



BACKGROUND AND OVERVIEW

On June 30 2020, Participating Company Amer Sports (hereinafter, “the company”) contacted the Fair Labor Association (“FLA”) to communicate that it had received a complaint from a board member of the union Luis Alonso Velasquez (“the union”) at the factory Wells Apparel Nicaragua (“the factory”), from which the company sources products. The complaint alleged that (1) factory management had dismissed six union board members (hereinafter “the Complainants”), who were entitled to *fuero sindical* protection, without complying with legal requirements; and (2) there was a potential risk that an additional union official currently under maternity leave would also be unlawfully dismissed.

Amer Sports shared with the FLA the information sent by the union board member, as well as that provided by the factory (as part of its internal preliminary assessment). The FLA agreed to review the information in light of Nicaragua’s legal framework on Freedom of Association and the FLA’s Workplace Code of Conduct and Compliance Benchmarks, and to provide Amer Sports with an initial assessment of the allegations to evaluate any potential noncompliance – whether with national laws or FLA standards.

As result of the initial assessment, the FLA recommended to Amer Sports that it should:

- Develop a clearer understanding of the allegations by interviewing the complainants as well as other relevant actors.
- Engage with factory management to verify compliance with the factory’s policies and procedures with respect to the termination of the six former union board members who allege that they were entitled to *fuero sindical* protection as of the time they were dismissed.

- Request information from factory management concerning the outcomes of the administrative and judicial demands filed by the complainants at the Ministry of Labor and the Managua Fourth District Labor and Social Security Court.

In the meantime, the FLA interviewed the union official who filed the complaint with Amer Sports to understand in detail the allegations concerning the illegal dismissal of the six complainants. The FLA confirmed that the six complainants lost their official union status on April 29, 2020 after the restructuring of the union board on April 20.

On July 20, 2020, the FLA accepted the complaint at Step 2 of the Third Party Complaint process. Under Step 2, Amer Sports had up to 45 days to make an assessment and develop relevant remediation. Alternatively, Amer Sports could waive the 45-day period and have the FLA designate an independent third party to assess the situation and, as appropriate, make remediation recommendations. Amer Sports chose to conduct an internal assessment of the allegations and to provide the FLA the opportunity to review and assess any follow up information provided by the factory.¹

The FLA, jointly with Amer Sports, put together a list of questions for, and documents required from, the factory as part of this investigation. These specifically concerned the employment relationship and termination of the complainants, as well as the factory’s industrial relations and freedom of association policies and practices, among other relevant issues.

¹ After the initiation of this investigation, the FLA learned that Participating Company New Balance established a sourcing relationship with the factory in June 2020. New Balance has expressed its support for the investigation and has indicated that it is prepared to work with Amer Sports to engage with the factory for purposes of implementing the recommended remediation measures outlined in this report.

On July 31, 2020, the factory responded to the questions submitted by Amer Sports. Based on a review of the information submitted, the FLA concluded and conveyed to Amer Sports that there were still gaps in the information provided by the factory to verify compliance with: (1) policies and procedures governing retrenchment with respect to the termination of the six complainants; as well as (2) the FLA Code of Conduct and Compliance Benchmarks.

Therefore, a second round of questions and a new list of documents were submitted by Amer Sports to the factory on August 18, 2020. In addition, the FLA Regional Manager for the Americas interviewed the complainants on August 15 and received additional information from them as part of the assessment process.

This Report is limited to a review of the documents provided by the factory through its communications with Amer Sports, coupled with information obtained during the interviews with the complainants and other individual workers.

The assessment does not include the allegations concerning the potential dismissal of the seventh union board member, as after her maternity leave she returned to work and is currently an active worker at the factory.

BACKGROUND ON THE COMPLAINANTS' UNION OFFICIAL STATUS AND THEIR TERMINATION

Article 87 of the Nicaraguan Constitution safeguards the rights of workers to Freedom of Association and Collective Bargaining. Workers can organize unions and these unions can be constituted according to the law. The Ministry of Labor is the authority with responsibility to register and authorize these unions and their union boards, but unions retain the right to create their own statutes and regulations, elect their representatives, and choose their structure, administration, and activities (Article 204, Nicaraguan Labor Code).

Union board members have a protected status, called *fuero sindical*, but under the law this is limited to nine members of the union board. Employers cannot dismiss any protected union official without the authorization of the Ministry of Labor and for a reason the Labor

Code considers to be just cause (Article 231, Nicaraguan Labor Code).

The union Luis Alonso Velasquez was established in August 2012 and is affiliated with the union federation *Central Sandinista de Trabajadores -José Benito Escobar (CST-José Benito Escobar)* (hereinafter “the union federation”). Its Secretary General is Lourdes Gomez Navarrete.

The six complainants were elected as union board members on October 9, 2019, as was certified by the Ministry of Labor through a certification dated October 18, 2019, for a one-year period beginning on October 18, 2019 and continuing until October 17, 2020. In the case of three of them, it was their second or third reelection as union board members.

The complainants alleged that after an internal conflict with the Secretary General around the agreement reached between the factory and the Secretary General on the implementation of a layoff in late March 2020, the Secretary General, in retaliation, conducted a restructuring process of the union board through which seven union officials were banned from the board, including the six complainants.

After this occurred, the union registered new elected union board members and the Ministry of Labor issued a new certification dated April 29, 2020 recognizing and authorizing the new union officials for a one-year period (again from October 18, 2019 until October 17, 2020).

Beginning on May 4, 2020, the factory initiated the termination of the complainants who had been removed during the union board restructuring process, as noted above. All six complainants were terminated based on Article 45 of the Labor Code.²

The factory alleges that their terminations were part of the retrenchments implemented due to the impacts of the COVID-19 pandemic. The factory did not recognize a *fuero sindical* protection, considering that the complainants were no longer union board members as of the time they were terminated.

² Article 45 of Nicaragua's Labor Code recognizes the concept of dismissal without cause. Employers can dismiss an employee without cause but are obligated to provide a severance indemnity according to the worker's seniority.

The factory provided information on the dates of hiring and termination and seniority, as well as the calculation of the severance payments for the six complainants, as follows:

WORKER'S NAME ³	DATE OF HIRING	DATE OF TERMINATION	SENIORITY	SEVERANCE PAYMENT CORDOVAS
Complainant #1	07/30/2014	05/04/2020	5 years and 10 months	8,762.02
Complainant #2	11/01/2017	05/04/2020	2 years and 6 months	6,667.05
Complainant #3	02/13/2017	05/22/2020	3 years and 3 months	4,319.80
Complainant #4	11/24/2015	05/22/2020	4 years and 5 months	7,096.63
Complainant #5	05/21/2012	05/25/2020	8 years and 4 days	13,240.79
Complainant #6	11/05/2012	05/25/2020	7 years and 6 months	14,066.16

According to the information shared with the FLA by Amer Sports, and confirmed by the factory, none of the union officials dismissed accepted their severance payments, and the factory decided to deposit their paychecks in an accrual account in the name of a labor court for the workers to claim them.

The union federation sent a letter on May 28, 2020 to the factory's General Manager expressing its support for the six complainants. The union federation stated that the union Secretary General had banned the six dismissed union board officials without convening a general assembly for the restructuring of the union board as required by the union bylaws, after which the factory management dismissed them.

On June 29, 2020, the union sent a letter to factory management expressing its disagreement with the decision of the six former union board members to reach out to Amer Sports concerning the situation at the factory, stating that this helped create labor instability there. The union alleged the six complainants were simply looking out for their own personal benefit in challenging the union decision to expel them from the organization and from the union board. It also stated the factory was not involved in the expulsion of these workers from the union board. Finally, the union requested that Amer Sports and other brands not take any measures against the factory and leave it up to the local labor authorities to resolve these issues. The letter was signed by 109 workers employed at the factory at that time.

³ In order to protect the identities of the six complainants, their names are omitted from this report and they are instead referenced by using "Complainant #". Their names will be shared if factory management rehires the complainants - as is discussed in the Recommendations section of this report.

The complainants filed an administrative demand at the Ministry of Labor alleging that their dismissals were conducted in violation of their protected Freedom of Association rights. The factory was summoned to attend conciliation hearings, as part of the administrative process, with the first hearing scheduled on June 18, 2020. The conciliation hearings took place according to the Ministry of Labor procedures and the factory representatives attended such hearings, but the parties did not reach an agreement and the conciliation process was considered to be exhausted.

The complainants then issued a legal demand with the Managua Fourth District Labor and Social Security Court. A court hearing was held on September 2, 2020, but again without an agreement being reached. The labor authority is now in the process of issuing a final legal resolution.⁴

The six complainants are no longer entitled to *fuero sindical* protection based on the labor regulations in Nicaragua, as the certification from the Ministry of Labor dated April 29, 2020 registering and authorizing the election of a new union board (after the restructuring election of the union board conducted April 20, through which seven union officials were expelled from the union board, including the six complainants) modified and extinguished the six complainants' official board status and in consequence their *fuero sindical* protection.

⁴ On September 23, 2020, the Managua Fourth District Labor and Social Security Court adopted a resolution on the demand filed before it by the six complainants. The court concluded there had not been an infringement of freedom of association, nor other fundamental rights, in the case of the termination of the six complainants and declared inadmissible the petition of reinstatement that they had requested. In addition, the court held that complainants have the right to demand their severance payments (noting that these claims must be filed with the labor court where the factory decided to deposit their paychecks after their termination).

On October 2, 2020, the six complainants appealed the court resolution to the National Labor Court of Appeals.

In consequence, this assessment of the allegations filed by the six complainants is focused on verifying whether the factory complied with its bylaws and with FLA Workplace Code of Conduct and Compliance Benchmarks with respect to their termination.

ASSESSMENT OF RETRENCHMENTS IMPLEMENTED BY THE FACTORY ACCORDING TO NICARAGUA'S LEGAL FRAMEWORK AND FLA WORKPLACE CODE OF CONDUCT AND COMPLIANCE BENCHMARKS

Based on information reported by the factory, as a result of the COVID-19 pandemic's Impact in Nicaragua, from late March until May 2020 it faced a gradual retrenchment of its workforce. In total 107 workers were terminated in that period of time from all production areas, as follows:

- 60 workers in March, including 11 newly hired workers who were still under the probation period.
- 29 workers in April.
- 18 workers in May.

These numbers match closely with the data reported by the factory in an email dated June 17, 2020. In that communication the factory General Manager stated that *"Due to the COVID-19 pandemic we have had to substantially reduce our work force from 255 employees in early March to 160 employees as of this week. We have had a reduction of about 70% of our orders."*

However, from June to August 2020, the factory rehired 46 workers who had been terminated during the above-referenced retrenchments. In addition, the factory hired 32 new personnel during June, July, and August. This occurred without the factory giving preference to those workers with comparable skills and qualifications who already had been terminated.

The factory shared a copy of the *Actas* signed between the factory and the union for each of the instances where the factory decided to lay off employees from late March until early April; these included the list of workers to be terminated in each of those instances. None of the six complainants was included on the list of

the workers terminated during that period of time.

According to FLA Termination and Retrenchment/General Policies and Procedures Compliance Benchmarks (ER. 32), employers should comply with a number of standards for the implementation of a mass layoffs/retrenchment due to operational requirements:

ER.32.1 *Employers shall have in place a formal written policy governing all aspects and modes of termination*

ER.32.2 *Employers shall maintain proper and accurate records in relation to termination and retrenchment*

The factory has a written policy and procedures for the implementation of retrenchments due to low levels of production. However, the steps described by the factory in its responses to Amer Sports regarding the proceedings for a retrenchment differ in certain respects from what is described in the written policy and procedures documents.

The listed factory criteria for the selection of workers to be terminated are:

- a. Performance
- b. Skills and abilities
- c. Experience in multiple operations
- d. "Operating" sewing machines
- e. Productivity
- f. Discipline
- g. Seniority

The selection process is managed by an evaluation committee, bringing together the General Manager, the Production Manager, and the HR Manager. There are not clear regulations on how workers will be graded under each selection criterion, or how their performance is evaluated, so it is uncertain how workers are evaluated and ranked. Once the selection is completed, the factory shares the list of workers to be terminated with the union. If both sides reach an agreement, an *Acta* will be issued and signed. Subsequently, workers will be terminated consistent with Nicaraguan regulations.

The factory’s retrenchment procedures also lack a description of steps regarding the communication to workers affected by the termination, as well as a mechanism through which workers can file their concerns if they have questions regarding the termination and/or severance calculation and/or payment. In addition, they do not include language on rehiring the first workers affected by the termination.

Finally, the factory recognizes that it has not kept formal documentation of the retrenchment process, so there is no record on how the factory evaluated and selected workers to be terminated.

Based on the above, the process used by the factory is not in compliance with FLA Workplace Code of Conduct and Compliance Benchmarks governing Termination and Retrenchment ER. 32.1 and ER.32.2.

Furthermore, the factory lacks a written policy and procedures regarding performance reviews for direct workers in accordance to FLA Workplace Code of Conduct and Compliance Benchmarks governing Employment Relations (ER.29.1 and ER 29.1.1).

In short, there is not a system in place for the periodic evaluation of workers’ performance that could have been a key factor in the selection of workers to be retrenched.

ER.32.3 *When employers are faced with major changes in production, program, organization, structure or technology and those changes are likely to result in temporary or permanent layoffs, employers shall communicate any alternative to retrenchment that have been considered and consult with workers’ representatives.*

ER.32.4 *Where temporary or permanent layoffs are unavoidable, a plan should be developed and implemented that mitigates the adverse effects of such changes on workers and their communities.*

ER.32.5 *The plan should be clearly communicated and posted, and include feedback channels for workers to ask and seek clarification*

Based on the review of documents, the interview with the complainants, and the factory’s responses to the questions presented, the factory failed to develop a clear plan for the retrenchments that occurred in March, April, and May 2020.

The factory followed its policies and procedures governing termination due to low levels of production that require consulting with the union previous to implementation of the March and April retrenchments by reviewing and approving the lists of workers to be terminated and signing an Acta. However, there is no evidence of any consultation in order to mitigate the adverse effects of a retrenchment on workers and their communities. The *Actas* through which the retrenchment of workers in March and April were agreed with the union had been signed the same day the workers were terminated – except in the case of the workers terminated March 31 the *Acta* was signed the day before the implementation of the termination.

Based on this information, there was not prior written notice/communication with workers to be terminated concerning the possibility of a retrenchment and the reasons therefore.

In addition, based on the information provided, the factory failed to share the Acta covering the agreements reached with the union Secretary General on the implementation of the retrenchments that occurred in May 2020 – when 18 workers, including the six complainants, were terminated as follows:

DATE OF TERMINATION	NUMBER OF WORKERS
05/04/20	2
05/05/20	1
05/22/20	13
05/25/20	2

The factory has recognized that it failed to grant to workers terminated a copy of their termination letter, nor of the calculation of their severance payment (*finiquito*) at the time of their termination. (Only the termination letter was given to some workers upon request.) Such deficiency in how the retrenchments were implemented limited workers’ opportunities to raise any concerns regarding their termination

and payment of their severance payments. The factory has also confirmed in its responses that it *“has not implemented any program to help minimize the negative impacts of the retrenchment for workers.”*

Such omissions contravene FLA Workplace Code of Conduct and Compliance Benchmarks on Termination and Retrenchment ER. 32.3, ER 32.4, and ER. 32.5, as well as Compensation Benchmarks governing Administration of Compensation/Termination Payouts; these provisions require *that employers establish channels for workers to confidentially express any concerns around legally-owed payment during a retrenchment process.*

ASSESSING THE POTENTIAL ANTI-UNION DISMISSAL OF THE SIX COMPLAINANTS

FLA Workplace Code of Conduct and Compliance Benchmarks on Anti-Union Discrimination/Dismissal, Other Loss of Rights and Blacklisting (FOA.5.1) provides that *“Employers shall not engage in any acts of anti-union discrimination or retaliation, i.e., shall not make any employment decisions which negatively affect workers based wholly or in part on a worker’s union membership or participation in union activity, including the formation of a union, previous employment in a unionized facility, participation in collective bargaining efforts or participation in a legal strike.”*

The six complainants alleged they were dismissed by the factory after they challenged the agreement reached between the union Secretary General and factory management on the implementation of the retrenchments. Through the restructuring of the union board conducted on April 20, 2020 that allegedly was orchestrated by the Secretary General, they were expelled from the union board and thereby lost their union official status **prior to** then being retrenched in May 2020.

In addition, the complainants mentioned that this was not the first time that the factory dismissed former union board members, in complicity with the union Secretary General. The FLA interviewed a worker whose case the complainants referenced as evidence of such dismissals and the FLA also requested additional information from the factory

regarding her termination. The worker during the interview expressed that while she was expelled from the union board in September 2019 because she had some personal problems that kept her from complying in full with her duties as a union official, she was not dismissed until April 2020 during the retrenchment process the factory implemented. This timing was confirmed by information shared by the factory. In addition, she said that her dismissal was not linked in any way with any anti-union animus, and to the contrary indicated that she is thankful for factory management’s support provided to her given that her daughter requires special medical attention.

The factory argues that the six complainants were dismissed as part of a retrenchment process implemented due to the negative impacts of the COVID-19 pandemic on factory’s production. The factory justified the retrenchment of each of the six complainants as follows:

- **Complainant #1:** Sewer; the factory did not provide an additional justification
- **Complainant #2:** Warehouse worker; two of the three warehouse positions were eliminated.
- **Complainant #3:** Warehouse worker; two of the three warehouse positions were eliminated.
- **Complainant #4:** Sewer; has been reprimanded for falsifying documents.
- **Complainant #5:** Packing clerk; packing area was downsized from four people to two. The two remaining clerks had other skill sets in using packing machinery.
- **Complainant #6:** Packing clerk; downsized from four people to two. The two remaining clerks had other skill sets in using packing machinery.

As previously noted, the termination of the six complainants happened between May 4 and May 25 – over a month after the earlier retrenchment process was concluded. Based on the information provided by the factory, at least four of the six complainants were apparently not terminated as part of a mass layoff:

- **Complainant #1** and **Complainant #2** were the only two workers terminated on May 4, 2020
- **Complainant #5** and **Complainant #6** were the only two workers terminated on May 25, 2020
- **Complainant #3** and **Complainant #4** were terminated on May 22, 2020, the same day on which another eleven workers were also dismissed.

The terminations implemented by the factory after April 3, 2020 did not follow the steps of consultation and agreement with the union, as required by factory's bylaws – unless the factory has evidence that it has not yet shared of the *Actas* signed with the union for the implementation of those terminations. In addition, there is no evidence concerning how the workers terminated in May 2020 – including the six complainants – actually were selected based on the factory's criteria for termination.

The factory also shared copies of the disciplinary sanctions imposed by the factory on five of the six complainants over the time of their employment. According to the information provided by the factory, only **Complainant #5** does not have a disciplinary record in her personnel file. In the case of the other five complainants, all have multiple written disciplinary actions recorded related to absenteeism at work, low performance, and/or unauthorized personal leave. In the case of **Complainant #4** there is also a “call of attention” for altering social security certificates; her case is the only one for which, as referenced above, the factory states that such disciplinary issues were a reason for her termination.

Absenteeism at work, unauthorized personal leave, and altering social security certificates are categorized as very serious matters by factory's *Reglamento Interno de Trabajo*. Most of the disciplinary sanctions imposed on the complainants occurred from 2016 through 2018, a few of them are from 2019, and the only one from 2020 concerns **Complainant #1**.

The FLA through Amer Sports also requested information on the structure of the packing and warehouse areas before and after implementation of the retrenchments (areas where four of the six complainants worked before their dismissals: two in the packing area and two in the warehouse). These showed that:

At the packing area: Three workers, including two complainants, were terminated from the area. The dismissal of the third worker occurred on March 31, over a month before the dismissal of the two complainants. This third worker was rehired on August 28 at the same production area.

At the warehouse: Only two workers (two of the six complainants) were terminated from this area (one on May 4 and the second on May 22). Two other workers have been relocated and are currently employed in the same job positions that the two complainants had before their termination (one of those workers is the seventh official also expelled from the union under the same circumstances as the six complainants).

CONCLUSIONS

Based on the assessment of the information provided by the factory and the interviews conducted with the complainants and the additional interview with a witness, it is not possible to conclude that Wells Apparel terminated the six complainants based on anti-union animus.

However, there are inconsistencies with respect to compliance with the factory's own bylaws pertaining to their terminations. Moreover, the current practices for termination due to economic reasons are not fully aligned with the FLA Code of Conduct and Compliance Benchmarks, leaving room for discretionary implementation of workers' termination through a retrenchment process. Finally, the absence of clear procedures and supporting information could serve to hide any potential discriminatory basis for the actions taken.

RECOMMENDATIONS

1. The factory should develop a comprehensive management system to handle terminations and retrenchments – including clear procedures to ensure the implementation criteria for making termination decisions are fully consistent with national law as well as the FLA Workplace Code of Conduct and Benchmarks and buyers' Codes of Conduct. This system should include clear steps for implementing and documenting workers' performance reviews in the context of any termination decisions.
2. The factory should ensure that all workers terminated between March and May 2020 receive a copy of both their termination letter and *finiquito*. In addition, the factory should establish a clear and transparent communication channel through which the concerns of any worker about the calculation and payment of their severance can be addressed.
3. In order to minimize the negative effects of the layoffs, the factory should provide rehiring priority to those workers terminated in March, April, and May 2020 who have skills and qualifications comparable with those of new applicants.
4. The factory should review and consider rehiring the six complainants who were terminated in May 2020, based on the evidence presented and reviewed that shows the factory (1) did not demonstrate that its termination decisions were objectively made, and (2) was not in compliance with its own bylaws and the FLA Workplace Code of Conduct and Benchmarks. The factory should provide information to the company, to be shared with the FLA, if it determines that this rehiring is not possible – including the reasons for reaching such a decision.