

FINAL REPORT
Third Party Complaint, Wells Apparel (Nicaragua)
April 19, 2021

On July 20, 2020, the Fair Labor Association (“FLA”) initiated a Third Party Complaint concerning the factory Wells Apparel Nicaragua (“the factory”) based on the allegations filed by a former board member of the Luis Alonso Velasquez union.¹ At the time the FLA accepted the complaint, it confirmed that FLA Participating Company Amer Sports was sourcing from the factory.²

The former union board member alleged violations of worker rights, principally concerning freedom of association, in relation to a retrenchment implemented by the factory between March and May 2020. More specifically, the board member alleged: 1) factory management had dismissed six union board members (including him) who were entitled to *fuero sindical* protection³ 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.

The FLA accepted the case 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 have waived 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 assessment of the allegations and to provide the FLA the opportunity to then review and assess any follow-up information provided by the factory. 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.

The factory responded to the questions and two rounds of follow up inquiries from the FLA and Amer Sports. In addition, the FLA’s Regional Manager for the Americas interviewed the six dismissed union board members on August 15, 2020 and received additional information from them as part of the assessment process.

Following this, the final assessment of the allegations was conducted by the FLA’s Regional Manager. The FLA based its conclusions and recommendations on the review of the documents provided by the factory through communications with Amer Sports, coupled with information obtained during interviews with the six dismissed union board members and other workers. The assessment focused on the allegations concerning the potential illegal dismissal of six of the seven union board members, as the

¹ The decision to initiate followed on a communication of June 30, 2020, in which Participating Company Amer Sports informed the FLA that it had received a complaint from the former member of the Luis Alonso Velasquez union.

² In the course of investigation, the FLA confirmed that New Balance, also a Participating Company, had recently initiated a sourcing relationship with the factory.

³ Union officials have protected status, called *fuero sindical*. Employers cannot dismiss any union official without the authorization of the Ministry of Labor and for a reason the Labor Code considers just cause. (Article 231, Nicaragua Labor Code.)

FLA confirmed that the seventh board member returned to work following her maternity leave and is currently an active worker in good standing at the factory.

The assessment resulted in the following conclusions:

- The six Complainants⁴ were no longer entitled to *fuero sindical* protection by the time they were terminated by Wells Apparel. Based on the documentary review the FLA confirmed the union had undertaken, on April 20, 2020, a restructuring election of its board through which seven union officials were expelled from the board. The newly elected union board was registered and authorized on April 29, according to a Certification. An internal decision from the union modified and extinguished the six workers' official board status and, as a consequence, their *fuero sindical* protection.
- As a result, the assessment of the allegations was focused on verifying whether the factory complied with its bylaws and with the FLA Workplace Code of Conduct and Compliance Benchmarks with respect to the termination of the six complainants.
- Based on the assessment of the information provided by the factory and the interviews conducted with the six workers and an additional interview with a witness, it is not possible to conclude that Wells Apparel terminated the six based on anti-union animus.
- However, the assessment also revealed that there were inconsistencies with respect to compliance with the factory's own bylaws pertaining to the workers' 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. The absence of clear procedures and supporting information also could serve to hide a discriminatory basis for the actions taken.

As part of the assessment process, the FLA made a number of recommendations to the factory, focused on steps to strengthen factory's policies, procedures, and practices in managing terminations and retrenchments to reduce the opportunity for potentially discriminatory decisions in the implementation of any further layoffs by the factory.

The final assessment report was posted on the FLA's website on October 7, 2020. Following that, Amer Sports worked jointly with Wells Apparel to put in place a remediation action plan and set out the steps needed for its implementation.⁵ **That action plan is the focus of this report.**

The FLA's recommendations to Wells Apparel are listed below, followed by a summary of the remediation actions implemented by the factory with the support of Amer Sports, and the status of those actions as of the submission of this report in April 2021.

⁴ While the initial complaint was submitted by only one of the six, subsequently the others informed the FLA's Regional Director for the Americas that they also wished to be considered as Complainants for purposes of this investigation.

⁵ New Balance expressed its support for the investigation and has collaborated with Amer Sports to engage with the factory for purposes of implementing the recommended remediation measures outlined in this report.

Recommendation	<i>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.</i>
Remediation Action	<p>The factory developed a policy and modified its procedures governing termination and retrenchment. The FLA had the opportunity to review and suggest changes to both documents to align them with national laws and FLA Workplace Code of Conduct and Benchmarks. The factory followed the FLA suggestions in these areas.</p> <p>In addition, the factory has put in place a system to evaluate workers’ job performance. The factory shared a copy of the evaluation tool and the draft of the performance evaluation procedures. The FLA made certain recommendations for improvement and the factory is in the process of modifying the documents to address those.</p>
Status	Completed (subject to receipt of the final versions of these documents)

Recommendation	<i>The factory should ensure that all workers terminated between March and May 2020 receive a copy of both their termination letter and finiquito (the settlement confirming receipt of a sum as final payment and resolution at the end of a contract). 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.</i>
Remediation Action	The factory sent evidence to the FLA that workers terminated between March and May 2020 received a copy of the termination letter and <i>finiquito</i> , including a copy of their paychecks.
Status	Completed

Recommendation	<i>In order to minimize the negative effects of the layoffs, the factory should give rehiring priority to those workers terminated in March, April, and May 2020 who have skills and qualifications comparable with those of new applicants.</i>
Remediation Action	A total of 107 workers were retrenched between March and May 2020. The factory as of April 9, 2021 had rehired 61 workers from this group (57% of the total) and reported having reached out to another 18 workers. In the case of those 18 workers, it reported that all of them refused to be rehired either for personal reasons or because they were already otherwise employed. Eight additional workers were rehired but later terminated after having failed during the probation period. During the same period, the factory hired 260 new employees, as it undertook new production as a result of orders placed by a new customer.

Status	Completed
Recommendation	<i>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.</i>
Remediation Action	<p>As learned during the assessment conducted by Amer Sports and the FLA, the six former workers filed a legal demand to challenge the termination of their employment contracts by the factory. After the workers appealed an adverse decision by the labor court of the Managua District (the first instance court), the judicial process ended in January 2021 with a final decision from the National Court of Appeal. That court upheld the finding below that the factory did not infringe any legal regulations in the dismissal of the six complainants, as the workers were not entitled to <i>fuero sindical</i> protection by the time they were terminated.</p> <p>The factory refused to consider the rehiring of the six workers, as the FLA had recommended, based on two reasons: a) the ruling from the Court of Appeal recognizing that the factory did not illegally dismiss them; and b) the disciplinary records of five of those workers compiled in the course of their employment with the factory, as shared with Amer Sports and with the FLA Regional Manager.</p> <p>The factory, with the support of Amer Sports, agreed to look into means to assist the six workers in claiming their severance payment at the court.⁶ However, the factory’s attorney then confirmed with the workers that they had already engaged with their own attorney to solicit the receipt of their severance payments from the court.</p> <p>As of the time this report was drafted, the FLA was able to confirm that four of the six had already received their severance payments from the court, while in the case of the remaining two workers, the payment process was still ongoing.</p>
Status	Completed

⁶ According to information shared by Amer Sports, none of the six union officials dismissed accepted their severance payment at the time they were terminated by the factory, so the factory decided to deposit their paychecks in an accrual account in the name of the labor court for the workers to claim them.

Conclusions

The Third Party Complaint filed by one of the six union board members dismissed by Wells Apparel set in motion a process whereby Amer Sports, with support from the FLA, assessed the termination and retrenchment practices at the factory – after which it worked with factory management on a remediation plan designed to address the recommendations made by the FLA.

Implementation of the remediation plan has now been completed. Key outcomes of the remediation phase have been: (1) the development of a new policy and procedures governing retrenchment practices; and (2) the establishment of a worker performance evaluation system in which any further termination decisions will proceed according to transparent and clear steps. This is intended to reduce the risk of unfair or illegal practices in how the factory conducts any future terminations.

While these are important actions, the FLA urges Amer Sports to continue to maintain regular communication and work with Wells Apparel management to ensure that both workers and management are fully trained on the new policy and procedures on retrenchment. It also will be important that Amer Sports continues to support the implementation of the workers' performance evaluation system and closely monitors practices in that regard.

Finally, the FLA concludes that the factory should provide rehiring priority to those workers terminated in March, April, and May 2020.