

WRC report on blacklisting of former Hermosa workers at Chi Fung

April 20, 2006

Dear Colleagues:

I write to provide an update regarding the case of Hermosa Manufacturing, located in Apopa, El Salvador, which has recently produced logo goods for Russell Athletic and Majestic Athletic, as well as non-logo apparel for Adidas, Nike, Speedo, and other apparel companies. As discussed below, the WRC's inquiry into this case has expanded to include an investigation of blacklisting of the concerned workers by other apparel facilities in the region, focused in particular on a supplier of collegiate logo goods known as Chi Fung.

Unfortunately, during the period since our last update on the Hermosa case, there has not been significant progress toward remediation of the serious code of conduct violations that have occurred at Hermosa – despite numerous meetings between representatives of the licensees involved, Salvadoran government agencies, NGOs, workers, and others. The former Hermosa employees continue to be owed substantial legally-mandated severance, as well as overtime, disability leave, maternity leave, sick leave, annual vacation, and other benefits to which they are entitled by law. Hermosa Manufacturing also continues to owe several hundred thousand dollars to government health and pension funds, including monies deducted from employee paychecks which were never remitted to the funds. Given the claims made by Hermosa's creditors on any monies generated through liquidation of the factory's assets, we do not see any real prospect in the foreseeable future of funds being generated for workers through the liquidation process – a conclusion shared by most if not all of the labor rights monitoring and advocacy organizations following this case.

There is a group of 63 workers who have been active in efforts to protest Hermosa's practices and secure the compensation owed to them, efforts that have been underway since prior to the facility's closure in May 2005 and continue today. In addition to being denied the compensation owed to them, the vast majority of these workers (95%) have been unable to obtain formal sector employment, for reasons discussed below. As we approach the twelfth month since the workers were discharged, the economic situation facing the workers and their families is grave.

Evidence of Blacklisting at Chi Fung SA de CV

There is substantial, credible evidence indicating that the ability of the workers to find employment has been impeded by the blacklisting of these workers by apparel employers in retaliation for their active protest of Hermosa's labor rights violations. The WRC has initiated an investigation into alleged blacklisting of former Hermosa workers at the Chi Fung apparel facility, a producer of university logo goods, located near Hermosa in the town of Apopa, El Salvador. Chi Fung is the largest apparel factory and one of the only apparel factories in the region, making blacklisting at the facility particularly damaging to the workers' ability to find employment. According to university disclosure data, the facility is a producer of collegiate logo goods for Nike, Jansport (a division of VF Corporation), Page & Tuttle, and Team Edition Apparel. The facility is also a current producer of Adidas garments. It bears noting that we have gathered credible evidence indicating that Chi Fung subcontracted the production of apparel goods (including Adidas and Nike garments) to Hermosa, apparently on an unauthorized basis, during the two years prior to the unlawful closure of the Hermosa facility. The Chi Fung and Hermosa facilities appear to have had an exceptionally close relationship, frequently working together to complete orders.

While the WRC's investigation remains ongoing, sufficient evidence has been gathered to date to warrant a clear conclusion that Chi Fung has engaged in unlawful hiring discrimination against former Hermosa employees. WRC investigators have thus far conducted interviews with 45 of the group of 63 workers who have engaged in protest activities and pursued legal claims against Hermosa. More than one third of the workers interviewed have sought work at Chi Fung. Each of these individuals is a skilled apparel worker, with experience in the industry ranging from 5 to 18 years. Though the factory has consistently hired new employees throughout the past six months, not a single one of the former Hermosa workers who applied for work at Chi Fung has been hired. (Numerous other workers told us that they have not applied because they believe, based on the experience of those who have applied, that such an endeavor would be futile.)

The conclusion that the Chi Fung facility has engaged in blacklisting of the Hermosa workers is further supported by credible worker testimony regarding the application process. Former Hermosa employees who applied for work testified that supervisory personnel in charge of the hiring process told them explicitly that they would not be considered for employment because of their past experience at Hermosa and because of the

protest activities that have occurred related to the facility. The testimony was highly detailed as to the specific language used by the Chi Fung representatives. One worker, for example, testified that she applied for work at the factory on or around June 16, 2005. At the outset of the interview, the general supervisor asked her which factory employed her most recently. The worker replied "Hermosa", to which the supervisor responded, "We don't want anyone from Hermosa here." Another worker testified that she applied for work in late June 2005. While waiting outside for the interview, the person in charge of hiring asked her where she had worked last. When she answered "Hermosa", the Chi Fung employee told her that "People from Hermosa are troublemakers. We don't want them working on the lines because they don't want to work." Another worker testified that he applied for work at Chi Fung on or around July 25, 2005. Upon arriving at the factory and asking the secretary if there was any work, he was asked about his work experience. When he said that he had worked at Hermosa, he was told, "Oh, we don't want anyone from Hermosa." These examples are illustrative of a pattern in which former Hermosa employees who have actively protested Hermosa's labor rights violations have been told that they would not be considered for hire because they worked at Hermosa. On each of the days on which former Hermosa workers have applied for work and been rejected, numerous other workers with work experience at factories other than Hermosa have been hired.

It bears noting that Chi Fung has not sought to deny employment to all Hermosa workers, as the quotes above may suggest. Instead, records show that some former Hermosa workers have been hired by the factory. The company's practice is consistent with typical blacklisting practices, as documented at other facilities in El Salvador (the case of Primo, a factory in the San Bartolo free trade zone that was the subject of an earlier WRC assessment, being a noteworthy example) and elsewhere in Central America. When workers are targeted for blacklisting because of their association with a union or with protest activities, it is common for the employer to not blacklist all employees from a given worksite, but to seek to the extent possible to target only those workers who are known to have participated in, or to have been sympathetic to, the organizing or protest activities. This is what has occurred at Chi Fung.

The factory has used several mechanisms commonly employed in the apparel industry to identify workers to be blacklisted. In some instances, it appears that Chi Fung supervisors recognized by name the individuals who applied for work as leaders of the protest activities and denied them employment on the basis of this knowledge. In other cases, Chi Fung representatives identified workers to be blacklisted by requiring that applicants provide a letter from their former employer confirming their prior employment (this letter is known as a "constancia"). Constancias are routinely provided by employers upon request, except in the case of workers who are perceived to be trade unionists or "troublemakers." Such workers usually find it impossible to obtain a constancia. Constancias are one mechanism through which blacklisting is carried out in El Salvador; it allows one employer to convey information to another about who the trade unionists and "troublemakers" are. With respect to Chi Fung, some workers testified that they were told explicitly that no workers from Hermosa would be employed *unless* they provided a constancia from Hermosa; the workers' applications were rejected because they could not produce the document. A number of other former Hermosa workers have been able to gain employment at Chi Fung. These workers had not complained about working conditions or participated in efforts to recover compensation owed to them by Hermosa. They were able to obtain a constancia at the time that the factory closed and were subsequently hired by Chi Fung.

The initial blacklisting at Chi Fung occurred from June through September 2005, as workers sought new employment following the closure of Hermosa; however, the blacklisting has continued to the present day. In recent weeks, additional members of the group of 63 workers have sought employment at Chi Fung (in some cases for the second time) and been denied, even as the facility has hired a substantial number of other workers without manifestly stronger qualifications. Roughly thirteen workers have sought work during April 2006, the most recent group on Monday, April 17. Chi Fung rejected each worker's application a priori, without allowing the workers to undergo a skills test, on the grounds that they could not produce a constancia from Hermosa. On the following day, April 18, two of the workers visited the Hermosa owner's new facility in order to request the constancia document; their request was flatly denied. Chi Fung's current hiring policies make it impossible for any of the former Hermosa workers who have participated in protest activities to be considered for employment. It is important to note that Chi Fung's policies, because they effectively preclude the hiring of any of the workers from Hermosa who lawfully exercised their associational rights, are illegal even if they are applied consistently to all applicants. Since the constancia is functioning as a means of discrimination, it does not matter whether the requirement is imposed consistently or in a targeted fashion – the effect is the same.

In sum:

- 1) Not a single one of the Hermosa workers in question who applied for work at Chi Fung has been hired, though the facility did hire a substantial number of other workers contemporaneously.

- 2) Chi Fung has carried out, and maintains, hiring policies that preclude the hiring of any former Hermosa worker who is viewed by Hermosa management as a “troublemaker”.
- 3) Workers provided highly credible testimony that clear statements of discriminatory intent were made by Chi Fung managers during the application process.

These facts constitute substantial, credible, and unambiguous evidence that Chi Fung has violated Salvadoran law and university and corporate codes of conduct.

Remedial Action

The WRC has communicated with Nike, Adidas, VF Corporation, Russell Athletic, Majestic Athletic, Team Edition, and Page & Tuttle, asking these companies to remedy the violations of worker rights in the Hermosa case. There remain two principle areas of concern: hiring discrimination, as described above, and the non-payment of legally mandated compensation.

With respect to hiring discrimination, we have asked the licensees currently producing at Chi Fung (which include, among others, Nike, Adidas, VF Corporation, Team Edition, and Page & Tuttle) to take measures to ensure that the former Hermosa workers are able to apply for employment at Chi Fung without discrimination and to remedy the discrimination that has occurred to date. The measures we have requested are as follows:

- 1) With respect to those former Hermosa worker who have previously applied for work at Chi Fung and been denied employment: We have asked the licensees to require that Chi Fung extend immediate offers of employment to all of these workers, with work assignments commensurate with their work experience and preferences, and with clear assurances from Chi Fung that these workers will suffer no retaliation or other discriminatory treatment once employed. Given that these workers have already applied, and have already been victimized by Chi Fung’s illegal actions, it is not reasonable to ask that these workers go through the application process again. Instead, job offers should be extended based on these workers’ prior good faith efforts to apply. The WRC will provide the licensees with a list of these workers, along with contact information. Since Chi Fung has recently been hiring workers at the rate of roughly ten per week, there should be no significant delay in providing employment to the former Hermosa workers, who number no more than sixteen. We have asked the licensees to require that Chi Fung conduct this hiring on a priority basis, meaning that the former Hermosa workers will be offered open positions before these positions are offered to any other applicants.
- 2) With respect to other former Hermosa workers who may wish to apply for employment at Chi Fung: We have asked the licensees to require Chi Fung to cease its discriminatory policies and actions, including the requirement that former Hermosa workers provide constancias as part of the hiring process. We have asked the licensees to require Chi Fung to write a letter, which may be addressed to the licensees or the WRC, stating that Chi Fung will not discriminate in hiring against any former Hermosa workers and invites and encourages these workers to seek employment at Chi Fung. This letter, written in clear Spanish, will be circulated by the WRC to former Hermosa workers. In addition, we have asked the licensees to require Chi Fung to post statements to the same effect in all places where it normally posts hiring information intended to recruit job applicants. We have asked the licensees to work with us to identify at least three dates, over the next several weeks, on which, by prior arrangement, former Hermosa workers will come to Chi Fung to apply for work. On these dates, both the licensees and the WRC will have observers on site who will have the unrestricted right to observe the application process and make sure that the former Hermosa workers are treated fairly and lawfully. In addition, since former Hermosa workers may also choose to apply at Chi Fung on other dates, we have asked the licensees to require Chi Fung to provide, to the licensees and the WRC, a weekly report, each week in May, June, and July listing all former Hermosa workers who applied for work and indicating the disposition of each application. The licensees and the WRC will have the right to request additional information if there are any concerns about any particular applicant and will further have the right to review all of Chi Fung’s job application and hiring records, upon request, to ensure that full and accurate information has been provided.

If Chi Fung fails to complete these remedial steps, and/or if it continues to discriminate against former Hermosa employees, the WRC will consider recommending that licensees suspend all sourcing from Chi Fung, until remediation is complete.

The former Hermosa workers may also be interested in gaining employment at other apparel facilities in the region that produce for licensees involved in this case. We have asked the licensees to assist the workers in gaining employment at these facilities, to the extent that they are in a position to influence the hiring process at

these facilities. Most of these workers have, however, indicated a strong preference for obtaining work at Chi Fung, in particular because of its proximity to their homes.

With respect to compensation still owed to the former Hermosa workers, we have reached an impasse. As noted above, given the legal claims made by Hermosa's creditors, there does not appear to be any reasonable prospect in the foreseeable future of the funds owed to the workers being generated through the liquidation of Hermosa's remaining assets. The one viable remaining remedy is for the licensees involved to pay some or all of the compensation owed. Given that a number of the key licensees involved – including Nike, Adidas, and Russell Athletic – have contributed to the problem by failing to detect the violations at Hermosa over a period of years, it would seem appropriate for the licensees to assist in resolving the compensation issues in this way. However, the obligation of licensees to assume responsibility for compensation owed by its contracted suppliers is not something explicitly mandated by current university codes of conduct. It is, therefore, not a recommendation that the WRC is in a position to make.

It should be noted that Nike has recently reported that it has secured a commitment from the government of El Salvador to take a series of measures with respect to the Hermosa case, which are unrelated to the issues of unpaid compensation and blacklisting. Of particular significance, these steps include a commitment to provide government funded health care to the unemployed former Hermosa workers for 12 months, or until the workers find a new job, whichever is soonest. These steps have not yet been announced in El Salvador.

To move forward, we have asked a number of the key licensees involved, including Nike, Adidas, VF Corporation, Russell Athletic, Majestic Athletic, Team Edition, and Page & Tuttle, to participate in a joint conference call to discuss these issues further and to develop a concrete plan to move forward swiftly. We hope to arrange this phone meeting during the coming week.

We urge those universities that have relationships with the licensees involved in this case to consider communicating with them to encourage prompt remedial action with respect to hiring discrimination at Chi Fung.

Scott Nova
Worker Rights Consortium