



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT
re COMPLAINT AGAINST NEW ERA CAP CO., INC. (DERBY, NY, USA)**

REPORT AND RECOMMENDATIONS

OCTOBER 8, 2002

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INTRODUCTION

This Report chronicles the Worker Rights Consortium's (WRC's) further assessment of code of conduct compliance at the Derby, New York manufacturing plant of New Era Cap Company (hereafter "New Era" or "the Company"), a family-owned corporation producing caps bearing the logos of colleges and universities affiliated with the WRC. The WRC's follow-up visit to New Era leads it to conclude that remediation at Derby, since the release of the WRC's Preliminary Report on the Derby facility in August of 2001, has been extensive and sincerely motivated by the desire of New Era management to cooperate with workers, with the WRC and with the university licensors who engaged the Company in sustained and constructive dialog over the course of the last year.

While this Report confirms findings of past violations contained in the WRC's Preliminary Report, it also notes that there have been very substantial positive changes at New Era's Derby plant since the time of that Report, both in terms of concrete conditions relating to *freedom of association* and *health and safety* (the two code of conduct areas where the WRC had identified strong evidence of violations), and at the level of management's greatly improved attitude towards the monitoring process – beginning with New Era's March 2002 decision to begin to work with the WRC and respond meaningfully to the concerns expressed by licensor universities. The change in the Company's position has translated into tangible transformation in terms of workers' rights.

In terms of freedom of association, a lengthy and difficult strike has been brought to a conclusion through a new collective bargaining agreement, and the subsequent return to work has been marked by a congenial atmosphere of mutual respect. In its Preliminary Report, the WRC identified strong evidence that New Era management had not accepted its responsibility, under law and codes of conduct, to work in good faith with the union representing Derby workers. While the strike, in and of itself, was not evidence of code of conduct non-compliance, New Era's willingness to engage in the negotiations necessary to reach a new collective bargaining agreement and end the strike constitutes strong evidence of remediation in the area of freedom of association.

With respect to health and safety, new machines and better safety mechanisms on existing machines, along with significant policy-level changes, have substantially addressed the concerns identified in the WRC Preliminary Report. Moreover, in several

areas where some concerns remain, New Era has committed itself to undertaking the remedial steps necessary to resolve the issue fully.

The effective intervention of colleges and universities was crucial to this process, and the WRC encourages their ongoing commitment to improvement at New Era, through continued involvement with the Company and continued support for efforts to ensure code compliance at the Derby plant..

1. Initial Complaint and Preliminary Investigation

In May 2001, seven workers from the Derby plant of New Era Cap Company filed a complaint alleging serious violations of the WRC and university codes of conduct. During eight days of worker interviews and document gathering in Derby, in July 2001, the WRC's Assessment Team found substantial, credible evidence of non-compliance, as described in detail in the Preliminary Report¹ and summarized below.

Health and Safety

- Inadequate safeguards against contamination by blood-borne pathogens in the event of cuts and needle-puncture injuries.
- Abnormal frequency of needle punctures, compared to the national average for the hat and cap industry.
- Incidence of work-related musculo-skeletal disorders (MSDs) and repetitive motion injuries at rates well above the national average for the hat and cap industry.
- Failure to institute a program adequately addressing the ergonomic hazards contributing to such MSDs.
- Unfair practices restricting workers' access to benefits under workers' compensation.
- Inappropriate provision of health advice and medical diagnoses by New Era supervisors not trained as medical professionals.

Freedom of Association and Collective Bargaining

- Threatening and intimidating workers who were union officials or activists and firing and transferring union activists in retaliation for their exercise of associational rights.
- Retaliatory disinvestments from the Derby plant involving the relocation of production and production machinery to New Era plants in Demopolis, Alabama (a non-union facility) and Buffalo, New York (a facility with an independent union unaffiliated with any multi-employer/ multi-plant labor organization).

¹ Worker Rights Consortium, *Assessment: re New Era Cap Co., Inc. (Derby, NY, USA)* August 10, 2001, available at http://www.workersrights.org/new_era_1.pdf. See also the Primary Source Documents, available at http://www.workersrights.org/Primary_Source.asp, and the Legal Chronology, available at <http://www.workersrights.org/legal.pdf>

- Refusal to bargain in good faith, in violation of the National Labor Relations Act (NLRA) and applicable provisions in the collective bargaining agreement then in effect.
- Destruction of union literature and property.
- Temporary lockout of workers as an act of reprisal for workers' exercise of their associational rights.

Upon reaching these preliminary conclusions, the WRC issued its August 2001 Report, in order to inform University and College affiliates contracting with New Era of the existing evidence of code violations. The WRC decided to produce a Preliminary Report, rather than one containing definitive findings, because New Era had not been willing to meet with the Assessment Team or respond to the WRC's concerns. While the Assessment Team had obtained substantial Company information from other sources, the WRC chose to wait to announce definitive conclusions until management's direct input could be obtained. Thus, in addition to stating preliminary findings, the Report also outlined in detail, the WRC's standing requests for information from New Era and urged the Company to respond.

2. Background to the follow-up investigation

Timeline

The on-site portion of the follow-up investigation, took place from September 10 to 12, 2002. The timing was dictated in part by the fact that Derby workers had just returned to work following an eleven-month strike at the facility, and the WRC believed that it could not adequately gauge code compliance in the absence of most of the Company's permanent workforce. The concise history below lays out the important elements of the intervening months between the WRC's preliminary and follow-up assessments at Derby.

It must be noted that New Era was not initially willing to work with the WRC or to respond to concerns expressed by some university licensors, largely because, as a February 2002 letter from the President of New Era stated, they believed that code of conduct monitoring essentially replicated legislative mechanisms already regulating the practice of manufacturers in the United States.² However, the letter was accompanied by a response to the WRC's Preliminary Report: a promising indicator that the Company was willing to engage with the substance of the alleged violations.³

² "American manufacturers are legislatively required to comply with a host of provisions which are virtually identical to the C[ollegiate] L[icensing] C[ompany] code of conduct provisions;" Letter from Christopher Koch, President of New Era Cap Company, to university licensors, February 14, 2002. Copy on file with the WRC

³ New Era Cap Company, *Response to WRC Report*, February 14, 2002, available at http://www.workersrights.org/New_Era_response_to_WRCreport.pdf

In its response to the Company's document,⁴ the WRC explained the principles underlying the code of conduct monitoring process as they applied to manufacturers in the United States, noting the significant limitations of agencies such as the National Labor Relations Board (NLRB) and the Occupational Safety and Health Administration (OSHA), particularly in terms of speed.

Apparently convinced by the dialog with the WRC and with university licensors, the President of New Era initiated a process of open communication and cooperation with the WRC in April 2002, through a letter offering unrestricted access to the facility and such interviews with management as the WRC required.⁵ The letter was accompanied by a compilation of several hundred pages of documentation, addressing the specific allegations and questions raised by the WRC in the Preliminary Report.⁶ It is the WRC's belief that, while the memorandum raises relevant methodological questions, particularly with respect to concerns raised in the Health and Safety section of the Preliminary Report, it does not contradict the Assessment Team's basic conclusions regarding cuts, punctures and MSDs. However, the data contributed significantly to a better understanding of the policies underlying New Era's approach to ergonomics, and of the ergonomic program that the Company began to implement in 1999/2000. The methodology of the WRC's follow up assessment has been informed by this contribution, and the organization is grateful to New Era.

Soon after the WRC received the communication from New Era, the strike ended with the negotiation and signing of a four-year collective bargaining agreement. The WRC scheduled its follow-up visit for a time when, it believed, the facility would have settled into a stable routine following the return to work.

The Team for the follow up assessment was substantially smaller than the Initial Assessment Team, as was appropriate given the changed circumstances at New Era. It included a Professor of Law from Columbia University, an occupational health expert from SUNY and two staff members of the WRC, as listed in the Appendix to this Report.

Parameters of this Report

On July 2, 2002 the WRC received a letter from the International CWA, pointing out that the Union and the Company had resolved the differences between them that had led to the strike, and expressing the conviction that the Derby facility was now in compliance with the applicable codes of conduct. Thus, the International CWA withdrew the worker complaint, and requested that the WRC discontinue its investigation.⁷ (The International

⁴ Worker Rights Consortium, *Re: New Era document, dated February 14*, February 21, 2002, available at <http://www.workersrights.org/New%20Era%20analysis.pdf>

⁵ Letter from Christopher Koch, President of New Era Cap Company, to the WRC, April 16, 2002. Copy on file with the WRC

⁶ New Era Cap Company, *Memorandum re: New Era Cap's efforts to maintain the ability to manufacture caps 'made in America,'* April 16, 2002. Copy on file with the WRC

⁷ Letter from Morton Bahr, President of the International CWA, to the WRC, July 2, 2002. Copy on file with the WRC

CWA had committed to taking these steps as part of its obligations under the post-strike Return to Work Agreement with the Company.⁸⁾

However, the WRC has an obligation to continue an investigation once begun, and the WRC's duty to assess compliance with the code of conduct is non-delegable: as an independent monitoring body, we cannot entrust either management or unions with the task of evaluating labor standards in a given facility. Notwithstanding the WRC's belief in the good faith of all parties concerned in this *particular* case, its process demands that a complaint initially found to be legitimate be pursued thoroughly—even if that complaint is later withdrawn by workers—simply in order to avoid possible abuse of the monitoring process. Were that not the WRC's policy, the investigative mechanism could otherwise be transformed into a “bargaining chip” by unions, threatening companies with a WRC assessment only to drop the complaint once their demands are acceded to, or by companies, negotiating with or intimidating workers in order to get a complaint withdrawn.

At the same time, the WRC fully respects the integrity of collective bargaining agreements between ethical companies and unions. Our monitoring process is not designed as a means of altering or distorting, *post facto*, the terms of a contract arrived at through fair negotiation with the full representation of workers.

The Report is restricted in scope to the evaluation of the current status of code of conduct compliance at the Derby facility, and does not consider many of the questions raised in Appendix II of the Preliminary Report.⁹ While many of those questions reflected code of conduct concerns, the WRC has deferred consideration of a number of them. This is not because they have been resolved to its satisfaction, but rather because many of the underlying *issues* have been resolved, and others are best addressed through the mechanisms contained within the collective bargaining agreement currently in effect. In the latter case, we will reassess compliance.

The WRC's investigative process in the context of the contractual prohibition of “corporate campaigns” at New Era, Derby

The Assessment Team for the follow-up investigation conducted a health and safety inspection of the factory, conducted interviews of workers (some of whom were contacted through the Union, while others were recommended by the Company), interviewed management at multiple levels of authority, and gathered and reviewed a wide range of documents.

However, on the level of worker interviews, it must be noted that the WRC investigation was initially rendered problematic by a clause in the contract between the Union and the Company, binding the Union and all workers at the Derby facility to an agreement not to engage in any “corporate campaign” against the factory. The language of the clause,

⁸ Return to Work Agreement, June 3, 2002, Clause 4C

⁹ *Preliminary Report*, pp.24-9

contained within a provision governing Strikes and Lockouts, defined “corporate campaigns” so broadly that all workers are barred from engaging in

“any written or verbal communication transferred by any means to the general public, Fair Labor Association, Worker Rights Consortium, United Students Against Sweatshops or any third party which licenses New Era Cap Products, or affiliates of such third party.” (Article XVII, 17.01)

It is important to note here that the issue was resolved very amicably, to the mutual satisfaction of the monitoring groups named in the clause as well as of the Company (as pointed out below) through the Company’s provision of language appropriately distinguishing “corporate campaigns” from the monitoring process. The narrative below is only relevant, therefore, only insofar as it serves as a general comment about the need for *all* companies and *all* unions to ensure that contract provisions that seek to limit the economic harm caused by strikes and corporate campaigns, do not infringe on the monitoring at their facilities.

During the on-site visit, the WRC explained to the Company, under the clause as it stood, the WRC could not fulfill its duty to universities to issue a comprehensive and credible report of remediation. This was, in part, because the WRC felt it could not justify placing workers at risk of the “disciplinary action, up to and including termination” to which any “violation” of the clause exposed them, but also because the credibility of any interviews with workers taking place in the shadow of this clause would inevitably be tainted, given workers’ fear of retaliation. New Era accepted this, and provided a letter that would cover the period of the on-site investigation, with the future implications of the clause to be discussed later.¹⁰

The WRC’s broader concern was that, in the event that the WRC and its affiliate universities failed to interrogate this clause, similar language could proliferate within employment contracts between unions and companies far less scrupulous than those at New Era, to the detriment of workers at large. Ultimately, such clauses would destroy the integrity of the monitoring process, not only of the WRC, but of all bodies seeking to enforce codes of conduct.

Both the WRC and the Fair Labor Association (FLA) expressed concerns to New Era regarding the long-term negative consequences of the clause, and the FLA independently sought and received a letter of clarification. In response to the WRC’s representations, the Company ultimately sent the WRC a letter making a commitment to approach the Union to seek the negotiation and execution of an agreement that would clarify the issue:

“New Era has informed the WRC that it will seek to negotiate a written agreement with the Communications Workers of America (Local 14177) and the CWA International Union to confirm the fact that Derby employees may communicate with the WRC, FLA, licensor universities or their representatives, in conjunction with their monitoring processes and that no Derby employee will be disciplined or

¹⁰ footnote referencing the letter

punished for such communication. This will be the case whether the communication is initiated by the employee or by one of the organizations. The WRC understands that the confirmation will require the consent of the CWA, which New Era is presently seeking. This confirmation concerns only those elements of Article 17 of the current collective bargaining agreement that pertain to communications between Derby employees and the above-mentioned organizations. This confirmation in no way concerns any other element of Article 17.”¹¹

While Article 17 will continue to limit communications between Derby workers and United Students Against Sweatshops (USAS), the WRC had no basis for opposing this provision, since USAS is not one of the organizations designated by university-licensors to undertake code of conduct monitoring.

The WRC is very pleased that both New Era and the Union are committed to the monitoring process and to ensuring that workers’ communication with monitoring organizations is not chilled. Such recommendations as the WRC makes in this regard are, therefore, addressed to other licensees: given that clauses such as this one can have the unintended effect of discouraging workers from raising genuine concerns with monitoring bodies, or speaking to them candidly in interviews, the WRC urges licensees, and unions as well, to refrain from including such language in contracts.

3. Findings and Recommendations

Freedom of Association and Collective Bargaining

Initial Findings. The WRC did not receive any testimonial or documentary evidence that would cause it to reevaluate the findings about New Era’s past practices of impeding workers’ rights of free association recounted in the WRC Preliminary Report of August 2002.¹² The bulk of the evidence in support of these conclusions was, and remains, the findings of the United States National Labor Relations Board and its regional officials, the disposition of NLRB complaints against New Era that did not reach the trial stage, and the findings of neutral arbitrators engaged to resolve disputes between the Company and the Union.

However, with respect to one of the central points of contention—the Company’s relocation of actual production and production machinery from the Derby plant to the plant in Demopolis, Alabama following the Union’s decision to affiliate with the CWA—the WRC cannot reach a firm conclusion. The WRC cannot discount the possibility that the motivating force was anti-union animus. While the Company asserts that the decision was the result of an objective cost-benefit calculation based on the Derby facility’s relative unproductivity and high rates of absenteeism, it has not offered sufficient data to

¹¹ Letter from Timothy Freer, Director of Human Resources, to the WRC, October 17, 2002. Copy on file with the WRC

¹² *Preliminary Report*, pp.15-20

support this claim. Under U.S. law, the burden is on the employer to prove that anti-union animus was not a factor. However, given the complicated nature of the evidence on this issue and absence of definitive proof, the WRC has determined that the findings are inconclusive. Thus, the WRC's conclusion that New Era violated workers' associational rights at the Derby facility is rooted in evidence other than the Company's disinvestment and relocation of production.

Current Status. The WRC found that all code of conduct violations in the area of freedom of association, detailed in the Preliminary Report, have effectively been remediated.

The collective bargaining agreement between New Era and the Union, signed on July 8 of this year, constitutes prima facie evidence of the Company's willingness to work with the legally recognized Union and to bargain in good faith. Furthermore, testimony from all parties indicates a substantially improved relationship between the parties, and a spirit of cooperation and mutual respect that underlies attempts to resolve both new and residual problems.

Recommendations. New Era should continue to fulfill its obligations in terms of freedom of association, as defined by college and university codes of conduct and under fundamental principles of law.

In view of past concerns, the Company should take strong precautions to notify all managers and supervisors of their responsibilities in this regard, and to insist that they abide by Company policy. The Company should further ensure that negative attitudes or views toward unions in general or the Derby union in particular play no role in decisions made by the Company concerning the distribution of production among plants or the level of employment at the Derby plant.

Health and Safety

Overall, the WRC visit to the Derby facility confirmed that the Company has made substantial improvements in health and safety conditions, at the level of both policy and practice.

A significantly higher degree of worker involvement in addressing health and safety concerns is particularly noteworthy, especially since it is derived in part from the new collective bargaining agreement, testifying to the openness and fairness of that process. Worker empowerment is also evidenced, in concrete terms, by the presence of workers on the Health and Environment Committee. The management's high level of responsiveness to workers' articulation of concerns and suggestions is also commendable. These positive circumstances were attested to by all relevant parties.

Contamination by Blood-borne Pathogens

Initial Findings. The conclusions stated in the Preliminary Report, with respect to the inadequacy of the Company's response to blood contamination episodes, and the paucity of protections for workers, remain uncontradicted by any subsequently received documentary or testimonial evidence. In fact, the WRC's findings were corroborated and elaborated by OSHA, during its investigation in the summer of 2001.

Current Status. The problem has been fully remediated. Not only has the Company developed a policy covering future exposure to blood-borne pathogens, but it has also identified all employees who were potentially exposed during previous contamination episodes and handled their cases properly.

The current policy, very appropriately, emphasizes the training of New Era employees. Specific workers have been trained and assigned for blood contamination clean-up tasks, and all employees have received awareness training for blood-borne disease. In addition to the policy's informational component, it also offers a vaccination program for those employees particularly at risk of exposure to blood-borne disease. Workers in the embroidery department were one of the groups that the WRC expressed particular concern about, and the problem has been addressed through the provision of needle disposal containers at each machine.

Recommendations. Current procedures at New Era are adequate, and reflect the Company's strong commitment to employee health and safety on this front.

Ergonomic Program

Initial Findings. Testimony from the Company received during the recent investigation confirmed the WRC's initial assessment that efforts to identify and correct ergonomic risk factors in production operations at Derby were largely absent until approximately 1999/2000. However, the Company had been on notice since at least 1990, when an OSHA investigation cited serious ergonomic problems.

The ergonomic program implemented by the Company in 1999/2000 focused primarily on postural and behavior-based methodologies to encourage neutral postures during work activities and non-work activities. In addition, New Era made significant changes to work station design, such as table height adjustments, padded table edges, and platforms to raise work storage boxes. However, the behavior-based program addresses only one element of the ergonomic picture and the workstation adjustments were done for only a portion of the workforce.

Current Status. Over the last 12 to 18 months, activities related to ergonomic safety have increased substantially at New Era and the overall level of protection in the plant is much improved from the time of the initial WRC assessment.

The Company has recently devoted extensive mechanic time (four hours per day) solely to the ergonomic concerns of production workers. Worker testimony indicates that upper management now responds with alacrity to correct ergonomic problems identified by workers and intervenes with mechanics where necessary. There is significant worker representation on the Health and Environment Committee, a body that, on the basis of 20 hours of extensive training, investigates possible ergonomic problems on the production floor and recommends changes to be carried out by mechanics. Most workers have benefited from adjustments to their workstations and significant enhancements have been made to the machinery in a number of production departments. The attention to machine adjustments and accommodations for individual workers are particularly important for those workers returning from injuries. During the 1990s, there was little attention to the special needs of such workers, resulting in the aggravation of healing injuries, but management is now taking significant steps to prevent recurrence.

The recent investigation indicates, however, that there are a few significant problems with the ergonomics program, primarily related to its limited scope. While testimony from both workers and the Company indicate that New Era has made extensive good-faith efforts to reduce ergonomic hazards on the production floor—for example, three particular high-impact operations have been completely redesigned—there has, as yet, been no comprehensive, department-by-department ergonomic hazard assessment.

The current ergonomics training program was developed by a consultant hired by the Company, through a grant from New York State in 1999. The interventions promoted by the consultant have focused primarily on behavior modification, and while this is one important element of an ergonomics program, New Era's approach will not be fully effective unless more attention is devoted to addressing the production process itself.

It should be reiterated that the consultant's contributions to improving the conditions of work of New Era employees have been valuable: the program included extensive ergonomics trainings with individual workers, beginning in the first year of the grant, and entailed analyzing posture and urging workers to keep the body in a neutral position. At the same time, however, the consultant asserted that he never considered recommending measures such as reduction in repetitive motions in any of the production departments—even though excessive repetitive motion is the most important risk factor for MSD injury. The consultant noted that an investigation into the potential hazards of repetition was part of the work of ergonomic hazard assessment, not of ergonomic training, and was therefore outside his purview.

The WRC is also concerned that the Company's ergonomic consultant was unfamiliar, as of the time of the investigation, with past OSHA findings—including the 1989 Voluntary Safety and Health Management Guidelines, which outline essential elements of workplace safety and health programs, such as employee involvement and the need for written policies—and even of the report produced by the Company's own consultant with respect to ergonomics planning, after the Company had received notice of violations concerning ergonomic hazards from OSHA in 1990.

Further ergonomic concerns:

Under the Return to Work Agreement of June 3, 2002, the Union and the Company established that new piece rates at the Derby facility would be set through an engineered time-motion study, developed by H. B. Maynard and Company (Clause 7B). The standards were implemented in July 2002.

During a series of worker interviews, the WRC apprehended that ergonomic considerations were not taken into account during the study, placing workers in certain operations at elevated risk of injury. A conversation with H. B. Maynard and Company confirmed that they do not consider ergonomics in their studies, under the assumption that the process has been perfected in this respect before the study, which involved measuring how long an average worker takes to complete a given task in every operation at the factory. However, as New Era's ergonomics consultant confirmed, the operations were actually not refined prior to the Maynard study. The consultant noted that he had participated in the ergonomic training of workers before the study took place but, since his work did not involve any ergonomic hazard assessment of the production process per se, the WRC continues to be concerned.

The representative of Maynard overseeing the study explained that, while ergonomics was not taken into account, metabolic processes such as human fatigue were. However, the health and safety expert on the investigative team found that fatigue may not, in fact, have been given adequate weight by the time study engineers. Garment work, which typically involves high repetitions of very short cycles, requires critical levels of concentration and discipline, and thus the allowance for fatigue tends to be pegged much higher than it is for most other manual work.

During the recent investigation, workers in several departments complained of health problems that they attributed to the sheer impact of having to produce under the new rate structure. The symptoms they described included backache and numbness in the hands. A worker in the operation known as Covers complained that her hands were numb every morning when she woke up, and stated categorically that she had never experienced this problem before the implementation of the new standards. Worker testimony indicates that most, if not all, of the workers in this operation have pain or numbness in their hands.

In the operation known as Blocking, while workers uniformly asserted that the new machines that had been installed were ergonomically superior to the equipment they had used before, and resulted in far less stress on the hands, the positive effect was being counteracted by what workers believe to be a substantially increased rate of production (the Company states that, because the Blocking machines are new, the production rates under the old and new process cannot be meaningfully compared). The Company, in response to our inquiries, stated that the new standards are an economic issue, rather than an ergonomic one, pointing out that workers who believe themselves to be at risk of injury could simply slow down and resign themselves to earning less. However, the distinction between economic concerns (which were resolved through the collective

bargaining agreement and are not among the issues confronting the WRC as possible code of conduct violations) and health and safety concerns (legitimately our purview) is hard to sustain. As one worker in the blocking department explained, given that the combination of the new base rate and the new standards meant that his wage had dropped from the pre-strike figure of \$12 to \$7, if he was working at his original pace, then naturally he would push himself much harder to make up lost wages.

The new rates are supposed to be such that an “average skilled worker at an average pace” should be able to achieve them, and in fact, most should be able to manage 130% of the standard. However, in the Blocking Department, among others, workers such as the one to whom the WRC investigative team spoke have not been able to achieve the basic standard, in spite of having been at work for over two months, and in spite of possessing expertise in this process dating back a decade or more.

The worker in Blocking noted that, while members of the Company’s health and safety team were genuinely interested in addressing the problem, they explained that they could not touch the issue of the ergonomic impact of increased repetitions resulting from the change in standards, telling employees that rates and wages were a “company matter.”

The investigative team also observed problems in the operation of Complete Taping, a department where the higher standards have *not* been accompanied by ergonomic improvements to the production process. A worker we spoke to on the recommendation of the Company, in order to receive worker perspectives unaffected by possible anti-management bias, described the new standards in Complete Taping as “unbelievable.” The worker ascribed the problem to the Maynard engineers not having taken enough human factors into account when undertaking the measurements. Ultimately, however, the worker noted that the problems were rooted in the piece-rate system, and expressed gratitude for being in a salaried position, as a worker in what is known as the A-Team, a department producing specialty caps on a more individualized basis. “Being a salaried person reduces injuries,” the worker explained, and pointed out that in the A-team, there are no injuries at all.¹³

The Company has asserted that there is a grievance procedure in place to address problems with the standards. However, the grievance process, as described in the contract (Appendix A, Section I, *Grievance Procedure (Job Standards Only)*), can only be brought to bear if workers are dissatisfied with Company-imposed *changes* to the initial (i.e. current) standard; it cannot serve as the means for workers to attest to flaws in the initial standards themselves. The Company agrees that this is the correct interpretation of the contract.

The Company notes further that the same standards are in place at the New Era facility in Buffalo, and have not resulted in problems: that is to say, workers at the Buffalo facility are able to achieve the standards, and to do so without injury. The Company assures us

¹³ While the worker is not cited by name, the WRC recognizes that the direct quotation renders the individual identifiable to some degree. It should be noted that the worker in question gave specific permission for this.

that, in a matter of some months, existing problems at the Derby facility will have been resolved. The WRC, short of an assessment of the Buffalo plant, can neither credit nor question this assertion.

Given these concerns, New Era agreed to draft a letter outlining an acceptable strategy for resolving this matter. The relevant portions are reproduced below:

“The Company, with the aid of its occupational health team, the members of the Health and Environment Committee, a certified professional ergonomist and such other qualified experts in the field as it deems necessary, will periodically review possible ergonomic hazards in its production operation inclusive of the operations where the WRC has raised concerns, beginning this fall. Based on this review, the Company will determine whether changes are called for, at the level of equipment, rates, or other substantive practice, and will seek to implement any changes it deems necessary. Upon completion of any such reviews the Company will share its findings with the Worker Rights Consortium. The WRC will, in turn, give due deference to the conclusions arrived at by the Company, particularly in light of the presence of workers on the Health and Environment Committee, which included union representatives, and the highly improved levels of trust and communication between workers and management at New Era.”¹⁴

The WRC appreciates the Company’s willingness to provide this written assurance, and looks forward to receiving an update on this matter when the Company’s internal assessment is complete.

Recommendations: The WRC limits its recommendations in this areas, since it is convinced that the Company is committed to seeing ergonomic problems resolved, given that the negative impact is not limited to physical injury, but also threatens to erode the hard-won trust that has been built up between the Company and the workers during the months following the strike. According to one of the workers the WRC spoke to on the recommendation of management—and thus, a worker devoid of obvious bias against the Company—“Many people think they’ve set the numbers so high because they want people to leave, and shut the plant.”

However, the WRC is reassured by the degree of worker involvement in the Health and Environment Committee at the plant, and is pleased that the Company has agreed to engage the services of a Certified Professional Ergonomist to perform a comprehensive ergonomics hazard assessment. In the longer term, it is recommended that New Era develop and establish a more comprehensive ergonomics program at Derby, based on the guidelines laid out in the NIOSH document entitled *Elements of Ergonomics Programs*.

The Company has frequently asserted that the workers in its Alabama and Buffalo facilities experience far fewer injuries than do workers at Derby. The WRC agrees that the difference in injury rates at the three New Era facilities warrants further investigation,

¹⁴ Letter from Timothy Freer, Director of Human Resources, to the WRC, October 10, 2002. Copy on file with the WRC

and believes that understanding the underlying causes of such disparity could provide important information in the prevention of MSDs, in terms of the Derby facility certainly but also, more generally, in the garment industry in the United States. The WRC therefore recommends that New Era engage in an assessment of factors that may produce variations in injury rates among its facilities, and suggests that the NIOSH Health Hazard Evaluation (HHE) program be requested for assistance in this matter, to provide a systematic framework for this assessment. (Note: The HHE program is a high-quality, experienced research program provided at no cost to the employer).

Workers' Compensation

Initial Findings. Because of the constraints of confidentiality, there is insufficient data for the investigative team to arrive at firm conclusions about allegations of unfair practices, noted in the Preliminary Report, concerning access to benefits under workers' compensation. However, evidence does demonstrate that the Company's policies with respect to claims were inadvertently resulting in a failure to file in some cases where filing was warranted.

Current Status. Documents provided to the WRC in April indicated that some "medical only" cases were not being reported to the New York State Workers' Compensation Board via the filing of C-2 forms. ("medical only" refers to any work-related health issue where the employee received medical treatment for the problem but did not have to take any time off work. Confusion sometimes results from the fact that some cases involving less than three doctor's visits are defined by the Workers' Compensation Board as "first aid" and do not require C-2 filing).

The Company defended its past practice, however, asserting that its internal policy dictates that if any medical expenses were ever paid out for a case the Company considers itself obligated to cover future expenses resulting from recurrences of the injury, without contesting the claim, regardless of whether a C-2 was filed. This policy covers even those employees who have, in the interim, left New Era to seek other employment.

The WRC expressed some concerns that this "good faith" guarantee, while highly commendable, was not strong enough to protect workers' interests in the event of a change in management or internal management policy at New Era, and recommended that the Company ensure that C-2 forms were filed for all cases beyond the provision of "first aid." In response, New Era explained that it had, in fact, independently decided to develop its practice still further, such that a worker who seeks even a single medical treatment as a result of work-related injury, will have C-2 forms filed. This practice will take the Company well beyond the requirements imposed on them by law or, for that matter, the recommendations of the WRC, and to the forefront of employer practice in this realm.

Recommendations. New Era's current decision-making criteria regarding the filing of C-2 forms render it in compliance with the regulations of the New York State Workers'

Compensation Board, and go beyond it in important ways, such that C-2 forms are filed for all cases beyond self-administered first aid.

The WRC limits its recommendations to suggesting that all New Era employees receive training on the importance of filing for workers' compensation when injured, with an emphasis on their rights as provided for by New York State. This training should be conducted by a representative of the New York State Workers' Compensation Board.

Injury Rates

In the WRC's Preliminary Report, it identified rates of injury at the Derby plant—for MSDs as well as for cuts, punctures and lacerations—that were abnormally high, many times the national averages for the hat and cap industry. The MSD rates cited in the Report were calculated by OSHA, based on data provided by New Era management; the WRC's calculation of injury rates for cut, puncture and laceration wounds, also relied on the Company's own reported data. The findings were strongly corroborated by a detailed survey of Derby workers, based on a standard NIOSH survey instrument, and conducted by the Assessment Team's industrial hygienist.

In its April 16, 2002 submission to the WRC, New Era management suggested that the injury rates reported by the WRC were too high, arguing that the WRC had miscalculated injuries per worker by using the inappropriate denominator. That is, the Company contended that the OSHA data for the number for workers at Derby and the number of hours worked underrepresented both categories.

The WRC reviewed New Era's argument in detail in April and, at the Company's request, did so again in September; we concluded that the figures for workers and hours of work used by the WRC are more appropriate than those suggested by New Era. The data for workforce and hours of work provided by New Era are substantially larger than those obtained from OSHA because New Era, unlike OSHA, included management and administrative employees. For purposes of record keeping, it is correct to use the New Era figures. For the purpose of calculating injury rates at the Derby plant, however, the use of the larger number when comparing injury rates to industry averages is inapt.

The reasoning is as follows: Derby is not just a production facility, but serves as the Company's headquarters. Thus, most of New Era's non-production employees—managers and administrators—are located at Derby. The 200-plus non-production employees—representing over a third of the total workforce during the years these injury calculations were made—have a far lower likelihood of injury than those on the production floor, and thus their inclusion in injury data generates a lower figure for injury rates. Comparing this figure to industry data where non-production employees represent a far smaller percentage of workers could serve only to misrepresent Derby's actual performance relative to industry averages.

With respect to the WRC's own calculations, it should be acknowledged that a modest adjustment could reasonably be made to reflect the exclusion of all non-production

employees from the OSHA data used in initial determinations, producing injury rate figures slightly lower than those originally reported by the WRC. However, even with this change, the resulting figures are still far above industry averages. Indeed, even if we were to set aside the WRC's calculations *entirely* and use New Era management's numbers instead, the conclusions and recommendations expressed in the Preliminary Report would remain fundamentally the same, since the management's numbers are themselves many times the industry averages. For example, for 1999, the WRC reported an MSD injury rate at New Era of 8.4 injuries per 100 workers. New Era's April submission argues that the correct rate is 7.9 injuries per 100 workers. The industry average for that year, as cited in the WRC August Report, was 2.16 injuries per 100 workers.

The WRC wishes to stress, as it has throughout this Report, that the Company's *current* policies and practices with respect to injury prevention, and their effect on workers now and in the future, are of more importance in assessing code compliance than past practices and experience. As discussed in detail below, improvements in the Company's policies and practices, and an increased role for workers and the union in addressing health and safety issues, should result in substantially lower rates of injury in the future.

a) Needle Punctures

Initial Findings. The WRC's analysis of needle puncture data indicated that workers in the embroidery department were particularly prone to such injuries. The Preliminary Report pointed to inadequate protection against inadvertent start-up of the embroidery machines as a probable common cause of injury in this particular operation. In its follow-up investigation, the WRC did not find evidence to contradict the finding that needle punctures were a major problem at the time of the August 2001 Report.

Current Status.

There has been substantial remediation of this problem at the Derby facility, and a key additional step that is currently in the process of being implemented will complete the remediation process.

Corrective actions initially taken by New Era in order to prevent accidental punctures in the embroidery department included employee re-training and the installation of a "lockout key" on each machine: employees were expected to use this locking mechanism to prevent accidental start-up of the machine while reaching around or under the needles to deal with thread changes or thread breaks. However, the WRC's walk-through investigation in April 2002 found employee compliance with the new "lockout key" policy to be inconsistent. The WRC attributed this to combined effect of production pressures under New Era's piece-rate pay system and the distance workers had to walk to get to the locking mechanisms – thus, workers who followed the policy conscientiously would produce somewhat less and receive less pay.

However, New Era plans upgrades to each embroidery machine; this will involve the addition of start/stop buttons located every third embroidery machine head (a few feet

apart). Thus, each embroidery machine operator should have the mechanism within easy reach, eliminating the economic disincentive to shutting down the machine, and thus ensuring a higher level of safety compliance and, as a result, a lower level of injury risk. On the level of training, New Era has circulated needle puncture prevention guidelines plant-wide, and provided a comprehensive safety checklist in the “refresher” materials for workers returning after the strike.

Recommendations. Routine data analysis (such as the “fault tree” analysis used by occupational health experts) should be implemented within Company record keeping policy, in order to determine trends and possible causes of injuries and illnesses. *All* needle punctures and cuts (and not just those considered recordable by OSHA) should be tracked, in order to monitor the effectiveness of prevention programs.

b) Musculo-Skeletal Disorders

Initial Findings. The Investigative Team’s examination of data, worker interviews and Company documents provided no information that would lead the WRC to question the initial findings, as drawn from OSHA logs, management records and a survey of workers, that, historically and at the time of the August 2001 Report, New Era has failed to protect workers adequately from injuries related to repetitive-stress and other musculo-skeletal disorders (MSDs). The information supplied by New Era to the WRC beginning in April 2002 confirmed the WRC’s preliminary conclusion that the Company had begun to implement some ergonomic safety programs in 1999/2000. However, the information also confirmed the WRC’s conclusion that, at the time of the August 2001 Report, these programs were inadequate and inconsistently applied.

Current Status. Very substantial progress has been made in the Company’s ergonomic programs since the WRC’s Preliminary Report, which should contribute to a reduction in MSD injuries, as detailed in the specific analysis of the ergonomics program below. Reporting of work-related injuries and illnesses has also improved, in part since the newly-revised OSHA record keeping procedures call for more precise methodology. OSHA has provided training on these procedures to the responsible persons at all New Era facilities, and testimony from the Derby plant suggests that the Company is making good faith efforts to record all cases of MSD injuries.

Recommendations. New Era should ensure that its injury records include *all* cases of MSDs, with particular sensitivity to new cases, aggravated recurrent cases and early symptoms. Periodic analysis of this data (department by department, for example) should be undertaken, to establish trends that could be used to target areas for re-evaluation.

Surveillance for MSDs should be expanded beyond the current passive method, which is limited to instances of employees coming forward with complaints of injuries, to include more active interventions such as periodic symptom surveys and/or medical examinations focused on MSD detection.

New Era should provide *all* injury data to the WRC and the FLA at the end of 2002, so that both organizations can evaluate the degree of progress in this area.

Inappropriate medical advice and diagnoses

Initial Findings: The WRC's initial Assessment Team had received credible testimony that New Era management, and in particular members of the health and safety team, had provided workers complaining of pain or injury with uninformed advice rather than referring them to a medical professional.

During the recent investigation, testimony from New Era management confirmed that such incidents had taken place, and the ergonomics consultant also confirmed having provided medical opinions in spite of possessing no medical training, in a well-intentioned though misguided attempt to supplement the ergonomic training of workers.

Current Status: This problem has been fully remediated; the Company explained that all supervisors had been advised of the importance of ensuring that workers do not receive advice that either conflicts with that of their physician, or dissuades them from seeking medical treatment, resulting in health complications. New Era guarantees that no staff member will provide medical advice, unless he or she is a physician, a physician's assistant or a nurse practitioner.

Recommendations:

Since this problem has been fully remediated, the WRC has no further recommendations in this regard.

CONCLUSION

As this Report demonstrates, remediation at New Era has been extensive and genuine. The follow up assessment took place in an atmosphere of cooperation, and the WRC found that the Company was eager to resolve the concerns expressed. The WRC secured the Company's commitment to follow through on the majority of recommendations that materially affect compliance with the code of conduct. In other cases, where the WRC addressed areas where it believed that the Company could improve, but was not obligated to do so by the code, the suggestions are framed in the language of aspiration.

4. Appendix

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