WRC's findings in this report are based on the following sources of evidence:

- Interviews with dismissed workers from Westtex Apparel who were elected leaders of the unions, Sindicato General de Costureras (SGC), Sindicato de la Industria de la Costura y la Maquila (SINDICOM), and Federación de Asociaciones y Sindicatos Independientes de El Salvador (FEASIES);

- A review of documents establishing the credentials of the union leaders, reports issued by the Salvadoran Ministry of Labor, decisions issued by the Salvadoran labor courts, documents provided by Westtex with regard to the violations that occurred and their subsequent remediation; documents provided by factory buyers with regard to their production orders at the factory; communications from worker representatives to Westtex; and reports issued by other external monitors and auditing organizations;

- A review of a written and verbal communications with factory buyers; and

- A review and analysis of applicable Salvadoran law and university and buyer codes of conduct.

III. Findings of Violations of Freedom of Association

A. Finding: Illegal Dismissal of Union Leaders with Protected Status

The three unions that filed complaints with the WRC regarding the illegal dismissal of worker union leaders by Westtex Apparel reported that these employees were fired on dates between 2021 and 2023. Article 248 of Salvadoran Labor Code establishes that all workers who are elected as members of the leadership committee of a registered union at a workplace (known, in El Salvador, as a *junta directiva*), or as leaders of the labor federation to which it is affiliated, are protected from dismissal, demotion, or disciplinary suspension, without prior authorization of government labor authorities for the period of their terms in office and for one year following. The complainant unions reported to the WRC that a total of five workers who were either current union leaders or workers who had recently finished their terms in office (and were, therefore, within the subsequent one year of legal protection) had been unlawfully fired by Westtex Apparel.

The unions charged, and Westtex did not dispute, that the factory had not requested the required authorization from the Salvadoran labor authorities prior to dismissing these workers, rendering the dismissals illegal under Salvadoran labor law. In the case of two of the five fired workers, following the refusal of Westtex Apparel to reinstate them, the workers had filed suit with the Salvadoran labor courts, which had issued judgements ordering the factory to reinstate these workers with full payment of back wages. However, in violation of university and buyer codes of conduct, the factory had refused to comply with the courts' judgements in the workers' favor.

The cases of each of the five workers whom Westtex illegally fired are discussed below.

Worker One

This worker was elected as a leader of the union Sindicato General de Costureras (SGC) for the period of October 29, 2021, to October 28, 2022. The worker was dismissed from his position at Westtex Apparel on November 9, 2021, during his elected term in office. As noted above, given that the worker was dismissed during his term in office, without prior authorization from the labor authorities, under Article 248 of the Salvadoran Labor Code, his dismissal was illegal.

The worker filed suit with the Salvadoran labor courts, and, on October 28, 2022, the Third Labor Court of El Salvador issued a judgement ordering Westtex Apparel to reinstate the worker with full payment of back wages. However, as discussed further below, the factory refused to reinstate the worker or pay him any back wages until the WRC engaged with Westtex and its buyers concerning his termination.

Worker Two

This worker was elected to a position on the leadership committee of the union, Sindicato de la Industria de la Costura y la Maquila (SINDICOM), for the period of February 10, 2021, to February 9, 2022. The worker was dismissed from Westtex Apparel on June 19, 2021, during his one-year term in this position. As noted above, given that his dismissal occurred during the worker's term of office, and without prior authorization from the labor authorities, his dismissal violated Article 248 of the Labor Code.

This worker also filed suit with the labor courts. On December 20, 2022, El Salvador's Fifth Labor Court ordered Westtex Apparel to reinstate this worker with payment of all corresponding back wages. However, until the WRC engaged with the factory and its buyers, Westtex also refused to reinstate or pay any back wages to this worker.

Worker Three

This worker was elected to the leadership committee of the union, Sindicato de Trabajadoras y Trabajadores de la Industria del Trabajo Textil (SITTEX), affiliated to the FEASIES union federation, for the period of September 17, 2021, to September 4, 2022. Four months after the end of her term in office elected, on January 6, 2023, this worker was fired from her employment at Westtex Apparel. Given that her dismissal occurred during the one-year period following the end of her term as an elected union leader, without prior authorization from the labor authorities, the company's dismissal of this worker also violated Article 248 of the Labor Code.

Worker Four

This worker was elected to the leadership committee of the SITTEX union for the period of September 17, 2021, to September 4, 2022. The worker was dismissed from her position at Westtex Apparel on January 6, 2023, four months after the end of her term in office and during the one-year period during which she was protected from dismissal, without prior authorization from the labor authorities. Therefore, Westtex Apparel's dismissal of this worker also violated Article 248 of the Salvadoran Labor Code.

Worker Five

This worker also was elected to the leadership committee of the SITTEX union, for the period of September 3, 2022, to September 2, 2023. The worker was dismissed from her position at Westtex Apparel on January 6, 2023, without prior authorization from the labor authorities. Given that she was an elected union leader at the time, Westtex Apparel's dismissal of this worker represented a violation of Article 248 of the Labor Code.

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As outlined above, all five workers who were fired from Westtex Apparel between November 9, 2021, and January 6, 2023, were protected from dismissal under the terms of Salvadoran labor law. University codes of conduct prohibit factories disclosed for the production of collegiate apparel from violating labor laws and protect the rights of workers to freedom of association.[5] Therefore,

[5] CLC Code of Conduct, (a.)(i.), ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the sign, development, sourcing, use manufacture, production, sale, license, distribution, or other commercialization of Licensed Articles.") and (a.)(ii.)(I.) ("Licensees shall recognize and respect the right of employees to freedom of association….").

the WRC found that the actions of Westtex Apparel, with regard to the dismissals of these five workers, were in clear violation of Salvadoran law and university codes of conduct.

B. Finding: Discriminatory Targeting of Worker Union Leaders for Suspension

On June 30, 2023, Westtex Apparel announced that it was suspending 127 of the factory's workers for two months due to an interruption in operations on two of the factory's production lines caused by a delay in delivery of fabric to be used in apparel for one of the factory's buyers. The factory workers' unions alleged that the suspensions were unlawful and had violated workers' freedom of association by discriminatorily targeting worker union leaders at the factory for suspension.

The WRC interviewed workers and engaged with the factory buyers, as Westtex management was not responsive to the WRC's communications. One of the factory's non-collegiate buyers confirmed to the WRC that it had, in fact, communicated to Westtex on June 30, 2023, that it was experiencing delays in the shipment of fabric to El Salvador for its orders at the factory and, for this reason, was pausing its production at Westtex Apparel for July and part of August 2023.

Buyers from the factory also shared with the WRC a letter issued by Westtex, also dated June 30, 2023, stating that the factory was temporarily suspending operations in its work areas designated as Production Lines Three and Six. The factory reported that this letter was issued to workers, along with a notice that operations on these two production lines would be suspended effective July 3, 2023. The letter stated that the workers would receive 50 percent of their regular wages for July 3–5, but that, starting July 6, the affected workers would be suspended, without pay, until they were recalled to work.

Salvadoran law allows for an employer to suspend part or all of its workforce as a result of circumstances outside the employer's control (*force majeure*), including due to a lack of necessary production materials. The Labor Code states that the employer must pay workers 50 percent of their regular wages for the first three days of the suspension and may suspend employees without pay thereafter.[6] Given that the company provided documentation demonstrating that there was an interruption to its production, on account of a lack of materials, that would warrant a suspension of the employment of workers assigned to the factory's Production Lines Three and Six, the WRC did not find that the suspension of those employees to be in violation of the law.

However, in reviewing the list of workers whose employment was suspended, the WRC found that Westtex included a number of worker union leaders that was grossly disproportionate to their share of the factory's workforce, in general, and included many worker union leaders who were not assigned to the production lines whose operations were affected by the lack of materials. As noted, 127 workers in all were suspended from the factory in July and August 2023, which represented approximately 14 percent of the total workforce. However, the group of employees who were suspended included a total of 17 out of 23 (74 percent) of the workers at factory who were elected union leaders. Moreover, of the 17 union leaders and members who were suspended, only six were assigned to Production Lines Three or Six, the work areas whose operations Westtex had indicated were affected by the lack of production materials. Based on the disproportionate share of worker union leaders (74 percent) who were selected for suspension relative to the share of the total

[6] Labor Code of El Salvador Article 33-38.

workforce that was suspended (14 percent), together with the fact that the overwhelming majority of the union leaders and members who were selected for suspension were not actually employed on the production lines whose operations, Westtex had stated, were affected by the lack of materials, the WRC concluded that the factory had used the broader suspension of factory workers as a pretext to target for suspension those employees who were union leaders and members.

Salvadoran labor law and buyer and university codes of conduct protect the right of freedom of association by prohibiting employers from discriminating against workers based on their participation in a union.[7] The WRC found that Westtex violated the rights of freedom of association of a total of 12 worker union leaders who were suspended by the factory in spite of the fact that they were not assigned to the production lines that the factory had stated were affected by the lack of production materials.

The FEASIES labor federation, which was one of the unions that submitted a complaint to the WRC concerning the discriminatory suspension of the worker union leaders, separately, also filed a complaint, on behalf of its union members employed at the plant, challenging the legality of procedure used by the company to implement the suspensions. On November 9, 2023, the Salvadoran Ministry of Labor issued a finding that, in the case of the company's suspension of four of these worker union members, Westtex had violated Article 29 (2) of the Labor Code[8] and should pay them back wages for the period July 31 to August 13, 2023. The Ministry of Labor found that the suspension of one of these workers was unlawful, even though this worker was employed on Production Line Three, and was, according to the Ministry of Labor, due back wages for July and August 2023. This worker, plus the 12 employees identified as not working on Production Lines Three and Six, therefore brought the number of worker union leaders and members who had been unlawfully suspended to 13.

[7] Labor Code, Article 30, "All employers are prohibited from … (5) Directly or indirectly discriminating against workers based on their union status or retaliating against them for the same reason." (WRC translation); CLC Code of Conduct; and, for example, Gap Vendor Code of Conduct.
[8] Article 29 (2) of the Salvadoran Labor Code says that it is the obligation of the employer to "(2) pay a worker a monetary benefit equivalent to the ordinary salary that he would have earned during the time he stops working for reasons that are attributable to the employer."

IV. Recommendations for Corrective Action of Violations

To remedy the violations of workers' associational rights that had occurred, the WRC recommended that licensees and factory buyers work with Westtex to ensure that the following corrective actions were taken:

- Offers of reinstatement, with seniority, for all five worker union leaders who were unlawfully dismissed between June 2021 and March 2023, to these workers' former positions, or equivalent ones, maintaining the seniority established by their original dates of hire;

- Full payment of back wages to all five illegally fired worker union leaders from the date of each worker's dismissal to the date of their offer of reinstatement; and

- Full payment of back wages for the period of two months to the 13 worker union leaders and members who had been discriminatorily and pretextually suspended from factory in July and August 2023.

V. Licensees' and Other Buyers' Responses; Remediation of Violations

A. Remediation of Illegal Firing of Five Worker Union Leaders

As noted above, the WRC first contacted Westtex Apparel about its unlawful dismissal of the five worker union leaders on March 23, 2023. While the factory did not respond to the WRC's communication, it did begin to take limited steps to remedy the violations. Two of these five workers were reinstated shortly after the WRC's initial communication to the factory and both workers ultimately received full payment of their back wages.

Concurrent to submitting a complaint filed with the WRC, one of the unions representing workers at the factory filed a complaint with the Fair Labor Association (FLA) concerning the dismissal of its union leaders. Like the WRC, the FLA also found that the factory's dismissals of the five worker union leaders were illegal and that the appropriate corrective action was reinstatement of these workers with full payment of back wages.

Despite this finding of illegal firing and recommendation for reinstatement with full back pay by both the WRC and the FLA, several licensees and other brands doing business with the factory failed to take adequate steps to secure corrective action to address these violations. For example, the licensee, Gorilla Marketing, did not respond in substance to the WRC's communications regarding the violations at the factory. While the licensee, 47 Brand, and the non-collegiate buyers, Next Level and Gap, engaged with factory management, they refused to require Westtex to reinstate all three of the remaining illegally fired workers and provide them with their full back pay, allowing the factory to delay remedy for workers—some of whom it had unlawfully dismissed in 2021—for most of another year.

In August 2023, five months after the WRC first contacted the factory and its buyers concerning the unlawful firings of the worker union leaders, Westtex reinstated one more of the fired worker leaders. After further engagement by the WRC with 47 Brand, Gap, and Next Level, Westtex offered reinstatement, in November 2023, to Worker Three, though the factory remained unwilling to pay her back wages from her date of dismissal in January 2023 to her date of reinstatement. The factory claimed that this worker had voluntarily resigned, even though both the WRC and the FLA found that she only agreed to quit after being told she would be terminated if she did not do so.

Regarding Worker Two, Westtex refused to implement the court order that he be reinstated with full payment of back wages, claiming that he had physically assaulted another worker before he was terminated. However, both Worker Two and the employee that Westtex claimed he had assaulted testified convincingly to the WRC that no such assault had taken place, and the factory management failed to produce any persuasive evidence to the contrary. Nevertheless, despite the lack of credible evidence of in support of Westtex's claims, as well as the substantial evidence to the contrary, the licensee, 47 Brand, and the non-collegiate buyers, Gap and Next Level, informed the WRC that they were not prepared to require the factory to obey the Salvadoran labor court order to reinstate this worker—until Westtex was given the opportunity to exhaust all appeals through the Salvadoran court system—a process that, as the WRC informed these brands, could easily extend for several years.

Fortunately, another university licensee, Spirit Clothing Company, which is also a licensee of The Walt Disney Company, was responsive to the WRC's recommendations for full remediation of the violations. Thanks to Spirit's engagement, Westtex Apparel reinstated Worker Two in December 2023, and both he and Worker Three received payments equivalent to their full back wages from the dates of their dismissal to their rehiring.

B. Remediation of Discriminatory Suspension of 13 Worker Union Leaders and Members

Regarding the discriminatory suspension of the 13 union leaders and members that occurred in July and August 2023, the WRC also engaged, with the licensee, 47 Brand, and the non-collegiate brands, Next Level and Gap. In response to this engagement, Westtex agreed, on December 7, 2023, to provide $125 *gift cards* to each of the workers who had been suspended in July and August 2023.

However, in the case of the 13 worker union leaders and member who had been discriminatorily suspended, $125 represented only 17 percent of the wages they had been denied as a result of the company's retaliation. Obviously, when workers have been discriminatorily denied wages, the provision of compensation, not to mention partial compensation, in the form of a gift card, is not adequate remediation. 47 Brand, Next Level, and Gap, however, failed to insist on further corrective action by the factory.

Fortunately, following further engagement by the WRC, Spirit Clothing Company, itself, ensured that the 13 worker union leaders and members received payments that were equivalent to the two months' wages they had lost as a result of being suspended in July and August 2023. The WRC found that Spirit's humanitarian assistance to these workers achieved full remediation of the violations of the collegiate and brand codes of conduct in relation to their suspension by the factory.