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Workers Rights Consortium Assessment re Easy Group (Mariveles/BEZ, Philippines): Easy Fashion Corporation, Allen Garments, & Kasumi Apparel Ltd. Corporation: Summary of Findings and Recommendations

Abstract

Report of an assessment of labor practices at three closely related manufacturing facilities located in the Bataan Economic Zone (BEZ) in Mariveles, Phillipines. The WRC's assessment has been carried out in response to three principal complaints: working hours and compensation, misuse of a contract labor system, and freedom of association and collective bargaining.

Keywords

Assessment, Association, Bargaining, BEZ, Business, Catherwood, Collective, Conditions, Consortium, Contract, Corporation, Cornell, Easy, Economic, Factory, Findings, Free, Freedom, Garment, Global, Globalisation, Globalization, Group, Hours, Human, ILR, Industrial, International, Labor, Labour, Legislation, Library, Manufacturing, Organisation, Organization, Philippines, Portal, Recommendations, Relations, Report, Rights, School, Status, Summary, Trade, University, Work, Workers, Workplace, WRC



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re EASY GROUP (MARIVELES/ BEZ, PHILIPPINES):
EASY FASHION CORPORATION,
ALLEN GARMENTS,
& KASUMI APPAREL LTD. CORPORATION**

**SUMMARY of FINDINGS and RECOMMENDATIONS
September 20, 2005**

List of Abbreviations

ALU	Associated Labor Unions
BEZ	Bataan Economic Zone
CBA	Collective Bargaining Agreement
DOLE	Department of Labor and Employment
EFWU	Easy Fashion Workers Union (<i>full name</i> EFWU-ALU-TUCP)
KAWU	Kasumi Apparel Workers Union (<i>full name</i> KAWU-ALU-TUCP)
NCMB	National Conciliation and Mediation Board
NOS	Notice of Strike
PCE	Petition for Certification Election
PEZA	Philippine Economic Zone Authority
TUCP	Trade Union Congress of the Philippines
ULP	Unfair Labor Practice
WRC	Worker Rights Consortium

WORKER RIGHTS CONSORTIUM ASSESSMENT of EASY GROUP (MARIVELES/ BEZ, PHILIPPINES)

Introduction

This is a report of an Assessment of labor practices at three closely related apparel manufacturing facilities located in the Bataan Economic Zone (BEZ) in Mariveles, Philippines. Each of the three facilities – Easy Fashion, Kasumi Apparel, and Allen Garments – is owned by the Taiwanese-owned conglomerate Easy Group.¹

Each of the facilities has produced collegiate licensed goods for Red Oak Sportswear (henceforth, “Red Oak”), which was purchased by licensee Knights Apparel subsequent to the WRC’s investigation. Factory disclosure data supplied by Red Oak indicated production of licensed goods at the Easy Fashion facility. However, the WRC’s initial inquiry determined that both of the other two facilities – Kasumi Apparel and Allen Garments – also produced licensed goods for Red Oak. For this reason, and because code of conduct concerns spanned the three production sites, the WRC decided to include all three of the facilities in this Assessment. Easy Group’s facilities have also produced non-collegiate goods for Champion, Northern Studio, American Eagle Outfitters, Tommy Hilfiger, White Sierra, Wal-Mart, W.W. Disney, Harley Davidson, Dicks, Dan Daniel, MICO and Union Bay.

The WRC’s Assessment of the three Easy Group facilities was carried out in response to complaints from employees alleging serious violations of worker rights. The principal areas of concern identified in the complaints were working hours and compensation, misuse of a contract labor system, and freedom of association and collective bargaining.

A WRC Assessment Team gathered evidence concerning this case during the months of November 2004 and January 2005. The investigation documented a number of serious violations of law and applicable codes of conduct. Most centrally, the inquiry documented an unusually brazen effort by Easy Group management to thwart efforts by employees to exercise protected associational rights through a variety of illegal means. These actions included threatening workers who chose to affiliate with a union with termination, placing these employees on forced unpaid leave, and ultimately firing employees en masse, shutting down the Easy Fashion facility, and shortly thereafter reopening it under a new name as a non-union facility. The circumstances surrounding the closure, which occurred during the course of the Assessment, are discussed in this report.

Unfortunately, Easy Group has not cooperated with the WRC’s investigation nor responded positively to the WRC’s recommendations for corrective action. Each of the violations identified in this report remain unresolved.

Easy Group has failed to respond constructively despite aggressive, positive efforts by Knights Apparel to compel the factory to correct violations of worker rights. Indeed, it should be noted that Knights Apparel demonstrated a laudable commitment

¹ Easy Group is also known as “Easy and Joytex Corporation” and “Easy Fashion Industrial Co. Ltd.”. The company’s headquarters is located on the 5th Fl. No.192 1st How Ganng Road, Shin Juang, Taiwan 242 R.O.C.

over a period of months to bring about a positive resolution to this case and has exhausted all reasonable measures in doing so. As noted above, at the time at which the WRC initiated its investigation of the Easy Group facilities, the factories were producing collegiate apparel for licensee Red Oak, arranged through the U.S.-based agent Design Resources International (DRI). When the WRC first informed Red Oak about its concerns regarding the facility, Red Oak responded by immediately severing business ties with the factory – a response the WRC does not advocate except as a last resort measure when constructive engagement with a supplier proves fruitless. However, shortly after this decision, Knights Apparel purchased Red Oak and immediately began a process of positive constructive engagement with the factory. Knights Apparel not only required that Red Oak reinstate orders at Easy Group, but also directed new Knights Apparel orders to the facility (the first such orders ever produced at Easy Group), and committed to placing future orders as an incentive for factory management to correct the problems identified. Knights Apparel also sent a representative to accompany the WRC’s staff person at a meeting in June 2005 with factory management, and strongly and consistently supported the WRC’s recommendations for corrective action.

Despite these efforts, Easy Group management has refused to address the key issues of concern. The June multi-stakeholder meeting did not yield an agreement on a plan to remedy the most severe violations identified, which would have entailed reinstatement of a group of illegally terminated workers and recognition of a union supported by workers. Several weeks later, in early July 2005, Easy Group did agree to the WRC’s core recommendations. However, when the factory was asked subsequently to produce a timeline for implementation, management reneged on the agreement. As noted, to date, Easy Group management has taken no action to implement any of the recommendations outlined in this report.

In light of Easy Group’s failure to remediate code of conduct violations, Knights Apparel has discontinued sourcing from the company. The WRC supports this decision and cannot recommend that any university licensee source from Easy Group until and unless the company comes into compliance with university codes of conduct.

Sources of Evidence and the Scope of this Report

The findings and recommendations presented below are based upon the following sources of evidence:

- Interviews with members of Easy Group’s management, including managerial staff based in Taiwan as well as in the Philippines.
- Interviews with approximately 50 production employees from Easy Fashion, Kasumi, and Allen Garments.
- Interviews with representatives from the Philippine Economic Zone Authority (PEZA) at the Bataan Economic Zone (BEZ) office.
- Interviews with Med-Arbiters, Conciliator-Mediators, and Election Monitors from the Department of Labor and Employment (DOLE) Regional Branch No. III.
- Interviews with officers and members of the Easy Fashion Workers Union affiliated with the Associated Labor Unions - Trade Union Congress of the Philippines (EFWU-ALU-TUCP).

- Interviews with officers and members of the Kasumi Apparel Workers Union affiliated with the Associated Labor Unions - Trade Union Congress of the Philippines (KAWU-ALU-TUCP).
- Interviews with officers from the Associated Labor Union of the Trade Union Congress of the Philippines (ALU-TUCP) Bataan District Office, and officers from the ALU-TUCP National Headquarters.
- Discussions with Design Resources International, East Planet Limited and Design Resources Inc., the trading agents that have facilitated Red Oak Sportswear's and Knights Apparel's orders at Easy Group.
- A review of approximately 100 PEZA, DOLE, and other official documents related to the case, and company records from November 2004 back to 2002.

Based upon the information gathered during the course of preliminary research and the full factory assessment, the WRC identified a number of key areas of concern for investigation. These included: *Working Hours and Overtime Compensation; Misuse of the Contract Labor System; and Freedom of Association and Collective Bargaining*. In the following sections, we summarize our findings with respect to each of these areas and, where appropriate, provide recommendations for remedial action.

FINDINGS & RECOMMENDATIONS

Through the course of the Assessment of Easy Fashion, Kasumi Apparel, and Allen Garments the WRC gathered strong evidence of the following violations of provisions of domestic and international labor laws and applicable university codes of conduct:

1) Working Hours & Overtime Compensation

The Assessment Team found the following violations concerning working hours and overtime compensation:

- a) *Forced Overtime*: The WRC assessment team found that Easy Group employees have frequently been forced to perform mandatory overtime. The requirement of overtime work as a mandatory aspect of employment represents a violation of provisions of applicable codes of conduct that require overtime work to be voluntary and provisions of Philippine law that forbid mandatory overtime except in the case of “emergency” situations.²

The Assessment Team found, on the basis of extensive, mutually corroborative worker testimony, that the factory has mandated overtime regularly during the past year, frequently ranging between four (4) to six (6) hours of overtime on each occasion. On occasional instances, workers have been required to work overtime until roughly 2:00 a.m. in order to complete orders. During discussions with the Assessment Team, members of management acknowledged that it has required employees to perform overtime. According to management, on occasions on which the company expects workers to perform overtime, workers are instructed to sign up for the overtime shift in the morning or submit a valid reason for not agreeing to do so. When questioned by the Assessment Team about what reasons would be considered valid for failing to perform overtime, management was unable to provide a response.

The requirement of obligatory overtime is reified in written company policy. The company’s employee handbook on “Violations and Penalties” states that, “Failure to report for overtime work without a valid reason when being scheduled to work according to overtime policy” could result in “Written Warning”, “Suspension for 3 working days”, “Suspension for 6 working days”, and lastly “Dismissal.”³ The handbook does not define what would classify as a “valid reason” for declining overtime. The ability to “render overtime” has also been included among criteria for

² Article 89 Book Three, “CONDITIONS OF EMPLOYMENT” of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974. Employers may require workers to perform “emergency overtime work” only during extraordinary circumstances, including a) during times of war or local emergency; b) when it is necessary to prevent the loss of life; c) when it is needed urgently to avoid damage to machinery; d) when it is necessary to prevent damage to perishable goods; and e) when it is necessary to prevent serious obstructions of the work of the employer. Overtime may not be mandated as a normal job requirement or practice in the workplace.

³ Easy Group’s “Violations and Penalties” e. Negligence of Duty (1).

eligibility to work at the facilities in Easy Group's official hiring announcements.⁴ According to these materials, any employee who wishes to work at the facility must agree to work overtime upon request as a precondition for employment.

The Assessment Team also found that Easy Group management has punished workers for declining or refusing to perform overtime. Most frequently, this punishment has taken the form of "forced leave" imposed on workers for the next day, or next several days, after refusing to perform an overtime shift. The use of forced leave as a punishment for employees' refusal to work overtime violates Philippine law. According to BEZA officials, "forced leave" is unpaid leave that employers are allowed to assign if unavoidable circumstances, such as a delay in accessing raw materials, require a change of scheduling; workers must be informed at least 1 week in advance.⁵ According to DOLE, forced leave cannot be used as a disciplinary action. The Assessment Team heard extensive, credible testimony from employees who stated that they had been placed on forced leave directly after informing their supervisors that they did not wish to perform overtime shifts. In some cases, according to this testimony, managers specifically told workers that the reason they were being placed on unpaid forced leave was their failure to work overtime as demanded of them.

The factory's practices of requiring that employees perform overtime as a mandatory aspect of employment and punishing workers who decline to do so represent clear violations of applicable codes of conduct and Philippine law. The imposition of "forced leave" as punishment for an employee's failure to perform overtime separately violates provisions of Philippine laws that forbid the use of forced leave as a disciplinary measure.

- b) *Inappropriate Payment of Overtime Compensation:* The Assessment Team found that the Easy Group facilities have frequently failed to compensate employees appropriately for overtime work, in violation of Philippine law.⁶ Substantial mutually corroborative worker testimony revealed that, in some cases, workers have received no payment whatsoever for overtime work they have performed. When compensation is given, it is often less than the legally required amount and provided three to seven days late. A review of employee pay slips found that the documents do not present overtime contributions clearly and some instances of overtime (such as that performed on Sundays or National Holidays) is not reflected in pay slips at all. Consequently, workers have had great difficulty verifying that the compensation they do receive is appropriate for the work they perform.
- c) *Day Swapping and Compensation:* The Assessment Team found that Easy Group management frequently required employees to work on designated rest days and holidays, in exchange for a day off later in the month. Such "day swapping", as it is known, has been carried out without workers' consent and without proper compensation. The practice violates Philippine law in several ways.

⁴ Hiring announcement for Allen Garments, dated November 25, 2004.

⁵ Interview with PEZA officials at Bataan District Office (BEZA), November 26, 2004.

⁶ Article 86 and 87. Book Three, "CONDITIONS OF EMPLOYMENT" of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

First, the practice of mandatory “day swapping” violates laws requiring that any work performed by employees on weekly rest days and holidays must be done so voluntarily, except in extraordinary cases. In the Philippines, employees are entitled to one 24 hour rest day for every 6 consecutive days worked. Employers may only require their employees to work on rest days and/or holidays in emergency circumstances, not as a common practice.⁷ The Assessment Team found that the practice of “day swapping” has been a common occurrence during the past year at the Easy Group facilities, rather than a practice born only of emergency as the law requires. Additionally, employers are required under Philippine law to “respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.”⁸ In violation of this provision, the practice of “day swapping” has resulted in employees working on the religiously identified rest day of Sunday, an issue of great concern to many workers, the strong majority whom are practicing Christians.

Second, the practice of mandatory “day swapping” has involved the under-compensation of employees. Philippine law requires that any work performed on rest days and holidays must be compensated at a rate of 30% above the normal work day rate.⁹ Philippine law is clear that any work performed as overtime (meaning work beyond the normal work day and work on rest days and holidays) must be compensated at this overtime rate, and cannot be compensated through any other means, such as unpaid leave – even if an employee were to accept such an arrangement. This interpretation of the law was confirmed to the Assessment Team by representatives from the DOLE and is stated clearly in the legislation itself. “Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required.”¹⁰ In the case of the Easy Group facilities, the company has regularly compensated employees working on rest days and holidays at the normal work day rate, rather than the legal overtime rate. The factory’s practice of compensating employees for overtime work through unpaid leave violates Philippine law.

Third, Easy Group has violated the Philippine law and applicable codes of conduct by punishing employees for declining to participate in the “day swapping” arrangement. As in the case of overtime discussed above, the Assessment Team found that many employees who did not report to work on rest days and Sundays that were “swapped” with normal work day by management were placed on forced unpaid leave shortly thereafter. As in the case of overtime discussed above, the evidence indicates that this practice by management has been a persistent pattern over time. The imposition of forced leave in this way represents illegal retaliation by management for employees’ exercise of the right to decline overtime.

⁷ Article 92 Book Three, “CONDITIONS OF EMPLOYMENT” of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

⁸ Article 91(b) Book Three, “CONDITIONS OF EMPLOYMENT” of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

⁹ Article 93 Book Three, “CONDITIONS OF EMPLOYMENT” of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

¹⁰ Article 88 Book Three, “CONDITIONS OF EMPLOYMENT” of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

Finally, the Assessment Team found that the facilities failed to provide a clear accounting for compensation of work performed on rest days. Sunday work, specifically, has not been recorded on employees' timecards, but rather in a separate book in which employees have been required to write by hand. Workers are not given a copy or receipt of the time recorded. Sunday work is also paid separately from regular pay, in small envelopes without a receipt. Some employees reported being paid as late as one month for work performed on rest days. This record keeping and pay system makes it unreasonably difficult for workers to ensure that they are being compensated appropriately for their work.

Recommendations

The WRC recommends that the factory take the following steps in this area:

- Discontinue the practice of requiring overtime as a mandatory aspect of employment.
- Refrain from working on rest days or holidays, particularly Sundays, unless absolutely necessary and an agreement to do so is reached with employees.
- Ensure that all overtime is performed voluntarily, by establishing a mechanism for workers to notify their immediate supervisor, either verbally or in writing if they do not wish to work overtime on a given day. Workers should be allowed to make this notification any time before the overtime shift begins, as well as during the overtime shift. This policy should be posted prominently in the factory and management should make it clear to supervisors that no worker can be disciplined or punished in any way for choosing not to work overtime.
- Cease the illegal practice of "day swapping", and pay workers all required pay rates for work performed on rest days and holidays regardless of whether or not leave is given on a later date. Specifically, if employees choose to work on a rest day or holiday they must be compensated the legally mandated overtime rate of 30% above the normal wage, and 50% for holidays that coincide with the employees scheduled rest day.¹¹
- All overtime should be recorded on employees' timecards and employees should get complete information on their pay slips about how the overtime compensation was calculated.

2) Misuse of the Contract Labor System

The Assessment Team found the following violations concerning the use of contract labor:

¹¹ Article 93 (a) and (c), Book Three, "CONDITIONS OF EMPLOYMENT" of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

a) *Improper Use of Contract Labor:* The WRC Assessment Team found that Easy Group uses contract employees for some positions that are effectively regular positions, in violation of Philippine laws regarding the classification of contract jobs. The implementation rules for Articles 106 through 109 of the Philippine Labor Code state that “Contracting’ refers to... the performance or completion of a specific job, work or service within a definite or predetermined period”; and, that it is “prohibited” for the “contractual employee to perform functions which are currently being performed by the regular employees.”¹² Implementation rules concerning regular employment further clarify that “regardless of the oral agreements of parties, employment shall be deemed regular... where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.”¹³ When a worker is hired on a contract basis, he or she should be employed to do specific tasks that are not the principal work of a business and should be hired to complete this work within a specific, limited time frame of no longer than 6 months.¹⁴

At Easy Group’s facilities, the Assessment Team found a substantial number of workers performing the same tasks as regular employees, such as cutting, sewing, and general assembly of garments, for indefinite periods of time. These contract employees’ work schedules and job responsibilities differed in no discernible way from that of regular employees. In some cases, employees have been kept on contract status for significantly longer than the 6 month legal limit for contract status employment. For example, sixteen such workers were identified during the course of a DOLE investigation regarding a union certification election at Kasumi Apparel. A DOLE appointed Med-Arbitrator determined that 16 “contract” employees, whose right to vote had been challenged by management, were in fact eligible to vote because they had been employed at the facility for longer than six-months. The Med-Arbitrator stated that these employees should, in fact, be classified as “regular” employees. In the case of this group of workers, factory management ultimately admitted the misclassification and they consented to the votes of the 16 employees being counted in the union election.¹⁵ Nevertheless, to date, the employment status of these 16 employees, and that of other “contract” employees who have been employed at the facility for longer than six-months performing work responsibilities identical or nearly identical to normal employees, has not changed. Numerous workers remain misclassified as “contract” employees.

The failure of Easy Group to either limit the use of contract labor to appropriate work arrangements or to classify all workers who fulfill the responsibilities of regular employment as regular employees represents a clear violation of Filipino law.

b) *Compensation Discrimination Concerning “Contract” Employment:* Workers who are misclassified as “contract” employees face discrimination in compensation and other employment rights. The Assessment Team found that numerous workers who

¹² Department of Labor and Employment Order No. 18-20 (series of 2002), Rules Implementing Articles 106 to 109 of the Labor Code, As Amended: Section 4(a) and Section 6(i).

¹³ Rules on Implementing the Philippine Labor Code, Book VI, Rule 1, Section 5(a).

¹⁴ Interview with DOLE representatives November 26, 2004.

¹⁵ DOLE Region III, Case No. RO300-0303-RU-001, Proceedings Re: Challenged Voters Certification Election at Kasumi Apparel Ltd. Corporation, February 23, 2004.

are employed on contract status but perform work identical to that performed by regular employees are compensated at a lower pay rate than the regular workers for this identical work: 217 Pesos/day for contract workers compared to 220 Pesos/day for regular employees. Employees who have been wrongfully classified as “contract employees” are also prevented from accruing seniority benefits and exercising associational rights as members of the regular, unionizable workforce.

Recommendations

The WRC recommends that the factory take the following steps in this area:

- Immediately discontinue the practice of hiring contract employees for “regular” employee type work. Management should begin to rectify this misclassification of jobs by conducting a survey of all the facility’s positions and their classification (contract or regular) at their three facilities in the Philippines. Easy Group should provide the WRC with an opportunity to review the survey process and results. Based on the results from this survey, management should offer regular employment status to any contract worker who is occupying what is, in effect, a permanent position.
- Immediately change the status of any contract worker who has worked longer than six months to “regular” status. Easy Group management should also allow the WRC and other monitors full access to employee records so that start dates and employment status can be fully monitored. It should be noted that it is a common practice in the Philippine’s manufacturing sector for contract employees to be laid off after their contract is finished, then hired again on a new contract one to two months later; the WRC would not see this as a viable resolution to the contract worker problems at Easy Group.
- Immediately begin paying all employees who have served more than 6 months and/or are doing work that is “regular” by nature, the higher wage rate of 220 Pesos/day.

3) Freedom of Association & Collective Bargaining

The Assessment Team found overwhelming evidence supporting the conclusion that Easy Group management has engaged in a range of acts that violate worker rights under applicable codes of conduct and Filipino law to associate freely and bargain collectively without interference or reprisal from factory management.¹⁶ Most centrally, management

¹⁶ Philippine law specifically forbids employers from committing the following “unfair labor practices”: “a) to interfere with, restrain or coerce employees in the exercise of their right to self-organization; b) to require as a condition of employment that a person or employee shall not join a labor organization or shall withdraw from one to which he belongs; c) to contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization; d) to initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizations or supporters; e) to discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization...” See: Article

engaged in a pattern of threatening workers with job loss if they chose to affiliate with the union, placing workers on unpaid forced leave, and ultimately terminating workers en masse in retaliation for their decision to join the union. In doing so, management repeatedly justified its actions by claiming that buyers had reduced orders from specific facilities, rendering forced leave and terminations unavoidable. Overwhelming evidence indicates that these claims by Easy Group were false and were made deliberately to mislead workers and other stakeholders in this case; a review of this evidence is presented at the end of this section.

Chronology

The following is a chronology of events pertinent to alleged violations of associational rights by Easy Group:

- On March 7th, 2003, workers from Easy Fashion and Kasumi Apparel filed petitions for union certification elections with the Department of Labor and Employment (DOLE). The names of the unions are Easy Fashion Workers Union (EFWU) and Kasumi Apparel Workers Union (KAWU).
- Between June 2003 and December 2004, the DOLE considered a series of appeals from Easy Group to bar the unions from holding elections. Ultimately, the DOLE dismissed the appeals, and fixed dates for the elections: February 12th, 2004 for Kasumi Apparel and March 18th, 2004 for Easy Fashion. The elections were held on the scheduled dates. The election results at Kasumi Apparel indicated a majority of workers opposed to union representation.¹⁷ The election results at Easy Fashion indicated a majority of workers supported union representation, triggering a legal requirement on the part of Easy Fashion management to recognize the union as workers' chosen representative.
- On April 2nd, 2004 the EFWU was certified as the lawful, exclusive bargaining agent for all regular employees at Easy Fashion.
- On August 25th, 2004, the EFWU filed a notice of strike with the DOLE citing a range of alleged unfair labor practices (ULP).¹⁸ The EFWU ultimately withdrew its notice of strike when an agreement was reached to initiate a collective bargaining process on or around September 10th, 2004.¹⁹

248, "Book Five, "LABOR RELATIONS" of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

¹⁷ It is important to note that, based upon the findings of serious violations of associational rights that occurred leading up the election, as discussed in this section, these election results may not be relied upon as an accurate demonstration of workers' will.

¹⁸ Unfair Labor Practices are defined by Philippine Law in Article 248, Book Five: LABOR RELATIONS of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

¹⁹ Raul S. Soldevilla (Officer-In-Charge, IRU, BEZ), Memo: Easy Fashion & Apparel Multi-Purpose Coop. September 20, 2004.

- On September 10th, 2004, EFWU representatives and factory management met and developed a timeline for collective bargaining in which bargaining would commence immediately and bargaining sessions would occur twice per month thereafter.
- On November 11th, 2004, Easy Group management announced that the Easy Fashion facility would be permanently closed, effective December 15th, 2004. The notice of closure cited the reason as “No more orders from buyers.”²⁰ All remaining Easy Fashion employees were subsequently paid severance and laid off.

Findings of Violations with Respect to Freedom of Association

The Assessment Team identified the following specific means through which Easy Group management has violated the associational rights of its employees under applicable codes of conduct and Filipino law.

- a) *Intimidation and Harassment of Union Supporters:* The Assessment Team found extensive evidence that Easy Group management has, on repeated occasions spanning more than a year, made threats to workers to the effect that their association with the union could result in the loss of their jobs. The most aggressive incidents of harassment and intimidation occurred between January and March of 2004, during the period leading up to scheduled elections regarding union representation at Kasumi Apparel and Easy Fashion. During this period, according to substantial, mutually corroborative worker testimony, Mr. Samson Su (the Plant Manager at Easy Fashion), together with other members of Easy Group management, visited employees in their homes outside of work hours and warned that a decision to associate with the union could result in the workers’ termination and that workers should therefore “vote wisely” in any election regarding union representation. Members of management asserted that the factories’ buyers would not tolerate a union in the factories and would cancel orders, necessitating layoffs. Mr. Su and other members of management also held captive audience meetings in the workplace during working hours conveying repeatedly that the factory would close if the union won the election. Such acts represent unlawful interference with and coercion of employees exercising protected associational rights.
- b) *Surveillance and Isolation of Union Leaders:* The Assessment Team found, on the basis of highly credible, mutually corroborative worker testimony, that Easy Group management conducted inappropriate surveillance of officers of the EFWU and KAWU unions. These actions included standing above these workers for long periods of time during the work day and making threatening remarks regarding the unionization effort. At Easy Fashion, these actions occurred beginning in March, 2003 and continued until the plant’s closure in December 2004. At Kasumi Apparel, actions of this nature began in March 2003 and continue to the present day. Additionally, management has, without justification related to production issues, relocated union officers to isolated parts of the factories where other employees could not see or interact with them. These acts represent illegal interference with and

²⁰ Mr. Huang Chi-Min, Easy Group Announcement, November 11, 2004.

coercion of employees exercising their right to associate freely.

- c) *Use of Forced Leave as Punishment for Union Activity:* The Assessment Team determined that factory management has targeted union officers in imposing unpaid forced leave. Management placed the majority of officers from both EFWU and KAWU on unpaid leave throughout the unionization campaign. The union officers comprised a disproportionate portion of employees who were placed on forced unpaid leave during this period. At Easy Fashion, the union officers were placed on forced leave on-and-off between April 2003, shortly after the unionization effort was announced, and March 2004, when a union election, which the union won, was held; the officers were then placed on forced leave on a nearly constant basis from March 2004 through December 2004, when the factory was closed. At Kasumi Apparel, the union officers were placed on forced leave on-and-off between April 2003, shortly after the unionization effort was announced, and February 2004, when the union election, which the union lost, was held. The imposition of forced leave on union officers ceased at Kasumi Apparel as soon as the election took place. Given these facts, the Assessment Team concluded that the factory's use of unpaid forced leave represented illegal interference with and retaliation against worker leaders engaged in the exercise of associational rights. The factory's use of forced leave as a means of discipline represents a separate violation of Philippine law, as discussed in the section above on forced overtime.
- d) *Attempted Bribery of Union Officers:* The Assessment Team found that Easy Group managers made attempts to bribe union officers in return for their agreement to halt unionization efforts. During a meeting on March 26th, 2003, Mr Huang Chi-Min, asked 8 union officers what they would want in exchange for ceasing unionization. Mr. Chi-Min offered better credit and loan options for all employees and personal bonuses for the officers if they abandoned the union. Attempts at bribery represent unlawful interference with employees engaged in the exercise of associational rights.
- e) *Attempted Illegal Disqualification of Workers from Unionizable Workforce:* The Assessment Team found that Easy Group management sought to exclude workers from participation in the union by wrongfully classifying them as "contract" employees, a category of employment barred from membership in the applicable collective bargaining unit. As discussed above, Easy Group management specifically challenged the right of 16 workers to participate in a union certification election at Kasumi Apparel by claiming that the employees were contract workers. A DOLE appointed Med-Arbiter determined that 16 "contract" employees were in fact eligible to vote because they had been employed at the facility for longer than the six-month limit on contract employment. The Med-Arbiter stated that these employees should be classified as "regular" employees and the factory's failure to classify them as such violate Filipino law.²¹ The factory's practice of keeping workers on contract status for longer than the law allows and other misuses of the contract labor system are discussed above in the section on contract labor.

²¹ DOLE Region III, Case No. RO300-0303-RU-001, Proceedings Re: Challenged Voters Certification Election at Kasumi Apparel Ltd. Corporation, February 23, 2004.

f) *Factory Closure and Mass Termination of Employees in Retaliation for Union Activities*

As noted above, on November 11th, 2004, Easy Group management announced that the Easy Fashion facility would be closed, effective December 15, 2004. All remaining Easy Fashion employees were subsequently laid off. The Assessment Team concluded that Easy Group's decision to close the factory and terminate the workforce was motivated by a desire to put an end to efforts by workers to establish a labor union in the facility. The firings therefore violated provisions of applicable codes of conduct and Philippine law that prohibit retaliation against employees for the exercise of associational rights.²²

i) *Evidence supporting the conclusion that the closure was motivated by anti-union animus is particularly strong given that unusual circumstances surrounding the closure present what is in effect a controlled experiment among Easy Group's facilities.* In many instances, the reasons behind a plant closure involving a unionization effort are contested and it is difficult to disentangle legitimate reasons from illegitimate anti-union animus. In this case, we are provided with rare circumstances resembling a controlled experiment, in which we can evaluate the response of a parent company to events in two of its own facilities. In one facility, a unionization effort was successful and the facility was closed. In the second facility, a unionization effort was unsuccessful and the facility flourished. Claims that the closure was made necessary by economic forces are belied by the facts that the facilities differed in no discernable ways relating to production capacity and that the parent company could have easily adjusted business levels in each of the plants to prevent the closure.

In the case of Easy Fashion, according to substantial worker testimony, during the year leading up to the closure of the facility, plant management persistently told workers the factory was experiencing a sharp reduction in orders from buyers that did not approve of the unionization effort and that management would likely be forced to close the facility. Despite these messages, the election results indicated majority support for the union and the union was certified as workers' bargaining agent. Roughly 2 months after collective bargaining began in earnest in September 2004, management closed the factory and terminated the workforce, citing a loss of orders. Within 3 months of the closure, Easy Group announced plans to reopen the Easy Fashion facility under a new name, Allen Garments 2. Workers in the "new factory" are not represented by the union.

In the case of Kasumi Apparel, in February 2003, prior to the union election at Kasumi Apparel, plant management likewise frequently told workers that the union activity was causing a reduction in orders from buyers and that, as a result, the factory may soon close. In this case, the union lost the election. In contrast to the case of

²² See Article 248, Book Five, "LABOR RELATIONS" of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974. See Footnote 17.

Easy Fashion, following the election management immediately ceased making such statements about a loss of orders and Kasumi's orders and production levels have remained stable since.

The differing response of Easy Group management to the successful and unsuccessful unionization efforts in the two facilities, the timing of the closure, and Easy Group's decision to re-open Easy Fashion shortly after the closure as a non-union facility lends credence to the conclusion that the closure was related to the unionization effort.

It is important to note that, even if Easy Group's claims regarding the purported anti-union preference of buyers were true, the closure of Easy Fashion would not have been made unavoidable as a result of this preference. According to testimony from Easy Group management, the distribution of production among the three Easy Group facilities is determined internally; buyers are typically unaware of which facility is producing their orders. Mr. Sammy Chu, plant manager of Kasumi Apparel and Allen Garments testified that it is generally he who decides where to site production of goods, not buyers.²³ He explained that orders often arrive addressed to Easy Fashion, but that he then balances the production of the orders out among the three sites. While orders typically begin at Allen Garments because it is the only one of the three with cutting, pressing, and packing capacity, there is no significant difference between the other two facilities – Easy Fashion and Kasumi Apparel – in terms of their capacity to complete orders: both consist primarily of sewing and assembly lines. Thus, a shortage of production at one facility could easily be remedied through the reallocation of production throughout the sites; indeed, Mr. Chu explained that he makes such adjustments regularly. It is clear that production levels remained at full capacity in each of the other two facilities at the time of the Easy Fashion's closure, and thus production could have been transferred to Easy Fashion had Easy Group so desired to prevent the closure.

ii) The conclusion that the closure was motivated by anti-union animus is further supported by credible testimony to the effect that Easy Group management privately acknowledged that the closure was related to the unionization effort. When the WRC inquired about Red Oak orders at the Easy Fashion facility with East Planet Limited and Design Resources Inc. – the agency that arranged Red Oak's orders at Easy Fashion – the representative responsible for the orders replied that the Red Oak order had been transferred from Easy Fashion to Kasumi Apparel because "Easy Fashion was temporarily closed". When the WRC investigator inquired further about Easy Fashion's closure, the East Planet representative stated that the reason given by Easy Group for the closure was "labor union problems."²⁴ This testimony, which was provided freely and without prompting to the Assessment Team by the East Planet

²³ Interview with Allen Garments and Kasumi Apparel Plant Manager, Mr. Sammy Chu, November 26, 2004.

²⁴ Telephone conversation with East Planet Limited and Design Resources Inc.'s trading agent based in the Philippines, November 26th, 2004.

agent over the telephone, lends credence to the conclusion that Easy Group closed the Easy Fashion facility to put an end to the union drive.

iii) The justifications offered by Easy Group for the closure are not credible. In justifying its actions, Easy Group has claimed that the decision to close the Easy Fashion facility was made necessary by the cancellation or reduction of orders from buyers at the Easy Fashion facility. The evidence available casts doubt on the veracity of this claim and indicates this justification is a pretext. Specifically, Easy Group has offered two conflicting explanations regarding a purported reduction in orders at the facilities. Neither specific claim is credible.

The first claim is that buyers had cancelled or transferred orders because they did not approve of the unionization efforts at Kasumi Apparel and Easy Fashion. As discussed above, even if the claim that buyers expressed anti-union sentiments were true, there is not a basis for concluding that closure of Easy Fashion was unavoidable as a result. Moreover, the claim that buyers disapproved of the unionization effort does not appear credible. It is important to note that Easy Group has never made this claim to the WRC or to government officials, but rather only to its own employees – the party in the weakest position to verify the assertion. The WRC has not identified any evidence indicating that any buyer has requested that their orders be transferred due to the unionization effort. Red Oak (later bought by Knights Apparel), the university licensee in this case, which comprised a substantial portion of production in the facilities during the time period in question, has credibly stated that it provided no instructions to Easy Group relating to unionization about which facilities should produce its orders. To date, Easy Group has not identified a single buyer that has done so.

The second claim of Easy Group, conveyed to government officials and the WRC, is that buyers had cancelled orders because of efficiency and quality issues specifically at the Easy Fashion facility. Easy Group has not provided credible evidence to support this claim. In November, 2004, Easy Group management promised to provide the Assessment Team with quality reports that support its claims in this area. The WRC finally received the promised documents more than 6 months later in May and June 2005. The documents, which are several years old, primarily from 2002, are addressed to Easy Group headquarters, not Easy Fashion in particular. They provide no specific claims regarding quality problems unique to Easy Fashion (relative to each of the other Unique Group facilities). Given the evidence available, the Assessment Team did not find Easy Group's claims regarding quality and efficiency at Easy Fashion credible.

In assessing the veracity of these claims, it is noteworthy that Easy Group gave these two differing accounts to two different audiences. In communicating with workers prior to the closure, Easy Group never cited quality issues when conveying the purported sentiments of buyers, only unionization. In communicating with government officials and the WRC, Easy Group never cited unionization as a reason that buyers purportedly redirected production, only quality and efficiency. The two

conflicting accounts impeach the overall credibility of Easy Group on the central question of why mass forced leave and terminations were necessary.

In sum, the available evidence strongly supports the conclusion that Easy Group's assertion that the closure of Easy Fashion was the unavoidable result of the decisions of buyers is, in fact, a pretext. The evidence available indicates that the closure was motivated by anti-union animus. As such, the resulting termination of workers represents a violation of workers' right to associate free from retaliation from management, as protected by Philippine law and applicable codes of conduct.

Recommendations

The WRC recommends that Easy Group take the following steps in this area:

- Reinstatement all workers who were terminated unlawfully. All 58 of the Easy Fashion regular employees who were illegally dismissed as of November 12, 2004 should be offered immediate reinstatement at their previous seniority levels. In addition, it must be acknowledged that many employees were coerced to resign during the last several months of Easy Fashion's operation as a result of excessive and illegal forced leave and/or the aggressive anti-union campaign carried out by facility management. Given the illegal circumstances underlying the employees' resignations, these employees should be eligible for reinstatement as well. The WRC recommends that all employees who have resigned from Easy Fashion or Kasumi Apparel since March of 2004 (totaling 47 workers) should be offered reinstatement at their previous seniority levels at any of the three Easy Group production units. In sum, Easy Group should offer reinstatement to the 105 former employees described above at their previous seniority levels.
- Establish a company policy on freedom of association that accords with Philippine law and codes of conduct. This policy should be posted throughout all three of the factories, informing workers of their right to join any union of their choice (or no union) and that management will neither reward nor punish any worker for the choice they make. Every line leader or section supervisor should be required to read this policy out loud to the employees under his or her authority. The WRC asks for an opportunity to review this policy and suggest any necessary modifications prior to it being posted. In addition to adopting a freedom of association policy, a formal letter of apology should be sent to the unions of KAWU and EFWU, acknowledging that the aggressive anti-union actions and forced leave were illegal activities.
- In light of the violations of workers' associational rights documented above, Easy Group management and ALU-TUCP should follow the Voluntary Recognition procedures (as outlined in Philippine law) in all three production facilities.²⁵ To be clear, employees of these three facilities should not be made to go through another lengthy Certification Election process again in order to establish union representation.

²⁵ "Voluntary Recognition", Rule X of the Labor Code of the Philippines, Presidential Decree No. 442 as Amended May 1, 1974.

- Easy Group Management should work with the DOLE and ALU-TUCP to design and conduct trainings for all supervisors and administrative staff on freedom of association and the obligation of all management, supervisory and administrative employees to refrain from any coercive action with respect to workers' choices about union representation. The WRC is also available to assist Easy Group management, the DOLE, and ALU-TUCP in designing and executing this training.