



**FINAL REPORT
SPECIAL INVESTIGATION
NEW HOLLAND NICA, NICARAGUA**

In November 2015, affiliated companies adidas-Group and Under Armour requested that the FLA engage an independent expert to examine freedom of association-related issues at the factory New Holland Nica (also known as New Holland Apparel S.A.), located in the Zona Franca Astro, Managua, Nicaragua (the “facility”). Adidas-Group and Under Armour are buyers from the facility.

The FLA companies had received a complaint from the union *Sindicato Trabajadores al Poder de la Empresa New Holland Apparel* (“STP union”) regarding violations by the facility’s management of workers’ exercise of their right of freedom of association. The union alleged that management, in collaboration with the Union Confederation to which the STP union belongs, have been persecuting a group of workers who constituted the Executive Board of a new union in the process of formation, with the factory firing union affiliates who attended a meeting held at the Union Confederation to address internal issues regarding the organization of the union within the context of the election of its new Executive Board.

The FLA engaged independent labor rights expert Katya Castillo to conduct a special investigation at the facility. The terms of reference of the independent investigation included:

- Investigate whether the terminations of five workers (Iris Sánchez, Claudia Chávez, Claudia Traña, Jerson Pérez, and Edgar Robleto), were carried out in accordance with the factory’s internal regulations and local law (including the Collective Bargaining Agreement) and specifically whether the dismissals were related to the workers’ individual exercise of their right to freedom of association.
- Identify any instances of management interference with the right to freedom of association by favoring one worker’s organization over another or by interfering with the formation or operation of workers’ organizations.
- Review the facility’s Management System to ensure that all termination-related procedures and applicable criteria used to determine workers’ termination are objective and in compliance with national laws, regulations and procedures, and free from any form of harassment, abuse, or discrimination.
- Review the facility’s Management System to ensure that it prevents any acts of anti-union discrimination or retaliation, i.e., ensure that no employment decisions that negatively affect workers are based in whole or in part on a worker’s union membership or participation in union activity.
- Review the Facility’s Management System to ensure that it prevents management interference with workers’ right to freedom of association by favoring one worker’s organization over another or by interfering with the formation or operation of workers’

organizations.

- Review the Facility's Management Systems to ensure that they comply with the Fair Labor Association's Workplace Code of Conduct provisions and benchmarks related to the above.

METHODOLOGY

The independent investigator made an on-site visit to the facility in late November 2015, at which time she interviewed representatives of management and of the established labor organizations at the facility, that is representatives of (1) *Sindicato de Trabajadores al Poder*; (2) *Sindicato de Trabajadores Ni un Paso Atrás*; and (3) *Sindicato de Trabajadores Unitarios*. The independent investigator conducted five group meetings, with the participation of 33 persons, representing management, each of the three labor unions, and staff of the Human Resources Department. The independent investigator also spoke by telephone with two of dismissed workers.

In addition to interviews, the independent investigator requested, and was given access by the facility, the following documentation:

- Facility's policies and procedures for worker terminations, non-discrimination and freedom of association;
- Facility's Internal Workplace Rules (in effect at the time of the investigation);
- Draft of possible changes to the Internal Workplace Rules;
- Collective Bargaining Agreement;
- Personnel files for the dismissed workers; and
- Personnel files of leaders of the three labor organizations at the facility.

FINDINGS AND RECOMMENDATIONS

The independent investigator made a number of findings and recommendations, which she included in a report submitted to the FLA¹. The principal findings include:

- The dismissal of union leader Edgar Robleto was carried out in a manner consistent with national law and facility internal regulations, including the provision promoting dialogue in the Collective Bargaining Agreement.
- The dismissal of worker Claudia Chávez was carried out in compliance with the national legal framework and internal regulations. Claudia Traña is still employed in the factory.

¹ The report is available in English and Spanish at <http://www.fairlabor.org/report/new-holland-nica-nicaragua>.

However, the dismissals of workers Iris Sánchez and Jerson Pérez did not comply with the procedures in the Collective Bargaining Agreement.

- The facility's worker termination procedures do not include procedures or specific measures to protect workers against discrimination and/or retaliation because of their participation in a worker's organization.
- The facility's management system does not contain clearly defined measures to guarantee impartial treatment of union organizations and respect for the independence of union organizations in their processes of formation or operation.
- The Factory Management System does not comply with a range of FLA Workplace Code of Conduct and Compliance Benchmarks relating to the Employment Relationship, Discipline, Non-Discrimination, and Freedom of Association and Collective Bargaining (ER.1.1, ER.27.1, ER.27.2.1, FOA.1, FOA.5.1, FOA.11, FOA.13.1, ER.27.3.3; and ER.27.4).

The investigator also made a number of recommendations to the facility/brands, among them:

- Reinstate, with back pay, workers Iris Sánchez and Jerson Pérez, in compliance with FLA Benchmark FOA.6, for dismissals that were inconsistent with Clause 10 of the current Collective Bargaining Agreement.
- Design and implement a training program directed towards management, human resources personnel, and representatives of union organizations about the right of workers to unionize, including freedom of association in the context of national legislation, international labor standards contained in Conventions 87 and 111 of the ILO, and the code element and benchmarks in the FLA Workplace Code of Conduct and Compliance Benchmarks related to freedom of association.
- Include within the facility's management system, measures and safeguards that prevent retaliation due to the exercise of freedom of association and guarantee equal treatment of union organizations and respect for the principles of independence of union organizations and non-interference by the employer in aspects related to the organization and operation of labor organizations.
- The facility should revise its Internal Labor Regulations, in consultation with the union organizations, to address weaknesses identified, especially those related to the application of disciplinary measures and employment termination procedures to prevent subjectivity in the application of sanctions, guaranteeing that its provisions are in accordance with national and international laws and the FLA Code of Conduct and Compliance Benchmarks.
- Design and implement a remediation plan that addresses the recommendations raised in the report, setting a timeframe and the responsible party to guarantee their completion.

REMEDIATION PLAN

adidas-Group and Under Armour, working closely with the facility's management, put in place the following remediation plan intended to address the findings identified in the report of the independent investigator. The remediation plan included the following elements.

1. Reinstatement with back pay of workers Iris Sánchez and Jerson Pérez. Responsible person for the action: Corporate Human Resources Manager. Timeline: Immediate.
2. Facility management to develop detailed policies and procedures regarding terminations that are in compliance with domestic law, the Collective Bargaining Agreement, and other relevant regulations. In particular, the policies and procedures should set out criteria for taking action, level of severance payment (if applicable), requisite documentation, and approval process by different actors. Policies and procedures should be communicated to every worker, including managers, supervisors and workers, during the induction process and at least one a year during the annual facility training on human resource management systems/policies. Factory management should designate a responsible person to review implementation of policies and procedures to ensure their consistent application. Responsible person: Corporate Human Resources Manager. Timeline: Complete by December 31, 2016.
3. Facility to design and implement a specialized training program directed toward management, human resources personnel, and union organizations regarding freedom of association, including scope and limitations in the light of national law, international labor standards in Conventions 87 and 111 of the International Labor Organization, and the FLA Workplace Code of Conduct and Compliance Benchmarks. Responsible person: Corporate Human Resources Manager. Timeline: Complete by December 31, 2016.

FLA CONCLUSION AND NEXT STEPS

The independent investigation around issues of freedom of association at the factory New Holland Nica arranged by the FLA on behalf of affiliated companies adidas-Group and Under Armour reviewed the consistency of a number of recent terminations with national and facility-specific policies and procedures. The investigator found that two of the dismissals did not follow the procedures in the Collective Bargaining Agreement and recommended that the workers be reinstated. Management has already carried out the reinstatements.

adidas-Group and Under Armour have worked with the facility to develop a remediation plan intended to: (1) develop detailed policies and procedures regarding terminations that are in compliance with domestic law, the Collective Bargaining Agreement, and other relevant regulations; and (2) design and implement a specialized training program directed toward management, human resources personnel, and union organizations regarding freedom of association, including scope and limitations in the light of national law, international labor standards in Conventions 87 and 111 of the International Labor Organization, and the FLA Workplace Code of Conduct. The FLA recommends that adidas-Group and Under Armour

follow closely the implementation of the remediation plan and keep the FLA informed on developments.