



FAIR LABOR ASSOCIATION[®]

SUMMARY REPORT BRAND-COMMISSIONED INDEPENDENT SAFEGUARDS INVESTIGATION NEW HOLLAND APPAREL, NICARAGUA

In February 2018, affiliated Participating Companies Nike Inc. and Under Armour Inc. requested that the Fair Labor Association (“FLA”) conduct a safeguards investigation¹ at the factory New Holland Apparel de Nicaragua, S.A. (“NHA”).² The two brands requested that the FLA engage an independent expert to investigate allegations of violations of freedom of association -- particularly with regard to the dismissal of a union leader who had *fuero sindical* employment protection -- as well as of other labor standards.

Earlier, on February 2, 2018, the FLA had received a communication from the *Trabajadores al Poder* union (“STP” or the “STP union”) at NHA, reporting that factory management had initiated an administrative process to terminate the employment contract of its Secretary General, Deyling Antonio García Quiroz (“Deyling García”). The communication was not structured as a complaint under the FLA’s Third Party Complaint procedure, and therefore the FLA did not undertake a Third Party Complaint review with respect to this communication. Nevertheless, FLA staff followed closely developments on the legal proceeding involving Deyling García and NHA and the settlement eventually reached by the parties. A brief overview of these developments is provided in this Final Summary Report.

To conduct the Safeguards investigation, the FLA engaged two highly-experienced experts on labor standards, Ena Lilian Nuñez Mancía and Katya Castillo, pursuant to detailed Terms of Reference drafted by the FLA with the concurrence of the two brands. The experts traveled to Nicaragua to conduct the investigation; field activities included two full days of interviews, other meetings, and review of documents at the factory Wednesday, March 21 and Thursday, March 22.

Subsequent to completing the investigation, the investigators prepared a draft report with findings and conclusions concerning all of the issues examined pursuant to the Terms of Reference. The FLA reviewed the report in draft form and requested some clarifications, which the investigators made. The final report by the independent investigators is also available on the FLA website.

¹ The FLA Safeguards procedures are set forth at <http://www.fairlabor.org/transparency/safeguards>. This falls within the category described there of “Brand-commissioned independent investigation.”

² NHA was acquired in 2016 by the U.S.-based apparel manufacturing corporation Tegra. NHA is also known as Tegra Nicaragua.

DISMISSAL OF UNION LEADER

Prior to the commencement of the Safeguards process and the independent investigation, NHA had requested authorization from the Nicaraguan Ministry of Labor (“MITRAB”), through an administrative review process, to terminate the employment contract of Deyling García, based on Articles 48 d. and 231 of the Labor Code (CT), and Article 45 of the NHA Internal Work Rules (RIT).

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

In light of this request from NHA, MITRAB held an evidentiary hearing and issued a ruling on February 23, 2018 declaring admissible the termination of the employment contract of Deyling García. This ruling was confirmed by a final, binding administrative ruling on March 6 denying an appeal that he had filed.

Deyling García filed a further appeal of the MITRAB final ruling, this time with the Nicaraguan labor court system, demanding his reinstatement as well as back pay for time away from his position at the factory. That legal case was pending at the time that the investigators conducted their field work, with a hearing scheduled to be held on April 23, 2018 before the Fifth Judge of the Labor and Social Security Court, District of Managua.

The investigators thus proceeded with the preparation of their work product, consistent with their mandate under the Terms of Reference document, without consideration of the course of Deyling García’s appeal to the Nicaraguan judicial authorities. Their review and analysis included issues relating to the allegations made by Deyling Garcia and in turn those of NHA concerning his activities.

The FLA’s Safeguards review process, including both its Third Party Complaint mechanism and Safeguards investigations initiated at the request of FLA-affiliated companies (the latter being the process involved in this case), has never been intended to be a substitute for consideration of the relevant issues pursuant to administrative and judicial review procedures established under national law. Put another way, the FLA fact-finding process and any conclusions and recommendations coming out of it are not intended to afford an alternative venue for either a complaining or a responding party to seek recourse where national legal authorities are already evaluating the same set of issues.

On April 23, the above-referenced hearing was held, after which the court scheduled a second hearing date of May 3. Prior to that second hearing, Deyling García and NHA entered into negotiations to resolve the case initially brought by NHA before MITRAB and then pending in the judicial system. Those negotiations resulted in a confidential settlement agreement between Deyling García and NHA that was approved by the Nicaraguan judicial authorities, thus bringing

to a resolution the issues that had been in dispute between the two parties and had led to Deyling Garcia's termination of employment.

As the legal process specifically with respect to Deyling Garcia was concluded pursuant to Nicaraguan legal procedures, the independent investigative report, as well as this Summary Report prepared by the FLA, do not include any findings and conclusions with respect to the allegations regarding the dismissal of Deyling Garcia, nor concerning any other allegations raised by NHA with respect to him.

For purposes of clarity and transparency, this report does reference below the core allegations concerning his dismissal that were part of the Terms of Reference – but without reaching any findings and conclusions that would, if included, run counter to established FLA standards for Safeguards investigation.

The independent investigative report does include a series of findings and conclusions with respect to all other issues covered in the Terms of Reference that do not pertain to the alleged actions of Deyling García related to his termination of employment.

FINDINGS OF INDEPENDENT INVESTIGATORS AND FLA RECOMMENDATIONS

The investigators made the following findings regarding the allegations of noncompliance raised in the Terms of Reference:

Harassment, Verbal Abuse, Discrimination: The investigators determined that there was no record of disciplinary proceedings against STP Executive Committee members. With respect to allegations of harassment and related improper treatment of STP members by factory officials, the investigators concluded that calls and summons to union leaders who are not at their job posts without justification to report to those locations cannot be considered a form of worker harassment. They instead are intended to be reminders of the need to meet the obligations in their individual labor contracts.

FLA Recommendation: Factory to hire an independent labor expert to review its disciplinary system to ensure that it complies with both national law and the FLA Code of Conduct and Compliance Benchmarks. Factory to conduct a training, to be repeated on an annual basis, on freedom of association and other relevant workplace rules and standards.

Verbal Abuse Against Workers by the Production Manager and Factory Supervisor: Interviewed workers and the members of the STP Executive Committee told the investigators that they had not been subjected to verbal abuse by the Production Manager or by NHA supervisors, and that they did not have knowledge of any concrete cases of verbal abuse by those officials. Thus, investigators did not find substantiation of claims of verbal abuse.

Accusations Against the NHA Regional HR Manager, Intimidation of Workers and Interference with the Exercise of Labor Rights: Worker testimony (both union and non-union workers) indicated that statements made by the regional HR Manager after a work stoppage were intended to intimidate workers and interfere with their associational rights. The regional HR

Manager stated that it had not been his intention to intimidate workers and instead was speaking about the need for collaboration and the future growth of the company. At a minimum, the regional HR Manager demonstrated insensitivity and lack of basic skills in communicating with workers.

FLA Recommendation: Factory to ensure that the Regional HR Manager and other relevant management are trained by an independent expert on the appropriate conduct of labor relations in a unionized work setting.

Alleged Illegal Dismissal of Pregnant Worker: A worker was dismissed within the legal probationary period. The worker claimed that the dismissal was motivated by her pregnancy, while management argued that it was based on unsatisfactory performance. Management did not provide the investigators with documentation supporting the allegation of low productivity of the worker. Subsequent to the completion of the investigation, a Nicaraguan judge hearing the worker's claim of illegal dismissal issued a ruling in which he ordered payment to her for her full probationary term, but did not order reinstatement or back pay.

FLA Recommendation: Improvement of management record-keeping of performance; Factory to provide training for HR workers on policies and procedures regarding handling cases of worker pregnancy and concerning workers on probationary period.

Change (Increase) in Production Goals without Consultation with Workers and Union: Interviews with workers and union officials 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 particularly given the dire condition of machinery. Interviewed workers stated that these increases were the central reason for the work stoppages on January 9 and February 2, 2018. There was no evidence of consultation with workers and the union prior to the change of production goals.

FLA Recommendation: Factory to enhance dialogue with workers and union representatives on production changes – both with respect to those already implemented and any planned changes in the future. Such dialogue to include discussion of reasonableness of production goals.

Requesting Overtime Beyond the Legal Maximum Allowed: The investigators did not find evidence that NHA requested workers to work overtime beyond the legal maximum allowed, consistent with NHA workplace policies and procedures. A review of time and payroll records for a sample of eleven workers over the previous three months reviewed by the investigators confirmed this to be the case.

Lack of Full Payment to Workers Who Attend Medical Consultations at the Nicaraguan Social Security Institute (INSS): 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.

Non-Compliance with the General Law for Hygiene and Occupational Safety in the Workplace:

The investigators found that 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, as required by Article 18 of the General Law for Hygiene and Occupational Safety in the Workplace. The factory is not in compliance with the law.

FLA Recommendation: Factory to complete the required ergonomic risk analysis and update policies and procedures to ensure that the analysis is performed with regard to potential future changes in production processes.

Meetings of the Hygiene and Occupational Safety Mixed Commissions: Investigators found that a Hygiene and Occupational Safety Mixed Commission had been constituted at NHA pursuant to Article 56 of the General Law for Hygiene and Occupational Safety in the Workplace and was holding meetings pursuant to Article 59 of said Law.

Updating of Risks Map: Investigators reviewed 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, as required by Article 18 of the General Law for Hygiene and Occupational Safety in the Workplace. At the time of the investigation, the factory was not in compliance with the law.

FLA Recommendation: Factory to update the required map of factory risks and policies and procedures, with periodic further updates as needed provided on a timely basis.

Excessive Heat and Lack of Adequate Ventilation: Factory has had in place since 2017 a plan to reduce heat and provide adequate ventilation. Certain elements of the plan have not been fully completed.

FLA Recommendation: Factory to ensure that plan to reduce heat and improve ventilation is implemented and reviewed regularly to ensure that it is effective in addressing issues raised concerning both heat and ventilation.

Malfunctioning Loudspeaker System: Investigators confirmed that messages conveyed over the factory's loudspeaker system are not reaching workers in certain areas of the factory because of a malfunctioning loudspeaker system.

FLA Recommendation: Factory to repair/upgrade the loudspeaker system to ensure that all workers are able to hear announcements and are informed of developments at the factory on a timely basis.

Substandard Conditions of Machinery Due to Lack of Repairs and/or Inadequate Maintenance:

The investigators observed machines in poor condition as well as mechanics at work repairing

machines. One of the workers stated that the machine he/she was using had broken down three times that morning. The poor condition of machinery affects workers in being able to meet production goals.

FLA Recommendation: Factory to prioritize the preventive maintenance program for machinery and to ensure that workers are not adversely affected in achieving reasonable production quotas by broken or malfunctioning machinery.

Inadequate Illumination System: Investigators confirmed that there are problems with the factory's illumination system. NHA management informed the investigators that there is a plan being implemented to upgrade lighting throughout the factory, and shared such plan with the investigators.

FLA Recommendation: Factory to continue to implement the plan to improve factory lighting and to review requirements periodically.

Management Interference in Union Matters: Investigators confirmed that in mid-2017, NHA's General Manager sent a letter to the Secretary General of the Sandinista Workers Central criticizing one of the unions in the factory (the STP union) and indicating a preference for this union to no longer exist at the factory. This investigators suggested that such action might be 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."

FLA Recommendation: Factory to put in place a comprehensive training program for its management and HR staff on workers' associational rights, including with respect to prohibitions on management interference with labor unions and/or preference for one union over another.

CONCLUSIONS AND NEXT STEPS

The Safeguards investigation at NHA described in this Summary Report was initiated at the request of FLA affiliates Nike and Under Armour, drawing on concerns that had come to their attention about alleged violations of freedom of association as well as other labor standards. As executed by two independent labor rights experts selected by the FLA, the investigative report documents a series of issues that lend themselves to effective remediation programs – some of which already are well underway, others that will require additional efforts.

The two companies, through their sourcing relationships with NHA, are well situated to work with factory management to ensure that a detailed remediation plan is developed and implemented. Even as some of the core freedom of association issues outlined in the Terms of Reference for this investigation are not address in the report in the wake of the settlement reached between the former union leader Deyling García and NHA, adequate attention to the remaining issues

documented there will be critical to improving the overall workplace environment at the factory and demonstrating a heightened responsiveness to worker concerns.

The FLA looks forward to being updated by the companies on the progress being made by NHA in addressing the issues documented in the investigation report and the recommended actions outlined in this Summary Report.