



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re PRIMO S.A. de C.V. (EL SALVADOR)**

**PRELIMINARY FINDINGS AND RECOMMENDATIONS  
MARCH 19, 2003**

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## **PRELIMINARY REPORT**

### **Introduction**

This is a Preliminary Report of an Assessment of labor practices at Primo S.A. de C.V. (“Primo”)<sup>1</sup> an American-owned apparel factory in El Salvador that currently employs 5,000 workers, most of whom are young women.

Primo produces goods that bear the logos of numerous Universities affiliated with the Worker Rights Consortium, under licensing agreements between these Universities and Lands’ End, a well-known catalog retailer recently purchased by Sears. Primo is located in the San Bartolo free trade zone in San Salvador, one of a number of export processing zones administered by the Salvadoran government.

The Worker Rights Consortium initiated this Assessment in response to allegations, which, if true, would constitute serious violations of Codes of Conduct of the WRC and its affiliated schools, including those Code provisions requiring compliance with Salvadoran and International Labor Law. These allegations were contained in a complaint to the WRC from a Salvadoran non-governmental organization, Centro de Estudios y Apoyo Laboral (Center for Research and Advocacy on Labor; hereafter CEAL). In light of evidence obtained during the Assessment, additional allegations were added.

A six-person WRC Assessment Team conducted on-site gathering of evidence in El Salvador from October 26-29 and from November 15-18, 2002. In addition, members of the WRC staff, in support of the Assessment Team, have conducted extensive fact finding in El Salvador since late October.

The Assessment Team members included: the Executive Director and lead attorney of one of El Salvador’s leading human rights organizations, an attorney who is a former investigator for the Salvadoran Ministry of Labor, a leading Salvadoran

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<sup>1</sup> Primo appears in factory disclosure data supplied by licensees as “Perry Manufacturing,” the U.S. concern that is Primo’s parent company. Some production buildings at the factory operate under the name “Perry,” but, according to company management, they are one and the same company, a fact corroborated by publicly available financial data.

economist, the Executive Director of the WRC, and the Executive Director and lead attorney of a prominent U.S.-based Salvadoran human rights organization. A list of Team members is contained in the Appendix.

The Team conducted in-depth interviews of 69 persons, including workers, supervisors, managers, government officials and officers of domestic NGOs. The WRC also reviewed the employment circumstances and job search history of an additional 109 workers. The Team gathered extensive documents and statistics from corporate, union, NGO, and government sources, and participated in guided tours of the factory. The Team continues to gather evidence and closely monitor unfolding developments at Primo and elsewhere in the San Bartolo free trade zone.

### **The Allegations to be Assessed by the WRC**

The present Report focuses exclusively on the most urgent issue at Primo: the allegation that Primo has systematically discriminated in its hiring process against workers perceived to be trade unionists (a practice known as “blacklisting”). It is important to note that this allegation concerns not just Primo, but factories throughout the San Bartolo free trade zone. Because workers allege that blacklisting is a zone-wide phenomenon, the WRC assessed evidence involving other factories in addition to Primo.

Additional allegations of Code of Conduct violations at Primo will be the focus of a subsequent WRC Report. These involve allegations of mistreatment of workers by supervisors, forced and excessive overtime, substandard health care at factory clinics and other issues.

### **The Purpose and Scope of this Preliminary Report**

This Preliminary Report states final conclusions with respect to Primo’s compliance with University and College Codes of Conduct in the area of freedom of association and makes concrete recommendations for remedial action. The reason for this narrow focus is the gravity of the violations in the area of anti-union discrimination that the WRC Assessment Team identified at Primo, targeting former unionized employees of a factory called Tainan, a Taiwanese-owned apparel factory that operated in the free trade zone until April of 2002, when it effectively shut down. Under these circumstances, immediate action is necessary both to address the impact of past abuses and to end ongoing discrimination that threatens irreparable harm to substantial numbers of workers.

### **Sources of Evidence**

The Assessment Team gathered evidence from the following sources:

- Extensive interviews with 53 workers, including 22 ex-Tainan workers who applied for work at Primo and were either refused work or were hired and then fired within a matter of hours or days; 11 ex-Tainan workers who sought work unsuccessfully at other apparel factories in the San Bartolo free trade zone; and 20 workers currently or recently employed at Primo. With the exception of four

current Primo employees selected by Primo management and interviewed inside the factory, all worker interviews were conducted in workers' homes or other locations chosen by workers, and all of these interviews were arranged without the knowledge or involvement of factory management.

- Two interviews with Kenny de Ramirez, Primo's Human Resources Director.
- An interview with Daisy Monteagudo, the Primo management employee directly in charge of the hiring of production workers at Primo.
- Interviews with three Primo supervisors.
- Research and analysis of the employment status and job-search history of 109 ex-Tainan workers who were members of the Tainan union.
- Interviews with the Vice-Minister of the Salvadoran Ministry of Labor and Social Security (Ministerio de Trabajo y Previsión Social) and other officials of the Salvadoran government.
- Interviews with non-governmental human rights and women's organizations with knowledge of working conditions at Primo and labor practices in El Salvador's free trade zones, including: Fundación de Estudios para la Aplicación del Derecho (FESPAD), Las Melidas and CEAL.
- Interviews with leaders of the Sindicato de Trabajadores de la Industria Textil (STIT), the union representing workers at Tainan, and STIT's parent union, Federación de Asociaciones o Sindicatos Independientes de El Salvador (FEASIES).
- Collection and review of several categories of documentary evidence, including:
  - Personnel files of Primo production workers
  - Files of workers applying for jobs at Primo
  - Documents concerning Primo's hiring policies
  - Documents supplied to job applicants during the hiring process
  - Wage and hour records of Primo production workers
  - Pay stubs of Primo production workers
- Review of reports of the Salvadoran government concerning labor practices and compliance with labor law in El Salvador's free trade zones, including a United States Agency for International Development (USAID) report released by the Salvadoran Ministry of Labor in 2000 and subsequently retracted by the Ministry after pressure from Salvadoran employers' associations.<sup>2</sup> Review of U.S.

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<sup>2</sup> See USAID/ Secretaría Técnica de Financiamiento Externo (SETEFE)/ Ministerio de Trabajo y Previsión Social (Ministry of Labor and Social Security), Monitoring Report on the Maquila and Bonded Areas, July 2000 (translation by National Labor Committee; copy on file with the WRC)

government reports concerning human rights and labor rights practices in El Salvador.

- An interview with one of the two physicians providing health care services, on-site, to Primo workers, and a visual inspection of one factory clinic
- Visual inspection of several Primo production buildings, both during and after regular work hours

It must be noted that while Primo was initially willing to answer questions and share company documents with the WRC, this openness and transparency ended abruptly when the WRC asked Primo to discuss the cases of specific job applicants who alleged that they had been victims of blacklisting by Primo. Primo was unwilling to discuss these cases or to supply any documents related to these cases and, after these requests were made by the WRC, Primo refused to provide any further interviews or information on any topic.<sup>3</sup> In asking to discuss these workers' cases, the Assessment Team sought to provide Primo with an opportunity to back up its claim that the company had not discriminated, by explaining the basis of its decisions not to hire these workers. In refusing to discuss these cases, Primo chose to decline this opportunity.

### **Assessment of Evidence and Findings with Respect to Alleged Blacklisting**

**At least since the discontinuation of operations at the Tainan factory, Primo has engaged in the systematic blacklisting of workers who are, or are perceived to be, trade unionists. Evidence gathered by the WRC demonstrates that this blacklisting is not limited to Primo, but has also been practiced by a number of other factories in the San Bartolo free trade zone.**

It must be noted that Primo management denies that any blacklisting has taken place; however, as explained in this report, the weight of evidence strongly undermines this claim.

Primo has used a variety of different mechanisms to identify and reject applicants with trade union ties, including: demanding that job applicants disclose any union affiliation; insisting that workers who had been employed at Tainan provide a letter of reference from Tainan management (something Primo management knew that many union members had not been able to obtain, and something which Primo does not normally require of applicants); asking workers if they had been employed at Tainan and then simply rejecting all such applicants (or, more commonly, rejecting those applicants

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<sup>3</sup> Primo's Human Resources Director offered a variety of pretextual justifications for the company's refusal to provide the requested information, including 1) that the information, in Primo's opinion, should have been asked for the first time the WRC Assessment Team met with the factory, rather than later in the process, 2) that the Assessment Team was late for the meeting at which the information was first requested (an erroneous as well as irrelevant claim), and 3) that, in Primo's opinion, enough information had already been provided by the factory and further requests were therefore excessive. Subsequently, The Human Resources Director acknowledged that in refusing to provide the requested information, she was acting on the instructions of superiors, who had decided to cease cooperation with the investigative process, for reasons she refused to specify. Primo's unwillingness to provide information after this juncture was reported by the WRC to Lands' End.

who had been employed in the production building at Tainan – called “TS2” – where the vast majority of union members worked); and, apparently, consulting a partial list of ex-Tainan unionists, provided to Primo (and other employers in San Bartolo) either by the Salvadoran government or by former Tainan supervisors. Through these means, Primo has been able to identify and exclude most ex-Tainan trade unionists who applied for jobs, many of whom were clearly qualified, according to Primo’s self-described hiring criteria.

This anti-union discrimination violates the provisions of College and University Codes of Conduct concerning freedom of association and compliance with domestic law. Such anti-union discrimination is explicitly prohibited by Salvadoran law, specifically Article 30, Section V of the Salvadoran Código de Trabajo (Labor Code), which prohibits employers from “...directly or indirectly discriminating against workers based on their unionization,” and Article 204, which grants all private sector workers the right to freedom of association.

By denying workers employment for illegal reasons, Primo (and other factories in the San Bartolo zone that have engaged in blacklisting) has caused irreparable harm to ex-Tainan unionists who have, as a result of this discrimination, been unable to secure gainful employment in the work for which they are trained. Workers, who in many cases have been unemployed or underemployed since the suspension of production at Tainan in the spring of 2002, have suffered grave financial hardship as a result of this illegal denial of employment, including, in some cases, the loss of their homes. Because this discrimination is ongoing, immediate remedial action (as outlined at the end of this report) is essential to prevent further irreparable harm.

## **The evidence**

The WRC’s findings concerning blacklisting at Primo are based on the following categories of evidence:

- Testimony by Primo management concerning Primo’s hiring criteria and practices and the clear contradictions between this testimony and Primo’s actions in the cases of job applicants with ties to the STIT union.
- Compelling and mutually corroborative testimony from 22 former Tainan unionists who applied for work at Primo and were rejected, including testimony concerning specific discriminatory actions and statements of managers at Primo who are in charge of the hiring process.
- Detailed information concerning the cases of specific applicants who sought work at Primo and were rejected, despite fulfilling all of the requirements of the application process and despite possessing the necessary qualifications, according to Primo’s self-described hiring criteria.
- Statistical evidence demonstrating that, among a sizable group of Tainan unionists whose cases were reviewed, most (including all who are union leaders) were

unable to obtain work at Primo or at any other San Bartolo factory, despite the fact that all are experienced apparel workers.

### **The closure of Tainan**

Because allegations of recent blacklisting at Primo involve a specific group of workers – members of the union at Tainan – it is necessary to review briefly the circumstances of Tainan’s closure.

In the spring of 2002, the aforementioned STIT, a union of garment workers, announced that they represented the majority of employees in one of Tainan’s two production facilities (called “TS2”) and informed management that they wished to proceed with collective bargaining. (Under Salvadoran law, a union that represents the majority of workers in one production building within a larger factory can compel management to bargain a contract for workers in that building). In late April, within weeks of STIT’s demand that Tainan bargain, Tainan management suspended production at the facility and subsequently laid off the entire workforce.

While it is not necessary for the purposes of this Report to determine the reasons for Tainan’s closure, an understanding of the events at Tainan is useful in developing a picture of labor relations in the San Bartolo free trade zone as they pertain to unionism. Although Tainan claimed to have shut down due to a lack of orders, there is strong evidence that the motivation for the shut down was STIT’s decision to exercise its right to bargain a contract. In addition to the timing of the shutdown, there is the testimony of former Tainan workers, describing numerous statements made within the Tainan factory by supervisors and managers to the effect that the factory would close as a result of the union’s actions. The workers’ testimony is corroborated by a former Tainan supervisor, who stated that it was common knowledge among supervisors that management would shut down the factory because of the union. Of the 230 factories in El Salvador’s free trade zones, none has a collective bargaining agreement. Tainan’s actions appear to be an example of how this status quo has been maintained, despite the clear protections for the right to organize and bargain in Salvadoran law. (Tainan has, laudably, begun action recently to reopen a small factory in El Salvador<sup>4</sup>).

Whatever the cause of Tainan’s shutdown, in late April, Tainan’s workforce, including the workers who had joined the STIT union in Tainan TS2, were out of work. Many have since sought employment in other apparel factories in the San Bartolo free trade zone. The allegations of blacklisting in the complaint investigated by the WRC arise from the treatment of STIT-Tainan unionists, and particularly union leaders, when they applied for work at Primo (and at other San Bartolo factories).

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<sup>4</sup> In a very positive development, Tainan agreed in December of 2002 to reopen in El Salvador, in a different facility within the San Bartolo zone. This commendable step came in response to significant expressions of public concern by various groups to Tainan and to Tainan’s largest customer, The GAP. Tainan’s reopening, which has not yet occurred, will provide jobs for some ex-Tainan workers, but the facility will be much smaller than the one which closed in April.

## Primo's official hiring policies

The WRC obtained information from Primo management regarding the company's official hiring policies for production workers. This information was provided by Primo's Director of Human Resources, Kenny de Ramirez, and by Daisy Monteagudo, the member of Ms. de Ramirez's staff who is directly responsible for accepting applications, interviewing applicants, and making most hiring decisions (referred to in this report as Primo's "hiring director").

According to the testimony of Ms. de Ramirez and Ms. Monteagudo, Primo's policy is to hire all applicants who provide the required application documents and have experience working on at least one of the machines used at Primo<sup>5</sup> (virtually all STIT unionists meet the second criterion, as a result of their prior employment at Tainan and, in many cases, at other factories). The two women explained that this policy is a result of the factory's frequent need for new employees, a result of the industry's high turnover rates and the large size of the facility. Ms. Monteagudo, when asked about possible reasons for rejecting an applicant, cited only two: 1) failure to provide all required documents and, 2) failure to return when called, subsequent to the date of application, to fill a newly-opened position. Thus, according to the testimony of these two officials, Primo, in effect, takes all comers: both women agreed that any experienced apparel worker who comes to Primo with the required documents in hand will be hired; if there is no position open on that day, the worker will be called when a position is available (on a first-come, first-served basis). This is common practice in the garment industry, especially at large facilities.

With respect to the documents required of applicants, two documents are of particular relevance: letters of personal reference and letters proving prior employment in the industry. The latter are called "constancias" and are sometimes given by factories to departing workers; they merely state that the individual was, in fact, employed at the factory. According to both Ms. de Ramirez and Ms. Monteagudo, Primo does not require that workers provide a constancia as a condition of employment. Instead, Primo offers workers the option of providing a personal reference in lieu of a constancia. Both managers were very clear that a constancia is not a requirement, as long as the worker can provide the alternate document. Kenny de Ramirez explained the reason for this: factories sometimes fail to provide a constancia to departing workers, so if a constancia were a requirement, many qualified workers could not be hired.

Both women also stated emphatically that hiring decisions are made on the basis of the application documents and an interview, and that no further investigation or research on a worker's application is done by Primo.

Ms. Monteagudo explained another important component of Primo's employment policy: all Primo workers are paid not by check but through direct deposit in a Salvadoran bank called Banco Agricola; therefore, after successful job applicants are hired, and before they can start work, they are sent to Banco Agricola to open an account,

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<sup>5</sup>According to worker testimony, there is a third requirement for applicants: they must pass a simple aptitude test. It is not clear why Ms. Monteagudo and Ms. Ramirez did not mention this element of the application process. Most workers who testified that they suffered blacklisting reported taking, and passing, this aptitude test before being rejected for employment; others report being rejected prior to taking the test.

unless they already have one. The factory provides each hiree with a letter to Banco Agrícola asking the bank to allow the employee to open an account with an initial deposit of \$1; normally the bank requires a deposit of \$25, which is difficult for many workers to afford.

### **Worker testimony**

The WRC interviewed 22 workers who allege that they were blacklisted by Primo. The testimony of these workers, describing their subjection to anti-union discrimination at Primo, was mutually consistent and corroborative, and highly credible. Workers provided detailed descriptions of their experience of the hiring process, and these experiences, as described by the applicants, constitute strong evidence of blacklisting at Primo.

Particularly powerful are: workers' accounts of explicit statements by Primo hiring personnel to the effect that unionists and/or ex-Tainan TS2 workers would not be hired; workers' accounts of being asked about their union ties during the hiring process; and workers' descriptions of experiencing a number of hiring practices clearly inconsistent with Primo's self-described policies, as outlined to the WRC by Ms. de Ramirez and Ms. Monteagudo. These accounts are described in more detail below.

### **The use of "constancias" as a means of anti-union discrimination**

Many of the workers interviewed by the WRC stated that, upon presenting their applications to Primo, they were told by Primo's hiring director that in order to be accepted for work at Primo, they would have to provide a constancia from their previous employer. Several workers testified that they were told that it was former Tainan workers, specifically, who had to provide constancias. As explained above, the demand for a constancia, as an absolute condition of employment, sharply contradicts Primo's self-described hiring policies. Moreover, current and former employees of Primo testified to the WRC, without exception, that they had *not* been required to supply a constancia when applying for work.

Workers testified that many (though not all) unionists were unable to obtain constancias from Tainan management when the factory closed, in some cases because these workers rejected Tainan's severance offer, while non-union workers generally did receive constancias. Thus, requiring a constancia is one means through which some STIT unionists could be identified and excluded from employment.

Several workers testified that, upon asking why they had to have a constancia, they were told by Primo's hiring director that it was known that former Tainan workers who did not have constancias were trade unionists. (In some cases, workers testifying to this type of exchange stated that Primo knew that they were ex-Tainan workers because they had acknowledged this to Primo, verbally or on their application; others reported that they had tried to hide this information, but that the hiring director had identified them as Tainan workers nonetheless.)

Ms. de Ramirez inadvertently provided the WRC with a company document that indicates either that Primo *changed its policy* on constancias during the spring of 2002, the time when substantial numbers of ex-Tainan workers were applying for jobs at Primo,

or that Primo maintained *two different policies* on constancias, allowing for the application of different policies to different groups of applicants. The document is a small card containing the list of materials job applicants are required to supply to Primo; these cards are handed to job applicants when they come to the factory to apply for work. According to Ms. de Ramirez, the cards were changed in the spring of 2002 because an additional document (unrelated to constancias) had been added to the list. She testified that this was the only change that had been made to the card. She further testified that the card made it clear that constancias were optional, by stating that workers could provide a constancia *or* a personal reference.

One example of the card shown to the WRC Assessment Team did state these requirements in either/or terms. However, another card shown to the WRC Assessment Team on another visit to the factory, and described by Ms. de Ramirez as an example of the “new” version dating from spring of 2002, indicated a reversal of the policy with respect to constancias. This card stated that, in order to be hired at Primo, workers had to provide a constancia *and* a personal reference – making constancias mandatory, rather than optional. When the contradiction was pointed out to her, Ms. de Ramirez became visibly agitated and stated that this was an error, that this did not reflect Primo’s policy, and that the alteration must have been the result of a typographical error. She then used a pen to manually cross out the Spanish word “y” (meaning “and”) on the card and wrote in “o” (meaning “or”).

The consistency and specificity of worker testimony on the issue, the contradiction between the hiring policies described by Primo management and the experience described by most workers interviewed by the Assessment Team, and Primo management’s possession of information cards for job applicants at odds with its stated hiring policies, combine to provide strong support for workers’ allegations concerning the use of constancias: that Primo, at least at some points and with respect to some workers, demanded constancias as a condition of employment, in contradiction to its usual policies, as a way of identifying Tainan TS2 unionists for discriminatory purposes.

### **Explicit statements by Primo hiring personnel that unionists would not be hired**

More than half of the workers interviewed by the WRC testified that at some point in their interaction with Primo hiring personnel – on the day they first applied, upon a second or third application, or upon calling the factory to check on the status of their application – they were explicitly told that Primo would not hire unionists and/or would not hire former Tainan (or TS2) employees. In almost every case, according to worker interviews, the hiring director was the person who made these statements. In some cases, workers testified that these statements were made after repeated demands by the worker that the hiring director explain her reasons for requiring a constancia and/or for rejecting their application. In other cases, workers testified that the statements were made by Primo to groups of workers at the beginning of the application process. This testimony was credible, detailed and mutually corroborative.

One worker testified that when she came to apply at Primo there were roughly 20 workers also soliciting employment. According to this worker, Ms. Monteagudo addressed the group as a whole, asking which factory the workers had been employed at previously and then, specifically, whether any of the workers were from Tainan TS2.

She then stated, according to the worker, that Primo was not hiring people from TS2 because these people were unionists and Primo was not going to hire unionists. After hearing this, the worker left, according to her testimony, seeing no reason to continue with the application process.

Another worker testified that when she applied for work at Primo and indicated that she had worked at Tainan, she was told by Ms. Monteagudo that she had to provide a constancia, which she could not. She was sent away, but returned again a week later, when, according to her testimony, she was recognized by Ms. Monteagudo and told by her again that she had to provide a constancia. Upon replying that she did not have one, she quotes Ms. Monteagudo as saying (sarcastically), “How odd” (in Spanish: “Que raro”) and then informing her that Primo knew that Tainan workers without constancias were unionists. The worker says that Ms. Monteagudo then demanded to know whether she was a unionist, which she denied. Ms. Monteagudo then reiterated that she could not be considered without a constancia and sent her away again.

A statement made to the WRC Assessment Team by the hiring director, Ms. Monteagudo, corroborates this and similar worker testimony. Ms. Monteagudo claimed repeatedly during her interview that Primo does not discriminate against job applicants on the basis of union membership. Toward the end of the interview, however, she made a statement demonstrating a belief that unionism is not compatible with employment at Primo, when asked what she would do in the case of a job applicant to Primo whom she knew for a fact had been a unionist at another factory. She stated that this would not be a problem, “*as long as they don’t make the same mistake here.*” Under Salvadoran law, a job applicant who is a unionist has the same right to employment as a non-union applicant, whether or not the unionist intends to continue his or her union activities.

The belief of the person in charge of hiring at Primo that unionism is a “mistake” that would disqualify a person from employment corroborates workers’ allegations concerning this same manager’s anti-union statements to job applicants. This evidence further supports the Assessment Team’s conclusion that Primo intended to discriminate, and did discriminate, against job applicants who were STIT unionists.

### **The use of extraordinary investigations of certain applicants’ files as a means of anti-union discrimination**

Two former STIT-Tainan workers testified that, despite the fact that they did not have constancias, their applications were accepted by Primo. In both of these cases, however, Primo’s hiring director told the workers (according to their testimony) that the factory could not make an immediate decision on their applications because further investigation of their files was necessary. In both of these cases, the women’s claim that they had applied to Primo and that their applications were complete was corroborated by Primo company documents. Both women are experienced sewing machine operators. However, according to their testimony, the women were never given work at Primo. Primo’s actions, as described in this credible and strongly corroborated testimony, contradict two basic tenets of Primo’s self-described hiring policies: 1) that all applicants with experience who present a completed application are hired, either then, or as soon as a job opens, and 2) that Primo *never* undertakes “further investigation” of applicant files, and that decisions are made exclusively on the basis of the application documents and an

interview. This testimony further supports the conclusion that Primo altered its hiring policies in order to justify the rejection of STIT unionists.

### **A case of the hiring of a leading unionist, followed by immediate dismissal**

One of the most significant pieces of evidence in this case is a document that proves the central element of one of the most important individual claims of blacklisting at Primo.

As noted above, all Primo workers are paid through direct deposit at the Banco Agricola. Thus, according to the testimony of the hiring director, all hirees who do not have a bank account are sent to open one upon being hired.

In the fall of 2002<sup>6</sup>, according to her testimony, a leader of the STIT union at Tainan applied for work at Primo. She testified that the hiring director, after receiving her application (in which she did not acknowledge having worked at Tainan), told her that the factory needed five workers immediately and that she was hired and would start working that day. She was then told, according to her testimony, to go to the Banco Agricola to open an account and was given a letter from Primo asking the bank to allow her to open the account with a deposit of \$1, as was consistent with Primo's hiring policy. She further testifies that, upon her return from the bank, she was told that she could not begin work after all because Primo needed to do "further investigation" of her file and that she would be called by the factory in the near future. The union leader testified that she was never called and that, after contacting the hiring director multiple times, she was finally told by the hiring director that Primo knew she was an official of the Tainan union and therefore could she not work at the company.

The union leader provided the Assessment Team with documentary proof that she was, in fact, hired by Primo as she claims: she provided the Team with a letter from Primo to Banco Agricola asking the bank to allow her to open an account with a \$1 deposit, and a bank book demonstrating that the account had been opened on the same day. Other evidence shows that, despite having been hired, she never began work at the factory.

Under Primo's self-described hiring policies, there is no valid reason why a worker qualified enough to have been hired initially would 1) have her job offer rescinded hours later and 2) never be offered work at the factory. Even if the factory were to have determined after making the hire that there was no immediate job opening, the worker, according to Primo's policy, would have been hired for the next available opening. This never occurred.

As noted earlier in this report, when the WRC Assessment Team asked Primo to discuss this specific case, and the cases of several other specific workers who allege that they were blacklisted, Primo refused and, at that point, ceased to cooperate with the Assessment Team.

The documentary and testimonial evidence in this union leader's case provides a high degree of corroboration of her claim to have been blacklisted. The most plausible explanation for the pattern of known facts is that Primo made a spur-of-the-moment decision to hire the union leader without checking her background – because they were

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<sup>6</sup> The exact date is known to the WRC, as are additional details that we cannot include in this account because they could serve to identify the worker involved.

short-staffed and because she was highly qualified – and then reversed their decision upon discovering that they had hired a leader of the STIT union. Primo provided no evidence to contradict the union leader’s claim.

### **Statistical evidence of anti-union discrimination in hiring**

A statistical analysis by the Assessment Team of the actual job search history of the STIT union leadership, and of STIT unionists in general, corroborates the testimonial and documentary evidence cited above.

The WRC obtained information on the post-Tainan job search and employment history of a total of 109 Tainan unionists. Of this group, there were 61 workers who sought work at one or more apparel factories in the San Bartolo free trade zone and for whom the Assessment Team was able obtain specific information as to where they had applied. Thirty of these workers had applied at Primo.

Of these 30 applicants to Primo, only four were hired; of these four, two were gone from the factory within a week. (One was fired, the other resigned after being told by her supervisor that she would shortly be fired). Thus, of 30 union applicants to Primo – a factory that claims to hire all applicants who meet minimal qualification standards – only two were hired and retained for more than a week.

Of the larger group of applicants to other factories in the San Bartolo free trade zone, seven succeeded in obtaining a position at an apparel factory in the zone, while 54 were rejected at every factory where they applied, or were hired and then fired in short order. (It is known that some of the workers who obtained positions hid their Tainan and/or union ties at the time of application.) Thus, looking at the San Bartolo zone as a whole, less than one in eight among this group of STIT unionists – all experienced apparel workers who had been hired by other factories in the past – were able to obtain apparel jobs in the eight months between Tainan’s closure and the time of the WRC’s survey.

Given the nature of employee turnover in the apparel industry, which leads to a frequent (and in the case of large factories like Primo, nearly constant) need for new qualified workers, and given the amount of time that has passed since these workers first began seeking new jobs in the aftermath of the suspension of work at Tainan, these success rates are far too low to be explained as a function of normal hiring patterns. Indeed, absent hiring discrimination, *most or all* of these workers should have had success obtaining employment in the industry within a relatively short time after Tainan’s closure. An illustration of this reality was provided by the testimony of one union worker: she alleged that when she was rejected for employment at one San Bartolo factory, the factory hired every one of the 11 other women who applied at the same time.

The WRC also obtained information on the post-Tainan job search and work history of seven of the nine senior leaders of the Tainan-TS2 union (two other leaders, both of whom had resigned from the union, could not be found). According to the Primo complaint, these leaders were the target of the most intensive blacklisting, including, workers allege, being denied access, in most instances, to the entire San Bartolo zone in the first two months after the shutdown of Tainan. All seven of these leaders sought work at Primo, at various times, and, according to their testimony, provided Primo with all of the required application documents, as defined in Primo’s self-described hiring

policies. (In one case, this was verified by an examination of the worker's application file at Primo; Primo management refused to allow the WRC investigative team to review the files of the other applicants.)<sup>7</sup>

Of these seven applicants, all highly qualified according to Primo's hiring criteria, five were rejected outright. Of the remaining two, one was hired and then told two hours later, as noted above, that she did not have a job because of a need to "further investigate" her application; she was subsequently told she had been rejected. The seventh (who testified that she did not disclose her Tainan association during the application process) was hired and then terminated four days later, after a fight with another worker who, according to eyewitness testimony, had denounced the fired worker as a unionist. All seven also sought work, unsuccessfully, at other apparel factories in the San Bartolo zone (in a few cases, according to their testimony, these workers were hired at one of these other factories and then fired within hours or days, after being told by management that they had been identified as unionists). Thus, of those members of the top STIT union leadership about whom the WRC was able to obtain information, all sought work at Primo and at other San Bartolo factories and none were able to obtain (and retain) positions.

The data summarized above show that, among a sizable group of ex-Tainan unionists, all of whom are qualified apparel workers, most were unable to find work at Primo, and in San Bartolo in general, over an extended period of time. The data also show that the high-profile union leaders the WRC interviewed were, without exception, denied employment, despite having solicited work at multiple factories. Other former STIT-Tainan unionists may have fared somewhat better (or worse).<sup>8</sup> However, the closed door experienced by most of the STIT-Tainan unionists whose circumstances are known, and reviewed above, is more than sufficient to demonstrate the use of discriminatory hiring practices by Primo and other San Bartolo factories. This aggregate data, with respect to STIT leaders as well as the STIT rank-and-file, lends strong corroboration to the testimony of individual workers and the other evidence cited in this report.

### **Salvadoran Labor Ministry report citing widespread blacklisting**

In December of 1999, USAID provided funding for the Salvadoran Ministry of Labor to establish the Labor Relations Monitoring and Analysis Unit, whose purpose was to assess and monitor working conditions and industrial relations in El Salvador's free trade zones. For four months, the unit's researchers investigated conditions in the four largest free trade zones in El Salvador, including San Bartolo, where Primo is located. Together, these four zones accounted, at that time, for 80% of El Salvador's export production.

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<sup>7</sup> The WRC was able to review this file – that of Maria Deysi Hernandez – because it was in a large group of files provided to the WRC by Primo management in response to a general request to view examples of files of recent job applicants. Primo refused all requests to view the files of specified applicants.

<sup>8</sup> There are a substantial number of other former STIT-Tainan unionists whose present employment circumstances are not known in detail to the WRC. It is possible that among this group, a larger percentage of workers had success obtaining employment in apparel factories in San Bartolo (including Primo), or in other free trade zones. As discussed at greater length later in this report, blacklisting, as it has been practiced in San Bartolo factories, is not uniform in its application and is not always effective when it is applied (for example, workers, most of whom are aware of blacklisting, can sometimes be effective in hiding union ties).

These researchers enjoyed easy access to the free trade zone factories, because the Labor Ministry was viewed as highly sympathetic to the views and interests of industry. In August 2000, a report was released outlining the Unit's findings with respect to working conditions and labor practices in the free trade zones.<sup>9</sup> The report documented a wide range of severe, chronic labor law violations and a history of non-enforcement of law by the Ministry of Labor. With respect to freedom of association and blacklisting, the report stated the following:

The issue of freedom to unionize is definitely one of the areas in which the rights of workers are frequently violated... One of the situations that most caught the attention during the visits was the fact that the rate of unionization in the [free trade zones] is very low... on investigating the reasons for this phenomenon, *it was found that there exists an anti-union policy in the maquilas, by which any attempt at organization is repressed...*

*The workers stated that one of the principle anti-union policies consists of the management of 'blacklists' of the names of workers who belong, or at some point have belonged, to a union organization. The workers affirm that the people who appear on these lists are not hired by the maquila companies, which constitutes a flagrant violation of freedom to unionize recognized in our judicial order, the constitution of the Republic, as well as secondary labor legislation (emphasis added).*

Upon release of this report, severe pressure was brought to bear on the Ministry of Labor by factory operators and business associations. The report was retracted one day after its release. The report remains the most credible official assessment to date of labor practices in El Salvador's free trade zones.

The U.S. government has also identified blacklisting as a problem in El Salvador. The most recent *Country Report on Human Rights Practices* issued by the U.S. State Department cites "instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and *the maintenance of lists of workers who would not be hired because they had belonged to unions.*" (emphasis added).<sup>10</sup> The report cites weaknesses in labor law and enforcement as a significant problem, noting, for example, that while Salvadoran law prohibits the firing of union leaders, it does not require the reinstatement of those who are fired. (In an interview with the WRC Assessment Team, a senior official of the Salvadoran Ministry of Labor acknowledged that the Salvadoran government did not levy a single fine for a labor code violation in the free trade zones in the last year). The report also cites the absence of any collective bargaining agreements in the free trade zones.

The anti-union discrimination at Primo and at other San Bartolo factories identified by the WRC Assessment Team is consistent with the types of practices documented by the Ministry of Labor in its 2000 report and by the U.S. State Department, a fact which lends further weight to the WRC Assessment Team's findings.

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<sup>9</sup> USAID/ SETEFE/ Ministry of Labor

<sup>10</sup> US Department of State (Bureau of Democracy, Human Rights, and Labor), Country Reports on Human Rights Practices, 2001: El Salvador, March 4, 2002

## **Blacklisting may not be practiced, or practiced successfully, in all cases**

It is important to note that the Primo complaint does not allege, and the evidence does not show, that Primo's general policy of anti-union discrimination, and discrimination against Tainan unionists in particular, was applied successfully in every case or, when it was applied, that it always involved the same methods and tactics. The evidence shows that:

- Many ex-Tainan workers sought to hide their Tainan TS2 and/or STIT connections, some of them successfully.
- Primo, in its efforts to exclude Tainan workers, frequently made a distinction between workers who had been in TS2, the unionized production building at Tainan, and workers who had been in TS1, the other production building, where most workers were not union members.
- Primo did not always correctly identify applicants as Tainan TS2 workers and/or as unionists.<sup>11</sup>
- Primo's blacklisting – particularly the demand for constancias – was applied less systematically in the months after the initial influx of Tainan applicants had ended.

As a result, it appears that Primo did hire a significant number of ex-Tainan applicants, the majority non-union workers. The factory also hired a small number of Tainan unionists (some of whom were fired or had their job offers withdrawn as soon as their identity was discovered).<sup>12</sup>

The fact that Primo's policy of discrimination was not applied with complete effectiveness, or consistency, does not bear on the central question of whether the policy exists and whether it is a violation of Salvadoran law and University and College Codes of Conduct. The Assessment Team documented acts of discrimination against numerous specific job applicants and the existence of an overall policy and practice of discrimination. These acts and practices are illegal, although they did not occur with respect to every job applicant at Primo.

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<sup>11</sup> Gaps in effectiveness of Primo's blacklisting reflect the decision of some applicants to hide their Tainan and/or union ties. The gaps also reflect the fact that although Primo apparently had access to a list of STIT union leaders, many rank-and-file STIT members could only be identified, absent self-identification, through such imperfect screens as the lack of a constancia or through identification of these unionists by former co-workers who either applied at Primo with them, or were already working at Primo.

<sup>12</sup> The Assessment Team could not determine how many former Tainan employees are presently working at Primo or, of more importance, how many such employees were members of the STIT-Tainan union. Primo management claimed that the factory employs roughly 120 ex-Tainan workers but refused to provide the Assessment Team with a list of these employees. The Team did identify, through other research, two former Tainan-STIT unionists who did obtain positions at Primo, as well as 28 unionists who were rejected.

## **Blacklisting as a free trade zone-wide and nation-wide problem**

While Primo, as the subject of the present complaint, is the primary focus of this Report, it is clear from the Assessment Team's investigation that anti-union discrimination in hiring is not a phenomenon limited to this one factory. The Team documented blacklisting against STIT unionists at four other San Bartolo factories and evidence suggests that all apparel factories in the zone have engaged in some degree of discrimination against this group of individuals. This evidence includes detailed testimony from workers who report statements and actions by hiring managers at these other factories similar to those reported by workers who applied at Tainan, including explicit statements that workers from Tainan and/or workers who are unionists were not welcome. A number of workers reported being hired at one of these factories – after, they stated, successfully hiding their union connections from hiring managers – and then being fired within hours or days by managers who, according to these workers' testimony, explicitly stated that they were being fired because their union connection had been exposed. One worker reported being hired at one of these factories and then, on her second day of work, being summoned to the Human Resources office where, she testified, she was told that she could not work at the factory because she was a unionist and that her name was on a list. The worker stated that the Human Resources manager who fired her then showed her where her name appeared on a list on this manager's computer screen.

Significantly, credible worker testimony also implicates the administration of the San Bartolo free trade zone in anti-union discrimination. Specifically, workers allege that, in the immediate aftermath of the suspension of production at Tainan, top leaders of the STIT union were routinely denied entry to the San Bartolo zone as a whole. According to this testimony, zone security told these leaders that they had been ordered by their superiors to deny the leaders entry; workers also testified that pictures of some union leaders were posted inside zone gatehouses. San Bartolo, like other Salvadoran free trade zones, operates under the authority of the Salvadoran government. Relevant government officials refused to answer questions concerning this issue.

More broadly, worker testimony, as well as the above-cited Salvadoran and U.S. government reports, show that the practice of blacklisting affects other Salvadoran free trade zones beyond San Bartolo and is, in fact, a national problem.

*The fact that anti-union discrimination is a zone-wide and national phenomenon does not, of course, excuse the practices of Primo or reduce the obligation of the licensee, Lands' End, to act to end the factory's serious violations of University and College Codes of Conduct. The zone-wide and national nature of the problem does mean that not just Primo, but all licensees sourcing from San Bartolo, and from El Salvador in general, have an obligation to scrutinize their suppliers' practices and to require their suppliers to implement preventative measures against possible discriminatory policies and practices. The WRC's remedial recommendations on this issue, outlined below, are therefore applicable not only to Lands' End and Primo, but to other collegiate licensees sourcing from El Salvador and to their supplier factories.*

*Accordingly, the WRC is contacting all collegiate licensees who source, or have recently sourced, from Salvadoran factories to make remedial recommendations.<sup>13</sup> In addition, the WRC has recommended to the Fair Labor Association (FLA) that all FLA brands adopt such policies.*

## **Harm to workers**

Numerous STIT-Tainan unionists have suffered hardship as a result of illegal discrimination by Primo and other factories in the San Bartolo free trade zone. For most of these workers, apparel work is the only kind of industrial work for which they are trained and is, by far, the most viable source of income for themselves and their families. These workers have been denied any employment in this industry for over 10 months, as a result of blacklisting by Primo and other San Bartolo companies; in nearly every case, these workers have been unable to find alternate employment that provides income anywhere near what they would earn in San Bartolo. The direct consequences of this financial blow include the loss of homes, the shortage of food for workers and their families, including minor children, and the inability of workers to pay their children's school fees. Obviously, in addition to the financial burden, such discrimination also exacts a substantial psychological toll, a fact attested to by numerous interviewees.

This ongoing, and in some cases irreparable, harm is the central reason why urgent action is needed to ensure that workers qualified for employment are protected from further illegal discrimination.

## **Recommendations for Remedial Action**

In order to remedy past anti-union discrimination in the hiring process and prevent future discrimination, Lands' End should require of its supplier each of the actions enumerated below, on an immediate basis.

- 1) Primo should refrain from any anti-union discrimination in the hiring process and instruct all personnel involved in any way with the hiring process that non-discrimination is official company policy and that deviation from this policy will not be tolerated.
- 2) Primo should produce a written public statement to the effect that the factory welcomes applications from all qualified workers, including those who may have solicited work unsuccessfully in past, and is committed to a policy of non-discrimination and fairness in hiring, consistent with Salvadoran law. Such a statement is necessary if discouraged workers who have been victims of past discrimination are to be convinced that there is reason to expect fair treatment upon re-application for work at Primo.
- 3) Primo should provide all rejected job applicants with a clear, written explanation of the reasons they were not hired. Primo should keep a record of the application

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<sup>13</sup> An example of the WRC's letter to these licensees available on the WRC's website at <http://www.workersrights.org/freports.asp>

file of every person who solicits work, containing application forms, supporting documents, graded aptitude tests, and, if the worker was rejected, a copy of the written explanation of the reasons for rejection. These records should be retained for a minimum of three years and should be available for inspection by factory monitors.

- 4) Primo should maintain and adhere to clear and equitable hiring policies and should provide a written explanation of these policies to all applicants. The factory should make no change to its official hiring policies as outlined to the WRC Assessment Team, but should apply these policies faithfully and without variation among different applicants. These policies are: 1) no requirement that applicants provide a constancia/letter of reference from previous employers, as long as the worker can supply a personal reference as an alternative; 2) no extra investigation of any applicant's file that would delay decisions on complete applications beyond the day of the interview; 3) offering job openings to qualified applicants on a first-come, first-served basis, such that if workers are qualified, but no job is available, such workers are called for subsequent openings in the order in which they applied for work; and 4) offering positions to all applicants who provide the required documents, have experience on at least one of the production machines used at Primo, and pass the aptitude test that Primo has been using over the last year.
- 5) Primo should agree that for successful future applicants who had also applied during the last 12 months and were rejected, the date of their *original* application will be the date used for determining priority for jobs that come open. For example, an applicant who applied last June and was rejected, and applies again next month and is deemed qualified, but cannot be hired right away because there is no opening, should be placed in line for future openings *ahead* of any workers who are applying for the first time this year. This policy ensures that those applicants who have been unfairly rejected in the past and are accepted in the future will experience less additional delay in obtaining employment.
- 6) In addition Primo should act immediately to hire those previously rejected applicants who have provided detailed evidence directly to the WRC that they were victims of anti-union discrimination and who are still interested in working at Primo. Their names will not be listed in this report, for reasons of confidentiality, but, with the workers' permission, the names can be provided to Primo by the WRC. This approach would be the fastest and most equitable remedy with respect to the discrimination experienced by these workers.

In addition, Lands' End should:

- 1) Issue a public statement to the effect that the Lands' End will not tolerate any blacklisting or other anti-union discrimination on the part of suppliers in El Salvador. This statement should be in writing, so that it can be circulated in El Salvador in government, labor and business circles.

- 2) Communicate to El Salvador's Ministerio de Economía (Ministry of the Economy), the governing authority for all Salvadoran free trade zones, the company's opposition to blacklisting and any other form of illegal anti-union discrimination. Ask the Ministry to make it clear to all zone administrative and security personnel that blacklisting is a violation of Salvadoran law and will not be tolerated.
- 3) Support the appointment of an ombudsman, chosen jointly by the WRC and the FLA, to receive and resolve complaints of anti-union discrimination from workers and to visit the factory on an unannounced basis to monitor the hiring process. This person must be able to visit as frequently as s/he deems necessary and must have full access to the application process, including the ability to sit in on job interviews, talk with applicants and review applicants' files. The ombudsman should issue regular public reports summarizing the content and disposition of complaints.

As noted, the focus of the present report is Primo. However, because the problem of blacklisting is zone-wide and national in scope, the WRC believes that all College and University licensees (and indeed, all buyers) that source from El Salvador should act immediately to implement the above recommendations. This is of particular urgency with respect to buyers sourcing from factories in the San Bartolo free trade zone.

## **The Response of Licensees**

The WRC provided a summary of its findings to Lands' End well in advance of the publication of this Report and asked Lands' End to support the necessary remedial action at Primo. To date, despite extensive discussion and exchange of information, Lands' End has not been willing to do so, stating that the WRC has not provided them with sufficient evidence of blacklisting to warrant action. Lands' End stated in a letter on March 13 that they "are working to improve and correct any situations [at Primo] that are in violation of the Lands' End standards of business conduct." However, in this same letter, Lands' End reiterated that they do not accept the WRC's findings of ongoing blacklisting and cannot support the remedial action the WRC has recommended. Although the WRC originally reported concerns about blacklisting to Lands' End in January, the company has, to date, provided no information, beyond the sentence quoted above, as to what if any problems they do acknowledge and what action they are taking. We are very concerned about the company's failure to act against the discriminatory practices that are ongoing at Primo and we continue to hope that Lands' End will reverse its position. The WRC remains ready and eager to work in cooperation with Lands' End to improve respect for worker rights and University and College Codes of Conduct at Primo; we remain hopeful that this will be feasible.

The WRC has also asked the FLA and its member brands that source from El Salvador to agree to take action to prevent blacklisting at all of their Salvadoran supplier factories. It is the WRC's understanding that discussions are underway among these brands and that an agreement is likely that would create an FLA-wide policy, supported

by the major brands, to address blacklisting in El Salvador. This policy would require all Salvadoran factories supplying collegiate licensees and non-collegiate FLA brands to implement a set of concrete preventative measures. If such a policy is created, and is sufficiently strong and transparent to be effective, it would be a huge stride toward respect for associational rights in El Salvador.

As noted earlier, in addition to this communication through the FLA, the WRC is also directly contacting all collegiate licensees who, according to WRC disclosure data, are sourcing from El Salvador.

## **APPENDIX**

### **Members of WRC Assessment Team for Primo S.A. de C.V.**

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An attorney with Foundation of Studies for the Application of Law (FESPAD) during the investigation, and now an attorney at the Institute of Human Rights at the Universidad Centroamericana, Mr. Burgos is an expert on Salvadoran labor law and its enforcement. A former investigator at the El Salvadoran Ministry of Labor, in 2000 he co-authored a key report, funded by USAID, on working conditions and labor law enforcement in El Salvador's free trade zones.