



FAIR LABOR
ASSOCIATION[®]

Independent Investigation: New Holland Apparel, S.A.

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I. BACKGROUND

On March 14, 2018, the Fair Labor Association (“FLA”) engaged us, Ena Lilian Núñez Mancía and Katya Castillo, independent experts on labor standards, to conduct an investigation at the factory New Holland Apparel Nicaragua (“NHA”). In particular, the FLA requested that we investigate a range of allegations regarding violations of labor standards at the factory pursuant to Terms of Reference drafted by the FLA and agreed to by the two brands sourcing from the factory, Nike Inc. and Under Armour. The investigation included two full days of interviews, other meetings, and review of documents at the factory on Wednesday, March 21 and Thursday, March 22.

II. GENERAL INFORMATION ABOUT THE FACTORY

NHA is located in the Astro Carton Industrial Zone in the municipality of Tipitapa, Managua Department. As of the time of the investigation, it had a labor force of 2,440 workers, of which 1,119 are women (45.9%) and 1,321 are men (54.1%). There are two labor organizations within NHA: Sindicato Trabajadores al Poder (“STP”) and the Sindicato Ni un Paso Atrás (“SNPA”). There is a valid Collective Bargaining Agreement signed on October 26, 2017 with leadership of both STP and SNPA.

III. METHODOLOGY

The methodology applied by the investigators pursuant to the Terms of Reference document agreed to with the FLA on March 14 consisted of a two-day onsite visit to the factory (March 21-22). The investigators reviewed documentation related to the issues covered in the Terms of Reference document and allegations made in the STP’s earlier communication with the FLA, and conducted interviews with factory representatives, members of the executive committees of STP and SNPA, and both unionized and non-unionized workers.

3.1 Interviews conducted

In the course of the two days at the factory and offsite, the investigators conducted eight group interviews and five individual interviews with a total of 94 persons, as follows:

- Thirty-three STP union members, including Executive Committee members;
- Nine members of SNPA, including its Secretary General and one of the workers who accused STP union leader Deyling Antonio García Quiroz (“Deyling García”) of harassment in 2017;
- Twenty-four non-unionized workers, including another of the workers who accused Deyling García of harassment in 2017;
- Six management representatives from NHA;
- Twenty-one members of the Hygiene and Occupational Safety Mixed Commission;
- One terminated worker, allegedly dismissed due to pregnancy (as described below).

This included separate group interviews with members of the STP Executive Committee (one at the factory and another offsite); with additional workers from a list submitted by STP; with workers from a list submitted by NHA; with management representatives; two with randomly-selected workers; and one with the 21 Hygiene and Occupational Safety Mixed Commission members. The investigators also held offsite interviews with Deyling García and with Grechel Suarez, the worker who alleged that she was terminated due to her pregnancy; two workers concerning specific harassment allegations; one additional worker on general factory issues at her request; and one with the Secretary General of SNPA.

3.2 Legislation and other documentation reviewed

- Nicaraguan national law (various provisions);
- International Labor Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organize (Convention 87) and

Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (Convention 135);

- NHA Collective Bargaining Agreement (CBA) with the two unions;
- Personnel records for workers Deyling García and Grechel Suarez;
- FLA Code of Conduct and Compliance Benchmarks;
- NHA Internal Policies/Work Rules (including on disciplinary procedures);
- NHA Report regarding actions attributed to Deyling García;
- Ministry of Labor (MITRAB) inspection reports (*actas*);
- Additional documents related to working conditions and occupational health and safety pertaining to the factory;
- 2017 Report of the ILO-IFC BetterWork Nicaragua Program.

IV. ISSUES INVESTIGATED

4.1 PROTECTION OF UNION IMMUNITY (*FUERO SINDICAL*)

Union leaders in Nicaragua enjoy enhanced protection against acts that infringe upon freedom of association, called "*fuero sindical*". The Nicaraguan Labor Code sets forth that the members of the executive committee of a union may not be sanctioned or dismissed without prior authorization from MITRAB and for duly-proved just cause (Article 231). In accordance with the Collective Bargaining Agreement and the Internal Work Rules of NHA, the process to be followed in the case of termination of a worker enjoying *fuero sindical* protection is as follows:

1. Establish a Bipartite Committee to hear the case, in accordance with the Collective Bargaining Agreement; and

2. Approach MITRAB to request authorization for the termination of the employment contract (Article 231) for just cause.

NHA representatives stated that Deyling García promoted two work stoppages, on January 9 and February 2, 2018, that subsequently were declared illegal by MITRAB. NHA representatives also stated that there is a record from the MITRAB inspection proceedings of October 30 and November 28, 2017 of Deyling García having harassed four factory workers, as well as other instances of inappropriate conduct on his part earlier in 2017.

However, in light of the national administrative and judicial process that culminated in a confidential settlement agreement between Deyling García and NHA, this investigative report does not include any findings with respect to these sets of allegations concerning the behavior of Deyling García, nor with regard to the underlying legal issue of “*fuero sindical*” protection with respect to the termination of his employment.

4.2 HARASSMENT, VERBAL ABUSE AND DISCRIMINATION

4.2.1 HARASSMENT AND APPLICATION OF DISCIPLINARY RULES AGAINST UNION EXECUTIVE COMMITTEE MEMBERS AND OTHER UNION MEMBERS

During the interview process, NHA factory management informed the investigators that there were no disciplinary proceedings ongoing against STP Executive Committee members. Therefore, this section of the report focuses on union claims of harassment and related improper treatment of its members by factory officials.

When consulted regarding the allegations of harassment and disciplinary measures by management, members of the STP Executive Committee did not provide evidence of concrete cases of the imposition of disciplinary measures, but described as harassment frequent statements by supervisors or managers to members of the Executive Committee to the effect that they should be working at their job posts within the production lines. Deyling García acknowledged that there are difficulties with regard to union leaders being at their job posts and that approximately half of the members of the Executive Committee

are not regularly at their job posts (although it was not possible to quantify exactly how frequently they were absent).

CONCLUSION: Calls and summons to union leaders who are not at their job posts without justification to report to those locations cannot be considered to be a form of labor harassment. They instead are intended to be reminders of the need to meet the obligations in their individual labor contracts.

4.2.2 ACCUSATIONS OF VERBAL ABUSE AGAINST WORKERS BY THE PRODUCTION MANAGER AND FACTORY SUPERVISORS

All interviewed workers and the members of the STP Executive Committee expressed that they have not been subjected to verbal abuse by the Production Manager or by NHA supervisors, and that they do not have knowledge of any concrete cases of verbal abuse by those officials.

CONCLUSION: Based on the above, there is no evidence gained by the investigators to substantiate claims of such verbal abuse.

4.2.3 ACCUSATIONS AGAINST THE NHA REGIONAL HR MANAGER, INTIMIDATION OF WORKERS AND INTERFERENCE WITH THE EXERCISE OF LABOR RIGHTS

All interviewed STP Executive Committee members, as well as union and non-union workers who participated in the different group interviews conducted by the investigators, expressed that after the January 9 stoppage, the NHA Regional Human Resources Manager, speaking through the factory's loudspeaker, made the following comments to workers:

- *“That MITRAB had declared that the strike was illegal and that the company would take actions.”*
- *“That the company needed loyal employees and, because of the actions taken, many jobs would be lost.”*

- *“That workers who did not like the new system should leave; there were many people who need a job.”*

- *“That they should be grateful to God for having a job.”*

These messages were considered by the interviewed workers to be threats intended to intimidate workers.

The Regional Manager denied making threats or intimidating workers; however, he did acknowledge communicating with workers through the loudspeaker – in the days after the January 9 strike – expressing what he considered to be the company’s position, not a personal position. He expressly stated that over the loudspeaker he first gave a greeting to workers on behalf of NHA, stressing that his statement was respectful of their labor rights and of the desire of NHA to keep working together with the workers; he noted further that he also informed workers about the acquisition of a new building that would mean more jobs in the future, mentioning also the importance of discipline and stability; and finally he stated that it was a blessing to have a job and this had to be preserved and cared for.

CONCLUSION: The evidence shows that although the Regional Manager spoke about future growth of jobs, he also used language that could be interpreted by the workers as a form of threat or intimidation.

4.2.4 ALLEGED ILLEGAL DISMISSAL OF GRECHEL CAMELIA SUAREZ, PREGNANT WORKER, IN FEBRUARY 2018

Grechel Suarez started working the night shift at NHA on January 11, 2018, pursuant to a contract with a legal probationary term.¹ During an interview conducted by the investigators, she expressed that on January 17, she consulted a doctor at a private clinic in Tipitapa and was informed that she was pregnant. She took the pregnancy test results

¹ **Art. 28 CT:** In all contracts with a definite term, the parties may agree upon a probationary period, which is no greater than thirty days during which any of the parties may end the working relationship without any responsibility to either.

to the HR Department at NHA and requested a change to the day shift. She stated that the HR Associate did not accept the pregnancy test results because they had been performed at a private clinic. Due to this, she requested support from Deyling García, as the STP Secretary General, in approaching management.

Deyling García stated that he took Suarez's pregnancy test results to NHA HR officials and that the test results were received, but he was not given a receipt confirming such delivery. On January 24, Suarez was called to the HR Management office, where she said she was tricked into signing a termination document (she said that she thought she was signing a document regarding overtime). Suarez stated that she thought this action was motivated by her communication about her pregnancy with HR. The HR Manager stated that they had no knowledge regarding the pregnancy and that Suarez was dismissed due to low productivity.

The investigators requested from the factory information documenting low productivity of the worker, but this was not provided. During the review of Suarez's personnel records, the investigators found a signed contract for a one-month probationary period, in accordance with law, and a "positive pregnancy" test dated February 13, after the worker's dismissal. In addition, the investigators found and reviewed a contract termination document signed by the worker and copies of severance payment checks issued to the worker.

CONCLUSION: Subsequent to the completion of the investigation and submission of the draft investigative report to the FLA, a Nicaraguan judge hearing Grechel Suarez's case issued a ruling in which he ordered payment to her for her full probationary term, but did not order reinstatement or back pay. The judge further concluded that there was not evidence that the factory had been notified of her pregnancy prior to her dismissal.

4.3 WORKING CONDITIONS

4.3.1 INCREASE IN PRODUCTION GOALS WITHOUT CONSULTATION WITH WORKERS AND UNION

STP officials and all of the interviewed workers confirmed that the change (increase) in production goals dated back to October 2017. This action produced a general discontent among workers based on a widely-shared view that the levels were so high as to be unachievable. Interviewed workers stated that these increases were the central reason for the work stoppages on January 9 and February 2, 2018.

This discontent was also documented in the record of the inspection of the January 9 strike, in which MITRAB states: “during the inspection, 74 workers stated unanimously that: ‘The production goals are too high, they can’t be achieved (...), the machines at the factory are obsolete, they are very old and not very fast; and the company no longer pays the bonus for time lost for machine break downs.’”

NHA stated that the increase in production goals relate to adjustments that have been carried out since 2017, with the objective of increasing the workers’ performance by 40 to 50 percent, but that the adjustments do not represent an excessive increase.

The investigation did not confirm any form of communication with workers regarding production goal changes; however, there was reference made to management discussion with union leaders of aspects of a Pilot Plan for production bonuses. In addition, the MITRAB records show an agreement among NHA, STP, SNPA, and workers from each of the factory’s production lines in which NHA did agree to temporarily freeze any changes in production goals for three weeks until two senior factory officials further reviewed the goals. It is not clear from the record what happened subsequently.

CONCLUSION: While able to confirm that increases in production goals at NHA occurred, the investigators are not able to determine if the increases were excessive or if they instead were reasonable under the current working conditions for production personnel.

4.3.2 PRACTICE TO REQUEST OVERTIME BEYOND THE LEGAL MAXIMUM ALLOWED

According to the STP union, the practice of requesting overtime beyond the legal maximum allowed is prohibited by NHA workplace policies and procedures. All of the interviewed workers and factory representatives stated that the factory does not require work beyond the legal daily limit of nine hours and, in fact, workers have not worked overtime for some time. This was corroborated by time and payroll records for a sample of eleven workers over the previous three months reviewed by the investigators.

CONCLUSION: The investigators did not find support for the allegations of non-compliance with the workplace policies and procedures regarding overtime.

4.3.3 LACK OF FULL PAYMENT TO WORKERS WHO ATTEND MEDICAL CONSULTATIONS AT THE NICARAGUAN SOCIAL SECURITY INSTITUTE

According to the CBA, NHA pays workers who need to attend medical consultations at the Nicaraguan Social Security Institute (INSS) travel time of one hour and a half each way, in addition to the time for the consultation itself registered on the INSS's record of services provided (Clause 28 of the CBA). The investigators were requested to look into allegations of non-compliance with this CBA provision.

Workers interviewed stated that they do receive full payment when they consult at INSS, including travel time, which was corroborated through payroll stubs reviewed for a sample of ten workers over the last three months.

CONCLUSION: The investigators did not find information to support the allegations made of non-compliance with the CBA.

4.3.4 ALLEGATION OF NON-COMPLIANCE WITH THE GENERAL LAW FOR HYGIENE AND OCCUPATIONAL SAFETY IN THE WORKPLACE

According to STP, NHA implemented a new production process without performing the required ergonomic risk analysis, and without providing workers with the equipment and furnishings necessary to safely perform the new operations.

Article 18 of the General Law for Hygiene and Occupational Safety in the Workplace states that it is the obligation of the employer to *“develop an initial diagnosis that takes into account the specific risk map for the company and its corresponding prevention and promotion of healthy work plan. The diagnosis must be updated when working conditions change or changes to the production process occur, and will be reviewed, if necessary, in the event that any harms to health have occurred.”*

During the investigators’ meeting with the Hygiene and Occupational Safety Mixed Commission, its members stated that there have been changes to working conditions. The Coordinator stated that they are currently working on a risk assessment with the NHA Engineering Department, but did not confirm a completion date. NHA’s Occupational Safety Manager stated that the changes at NHA in Nicaragua have also been implemented at a NHA factory in Honduras and that for the latter, a study of ergonomic risks was performed; the March 7, 2017 report regarding NHA Honduras was provided to the investigators.

CONCLUSION: The existence of a study of ergonomic risks conducted at NHA Honduras does not substitute for the obligation to comply with the requirements in Nicaragua’s General Law for Hygiene and Occupational Safety in the Workplace. For this reason, the investigators conclude that NHA is not in compliance with Article 18 of that law or with FLA Compliance Benchmark Health, Safety and Environment HSE.1, which requires employers to comply with all national laws and procedures regarding hygiene, occupational safety, and environment.

4.3.5 HYGIENE AND OCCUPATIONAL SAFETY MIXED COMMISSION MEETINGS

According to Article 59 of the General Law for Hygiene and Occupational Safety in the Workplace, the members of the Hygiene and Occupational Safety Mixed Commission shall meet at least monthly and whenever one of the represented sectors proposes a meeting. The members of the Commission stated that they meet once a month and that their objective is to monitor compliance with all safety standards at the factory and that there are no risk situations currently being considered. Management provided records of three Commission meetings (held January 22, February 15, and March 1, 2018), which confirmed the regularity of the meetings as well as provided a record of the issues discussed there.

CONCLUSION: The operation of the Mixed Commission complies with Articles 56 and 59 of the General Law for Hygiene and Occupational Safety in the Workplace, which regulate the functions of the Commission and the schedule of its meetings.

4.3.6 RISKS MAP UPDATING

Factory representatives provided a map of factory risks updated in December 2016, and the Hygiene and Occupational Safety Mixed Commission members informed the investigators that they are currently working on a revision to take into account changes within the factory.

CONCLUSION: As noted in 4.3.4 above, factories are required to develop a diagnosis which includes a map of risks, and to update it when there are changes to working conditions, in order to comply with Article 18 of the General Law for Hygiene and Occupational Safety in the Workplace and FLA Benchmark HSE.1. Interviews with members of the Mixed Commission indicate that NHA is in the process of updating its risk map, consistent with Article 18 of the law.

4.3.6 EXCESSIVE HEAT AND LACK OF ADEQUATE VENTILATION

Workers expressed that there is excessive heat in the factory. The STP union representatives mentioned that the ventilation system is inadequate; there is only one fan per production line; and this is not enough to ventilate all the workers in a production

line. NHA officials said that they are making changes in order to improve ventilation, and made available to investigators the plan that they have been implementing since 2017 to this effect.

During a tour of the factory, the investigators observed that there is one fan per production line, as mentioned by the union representatives; in addition, the investigators observed industrial fans and air injectors that have been installed according to NHA's ventilation plan.

CONCLUSION: The investigators reviewed the factory's ventilation improvement plan and verified that it is in the process of being implemented, but note that the elements of the plan had not yet been completed in full at the time of the visit.

4.3.7 MALFUNCTIONING LOUDSPEAKER SYSTEM

According to STP, not all workers hear the information transmitted by the HR and Production Departments because of a malfunctioning loudspeaker system.

Factory management and the representatives of the Mixed Commission acknowledged that the loudspeaker system is malfunctioning, pointing out that the workers from the area of the factory where labels are affixed (known as *mercadito*) and from city park (part of plant 1) do not hear the announcements made through the loudspeaker.

CONCLUSION: The investigators concluded that NHA recognizes the problem noted and is in the process of remedying it.

4.3.8 SUBSTANDARD CONDITIONS OF MACHINERY DUE TO LACK OF REPAIRS AND/OR INADEQUATE MAINTENANCE

NHA showed the investigators its preventive maintenance program for sewing machines and shared the 2018 schedule for such maintenance. However, there was broad discontent among interviewed workers about the condition of machinery, particularly because while NHA demands that workers meet high production goals, the machinery they have to use is obsolete and slows down their production. On this point, the record of

the inspection conducted by MITRAB of the January 9 strike confirmed the statement of 74 workers that *“The machines that the company has are obsolete, they are very old and do not have much speed; in addition they break down very often.”*

The investigators observed machines in poor condition as well as mechanics at work repairing machines. One of the workers stated that the machine being used had broken down three times that morning. Later, in a conversation with workers from production lines 38, 39, 45 and 83, those workers confirmed that the machines are in bad condition and it is therefore difficult to meet the production goals.

CONCLUSION: While NHA has a preventive maintenance program in place, the combination of high production goals and substandard machines remains an area of concern, particularly against the backdrop of the January and February work stoppages.

4.3.9 INADEQUATE ILLUMINATION SYSTEM, SPECIFICALLY LAMPS THAT ARE NOT OPERATING

NHA management recognized that illumination is a problem and stated that the factory was in the process of changing the lamps throughout the factory. They further informed the investigators that they had already purchased 65 LED light tubes and that the acquisition of 58 more was pending.

While documentation of these purchases was not shared, NHA did provide the investigators with a copy of the factory-wide plan being implemented to upgrade the light tubes.

CONCLUSION: The investigators conclude that NHA appears committed to the needed changes under the noted factory-wide improvement plan.

4.3.10 NEGOTIATION PROCESS FOR COLLECTIVE BARGAINING AGREEMENT 2018-2019 AND WHETHER THE FACTORY INTERVENED OR INTERFERED

Deyling García told the investigators that the HR Regional Manager consistently expressed, during the CBA negotiations, that management wished that only one union

existed within NHA, which was understood to mean that he would prefer that the STP union not be present there. However, he did not provide specific dates when the alleged statements were made or other information to allow for a further investigation of these alleged statements.

Investigators note one case of apparent interference in union matters by the NHA General Manager who, around the time the major apparel manufacturer Tegra was in the process of acquiring NHA, sent a letter to the Secretary General of the Sandinista Workers Central requesting a meeting (which NHA asked to be held between June 10 and 14, 2017) to discuss concerns about the STP union. In the letter, the General Manager stated that “the new owners are concerned with this situation in Nicaragua because they [the STP union] are providing information that is incorrect and while we are working to maintain good communications and a good relationship, I consider that the way the situation at the company is developing and the procedures being used by the members of the union Executive Committee is like sending correspondence directly to corporate [headquarters] executives.”

Upon consulting the General Manager regarding this letter and trying to clarify its uncertain meaning, he mentioned to the investigators that it was his signature and seal on the letter but that he did not recall it, adding that at least once previously his signature had been falsified. However, this argument became moot when the Human Resources Manager confirmed that the factory had in fact sent the letter to the Sandinista Workers Central, providing the investigators with signed and dated copy.

CONCLUSION: While the meaning of the above-noted letter is not entirely clear, it can be read to suggest a violation of (1) FLA Compliance Benchmark Freedom of Association (FOA).10, which establishes that “Employers will abstain from interfering with the formation or operation of labor organizations, including actions designed to establish or promote the domination, financing or control of labor organizations by the employers”; and/or (2) FLA Compliance Benchmark Freedom of Association (FOA).13, which states that

“employers shall not interfere with the right to freedom of association by favoring one workers’ organization over another.”

V. OTHER FINDINGS

One of the interviewed workers alleged that he (“Worker 1”) was terminated on March 1, 2018 presumably because he was a member of STP. In addition, according to STP, NHA failed to follow its internal procedures because a bipartite committee was not formed, and the workers were not given the opportunity for a defense in connection with the dismissals on February 27, 2018 of two STP members (“Workers 2 and 3”).

CONCLUSION: The investigators were not able to make any additional determinations during the course of their two-day factory visit concerning whether the dismissals of Workers 1, 2, and 3 were made with just cause and according to appropriate procedures.