

## VI. THIRD PARTY COMPLAINT CASE STUDIES

The Third Party Complaint procedure enables any person or organization to report to the FLA allegations of significant and/or persistent patterns of noncompliance, or an individual incident of serious noncompliance, with the [FLA Workplace Code of Conduct](#) in production facilities of FLA-affiliated companies, as well as in those of College and University licensees that participate in FLA monitoring programs. It functions as a safety valve to ensure that workers in FLA-applicable factories have recourse to address instances of noncompliance. A key part of the procedure is remediation of any verified instances of noncompliance through corrective action. [Click here](#) to learn more about the FLA's Third Party Complaint Procedure.

Issues that are brought to the attention of the FLA through the third party complaint procedure tend to be urgent, controversial, complex, and rooted in long-standing practices. The experience of the FLA is that it is necessary to address not only the symptoms of noncompliance to temporarily resolve a third party complaint, but to get at the root causes to seek more sustainable solutions. This often involves mediation rather than corrective action, particularly in freedom of association cases where the conflict between labor and management needs to be resolved and the relationship between them repaired.

This section provides case studies of two third party complaints that were brought before the FLA since last year's report. The case studies provide some background necessary to understand the larger context in which the noncompliance issues arose as well as particular factory situations. The case studies document how the third party complaints have required that the FLA grapple with some of the most difficult code issues and engage with constituents ranging from trade unions and NGOs to affiliated and non-affiliated PCs.

- 3PC Case Study: Facility Owned and Operated by Gildan in Honduras
- 3PC Case Study: Facility Contracted by Nike in Thailand

Following the pattern of third party complaints reported in earlier Public Reports, the two case studies relate to freedom of association. The fact that a majority of third party complaints received by the FLA to date have focused on noncompliance with freedom of association strongly indicates that this is a challenging Code provision to monitor and remediate.

## **Third Party Complaint Regarding a Facility Owned and Operated by Gildan in Honduras**

\*Please note: Due to FLA's policy regarding third party complaints, we have withheld the name of the factory that was the subject of this complaint. More information about this factory is available in the factory tracking chart, which is posted on the FLA's website.

### **Overview**

This report focuses on a factory owned and operated by FLA Participating Company Gildan Activewear in the San Pedro Sula area in Honduras. In December 2003, the Maquila Solidarity Network (MSN) and other organizations filed a third party complaint with the FLA regarding discriminatory dismissal practices at the subject factory owned by Gildan. An Independent External Monitoring (IEM) visit was conducted and a remediation plan agreed upon between Gildan and the FLA. In the course of the implementation of that plan, the company made the decision to close the factory. This resulted in Gildan being placed by the FLA on a 90-day Special Review status, as described in the FLA Charter, the first company to undergo such Special Review in FLA history. Gildan has since worked with the FLA, Worker Rights Consortium (WRC), and the MSN to fully implement an agreed-upon remediation plan.

### **Legal Context**

The Honduran Constitution recognizes the right to associate freely and to form trade unions. The Honduran Labor Code, enacted in 1959, protects workers who choose to assemble and collectively bargain. The Labor Code requires a minimum of 30 workers to form a union and establishes registration procedures that unions must follow to achieve legal status. Despite legal guarantees, obstructing a worker's rights to freely associate is not an uncommon situation in Honduras.

### **Background**

Gildan Activewear is a vertically integrated manufacturer of knitted products that controls spinning and dye mills, sewing plants, and distribution centers throughout the Americas. The company is headquartered in Montreal, Quebec. Gildan's operations in Honduras at the time of the third party complaint included a mill and three sewing plants in the San Pedro Sula area.

In 2001 and 2002, the MSN and a Honduran monitoring team, Equipo de Monitoreo Independiente de Honduras (EMIH) conducted research on the conditions of Gildan's owned and operated facilities in Honduras. In November, 2002, it became public knowledge that Gildan had dismissed 42 workers at a

factory located in Honduras producing blank t-shirts for university licensees under the name Gildan Activewear after they applied to the Ministry of Labor for registration of a union. MSN unsuccessfully encouraged Gildan to acknowledge the actions and to reinstate the workers. The case gained momentum when, in February 2003, the Solidarity Fund of the Quebec Federation of Labor, an investor in Gildan, encouraged the company to cooperate with an independent investigation of the factory and to participate in a multi-stakeholder initiative that focused on labor rights. In December 2003, Gildan dismissed an additional 37 workers.

## **FLA Involvement**

In December 2003, MSN, the Federación Independiente de Trabajadores Hondureños (FITH, Independent Federation of Honduran Workers), and the Canadian Labor Congress (CLC) filed a third-party complaint with the FLA and the WRC. In February 2004, the FLA scheduled an IEM event at the factory. The IEM confirmed the obstruction of workers' rights to freedom of association and identified other instances of noncompliance with the FLA Code of Conduct, such as long working hours, failure to pay overtime, and sexual harassment ([http://fairlabor.org/all/transparency/charts\\_2004/29002930C\\_Gildan\\_Hon.pdf](http://fairlabor.org/all/transparency/charts_2004/29002930C_Gildan_Hon.pdf)).

In response to the IEM, Gildan committed to a remediation plan which included enhancing code awareness through trainings for all employees conducted by an external group, changes in the factory's clinic to address concerns of female workers about improper medical examinations, certain health and safety improvements, and training on freedom of association for all workers.

In the midst of discussions with the FLA, the WRC, and other stakeholders, Gildan made the decision in July 2004 to close the factory, which employed about 1800 workers. According to Gildan's management, the decision to shut down the factory was based strictly on business reasons: while Gildan's other sewing factories in Honduras manufactured one specific product, the product mix at the subject factory was varied, which led to lower margins and increased down time. Gildan was also ramping up operations in Nicaragua and Haiti, where it also owned factories. Finally, lower labor costs at other plants were also alleged to be a driver in the factory closure.

Gildan's failure to effectively remediate some of the noncompliance issues identified in the IEM, compounded by the announcement in July 2004 of the closure of the plant, led the FLA Board of Directors in July 2004 to place Gildan on a 90-day Special Review. The Board specified conditions for Gildan to meet in order to have the Special Review status lifted. In October 2004, the FLA Board discussed Gildan's performance in meeting those conditions and decided that Gildan had failed to fully satisfy them. The Board therefore voted to terminate Gildan's participation in the FLA, effective December 10, 2004, unless by

November 30, 2004, Gildan provided evidence satisfactory to the FLA Board that it had taken the following specific actions (see <http://www.fairlabor.org/all/news/gildan.html>): (1) a public statement that acknowledged there were restrictions in the factory on workers' rights to freedom of association; (2) correction by Gildan of misrepresentations regarding its compliance with FLA Standards and of the FLA's position on Gildan issued by the company; (3) effective communication to Gildan Honduras employees of the company's commitment to their associational rights; (4) completion of a remediation plan that included evidence of payment of back wages to workers dismissed because of their union activity and severance packages to eligible workers and evidence of completion of initial training by an external organization on freedom of association for workers and managers and adoption of plans for subsequent training in Gildan Honduran facilities; and (5) constructive engagement with the MSN on issues related to implementation of FLA Standards.

On December 10, the FLA Board agreed that Gildan had satisfied the conditions of the earlier resolution, rescinded the termination, and reinstated Gildan as a Participating Company of the FLA. The Board also directed the FLA staff to provide an update to the Board at its February 2005 meeting on Gildan's progress in implementing the remediation plan; to make a public statement regarding the reasons for the reinstatement; and to review in advance any public statements that Gildan might issue regarding the situation (see press statement and chart at <http://www.fairlabor.org/all/news/gildan-rescind.html>). The FLA also insisted that in the event that Gildan opened a new factory in the general San Pedro Sula area, the retrenched workers would have the right of first hire.

### **On-Going Remediation**

As with all IEMs, the FLA staff played an active role in ensuring that Gildan complied with the remediation plans in factories located in the San Pedro Sula area. The FLA Regional Coordinator for the Americas spent two weeks in San Pedro Sula investigating the progress of not only the original action plan that emerged from the IEM, but also of an action plan proposed by the WRC and the plan proposed by the FLA Board of Directors in October 2004.

Triggered by FLA action under the third party complaint procedure, Gildan has taken concrete actions to improve the conditions in their supply chain in factories located in the San Pedro Sula area. Among these actions were: (1) contracting with Verité to conduct trainings on freedom of association in two factories; (2) making a public statement acknowledging that there were restrictions on workers' right of association in the since-closed Honduran factory; (3) remediation of various non-compliances regarding safety and health, the conduct of physical examinations of company doctors, and the establishment of cafeteria committees; (4) engaging in an active dialogue with the MSN and other

members of civil society in discussions regarding worker rights and living conditions in Honduran facilities owned or contracted by Gildan; and (5) a commitment to preferential hiring at other Gildan facilities of workers dismissed from the factory that was closed. The FLA is in the process of designing an independent follow-up visit to verify the remediation undertaken by Gildan.

### **Third Party Complaint Regarding a Facility Contracting for Nike in Thailand**

\*Please note: Due to FLA's policy regarding third party complaints, we have withheld the name of the factory that was the subject of this complaint. More information about this factory is available in the factory tracking chart, which is posted on the FLA's website.

#### **Overview**

The third party complaint involved the dismissal of three workers who were organizing the Garment Industry Labor Union at a factory in Thailand producing athletic clothing for Nike. A Thai solidarity group, the Centre for Labor Information Service and Training (CLIST), supported by the Clean Clothes Campaign, lodged a third party complaint with the FLA. The Thai Labor Relations Committee ordered the reinstatement of the workers. FLA convened three meetings in Bangkok at which factory management agreed to a Recognition Agreement with CLIST and the Garment Industry Labor Union. That agreement is being overseen by an Ombudsperson (Prof. Lae) appointed by the FLA and includes training on freedom of association for the unions, workers, supervisors, and management.

#### **Legal Context**

Thailand's 1975 Labor Relations Act recognizes the right of private sector workers to organize and bargain collectively, and prohibits anti-union discrimination by employers. Ten workers in the same factory or industry can apply to form a union, which must be registered with the Ministry of Labor and Social Welfare (MOLSW). Workers can be legally fired for any reason provided they receive severance pay, even if they are union leaders, a provision that lends itself to abuse. Members of the bilateral Worker-Employer Welfare Committees are protected from dismissal under the 1998 Labor Protection Act, but even in such cases reinstatement for unfair dismissals is a very lengthy process. It is reported that employers frequently dismiss workers who try to form trade unions. In some cases, they are dismissed while awaiting registration, while in others they are dismissed ostensibly for non-union reasons alleged by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

## **Background**

In November 2003, three worker leaders at the subject factory in Nakorn Rachasima province, in the northeast region of Thailand, began to collect signatures from workers in support of a demand to management for improved working conditions, which included cessation of verbal harassment by supervisors and body searches by security guards. At the time the complaint was filed, the factory employed 400 workers, of whom 350 were women, and produced athletic clothing -- short and long-sleeve t-shirts -- for Nike. Before they had a chance to submit the demand to management, two of the workers were dismissed. The workers filed a complaint before the National Commission on Human Rights and the Commission ordered management to reinstate the two workers in February 2004.

On October 12, 2004, three worker leaders successfully organized a group of 11 workers, meeting the necessary threshold to set up a union and registering the union as the Garment Industry Labor Union. The union held its first general meeting, attended by 12 members, on October 23, 2004. Among other actions, the union appointed workers to leadership positions. Management dismissed three union leaders -- including the President and Secretary General -- on October 29, 2005, before the MOLSW had given official recognition to the union executives.

According to the letter of employment termination, the three dismissed workers were charged with committing several serious acts of misconduct, such as instigating conflict and division among workers, as well as between workers and the company, distributing leaflets criticizing company management and supervisors, disseminating distorted facts about the company, causing disturbances and instigating workers to disrespect supervisors, and using aggressive and sarcastic verbal and physical expression against other workers and supervisors which negatively affected the work of the management and annoyed other workers. The dismissed workers filed a complaint before the National Commission on Human Rights and the Labor Relations Committee. On December 14, a conciliator from the Welfare and Labor Protection Department of the Ministry of Labor organized an informal meeting in order to mediate the case between management and the three dismissed workers. Nike and FLA representatives also observed the meeting. Management refused to reinstate the workers, and offered them severance pay in the form of ten months' salary. All three workers refused to accept the severance and stated that they would continue to pursue reinstatement. In March 2005, the Thai Labor Relations Committee voted in favor of reinstatement of the workers.

## **FLA Involvement**

The FLA became involved when the CLIST, a Thai organization that supported

the union activists, filed a third party complaint in January 2005. The FLA deemed the complaint to be receivable and following the procedures, sought to ascertain whether the Participating Company concerned was aware of the issue and taking the necessary steps to resolve it. After discussions with Nike, the FLA decided to wait while the Thai Labor Relations Committee considered the case and only step in if the governmental process stalled or failed.

As noted above, the Labor Relations Committee found in favor of the workers and ordered their reinstatement. Nike worked with factory management to draft a remediation plan involving not only reinstatement and payment of back wages but also the establishment of a factory environment favorable to the exercise of freedom of association. Given the history of tension between the parties Nike asked the FLA to mediate the process. Assisted by the FLA Regional Coordinator for Southeast Asia and the Nike compliance team, the FLA's President and CEO convened three meetings in Bangkok at which factory management agreed to reinstate the three workers with back pay and negotiated a Recognition Agreement between the company and the Garment Industry Labor Union. An Ombudsperson appointed by the FLA has overseen the remediation process and the implementation of the agreement, and provided training on freedom of association for the unions, workers, supervisors, and management. The Ombudsperson is Professor Lae Dilokvidharat, Director of the Labor and Management Center of Chulalongkorn University's Faculty of Arts, and Chairman of the Joint Consultation Committee of the Electricity Generating Authority of Thailand (EGAT), whose union is one of the strongest in the country.

### **On-going Remediation**

The FLA coordinated an initial meeting on August 24, 2005, between factory management, Nike representatives, and the ombudsperson to discuss specific details of the remediation plan, including curriculum, date, location, budget, and trainer to ensure that there is a clear understanding about the company's policies and procedures and Thai labor law. The training modules were designed and sessions were held in September 2005. The FLA will facilitate a meeting among all parties every six weeks to review progress and discuss any problems that may arise at the facility.

Since one of the major concerns at the subject factory relates to disciplinary practices, the FLA provided guidelines on grievance and disciplinary procedures to management who have restructured their policy and procedures to provide clear and fair grievance and disciplinary mechanisms to the workforce. It also revised the performance evaluation system to prevent any discrimination against workers by supervisors. In an effort to improve internal communications, management is holding meetings with the existing welfare committee and safety committee every month and has also created a newsletter to communicate with its workforce.