



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re PROPPER INTERNATIONAL  
(PUERTO RICO AND DOMINICAN REPUBLIC)**

**FINDINGS AND RECOMMENDATIONS**

**December 10, 2010**

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## I. INTRODUCTION

This report outlines the WRC's findings and recommendations concerning labor practices at facilities owned and operated by military and public safety uniform manufacturer Propper International, Inc. ("Propper") in Puerto Rico and the Dominican Republic.

The compliance assessment was undertaken pursuant to the WRC's role as a monitor for the City of Los Angeles ("the City") of compliance by City vendors with the City's Sweat-Free Procurement Ordinance ("the Ordinance") for apparel and other goods procured by the City.<sup>1</sup> Propper, a privately-held company which is headquartered in Weldon Spring, Missouri, was disclosed as a manufacturer of apparel for City employees by City contractor Galls, Inc. ("Galls"). Galls is a Kentucky-based retailer and distributor of public safety equipment and a subsidiary of Aramark Corporation. Under its contract with Galls, the City purchases helicopter pilot flight suits, tactical patrol suits, and other garments manufactured by Propper for use by employees of the Los Angeles Police Department and the Enforcement Division and Emergency Services Section of the Los Angeles Housing Authority.

The WRC assessed labor practices at three manufacturing facilities operated by Propper: two factories in Puerto Rico: Quest Best, which is located in the city of Adjuntas, and Lajas Industries, located in the city of Lajas; and one facility in the Dominican Republic: Suprema, located in the San Pedro de Macorís free trade zone.<sup>2</sup> The WRC initiated its inquiries regarding labor practices at Propper's Puerto Rican and Dominican facilities after receiving complaints from the U.S. labor union, UNITE HERE, and the nonprofit labor rights advocacy organization, SweatFree Communities, that Propper's labor practices at these facilities violated its workers' rights under U.S., Puerto Rican and Dominican law.

The Ordinance amends the City's Administrative Code to require that City contractors "take good faith measures to ensure that, to the best of the contractor's knowledge, the contractor's subcontractors . . . comply with the City's Contractor Code of Conduct," which, in turn, mandates compliance with "all applicable wage, health, labor, environmental, and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination."<sup>3</sup> Applied here, the Ordinance requires that Galls take good faith measures to ensure that Propper complies with the Code of Conduct ("Code") by remedying any violations of relevant federal and Puerto Rican laws at the latter's Adjuntas and Lajas facilities, or violations of Dominican law at the Suprema facility.

The WRC's preliminary research indicated that a full compliance assessment was warranted and, in December 2009, the City of Los Angeles authorized the WRC to conduct an investigation of the three facilities. The WRC's subsequent investigation

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<sup>1</sup> City of Los Angeles Ordinance No. 176291 (effective, Jan. 1, 2005) ("Ordinance").

<sup>2</sup> These factories are referred to hereinafter as the Adjuntas, Lajas and Suprema facilities.

<sup>3</sup> City of Los Angeles Administrative Code § 10.43.3. ("Contractor Code of Conduct").

found credible evidence of violations of relevant laws in the areas of wage and hour, freedom of association, sale of work tools to employees, and medical leave.

In regard to certain other issues, such as sexual harassment, verbal abuse of employees, setting piece rates and explaining them to employees, occupational health and safety, and discrimination against disabled employees, the WRC found evidence that, while not clearly establishing that laws had been violated, nonetheless gave grounds for significant concern. All these findings, and the evidentiary basis for them, are outlined in detail in this report. The report also provides recommendations for corrective action or improved practice in each area.

Unfortunately, despite requests from both the WRC and the City of Los Angeles, Propper declined to cooperate with the WRC's inquiry by providing access to its facilities. The WRC is hopeful that this report will encourage both Propper and Galls, in its role as the City's direct contractor, to act promptly and constructively to address the issues we discuss herein.

## **II. METHODOLOGY**

### **A. Selection of Factories for Assessment and the Implications of Propper's Refusal to Grant Factory Access**

The process by which the factories covered by this assessment were selected was as follows:

During December 2008, Propper disclosed to the WRC, as the site of production of apparel purchased by the City, an address in the Parque Industrial Guanajibo in Puerto Rico. Propper operates eight different manufacturing plants in Puerto Rico. Complaints received by the WRC from the UNITE HERE indicated potential non-compliance with U.S. and Puerto Rican laws at several of Propper's Puerto Rican facilities, including the Lajas and Adjuntas plants.

During the course of its preliminary research into Propper's Puerto Rican operations, the WRC learned that the address that had been provided to the WRC by the company belonged to Propper's business office and distribution center in Puerto Rico, rather than to one of the company's production facilities. Having determined that Propper had failed to provide accurate information concerning the actual location where apparel purchased by the City was being manufactured, the WRC contacted Propper in December 2009 to request clarification of this issue.

Propper claimed that, contrary to the information it had previously supplied to the WRC, none of its facilities in Puerto Rico produced apparel for the City and that these garments, instead, were produced at the company's Suprema factory in the Dominican Republic. The WRC then proceeded to conduct preliminary research concerning labor practices at the Suprema facility, a facility that UNITE HERE and SweatFree Communities previously had complained was violating Dominican labor laws.

Ultimately, notwithstanding the complications created by Propper's provision of apparently erroneous disclosure information, the City and the WRC decided to move forward with a compliance assessment of the three Propper facilities (Adjuntas, Lajas and Suprema) where the WRC's preliminary research had indicated that full investigations were warranted. This decision was based on the following considerations:

- (a) Under the City's Ordinance, adherence to the Code and cooperation with the City, and, by extension, the WRC as its monitoring agent, is not voluntary, but, instead, is a mandatory condition of doing business with the City;
- (b) Although Propper revised the information it provided to the WRC to indicate that only the Suprema facility produced apparel purchased by the City, there was reason to believe that this information was not accurate. One of the facilities in Puerto Rico, Lajas, produced garments that, as described by workers, matched the descriptions of Propper apparel purchased by the City. Moreover, although there is a strong degree of specialization among the plants, workers reported that company frequently shares orders between factories;
- (c) Workers at all three facilities strongly supported investigations of their facilities' compliance with the City's Code as a means of addressing labor rights violations at their plants.

As the WRC's preliminary research indicated that the allegations of noncompliance with federal and Puerto Rican laws at the Adjuntas and Lajas plants, and with Dominican laws at the Suprema facility, were credible, the WRC determined that a full assessment was warranted. With authorization from the City, the WRC contacted Propper on January 25, 2010, and again on February 4, 2010, to request permission to conduct an onsite inspection of the Suprema plant pursuant to the City's Ordinance.<sup>4</sup>

Propper responded by requesting information concerning the scope and methodology of the WRC's investigatory process, which we promptly supplied. During the same period, City personnel also contacted Propper to request its cooperation with the WRC's inspection. However, on February 15, 2010, Propper contacted the WRC and stated that it was rejecting the WRC's request for access to the facility to conduct an onsite inspection for the City. Propper provided no reason for the decision not to cooperate with the WRC's assessment.

Because of Propper's unwillingness to cooperate with the WRC's investigative process, our access to evidence was in some respects limited. With respect to many issues, the WRC was nonetheless able to gather sufficient evidence from worker interviews, documents supplied by workers, and documents that are a matter of public record to enable us to reach firm findings, including findings of noncompliance with applicable labor laws. With respect to these issues, we have made recommendations for remedial

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<sup>4</sup> See, Adm. Code § 10.43.3(C)

action which must be implemented by Propper in order to achieve compliance with the City's Code.

In regard to other issues, the available evidence was sufficient to warrant serious concern that applicable labor laws already have been, or are at risk of being violated, but insufficient to warrant firm findings of unlawful conduct. In these instances, as well as with respect to others where the company's conduct, while not unlawful, was clearly inconsistent with established industry best practices, we have also made recommendations for remedial action. While we strongly urge Propper to implement them, these recommendation must be regarded as advisory until and unless further evidence can be gathered that warrants a firm conclusion that additional violations of the City's Code have occurred.

## **B. Sources of Evidence**

The findings presented in this report are based on the following sources of evidence:

- Detailed interviews with thirty-nine current employees of the Adjuntas, Lajas, and Suprema facilities. All interviews were conducted away from the factory premises in locations chosen by workers;
- An additional interview with a group of eight Adjuntas employees concerning occupational safety and health (OSH) issues at that plant, which was conducted by recognized OSH experts;
- A review of pay stubs, severance calculation forms, and other company documents that were shared with the WRC by workers;
- A review of written statements by workers and other documents concerning unfair labor practice charges that had had been filed against Propper with the U.S. National Labor Relations Board ("NLRB");
- A review of company-produced literature opposing unionization of Propper's Puerto Rican factories that had been distributed by Propper to its employees at those plants;
- A review of reports and legal documents produced by the Dominican Secretary of Labor in relation to labor rights violations at the Suprema facility.

The remainder of this report sets out the WRC's findings and recommendations concerning Propper's compliance with the City's Code with respect to its Puerto Rico and Dominican Republic facilities.

## **III. FINDINGS**

### **A. Lajas and Adjuntas (Puerto Rico)**

As noted, Propper International owns and operates eight factories in Puerto Rico. In addition to the factories in Lajas and Adjuntas, which are the focus of this assessment, they include two facilities in the city of Cabo Rojo – Reto 1 and Reto 2 – three facilities in the city of Mayaguez – Mayaguez 1, Mayaguez 2, and Equa – and one facility in the city of Las Marías, Hunca Munca.

The Lajas and Adjuntas factories both manufacture apparel. Lajas employs roughly 300 workers, producing a variety of goods including one-piece suits and coveralls, gloves and pants, and Adjuntas has roughly 180 employees, who mostly manufacture pants.

This section outlines the WRC's findings concerning labor practices at the Lajas and Adjuntas facilities. Except where otherwise indicated, the findings pertain to both facilities. In one area, freedom of association, we present evidence concerning the company's conduct at its other Puerto Rican plants as well.

## **1. Treatment of Employees**

### *a. Sexual Harassment*

The WRC found credible evidence of gender discrimination at the Adjuntas plant, in the form of sexual harassment of female workers by the plant's general manager. Workers at the plant reported that the general manager touches women workers in the workplace in ways that the workers consider inappropriate. According to workers, when the manager greets workers, he frequently touches their shoulders or arms for prolonged periods. Workers reported that this behavior makes them feel highly uncomfortable. Several workers reported that they have asked him to remove his hands from their bodies and he has done so on such occasions, but the manager continues the same behavior with other women workers. Women workers also complained that the same manager stares at them while they work, describing this behavior as "creepy" and "intimidating."

Title VII of the U.S. Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, prohibits employers from, in relevant part, "discriminat[ing] against any individual with respect to h[er] . . . conditions, or privileges of employment," on account of "such individual's . . . sex." Workplace sexual harassment can constitute a form of gender discrimination prohibited under Title VII.<sup>5</sup> One form such illegal harassment can take is when a male manager's sexually objectionable conduct creates a hostile work environment for one or more female employees.<sup>6</sup>

Many aspects of the general manager's conduct, as described by employees, would support the conclusion that it has created a hostile work environment for female workers:<sup>7</sup> First, the conduct described is clearly unwelcome and directed specifically toward women. Moreover, this conduct – leering and unwelcome touching – is offensive to the women who are subjected to it, and would be so viewed by any objective observer.

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<sup>5</sup> See, e.g., *Reed v. MBNA Mktg. Sys.*, 333 F.3d 27, 32 (1st Cir. 2003).

<sup>6</sup> See, e.g., *Agusty-Reyes v. Dep't of Educ.*, 601 F.3d 45 (1st Cir. 2010).

<sup>7</sup> See, *Agusty-Reyes*, 601 F.3d at 53 n. 6 (explaining that to establish a hostile work environment claim for sexual harassment, an employee must show "(1) that she (or he) is a member of a protected class; (2) that she was subjected to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established").

It is certainly the type of conduct that can give rise to a hostile work environment.<sup>8</sup> Finally, the person responsible, who is the top management official at the workplace, has been previously informed, on multiple occasions, that this conduct is unwelcome.

However, because the plant manager reportedly ceases this conduct when a female employee requests – or, more accurately, ceases directing his conduct toward that specific employee – and because there is no allegation of retaliation by the manager against employees who have made such requests, it is not entirely clear whether or not the manager’s harassing actions are of such severity as to give rise to liability under Title VII.<sup>9</sup> Moreover, because Propper has refused to cooperate with our assessment, the WRC is unaware of what efforts the company has made to detect and prevent sexual harassment in its plants, or whether any of the affected employees have lodged formal complaints against the plant manager for this conduct, both of which are significant factors in establishing whether Propper could be held legally responsible for the manager’s conduct.<sup>10</sup>

Nonetheless, sexually-objectionable conduct should not be allowed to reach the point where the company could be held legally liable before it is stopped and effective remedial measures are taken. In this case, female employees should not have to choose between having to submit to offensive conduct or having to affirmatively reject the unwelcome attentions of their workplace’s top manager. The conduct described here clearly constitutes sexual harassment under any reasonable definition of the term, even if it has not, as yet, risen to a violation of federal law on the part of the company.

*b. Verbal Abuse*

Workers at the Lajas facility reported that managers have subjected them to abusive and degrading treatment. Several workers described a tense work environment, in which managers and supervisors frequently yell at and scold sewing machine operators.

One worker described a hierarchy of abusive treatment wherein line supervisors are called to the factory’s human resources office and harshly criticized by senior management for production-related issues. The supervisors in turn return to the production area and take out their frustrations on sewing machine operators by insulting them, including calling them “useless,” and using crude language to order them around.

In multiple cases, workers described being reduced to tears by such mistreatment. While, typically, the supervisors often apologize after the fact, the same behavior is later repeated. Workers also complain that supervisors and managers are hostile and disrespectful to them – for example, that supervisors and managers turn their backs on workers when these employees seek to speak with them.

The practices described here do not represent violations of U.S. federal or state law, and,

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<sup>8</sup> See, e.g., *Billings v. Town of Grafton*, 515 F.3d 39 (1st Cir. 2008).

<sup>9</sup> See, *Agusty-Reyes* at 53 n. 6

<sup>10</sup> See, *Reed*, 333 F.3d at 32.



therefore, do not violate the City's Code. Many leading apparel firms, however, prohibit their contractors from engaging in verbal abuse of employees.<sup>11</sup> Such practices, thus reflect a clear failure on the part of Propper management to adhere to industry best practices with respect to supervision of its employees.

*c. Denial of Medical Leave*

Workers at the Adjuntas facility complain that Propper refuses to permit them to take medical leave or retaliates against those workers who do miss work for medical reasons. These practices clearly violate the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, and, moreover, raise serious concerns regarding the company's compliance with the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and Puerto Rico's own laws regarding disability discrimination.<sup>12</sup>

In one case, an older worker declined her supervisor's request that she work on a Saturday, stating that she needed to rest due to a serious health condition. Her supervisor demanded, in the presence of other workers, to know the details of the worker's health condition. The supervisor repeated this demand after the worker clearly stated that she did not feel comfortable speaking about the matter. Finally, the worker stated that she had been diagnosed with multiple tumors and then burst into tears. The manager later apologized, but defended his behavior, saying that he needed to "set an example" for other workers.

In another case recounted to the WRC, a worker informed her supervisor that she had kidney stones and requested time off. The supervisor then responded by stating this was something the employee "just needed to live through" and that she had to report to work.

Another worker at the Adjuntas facility reported that due to managers pressuring workers with health problems to continue working, employees regularly delay surgeries and other medical procedures for fear of being laid off in retaliation for seeking medical leave. This worker had been issued a layoff notice after requesting medical leave for a day on which he had surgery and the two days following the procedure.

Although, after a lengthy back-and-forth with management, this worker was reinstated, he stated that Propper's general practice is to prohibit employees who take medical leave from returning to work for the following six months, which, according to the company's internal policies, automatically results in the layoff of those employees. Workers who are laid-off lose their seniority and must begin work again as new employees. Workers reported that only in cases where workers seek assistance from the Ministry of Labor and Human Resources, or engage in ongoing negotiations with the factory, are employees able to return to their jobs after taking medical leave.

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<sup>11</sup> See, e.g., Gap, Inc., *Code of Vendor Conduct* at 3 (requiring that [“t]he factory does not engage in or permit psychological coercion or any other form of non-physical abuse, including . . . verbal abuse”), available at: <http://www.itglwf.org/lang/en/documents/GapCodeofConduct.pdf>.

<sup>12</sup> See, 1 L.P.R.A. § 501 *et seq.*; 29 L.P.R.A. § 1401 *et seq.*

The FMLA requires that employers must provide eligible employees<sup>13</sup> with up to twelve weeks of unpaid leave during any twelve-month period for a serious medical health condition.<sup>14</sup> In addition, the FMLA prohibits employers from interfering with, restraining, or denying the exercise of FMLA rights.<sup>15</sup> The Americans with Disabilities Act (“ADA”) prohibits discrimination against an otherwise qualified individual based on his or her disability.<sup>16</sup> Similarly, Puerto Rican law prohibits discrimination against disabled persons<sup>17</sup> and provides for equal employment opportunities for persons with disabilities.<sup>18</sup>

Section 105(a) of the FMLA prohibits employers from interfering with, restraining, or denying the exercise of FMLA rights or attempting to do so.<sup>19</sup> This prohibition extends to situations where the employer does not permit employees to exercise rights under the FMLA – including the right to return to one’s job after taking leave – or otherwise retaliates against employees for using FMLA-protected leave.<sup>20</sup>

Once an employer becomes aware that an employee is seeking to take leave because of a serious medical condition, it is the employer’s obligation to inform the employee of his or her rights under the FMLA.<sup>21</sup> Therefore, when the worker who requested not to work on Saturday indicated that the reason for her request was a serious health condition, her supervisor was required to inform her of her right to take such leave under the FMLA.

By forcing this employee to provide details of her condition in front of her co-workers, the supervisor interfered with not only this worker’s FMLA rights, but also those of the other employees for whom the supervisor was trying to “set an example.” Making employees believe that they will need to make their personal medical conditions public in order to take FMLA leave places an undue burden on the exercise of this right.

In the case where the employee who had kidney stones was denied leave and told by her supervisor that the condition was something she “just needed to live through,” the

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<sup>13</sup> To be an eligible to take leave under the FMLA, an employee must have worked for a covered employer: (1) for at least twelve months; (2) for at least 1,250 hours during the twelve-month period immediately preceding the date the leave is taken; and (3) at a worksite where the employer employs at least fifty employees within seventy miles. *See*, 29 U.S.C. § 2611(2) (A), (B).

<sup>14</sup> *See*, 29 U.S.C. § 2601(b) (2).

<sup>15</sup> *See*, 29 U.S.C. § 2615(a) (1).

<sup>16</sup> *See*, 42 U.S.C. § 12112(a).

<sup>17</sup> *See*, 1 L.P.R.A. § 501 *et seq.*

<sup>18</sup> *See*, 29 L.P.R.A. § 1401 *et seq.*

<sup>19</sup> *See* 29 U.S.C. § 2615(a1).

<sup>20</sup> *See, e.g., Bachelder v. Am. W. Airlines Inc.*, 259 F.3d 1112, 1124 (9th Cir. 2001) (“[E]mployer actions that deter employees’ participation in [FMLA] protected activities constitute ‘interference’ or ‘restraint’ with the employees’ exercise of their [FMLA] rights.”); *also, Liu v. Amway Corp.*, 347 F.3d 1125 (9th Cir. 2003); *Arban v. West Publ’g Corp.*, 345 F.3d 390, 402-03 (6th Cir. 2003). The U.S. Department of Labor construes § 105(a) (1) as reaching any violation of the Act. *See*, 29 C.F.R. § 825.220(b) (“Any violations of the [FMLA] or of these relations constitute interfering with, restraining, or denying the exercise of rights provided by the Act.”).

<sup>21</sup> *See, Tate v. Farmland Indus., Inc.*, 268 F.3d 989, 997 (10th Cir. 2001) (“If the employer is on notice that the employee might qualify for FMLA benefits, the employer has a duty to notify the employee that FMLA coverage may apply.”).

supervisor's conduct also clearly violated that employee's rights under the FMLA.<sup>22</sup> When an employee requests FMLA leave, the employer must comply with the request as long as the employee is eligible for FMLA leave.<sup>23</sup>

Similarly, laying off an employee for taking FMLA leave, as the company attempted in the case of the worker who requested medical leave for his surgery procedure, violates the Act's requirement that an employee be restored to his or her original position, or an equivalent position, upon return from FMLA leave.<sup>24</sup> Moreover, the company's general practice, according to this worker, of routinely laying-off for six months employees who take protected medical leave, also interferes with employees' FMLA rights.<sup>25</sup> Employers cannot require workers who take leave for medical purposes to involuntarily take additional time off as well to suit the employer.<sup>26</sup>

#### *d. Discrimination Against Workers with Disabilities*

Workers reported that, in at least one case, Propper refused to provide accommodation for an employee with a medical disability. Workers who were interviewed stated:

There is a worker who had bypass surgery and had a medical restriction that she had to work four hours seated and, then, four hours standing, so that the bypass didn't get blocked. She had all the medical documents that she needed in order to be assigned light duty, but the company told her that while they would let her work the four hours in the morning, she would then have to go home.

The managers said that they couldn't make any special arrangements for her, and that Propper never made such arrangements for workers' medical problems. They said it was normal for her to be laid-off on account of her medical problems. There were multiple letters from doctors saying that she could work under the arrangement they suggested, but the company would not accept this.

This incident indicates that Propper is failing to comply with Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C § 12111 *et seq.*, which requires employers to provide employees who have a disability, but still can perform the "essential functions" of their jobs, with "reasonable accommodations," which may include "job restructuring, part-time or modified work schedules," unless the employer can show that the

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<sup>22</sup> Kidney stones can be serious medical conditions for purposes of the FMLA. *See, e.g., Tornberg v. Business Interlink Services, Inc.*, 237 F. Supp 2d. 778, 786 (E.D. Mich. 2002).

<sup>23</sup> 29 U.S.C. § 2615(a) (1) (2010).

<sup>24</sup> 29 U.S.C. § 2614 (2010); 29 C.F.R. § 825.214(a) (2010) (providing that employees are entitled to reinstatement if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.)

<sup>25</sup> *See, Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1051 (8th Cir. 2006) (noting that the FMLA prohibits considering "an employee's use of FMLA leave as a negative factor in an employment action."); *also*, 29 C.F.R. § 825.220(c) (noting that absences due to protected medical leave may not be counted against employees for disciplinary purposes).

<sup>26</sup> *Cf.*, U.S. Dept. of Labor, Wage and Hour Opinion Letter 29 (Feb. 7, 1994) (explaining that an employer may not require an employee taking intermittent FMLA leave to "take more leave than is medically necessary").

accommodation requested would impose an “undue hardship” on the employer.<sup>27</sup> It also raises the likelihood of non-compliance with Puerto Rican laws prohibiting disability discrimination.<sup>28</sup>

The ADA defines “disability” to include any “physical . . . impairment that substantially limits one or more major life activities,” among which are “circulatory . . . functions.”<sup>29</sup> The health condition described above appears to qualify as a disability for which reasonable accommodations were required to be made, assuming that the employee still was able to perform the essential functions of her job. According to the Equal Employment Opportunities Commission, the federal agency charged with enforcement of Title I of the ADA, a proper course for determining the appropriate reasonable accommodation, is for the employer “to initiate an informal, interactive process with the qualified individual . . . with a disability in need of the accommodation.”<sup>30</sup>

Unfortunately, according to employees, the response of Propper’s managers in this case was to inform the worker that the company’s policy was to *never* provide such accommodations to employees with medically-related disabilities. Without knowing whether the employee was still able to perform the essential functions of her job and whether the accommodations she sought were unduly burdensome for the company, it is not possible to reach a firm conclusion as to whether her rights under the ADA were violated in this particular instance. However, the company policy cited by the employee’s supervisors does appear to be in direct contradiction to the requirements of the ADA, unless the company can show that the type of accommodations sought by this employee will, without exception, impose an “undue hardship” on Propper’s business.<sup>31</sup>

## 2. Sale of Work Tools to Employees

Workers from both the Adjuntas and Lajas facilities reported that the factory does not provide basic work tools necessary for workers to perform their jobs – including scissors, tweezers, needles, pencils, seam-rippers and screwdrivers. All of the sewing machine operators that the WRC interviewed stated that the company does not provide certain tools that they need to perform their jobs. Some workers in other departments reported the same thing: a mechanic, for example, said that he was required bring his own work tools to the factory.

Many workers said that the company provided them with a set of basic work tools when they began working at the factory, which was, in the case of some workers, more than fifteen years ago. But when these tools became broken, these workers reported, the employees had to replace them by purchasing new ones with their own money.

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<sup>27</sup> 42 U.S.C. §§ 12111(8)-(10), 12112 (a), (b)(5)(A).

<sup>28</sup> See, *Perez Montero v. CPC Logistics, Inc.*, 536 F. Supp. 2d 135, 145 (D.P.R. 2008) (stating that Law 44 [codified at 1 L.P.R.A. § 501] was modeled after the A[DA] . . . [and] [l]ike the ADA, Law 44 creates an obligation for any employer to provide reasonable accommodations”).

<sup>29</sup> 42 U.S.C. § 12102.

<sup>30</sup> 29 C.F.R. § 1630.2(o)(3).

<sup>31</sup> See, 42 U.S.C. § 12112(b)(5)(A).

Workers indicated that they had no choice but to purchase these tools themselves in order to perform their assignments. At both plants, at least some of the workers interviewed reported that the company sells tools such as scissors and tweezers to employees, a practice which violates Puerto Rican law, and, therefore, the City's Code. Other workers, however, reported they purchased these tools outside of the workplace.

One worker, for example, described the situation as follows: "Last year I bought scissors for \$7 and tweezers for \$2.50. I had to pay the company in cash to get them from the office. I would not have been able to produce if I had not bought them."

The WRC notes there was some variation in the workers' testimony on this subject, with some workers stating they have purchased tools – most commonly, scissors – from the company in recent months and others stating that the company no longer sells such items inside the factory.

The practice of an employer selling workers tools that they need to perform their jobs violates Puerto Rico's Law 27 of April 10, 1942, 29 L.P.R.A. § 144, which prohibits employers from "maintaining, operating, or having any direct or indirect interest in businesses for the sale of provisions, tools, merchandise, clothing, or similar articles, to their workmen or employees" in establishments employing ten or more employees. Moreover, requiring workers to supply their own work tools, in effect, forces employees to subsidize their employers, as workers must use their incomes to purchase items that, otherwise, the company itself would have to buy.

### **3. Wage and Hour Issues**

#### *a. Inadequate Break Periods*

The WRC's inquiry identified two areas of noncompliance with the City's Code with respect to employees' lunch breaks: First, the lunch break at the factory, which is one half hour in length, is shorter than the statutory minimum of one hour. While, under Puerto Rican law, an employee may voluntarily agree to a shortened lunch break, Propper has instituted this practice without giving its employees an actual choice in the matter. Second, the lunch break workers actually receive is even shorter – less than a half hour – because workers are forced to wait for a portion of that time to clock-in and clock-out. These issues are discussed below.

#### *i. Denial of Statutory Meal Period*

Both the Adjuntas and Lajas plants maintain a daily schedule, under which employees work from 7:00 a.m. to 3:30 p.m., with two ten-minute breaks and a half-hour lunch break in several shifts around midday. Workers at both factories uniformly testified that they understood this work schedule – and in particular having a half hour, rather than a full hour, lunch break – to be a mandatory condition of employment. All workers interviewed stated that they were informed of this upon their hiring and that at no time

were they told that taking a half-hour lunch break was optional or that they could choose to take an hour-long lunch break.

Most workers stated that the half-hour lunch break, under current conditions, did not provide them with sufficient time to leave their work stations, wait in line to clock-out for their break, get their food, eat at a reasonable pace, and return to work. One worker described the situation as follows: “Almost nobody has time to eat. You see a lot of people just eating crackers or Jell-O and going back to work.” Other workers described having to throw out some of their lunch because there was not enough time to finish eating. As described in the following section, lunch period is often reduced by an additional ten minutes because workers must wait in line to clock-out and clock-in during the lunch period itself.

Of the twenty-four workers interviewed by the WRC at the Adjuntas and Lajas plants, only three recalled ever having signed a document relating to their lunch breaks. The latter, all three of whom who were employees of the Lajas plant, stated that management made clear that signing documents agreeing to the half-hour lunch period was mandatory if they wished to work for Propper.

One of the three workers recalled, “I signed something about a half-hour lunch break. The managers said that, according to the law, they had the authority to give us a half-hour for lunch, and the workers had to sign an agreement to that effect. The managers said that it wasn't voluntary – it was a regulation that has been approved by the Department of Labor.” None of these workers, however, recalled being shown any government document authorizing the shortened lunch period. None of the other twenty-one workers interviewed by the WRC recalled having ever signed any documents relating to the lunch period. Some did state that when they were hired at the factory they were given a stack of documents that managers from the company's human resources department told them they had to sign in order to begin work.

However, all these workers were certain that management at no time had indicated that signing any of the documents was voluntary or that the workers had the option of taking a one-hour lunch break if they preferred to do so. As one worker described, “As long as I have worked here the lunch break has always been a half hour. It was never optional. I have never signed anything agreeing to it, they [the human resources managers] just told us that this was the schedule.”

Puerto Rican law mandates that employers must provide employees one-hour meal periods, unless the employer has secured the voluntary written consent of its employees and a permit from the Secretary of Labor and Human Resources. Puerto Rico's Law 379 of May 15, 1947, 29 L.P.R.A. § 283, gives employees the right to a one-hour meal period per each eight-hour work shift.<sup>32</sup> This meal period must not commence before the

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<sup>32</sup> See, 29 L.P.R.A. § 283; see generally *Jimenez Marrero v. General Instruments, Inc.*, 2007 T.S.P.R. 13, 2007 PR Sup. LEXIS 11 (Jan. 19, 2007); *Acevedo Arroyo v. P.R. Sun Oil Co.*, 145 D.P.R. 752 (P.R. 1998) (detailing the legislative history, purpose, and application of Law 379).

conclusion of the third hour of work, nor after the sixth hour of work, so that at *no time* (i.e., within a regular work period *or* outside of it) may an employee work more than five consecutive hours before the commencement of a meal period.

The law provides that employers who permit work during the meal period must pay for such period or fraction thereof at a wage rate equal to double their normal rate for regular work hours.<sup>33</sup> No *de minimis* exception applies in such cases.<sup>34</sup>

There are several relevant exceptions to these requirements. Most relevant here is the law's provision that "The meal period may not be less than thirty minutes . . . [unless] the reason [for the reduced meal period] is due to mutual convenience of the employer and the employee, and must be stipulated in writing by the employee and the employer, with the approval of the Secretary of Labor."<sup>35</sup> Unless the reduced meal period occurs outside of the regular workday, the written stipulation must be between the employee, employer and the Secretary of Labor and Human Resources. Law 379 provides that "[o]nce the stipulations . . . are approved by the Secretary of Labor and Human Resources, they shall be valid indefinitely and if the same work relationship continues, none of the parties may withdraw its consent to what was stipulated without the consent of the other, until one year after the stipulation's effectiveness."<sup>36</sup>

To obtain a permit for the waiver or reduction of a meal time period, a written agreement signed by the employer and the affected employee or employees must be filed with the Secretary of Labor and Human Resources, which must include the workers' names and social security numbers; the employer's name, address, and telephone number; a brief declaration of the convenience for the worker; and a description of the worker's duties.<sup>37</sup> The regional office of the Bureau of Labor Standards keeps the original application in its files, and a copy is sent to its central office.<sup>38</sup> However, the rule also states that the Secretary has the discretion to exempt individual cases from "one *or all*" of the aforementioned requirements.<sup>39</sup>

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<sup>33</sup> 29 L.P.R.A. § 283; *see, e.g., Colon Claudio v. Syntex Puerto Rico, Inc.*, 2004 TSPR 104, 2004 PR Sup. LEXIS 112, \*11 (P.R. June 18, 2004).; *Adams v. Exec. Airlines, Inc.*, 258 F.3d 7, 15 (1st Cir. 2001). In cases of overtime work, this amount is additional to overtime pay. *See, Jimenez Marrero*, 2007 PR Sup. LEXIS 11 at \*27.

<sup>34</sup> *Jimenez Marrero*, 2007 T.S.P.R. 13.

<sup>35</sup> *See, id.*, ("Por otro lado, al aprobarse la Ley 379 en el año 1948, la Asamblea Legislativa reconoció el derecho de todo trabajador no excluido de sus disposiciones al disfrute del P.T.A. Dispuso en su Artículo 14 que el tiempo señalado para tomar los alimentos no podía ser menor de una hora, a menos que por razón de conveniencia para el empleado y por estipulación de este y su patrono, con la aprobación del Secretario del Trabajo, se fijare un periodo menor." (emphasis added)); also, Reglamento para Regular el Disfrute del Periodo de Tomar Alimentos, Compensación y la Expedición de Permisos para su Reducción, Num. 4334 del Departamento del Trabajo y Recursos Humanos (Sept. 24, 1990), available at <http://www.estado.gobierno.pr/ReglamentosOnLine/ReglOnLine.aspx>.

<sup>36</sup> *Id.*

<sup>37</sup> *See*, Reglamento Num. 4334, *supra*, n. 35,

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

Because Propper refused to cooperate with our investigation, the WRC is not aware whether or not the company possesses the requisite approvals from the Secretary of Labor and Human Resources for its employees to receive a reduced lunch period. Even if Propper has secured these permits, however, the finding of the WRC is that they are not actually valid. The permits' validity has been challenged in a lawsuit brought against Propper in December 2008 by a number of company employees, which is currently pending in the Superior Court of Mayaguez.<sup>40</sup>

The employee lawsuit raises a number of arguments why any such permits would be invalid. Most persuasively, the plaintiffs point out that, under *Reglamento* 4334, even if a reduced meal period has been approved by the Secretary, if the covered worker is regularly required to work during the reduced meal period, the permit is void.<sup>41</sup> As discussed below, employees reported to the WRC that Propper regularly requires them to work during the reduced lunch break.

In addition, the employees who are plaintiffs in the lawsuit argue that the permits are invalid because workers were intimidated by Propper into signing the underlying agreements to accept a reduced meal period. Based on testimony given by workers to the WRC, Propper's conduct in obtaining the agreements arguably did constitute intimidation because employees were told that, although they already had been offered employment with the company, they could only start work if they signed the consent forms. In other words, workers were led to believe that their pending job offers from the company would be retracted if they did not consent to the shortened lunch period, even though by doing so they received no other benefit.<sup>42</sup>

#### *ii. Further Interference with Lunch Breaks*

Workers at both the Lajas and Adjuntas plants also reported that they typically have to spend five to ten minutes of their half-hour lunch breaks waiting in line to clock-out and clock back in. Both facilities use a machine that scans workers' hands to mark their entry and exit from the plant. According to workers, each factory presently has three machines,

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<sup>40</sup> See, *Irizarry Mendez. v. Propper International Inc.*, Mayaguez Sup. Ct. (Dec. 2008), Complaint at ¶ 16.

<sup>41</sup> “*En los casos en que se expida un permiso para reducir el período de tomar alimentos, y luego se le permite o se le requiere al trabajador trabajar regularmente su periodo de tomar alimentos ya reducido se entenderá que el permiso ha quedado invalidado o sin vigor y el trabajador tendrá derecho a la penalidad por el trabajo realizado en la hora completa destinada a tomar los alimentos al cambiar las circunstancias por las cuales se autorizó la reducción.*” Reglamento Num. 4334, Art. IX.

<sup>42</sup> *Id.* at ¶ 18; see, also, 31 L.P.R.A. § 3406 (“Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of the spouse, descendants, or ascendants.”); *Garita Hotel Ltd. Pshp. v. Ponce Fed. Bank*, 954 F. Supp. 438, 450 (D.P.R. 1996) (“[There are five] distinct requirements for establishing intimidation: (a) A state of apprehension that compels consent. (b) The apprehension is provoked by the actions of another person. (c) The apprehension must be rational [or reasonable] and well-grounded. (d) [The apprehension] refers to an injury that the subject will suffer unless he or she enters into the contract. (e) The intimidatory actions must be antijudicial.” (quoting M. Albaladejo, *Comentarios al Código Civil y Compilaciones Forales* 348 (1993))).



which are used by the entire workforce at the beginning and the end of the work day and by groups of 30-100 workers who take breaks at the same time.

Workers complained that the hand-scanning machines frequently malfunction. They break down; they are unable to register an individual's hand-scan and must be reset; or workers must scan their hands multiple times until the machine registers their handprint; all while other workers wait to go to lunch. When these malfunctions occur, workers sometimes spend nearly half of their lunch break waiting in line to leave the production floor.

According to worker testimony, the situation has improved somewhat at the Adjuntas plant over the past year because Propper installed a new hand-scanning machine. Workers at the Lajas plant stated that a new machine also recently was installed there, but this was done to replace another machine that had recently broken and that another machine that ceased to function was never replaced. In both cases, as noted, workers report that they still lose five to ten minutes per lunch break as a result of the problems with the machines.

Workers complained that due to the abbreviated lunch period, they are not able to have a decent meal or rest. Workers reported eating snacks for lunch, or sometimes just drinking a soda, because there is no time to eat a normal lunch.

Because the malfunctioning of the company's hand-scanning equipment causes employees to be denied a significant portion of their meal periods, Propper is in violation of Puerto Rican labor law, and is, possibly, violating federal wage and hour laws as well. Puerto Rican labor law provides that employers who permit work during meal periods must pay workers for break time that is worked at double their ordinary hourly rate.<sup>43</sup> Moreover, as construed by the U.S. Department of Labor ("DOL"), the federal Fair Labor Standards Act, U.S.C. §§ 201 *et seq.* ("FLSA"), requires that employees must be compensated for break periods that are only twenty minutes in length.<sup>44</sup>

While the federal Portal-to-Portal Act of 1947, 29 U.S.C. § 251 *et seq.*, ordinarily relieves employers from liability under the FLSA for time spent by employees waiting to clock-in at the beginning of the workday or clock-out at its end,<sup>45</sup> this exclusion does not apply to

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<sup>43</sup> See, 29 L.P.R.A. § 283.

<sup>44</sup> See, 29 C.F.R. § 785.19(a) ("Meal") ("Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. . . . Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.").

<sup>45</sup> See, 29 C.F.R. § 790.4(b) ("Liability of employer; effect of contract, custom, or practice") ("Under section 4 of the Portal Act, an employer who fails to pay an employee minimum wages or overtime compensation for or on account of activities engaged in by such employee is relieved from liability or punishment therefor if, and only if, such activities meet the following . . . tests: (1) They constitute ' . . . activities 'preliminary' or 'postliminary' to the 'principal activity or activities' which the employee is employed to perform; and (2) They take place before or after the performance of all the employee's 'principal activities' in the workday"); 29 C.F.R § 785.24 ("Principles noted in Portal-to-Portal Bulletin") ("(c) Among the activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance. . . . However, activities such as checking in and out

time spent in the same activity during the workday.<sup>46</sup> Therefore, under federal labor law, time spent waiting to clock-in or out during the workday must be compensated as work time.<sup>47</sup> Because Puerto Rico interprets its labor law in accordance with federal labor laws and regulations,<sup>48</sup> the portion of their meal time that employees spend waiting to clock-in and clock-out must be considered to be time during which Propper permits them to work. Because Propper does not compensate employees for this time at the legally-mandated double-time rate, the company is failing to comply with Puerto Rican labor law, and therefore the City's Code.

Moreover, under DOL regulations, to qualify as break time for which employees are not required to be paid, the time-off afforded to employees must be sufficient to afford a "[b]ona fide meal period," defined as one in which "[t]he employee . . . [is] completely relieved from duty for the purposes of eating [a] regular meal[]"<sup>49</sup> The regulations state that "[o]rdinarily[,] such a meal period should be "30 minutes or more," but that "[a] shorter period may be long enough under special conditions."<sup>50</sup> The regulations make clear that a period of time which allows only a "coffee break[] or time for snacks," does not qualify as such a bona fide meal period.<sup>51</sup>

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*and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities."* (emphasis added)).

<sup>46</sup> See, 29 C.F.R. § 790.6(a) ("Periods within the 'workday' unaffected") ("Section 4 of the Portal Act does not affect the computation of hours worked within the "workday" proper, roughly described as the period "from whistle to whistle," and its provisions have nothing to do with the compensability under the Fair Labor Standards Act of any activities engaged in by an employee during that period. Under the provisions of section 4, one of the conditions that must be present before "preliminary" or "postliminary" activities are excluded from hours worked is that they 'occur either prior to the time on any particular workday at which the employee commences, or subsequent to the time on any particular workday at which he ceases' the principal activity or activities which he is employed to perform. Accordingly, to the extent that activities engaged in by an employee occur after the employee commences to perform the first principal activity on a particular workday and before he ceases the performance of the last principal activity on a particular workday, the provisions of that section have no application. The principles for determining hours worked within the "workday" proper will continue to be those established under the Fair Labor Standards Act without reference to the Portal Act, which is concerned with this question only as it relates to time spent outside the "workday" in activities of the kind described in section 4."); see, also, *Dooley v. Liberty Mut. Ins. Co.*, 307 F. Supp. 2d 234, 244 (D. Mass. 2004): "[O]nce the workday begins, workers' time must be compensated under the FLSA until the end of the workday."); citing *Alvarez v. IBP, Inc.*, 339 F.3d 894 (9th Cir. 2003) (stating that "there is nothing in the statute or regulations that would lead to the conclusion that a workday may be commenced, then stopped[,] . . . then recommenced").

<sup>47</sup> See, 29 C.F.R. § 790.6(a) ("Periods of time between the commencement of the employee's first principal activity and the completion of his last principal activity on any workday must be included in the computation of hours worked *to the same extent as would be required if the Portal Act had not been enacted.*" (emphasis added). Prior to the enactment of the Portal-to-Portal Act, time spent waiting to clock-in at the start of the workday and clock-out at its end was considered time worked under the FLSA. See, Dept. of Labor, Wage and Hour Opinion Letter (Apr. 9, 1941)

<sup>48</sup> See, Law 180 of 1998, 29 L.P.R.A. § 250 (stating that "provisions in Federal legislation and regulations shall be recognized with regard to how the minimum wage shall be paid, what working hours are . . . and to establish the minimum hours of work or maximum work week").

<sup>49</sup> 29 C.F.R. § 785.19 (emphasis added).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

As its employees' testimony makes clear, Propper's failure to maintain an efficiently-functioning time-keeping system has meant that workers often do not actually enjoy such a bona fide meal period. Employees report that the lengthy wait to clock-in and clock-out means that the breaks they enjoy are less than thirty minutes in length. They also indicate that, as a result, they only have enough time for a snack or a beverage, rather than sufficient time for a meal. These workers' testimony provides no basis for believing that any special conditions exist that make these shortened breaks long enough to qualify as bona fide meal periods.

In addition, the employees' testimony indicates that, in some cases, time spent waiting to clock-in or clock-out restricts their breaks to the extent that workers only have twenty minutes left for their meals. DOL regulations are clear that breaks of this length cannot be treated as unpaid meal periods and that workers must be compensated for such time by their employers.<sup>52</sup> Therefore, to the extent that its employees' breaks are so restricted, under federal labor law the company must compensate employees for their break time, itself, as well.<sup>53</sup> Propper's failure to do so violates federal labor law and, therefore, the City's Code.

*b. Requiring Workers to Wait without Pay to Meet with Managers*

Workers report that both the Lajas and Adjuntas plants share a practice whereby the factory shuts its main door at or shortly after the time that the morning work shift begins – at Lajas, as early as 7:01 a.m., and at Adjuntas as early as 7:05 a.m., for a shift that begins at 7:00 a.m. Workers who are not inside the factory by that time are not allowed to enter and clock-in to begin work. Instead, they are made to wait in an administrative office to be seen by a human resources manager and to provide the manager with an excuse for why they are arriving late, before they are allowed to clock-in.

Workers described being denied permission to enter the factory because they arrived as little as one minute late. Workers also reported that they are sometimes required to wait before clocking-in for as long as fifty minutes. Workers in Lajas reported slightly longer waiting times than did workers in Adjuntas, but in both facilities, workers are not paid for the time they are required to wait to meet with management before being allowed to begin work. Workers complained that this practice doubly penalizes employees, because if one is forced to wait before beginning work, it is nearly impossible, to meet the factory's daily production goal and thus obtain the corresponding bonus.

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<sup>52</sup> See, 29 C.F.R. § 785.18 (“Rest”) (“Rest periods of short duration, running from 5 minutes to about 20 minutes . . . must be counted as hours worked.”)

<sup>53</sup> To the extent that including break time as part of an employee's working hours extends the workday beyond eight hours per day, this additional time must be compensated at one and a half times the employee's usual hourly rate. See, 29 L.P.R.A. § 274 (“Every employer in any industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act . . . shall be under obligation to pay only for each extra hour of work in excess of the legal eight (8) hour working day a wage at a rate of not less than time and a half the rate of wage agreed upon for regular hours.”)

Under the FLSA, an employer must pay an employee for all time “which the employee is required to give his employer,” even if the activity involved is merely that “wait[ing] for something to happen [and] [r]efraining from other activity.”<sup>54</sup> In particular, employees must be compensated for time spent in company meetings where their attendance is required by the company and/or which are held during normal working hours.<sup>55</sup>

While the Portal-to-Portal Act, 29 U.S.C. § 254(a)(2), excludes from compensable time “activities which are preliminary to or postliminary to [the employee’s] principal activity or activities,” this rule does not apply when an employer requires an employee to be present at the workplace at a specific time and place and then wait to engage in activities which normally must be compensated.<sup>56</sup> For example, where an employer requires a worker to be at her workstation ready to begin work at a certain time, but the employer does not provide the necessary equipment for work to begin, the employee must be paid for the time she waits for the equipment to be delivered.<sup>57</sup>

Here, Propper requires employees who have arrived late at work to go to its administrative offices. Once they arrive at these offices, employees are required to wait there before meeting with company managers. All this waiting time takes place during employees’ normal working hours.

As explained, under the FLSA, not only the time employees spends in these meetings, but also the time they spend waiting for the meetings, must be treated as hours worked. Propper’s failure to compensate its employees for this time violates federal labor law and, therefore, the City’s Code.

### *c. Failure to Pay the Procurement Living Wage*

The City’s Code establishes the following requirement for wages paid to workers manufacturing apparel for the City: “For contracts involving the procurement of garments, uniforms, foot apparel, and related accessories, to ensure that workers are paid a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services’ (“HHS”) most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits.”<sup>58</sup>

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<sup>54</sup> See, 29 C.F.R. §785.7 (“Judicial construction”), citing, *Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Skidmore v. Swift*, 323 U.S. 134 (1944).

<sup>55</sup> See, 29 C.F.R. § 785.27 (“General”) (“Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following . . . criteria are met:(a) Attendance is outside of the employee’s regular working hours; . . . [and] (b) Attendance is in fact voluntary”); 29 C.F.R. § 785.28 (“Involuntary attendance”) (“Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.”)

<sup>56</sup> See, e.g., *IBP, Inc. v. Alvarez*, 546 U.S. 21, 40 n. 8, 41 (2005)

<sup>57</sup> *Ibid.*

<sup>58</sup> Adm. Code § 10.43.3 (D).

HHS' 2009 poverty guideline for a family of three is \$18,310.00 per year.<sup>59</sup> Increasing this figure by twenty percent to calculate the procurement living wage set by the City yields a figure of \$21, 972.00 per year.

Production workers at the Adjuntas and Lajas plant earn as their base salary the federal minimum wage of \$7.25 per hour, which, assuming that employees work a full-time schedule of 2,080 hours per year, corresponds to an annual gross income of \$15,880. Including non-guaranteed production-related bonuses, workers supposedly can earn between eight and ten dollars per hour, equating to \$16,640 to \$20,800 per year. However, all but one of the production workers interviewed by the WRC reported that they currently earn only the minimum wage.

Propper's workers in Puerto Rico, therefore, earn a base salary representing roughly seventy-two percent of the City's procurement living wage. Even at ten dollars per hour, which production workers identified as the upper limit of their earnings potential, including non-guaranteed bonuses, workers still would earn only ninety-five percent of the City-mandated procurement living wage.

As the monetary compensation paid to these workers falls below the City's procurement living wage, for Propper to be in compliance with the City Code, the company must make a contribution to workers' health care benefits equal to the amount of this shortfall. Some workers did report being enrolled in a private health insurance plan through the company. For workers who are being paid only the minimum wage, then, the company's annual contribution to health care benefits would have to total \$6092.00 per employee. If Propper is contributing less than this amount for health benefits, and is employing at least some workers at minimum wage, as seems quite likely, then its compensation practices fail to comply with the City's procurement living wage standard.

#### *d. Non-Transparent Compensation System*

Workers from both the Lajas and Adjuntas plants uniformly reported that they do not understand, and have not received any explanation of, the manner in which the company calculates their compensation. The factory's pay slips – samples of which were reviewed by the WRC – omit basic information essential for workers to understand how they are being paid.

Most workers are paid according to piece rates. However, their pay slips lack information regarding the worker's efficiency level during the pay period, which is the basic determinant, along with production quota, of compensation under a piece rate system. According to workers, until mid-2009, Propper specified on their pay slips their efficiency levels, but, subsequently, ceased providing this information, without

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<sup>59</sup> See, 74 Federal Register 4199–4201 (Jan. 23, 2009). Note that the figure cited is calculated for the contiguous forty-eight states and the District of Columbia, but may be applied to Puerto Rico as well. See, HHS, *2009 Poverty Guidelines*, (“The poverty guidelines are not defined for Puerto Rico [and other unincorporated U.S. territories] . . . [but] [i]n cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.”), available at: <http://aspe.hhs.gov/poverty/09poverty.shtml>.

explanation. Workers reported that this information was removed from their pay slips when workers began to distribute information about, and sign up as plaintiffs in, a lawsuit regarding pay issues.

While the company's pay slips include a column for indicating workers' pay rates, on the pay slips that the WRC examined, the column was left blank. Workers reported that this is standard practice. It was apparent from the workers' testimony that there is widespread confusion among employees regarding their pay rates for production hours, vacation, overtime and holidays. Some workers believed they were being paid at the minimum wage for holidays and vacations, while others thought their production levels might be factored into this compensation. Likewise, workers reported confusion as to whether they were being paid double time or time-and-a-half for overtime. The pay slips also included several other categories of compensation which workers could not explain or for which they offered widely varying interpretations.

Several workers reported that when they asked their supervisors to explain how their pay was calculated, their supervisors provided contradictory responses or declined to answer the questions at all. One worker recounted,

“Everyone has the same problem with the pay stubs: there is no way to understand it and it simply does not add up. It is hard to understand why you are earning what you earn. People in my area have asked their supervisors why they are getting paid the amount they receive and the supervisors say that there is nothing to ask since it is all perfectly clear. Other people in my area have asked three or four times and they have never gotten an answer.”

Another stated, “I have worked here for four years, and have never been told what my quota is. [My supervisor] could not explain the pay stub categories.”

While not unlawful, the company's lack of transparency in this area clearly represents another failure to meet industry standards of good practice.<sup>60</sup> As a result of Propper's failure to provide them with complete or coherent information in this area, it appears to many workers that their actual compensation is arbitrary. Moreover, employees are uncertain whether they are being paid in accordance with the law. The WRC, in fact, found several areas where workers' testimony and pay slips raised questions concerning potential violations of wage and hour laws – particularly with respect to overtime and vacation pay – but the lack of information on the pay slips made it impossible to make a determination.

Several workers also reported that, for extended periods of time, they had not been informed of their production quotas – a piece of information that is essential for understanding how much they must produce in order to be paid above minimum wage.

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<sup>60</sup> See, Gap, Inc., *supra*, at n. 11 (“For each pay period, the factory [shall] provide[] workers an understandable wage statement which includes days worked, wage or piece rate earned per day, hours of overtime at each specified rate, bonuses, allowances and legal or contractual deductions.”)

Several workers reported that they were not given this information even when they repeatedly asked for it from supervisors, production engineers and management.

Many of the plants' workers receive the minimum wage consistently and their production quota has never been communicated to them. The majority of workers who reported this problem were workers who had worked in the factory ten to fifteen years and had been transferred in recent years to new positions. Such workers reported that their pay had significantly decreased for periods ranging from a month to several years after being moved to the new position, and that they had been told they must wait for the company to "establish" their production quota.

One worker told the WRC, "I never know what percentage of the quota I make. I have asked the company my percentage and they never know or tell me." Another worker recounted, "I have been working here twenty-five years and I am now getting paid minimum wage. You can earn more if you meet your quota, but they have never even told me what mine is. Two years ago they timed me to give me a quota, but it was more than two years ago and they still haven't told me."

*e. Failure to Establish Achievable Production Quotas*

Workers reported that they believe management sets and revises the production quotas and manipulates the work process such that their quotas are impossible to reach. Of the production workers we interviewed, only one could regularly meet her quota, while the majority reported that they had not reached their quota more often than a few times per year for the last several years. Some workers reported a practice where, if the worker's production quota is established at a certain number, the employee is given one or two pieces of cloth fewer than is needed to achieve the quota. Other workers reported a pattern by which managers or production engineers raise their production quotas as soon as they begin to regularly reach them. Workers reported that these problems have occurred with increased frequency during the past two to three years.

As a result of such practices, workers report they have experienced a substantial reduction to their overall pay. Nearly all workers interviewed, including all but one production worker, indicated that while in previous years they were frequently able to make their quota – allowing them to earn eight to ten dollars per hour – they currently make only the minimum wage of \$7.25 per hour.

Workers reported that when they have sought to raise problems related to their production quotas with management, they have received hostile and threatening responses. Several workers reported that when they complained to managers that their production packets regularly arrived with one less piece than was needed to achieve the production quota, the managers refused to acknowledge or fix the problem. Instead, the managers threatened that if the workers persisted in complaining, they would be reassigned to work areas where there was less production, and where, as a result, they would be afforded fewer hours of work and lower earnings.

The company's practices in setting piece rates, while clearly representing poor management practice are, again, not unlawful. However, threatening workers with retaliation for collectively raising complaints regarding these practices, as employees charge managers have done, clearly represents an unfair labor practice under the U.S. National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA").<sup>61</sup> Reports of such threats are of particular concern given the company's overall failure to respect its employees' rights to freedom of association and collective bargaining, as detailed below.

#### **4. Freedom of Association**

The WRC reached the following findings regarding the company's respect for workers' right to freedom of association and collective bargaining. These findings are based on interviews with workers and the staff of the union, Workers United (a union that now represents certain former local unions of UNITE-HERE), and a review of documents relating to unfair labor practice charges filed by UNITE-HERE against Propper with the NLRB. This information is presented in two sections: (a) a review of incidents prior to an NLRB-approved settlement in October 2008 of unfair labor practices charges previously filed by the union; (b) a discussion of more recent violations of workers' associational rights.

The findings in this section concern not only violations at the Adjuntas and Lajas factories, but also incidents at three additional Propper facilities in Puerto Rico: Reto I, Reto II, and Las Marias, which were the subject of unfair labor practices charges filed against the company with the NLRB. The WRC believes that it is fair to consider incidents at the latter plants as part of this assessment because they are part of a pattern and practice of conduct by the company in responding to its employees' exercise of associational rights.

##### *a. Violations of Freedom of Association Prior to October 2008*

In May 2008, workers at Propper's factories in Puerto Rico began an open effort to establish union representation at these facilities. Propper responded immediately to the union drive by launching an antiunion campaign. The company urged and pressured workers to refrain from supporting the union organizing effort through a variety of means which are described below.

First, the company required workers to attend mandatory meetings during working hours inside the factory, termed "captive audience meetings" in U.S. labor law parlance, and had its supervisors engage in one-on-one conversations with workers concerning unionization.<sup>62</sup> During the course of these meetings and conversations, Propper

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<sup>61</sup> See, 29 U.S.C. § 157 ("Employees shall have the right to . . . engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (emphasis added)); 29 U.S.C. § 158 ("It shall be an unfair labor practice for an employer-- (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. . .").

<sup>62</sup> Although generally legal under U.S. labor law, the practice of holding antiunion "captive audience" meetings and directing supervisors to have high-pressure one-on-one conversations with employees to discourage unionization has been criticized by international labor and human rights experts as restricting



management:

*i. Conveyed to workers that a decision by workers to unionize would result in job loss because the factory would shut down:*

- In a meeting with employees of the Lajas plant in May 2008, Maria Melendez, General Manager for Propper’s Puerto Rico operations informed workers that if, at any point, the union was established, the factory would close down.
- Also, in May 2008, a worker at the Adjuntas plant was approached at her sewing machine by the plant’s general manager, Maria Lugo, who asked her why the worker and her son were involved with the union. The worker responded that she had become involved in the union in order to ensure her right to vacation and sick days and to make sure that managers and supervisors treated her with respect. Lugo responded that she knew that the worker and her son had been responsible for bringing the union to the plant and that they were always at union meetings, and that these union activities must stop. She said that she did not understand why the workers defended the union so strongly. The manger told the worker that if the union was successful in organizing the factory, the company would shut it down.
- In a meeting with employees at the Adjuntas plant in May 2008, Propper Vice-President Erick Deliz and General Manager Melendez told workers that if the union was successful in organizing, the company would not negotiate with the workers, but, instead, the company would close. One of the managers said, “If the union comes in, we are going to close [the plants in Puerto Rico].”
- On May 23, 2008, a group of workers were talking to union organizers outside the gates of the Reto I plant. From inside the gate, a supervisor began shouting at the workers saying, “What are you doing talking to the union?” and telling the workers not to pay attention to what the union organizers were saying and not to sign the cards. She also said, “Baby, don’t let them eat your brain, they only want your union dues” and “If the union comes in we are all going to be unemployed.” One of the union organizers attempted to explain why the employees were seeking to form a union, but the supervisor continued to yell at the workers and organizers, telling the organizers to leave and telling the workers that they would pay the consequences if they signed the union cards. She said that if the union came in, the workers would be left with no jobs. Eventually someone inside the gate pulled the supervisor away.
- On May 16, 2008, at a meeting with employees of the Reto 1 plant to talk about the union, Melendez said that workers should not be fooled by the union because there was no way that they could be sure that the company would negotiate with

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workers’ exercise of freedom of association. *See, e.g.,* Lance Compa, *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards* (Human Rights Watch, 2000).

the union. At the same meeting, Deliz told the workers that the company would rather close down the plant than accept the union.

- At a meeting with a group of employees of the Reto II plant in May 2008, Deliz told workers about three other factories that had closed because unions had been organized and then said that if the union came in, the same thing would happen at Propper, and the 3,000 people who worked at Propper's factories in Puerto Rico would be left without a job.
- At a meeting with a group of Reto II employees in May 2008, a manager informed the workers that, if the union were successful in its attempt to get into the factory, the factory could close down. A manager told the workers, "If the factory closes down, the union won't give the employees a job."
- A manager informed workers at a meeting held in May 2008 with workers of the Las Marías plant that "if the union comes in, the factory could be affected and have to close down."
- In a meeting with employees of Las Marías in May 2008, a manager said to the workers, "The union wants to get money from you. The union comes in and a year or two later the factory will have to close because the plant will be affected. Don't sign any more cards and don't accept the union papers [that they are distributing] and when they go to your homes turn them away."

*ii. Conveyed that, should workers unionize, the company would not negotiate with the union:*

- In a meeting with the employees at the Adjuntas plant in May 2008 to address the issue of the union, Deliz told workers that "we aren't going to negotiate anything, we won't negotiate anything, that means nothing, and we promise that it will be nothing."
- At a meeting with employees of the Lajas plant in May 2008, a manager said that the company would not negotiate with the union even if the union won an election and that the company had the right to not negotiate. The managers added that this is how strikes are initiated and how plants are then shut down.
- On May 23, 2008, managers held a meeting with workers of the Quest Best facility in which they conveyed that they would do everything possible to keep the union from coming into the plant and told the workers to think about what they were doing and not to sign the union cards. Melendez told the workers that even if the union won, the company would not negotiate with it and the workers would not get anything. Melendez finished the meeting by saying, "Not one more card."

- In a meeting with workers of the Lajas facility during or around May 2008, Deliz said that the company would not “negotiate in any way with the union.”
- In a meeting with workers of the Lajas plant during or around May 2008, the managers told the workers that if the union won, they would not negotiate and communication would be lost. They said that management would always be there for the workers and that the workers could ask for what they needed.
- At a meeting with employees of the Adjuntas facility during or around May 2008, a manager said, “If the union gets in we won’t negotiate with them, this is a given. Imagine what will happen? We aren’t going to negotiate. Even if the union comes in, this is a given. We won’t give anything and we won’t promise anything.”
- At a captive audience meeting with employees at Las Lajas in May 2008, a manager said that if the union was successful in its attempt to organize the plant, that the management would not negotiate with the union because the union “isn’t part of the Propper family” and had nothing to offer the workers.
- During mid-2008, Melendez told workers at a meeting at the Las Marías plant that the company would not negotiate with the union and therefore the workers should not sign affiliation cards. [In the same meeting, she also told the workers that if the union came into the plant, the company would have to close down operations.]
- At a meeting with employees, a top manager told the workers at the Equa facility that the company was not going to give in to the union’s demands or requests and that things were going to stay the way they were. He said that the company would not make any deal with the union and that the only thing the union could do was to provoke the company, which would lead to a strike. He said, “You will lose your jobs and you won’t earn any money.”

*iii. Interrogated workers regarding their participation in union meetings, their support for the union and that of other workers:*

- In late May 2008, a worker at the Reto I facility was called by Propper Human Resources Manager Carolyn Orench to Ms. Orench’s office. Ms. Orench told the worker – in the presence of other managers – that he should not listen to the union’s claims and that the union was motivated solely to obtain money through workers’ dues. Later in the same day, Orench called the same worker back to her office and asked him if he had signed a union card. When the worker told her that he had signed a union card, Orench said that he should ask for his card to be returned to him.
- A supervisor at the Las Marías, Elsa Aponte, on at least two occasions in mid and late May 2008, interrogated a worker on the shop floor, repeatedly asking her about her views and involvement in the union drive and the distribution of union

literature.

*iv. Conveyed to workers that they were not permitted to discuss or display support for the union inside the factory:*

- On May 22, 2008, a worker at the Adjuntas plant was speaking with another worker inside the factory, during a break, concerning a sick family member. While the workers were speaking, the general manager of the plant gestured angrily and shouted at them, “You can’t talk about the union here, out, out, get out of here!”
- In mid-June 2008 in the Adjuntas plant, managers and some employees wore t-shirts bearing the message “Don’t support the union.” The t-shirt was worn by Angel Gonzalez, the plant manager, as well as by the head of production and all of the supervisors. However, when one worker wore a small “UNITE HERE” button, Gonzalez took the button away.

*v. In at least one instance, conveyed to workers they were not permitted to have pro-union literature inside the factory.*

- On the morning of May 20, a worker at the Quest Best facility was distributing pro-union flyers outside of the factory. When the worker entered the factory gate to begin his shift, a mechanic confronted him and informed the worker that he was under orders from factory management to prevent the worker from bringing the flyers into the factory. The mechanic told the worker that the employee must either give up the flyers or return them to a union organizer who was outside the factory.

*vi. Informed individual workers that managers were aware, and disapproved, of their support for the union:*

- A manager, Eduviges Valentin, went to an employee’s work station at the Las Marias facility and said that he had learned that the worker was visiting other employees at home with union organizers. He told the worker that she should be prepared because the plant manager, Gilberto Lopez, was going to call her to his office talk about this. He further told the worker that he was aware of her rights, but that he thought she should be aware of the consequences of what she was doing. This interchange left the worker feeling intimidated and that she was being watched.
- In May 2008, a supervisor at the Las Marías plant indicated to a worker, in the course of interrogating her about her union activities, that the manager was aware of the worker’s support for the union and told her that it would be best for her if she did not participate in the union.

*vii. Impliedly offered individual workers improved compensation in exchange for*

*abandoning the unionization effort:*

- When the Las Marías worker referenced in the previous bullet confirmed to her supervisor that she did support the union, the supervisor responded by telling her, “You should talk to Gilberto Lopez (plant manager) to see if he can get you a better sewing machine that pays more money; you are skilled on the machine.”

In addition, Propper managers conducted surveillance of union meetings held away from the factory premises mid-2008. According to workers’ testimony, factory managers repeatedly drove slowly by the locations of union meetings in a truck, at a distance close enough that it would be possible to identify those workers who were attending the meeting.

Finally, Propper management circulated anti-union written materials in the workplace. The materials generally conveyed the view that UNITE HERE sought to benefit itself at the expense of workers by taking dues from workers’ paychecks, that the union had a history of illegal conduct, and that it was making false promises to workers.

The company also posted anti-union banners in its factories. By roughly May 20, 2008, only a week after workers began signing affiliation forms, Propper had displayed anti-union banners at all eight of its facilities in Puerto Rico. The banners carried slogans such as “Say No to the Union. Do not sign a union card. Get out, dues suckers. The Management.”

From May to September 2008, UNITE HERE submitted a series of charges to the offices of Region Twenty-Four of the NLRB, which includes Puerto Rico, alleging that Propper’s anti-union conduct constituted unfair labor practices under the NLRA. The allegations concerned, in addition to the conduct described above, charges of discrimination against union supporters by the company in providing benefits, and the company’s practice of prohibiting workers from discussing unionization during non-working time in the plant.

The regional NLRB office in San Juan conducted an investigation, taking testimony from numerous workers and managers and reviewing documents submitted by the union and the company. According to the union, the Board’s investigator informally notified the company and the union that it found evidence to support a finding that the company had committed fifteen unfair labor practices. The union reported that Propper indicated to the NLRB that it wished to settle the matter. Ultimately, the company agreed to post a notice to workers stating that it would respect workers’ rights to join a union and engage in other activity protected by the NLRA and would refrain from certain specific management practices that infringe on these rights.

On October 9, 2008, the NLRB regional office notified the company and the union that the Board had approved the terms of the settlement. In the statement, which Propper was required to post as the main condition of the settlement, the company pledged that its managers would not:

- (a) “[G]ive the impression to employees that we are spying on them to determine if they are engaging in activities in support of any other labor organization;”
- (b) “[A]sk our employees about their activity or support in favor of any other labor organization[;]”
- (c) “Threaten and/or ask our employees about the filing of any charges against us without first granting them their assurances as required by the [NLRA];”
- (d) “[C]oercively tell our employees to abstain from supporting the union;”
- (e) “[T]ell our employees that it would be futile to request union representation [ ]or that the company will [n]ever bargain with any labor organization if it becomes the exclusive bargaining representative of the employees;”
- (f) “[S]olicit grievances and impliedly offer to resolve them in order to circumvent the union campaign or movement on behalf of any labor organization;”
- (g) “[C]o done or participate in the making, posting or distribution of any offensive material violative to the Act that disparages our employees or any labor organization;”
- (h) “[T]ell our employees to report on the union activities of other employees and/or co-workers;”
- (i) “[E]nforce any rule that may discriminate against employees that distribute or solicit employees to join or become members of the union during non-work hours or [in] non-work areas.”

The company also pledged that it would allow employees:

- (a) “[T]o distribute and/or solicit union literature and speak about any labor organization during their non-work time and in non-working areas inside our facilities and WILL rescind any such rule that prohibits such;”
- (b) “[T]o wear pro-union propaganda in favor of any labor organization without fear of reprisal.”

Under the terms of the settlement agreement, Propper did not admit that it had violated the NLRA. It is important to note, however, that settlements of this type typically are reached after an initial NLRB investigation finds that the employer, in fact, has committed unfair labor practices, and the NLRB indicates to the employer that it plans to issue a complaint unless the employer agrees to such a posting.<sup>63</sup> Unions often accept

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<sup>63</sup> See, id. at 4.

such settlements because, even once a complaint is issued, the process of having it heard and decided by the Board is a very lengthy one, and the remedies, in all but the most exceptional cases of this kind, are not significantly stronger than the posting to which Propper agreed here.<sup>64</sup>

Having independently reviewed the relevant evidence, the conclusion of the WRC is that Propper did, in fact, commit the acts which, in the NLRB-approved notice, it subsequently committed to refrain from, all of which constitute violations of the NLRA. As such, the company's conduct also represented a violation of the City's Code.

*b. Violations of Freedom of Association Since October 2008*

The October 2008 settlement of the union's charges with the NLRB did not end Propper's violation of its workers' right to freedom of association. The unionization effort at the plants continued, as did the company's anti-union campaign. The WRC has reached the following findings with regard to events following the NLRB settlement:

*i. Propper has continued to post anti-union materials in its factories*

The company has continued to distribute anti-union literature which is posted in prominent locations in its plants, such as at the time clocks and the company bulletin board. These documents claim, among other things, that the union is putting workers' jobs at risk through public campaign activities; that the union's sole motive is enriching itself with workers' dues; and that that union has misrepresented the NLRB settlement by claiming the company has agreed to "notify its employees that the company will refrain from violating federal law," as, according to Propper, it has not admitted any unlawful conduct and the statement is merely a restatement of rights Propper has always respected.

Additionally, the anti-union banners described above remain posted at many of the company's factories, including Adjuntas and Lajas. Such practices, while generally permissible under U.S. labor law, reveal the company's continued hostility to its employees' exercise of freedom of association.

*ii. The NLRB settlement has failed to remedy the company's unfair labor practices*

Workers reported to the WRC that they had not seen the NLRB-approved settlement notice. Workers also complained that the notice was not posted in a prominent location in the Lajas or Adjuntas factories. The notice was posted on company bulletin boards outside administrative offices, but not in more visible areas, such as production areas or at the time clocks where the company has displayed anti-union literature. Workers complained that, as a result, the fear among workers that was engendered by the many unfair labor practices that the company committed in the early stages of the anti-union campaign has not been meaningfully addressed and workers remain afraid to exercise their rights to freedom of association. The failure of NLRB postings of this type to provide a meaningful remedy for unfair labor practices of the severity seen here has been

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<sup>64</sup> See, id. at 14, 29, 31 and 89.

well-documented by leading human rights and labor rights organizations.<sup>65</sup>

*iii. Propper management has continued to retaliate against employee union leader Albert Torres*

Albert Torres has been the most prominent worker leader in support of the unionization campaign at Propper's facilities in Puerto Rico. Mr. Torres has organized numerous union meetings and has regularly distributed pro-union flyers after work. He has also served as an external spokesperson for the union; he was, most notably, photographed and described in a December 10, 2008 article about the organizing effort that was published in the *New York Times*<sup>66</sup> and has visited Washington, DC and Florida to promote the union's cause at public events. His activities have been featured on several websites and online journals<sup>67</sup> and he was a key speaker at the "National SweatFree Summit," a weekend-long policy forum and strategy session concerning federal anti-sweatshop procurement legislation which was held in Washington in November 2009.<sup>68</sup>

Torres asserts that the company has discriminated against him because of his leadership in the union organizing effort, first, by removing him from his normal work station in the factory and, subsequently, placing him on furlough while other employees continued working. The following outlines the key incidents concerning his case:

- On the afternoon of April 17, 2009, the plant manager instructed a mechanic to relocate Torres' sewing machine. His machine was moved twelve to fifteen feet and placed such that Torres was facing away from his co-workers and it would be readily apparent to an observer whenever any worker came to speak with him. He was also made to work alongside a vocal union opponent, who frequently wore anti-union t-shirts. Torres was the only worker whose machine was moved at this time. An engineer normally responsible for arranging the positions of machines told Torres that his machine did not need to be moved for any production-related reason.
- After Torres' machine was moved, the assistant plant manager, who is now the plant manager, began to spend substantial periods of time walking slowly around Torres as he worked and watching him. The assistant manager also followed Torres and watched him while he went on breaks as he talked to other workers.
- Beginning in mid-May 2009, Torres' work shift was frequently reduced from eight hours to four hours per day. Whereas previously he worked on two different machines, he was informed there was only sufficient work for him to continue

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<sup>65</sup> See, id., at 14 and 88-89.

<sup>66</sup> Damien Dave, "Economy Complicates Labor Dispute," *New York Times* (Dec. 10, 2008).

<sup>67</sup> Eric Becker, "Weldon Spring Company Accused of Labor Violations," *Suburban Journals* (Feb. 10, 2009), available at: <http://suburbanjournals.stltoday.com/articles/2009/02/10/stcharles/news/0211stc-prop00.txt>.

<sup>68</sup> SweatFree Communities, National SweatFree Summit 2009, Conference Announcement, <http://www.sweatfree.org/summit09>.



working on one machine. Overall production in the department where Torres worked, however, did not noticeably decrease during this period.

- From July 13 to July 27, 2009, Torres was placed on a furlough even though workers with less seniority than he continued working. Management took this action against Torres immediately after Torres, earlier the same month, took a leadership role in informing workers of their right to join a lawsuit which had been filed against Propper concerning the company's denial of vacation days, overtime pay, and other benefits, to employees.
- After Torres returned to the factory on July 27, he was regularly sent home without work two to three days per week. Torres reported that during this period, due to the fact that he was regularly sent home, he typically worked only twenty-five or fewer hours per week.
- In December 2009, following his participation in the SweatFree Communities-organized "SweatFree Summit" conference, Torres was placed on furlough again, along with roughly thirty other workers who had been producing products for the U.S. Air Force. These workers were told to return to work on January 11, 2010. However, while the other furloughed employees were called back to work in mid-January, Torres and several other prominent union leaders were not called back. Another worker was assigned to work at Torres' work station.
- By February 1, 2010, every other worker who had been placed on furlough in January, and was able to return to work, had been called back to their jobs except for Torres. Among the workers who were furloughed and called back were more than a dozen with less seniority than Torres.
- As of the date of this report, Torres remains the only worker furloughed in January 2010 who has not been called to return to work at the factory. According to the union, Workers United, under Propper's internal policies, workers who have been furloughed for six months or more lose their accumulated seniority and must be hired again as new employees.

The WRC concludes that Propper has repeatedly discriminated against Torres in retaliation for his union activism, and his participation in other concerted activities by Propper workers to improve their conditions of employment. This conduct violates Sections 8(a)(1) and (3) of the NLRA.<sup>69</sup> The company's actions in this regard, therefore,

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<sup>69</sup> *Codified*, at 29 U.S.C. § 158 (establishing that "[i]t shall be an unfair labor practice for an employer-- (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . . [or] (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization").

also constitute a violation of the City's Code.

Workers reported that Propper also discriminates against other workers at the Adjuntas plant who are union members and/or are plaintiffs in the lawsuit against Propper. Union supporters stated that factory management has systematically reduced the working hours of union supporters and/or plaintiffs in the lawsuit, relative to other workers, and denied the former opportunities to work overtime. These employees stated the following:

“Following the NLRB settlement they [the management] do not make anti-union comments, but those of us involved in the union are only working two and a half days a week.”

“I have been sent home two times this week, because they discriminate against those of us who are involved in the union. I used to make \$700 in a two-week paycheck, but now I am making only \$400.”

“They treat those of us who are involved in the union differently. They send almost all of us home when there isn't work. There are times when they have sent me home and everyone else stays.”

“Almost all the people that they send home when there is no work are people who are involved with the union. I would say 99% of those workers don't get eight hours of work per day. We arrive at work at 7:00 am, and by 7:30 they send them home.... They stopped giving [my wife] overtime when she signed [on as a plaintiff in] the lawsuit. [They also discriminate against us in other ways] When I signed up for the lawsuit, they increased my workload to work on three machines when I had always worked on two. I have to do forty-five packets per day, and I can barely go to the bathroom.”

Because of Propper's decision to refuse the WRC access to the factory's records, the WRC has not been able to conduct a systematic, statistical analysis of the allocation of working hours to union supporters and plaintiffs in the lawsuit, relative to other similarly-situated workers. However, based on the testimony of these workers, which is the best available evidence, and, under international labor standards, represents a sufficient basis for reaching findings of fact,<sup>70</sup> the WRC concludes that Propper has discriminated against these employees in retaliation for their union activity. The company's treatment of these workers, like its conduct towards Mr. Torres, violates §§ 8(a)(1) and 8(a)(3) of the NLRA. The company's actions in this regard, therefore, also constitute a violation of the City's Code.

## 5. Occupational Safety and Health

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<sup>70</sup> See, e.g., Adrian Goldin, *Mission Report: The Closure Process at Jerzees de Honduras* 3 (Jan. 26, 2009), available at: [http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/jerzees\\_de\\_honduras\\_second\\_jdh\\_investigation\\_jan\\_2009.pdf](http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/jerzees_de_honduras_second_jdh_investigation_jan_2009.pdf).

The findings presented here are based on an occupational health and safety focus group and one-on-one interviews held with current workers of the Adjuntas and Lajas factories. The focus group was facilitated by Dr. Jorge Ramos Feliciano, director of the Center for Occupational Safety and Environmental Protection (University of Puerto Rico); and Dr. Mario Roche, Professor Emeritus of Occupational Health and Safety and Director of the Center for Labor History Santiago Iglesias Pantin (University of Puerto Rico).

As noted below, the focus group identified concerning patterns of multiple, distinct risks in the following areas of health and safety regulations which denote systematic underlying issues, and not isolated incidents, in the areas specified below. Unless otherwise noted, these problems were identified as existing in both the Lajas and Adjuntas factories.

*a. Indoor Air Quality*

*i. Cloth particulates and dust in the air*

Workers complained that there is a great amount of dust in the air inside the factory. Some workers complained that, as a result, they have difficulty breathing. Workers stated:

“There is only one janitor for the plant so it can be five to seven days before our area is cleaned. It is cleaned while we are working and it raises up clouds of dust and cloth particulates. The fans are placed very high up and totally filled with dust so that when they run they just blow lint and dust into our faces.”

“We literally leave [work] sometimes with our clothes covered in dust or lint- it gets on your arms, in your ears, in your nose, in your hair, everywhere, and it even gets under our clothes. Some of us leave at the end of the day with grey hair because of the dust. If there is any kind of breeze, you can see that the air is filled with dust. There is no air conditioning- just the fans - which are totally filled with dust.”

“The dust irritates my eyes and makes me cough and sneeze. My nose itches. You can see it in the air; it looks like snow falling and it is like that every day. Previously, they cleaned up above [in higher areas] – but now it just accumulates.”

Workers indicated that the factory has never administered a respiratory test in which workers are asked to exhale or blow out.

The conditions described above raise concerns regarding Propper’s compliance with OSHA Regulation 1910.22(a)(1) (“Housekeeping”), which states that “[a]ll places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition.” If cloth used by the factory as a raw material contains chemical substances, the factory also may be failing to comply with OSHA Regulation

1910.1000 (“Air Contaminants: Toxic and Hazardous Substances”), as these substances likely are being released into the air inside the factory as well.

Additionally, OSHA has issued certain recommendations concerning indoor air quality which Propper’s factories do not appear to meet. An OSHA technical manual notes that “the most effective engineering control for prevention of indoor air quality problems is assuring an adequate supply of fresh outdoor air through natural or mechanical ventilation,” in the amount of “20 cubic feet per minute (CFM) of outdoor air per occupant.”<sup>71</sup> OSHA also recommends “us[ing] local exhaust ventilation and enclosure to capture and remove contaminants generated by specific processes” and directs that “air in which contaminants are generated should be discharged directly outdoors rather than re-circulated.”

*ii. Fumes from soldering and welding*

Workers at the Adjuntas facility also complain that mechanics perform repairs involving sanding, soldering, and welding in the same workspace as sewing machine operators, with no barrier or extractive devices to protect workers from being exposed to smoke, fumes, and particles. Stated one worker:

“At the end of the year the mechanics receive a bonus if they have saved the company money by not buying new parts. They try to fix a lot of the machines inside the factory; they solder them there; they make the pieces there; to save money. They fix the machines right where we work -- they even sand metal and plastic parts, which makes it hard to breathe. There is no barrier; they work at a table right next to the sewing machines. There is no extraction system; the table where they do everything is right where we are working. Only recently did the mechanics begin soldering and welding in a different area [from the one where we work].”

These practices raise concerns regarding Propper’s compliance with OSHA Regulations 1910.253-255 (on welding), 1910.262(c)(8) (“Identification of Physical Hazards”) and 1910.1000 (“Air Contaminants”).

*iii. Exposure to smoke and other fumes*

Workers also reported that they are exposed to smoke and other fumes in the course of their work. One worker recounted, “I work with a hot knife that cuts Velcro and elastic. There is a lot of smoke and you can smell the chemicals. I have to bring my own fan so that the smoke goes away. It would be impossible for me to work if I didn’t bring it. One time they tried to take away the fan, but the strong smell bothered me too much.”

Workers from both the Lajas and Adjuntas plant also uniformly complained about the fumes of a gas-powered forklift which is operated inside the factory when workers are nearby: “They run the f[orklift] while we are working and it leaves you totally congested

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<sup>71</sup> OSHA Technical Manual, Directive Number: TED 01-00-015 (Jan. 20, 1999).

by the fumes. We have been worried about it and have been saying that it is bad for us for more than three years, and their response was only to add a[n] [exhaust pipe] – but that just puts the exhaust in a higher position, it doesn't change the problem.” This practice also raises concerns regarding the factory's compliance with OSHA Regulation 1910.1000.

*iv. Lack of adequate ventilation*

Workers indicated that extractors in the plants often do not work. This has been a particularly serious problem at the Lajas plant where, workers reported, the extraction system is basically non-functional. A mechanic knowledgeable about these machines confirmed that the extractors are broken more often than not and that the majority simply do not work: “The majority of extractors are broken, and they have blocked off one of the loading docks [that] they used to keep open, so there is almost no ventilation. It gets so hot we all have to bring our own fans to work.”

As noted above, OSHA has issued specific recommendations concerning the issue of indoor air quality – OSHA Technical Manual, Directive No. TED 01-00-015 (Jan. 20, 1999) – which Propper does not appear to be following.

*v. Exposure to gas from compressor*

Workers at Adjuntas reported that, due to a faulty compressor, water and gas are sometimes released inside the plant during working hours. Employees stated that water and gas are released nearby while they are working four or five times a day when the compressor malfunctions.

This practice also raises concerns regarding compliance with the OSHA Regulation 1910.1000.

*b. Obstructed Emergency Exits*

*i. Locked exits during work hours*

Workers reported that Propper keeps its factories' main exits locked with a padlock during working hours. Workers from the Adjuntas plant uniformly indicated that exits were locked. According to one worker, “The doors are closed with a padlock. If there is a fire we couldn't open these doors.”

Another worker stated, “They [the managers] said that there had been robberies. They say this is why they are closing it with a padlock even during work hours. All of the doors are locked against the workers during work hours. They close it with a chain and a lock or a rod.” A third worker similarly reported, “The door is closed with a padlock. When we asked them why they were locking the emergency exits they said it was because of a federal law. If you need to get out you have to call the office with your cell phone to get them to open the door.”

While workers at the Lajas plant did not report that emergency exits were locked on a daily basis as they are in the Adjuntas factory, several workers reported incidents of doors being locked during work hours. Said one worker, “[A] coworker of mine . . . had an emergency with his daughter who has diabetes, and he had to leave quickly to deal with the emergency. It took twenty minutes for them to come and unlock the door.”

The practices described here raise serious concerns regarding worker safety and Propper’s compliance with the OSHA Regulation 1910.37(a)(3) (“Maintenance, Safeguards, and Operational Features for Exit Routes”), which states:

“Exit routes must be free and unobstructed. No materials or equipment may be placed, either permanently or temporarily, within the exit route. The exit access must not go through a room that can be locked, such as a bathroom, to reach an exit or exit discharge, nor may it lead into a dead-end corridor. Stairs or a ramp must be provided where the exit route is not substantially level.”

*ii. Obstructed exit routes*

Workers at the Lajas plant also reported that emergency evacuation routes in the factory are frequently obstructed by boxes and other materials. One worker stated:

“The walkways are really tight in between [the] machines and often blocked by boxes or carts. It would be very dangerous in an emergency if we had to get out quickly. They haven’t paid attention to this problem — they only move things out of the way and hide things in the back if an inspector or a visitor comes, but then [afterward] they put it all back. I have to side step to get through the machines.”

This practice also raises grave concerns regarding worker safety and Propper’s compliance with the same OSHA regulation noted above.

*c. Exposure to Hazardous Substances*

*i. Dermal and respiratory exposure to chemicals in cloth and cloth particulates*

Workers raised significant concerns regarding their exposure to chemicals, particularly with respect to the handling of fabric that has been treated with fire retardants, insect repellants, and/or chemicals for water-proofing. The following are statements by workers on this issue:

“We touch the material without gloves and it sometimes causes a reaction, rashes, redness or itchiness. [C]loth comes to the factory pre-treated with chemicals. They don’t tell you what the chemicals in the fabric are. . . . Some batches of cloth give me rashes or sores. I was on layoff for two months and my hands were totally normal. I went into work last week and after four days of work they have these sores from working with the chemicals that come in the cloth. There is one

person who has rashes on all of her fingers from the chemicals. Many people have had to go to the *Fondo* [*Corporación del Fondo de Seguro del Estado*, “State Insurance Fund Corporation”] because all their skin broke into a rash. One of my co-workers was evaluated by the *Fondo*. She showed them the cloth and the particulates from the cloth and when they analyzed it they said her illness was linked to the chemicals in the fabric.”

“I get rashes from the lint on the fabric. It happens some days and not others; it depends on the uniform and the batches of cloth. When it is bad I get rashes on my face, all over my neck. This happens to me almost every month and a lot of people get it worse than me and have to go to the doctor.”

“I have asked more than ten times what is in the fabric, but they always tell me they don’t know.”

The practices described above raise grave concerns regarding worker safety and compliance with OSHA Regulation 1910.132(a) (“Application: Protective Equipment”), which directs that “personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment . . . .” OSHA Regulation 1910.1200(e)(1) (“Written Hazard Communication Program”) also mandates that “Employers shall develop, implement, and maintain at each workplace, a written hazard communication program” which, (a) includes “[a] list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet,” and (b) “[l]imits exposure to substances specified in the section.” Also applicable are OSHA’s recommendations for indoor air quality as discussed above (OSHA Technical Manual, Directive No. TED 01-00-015).

## *ii. Exposure to solvents*

Some workers reported being exposed to solvents used to treat materials (primarily to remove stains). Below are several statements from these workers:

“There . . . [was] a solvent that I was given [for] get[ting] grease or other stains out of the fabric. . . . If it fell on you, it would burn you. They didn’t give me good gloves, and it was my job to use this chemical to remove the stain. [Later] [t]hey exchanged [this solvent] for acetone, but if you get [acetone] on your hands it also burns.”

“They give you [a] mask[] without a filter, a simple paper mask . . . .”

“Another person in my work area uses solvents to get out stains . . . right next me and the smell is very strong. It is like acetone and they don’t use gloves when they apply it.”

A mechanic reported that he and other workers in his department work with degreasers and acids, but have received no training on these substances and have no gloves or masks to wear when they work with them. The practices described above raise concerns regarding compliance with OSHA Regulation 1910.1200(e).

*d. Slippery Floors*

Workers reported that oil frequently leaks from machines, forming puddles on the floor. Employees interviewed by the WRC stated the following:

“There are machines that also leak oil on us and on the ground. We call the mechanic, and he ignores it; we call the manager and he ignores it.”

“My machine was leaking oil every day. I told the mechanic every day and he didn’t fix it until one day I couldn’t take it anymore and refused to work until it was fixed. [Oil] was falling down my leg and onto the floor and people have to walk through that area. People could slip and fall because the floor in my area was covered with oil.”

“My [work] area is a mess. There was a huge oil leak from my machine. It went all down my legs and there was a puddle under my machine. When I complained they would just put paper on top of it. It took them more than a month to fix it and I had to ask them at least two times.”

Workers also reported that paper and other work materials accumulate on the floor of the factory, creating a safety hazard:

“Each packet of components that we are given to sew comes with a piece of paper and, as there is no place to put them, they accumulate on the floor. . . . It can be hours before anyone comes to pick them up. One of my coworkers slipped the other day, and, if he hadn’t grabbed onto me, he would have fallen on the floor.”

“There is no place for us to put the papers that come with the packets [of components], so they pile up on the floor. There is only one person who cleans the whole plant. There have been cases where people have fallen down.”

Workers also reported that the facilities’ restrooms sometimes have wet and/or slippery floors. These practices raise concerns regarding Propper’s compliance with OSHA Regulation 1910.22(a) (“Housekeeping”), which states that “[a]ll places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition,” and that “[t]he floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition.”

*e. Lack of Information and Training on Workplace Hazards and Safe Conduct*

*i. Lack of training re workplace hazards*



Employees reported they were not provided with training on how to identify and prevent health and safety hazards in the workplace. The practice raises concerns regarding the company's compliance with the OSHA Regulation 1910.1200(e) which requires employers to "develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria [for] employee information and training will be met," and what "methods the employer will use to inform employees of the hazards of non-routine tasks. . . ."

*ii. Lack of training on how to lift heavy objects*

Workers who lift objects weighing from thirty to sixty pounds reported that they had not received training on how to lift heavy objects and lifted these by themselves without assistance. One worker, for example, stated:

"I have problems with my hips... [O]ne time they asked us to open up boxes. From 10am-5pm I was moving boxes that weighed fifty to sixty pounds.... They just showed me where the boxes were and what I was supposed to do with them. There is no type of training [on how to lift]."

The company's failure to provide training in this area raises concerns regarding its compliance with Section 6 of the Puerto Rico Occupational Safety and Health Act<sup>72</sup> which establishes that "(a) Each employer shall furnish to each of his employees . . . a place of employment free from recognized hazards which are causing or may cause death or physical harm to his employees." Lack of training on safe lifting of heavy objects exposes employees who perform such tasks to physical harm.

*iii. Lack of training concerning personal protective equipment*

Workers reported that they have not received education or training on the personal protective equipment ("PPE") which should be worn or used on their jobs.<sup>73</sup> The company's failure to provide such training and education raises concerns regarding its compliance with OSHA Regulation 1910.132(f) ("Training"), which establishes that "The employer shall provide training to each employee who is required by this section to use personal protective equipment (PPE) . . . [o]n when PPE is necessary; . . . what kinds of PPE are necessary; . . . ; how to properly don, doff, adjust, and wear PPE; . . . the limitations of the PPE; and, . . . the proper care, maintenance, useful life and disposal of PPE."

*iv. Lack of education or information on chemicals in the workplace*

Janitorial and maintenance employees reported they had not received training or information on the cleaning agents they used. An employee described a chemical accident that resulted from the mixing of two cleaning agents, which employees had not

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<sup>72</sup> Act No. 16 of August 5, 1975.

<sup>73</sup> A related issue, discussed below, is the fact that the company fails to provide certain relevant PPE to employees. *See, infra*, at 40.

been instructed would cause a reaction if mixed. As a result of the incident, several production workers fainted and had to receive medical treatment at a hospital. Workers reported that, at the time this incident occurred, they had not been informed of any procedure for evacuating the factory in case of emergency, and that several workers were told by management not to leave the plant. The WRC has not been able to determine which cleaning agents were mixed in this incident.

Finally, workers who handle solvents and mechanics who work with other chemicals also reported that they have not received information or training on the substances in use at the plant and any associated risks or hazards.

The company's failure to provide training or information to employees on this subject raise concerns regarding its compliance with OSHA Regulation 1910.1200(e)(1).

*v. Access to Material Safety Data Sheets*

None of the workers interviewed by the WRC reported having seen a Material Safety Data Sheet (MSDS) for any of the chemicals at use in the factory. A worker from the Adjuntas plant reported that he asked a supervisor to see an MSDS, but was never provided with it. The company's failure to provide MSDS' to employees raises concerns regarding its compliance with the following OSHA Regulation 1910.1200(g)(1) ("Material Safety Data Sheets"), which requires that "Employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use."

*f. Lack of Safety Equipment*

*i. Lack of needle guards and other safety devices on machinery*

Workers reported that sewing machines at the facility lack standard needle guards to protect employees from cuts and puncture wounds. Workers testified as follows:

"People in the factory are always getting needle punctures or cutting their fingers. If you move just a little bit you end up getting cut. Two out of the three machines I have worked on never had any needle guards or any kind of protection."

"Not all the machines have protectors. Four out of the five machines in my area don't have any protectors or needle guards. I was working on a machine that has a knife on it and it didn't have a protector and it took off half my nail. This was eight to nine months ago. After this happened they [the factory management] put a protector on my machine. I didn't get any health and safety training on how to prevent risks or accidents."

"The needle [on my sewing machine] punctured my finger many times because [the machine] didn't have a needle guard. Just since the time I began working in January I have been punctured twice by the needle. There is a needle guard, but it wasn't the one that comes with the machine. The mechanics make needle

protectors out of wire, but they break easily. One time the needle broke my nail off and the protector did not protect my finger.”

“There is a wire they put on our machines as a needle guard but it is very easily broken. Mine has split in two. (Showed interviewer scars of puncture wound.) It happens to me at least 1-2 times a year. My coworker had needle punctures four times, but the supervisor said they couldn’t put a guard on her machine, since there were two needles [on the machine].”

Some workers reported that their sewing machines previously had needle guards which were part of their original equipment, but that now the only form of protection on these machines is a wire around the needle, which was installed by the factory itself.

The company’s practices in this respect raise concerns regarding its compliance with Section 5(a) of the Occupational Health and Safety Act of 1970, 29 U.S.C. § 654, as well as OSHA Regulation 1910.262(a).

*ii. Deactivation of a safety device*

In a particularly troubling incident, one worker reported that the company had disabled sensors on sewing machines which are intended to protect employees by stopping the device in case of a malfunction:

“My machine is not automatic, but it has a sensor, which is a safety device for my protection. If there is a problem with the thread, it [the sensor] stops the machine automatically. There were problems with the sensor, but instead of fixing it, they just turned off the sensor on my machine so that even if the thread snaps, the machine will keep running. The sensors are there for our protection. They deactivated the one on my machine because they didn’t want to have to buy a new sensor.”

“They refuse to buy any new parts so, in my case, if the thread breaks or any other thing malfunctions, it will keep running when it should, for my protection, stop if the sensors are activated. I know that my machine and one other do not have sensors. In my area, they disconnected two of the sensors on the machines and just told us ‘you have to be careful when the thread snaps.’ The older machines don’t even have sensors.”

The company’s practices in this area raise concerns regarding its compliance with OSHA Regulations 910.262(c)(1)(“Means of Stopping Machines”), which establishes that “Every textile machine shall be provided with individual mechanical or electrical means for stopping such machines.”

*ii. Failure to provide face masks*

Workers reported that the company does not provide face masks and that workers who

wish to use them must purchase them. One worker recalled, “I was feeling fatigued and asked my supervisor if they had masks and he said that the office didn’t have any. Some people have them, but I think they bring them from home.”

Face masks are a particularly crucial piece of PPE in light of workers’ concerns about exposure to textile dust in Propper’s factories. The company’s failure to provide masks to employees raises concerns regarding its compliance with OSHA Regulation 1910.132(a), which states:

“Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, . . . or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.”

### *iii. Lack of gloves*

Workers also reported that the factory does not provide gloves to workers who handle machinery with hot or sharp elements. Workers stated:

“I work with a hot knife that cuts Velcro and elastic. The other person who works on this type of machine has been cut, but it hasn’t happened to me yet. They never did any training or gave us gloves, and our fingers have to be really close to the knife. Sometimes my finger touches it and it is quite hot.”

“When there was an inspection of the factory they put guards on the machines where they could, but since one of my machines has no guard or protection, and my hand has to pass so close to the knife, they [the managers] sent me to another part of the plant . . . and told me not to work on [my machine] in front of them [the inspectors].”

“Whenever there is a visitor [to the plant], they tell me I can’t work on my machine because it is hot and cuts, and it is a risk for burns. They [visitors to the plant] have always called two to three days before any inspector shows up, and if they don’t, I don’t think they [the managers] let them [the inspectors] inside.”

The company’s failure to provide gloves to these employees likewise raises concerns regarding its compliance with OSHA Regulation 1910.132(a).

### *g. Ergonomics*

Workers reported suffering what they believe to be repetitive strain injuries caused by the poor ergonomic design and positioning of work chairs, tables, and other equipment.

Workers stated:

“I work on the tacking machine. This is the part where we sew the corners of pants pockets and other small parts. This area [pointing to neck] hurts because I am standing and leaning over the work all day.” (The worker stated that she believes moving her table would make a significant difference, but that the factory’s mechanics do not like to make such adjustments).

“I work sitting down and my chair can’t be adjusted or moved. I need to lean forward in order to work, and I don’t have any support for my back. This gives me back problems. I went to the *Fondo*, and I am 65% handicapped – this happened about three years ago. I had a herniated disk and a problem with a pinched sciatic nerve. I can’t walk for more than ten to fifteen minutes. It makes me cry so hard, because it feels like I am being punched. I have to sit or lie down when this happens, or else I will fall down. I have to take three different muscle relaxers in order to be able to work. When I am outside of work or on vacation, it is much better. But I am worried, because the disk is at risk that it may rupture.”

“I had a wood chair for nine years and kept asking them to change the chair. There are better chairs in the storage area, but they have a lot of people still working in the old chairs that are wood – like the ones in schools. The better chairs go up and down, but there is no lumbar support.”

“I feel pain in my back and arms. I went to the doctor, and he suggested buying a chair, because the ones there were made out of wood and were making it [the pain] really bad. I had muscle spasms from my neck downward. In the last year I had such awful pain that I had to take muscle relaxers and [have] injections five or six different times.”

“I work on two different machines and am on my feet all day, going back and forth between the two. I hurt my back, because of the motions this requires. I was on disability leave for more than a year. I was totally paralyzed and couldn’t move to lift my arms. If I did a certain movement, I would just get paralyzed or stuck.”

In the case of several workers, the WRC reviewed documents issued by the *Fondo* that corroborated their testimony. The conditions described in these documents, as well as in workers’ testimony, raise concerns regarding the company’s compliance with Section 6 of the Puerto Rico Occupational Safety and Health Act.

#### *h. Inadequate Management Response to Health and Safety Hazards*

##### *i. Response of management to reported hazards*

Workers reported that Propper’s management has failed to respond in a timely or adequate manner when they have brought workplace hazards to the company’s attention.

Employees stated the following:

“My machine has an exposed sharp acrylic edge where there is a difference in height between [it and] the machine [next to it]. This edge is sharp like glass, but they [the managers] refuse to fix it and just put paper and tape across it. It [still] is not safe, and I can cut myself [on it]. It has been like this for seven years.”

“There was a machine that would chew up our work, so we asked them [the managers] to replace or fix it, but they didn’t. So when a piece [of cloth] got stuck in it, I would have to reach my hand in [the machine, to extract the cloth]. It was very dangerous, but they don’t want to buy new machines.”

“My machine was slipping off its base. For three years, I kept telling the mechanic, my supervisor, and even the manager that it was going to fall and break my leg. Finally, after a new manager came in, they changed the box under the machine to make it more stable.”

“When the fusing machine breaks, they take off the safety guards, [so] there is a bunch of exposed wires. It is dangerous.”

In addition, a maintenance employee reported that although carts, boxes, and tables between the machines blocked passageways to emergency exits, he only was instructed to move them when there were audits or inspections.

The conditions described above raise concerns regarding the company’s compliance with OSHA Regulations 1910.262(c) (1).

*ii. Provision of first aid and healthcare by administrative personnel*

Workers reported that, in cases of needle punctures and other work accidents, they often are given first aid by office staff. Workers were not aware of what, if any, first aid training the employees treating them had. They reported there is no nurse or doctor available at or nearby the factory. One worker recalled:

“I got punctured by a needle (showed interviewer the puncture wound) last Monday. They sent me to the office and gave me [rubbing] alcohol. The same people from the office gave it to me, not a doctor or a nurse.”

Workers also reported that when they inform their supervisors that they have fallen ill, they are given aspirin and other over-the-counter medications and told to return to work, without receiving any medical attention.

The company’s practices in this area raise concerns regarding its compliance with OSHA Regulation 1910.151, which states:

“The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of plant health[,] . . . [and] in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, [that] a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.”

## **B. Suprema (Dominican Republic)**

Suprema Manufacturing is a factory owned by Propper that is located in the free trade zone in the city of San Pedro de Macoris in the Dominican Republic. The factory employs roughly 350 workers, and produces apparel for U.S. military and civilian use, including pants, jackets, boys’ shorts and tops, coveralls, flight suits and hats. The following section discusses the WRC’s findings concerning Propper’s labor practices at the Suprema facility.

### **1. Wage and Hour Issues**

#### *a. Failure to Properly Compensate Workers for Overtime*

The Suprema factory uses a three-part compensation system. Workers are paid (1) a weekly base salary of 1,246 Dominican Pesos (“DOP”), or roughly USD 34.07, which is, on a monthly basis, equivalent to the legal minimum wage for workers in the country’s free trade zones;<sup>74</sup> (2) additional compensation based on each employee’s individual production relative to daily quotas set by management; and (3) a weekly bonus if they work at the rate that has been defined as 100% efficiency for their position and do not miss any work during the week. The factory’s standard work schedule is from 7:00 a.m. to 4:30 p.m. on Monday through Thursday, and 7:00 a.m. to 3:30 p.m. on Fridays, with a half hour lunch period and two ten-minute rest breaks (one in the morning and the other in the afternoon).

Workers reported that, up until around April 2009, it was standard practice at the facility for employees to clock-out at the end of their normal shift and then continue working for an additional one to two hours each day in order to complete their production quotas. Workers stated, uniformly, that they felt compelled to perform this extra work because it was impossible to meet the production quota during the workday. The time spent working after their shifts ended was not recorded by the company or reflected in workers’ pay slips, and workers were not provided any additional hourly compensation for this labor. According to workers’ testimony, the vast majority of the factory’s workforce had performed such unpaid labor regularly for their entire tenure at the facility, which was, in the case of some workers, as long as ten years.

On April 15, 2009, SweatFree Communities published a report, entitled “Subsidizing Sweatshops II,” which discussed the Suprema facility. This report asserted that the

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<sup>74</sup> The applicable minimum wage is DOP 5,400 per month (USD 147.53). See, *El Comité Nacional de Salarios* (National Committee on Salaries) Resolution No. 4-2009.

factory failed to provide workers legally required overtime compensation. Workers reported to the WRC that while, following the publication of this report, the company significantly reformed its practices in this area, there continue to be significant problems with its wage and hour policies, as discussed below.

First, workers reported to the WRC that, from roughly April 2009 to the present, Suprema has, with some exceptions, prohibited workers from working after they have clocked-out. However, the factory has not, as a corollary to this reform, reduced its production quotas for employees. Nearly all of the workers interviewed by the WRC reported that, as a result, it is now necessary for them to work through at least part of their half-hour lunch period and one or both of their ten-minute rest breaks in order to meet their daily production quotas.

As one worker described, “In the afternoon, almost nobody takes the breaks. We almost all end up staying [on the production line]. If you go to the bathroom, you have to go fast, [since,] with the quotas, we don’t have the luxury of leaving our machines.” Another worker stated, “To meet the production quota I usually work for half of the lunch period and only take one of my breaks – and the majority of people in my area do the same thing.”

The lunch period is unpaid and, thus, is not counted as part of the factory’s standard weekly schedule of forty-four working hours. The two ten-minute breaks are paid and included in the forty-four working hours but are established in the schedule as break periods.

Workers do not clock-out for either the lunch period or meal breaks, so the labor that workers perform during such periods is not recorded. Employees report, however, that they work anywhere from one half hour to five hours per week during their breaks or lunch periods.

Second, while most workers reported that they no longer work after clocking out at the end of the day as a standard practice, several workers reported that such work still takes place, albeit less frequently. In such cases, workers work for fifteen or twenty minutes after clocking out. As in the past, this time is not recorded and the employees involved do not receive any hourly compensation for this work.

Because the time worked by these employees during breaks, lunches, and after the end of the regular work shift is in excess of the standard workweek of forty-four hours,<sup>75</sup> it must be compensated as overtime at 135% of the employee’s normal rate of pay<sup>76</sup> (after which labor is to be paid at double to normal pay rate). The factory’s failure to compensate

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<sup>75</sup> See, Dominican Labor Code (“Labor Code”), Art. 147 (mandating that the normal workweek should be no more than forty-four hours).

<sup>76</sup> See, Labor Code, Art. 203 (requiring that hours worked in excess of forty-four hours per week be paid at 135% of the normal hourly rate, and that hours worked in excess of sixty-eight hours per week be compensated at 200% the normal hourly rate).



workers for these additional hours at the required overtime rate represents a violation of Dominican labor law and, therefore, the City's Code as well.

Finally, in addition to these problems, the WRC found at least one instance in which it appeared that a worker was not even paid properly for overtime which *was* recorded by the company. A pay stub provided by this worker to the WRC indicates that the worker was paid at a rate well below the legally mandated rate for overtime hours which were recorded on the pay statement. Because Propper refused to grant the WRC access to its records, however, we were not able to determine whether this discrepancy reflected an isolated error or a more widespread problem.

*b. Failure to Pay the City's Procurement Living Wage*

As previously discussed, the City's Code requires that factories manufacturing apparel purchased by the City pay their employees, at minimum, a "procurement living wage." For domestic manufacturers, this figure is defined as the "base hourly wage . . . required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services' ("HHS") most recent poverty guideline for a family of three, plus an additional twenty percent of this figure, which must be paid either as hourly wages or health benefits."<sup>77</sup> For "manufacturing operations in countries other than the United States" the Ordinance states that "the DAA ["Designated Administrative Agency," here, the City's Department of General Services] shall establish a procurement living wage which is . . . comparable to the [procurement living] wage for domestic manufacturers as defined [in the ordinance], adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income per capita Purchasing Power Parity ("PPP") index."<sup>78</sup>

As explained, HHS' 2009 annual poverty guideline figure, inflated by twenty percent, results in a procurement living wage of USD 21,972.00 annually, the equivalent of USD 10.56 per hour. The City's Department of General Services has not established a procurement living wage for the Dominican Republic. However, adjusting the USD 10.56 per hour figure by the PPP index to reflect the Dominican Republic's level of economic development relative to that of the United States yields an estimated procurement living wage for the country of USD 1.46 per hour.

The "base hourly wage" for employees at the Suprema factory – the amount paid to the employees without attendance or production bonuses – is roughly DOP 1,246<sup>79</sup> or USD 34.06 per week and USD 0.77 per hour. Thus the factory's base wage is roughly 47% below the WRC's estimate for a procurement living wage for the Dominican Republic. Workers report that, with attendance and production bonuses, their take-home weekly

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<sup>77</sup> Adm. Code § 10.43.3(D).

<sup>78</sup> Ibid.

<sup>79</sup> The base wage is defined here as the guaranteed wage; it does not include production and attendance-related incentives, which are not guaranteed and vary from week to week. None of the pay slips reviewed by the WRC indicated a hourly base wage. The base wage figure presented here is based on workers' testimony and the hourly rate paid for holidays, as reflected in workers' pay slips.

wage is typically about DOP 2,550, roughly USD 61.52, per week, or USD 1.40 per hour – still lower than our estimated procurement living wage.

It bears noting that the figure that we have calculated as the “procurement living wage” for the Dominican Republic under the City’s standard is significantly lower than estimates of what actually constitutes a living wage for garment workers in the country. For instance, in 2008 the WRC conducted a living wage study in the Dominican Republic using a “market basket” methodology based on the actual costs of basic living expenses for apparel workers. This study concluded that a living wage for Dominican garment workers is DOP 9,665.92, or USD 559.50, per month for a family of one adult wage earner with two minor dependents, a wage that is equivalent to USD 2.93 per hour.

Similarly, a 2006 study by the Dominican Central Bank estimated the cost of basic living expenses for a family of five persons, with two wage earners and three dependents, to be DOP 18,021, or USD 458.94, per month (adjusted for inflation, DOP 20,629.87 pesos or USD 525.37 per month). To provide this income, each of a family’s wage earners would need to receive a full-time salary of USD 121.24 per week, or USD 2.76 per hour.

Finally, a 2008 study by the Dominican trade union confederation CNUS estimated the monthly cost of basic goods for a family of three persons at DOP 27,106 pesos, or USD 690.30. CNUS estimated the monthly wage needed to purchase these goods to be USD 159.30 per week, or USD 3.62 per hour.

## **2. Freedom of Association**

Employees at the Suprema factory are not covered by a collective bargaining agreement. Some workers at the factory, however, have formed a union, the *Sindicato de Trabajadores de Suprema Manufacturing*, which is affiliated to the national labor bodies, the National Federation of Free Trade Zone workers (FENOTRAZONAS) and the National Confederation of Dominican Workers (CNTD). The union’s current membership in the plant appears to be limited to its seven-member leadership committee.

Information gathered by the WRC suggests that the limited nature of the Suprema workers’ exercise of freedom of association is the result, at least in part, of past violations of this right by the company’s management. While these violations took place significantly prior to the period covered by the WRC’s assessment of the Suprema facility, they are discussed here because they provide important context for evaluating the degree to which employees currently are able to exercise their associational rights.

### *a. Past Violations of Freedom of Association*

Interviews with Suprema employees and labor union officials, along with reports by the Dominican Ministry of Labor, provide the following chronology of violations of freedom of association at the factory.

Starting in 2000, a group of workers at Suprema began initial steps to form a union affiliated with FENOTRAZONAS, with the goal of recruiting a majority of the plant's workers, the legal prerequisite for compelling an employer to engage in collective bargaining.<sup>80</sup> However, the company fired these workers, before the employees could establish a union formation committee ("*comite gestor*"), whose members, under Dominican labor law, would have had legal protection against termination (*fuero sindical*, or "union charter"),<sup>81</sup> without just cause and prior government authorization. Workers recalled that the company had fired roughly sixteen of these initial union activists.

Despite these firings, workers at Suprema continued to attempt to organize a union, and by 2001, FENOTRAZONAS had succeeded in establishing a *comite gestor* of fifteen union leaders, and had recruited roughly 120 additional union members. At that time, Suprema's operations were divided into two facilities, Plant I and Plant II. All of the union's leaders and other members, however, worked in Plant I.

Factory management responded to this renewed organizing effort with an aggressive campaign of intimidation, in which managers met repeatedly with individual workers and pressured them to renounce union membership. As a result, workers reported, many workers chose to either leave the company, or resign from the union. FENOTRAZONAS received identical legal notices of resignation, bearing what were claimed to be signatures of various union members.

In addition, around this time, Propper closed Plant II. As part of this process, Propper laid-off workers from Plant I, where employees had formed a union, and replaced them with employees from Plant II, where there was no union. In so doing, Propper laid off virtually all of the union's remaining members, leaving employed only seven members of the *comite gestor*, who could not be laid off due to the *fuero sindical*.<sup>82</sup> Eventually, all of the union's members, except for seven out of the fifteen members of the *comite gestor*, either quit their jobs, were laid-off, or renounced union membership.

Following its campaign of lay-offs and coerced resignations, the company then placed the remaining seven union leaders, as well as ten pregnant workers, who enjoy a similar protection against termination under Dominican law,<sup>83</sup> on a sixty-day unpaid suspension. Although Suprema cited lack of raw materials as the cause for the suspensions, no other workers were suspended at this time. On September 6, 2001, Propper submitted a request for retroactive approval of the suspensions to the Ministry of Labor, as is required under

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<sup>80</sup> See, Labor Code, Art. 109.

<sup>81</sup> See, Labor Code, Arts. 389-94.

<sup>82</sup> See, *id.* While those employees protected by "fuero sindical" were not fired in compliance with the law, the possible discrimination against active union members in the decision to lay off all employees in the plant with union membership raises questions about the violation of Principal VII of the labor code which prohibits discrimination, exclusion or preference due to union activities, among others.

<sup>83</sup> See, Labor Code, Art. 232 (stipulating that a pregnant worker cannot be laid off during her pregnancy or for three months after giving birth).

Dominican labor law.<sup>84</sup>

The Dominican Ministry of Labor conducted an inquiry to determine if the suspensions were legally justified. The Ministry determined that they were not, observing that “Suprema Manufacturing showed no documentation that justifies the suspensions.”<sup>85</sup> Having inspected the Suprema factory, the Ministry noted that “it was unclear that the suspensions of work contracts requested were really due to the lack of raw materials ... given that the company has affirmed that all suspended workers were union leaders and pregnant women which was corroborated in the inspection...”<sup>86</sup>

On October 9, 2001, Suprema’s management appealed the Ministry’s determination. After reexamining the case, the Ministry released its findings on November 12, 2001, which confirmed that the suspension did not fulfill legal requirements.<sup>87</sup>

After the Ministry issued its findings, Propper returned the seven union leaders to work with back pay. Workers report, however, that factory supervisors told them that the union leaders were bad employees and that any worker who associated with them could expect to be terminated. These instructions, as well as the coerced resignations and discriminatory layoffs of the union’s other members, created a climate of fear in the workplace, in which workers believed it was not safe to associate with the union. As a result, even workers who continued to speak with the union leaders outside of the plant would not do so inside the factory.

Aside from the removal of the suspensions, factory management did not take any steps to remedy the chilling effects of its other retaliatory actions against union leaders and members on employees’ ability to exercise their right to freedom of association.

*b. Current Environment with Respect to Freedom of Association*

As noted, the union’s only remaining members are the seven employees who comprise its leadership committee and enjoy statutory protection against dismissal. Although the committee members evince a desire to address a range of workplace issues, there is no regular dialogue or collective bargaining between the union and the management. The committee’s members report that other workers at the factory tend to avoid them for fear of retaliation from factory management. The union’s general secretary stated “[W]hen they [the managers] see workers speaking to me, even if it has nothing to do with the union, they fire them. The last time this happened was two years ago.”

Other workers also described a climate of fear associated with the issue of union membership. Many workers who were willing to speak with a WRC representative about

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<sup>84</sup> See, Labor Code, Arts. 48-61 (outlining process and legitimate reasons for suspensions).

<sup>85</sup> Dr. Washington Gonzales Nina, General Director for Labor for the Secretary of Labor: Resolution # 1439 2001 September 14th, 2001.

<sup>86</sup> Ibid.

<sup>87</sup> Dr. Milton Ray Guevara, Secretary of Labor Resolution # 40 2001, November 12, 2001.

other issues, were hesitant or even fearful to speak about this issue. When asked about the union, workers stated:

“I can’t give you an exact response – I have never gotten close to a union so I don’t know. There was once a problem [in the factory] with unions. I think it would bring problems because it was a problem before.”

“I don’t know because I’ve never been involved [with the union]. They [the managers] don’t look positively on people who do that. People think that [employees] can be fired if they are involved. If the company sees that you want to join a union, [it] will easily fire you. I don’t have any reason in particular to join, but there are other people who would want to join.”

“There was a union there, and they [the managers] got rid of it, [so] [t]here are workers [in the factory] who are afraid of losing their jobs.”

“The company doesn’t like the union. They will fire you if you get involved. In the plant where I work [Plant II] there was never a union but in the other plant [Plant I] there was a group of people who they fired who formed a union. People are very afraid. Of course people would affiliate more [with the union] if they were not afraid.”

“They [the managers] get mad at you – you can’t talk about unions there. [If you do] [y]ou are signing your own verdict – if you want to join the union you have to do it quietly. They fire you if you are involved in the union. They have fired people before. If they see me or hear me talking to the union leaders it would be a problem.”

Consistent with international labor standards on freedom of association, the Dominican labor law prohibits employers from engaging in practices that impede workers’ joining or forming trade unions, including, generally, retaliation or other coercion against workers on account of their participation in a trade union.<sup>88</sup> Over the past decade, Propper has committed severe violations of workers’ right to freedom of association under Dominican law, including mass discriminatory suspensions, layoffs, and terminations of union leaders and members.

As noted, although the WRC did not document any explicit *recent* conduct by the company that contravenes Dominican law in this area, the company’s past conduct has created an extreme chilling effect that, in actual effect, denies workers’ freedom of association at the factory. Without taking steps to reverse this chilling effect and assure workers that, if they chose to join a union, they will not face any sanctions from the company, Propper cannot be said to be respecting workers’ right to freedom of association at the Suprema plant. In order to make such assurance meaningful, such steps must include remedial measures of concrete benefit to the workers who have been the

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<sup>88</sup> See, Labor Code, Art. 333.

victims of prior violations, including offers of reinstatement and monetary compensation.

### **3. Occupational Safety and Health**

Based on worker testimony, the WRC identified the following areas of concern at the Suprema facility with respect to occupational health and safety. Because Propper rejected the WRC's request to conduct a comprehensive health and safety inspection of the plant, we are not in a position to issue findings with the level of specificity that such an inspection would enable. For the same reason, there may be other health safety problems at the facility that are not noted here.

#### *a. Airborne Dust and Failure to Provide Adequate Ventilation*

Workers reported that, as a result of poor ventilation, the factory is very hot, and there is so much dust from textiles in the air that it is sometimes difficult to breathe. According to workers, the factory's ventilation system, which relies primarily on fans and extractors, has been improved over the past several years, but significant air quality issues remain.

One worker stated, "There are a lot of problems with dust from the fabric which fills your eyes, since some of the machines produce a lot. I suffer from itchy eyes. I leave work covered in fabric dust, because of the excess that the machines produce. There are no masks. Only some workers use them, if they are asked to use them." Another worker reported, "If you have a fan close to you, then your nose will be totally congested."

Dominican law requires that employers maintain adequate ventilation, by (a) providing workers with fresh, clean air at rates of thirty to fifty cubic meters per hour per worker, thereby ensuring complete air exchange six times per hour for physically inactive workers and twenty times per hour for physically active workers;<sup>89</sup> and (b) installing extraction systems at locations where dust or other particulates originate to prevent the circulation of such substances through the workplace.

#### *b. Failure to Provide Necessary Safety Equipment*

Workers reported that, following the publication by SweatFree Communities of the report which discussed conditions at the factory in April 2009, the facility improved its practices with regard to installation of safety equipment on machines in the plant: Needle guards were installed on some sewing machines where they previously had been missing or broken. In addition, workers reported an increased supply of PPE, such as safety glasses and masks.

Despite this progress, many of the workers interviewed reported that machines continue to lack guards and that they themselves, had experienced or witnessed injuries related to this problem, particular in the cutting, ironing, and pressing areas. Dominican law

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<sup>89</sup> See, Executive Order on Regulation of Industrial Safety and Hygiene, No. 807 (Dec. 30, 1966), Arts. 14, 117.

requires that employers install safety gear on machinery where necessary to eliminate preventable accidents.<sup>90</sup> Needle guards, which are widely regarded as basic and critical safety equipment in apparel factories, clearly qualify as gear which an employer is obligated by the law to install.

*c. Failure to Report Workplace Accidents*

Some workers interviewed by the WRC reported that they had suffered or witnessed injuries that they believed were not reported to the Dominican Administration for Workplace Hazards (*Administradora de Riesgos Laborales, Seguro Social*, or ARLSS) as required by Dominican law.<sup>91</sup> One worker stated:

“I have been punctured twice by a needle. They [the managers] didn’t report it. I went back to work right afterwards. They just wrapped it up and sent me back to work and didn’t mention anything about reporting it to the [ARLSS]. This was last January and the needle went right through my finger.”

Workers also suspected that other accidents, involving lacerations suffered by employees using cutting machinery, and burns to workers operating ironing equipment, also were not being reported. Judging from workers’ testimony, the incidence of alleged underreporting of accidents was higher prior to the factory’s installment of additional safety gear in mid-2009, but worker concerns on this subject remain.

Employers in the Dominican Republic have significant incentives to underreport workplace injuries. The amount that an employer is required to contribute per employee to the ARLSS is based on the employer’s past injury record.<sup>92</sup> Moreover, an employer’s obligation to provide medical care and paid leave to an injured employee is dependent on the injury in question being reported to ARLSS.<sup>93</sup>

In this case, the evidence gathered by the WRC is not sufficient to determine conclusively whether and to what extent the company is actually failing to report accidents, as some workers suspect. It is clear, however, that the company lacks a transparent process for informing workers of the steps the company is taking when injuries do occur and the rights they possess in this respect.

*d. Notification of Potential Workplace Hazards*

Workers at the Suprema factory work with fabrics that have been chemically treated to be

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<sup>90</sup> Article 95 and 96 establish that for all workplaces that require for their activities the use of machines, the employer should provide or create safety apparatus in order to eliminate all possible safety risks to prevent accidents.

<sup>91</sup> See, Law 87-01 (2001) (establishing the ARLSS within the Dominican public healthcare system, and requiring reporting of workplace accidents to the ARLSS within seventy-two hours of their occurrence).

<sup>92</sup> See, id. (mandating employer contributions based on past accident record).

<sup>93</sup> See, id. (requiring employer-paid medical treatment and injury leave if the ARLSS confirms that the injury is work-related).

waterproof, fireproof, and insect-repelling. As at Propper's facilities in Puerto Rico,<sup>94</sup> workers at Suprema who were interviewed by the WRC expressed concern that extensive exposure to these chemicals posed risks to employees' health, noting that some workers have had strong allergic reactions to the treated materials. The workers also reported that they have not received information from Propper management concerning these chemicals and any health hazards associated with them. Dominican law requires that employers notify workers of health risks relevant to their work tasks.<sup>95</sup>

#### **IV. RECOMMENDATIONS**

The WRC recommends that Propper International undertake the actions outlined below without delay. As discussed previously, where the WRC has reached a finding that violations of law and, therefore, the City's Code have occurred, we have classified these recommendations as "corrective." Such recommendations must be implemented in order for compliance with the Code to be achieved.

Where the WRC has not been able to reach a finding of legal violation, but where the conditions cited either raise significant concerns that one exists, or are in substantial conflict with industry standards of good practice, our recommendations are classified as "advisory." The WRC strongly recommends that these measures be taken in order to avoid the risk that existing violations will be permitted to persist or worsen, or that these conditions will, in fact, lead to actual violations in the future.

#### **A. Lajas and Adjuntas**

##### **1. Corrective Recommendations**

With respect to these facilities, Propper should:

##### *a. Medical Leave*

- Train all managers, supervisors, and production workers on compliance with the Family Medical Leave Act and Americans with Disabilities Act, focusing on workers' rights to medical leave in case of a serious health condition and reasonable accommodation when disabled.

##### *b. Sale of Work Tools*

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<sup>94</sup> See, *supra*, at 36.

<sup>95</sup> Article 137: "The employer should ensure that workers are well informed of the risks that are relevant to their job and the precautions they should take to avoid accidents and harm at work, especially newly hired workers and workers who are illiterate that it is important that these risks be explained and followed with vigilance."



- Discontinue the sale of work tools at the factory and ensure that workers are provided with all work tools necessary to perform their jobs.

*c. Wages and Hours*

- Provide each employee with a full one-hour lunch break, in accordance with the provisions established by Law 379, unless that employee gives informed and voluntary consent to receiving a shorter period, and receives some meaningful consideration from the company in return.
- Ensure that workers are paid for all hours, or portions thereof, in which they are required to be at the workplace – including all periods in which they are required to meet or wait to meet with managers before beginning work, or continue working after their shifts have ended and they have clocked out.
- Compensate workers for all periods of time during which they have been required to: (a) receive a shortened lunch period; (b) meet or wait to meet with managers; (c) continue working after their shifts have ended and they have clocked out; or (d) wait to clock-in before, or clock-out after, lunch periods.
- To the extent that the additional time for which employees should be compensated represents work beyond eight hours per day or work during the statutory one-hour lunch period, compensate employees at the premium rates mandated under Puerto Rican law.
- Pay workers a base wage equal to or exceeding the “procurement living wage” established by the City’s Code.

*d. Freedom of Association*

- Immediately reinstate Albert Torres to his former position and make him whole for any loss of earnings for the period in which he has been kept on furlough.
- Cease any practice of discrimination against union members with respect to the allocation of working hours, and make them whole for any resulting loss of earnings.
- Take additional measures to ensure that employees are made aware of the NLRB settlement notice. These measures should include: (1) re-posting the NLRB settlement notice in Spanish in all places where notices to employees are customarily posted; (2) mailing copies of the settlement notice to all employees; (3) convening employees during working time and having the company's plant managers read the

notice to them; and (4) publishing the notice in local newspapers of general circulation twice weekly for four weeks.<sup>96</sup>

## 2. Advisory Recommendations

With respect to these facilities, Propper should also:

### *a. Sexual Harassment*

- Train all managers, supervisors, and production workers on compliance with Title VII of the Civil Rights Act of 1964, with a focus on prohibitions on sexual discrimination, particularly in the form of workplace sexual harassment.
- Warn and discipline the manager at the Adjuntas plant who has been identified as having sexually harassed women workers.

### *b. Verbal Abuse*

- Establish a policy setting out guidelines for supervisory conduct that prohibits verbal abuse and harassment, and provide training to managers and supervisors on compliance with this policy.

### *c. Wages and Hours*

- Install a sufficient number of time-keeping machines such that workers can clock-in and clock-out without excessive wait times.

### *d. Transparency of Compensation*

- Revise the pay slips issued to employees to fully and clearly convey the basis for their compensation, including production targets and efficiency ratings, as well as daily working hours and hourly wage rates. Provide training to supervisors and workers regarding the company's pay system.
- Establish an accessible process whereby workers can clarify and contest the company's calculation of their compensation.

### *e. Piece Rates*

- Review the positions of all workers presently paid by piece rates to ensure that (a) all such workers have been provided with current and accurate information concerning their production quotas, (b) all such quotas are set at levels which are achievable by the average employee, working at ordinary speed, during the normal working day,

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<sup>96</sup> Such "special reading" remedies are appropriate where, as here, an employer has committed serious unfair labor practices that an ordinary NLRB notice is insufficient to remedy. *See, e.g., Fieldcrest Cannon v. NLRB, Inc.*, 97 F.3d 65, 73 (4th Cir. 1996).

and (c) all such workers are provided with fabric and other materials necessary to meet their quotas.

*f. Freedom of Association*

- Adopt additional remedial measures to address the continuing chilling effect of the company's prior unfair labor practices on employees' exercise of freedom of association. These measures should include: (1) supplying the union with names and addresses of its employees; (2) allowing the union access to post its own materials on company bulletin boards and in all places where notices to employees are customarily posted; (3) granting the union access to meet with employees in non-work areas of its factories during employees' non-work time; (4) giving the union notice and equal time to respond to any communication made by the company regarding the issue of union representation; and (5) affording the union the right to deliver a 30-minute speech to employees on working time.<sup>97</sup>

*g. Occupational Safety and Health*

- Cooperate with a credible, independent health and safety organization or expert to conduct a technical consultation and ongoing inspection program to ensure compliance with federal and Puerto Rican occupational health and safety standards. The first stage of such a program should be to identify and measure actual employee exposure to health and safety hazards. Attention should be focused on the areas of concern identified in this report. The second stage should be to design and implement effective controls to address these concerns, including, in order of priority: (1) engineering controls (such as installing guards on machines and improving ventilation); (2) administrative controls (such as training employees and rotating them among jobs, where necessary, to limit exposures); and (3) personal protective equipment (which should be provided as a complement to, rather than a substitute for, engineering or administrative controls).
- Establish functioning occupational health and safety committees comprised of workers and managers at each of the company's facilities which are charged with identifying and addressing workplace safety and health hazards on an ongoing basis, in coordination with the externally-managed program described above. Arrange for robust technical training of all committee members. Post minutes of all committee meetings in one or more visible places in each workplace.
- Cooperate with a credible, independent organization or expert to carry out a training program for all workers and supervisors concerning: applicable occupational health and safety standards; identification of risks; safe use of machinery, equipment, chemicals and solvent; effective use of personnel protective equipment and other

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<sup>97</sup> Such "special access" remedies are appropriate where, as here, an employer has committed serious unfair labor practices that ordinary NLRB remedies are insufficient to remedy. *See, e.g., Fieldcrest Cannon, Inc.*, 97 F.3d at 73.

safety gear; and all other matters deemed appropriate by the outside health and safety expert or organization.

## **B. Suprema**

### **1. Corrective Recommendations**

With respect to this facility, Propper should:

#### *a. Wages and Hours*

- Provide back pay to workers for labor performed “off-the-clock,” both with respect to work performed after the end of the normal work day, and work performed during lunches or other breaks.
- Commit to pay workers a base wage equal to or exceeding the “procurement living wage” standard required by the City’s Code, as estimated for the Dominican Republic by the WRC.

#### *b. Freedom of Association*

- Post a statement on company bulletin boards and in all places where notices to employees are customarily posted pledging to respect workers’ right to freedom of association. In particular, the company should promise that as required by Dominican law, it will *not* suspend, fire or otherwise retaliate, coerce, threaten or intimidate workers because of their participation in, or association with, a trade union, and *will* deal with trade union representatives and engage in collective bargaining with any union that represents more than fifty percent of non-confidential employees, as confirmed by a credible, transparent, independent procedure.

### **2. Advisory Recommendations**

With respect to this facility, Propper also should:

#### *a. Piece Rates and Production Quotas*

- Review the positions of all workers presently paid on piece rates to ensure that: (a) they have been provided with current and accurate information concerning their production quotas; (b) production quotas are set at a level that is achievable for the average employee, working at ordinary speed, during the normal working day; and (c) workers are provided with sufficient fabric and other materials to meet their quotas.

#### *b. Freedom of Association*

- Convene its employees during working time and have the company's plant managers read the statement described above; allow the union to post its own materials on

company bulletin boards and in all places where notices to employees are customarily posted; grant union representatives opportunities to meet with employees in non-work areas of its factories during employees' non-work time without company managers or supervisors being present; afford the union the right to deliver a 30-minute speech to employees on working time; and give the union notice and equal time to respond to any communication made by the company regarding the issue of union representation.<sup>98</sup>

*c. Occupational Safety and Health*

- Cooperate with a credible, independent organization or expert to conduct a technical consultation and ongoing inspection program to ensure compliance with Dominican occupational health and safety standards, carry out a health and safety training program for workers and supervisors, and establish a functioning occupational health and safety committee, along the same lines as the program recommended for the company's Puerto Rican facilities.

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<sup>98</sup> For an example of remedial measures by a US employer to restore freedom of association in its overseas operations, see, WRC, *Statement on Russell - CGT- Sitrajerzeesh Agreement* (Nov. 18, 2009), available at: [http://www.workersrights.org/linkedddocs/WRC\\_Statement\\_on\\_Russell-CGT-SitrajerzeeshAgreement.pdf](http://www.workersrights.org/linkedddocs/WRC_Statement_on_Russell-CGT-SitrajerzeeshAgreement.pdf).