



Comisión de Verificación de Códigos de Conducta

FINAL REPORT

INDEPENDENT INVESTIGATION

AT

JOEANNE DOMINICANA

Santiago de los Caballeros, Dominican Republic

April 9 to 12, 2013



Comisión de Verificación de Códigos de Conducta

INDEPENDENT INVESTIGATION JOEANNE DOMINICANA

OBJECTIVE OF THE INDEPENDENT INVESTIGATION

The Fair Labor Association (FLA) requested that COVERCO conduct an independent investigation regarding the Third Party Complaint lodged by the Dominican Federation of Free Trade Zone Workers (FEDOTRAZONAS) with regard to worker terminations possibly linked to efforts to organize a union at JoeAnne Dominicana, Ltd., located in the Santiago Free Trade Zone, Dominican Republic.

AREAS TO BE INVESTIGATED

According to the Terms of Reference, the following issues were to be investigated:

- a. Whether the environment within the factory allows workers to freely organize a union of their choice;
- b. The allegation that workers who attended a meeting at the union federation FEDOTRAZONAS' offices on January 24, 2013, were terminated for their alleged sympathy towards the union;
- c. Statements from management declaring that the worker terminations were related to their participation in the organization of a union.

The investigation will also address reports by other actors. FLA will provide public reports to the investigator.

METHODOLOGY

The methodology used by COVERCO consisted of two phases: 1) **Interviews:** 48 interviews were conducted with both internal actors (administration and production (operators) personnel) and external actors (workers terminated between January 28 to February 8, 2013; union leaders from FEDOTRAZONAS; the company's lawyer; and representatives of the Dominican Labor Foundation (FLD). 2) **Records Review:** active and non-active employee files selected on the basis of: a) the interviews performed and b) the workers terminated during 2012 (October) and early 2013 (January and February).



Comisión de Verificación de Códigos de Conducta

Interviews

The investigation began Sunday, April 7. Interviews with key external actors concluded Wednesday, April 10. On Tuesday, April 9, an initial meeting with General Management and Human Resources Management was held; subsequently, interviews with active workers – selected from various production areas, by gender, seniority, and job position – were planned. 34 interviews with administrative personnel, middle management, supervisors, and workers were conducted.

In addition, in order to obtain evidence, information, knowledge, and experience related to this case and about Dominican labor law, 14 interviews with key external actors were performed between Sunday, April 7, and Wednesday, April 10; including interviews with: 1) 7 workers terminated during January and February 2013, 2) FEDOTRAZONAS' representatives, 3) the company's Labor Counsel, and 4) two representatives of the Dominican Labor Foundation in order to obtain evidence, information, knowledge and experience related to this case and about Dominican labor law.

On Wednesday, April 10, another meeting with General Management and Human Resources Management was held, at which the President and CEO of the company were present.

Records Review

The following documents were requested from Administration:

1. Payroll records from January through March 2013;
2. Social Security payments records from October 2012 through February 2013;
3. Records of the number of workers added and dismissed from January 2011 to March 2013;
4. Worker accession and termination records from January 2011 to March 2013;
5. Lists of workers that left the company from October 2012 through February 2013;
6. List of Company Policies;
7. Policies and Procedures for Freedom of Association and Collective Bargaining;
8. Policies and Procedures against Discrimination;
9. Personnel records or worker files for active and terminated workers for January and February 2013;
10. Company notifications to the Ministry of Labor (MINTRAB) containing a list of terminated work contracts from January to February 2013;
11. Training and Orientation Programs for 2010 and 2013.



Comisión de Verificación de Códigos de Conducta

IMPORTANT INFORMATION

It is important to note that in 100% of the interviews with active employees – especially those with seniority – two items were expressed: 1) a shared sense of being part of the company, and expressed 2) their gratitude toward the company for guaranteeing their jobs in the times of crisis during 2007 to 2009.

Furthermore, 100% of the interviewees indicated that they have direct access to the General Manager, who they value as a person who understands their needs and requests; 75% did not know about the open-door policy, but there is evidence that the company does implement this policy.

Four interviewed workers who have significant seniority and work on production lines in close proximity to the line of the workers who began to be terminated on January 28¹, expressed a negative view regarding the possible existence or organization of a union, stating that *“having a union is bad for the company, that they are like the devil, and that factories that have unions close.”* These comments are relevant because, as described in the findings, they have a direct impact on the events of the week of January 28, 2013.

During the meeting on Wednesday, April 10, the President and CEO of the Company expressed concern regarding the allegations made by FEDOTRAZONS to FLA regarding the termination of workers that were allegedly trying to organize a union. The President and CEO reaffirmed that: 1) the Company has been responsible in its compliance with labor rights, 2) a positive environment and good labor relations exist at the JoeAnne Dominicana Factory, 3) that they guarantee compliance with their policies and Dominican labor law, and 4) if noncompliance is demonstrated, it will be corrected adequately.

JoeAnne Dominicana has “Company Policies,” its Norm No. 7, Policy and Procedure for the prohibition of discrimination clearly and “**emphatically prohibits discrimination of any type, waivers or sustained favoritism based on gender, age, race, color, national origin, social class, political views, union militancy²...**”; and, Norm No. 9, Policy and Procedure for Freedom of Association, establishes that “its employees have the right, if they so desire, to associate, with their right to do so always respected.”

In 83% of the interviews, including those with supervisors, employees did not remember these policies and procedures.

The company has conducted two training sessions for management, middle management, and supervisors on freedom of association, including topics on discrimination and human relations. The first documented session was held October 7 and 8, 2010, and the second was held March 25, 2013; both training sessions lasted four hours. The first session was coordinated and conducted by the National Institute for Professional Technical Training

^{1/} During the selection of interviewees, workers belonging to the production lines or from those in close proximity to where the terminated employees worked were included; therefore, the interviewees knew the events of the week of January 28, 2013 well.

^{2/} Emphasis added by COVERCO.

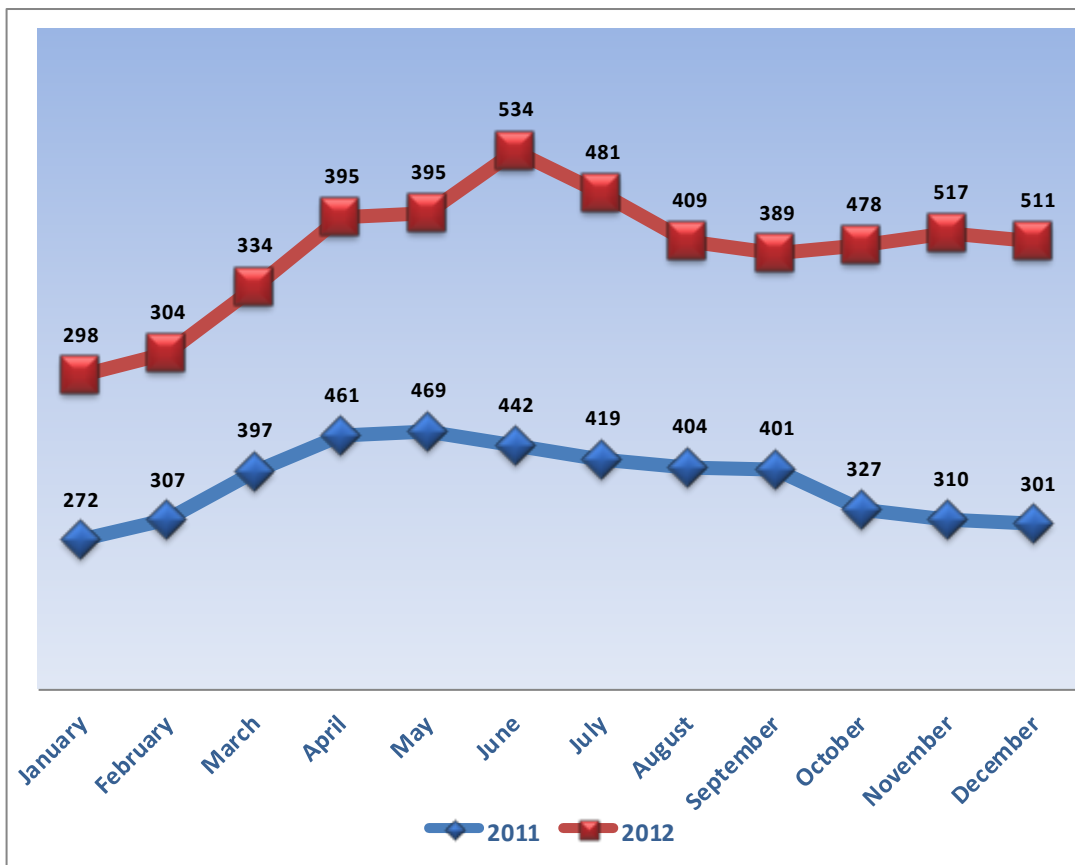
Comisión de Verificación de Códigos de Conducta

(INFOTEP³) and the March 2013 training session was led by the Vice-Minister of Labor from Santiago.

Interviews were conducted with 7 middle management employees and supervisors who participated in the March 2013 training session (2 from middle management, 1 supervisor); they confirmed that the topics covered included freedom of association and discrimination.

Starting in 2011, the company has had significant growth in employment, despite having high turnover levels. In 2012, the company had significant and sustained growth in employment.

**JOEANNE DOMINICANA LTD. FACTORY
EVOLUTION OF THE WORKFORCE COMPARISON OF 2011 AND 2012**



Source: COVERCO based on data provided by JoeAnne Dominicana, Ltd.

Due to the wide variety of products produced at JoeAnne Dominicana, there is constant worker turnover, particularly in some months of the year. When consulted about this

³ / An institution of the Dominican State specializing in training programs for workers and companies.

Comisión de Verificación de Códigos de Conducta

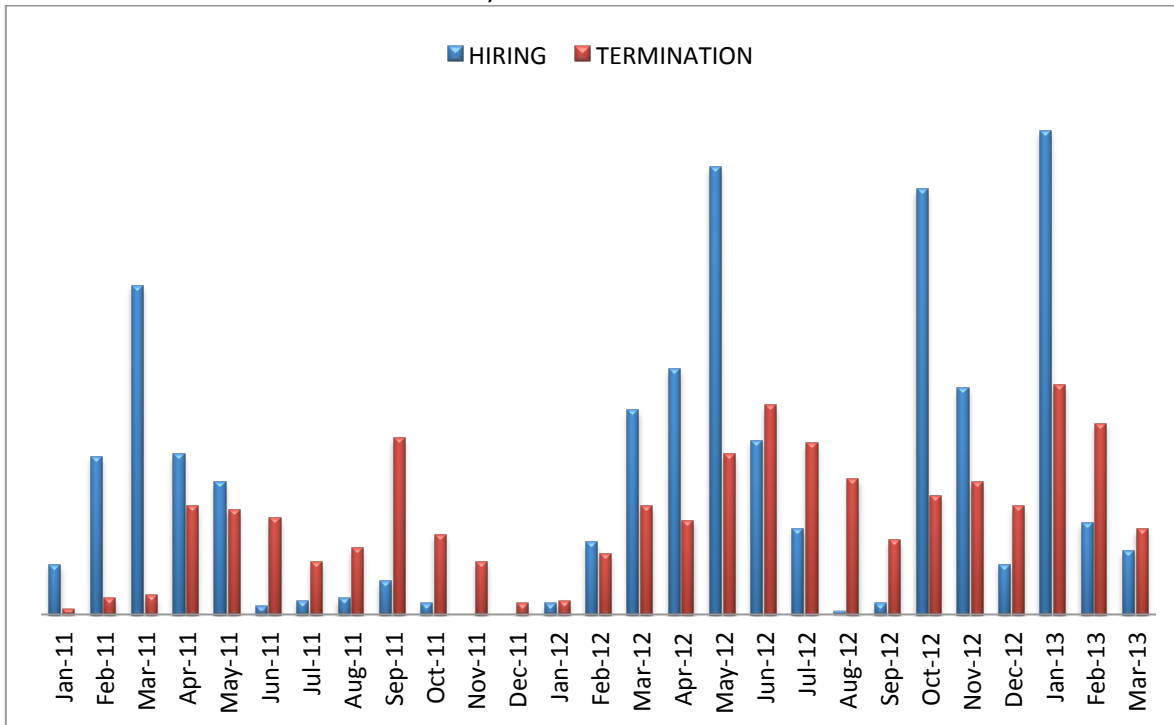
indicator, management stated that some orders are specific and produced in a short time, and that for such tasks, they hire short-term employees. The following graph shows this behavior.

The factory’s sustained employment growth, starting from 2011 (when the monthly hiring and terminations were substantially lower) through March 2013 (when the fluctuations in employment were larger), was justified by management in terms of the factory’s commitments with customers.

The investigation evaluated worker turnover to identify if the month of January 2013, when the potential union organizers were terminated, was atypical with respect to the behavior of previous months. The situation was, in fact, different; January 2013 had the highest level of hiring and terminations compared to January 2011.⁴

Although the termination of contracts in January 2013 was atypical, it is the view of this investigation that management: 1) had knowledge and had identified the union organizers, 2) took advantage of the routine, and 3) justified terminations in the month of January 2013 to carry out the termination of union organizers.

**JOEANNE DOMINICANA LTD. FACTORY
MONTHLY WORKER ACCESSIONS AND TERMINATIONS
2011, 2012 UNTIL MARCH 2013**

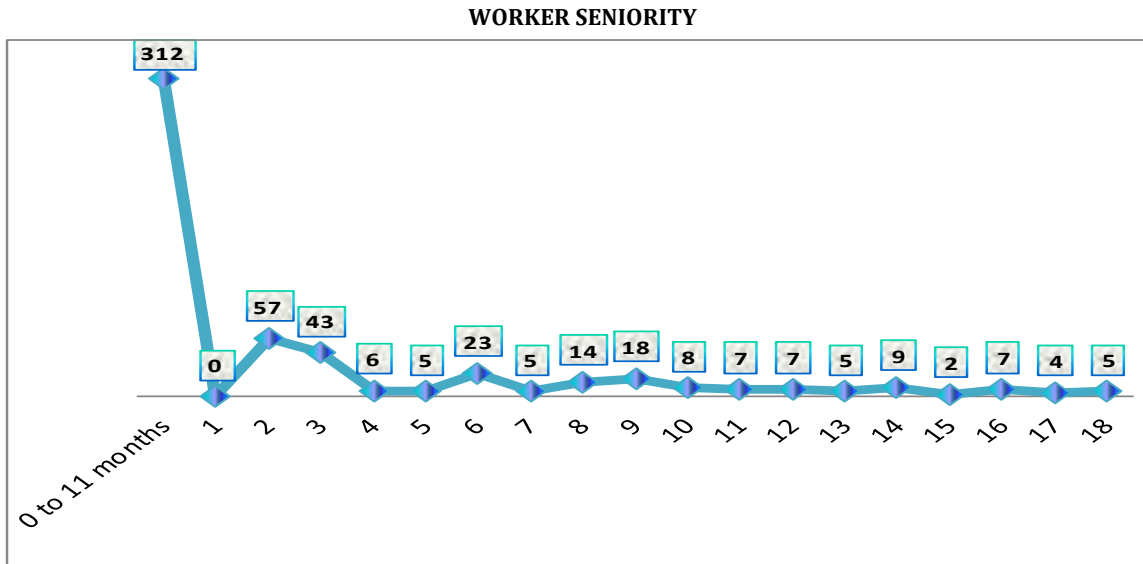


Source: Self-developed based on data provided by JoeAnne Dominicana, Ltd.

⁴ January 2013 registered the greatest number of arrivals (175) and terminations (83).

Comisión de Verificación de Códigos de Conducta

Employment stability is evident, considering the employment tenure information provided through the year 2011⁵; from that year on, there has been sustained growth in new hiring, as 61% of workers have less than 2 years of seniority. In the view of this investigation, this is another important factor.



Source: COVERCO based on data provided by JoeAnne Dominicana Ltd.

FINDINGS

a. Worker meetings to organize a union at JoeAnne Dominicana

Although documented evidence⁶ does not exist – only worker testimony – there is information that on Thursday, January 24, 2013, 6 – 7 JoeAnne Dominicana workers met at FEDOTRAZONAS’ headquarters with the objective of organizing a union.

The workers that attended this meeting were:

1. [Employee name #1]

⁵/ For the purpose of analysis, it is considered that, beginning in 2012, the company had a significant increase of 312 workers, with less than 2 years of seniority.

⁶/ Documents such as minutes or memoirs of meetings signed by the workers were not available. After consulting with FEDOTRAZONAS, they explained that this type of evidence is not kept for the safety and protection of the workers.

Comisión de Verificación de Códigos de Conducta

2. [Employee name #2]
3. [Employee name #3]
4. [Employee name #4]
5. [Employee name #5]
6. Two workers whose names are incorrect or incomplete⁷

In addition, testimonial evidence suggests that the first meeting to organize the union was held in October 2012.⁸ Two workers who requested that their names not be revealed stated that they attended union planning meetings; one of them attended the October 2012 meeting and the other the January 24, 2013 meeting.

b. Evidence of possible reaction and pressure from factory workers not to organize the union

The interviews with active workers indicated that between January 25 and 28, 2013, there was a rumor at the factory about the formation of a union.

Eight of the 24 interviews with active workers confirmed that on January 28, there were strong rumors – in some work lines and modules – about an attempt to organize a union. The 8 interviewees also stated that the supervisors informed management (without specifying names), and that on that date they started firing “union members.”

Four of the 8 interviewees that confirmed the rumors of the organization of the union, expressed their opinion rejecting the formation of a union in the factory. In the interviews they stated: *“having a union is bad for the company, they are like the devil, and factories that have unions close.”* This comment was expressed in 4 of the interviews; 1 of the interviewed workers commented that he/she asked the supervisor of the area where the alleged organizers worked not to permit a union in the factory.

c. Worker Terminations

When consulted about the content of the complaint by FEDOTRAZONAS and the objective of the investigation, management representatives indicated that during December 2012 and January 2013, the factory had several employee layoffs, the largest of which was due to an order that the factory had difficulty meeting due to problems with quality and productivity. Consequently, this order was withdrawn, directly affecting one production line.

⁷ Only 1 name for each worker was obtained.

⁸ The terminated workers did not specify the date. In addition, an active worker confirms being at this meeting although unable to remember the exact date.

Comisión de Verificación de Códigos de Conducta

During the month of January 2013, 83 terminations were registered. The contract terminations of 6 of the 7 cases involving the alleged union organizers being investigated occurred between January 28 and 30.

They also argued that it is company policy that if layoffs arise, retention priority is given to workers with the most seniority. When asked if written policy and procedure exist to this effect, they responded that they did not, but that they have always used this criterion.

In order to determine other employee layoffs, the supervisors, in conjunction with the Engineering department, decide who should be terminated, while always complying with the policy that gives retention priority to workers with the longest seniority.

Based on these arguments, they stated that the contract terminations of January 2013 complied with Dominican Labor Laws, as stipulated in Articles 76⁹ and 77¹⁰ of the Dominican Republic Labor Code, which guarantee the Right of Dismissal. In the judgment of this investigation, they did not fully comply with the law, since prior notice was not given and workers were not notified. In interviews, the terminated workers indicated that they were not notified as required by law; in addition, the review of files did not find evidence of any letter of notification.

The terminations included some of the workers alluded to in the FEDOTRAZONAS letter and included other workers associated with the organization of the union, even though they were not present at the January 24 meeting:

	Name	Employment Date	Termination Date
1	[Employee name #1]	02-10-2012	29-01-2013
2	[Employee name #2]	02-10-2012	28-01-2013
3	[Employee name #3]	08-01-2013	30-01-2013
4	[Employee name #4]	27-11-2012	31-01-2013
5	[Employee name #5]	26-11-2012	30-01-2013
6	[Employee name #6]	16-01-2013	29-01-2013
7	[Employee name #7] ¹¹	Not available	Not available

⁹ / Article 76 sets forth: " The party exercising the right of dismissal must give prior notice to the other party, according to the following rules: (1) If after continuous employment of no less than three months and no more than six months, a minimum of seven days in advance."

¹⁰ / Article 77 sets forth: " The dismissal will be communicated in writing to the worker and the Department of Labor shall be notified within forty eight hours ..."

¹¹/ [Employee name #7] was interviewed. According to information from FEDOTRAZONAS and workers who participated in the January 24 meeting, he/she is linked to the process of union organization; the investigation did not find employment records for this worker; he/she is neither on the list of terminated contracts in January and February 2013, nor on company notifications to the Ministry of Labor.



Comisión de Verificación de Códigos de Conducta

CONCLUSIONS

Based on the information obtained from interviews, the testimony of terminated workers, and review of employee records, fundamental evidence exists that an effort to organize a union did exist.

This same evidence suggests that management, principally some supervisors and managers, had knowledge of the rumors and identified the union organizers.

The interviews with active and terminated workers do not reveal the existence of violent actions during the terminations on January 28, 29, and 30. However, the 8 interviews that confirmed the rumors of the organization of a union did indicate that these terminations corresponded with the “union members.”

The workers organizing the union had less than 4 months of seniority, as opposed to the almost 40% of workers with longer seniority who have a sense of belonging in the factory; in the opinion of the investigators, some of the workers with more seniority applied the initial pressure to terminate the workers.

Considering the precepts and content of the Dominican Constitution in Article 62, Numerals 3 and 4; the Dominican Republic Labor Code; FLA Code of Conduct; FLA Compliance Benchmarks, primarily FOA.2 Right to Freely Associate, FOA.6 Restoration of Workers Rights/Reinstatement, and FOA.7 Protection of Union Representatives; the International Labor Organization (ILO) Conventions Numbers 87 and 98¹²; the Observations by the Freedom of Association Committee on the matter of anti-union discrimination; the Declaration on Fundamental Principles and Rights at Work (1998); the Commitments by the Dominican State for decent work in the Dominican Republic; and Chapter 16 of the Free Trade Agreement between the Dominican Republic, Central America, and the United States¹³.

Therefore, based on the gathered information, the evidence confirms that there was a union formation process and an action of anti-union discrimination in the JoeAnne Dominicana factory.

RECOMMENDATIONS

FLA-Affiliated Brands at JoeAnne Dominicana

- Communicate to all workers, in writing or through other means, the commitment of the companies to guarantee the Right to Freedom of Association and Collective

¹²/ Convention on the Freedom of Association and Protection of the Right to Organize, 1948, No. 87; Convention on the Right to Organize and Collective Bargaining, 1949, No. 98.

¹³/ Articles 16.1 and 16.8.

Comisión de Verificación de Códigos de Conducta

Bargaining and the commitment to continue their commercial relationship with JoeAnne Dominicana, Ltd.

- In accordance with their commitments to FLA, request that the factory compensate for lost wages and reinstate workers involved in the formation of the union.
- As a result of this report, verify the factory's compliance and commitment to the remediation program on anti-union discrimination.

JoeAnne Dominicana

- Compensate for lost wages and reinstate workers involved in the formation of the union.
- Ensure that there will be no discrimination against workers involved in future efforts to form a union.
- Adequately include in its orientation program, Policies and Procedures Prohibiting Acts of Anti-union Discrimination and Freedom of Association.
- Implement, through an institution or through qualified external professionals, a continuous training program and objective evaluation of the knowledge acquired through training regarding its Policies and Procedures Prohibiting Acts of Anti-union Discrimination and Freedom of Association.¹⁴
- Implement, as part of the training program and in addition to the topics suggested previously, training on: 1) human relations for all personnel and 2) techniques on conflict resolution for management, middle management, and supervisors.
- Develop policy and procedure that include, in addition to employee seniority, other measurable and objective indicators¹⁵, in order to evaluate cases of worker terminations due to the fluctuation of contracts with buyers.

^{14/} INFOTEP could develop a continuous training program. That institution was a local partner in the CIMCAW (Continuous Improvement in the Central American Workplace) Project, where they designed and developed training modules regarding the basic labor rights in the Dominican Republic, which includes Freedom of Association and Collective Bargaining; another possibility is the Dominican Labor Foundation, with ample experience in labor rights.

^{15/} The criteria for the suggested indicators should be based on the context of the factory with regard to efficiency and quality indicators, but also associated with Internal Work Policies, such as punctuality, disciplinary procedures, and training, among others.