



# Research Report

## F&D FACTORY CASE

PRESENTED BY THE INDEPENDENT MONITORING GROUP OF EL SALVADOR (GMIES)

AT THE REQUEST OF FAIR LABOR ASSOCIATION (FLA)

**SAN SALVADOR, EL SALVADOR,  
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## INDEX

Abbreviations and acronyms	3
I Context of the investigation	4
II Methodology	6
A. <i>Planning</i> and investigation off-site the factory	6
B. On-site visit to the factory	6
III Results of the investigation	9
1. <i>Rights to vacations and Christmas bonus</i>	9
2. <i>Social Security Payments</i>	10
3. <i>Granting of Loans</i>	11
4. <i>Disciplinary System</i>	12
5. <i>Verbal Abuse</i>	14
6. <i>Body Search Procedures</i>	15
7. <i>Information about HBI Standards</i>	15
8. <i>Communication channel to report noncompliance to HBI</i>	16
9. <i>Maintenance of first aid kits and their contents</i>	16
10. <i>Freedom of Association</i>	17
11. <i>Suspension in January 2011</i>	21
12. <i>Overtime payment to new employees</i>	21
IV Remediation actions	22
V Annex	26

## *Abbreviations and acronyms*

IEM	Independent External Monitoring
FLA	Fair Labor Association
FESS	Union Federation of El Salvador (for its initials in Spanish)
HBI	Hanesbrands Inc
GMIES	Independent Monitoring Group of El Salvador (for its initials in Spanish)
SITS	Textile Industry and Related Activities Union (for its initials in Spanish)
STEF&D	Union of the Company F&D (for its initials in Spanish)
UMO	Order Maintenance Unit
PNC	Civilian National Police
FESPAD	Foundation for the Study of the Law
MTPS	Ministry of Labor and Welfare (for its initials in Spanish)
ISSS	Salvadoran Institute of Social Security (for its initials in Spanish)
AFP	Pension Funds Administrator (for its initials in Spanish)
CALMA	Breastfeeding Support Center (for its initials in Spanish)

## *I Context of the investigation*

The textile factory F&D is located in building number 8 of the Free Trade Zone of San Marcos, in the municipality of the same name, department of San Salvador. Its principal activity is the production and exportation of clothing. The factory produces clothes exclusively for the company Hanesbrands Inc. (HBI). The factory workforce is approximately 813 workers, who are in the majority women.

In December of 2010, the Independent Monitoring Group of El Salvador (GMIES), via a petition from the Fair Labor Association (FLA), carried out an Independent External Monitoring process (IEM) at F&D. At this time, GMIES pointed out a series of failures to comply with both the FLA Code of Conduct and with national labor law and international freedom of association conventions. Among the principal findings, it's important to highlight the noncompliance in vacation payments, Christmas bonuses, social security and overtime; irregularities in the granting of personal loans to workers; evidence of verbal abuse; and inappropriate body search procedures, among others. Nevertheless, one of the most sensitive findings has to do with freedom of association. Before these findings, the factory and HBI suggested a remediation plan, along with a work chronogram for its implementation. The measures adopted as part of this plan were reported to the FLA.

In F&D there exist two legally constituted unions: one a trade union from the industry and the other one from the factory. The first is called the Textile Industry and Related Activities Union (SITS) Section F&D, which is in addition unionized with the Union Federation of El Salvador (FESS). The second union, which is the one most recently conformed, is called the Union of the Company F&D (STEF&D). There is no specific information known of the number of affiliated workers to each of the union organizations because the union leaders of both organizations prefer to maintain confidential the exact numbers of their members.

This factory has been characterized by constant conflicts between representatives of SITS and the management, which have even had media coverage.

In February of 2011, workers of the F&D factory who were affiliated to SITS initiated the Third Party Complaint mechanism that the FLA makes available. In this moment, they alleged the violation of the FLA Conduct Code and compliance benchmarks with respect to the payment of salaries and benefits, compensation for overtime and freedom of association.

In June 2011, the FLA issued a follow-up report to the findings pointed out by GMIES in the IEM of December 2010 and the Third Party Complaint of February 2011.

In September 2011, various workers affiliated to SITS carried out a protest in the main entrance of the Free Trade Zone of San Marcos to demand the reinstatement of some employees who had been fired as a result of their union affiliation. It is important to emphasize that in the protest participated workers of three factories, of the Free Trade Zone including F&D workers. At that time, the workers' organization was supported by representatives of FESS<sup>1</sup>.

On December 1<sup>st</sup> of 2011, affiliated members to SITS began another labor strike as a protest mechanism against the management of F&D. According to the interviews carried out with SITS leaders, the demands

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1 La Prensa Gráfica, News article from September 26<sup>th</sup> of 2011, available at <http://www.laprensagrafica.com/el-salvador/social/220159-empleados-zona-franca-san-marcos-exigen-reinstalo-de-trabajadores.html>

at that time were: to stop the hostilities and threats against SITS members; to reinstall one affiliated worker; and to pay the rest day corresponded to the week of September 26, which had been discounted for participation in a union activity. At that time, both leaders from other sections of the trade union and representatives of FESS supported to SITS affiliated workers. The protest lasted 7 days and blocked the entrance of workers to the Free Trade Zone as well as the cargo transport access.

Various media covered the labor conflict. For example, La Prensa Gráfica emphasized in news article that<sup>2</sup>:

“[...] employees of three factories from the Free Trade Zone of San Marcos, affiliated with the Union Federation of El Salvador (FESS), blocked cargo transport access to the zone as a protest mechanism against the leadership of the companies.

Alejandro Ramos, representative for the workers, assures that the managerial positions have threatened death and harassed with sharp weapons those who are affiliated to the factory unions.

The protesters ask the Ministry of Labor (MTPS) to intervene in the matter, assuring that the problem was presented to this institution the previous October.”

At that time, agents from the Order Maintenance Unit (UMO) of the Civilian National Police (PNC) intervened to disperse the protest. The confrontation put in danger the physical integrity and the lives of the protesters, the group of workers who had the confrontation and the rest of the workers of the Free Trade Zone of San Marcos.

In this context, the FLA requested GMIES to conduct a verification of the implementation of the remediation plan, of the advances in the Third Party Complaint resolution and a special investigation about the labor conditions in the F&D factory. This report is the result of the investigation that GMIES carried out and is a synthesis of the verified findings, plus a proposal of corrective actions.

5

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<sup>2</sup> La Prensa Gráfica. News article from December 1<sup>st</sup> of 2011, available at <http://m.laprensagrafica.com/2011/12/01/sindicalistas-bloquean-ingreso-de-materia-prima-a-tres-empresas-en-san-marcos/>

## **II Methodology**

GMIES began the investigation on February 16<sup>th</sup> of 2012. It was necessary to establish a methodology and a work plan. The process of collecting information was divided into two phases: the first, planning and investigating off-site the factory; and the second, an on-site visit to F&D facilities. The activities developed in both phases are detailed below:

### **A. Planning and investigation off-site the factory**

This consisted of an analysis of the remediation plan implemented by the factory, of the preliminary report by the FLA relative to the Third Party Complaint presented by the workers affiliated to SITS-FESS, along with the report issued by the Director of Global Labor and NGO Relations from HBI, in relation to the brand's follow-up to the Third Party complaint and, finally, an investigative documentary from journalistic sources that have covered the labor situation in F&D.

During this time, GMIES investigated and received information from people who had worked in F&D to find out specific facts alleged in the Third Party Complaint but also new facts denounced during the on-site visit to the factory.

It is important to point out that this phase also includes interviews with a representative of HBI, with lawyers from the Foundation for the Study of the Law (FESPAD), who supposedly offer legal counsel and accompaniment to one of the unions, and also with workers who have been supposedly fired for reason of their union affiliation.

### **B. On-site visit to the factory**

The second phase consisted of carrying out an external monitoring visit in the factory facilities, including the activities that an audit requires:

1. Interviews with workers, including union leaders;
2. Interviews with management;
3. Revision of documents;
4. Visual inspection.

A preliminary meeting with management of F&D was carried out to explain the purpose of the investigation process, the methodology and the work plan.

The on-site visit lasted three days, February 23<sup>rd</sup> and 24<sup>th</sup> and March 2<sup>nd</sup> of 2012. In whole, 68 workers were interviewed, according to the details below:

Regular workers, pregnant women and women who were in a nursing period in September 2011	54
Union leaders	12
Supervisors	2

The number of workers interviewed represents 8.47% of the workforce. 74% of the sample was comprised by women and the remaining 26% were men; 51 interviews were conducted on an individual basis and there were 2 group interviews with leaders of both unions legally constituted within the factory.

The following criteria were used in selecting workers to interview: representative percentage of the total workforce, of which the majority should be women; and to interview both new and long-seniority employees. In addition, for GMIES it was indispensable to interview union leaders from both workers' organizations with the goal of getting to know the advantages or obstacles that they face.

People belonging to all areas of the factory were interviewed, including supervisors, and pregnant and nursing women.

A visual inspection was also carried out in the facilities of the factory that included all work areas, with the goal of verifying the points observed in the IEM of 2010 on the subjects of hygiene and occupational safety.

Finally, as part of the records review, the analyzed information was the following:

DOCUMENTS
1. Payrolls from collective vacations from 2011.
2. Payrolls from Christmas bonuses from 2011.
3. Compensation policies and procedures.
4. Ministry of Labor and Social Welfare (MTPS) authorization for methods of collective vacations.
5. Time tracking records of the vacation period from 2011.
6. Payrolls from the Salvadoran Institute for Social Security (ISSS) and the Pension Funds Administrators (AFP), from January 2011 until January 2012.
7. Pay slips from workers with personal loans granted by the factory (sample of 10 cases corresponding to 2011.)
8. Policies and procedures from the disciplinary system.
9. Sample of files of sanctioned workers from January 2011-January 2012.
10. Internal rules of the factory (section relative to discipline.)
11. Records of complaints from the Labor Relations Office.
12. Results of the Survey of Workplace Atmosphere 2011.
13. Documents from informative campaigns, talks and trainings in matters related to the audit.
14. Documentation about the methodology change for the implementation of body search procedures.
15. Maintenance controls from First Aid kits.
16. Minutes from meetings held between the union and the management of the factory in the MTPS headquarters.
17. Proof of salary payments for days not worked during the labor suspension of 2011.
18. Resolutions from MTPS about the labor suspension of 2011.
19. Personal files of union leaders.
20. Special and programmed inspection minutes from MTPS in 2011.
21. Sample of daily production records.
22. Salary payrolls from June 2011 until February 2012.

23. Entrance and exit time tracking records.
24. New employees list.
25. Resignation letter from a union leader in 2011.
26. Records of union leaves provided to SITS leaders in 2011.
27. Procedure for vacation calculations and Christmas bonus payments.
28. Minutes from the negotiation process between SITS and the management.
29. Report from the Institute of Forensic Medicine about lesions suffered by a SITS leadership.
30. Denouncement brought before the Attorney General of the Republic for aggressions against the leaders of SITS.
31. Copy of the minutes from the initial hearing against the Labor Relations Manager of F&D for the crime of making threats.
32. Denouncements before the PNC for aggressions against SITS leaders and theft of their belongings.
33. ISSS's medical leave note for union leader because of lesions resulting from an attack against her.

The period of documental inspection was from the previous IEM (December 2010) to the present date.

The findings and conclusions presented below are the results of the triangulation and the cross-checking information obtained throughout the phases that make up the investigation.

### III Results of the Investigation

#### 1. RIGHT TO VACATIONS AND CHRISTMAS BONUS

- Initial findings in IEM of December 2010

**1.1)** Christmas bonuses and severances are not calculated with a base in the average salary of the last 6 months.

**1.2)** Factory doesn't provide the 1- daily nursing hour to women who are nursing their newborn babies.

**1.3)** There is no documentary evidence that the factory pays vacations above the average salary within the past 6 months. Additionally, the factory pays vacations but does not grant time to rest as the law demands.

**1.4)** The factory does not respect length of time with the company in calculating Christmas bonus for those employees who renew their work contract each year.

- Current Status

##### 1.1) On the calculations of severance and Christmas bonuses

**COMPLETED:** Based on workers interviews and payrolls review, it was verified that the Christmas bonus payment was made in the month of December 2011, within the time period allowed by the law. In addition, the calculation took into account the average salary achieved by the workers (including bonuses) from the last six months. At the same time, it is important to point out that the proportional payment of the Christmas bonus, in the cases that correspond to it, also was carried out under legal parameters.

It was corroborated that the severance payments were also carried out in compliance with national legislation

In conclusion, this finding has been completed.

##### 1.2) On the 1-daily nursing hour

**ON GOING:** In addition to the management interviewed and the collection of documentary proof, it was verified that the personnel of Human Resources and of the medical clinic that functions inside the factory were trained in the month of September by the organization CALMA<sup>3</sup>. The training lasted three half-day sessions. Later, the information was passed on to a group of women employees who were at that time nursing their newborn babies. Additionally, a room with a refrigerator has been set up for the mothers so that they can extract their milk during work hours and deposit it while returning home. There are attendance lists of nursing mothers who have gone to this room to deposit their milk; but it was noted that very few women uses this benefit. From the interviews with them, they revealed that it is uncomfortable to manually extract the milk; besides they think that the quality of the milk could be affected on the way to their homes.

Despite these efforts, there is no effective guarantee that nursing women receive their right to 1-paid daily hour pause, as required by the Labor Code in the article 312 that recognize that a worker that is

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<sup>3</sup> CALMA is a non-profit institution that began in El Salvador in 1979 with the objective of contributing to the protection, promotion and reinforcement of the practice of breast feeding, which was becoming extremely uncommon and contributed to an increase in diarrheas, malnutrition and infant mortality. For more information, consult the website, <http://www.calma.org.sv/quienessomos.php>

nursing a newborn child has the right to an interruption of 1- daily paid hour. The daily nursing hour will be paid the same compensation as an hour of work.

About this finding, an interview with MTPS inspectors was carried out. Their opinion is that the Salvadorian labor law is clear that nursing women must get to nurse their newborn child in person, but in practice, it is difficult for women to exercise their right because of external factors like the distance between their homes and place they work, transportation and conditions of the containers with milk; in the factory there is no an infantile nursery. However, the Salvadorian labor law demands an effective implementation.

GMIES considers it necessary for the factory to continue actions to make sure that nursing women receive an effective guarantee to their right to one-paid daily hour pause.

### **1.3) On vacations**

**COMPLETED:** As part of the remediation plan, it was established that vacations would be paid proportionally and enjoyed collectively, in December 2011. The factory closed operations from December 19<sup>th</sup> of 2011 until January 2<sup>nd</sup> of 2012.

From the interviews of regular workers, pregnant women, and nursing women, 100% responded that they had received collective vacations and also verified that they were paid before beginning the rest period. The union leadership also confirmed the payment and reception of vacations according to legally established requisites.

From the salary payroll review, it was confirmed that the calculation of the vacation compensation was made based on the average salary from the last six months achieved by workers.

In conclusion, this finding has been completed.

### **1.4) With respect to seniority in calculating Christmas Bonuses**

**COMPLETED:** With respect to this point, it was corroborated that, in the calculation of Christmas bonuses from December 2011, worker seniority in the factory was respected. The interviews also corroborated this situation.

In conclusion, this finding has been completed.

## **2. SOCIAL SECURITY PAYMENTS**

- **Initial Finding(s) of independent external monitoring of December 2010**

**2.1)** *The factory does not pay ISSS and AFP contributions of those workers who receive payment for working during their vacations. According to the law, the corresponding deductions for social contributions should be applied to this amount of money.*

**2.2)** *Various delays in the payments of social contributions to the ISSS and AFP were found. The delays range from one to nine days.*

- **Current status**

### 2.1) On the non-payment of social contributions of employees that worked during vacations

**COMPLETED:** In relation to this finding, it is important to indicate that there is no obligation to pay the social contributions, because this is an illegal agreement between workers and management. The illegality resides in Article 188 of the Labor Code, demanding that vacations are for rest during the entire legally-established period. With respect to this illegality, the auditors made reference in the report to the IEM in 2010. As previously mentioned, the current state of this finding, has been resolved because the workers now benefit from collective vacations. As such, in this case the company has no legal obligation to deduct and pay social contributions.

### 2.2) On the delays in payment of social contributions

**PENDING:** From the interviews conducted with management and all gathered information from records review from January 2011 to January 2012, it was found that the factory has presented and paid the payrolls corresponding to social security. However, in the payment of pensions to the AFP, the factory has made delay payments on four occasions, with an average of five to six days delay. The details follow:

Payments for the month of	Due Date	Payment Date	Days Delay
March 2011	14/04/2011	27/04/2011	13 days
September 2011	14/10/2011	20/10/2011	6 days
October 2011	15/11/2011	17/11/2011	2 days
January 2012	14/02/2012	16/02/2012	2 days

11

In conclusion, although management has positively advanced in the on-time payment and its handling of social contributions in general, it is important to point out that no delay in the payment of these contributions should exist, given that these are deductions that are applied directly to the economic compensation that workers receive in exchange for their work. With this in mind, it is a concern for GMIES that there are still delays in the payment of AFP. Auditors suggest greater attention to the payment dates that the law establishes.

## 3. GRANTING OF LOANS

- **Initial Finding(s) of independent external monitoring of December 2010**

**3.1) Deductions applied by the factory to workers salaries are so high that they exceed the limits established by the Labor Code (Articles 132, 133 and 136). The majority of these deductions are related to loans that the owner of the company grants to workers. Through revision of payroll, various cases were found in excess of the maximum limit of 20% that should be applied in concept of salary deductions.**

- **Current Status**

### 3.1) On personal loans granted to workers

**PENDING:** At the beginning of 2011 –and after the IEM that GMIES carried out in December 2010– the factory made the decision to no longer grant loans. However, this decision was never formally communicated to all workers. There are no policies in writing regards loans, but in practice and based on the interviews conducted, it was concluded that there are three ways of obtaining a loan within the factory. It should be noted that these loans do not come from F&D funds:

A) The General Manager revealed that, by personal initiative, he can give a no-interest loan, but in a more selective manner. The worker that needs the loan can receive a maximum amount of \$50 in the concept of school loan or for emergencies, as in the case of tragedies due to rains. The request is examined by the Human Resources department – specifically by the Head of the Labor Relations Office – and the department decides whether to grant the loan or not.

B) According to the Head of the Labor Relations Office, there is a loan provider external to the factory that grants loans to workers at 4% interest. Although it is the external loan provider that approves the loan, the Head of the Labor Relations Office does an initial evaluation to verify if the person fulfills the conditions to receive a loan or not. The criteria are: B.1) That there is a compelling reason; B.2) That the worker commits to making payments; B.3) That there is consistency in his/her work, in other words, not many absences are reported. The aim of this last criterion is that the person has sufficient liquidity to pay the debt.

C) The Head of the Labor Relations Office manifested that he has made the decision to give loans with his own money when he considers that the workers needs it urgently, without applying interest.

From records review, it was found that there are currently nine workers paying debts from before December 2010 and ten employees that have recently received loans. From the total of regular workers interviewed, only 4% said they were in debt with loans that the factory is facilitating now. From the pay slips review, it was shown that the number of cases with deductions about the 20% permitted by Article 136 of the Labor Code was considerably reduced; however, three cases in excess were found, with an average of 5%, making it necessary that the factory continue with efforts directed towards full compliance of the legal requirement.

#### **4. DISCIPLINARY SYSTEM**

- **Initial Finding(s) of independent external monitoring of December 2010**

**4.1)** *They disciplinary system of the factory does not include the possibility for workers to appeal or question a disciplinary action placed against them.*

**4.2)** *Despite the factory defining different kinds of sanctions (written warning, verbal warning, suspension and firing) there is no clarity about how and when these will be applied. In this way, the door is open for the application of arbitrary discipline.*

- **Current Status**

#### 4.1) Right to appeal or question disciplinary actions

**PENDING:** Through records review, it was corroborated that the factory has taken some measures to improve its disciplinary system. The factory has defined an ample list of obligations and prohibitions for workers. In addition, they have redefined their disciplinary procedures, in an escalating process, where each stage has different kind of sanctions to be applied according to the gravity of the fault. The kinds of sanctions that this new procedure establishes are:

- Verbal advice;
- Written warning;
- Written warning (second time);
- Suspension;
- Termination.

The new procedure establishes that the factory is not obligated to follow this order when the gravity of the fault merits. The problem is that criteria still has not been established to evaluate the gravity of an act.

In addition, it has been established, in writing, the right of workers to appeal a sanction and the moment to do so. However, in practice the application of this right has not been verified: of a sample of disciplinary actions imposed during 2011, there is no evidence that the sanctioned workers had the right to appeal or question their sanctions. Of the total interviews of regular workers, 31% had been reprimanded at one time without the opportunity to appeal. The rest of the workers that had not been reprimanded said that they were not aware of the right to appeal or question a disciplinary action.

Therefore, the factory must continue efforts so that the workers understand and exercise this right.

#### 4.2) Lack of clear rules about discipline

**PENDING:** The necessary modifications in the Internal Regulations have not been made to establish specifically the conduct that will be sanctioned. Once again, all the kinds of sanctions that the company can apply are mentioned, but it is not clear in what cases each of these disciplinary actions will be used.

In addition, as was previously mentioned, there are no criteria to establish the gravity of an act to apply the due sanction.

#### 4.3) Deficiency in the application of a disciplinary regime

**NEW FINDING:** Despite changes in the disciplinary procedures, in practice the lack of application of disciplinary norms was corroborated. Gathered information shows that some workers have suffered acts of physical and verbal violence as well as theft of belongings within the factory and management has not carried out respective investigations to find those responsible and apply the corresponding sanctions.

Some examples of these acts are detailed below. It is important to note that HBI representatives, management and of the unions, which members have been assault in these incidents.

1. On November 23<sup>rd</sup> of 2011, a union leader of SITS suffered the theft of her belongings. Her locker was opened and her belongings were removed, which she values at \$46. Upon complaint to the security guard, the discussion ended in physical aggression between the affected person and a person in charge of security. There is no report of disciplinary measures nor of investigation into the issue. From the interviews with workers, it was known that these thefts have occurred on other occasions.
2. On December 8<sup>th</sup> of 2011, a union leader from SITS was physically assaulted by another worker, affiliated to STEF&D. The aggression consisted of a blow to the head. The worker reported this event to the Human Resources Manager, but no measure was taken.
3. On December 12<sup>th</sup> of 2011, a union leader of STEF&D and another union leader of SITS physically assaulted each other on their production line. This conflicted originated because both claimed a work place within the same line. The management opted to warn both workers, without investigating the incident or deducing individual responsibilities.
4. On February 1<sup>st</sup> of 2012, a union leader of SITS was gravely assaulted by another worker affiliated with STEF&D. It was the same workers mentioned in the second case. This attack took place in the bathrooms just minutes before the time to leave. The union leader assaulted presented a report by the Institute of Forensic Medicine of the Supreme Court of Justice that establishes that she suffered injuries on the upper lip, neck and elbow. The auditors also reviewed the medical leave for three days given to that worker by the ISSS, due to the injuries suffered on her face and head. In this case, management has not carried out an investigation or taken any disciplinary measure.

Different management positions admitted that in the case of these conflicts between members of the unions, they preferred not to apply discipline to avoid problems with the unions' leadership. The facts previously described are some examples of the climate of violence that is active within the factory. Union members are responsible for the majority of these conflicts, while management doesn't adopt measures to prevent them and much less to investigate them and apply respective sanctions.

With respect to security, some workers interviewed as well as union leaders of both unions complained of theft in the lockers and that security people don't take responsibility for this, ensuring that care of that area is not among their responsibilities. On the other hand, there is a security camera whose monitored by the Human Resource office; the said camera captures in real time the locker area, however, there is no video register and no one has been assigned to monitor it at all times.

## **5. VERBAL ABUSE**

- **Initial Finding(s) of independent external monitoring of December 2010**

**5.1)** *20% of workers interviewed reported verbal abuse by supervisors. Abuse consists of yelling and scolding.*

- **Current status**

#### **5.1) On verbal abuse**

**PENDING:** 22% of the workers interviewed said that they had suffered verbal abuse. The verbal abuse is committed by some supervisors.

Verbal abuse consists of yelling and disrespectful methods of getting attention. People mentioned that there are supervisors who have made various workers cry.

Half of those interviewed said that this issue has been discussed in meetings about working environment with the Human Resources Manager. However, this kind of abuse still persists.

### **6. BODY SEARCH PROCEDURES**

- **Initial Finding(s) of independent external monitoring of December 2010**

**6.1)** *80% of women interviewed complained about the way in which the security guard touches them during body searches, as they consider them done in an excessive way, in a rough way and even touching their genital areas.*

#### **Current Status**

#### **6.1) On body searches**

**ONGOING:** As a remediation measure, the factory held a 30-minute talk on April 12<sup>th</sup> of 2011 with the four security guards that carry out personnel revision (two men and two women). The goal of the talk was to ensure that the procedure is done with respect and decorum. It was given by the Human Resources Manager. On November 25<sup>th</sup> of 2011, a second talk was given about the correct way to conduct personnel revision, which was led by the Security Chief of HBI. The same four people responsible for personnel revision participated.

At the time of the investigation, 76% of employees interviewed said there were changes in security personnel that did the checks. The women that did body search procedures at the time of the December 2010 IEM was fired, due to re-offending and, after follow-up, she did not change the way of carrying out the body search. As a consequence of the change in security guard, the problem has improved, according to the majority of those interviewed.

However, the remaining 24% say that they are not in agreement, because although the women security guards have been changed, the current guards continue to be rude in their manner of search; they pinch and squeeze the bust, something that has caused discomfort with the women workers.

Some workers express that there have been disputes between security personnel and the workers over this issue. Before closing this research report, the management decided to fire one of the female guards, arguing that several complaints were raised against her. This dismissal took place last March 5<sup>th</sup>.

## **7. INFORMATION ABOUT HBI STANDARDS**

- **Initial Finding(s) of independent external monitoring of December 2010**

**7.1)** *There is no evidence that workers are informed of the standards of social compliance of HBI.*

- **Current Status**

**ONGOING:** On March 5<sup>th</sup> of 2012, the Environmental Issues and Corporate Social Responsibility Manager from HBI provided an initial talk, to managerial positions, regards the HBI Global Standards for Suppliers. According to the management, he also committed to creating a plan to cover 100% of the workforce in a period of 2 weeks.

But in conclusion, the finding has not been fully rectified at the close of this research report.

## **8. COMMUNICATION CHANNEL TO REPORT NONCOMPLIANCE TO HBI**

- **Initial Finding(s) of independent external monitoring of December 2010**

**8.1)** *A communication channel within the facilities that allows workers to report noncompliance directly to HBI does not exist.*

- **Current Status**

**PENDING:** On the base of the interviews carried out with the Human Resource Manager and regular workers as well as with the representatives of union organizations, is was concluded that the factory has not taken adequate measures to ensure an effective communication channel between workers to report possible noncompliance in labor conditions directly to the HBI representatives.

Is important to note that HBI doesn't have a communication channel to report noncompliance and it's not part of their policies. This information is based in the interview carried out with HBI representatives.

## **9. MAINTENANCE OF FIRST AID KITS AND THEIR CONTENTS**

- **Initial Finding(s) of independent external monitoring of December 2010**

**9.1)** *During the visual inspection, it was corroborated that some of the contents of first aid kits were expired.*

**9.2)** *Fire extinguisher number 35 in the warehouse was found blocked by old machinery.*

- **Current status**

**9.1) Contents of first aid kits**

**PENDING:** From visual inspection, some situations that constitute noncompliance in terms of health and safety were corroborated, specifically the FLA compliance benchmark HSE.121. All first aid kits were locked with a padlock; two people have been assigned responsible for each first aid kit to open them in the case of an emergency. But it was corroborated that in all cases, the people responsible were not immediately available and in one specific case, it took eight minutes to localize the person, which implies a risk for workers in the case of an emergency.

In all of the first aid kits, there was surgical tape, latex gloves, sterilized gauze, cotton, burn ointment, antiseptic adhesive bandages (band-aids), alcohol, eye drops, and a gel band for muscle pain. As a product of the inspection, five first aid kits were found to have irregularities:

First Aid Kit Number	Findings
First Aid Kit Number 1	The cotton was stored in gloves, with no sterility.
First Aid Kit Number 5	Kit with too much dust The cotton was stored in gloves, with no sterility The burn ointment was expired There were insufficient antiseptic adhesive bandages Alcohol was insufficient
First Aid Kit Number 8	The kit was found open Boxes were an obstacle to unrestricted access
First Aid Kit Number 9	The burn ointment was found with spills
First Aid Kit Number 10	The cotton was stored without protection.

It is important to mention that the gel bands could be much needed in cases of muscular pain; however, in order to appropriately use them, there should be a refrigerator and a system to get them cooler or hotter, according to the specific needs of each case. The lack of both systems, make these gel bands useless for its stated medical purpose.

In conclusion, the factory should implement measures to ensure that in the case of emergency, the first aid kits can be opened according to the urgency of a possible work accident.

**9.2) State of fire extinguishers:**

**ONGOING:** In general, irregularities were not found in the facilities with regards to fire extinguishers. In January 2012 was the last inspection of the extinguishers and that revision, according to management information, is carried out the last week of every month. However, it is worth noting that extinguisher 39 is behind a door that, while doesn't block visibility, could be an inconvenience in the case of an accident, considering it is in a storage area of raw material.

## 10. FREEDOM OF ASSOCIATION

- **Initial Finding(s) of independent external monitoring of December 2010 and the Third Party Complaint from February 2011**

**10.1)** *The factory fired two union leaders, one in May 2010 and the other in October of the same year. This goes against Article 248 of the Labor Code, which establishes that union leadership can only be fired with the approval of relevant authorities.*

**10.2)** *SITS union leadership alleges that the General Manager constantly offers them money to quit the factory. They report three cases of leadership that -- in their opinion -- were “bought” and abandoned the factory in a sudden way and without providing explanations to their union colleagues. Via these offers of money, the General Manager intends to dissolve the union.*

**10.3)** *In May 2010, members affiliated with SITS held a strike demanding the reinstatement of a fired union leader. According to a union leader, in the precise moment that the strike took place, an unknown man called her mobile phone to tell her that he was outside her home of residence, along with three other men, and that if they did not put an end to the strike, her family would pay the consequences.*

**10.4)** *Workers affiliated with SITS affirm that the supervisors are constantly preventing them from reaching production goals and because of that, they do not earn bonuses. Supervisors move workers that are key to reaching goals to other modules. According to management and supervisors, these changes are made according to production needs.*

**10.5)** *Factory refuses to grant loans to union leaders of SITS, due to their union affiliation.*

- **Current status**

### 10.1) Firing of union leadership

**COMPLETED:** After the IEM that GMIES conducted in 2010, more firing of union leadership was not reported. However, SITS leadership fired in May and October 2010 has not been reinstated. Regarding the specific case of the union leader fired in May 2010, the MTPS considered said termination infringed on Article 248 of the Labor Code and ordered her reinstatement<sup>4</sup>. However, management presented a MTPS resolution from March 7<sup>th</sup> of 2012 in which the factory is exonerated from all liability regards this case, arguing that the factory had showed a certified resignation letter signed by this union leader. In such letter, the union leader declared that factory does not owe her any labor or economic duties. For that reason, the MTPS rescinded the Act of Special Inspection N° 203-UD-05-10-Especial, with ref. number RG-VL-DI-UES-02.

### 10.2) Offers of money to union leadership for their resignations

**UNCORROBORATED:** The allegations about the “buying of will” of leadership and affiliates continue. Leadership of SITS alleged that at the beginning of February 2012, the only male union leader quit

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<sup>4</sup> MTPS, Act of Special Inspection Number 203-UD-05-10-Especial, RG-VL-DI-UES-02, pg.. 2. Similarly, it is necessary to clarify that the firing of this union leader was on April 30 and not in May, as some of this union-mates manifested.

because the General Manager offered and paid him two thousand US dollars (\$2,000). Upon interviewing the General Manager about this supposed “buying of will,” he flatly denied it and affirmed that the members of SITS have misinterpreted the fact that he has had lunch together with some workers, including some members of SITS. Upon revising the personnel files of the union leader, his resignation letter was found written by hand. It is interesting that the union leader manifests that the reason for his resignation is “**I don’t want to be in the union anymore**”. Telephone contact with this worker was attempted, but he said he couldn’t speak at the moment and the next day he would return the auditor’s call. This did not happen.

In relation to the three union leaders that were supposedly “bought,” allegation of SITS in the IEM of 2010, information was not obtained. The union leaders of SITS assured that they lost contact with these people completely.

### 10.3) Threats to union leaders

**PENDING:** The threats that a SITS leader supposedly received in May 2010 were not investigated. Additionally, the union leaders of SITS reported to GMIES auditors new complaints of threats against them, which were made after the IEM of December 2010. The majority of these threats have been carried out by members of the other union, but in one case, SITS union leaders manifested that the Head of the Labor Relations Office said to them: “**Don’t go getting involved in things, you could wind up in bags**”<sup>5</sup>. This act was denounced in the justice system.

### 10.4) Obstacles for union leadership to reach production goals

**UNCORROBORATED:** SITS union leaders continued to allege that management denies them the opportunity to earn bonuses. They affirmed that the supervisors of modules 2-2; 5-2; 5-3; 12-3 dismantle the modules through moving key workers to achieving goals, to other positions, without seeking replacements. In addition, they assured that new workers, who do not have sufficient experience to achieve production goals, are placed in these modules. On these four modules, a good amount of the union leaders and workers affiliated with SITS are located. For their part, the supervisors of these modules and Production Management assured that these teams almost never reach their production goals due to a high rate of absenteeism. In the case of union leaders, this absenteeism is because on occasions, they ask for leaves to attend union activities. Management alleged that all workers in the factory have the opportunity to earn bonuses; however, in the case of SITS members, the problem is that the union leaders asks for too many leaves, and because of this, their modules aren’t able to reach the goals.

From payrolls review, time cards and records of union leaves provided to SITS union leaders during 2011, the following results were found: the first leader had 114 leaves, the second 60 and the third 40. As such, the average number of union leaves of these three union leaders during 2011 was 107. From interviews with some non-affiliated workers that are found on the same modules as SITS members, there is a general attitude of resignation to not achieving goals among all workers of the module. In fact, in general, these four modules almost never reached the minimal production goal during 2011. When the

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<sup>5</sup> In the Salvadoran context, there have been various cases reported in which murdered people appear in plastic bags.

union leadership was asked about these leaves, they responded that, facing the obstacles imposed on them by management to meet their goals, they opt to request union leave.

#### 10.5) Denial of loans to union leadership of SITS

**COMPLETED:** SITS affiliates continued to allege that management denies them loans. As previously mentioned, management no longer provides loans with factory funds. However, the Head of the Labor Relations Office acts as intermediary so that another entity gives loans to the workers. In addition, the General Manager and the same Head of the Labor Relations Office in a personal manner can provide loans to workers. To have access to these loans, workers should fulfill some requirements that are then evaluated by the Head of the Labor Relations Office. One of these requirements is that the person has consistent attendance at work, because in that way the worker has liquidity to be able to pay the loan. In the case of union leaders of SITS, the Head of the Labor Relations Office assured that they request too many union leaves, which are deducted from their biweekly salary, diminishing their ability to pay. In this sense, they do not meet the conditions to apply for said loans. Legally, the employer has no legal compulsory to grant loans to the workers, and as such, there is no noncompliance to report on this point.

#### 10.6) Termination of a worker affiliated with SITS

**NEW FINDING, UNCORROBORATED:** SITS leadership commented that, in August 2011, the factory fired a worker affiliate to SITS. In December of that same year, SITS held a strike at the entrance of the free trade zone, demanding the reinstatement of that worker. The worker was fired on August 3<sup>rd</sup> for “lack of collaboration in his work and disinterest and loss of time in working hours,” as the termination letter read, which was not signed by the worker. Within his file, the following disciplinary actions were found: 1) on July 28<sup>th</sup> of 2010, for not completing well his work and for disrespect towards his supervisor; 2) on September 21<sup>st</sup> of 2010, for missing work on September 20<sup>th</sup> of 2010 without permission and without justification; 3) on September 24<sup>th</sup> of 2010 for negligence at work, adhering a band of wrong size to a piece; 4) on July 7<sup>th</sup> of 2011, for wasting time during working hours and not doing his job with diligence.

From the interview carried out with this worker, it was shown that he was notified of all of the reprimands previously mentioned in the moment. Additionally, in his personnel file, a private document was found that recorded the worker’s termination. The MTPS carried out an un-planned inspection on August 24<sup>th</sup> of 2011, in which they concluded that the termination of this worker is not due to arbitrary acts of discrimination<sup>6</sup>.

Facing these facts, it calls the attention that the management paid a severance of \$370.33, despite the fact that, under these circumstances, it was not obligated to by law. The management stated that it is a factory policy to pay severance to all workers even when termination is justified; however, this policy is not in writing.

On the other hand, upon interviewing the worker, he commented that the area bosses and supervisors expressly told him not to get involved with SITS members to avoid problems; however, he decided to

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<sup>6</sup> MTPS, Resolution of File 190-UD-08-111-Especial-San Salvador from August 24, 2011.

affiliate and from that moment on, harassment against him began. Despite his termination could be justified based on the accumulation of disciplinary actions against him, the termination was made effective up to one month after the last disciplinary sanction.

The worker manifested that one week after being fired; people came to threaten him at his place of residence, with his personnel file in hand to force him to sign the termination letter, which he denied. The threats were made by five people that work in the factory, some of them, now members of STEF&D union.

These last events motivated SITS to think that the termination of this worker was because of union discrimination, which is why they held a strike in December 2011.

## **11. SUSPENSION IN JANUARY 2011**

- **Allegation of SITS in the Third Party Complaint presented to the FLA in February 2011**

*11.1) Non-payment of salary corresponding to workers affected by a suspension in January 2011, for reasons attributable to the employer.*

- **Current status:**

**COMPLETED:** Management provided documentary evidence of the payment of salaries to 221 workers affected by this suspension, whose causes were attributable to the employer<sup>7</sup>. From the interviews with union leaders and other workers, the payment was confirmed, which was made at the beginning of June 2011.

This finding has been completed.

## **12. OVERTIME PAYMENT TO NEW EMPLOYEES**

- **Allegation of SITS in the Third Party Complaint presented to the FLA in February 2011**

*12.1) Members of SITS allege that the company does not pay overtime to new employees.*

- **Current status:**

**COMPLETED:** From records review, it was concluded that the payment of overtime to new employees is paid on-time and according to Salvadoran labor legislation.

Therefore, this finding has been completed.

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<sup>7</sup> The MTPS dictated that the suspension from January 12-25 2011 was attributable to the employer, and as such, the company should pay the un-paid salaries to workers that were affected (Act of Special Inspection, Exp. N° 19-UD-01-11, RG-VL-DI-UES-02).

#### IV. REMEDIATION ACTIONS

FINDING	ACTIONS	PERIOD <sup>8</sup>
<p><b>Regarding nursing hour</b></p>	<p><b>Action 1:</b> To ensure that the labor law is upheld, the factory should provide its nursing workers the 1-daily paid hour that corresponds to them according to the Labor Code. For this, the following is suggested: that workers who live near the factory can opt to take their nursing hour after lunch; and for those that live far, they can leave one hour before their shift ends.</p> <p><b>Action 2:</b> The factory should create a policy relative to the fulfillment of the nursing hour as the law established; said policy should also include a guarantee to use replacement workers to cover those that have nursing leave, with the goal of not affecting the module where they work. Additionally, it is suggested that women in their nursing period benefit from the bonuses that their module reaches.</p> <p><b>Action 3:</b> The factory should request MTPS's inspection to receive the advices how to effective guarantee the implementation of 1-daily paid hour pause of every women who is nursing their newborn babies.</p>	<p><b>Beginning:</b> Action of immediate implementation.</p> <p><b>Duration:</b> Permanently.</p>
<p><b>Regarding personal loans given to workers.</b></p>	<p><b>Action 1:</b> The factory should continue with efforts to ensure that salary deductions do not exceed the 20% that Article 136 of the Labor Code establishes.</p> <p><b>Action 2:</b> Considering that the factory intervenes in the loan-giving process of loans, they should establish clear rules in writing about the requirements, forms of payment, interest rates and periods.</p>	<p><b>Beginning:</b> Action of immediate implementation.</p> <p><b>Duration:</b> Permanently.</p>

<sup>8</sup> All of the lengths of time suggested in the remediation plan will start the day after formal notice of this report to management.

	<p><b>Action 3:</b> Inform all workers in the factory about the previously mentioned requirements.</p>	
<b>Disciplinary System</b>	<p><b>Action 1:</b> The factory should establish written criteria to categorize sanctions, from minor, serious, to very serious, in order to provide clear standards to apply sanctions.</p> <p><b>Action 2:</b> Inform 100% of the workers of the right to appeal and question disciplinary actions and the process to do so.</p> <p><b>Action 3:</b> The factory should establish a investigation mechanism of the acts of violence that occur among workers, with the goal of determining responsibilities and applying corresponding sanctions.</p> <p><b>Action 4:</b> The factory should establish an effective mechanism for permanent security in the area of the lockers, to prevent theft of workers' belongings.</p> <p><b>Action 5:</b> If even with this new system of security thefts occur, the factory should assume the responsibility for the economic loss that workers suffer.</p>	<p><b>Beginning:</b> Action of immediate implementation.</p> <p><b>Duration:</b> Permanently.</p>
<b>Regarding body search procedures</b>	<p><b>Action 1:</b> Management should continue efforts to reduce workers complaints about the way body searches are carried out.</p>	<p><b>Beginning:</b> Action of immediate implementation.</p> <p><b>Duration:</b> Permanently.</p>
<b>Health and Safety</b>	<p><b>Action 1:</b> Management should ensure that at all times, the contents of the first aid kits are available to respond effectively to any emergency.</p> <p><b>Action 2:</b> Management should make a work plan to carry out periodic revisions of the first aid kits, in order to assure the supply and quality of the medical supplies.</p>	<p><b>Beginning:</b> Action of immediate implementation.</p> <p><b>Duration:</b> Permanently.</p>

	<b>Action 3:</b> Management should ensure that all the fire extinguishers are located in places free of obstacles.	
<b>Information on HBI Standards</b>	<b>Action 1:</b> The brand should hold, as soon as possible, training with all the workers in the factory about HBI social compliance standards.	<b>Beginning:</b> Action of immediate implementation.  <b>Duration:</b> Guarantee at least one annual training.
<b>Communication Channel with HBI</b>	<b>Action 1:</b> Because is not a policy of HBI to establish a communication channel to report noncompliance, we suggest that the brand should reach an agreement with the FLA about the best way to fulfill this obligation.	<b>Beginning:</b> Action of immediate implementation.  <b>Duration:</b> Indefinite.

<p><b>Freedom of Association</b></p>	<p><b>Action 1:</b> If an accusation that a SITS members was offered money to resign, it is suggested that management informs MTPS and the brand, and if these parties consider it necessary to conduct an investigation, the factory should provide full access to conduct the investigation.</p> <p><b>Action 2:</b> Management should allow full access to appropriate public authorities to carry out inquiries necessary when complaints of threats, aggressions, theft. or any other kind of criminal act inside the factory.</p> <p><b>Action 3:</b> Management should provide union leaders with the opportunity to move to other production modules, allowing them to reach the production goals, with the purpose of ensuring the same conditions to reach the production goals established by the factory. Complementary to this, a time and motion study of the current styles and production goals is suggested, to determine if these are achievable in an ordinary 8 hours-shift.</p> <p><b>Action 4:</b> The company should train all personnel, including supervisors and management, about the right to freedom of association.</p>	<p><b>Beginning:</b> Implementation in all cases of resignation.</p> <p><b>Duration:</b> Permanently.</p> <p><b>Beginning:</b> Immediate, as denouncements occur.</p> <p><b>Duration:</b> Permanently.</p> <p><b>Beginning:</b> It should be implemented for a probationary period of at least, two months, in order to discard the reasons of the complaints regards this issue.</p> <p>Within three months, a time and motion study should have concluded.</p> <p><b>Duration:</b> Both actions are permanent.</p> <p><b>Beginning:</b> Within three months, the entire labor force should be trained in the fundamental principles of the right to freedom of association.</p> <p><b>Duration:</b> Guarantee at least one annual workshop.</p>
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