



WORKER RIGHTS CONSORTIUM

Case Summary: Star S.A. (Honduras)

October 1, 2008

Star S.A. is an apparel manufacturing facility in Honduras that is disclosed as a producer of collegiate apparel for licensees Nike, New Agenda, and VF Imagewear. The factory is owned and operated by Anvil Sportswear.

The WRC's work on this case has occurred in two phases. In the first phase, the WRC conducted a preliminary inquiry in response to a report from the National Labor Committee (a U.S. based labor rights organization) in November 2007, alleging that the company had illegally dismissed a group of workers who had sought to form a union. The WRC's preliminary inquiry revealed that the factory had indeed conducted an unlawful mass dismissal. During the course of several days in mid-November 2007, Star management dismissed roughly 55 workers shortly after those workers had become founding members of a labor union named SITRASTAR. The dismissals were unlawful under Honduran law, both because they were clearly motivated by anti-union animus and because they violated a procedural requirement in the law, known as "*protección del estado*," which prohibits the dismissal of founding union members (for any reason) without prior authorization for the Ministry of Labor.

In light of these findings, the WRC recommended to Anvil that the workers be reinstated with back pay. Several other organizations, including the National Labor Committee and International Textile, Garment, and Leather Workers' Federation, also weighed in on the issue, pressing Anvil, and Nike, the key buyer, to take corrective action. Nike engaged relatively quickly, conducting its own inquiry and pressing Anvil to reinstate the workers. In December 2007, Anvil reinstated and provided back pay to roughly 55 unlawfully dismissed workers. The reinstatements represented important progress.

The second phase of the WRC's engagement involved a full assessment of labor practices at the facility. This effort began with extensive offsite worker interviews. The WRC received credible testimony from workers about a number of serious abuses at the facility. Workers testified that factory supervisors engaged in verbal abuse of workers (yelling at workers and addressing them with vulgar and derogatory epithets), and that in some cases, supervisors physically abused workers inside the plant as a means of enforcing discipline. Workers testified to instances of serious sexual harassment by male supervisors of female workers in the facility. Workers testified that they were forced to work overtime and that they were subjected to unreasonable restrictions on their access to bathrooms and drinking water. Many workers reported that these conditions triggered their desire to organize a union at the plant.

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As part of its inquiry, the WRC also sought to investigate another set of alleged anti-union dismissals. These firings had occurred after the mass dismissal described above and were not initially investigated by the WRC. At the time factory management agreed to reinstate the first group of fired workers, management also committed to the union that it would review the circumstances of this second set of firings in consultation with the union and would consider reinstating these workers as well. At the end of 2007, the WRC received a complaint from the SITRASTAR union alleging that management had reneged on its commitment to review these workers' cases with the union in good faith.

In February 2008, the WRC contacted Star in order to arrange to review the WRC's findings concerning code of conduct compliance in areas unrelated to freedom of association, and to seek cooperation from Anvil in reviewing relevant documentation and interviewing managers related to the dismissal of the second group of workers.

Anvil responded by indicating it would not cooperate with the WRC. The company's position was that it was engaging directly with the union at the plant concerning the dismissals and the WRC's role as a monitor of university codes of conduct was therefore not applicable to the situation. The WRC responded that there were numerous issues of concern in addition to the dismissals. The WRC also noted that, in terms of the dismissals themselves, the fact that there was a dialogue between management and the union did not exempt the factory from its obligation to demonstrate compliance with university codes. If the dismissals were unlawful, the factory had an obligation to remediate this violation.

Repeated efforts to secure the company's cooperation, over a period of months, did not bear fruit – on several occasions, the company indicated a willingness to schedule a WRC visit to the factory and then failed to follow up. In May, the WRC contacted Nike to request its intervention in securing Star's cooperation. Nike replied that it had communicated with Star and that the company had indicated to Nike that it was prepared to meet with the WRC to review the code of conduct compliance concerns. However, when the WRC followed up by again requesting a meeting with Star management to review the code of conduct compliance issues, the company refused to meet.

Despite Anvil's failure to cooperate, the WRC was able to gather sufficient evidence to assess the legality of the dismissals. This evidence strongly supported the conclusion that the workers were dismissed unlawfully.

First, the dismissals in question were illegal in terms of the procedure employed. Article 117 of the Honduran Labor Code requires any employer who wishes to dismiss a worker to provide a written document to the worker in advance of the dismissal, stating the justification for it. In this case, Anvil did not provide any of the workers in question with a dismissal letter. Instead, factory management simply informed the workers verbally that they were being dismissed as part of a general reduction of personnel. On the basis of these facts alone, which Anvil could not plausibly dispute, the dismissals were without question illegal.

Second, the WRC found strong evidence that the workers were selected for dismissal due to their union activism. All of the workers in question were supporters of the independent unionization effort at the plant. All of the workers joined the union during the period after its founding assembly, but prior to their dismissal. And all of the workers had participated in a protest on November 12, 2007 at the industrial park where Star is located. The dismissal of workers occurred in most cases just days after their participation in the lawful protest (the largest time gap between participation in the protest and dismissal was two weeks). Workers testified that members of the factory's personnel department and security personnel from the free trade zone took extensive video footage of workers during the protests. Through this footage, management was in a position to know the identities of workers who had participated in the protest. Additionally, workers testified that, in repeated instances prior to workers' dismissal, factory supervisors threatened the workers that they would be dismissed due to their union activities. In some cases supervisors demanded that the workers provide them with the names of union supporters as a condition of keeping their jobs.

Anvil provided changing and contradictory justifications for the dismissals, each of which lacked credibility. The company's first justification – given to workers at the time of the dismissals – was that there was a need for a general reduction of the workforce (e.g. overall downsizing). After being challenged by the workers, the WRC, and other organizations, the company provided a second and wholly different justification for the dismissals, claiming that the dismissals had in fact been carried out for cause: the company alleged the dismissals were justified by poor performance or disciplinary problems. However, the company had made no such claim at the time of the dismissals. Indeed, in some cases, management specifically said to workers that their performance was not the issue, noting that the company had dismissed other workers during the same period who had entirely clean records. The fact that the company only began to make the just cause claim months after the dismissal, in response to pressure, severely undermined its credibility. Importantly, Honduran law makes clear that reasons for dismissals given *post hoc* are not considered valid; indeed, this is the reason, as explicitly stated in the law, why employers are required to provide a written dismissal notice explaining the justification at the time of the dismissal.¹

In light of the evidence described above, the WRC recommended that Nike press Anvil to provide offers of reinstatement and back pay to the workers in question. Nike, which had previously declined to act on the issue, agreed to raise the matter with Anvil.

In response to this intervention, management agreed to meet with worker representatives concerning the dismissals. A deal was ultimately reached. Under this agreement, signed on September 2, Anvil agreed to reinstate each of the ten workers who continued to seek reinstatement. The company agreed to recognize the workers' seniority as of November 30, 2008 (as mentioned, the company paid severance and accrued benefits until shortly before this date). Notably, however, the agreement did not provide for back pay to any of the workers, a required remedy under Honduran law² and international labor standards

¹ Article 117 of the Honduran Labor Code

² Article 110 of the Honduran Labor Code

for unlawful dismissals. Thus, while the agreement represented significant progress concerning the dismissal issue, it cannot be considered full remediation. It also must be emphasized that progress on the issue was only achieved after an unacceptably long delay, causing significant hardship for workers.

There has not been verified corrective action with respect to the other violations identified through the WRC's inquiry. The WRC will continue to seek to engage with Nike and Anvil to ensure that these violations are addressed.