



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re PT DAE JOO LEPORTS (INDONESIA)**

**and**

**re KAWASAN BERIKAT NUSANTARA EXPORT  
PROCESSING ZONE, MARUNDA & CAKUNG BRANCHES  
(INDONESIA)**

**FINDINGS AND RECOMMENDATIONS  
AUGUST 26, 2003**

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## **Preface**

The Worker Rights Consortium (WRC) conducted investigations at two factories situated in the Jakarta, Indonesia export processing zone known as Kawasan Berikat Nusantara (KBN), in the Marunda and Cakung branches respectively. The WRC also assessed general conditions in this export processing zone, because ongoing research undertaken by the WRC and partner organizations suggested that policies of the KBN Administration, as well as practices common to many factories in the KBN, might be directly or indirectly related to alleged material violations of law and College and University Codes of Conduct at these two factories.

The following report outlines the WRC's conclusions and recommendations concerning the zone itself and one of the two factories: PT Dae Joo Leports, a producer of backpacks bearing the names and logos of WRC-affiliate Colleges and Universities. Conclusions and recommendation concerning the second factory will be released in a separate document. The present report details the outcome of an on-site investigation by a WRC Assessment Team at PT Dae Joo Leports, conducted between February 20 and 27, 2003, as well as of extensive supplementary research carried out by WRC staff, consultants and partner organizations over the subsequent months. This document also describes the substantial corrective actions taken to date by PT Dae Joo Leports, and the response of the licensees that source from the factory: adidas-Salomon, through a licensee, Agron, and Vanity Fair Corporation (VF), through its subsidiary, Jansport. Both companies have responded constructively and supported necessary remediation.

Beyond the issues at PT Dae Joo Leports, there are common practices in the KBN and rules that govern the zone's functioning that should be of concern to all university licensees and other brands seeking to source from any factory within the zone. As a preliminary matter, therefore, this report reviews these zone-wide concerns and makes recommendations for addressing them.

## **Overview of issues in the Kawasan Berikat Nusantara (KBN) export processing zone**

The International Labor Organization (ILO), in a 1998 publication, noted that "hours of work, overtime and wages, occupational health and safety, leave, provision of food and transport, social security and the special needs of women workers,"<sup>1</sup> in addition to inadequate access to health care and restricted associational rights, are problems characteristic of export processing zones. In Indonesia's export processing zones, and in the KBN's North Jakarta branches in particular, some of these problems are starkly visible. In one sense this is surprising, since Indonesia, unlike several other countries that operate export processing zones, places no formal legal restrictions on the functioning of trade unions and does not permit labor law to be held in abeyance within zone boundaries. Unfortunately, however, other factors work to undermine respect for labor rights within the zone, administered by a state-owned for-profit corporation (PT Persero

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<sup>1</sup> International Labor Organization (ILO), *Note on the Proceedings*, Tripartite Meeting of Export Processing Zones-Operating Countries, ILO, Geneva, 1998. Doc. No.: TMEPZ/1998. Conclusion 23

Kawasan Berikat Nusantara; henceforth, “KBN Administration”). Most important among these problems are interference by the military, police or thugs in labor disputes, broad internal regulations that protect factories’ assets from workers’ legitimate claims in the event of closure, and inadequate access to health care, in violation of legal mandates.

Until 1994, military involvement in labor-management disputes was a routine matter, taking place under the “Guidelines for Mediating Industrial Labor Disputes”<sup>2</sup> issued by the Departmen Tenaga Kerja dan Transmigrasi (the Ministry of Manpower and Transmigration; henceforth “Depnakertrans”). That regulation was officially repealed on January 16, 1994, with the issuing of a new ministerial decree, No.15A/1994. While there were no allegations that active-duty military had ever been involved in labor disputes at PT Dae Joo Leports, the WRC received credible testimony that Aparat KBN (KBN Administration special “security forces”) had frequently stepped in to prevent union organizers from talking to demonstrating workers at the second factory fully reviewed by the WRC, in a clear violation of Indonesian law and College and University Code of Conduct provisions regarding freedom of association. Furthermore, workers from several other factories within the KBN that produce licensed apparel for WRC-affiliated Colleges and Universities provided the WRC with credible testimony that factory managers continue to seek, and obtain, the involvement of the Indonesian military in the suppression of legal strikes and demonstrations.

The problem of military intervention is further compounded by the widespread use, over a period of years, of preman (hired strongmen, sometimes “moonlighting” military personnel) to intimidate workers during strikes and demonstrations in the zone. The climate of fear produced by the presence of preman unquestionably constrains the exercise of associational rights of all workers in the KBN, no matter what the actions or practices of a particular factory. Thus, while none of the workers at PT Dae Joo Leports have alleged that management has ever employed preman, many noted that they had refrained from active participation in strikes and demonstrations because they were afraid of violence by preman. One worker described to the WRC in detail the actions of a group of preman, calling themselves “The Forum,” that, according to the worker, has been hired by many companies in the KBN. Furthermore, local union leaders have reported seeing off-duty military personnel present at PT Dae Joo Leports, apparently for the purposes of everyday security and also for crowd control during demonstrations. Organizers from the union Serikat Buruh Sejahtera Indonesia (SBSI), for example, described a confrontation with an air force officer hired by a factory engaged in production of collegiate apparel, who prevented them from observing a demonstration outside the factory in July of 2002.

Incidents involving other factories in the KBN producing licensed apparel for WRC affiliates have presented still sharper violations of Code of Conduct provisions in the realm of freedom of association. One of the most extreme examples occurred when the employees at a factory in KBN Cakung producing licensed apparel for several WRC

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<sup>2</sup> KEP-342/MEN/1986

*Note:* Indonesian laws and regulations fall into four general categories: Peraturan Menteri (Ministerial Regulations; henceforth “PER-/MEN/”), Keputusan Menteri (Ministerial Decrees; henceforth “KEP-/MEN/”), Undang-Undang (Acts or Ordinances; henceforth “UU”), and Peraturan Pemerintah (Government Regulations; henceforth “PER-/MEN/”).

member Colleges and Universities<sup>3</sup> went on strike at the end of 2001. A number of workers, interviewed separately, produced consistent and compelling testimony about the presence of about 700 preman who had been called in, according to the factory's personnel manager, to "protect" the factory from the "potentially violent protestors." When the workers' negotiating committee, consisting of local union leaders from Front Nasional Perjuangan Buruh Indonesia (FNPBI) and Serikat Pekerja Tekstil, Sandang dan Kulit (SPTSK), tried to leave the building, they were immediately engulfed by the crowd of preman shouting, "There are their leaders, get them!" The SPTSK leader was held with a knife to his throat for several minutes before the Aparat KBN and police intervened. The union leaders were detained by the police for several hours, while none of the preman were detained or called in for questioning. Four months after the strike, the company shut down its location in KBN Cakung and moved to another location, reopening under a different name. This is one of the ways in which the close connection between the KBN Administration and the state apparatus presents problems at the level of excessive military and police involvement in labor-related concerns at individual factories.

The state-approved policies and guidelines that operate within the KBN also serve to insulate factories from the full force of certain laws designed to protect workers. For example, individual plots within the KBN – including the buildings themselves – are merely rented to factories, with little or no security deposit, thus permitting factories that seek to close an easy means of doing so without leaving behind significant assets against which workers who are due back wages and/ or severance pay<sup>4</sup> could place a lien. (It should be noted that, by law, workers' claims to the payment of back wages takes precedence over the claims of all other creditors,<sup>5</sup> which would include, for example, claims made by the company administering the KBN). Over the past year alone, over twenty companies have left the KBN with little to no notice to their employees; in most instances, these factories still owe legally mandated compensation to their former employees.<sup>6</sup> KBN Administration offices consistently refuse to provide workers with the contact information of a closed factory's parent company, and actively block workers' legal attempts to seek the liquidation of factory assets such as machinery, raw materials, and finished goods to cover back wages and severance due.

Given that factories within the KBN find it relatively easy to close without observing the procedures required by Indonesian law,<sup>7</sup> these factories are more likely to use the excuse of closure in order to engage in massive layoffs in order to transition to a system of short-term employment contracts. Another factory within KBN Cakung

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<sup>3</sup> The WRC does not publicly name factories in the context of a violation or violations of College and University Codes of Conduct unless a full assessment has been conducted at that factory. Full assessments have not, to date, been conducted at those factories which are referred to, but not named, in this report.

<sup>4</sup> By law, if a company becomes bankrupt, employees are still entitled to a base severance package—referred to as Peraturan Menteri Tenaga Kerja (PMTK). If employees are terminated for no fault of their own (particularly in the case of layoffs for "efficiency's sake"), or a company closes for reasons other than bankruptcy, workers are entitled to twice the amount of PMTK. See KEP-150/MEN/2000 Article 27.

<sup>5</sup> UU-08/1981, Article 27

<sup>6</sup> Ulin, "Politik," in *Kontan*, November 25, 2002. p.49 [049/IX-VII/KONTAN/2002: 9/VII/2002, Politik]

<sup>7</sup> Corporations in Indonesia may only shut down on the basis of a decision by either Rapat Umum Pemegang Saham (general stockholders' meeting); the expiration of the original incorporation period; a court decision.

engaged in apparel production for a number of WRC-affiliated Colleges and Universities closed its doors in late 2000, paying workers only half of the severance due to them. After the Lebaran holidays, about a week later, the factory re-opened, hiring workers back as short-term contract employees. Nearly three years later, workers were still maintained in the same “short-term” status, in violation of Indonesian laws governing contract labor, as applicable at that time

Finally, violations of labor law (as well as of College and University Codes of Conduct) in the area of mandatory benefits are widespread in the KBN. The issue of health care is particularly problematic. Each of the three branches of the KBN has a polyclinic, to which workers at all factories have access, in theory, whether or not the factories in question have clinics of their own. As both polyclinic staff and management of the KBN Administration explained to the WRC Assessment Team, access to the polyclinic is intended to satisfy the obligation of employers who choose not to provide their workers with health insurance through PT Jaminan Sosial Tenaga Kerja (JAMSOSTEK), a state-run worker’s insurance firm, with a *superior* alternative as required by law.<sup>8</sup> However, the services provided by the polyclinic are vastly *inferior* to those available to workers through JAMSOSTEK, both in terms of accessibility (e.g., workers’ family members, who are covered when an employer provides JAMSOSTEK, have no access to the factory clinic) and in terms of quality of care. Staff from the Cakung branch of the KBN Administration reported, for example, that the clinic’s complement of three trained doctors must treat an average of more than 200 patients a day and is responsible for a total patient population of 70,000 employees.<sup>9</sup>

Furthermore, workers’ access to the services offered by the polyclinic is often unreasonably restricted. While membership in the clinic is mandatory for all factories in the KBN, factories can regulate that access for their workers as they wish. The clinic submits a claim for reimbursement to each factory once a week, on a fee-for-service basis, according to the services provided to the employees of that factory. Thus, factories have a financial incentive to limit care. In order to use the clinic’s services, workers from most factories must supply a letter from the company, in part, as clinic staff explained to the WRC Assessment Team, to ensure that the worker is still employed at that factory. Factories routinely refuse to give permission letters to workers, as a means of reducing health care costs.

Follow-up care and referral to outside specialists is also severely restricted by many factories. According to clinic staff, before a doctor makes a referral, he or she must call the personnel manager of the factory where the worker is employed and obtain authorization. Similarly, in order for patients to schedule a follow-up appointment, they must take a letter from the clinic recommending continuing care to the factory’s personnel manager, get his or her signature, and then bring the letter back to the polyclinic. Because the factory must pay out of pocket for any care provided by medical

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<sup>8</sup> PER-03/PEM/1992 sets out the four elements of JAMSOSTEK coverage: insurance for workplace accidents, life insurance, provident fund, and health insurance. PER-14/PEM/1993, Article 2(4) clarifies that all firms employing more than 10 workers must provide all four packets of JAMSOSTEK. Companies are only exempt from providing the fourth packet if they provide private health insurance that is demonstrably better.

<sup>9</sup>By comparison, Indonesian government policy limits Puskemas (regional state-owned clinics), which are comparable to the KBN polyclinic in terms of facilities and size, to servicing no more than a total patient population of 30,000 people.

facilities outside the clinic, and for any ongoing care at the zone polyclinic, permission for referrals and follow-up care is routinely denied.

As a practical matter, workers at factories that use the zone polyclinic in lieu of JAMSOSTEK or private insurance have little or no access to care for any serious or ongoing medical problem, or for emergencies that occur in the evening or early morning hours, when there are no doctors on duty at the clinic. There are also factories in the KBN that maintain an in-factory clinic and do not provide workers with any access to the polyclinic. The services provided by in-factory clinics are even less comprehensive and less accessible than those provided by the polyclinic.

By failing to provide either JAMSOSTEK or a superior alternative, most factories in the KBN are in violation of Indonesian law and of College and University Code of Conduct provisions requiring compliance with host country laws. As explained below, PT Dae Joo Leports, at the time of the WRC investigation, was not in compliance with the law concerning health insurance, though remedial action is now underway.

### **Recommendations Concerning the KBN**

The WRC addresses these recommendations to the College and University licensees sourcing from factories located in Indonesian export processing zones, and the North Jakarta KBN branches in particular. Given the substantial impact of zone-wide policies on the degree of Code compliance at individual factories within the zone, licensees must involve themselves in advocacy at the level of the zone and of the state. This would include urging vastly improved health services, and access to these services, in the KBN (to the extent that there are factories which, to satisfy their legal obligation in the area of health insurance, offer access to the services of the zone polyclinic) and urging that the zone administration adopt policies designed to prevent factories from closing and then renegeing on their financial obligations to employees. As a first step, zone personnel should be directed to assist workers and unions when they are seeking to contact the management or ownership of a facility that has closed in order to discuss matters of severance and other compensation.

The WRC also recommends that licensees press for worker representation at the level of the zone, as proposed by the ILO in its recent policy paper on export processing zones:

“Sound labor-management relations are essential to the success of EPZs. Free, strong and representative workers’ organizations have a major role to play in building workplace relations conducive to improvements in working conditions and increases in productivity and competitiveness. [...] One means of fostering sound labour-management relations could be the participation of representatives from workers’ and employers’ organizations on the boards of investment promotion and zone management bodies.”<sup>10</sup>

Such measures would also contribute to greater compliance with domestic law, and with College and University Codes of Conduct, in terms of workers’ associational rights, and to a reduction in the undue interference of military and police in labor-management disputes at individual factories. In the interim, however, licensees should, at a minimum,

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<sup>10</sup> ILO, *Note on the Proceedings*, Conclusions 10, 15

make it clear to the supplier factories located in the zone, and to the zone administration, that violence and intimidation in an effort to end strikes and demonstrations will not be tolerated.

## WORKER RIGHTS CONSORTIUM ASSESSMENT OF PT DAE JOO LEPORTS, KBN MARUNDA, INDONESIA

### Introduction

PT Dae Joo Leports is a factory located in North Jakarta, Indonesia, in the Marunda branch of the export-processing zone Kawasan Berikat Nusantara (KBN). Employment at PT Dae Joo Leports fluctuates between 1,100 and 1,300 workers, depending on the level of orders from buyers. The factory manufactures (or has recently manufactured) backpacks and handbags bearing the names and logos of Colleges and Universities affiliated with the Worker Rights Consortium (WRC) for Jansport, a brand owned by Vanity Fair Corporation (VF), and for adidas-Salomon (through its licensee Agron), as well as non-licensed goods for brands including Alpine, REI, Northface, Camel Back, and Eastpak (also a VF brand). The parent company, Dae Joo Leports Corporation, has its head office in South Korea and operates another production facility in Qingdao, China.

The WRC undertook this assessment of violations of college and university codes of conduct on the basis of preliminary research by WRC staff and partner organizations based in Jakarta. The WRC had received a complaint letter from another factory in the KBN in November 2002 and the potential problems identified by the WRC's researchers in the context of PT Dae Joo Leports – primarily in the areas of occupational health and safety, health benefits and freedom of association – mirrored those at the other factory to a significant degree. For the purposes of developing a deeper understanding of general problems at factories producing licensed apparel within the KBN, and in order to look more closely at the strong indications that there were such problems at PT Dae Joo Leports, the WRC undertook a systemic or spot investigation (i.e., an investigation *not* triggered by a complaint), pursuant to Section III.A of the WRC Investigative Protocols.

The WRC's Assessment Team, composed primarily of prominent Jakarta-based experts on labor rights and occupational health and safety, carried out its intensive investigation from February 21-27, 2003. This report documents the outcome of that process, as well as of preliminary and supplementary research conducted by WRC staff, consultants, and partner organizations.

In this report, the WRC also outlines the commendable response of the licensees – VF (and its subsidiary Jansport) and adidas-Salomon (and its licensee Agron) – and details the constructive processes of remediation initiated by factory management in Jakarta and South Korea. The WRC believes that the changes taking place at PT Dae Joo Leports as a result of the licensees' commitment to frank and thorough communications with the Dae Joo Leports Corporation are both significant and sustainable. At the same time, the fact remains that PT Dae Joo Leports has yet to fulfill a number of important remediation commitments and the ultimate test of the factory's progress toward compliance with College and University Codes of Conduct will be whether these commitments are met.

## Sources of Evidence

The WRC Assessment Team's findings are based on the following sources of evidence:

- Interviews with 79 employees from the sewing, cutting, quality control, mechanics and packing divisions, including several employees in supervisory and administrative positions. The employees ranged in age from 18 to 35 years.
- An extensive meeting with upper- and mid-level management at PT Dae Joo Leports, and a survey of the factory premises.
- Interviews with Serikat Pekerja Tekstil, Sandang dan Kulit (Indonesian Textile, Garment, and Leather Workers Union; henceforth "SPTSK") national, regional, and factory level officers, and factory level members.
- Interviews with Serikat Buruh Garmen Independen PT Dae Joo Leports (the Independent Garment Workers Union at PT Dae Joo Leports; henceforth "SBGI") members and officers.
- Interviews with staff at the factory health clinic of PT Dae Joo Leports.
- An interview with the administration of the KBN export processing zone.
- Interviews with government officials from the Panitia Penyelesaian Perselisihan Perburuhan Daerah (Regional Committee for the Settlement of Labor Disputes; henceforth "P4D").
- Interviews with government officials from the Departmen Tenaga Kerja dan Transmigrasi (the Ministry of Manpower and Transmigration; henceforth "Depnakertrans" and the provincial branch, "Disnaker").
- An assessment of occupational health and safety standards at PT Dae Joo Leports led by Balai Hiperkes dan Keselamatan Kerja (the Indonesian governmental agency for workplace health and safety; henceforth "HIPERKES").
- Interviews with officials from PT Jaminan Sosial Tenaga Kerja (a government-operated social security firm; henceforth "JAMSOSTEK").
- Additional worker interviews conducted by WRC staff and consultants prior to and after the formal interviews conducted by the Assessment Team.
- Collection and review of company documents including the collective bargaining agreement, personnel policy, personnel files, pay stubs, and medical records
- Extensive research of Indonesian law, including governmental and departmental regulations, guidelines, and circulars.

## Allegations Assessed in this Report

Based on preliminary research by WRC staff and consultants, including extensive worker interviews, a number of potential violations of law and of Codes of Conduct were identified for investigation by the WRC Assessment Team. The concerns and allegations were as follows:

- *Freedom of association and collective bargaining.* That the company failed to negotiate with the SPTSK union at the factory, in spite of numerous requests

that it do so; that management threatened workers perceived to be members of the union with dismissal.

- *Arbitrary exercise of disciplinary action.* That workers were demoted, transferred, dismissed or subjected to other disciplinary action out of proportion to the alleged misconduct.
- *Access to health care.* That the company did not provide health insurance or provide for the treatment of work-related injuries, as required by law.
- *Inadequate wages and benefits.* That the company did not provide adequate stipends for food and transportation.
- *Occupational health and safety.* That the company did not provide adequate, appropriate personal safety equipment for workers engaged in hazardous tasks, and restricted access to bathrooms.
- *Hours of work and forced overtime.* That the company regularly forced workers to perform two hours of overtime per day and in some instances forced workers to work until 11PM or later in order to meet production deadlines. Also, that the company used deceptive and coercive means to compel some workers to accept work on shifts other than the day shift.
- *Other forms of involuntary labor.* That workers in the quality control division were sent on extended postings to other factories without the option to refuse, without any information about the length of the posting, and without adequate compensation or benefits. Separately, that the company compelled employees to work until 12AM (midnight) or later if orders were not ready for shipment.
- *Misuse of the contract labor system.* That workers were retained on short-term contracts without their positions being regularized, in violation of the law as applicable at the time.
- *Women's rights.* That women workers could not take menstrual leave, as provided for by law.

We outline below the WRC's findings with respect to each of these areas of potential non-compliance and, where appropriate, list recommendations for remedial action, developed in consultation with workers, government agencies and experts in the field. Substantial remediation work has occurred at PT Dae Joo Leports over the months since the WRC Assessment Team's initial on-site investigation. This progress has taken place in the context of extensive and ongoing discussions between the WRC and the licensees and factory management. Some key communications are referred to in this document, including the WRC's April 1 submission to PT Dae Joo Leports management of an initial set of findings and recommendations, management's response of April 28, and conversations which took place during the WRC staff's most recent meeting with factory management on July 3. The status of these discussions and progress on remediation efforts to date are reviewed below.

## FINDINGS, RECOMMENDATIONS AND STATUS REPORT

### Freedom of Association and Collective Bargaining

#### Allegations

The WRC Assessment Team investigated allegations that PT Dae Joo Leports had refused to negotiate a collective bargaining agreement with a duly-recognized union, and had threatened or otherwise sought to intimidate workers who are, or were, members of this union.

#### Findings

At the time of the WRC assessment of PT Dae Joo Leports, management, by its own admission, had failed to agree to negotiate a *Persetujuan Kerja Bersama* (collective bargaining agreement; henceforth “PKB”) with the 6-month-old SPTSK union. The company had refused to respond either to the draft PKB presented to them by the union in December 2002 or to the two letters sent by the union in the weeks following. The refusal to negotiate a collective bargaining agreement is not only in contravention of College and University Code of Conduct provisions regarding collective bargaining and freedom of association, but is also in violation of Indonesian law. Under regulations governing collective bargaining, companies and legally registered unions must negotiate a contract if either one of the parties so requests; the other party has 30 days after a request in which to respond.<sup>11</sup>

When the draft PKB was presented to management, union members became the targets of comments from mid-level management such as: “If you’re unhappy here, you should just quit – or we could terminate you.” The Personnel Manager constantly criticized the SPTSK union, as well as the workers who had joined it, for having wanted to switch over from the *Serikat Pekerja Seluruh Indonesia* union (All-Indonesia Workers’ Union, henceforth “SPSI”) that had been in place before. Other comments that were reported to the WRC Assessment Team included threats relating to workers’ right to engage in strikes and demonstrations, such as: “One more strike and we will move all production to China.” Workers testified consistently, in detail, and in multiple, independent interviews, about the content and sources of these comments.

Threats against union members are also illegal in Indonesia. Freedom of association is protected through legislation that prohibits all interference with workers’ decisions to participate (or not participate) in trade unions and their activities.<sup>12</sup> Management denied that they had sanctioned the use of threats and intimidation to chill union activity. The Assessment Team did not find these denials to be credible.

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<sup>11</sup> PER-01/MEN/85 Article 2(3)

*Note:* Indonesian laws and regulations fall into four general categories: *Peraturan Menteri* (Ministerial Regulations; henceforth “PER-/MEN/”), *Keputusan Menteri* (Ministerial Decrees; henceforth “KEP-/MEN/”), *Undang-Undang* (Acts or Ordinances; henceforth “UU”), and *Peraturan Pemerintah* (Government Regulations; henceforth “PER-/MEN/”).

<sup>12</sup> UU-21/2000

## **Recommendations**

It proved unnecessary for the WRC Assessment Team to make a recommendation concerning PT Dae Joo Leports's obligation to negotiate a contract with the SPTSK union because, during their interview with the Assessment Team, PT Dae Joo Leports managers, having acknowledged a "delay" in responding to the union's entreaties, immediately pledged to do so and, in fact, stated that they planned to meet with the SPTSK union at 2PM the same day. The meeting took place as planned, and a first negotiation session then occurred on March 15, 2003. In order to promote ongoing compliance in this area, the WRC recommended that PT Dae Joo Leports management adhere to the negotiation schedule agreed upon at its first bargaining session with the union and that management post an announcement in several easily accessible areas around the factory, announcing that contract negotiations had begun, reiterating the ground rules for negotiations and laying out the general schedule. It was recommended that upper management at the factory should provide at least some direct supervision and oversight of the staff participating in negotiation sessions, if direct and consistent engagement by senior managers in the negotiations was deemed not to be feasible.

The WRC recommended that upper management engage in closer supervision of members of mid-level management and supervisors who deal directly with union officers, in order to end efforts to coerce or intimidate workers and to ensure that the company's stated commitment to workers' freedom of association was meaningful at the level of the day-to-day functioning of the factory.

## **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

In a communication dated April 28, 2003, PT Dae Joo Leports responded to the WRC's presentation of recommendations on this matter. Management asserted that they were not aware that they were required by law to negotiate a PKB with the factory-level SPTSK union, but confirmed that they were nevertheless committed to the negotiation process. They also agreed to the active involvement of upper-level management, and to the public posting of information regarding the PKB negotiations.

VF has agreed to encourage management in both PT Dae Joo Leports' Indonesian and South Korean offices, to adhere to the negotiations schedule and to continue to bargain in good faith with the SPTSK union. Compliance officers at adidas-Salomon/Agron made a similar commitment, on the condition that an inquiry into Indonesian labor law revealed that management did indeed have an obligation to negotiate a contract with the factory-level union. (The applicable laws relating to collective bargaining are cited above). The WRC communicated that the eventual negotiated PKB must be in compliance with Indonesian law and College and University Codes of Conduct.

PT Dae Joo Leports management was quick and efficient in resolving these concerns; first, by setting up regular negotiation sessions and second, by widely announcing the progress of the ongoing negotiations within the production area. The negotiations have taken longer than either management or labor first anticipated, but the period was extended by mutual agreement. Part of the reason for the extension was to give time for the newest union at PT Dae Joo Leports to be involved in the process (see

*New Developments* below). The WRC will continue to monitor the negotiations process at PT Dae Joo Leports.

### **New Developments**

The WRC has recently learned of the legal registration of a second union at PT Dae Joo Leports: SBGI. The WRC assumes that PT Dae Joo Leports management will respect the rights of this union, as they have of the SPTSK union, in terms of recognizing it as a legal, valid union with the right to negotiate a contract should its membership reach a majority. Most importantly, according to Indonesian law, no level of management may engage in preferential treatment towards, or discrimination against, either union.<sup>13</sup> Thus, both unions are guaranteed the same rights and responsibilities. For example: the unions must be granted the same amount of time for carrying out union activities and duties, granted the same access to workplace resources, and both unions must be equally involved in discussing workplace policies and procedures or other issues that will impact workers. Also of great importance is management's duty to be vigilant in ensuring that employees do not experience intimidation, harassment, demotion, or punishment of any kind as a result of joining the union of their choice (or not joining one at all).

### **Additional Recommendations**

In view of the establishment of a second legally recognized union at the factory, the WRC recommended that – in order to ensure that workers understood their right to associate with the union of their choice, or with no union at all – a company policy on freedom of association be written, posted widely in the factory, and read aloud by all supervisors to each production line. The WRC further recommended that PT Dae Joo Leports make an announcement in the same manner (written and verbal) recognizing that there are now two legally registered unions at PT Dae Joo Leports. The contents of the policy and announcement should be reviewed by the chairperson of each union before they are publicized.

The WRC also recommended that management and the leaders of the two unions meet at the earliest opportunity to discuss and establish the guidelines for union activity within the factory in areas not regulated by law. These would include: when and where and by whom membership forms may be distributed; when and where membership meetings may be held (if at all) on the factory premises; where union announcements and information may be posted within the factory; the frequency and location of union and management meetings; the amount of time allotted for, and the procedures union leadership or membership should follow to notify management of, union duties during a workday; the accessibility of basic office facilities (e.g. photocopy machine/ fax/ telephone). The WRC emphasized that laying down such ground rules would help avoid confusion and discrimination in the future.

The WRC further recommended that, given SBGI's legitimacy and growing membership base within the factory, the new union be consulted regarding the PKB's content prior to its finalization.

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<sup>13</sup> UU-21/2000

### **Response from PT Dae Joo Leports to the Additional Recommendations**

PT Dae Joo Leports agreed to recognize the new union and to create a freedom of association policy as a matter of high priority, and to announce both verbally and in writing that SBGI was now officially registered and recognized by the company. PT Dae Joo Leports management promised to send the WRC a copy of the freedom of association policy and announcement regarding the recognition of the two unions as soon as it had been completed. The agreement has not been sent to date despite follow-up email regarding the issue.

PT Dae Joo Leports management also agreed to grant the leadership of the two unions time to meet to discuss the guidelines for union activity within the factory. Management also agreed to send the WRC the minutes of this meeting, once it had taken place, or, in the alternative, a copy of the agreed-upon union guidelines. Again, the WRC has not received such documentation to date.

PT Dae Joo Leports management and SPTSK leadership also agreed to consult with SBGI leadership about the content of the PKB before the finalization of the agreement.

### **Arbitrary Exercise of Disciplinary Action**

#### **Allegations**

The Assessment Team addressed allegations that workers at PT Dae Joo Leports had been subjected to excessive or arbitrary disciplinary procedures, up to and including termination, for actions that merited no action or a mere warning. The WRC also sought to determine whether particular workers were discriminatorily targeted for having asserted their rights in the workplace.

#### **Findings**

During the first two months of 2003, according to credible worker testimony, a number of workers who should have received a simple warning letter for an alleged violation of company rules had instead been terminated. During interviews conducted by the WRC Assessment Team, workers expressed great concern that their position, in terms of disciplinary procedures and practices, was particularly precarious since the internal company policy governing such matters had expired at the end of 2002. No negotiated statement of workers' rights and responsibilities had taken its place, since management had not, at the time of those interviews, responded to requests to begin negotiating a contract.

Workers also testified to other forms of retaliation implicating associational rights, such as mid-level management's practice of demoting or transferring those workers seen as troublemakers, without due process. Workers who credibly described being targeted in terms of arbitrary demotions, transfers and firing included: members and leaders of worker representative bodies/organizations; workers who had demanded that the company pay for their medical expenses through JAMSOSTEK; workers who had asked for improved wages or benefits; workers who had complained about workplace safety issues; and workers who had complained about forced overtime. Several workers

described having been transferred to other departments in ways that appeared to them to be both arbitrary and punitive. Even where such transfers were lateral rather than being demotions, workers experienced them as disruptive, both because they generally involved harder tasks that took longer, and therefore rendered targets more difficult to reach, and because they placed workers among unfamiliar faces and thus inhibited the formation of social structures as well as attempts to organize within the factory.

It should be noted that one particular worker, Sukati, who agreed to be named in this report, was transferred five times in rapid succession without any clear reason being given on any occasion. Sukati, who served as the president of the Workers' Representative Committee<sup>14</sup> at PT Dae Joo Leports from 1997-99, and whose experiences with PT Dae Joo Leports in terms of seeking reimbursement for health care after a work-related injury are described below, expressed the belief that her supervisors were striking back at her for her outspokenness. She was convinced that the actions of supervisors were designed to render her tired and frustrated, to the point where she would resign.

Senior managers denied that PT Dae Joo Leports used disciplinary action in an arbitrary manner, or in ways designed to punish workers for seeking to assert their rights. The assessment team requested documents covering all instances of demotions and transfers within the factory over the six months prior to the Assessment Team's visit as verification of management's assertions. Management provided some documents, but the files provided were incomplete and there were no files at all for the majority of the employees who had alleged that their transfers and/or demotions were illegitimate. PT Dae Joo Leports management also could not describe the process by which it made decisions to transfer and demote. With respect to dismissals, as PT Dae Joo Leports later acknowledged in a written communication, they had no procedures in place.

In light of this evidence, the Assessment Team determined that discipline had been exercised in an arbitrary fashion and/or as a means of punishing outspoken workers, at least in some cases. It must be emphasized that it is unclear whether upper management at PT Dae Joo Leports authorized, or was even aware of, any such acts by supervisors and mid-level managers. Senior management is, however, responsible for implementing and maintaining appropriate procedures and ensuring that all personnel follow them.

## **Recommendations**

The WRC recommended that unofficial policies permitting arbitrary transfers and demotions be suspended, and that workers affected by these policies be given the option of reinstatement to their prior postings. The WRC urged that management use the contract negotiation process as a vehicle to develop and institutionalize appropriate disciplinary procedures. The WRC also recommended that senior managers exercise closer supervision over disciplinary procedures in order to eliminate the possibility of their abuse by lower-level staff.

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<sup>14</sup> The Workers' Representative Committee was a non-trade union-affiliated factory-level committee, with its representatives elected by fellow employees, which existed prior to the formation of a legally registered trade union.

## **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

In response to recommendations conveyed to them on April 1, PT Dae Joo Leports agreed to negotiate with the union during the PKB process towards a revised policy regulating warnings, terminations, demotions, and transfers and to exercise close supervision of staff with respect to disciplinary practices. The WRC and VF have agreed that, if PT Dae Joo Leports adopts a fair disciplinary policy through the PKB negotiations, posts this policy inside the factory, trains supervisors and employees on its workings and engages in ongoing monitoring of the policy's implementation, remediation in this area will be essentially complete. The WRC will continue to monitor developments in this area. The issue of reinstating workers subjected to prior arbitrary discipline remains unresolved, however.

On July 3, the WRC received a copy of the disciplinary policy language that has been developed through the PKB negotiations. The policy had improved in clarity from previous attempts, but still needed to reference Kep-150/MEN/2000 (\*\*\*\*the Ministerial Decree on Employee Dispute Resolution, Termination, Severance, Merit Pay and Compensation), as the main legal framework for termination and resignation procedures. As the policy stood in early July, only the new general labor law UU-13/2003 (\*\*\*\*Manpower Act) was listed in regards to the termination process for employees.<sup>15</sup>

## **Access to Health Care**

### **Allegations**

It was alleged that PT Dae Joo Leports failed to provide adequate health care, as required by Indonesian law.

### **Findings**

The Assessment Team determined that PT Dae Joo Leports had failed to comply with its legal obligation to provide health insurance coverage to all employees.<sup>16</sup> The law requires businesses to enroll all employees in Jaminan Pemeliharaan Kesehatan, (the health insurance system operated by the national social security program JAMSOSTEK, henceforth "JPK"), also know as "Packet B" of JAMSOSTEK.<sup>17</sup> The only exception is for employers who provide alternative health insurance coverage that is demonstrably superior to JPK. By its own admission, at the time of the WRC investigation, PT Dae Joo Leports did not provide JPK coverage to employees. The health care provisions the factory *did* make did not constitute a superior (or even minimally functional) alternative.

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<sup>15</sup> While the company might argue that UU-13/2003 takes precedence over Kep-150/MEN/2000, Indonesian lawyers addressing conflict of law issues would generally disagree with this analysis, for a number of reasons not immediately relevant to this report. What remains incontrovertible is that UU-13/2000 *cannot* be the sole point of reference at this point in time, since none of the *peraturan pelaksanaan* (regulations required to define the mode of implementation of a general law) are as yet available. Given this, it is necessary to cite current *peraturan pelaksanaan* such as Kep-150/MEN/2000, until regulations are written to take their place.

<sup>16</sup> PER-01/MEN/1998 and PER-14/PEM/1993 Article 2(1,3-4); and UU-03/1992, Article 3(1, 2) and Article 4(1)

<sup>17</sup> PER-05/PEM/1993 Chapter VII lists the services available under JPK.

The company did provide a clinic on the premises, but services, in terms of scope and availability, were far inferior to those available under JPK. For example, the clinic did not provide care to workers' families (as JPK does), but only to workers themselves. The clinic was only open during work hours, leaving workers with no access to emergency care. The clinic did not provide a number of essential medicines, and had no dentist, optometrist, or X-ray machine. The clinic was staffed by nurses, with a primary care doctor visiting for a few hours three times a week.

At the time of the WRC assessment, it was the company's practice to refuse any reimbursement for care sought by workers outside of the clinic factory, even in cases where the clinic physician deemed such care necessary. Thus, in general, workers had no alternative to the inadequate services provided by the clinic. This conclusion was supported by the experience of the WRC Assessment Team when it conducted a health and safety review of the factory on March 14, led by specialists from HIPERKES. Some workers tested positive for anemia during exams conducted by the doctors from the Assessment Team. (It should be noted that the WRC Health and Safety team concluded that there were no indications that these cases of anemia had been caused by any health and safety conditions or practices at PT Dae Joo Leports.) When the doctors attempted to provide these workers with referrals for treatment, the PT Dae Joo Leports personnel manager prevented them from doing so, stating that PT Dae Joo Leports did not pay for outside medical care.

Management was also generally unwilling to provide reimbursement for expenses for outside medical treatment related to workplace accidents and injuries. Coverage for work-related injuries is mandatory under a separate law.<sup>18</sup> According to worker testimony, the factory's practice was to apply to the insurance company for reimbursement for an initial treatment, and then to refuse to reimburse workers for subsequent, necessary treatments.

PT Dae Joo Leports initially claimed that it could demonstrate that the company did, in fact, apply to JAMSOSTEK for reimbursement for multiple treatments of work-related accidents and injuries and that it did reimburse workers for general medical treatment. The documents that were shared by management with the Assessment Team, however, did not demonstrate this. As noted above, management acknowledged that workers were not enrolled in JPK. Management claimed that this was unnecessary, since the factory maintained an on-site clinic. However, as outlined above, because the services provided by the clinic are not superior to those provided under JPK (and, indeed, are significantly inferior), the clinic is not a legally adequate substitute for JPK enrollment.

Many individual workers experienced substantial hardship due to the company's failure to provide medical care. The WRC cannot provide details of most individual cases that were reviewed, for reasons of confidentiality. However, one employee, Sukati, agreed to the disclosure of her name and the full facts of her case for the purposes of this report as well as in terms of communication with the factory and the licensees. She did so, in spite of initial fear of retaliation, because of her desperate need for medical care.

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<sup>18</sup> See UU-03/1992 Articles 4(1) and 8(1). "Compensation," as referred to in Article 8(1) covers transportation costs, examinations, medical and/or curative treatment, rehabilitation, and benefits to appropriate parties in the case of temporary inability to work, permanent partial disability, permanent and total disability (either physical or mental), and death (Article 9).

The WRC includes this account in the report because it serves as an illustrative case study of the problems with access to health care at PT Dae Joo Leports.

Sukati sustained a head injury in July 2000 when she collided with a low-hanging target board in the production area.<sup>19</sup> She lost consciousness, but returned to work shortly thereafter. However, over the course of the next few hours, Sukati's face became disfigured and partially immobilized; she also began to experience severe headaches, blurred vision, mental confusion, and blackouts.

Sukati sought immediate medical care for this injury, and paid for it herself. However, after some debate, PT Dae Joo Leports management eventually agreed to file for reimbursement through JAMSOSTEK's accident compensation procedures. With the assistance of JAMSOSTEK, Sukati was able to receive appropriate diagnostic work, including a CT scan, and was able to purchase some medications; however, she did *not* obtain the operation that doctors had recommended in order to deal with the subdural hemorrhage revealed by the CT scan, or any alternative treatments, since the company informed her that they would not pay, even though the law unequivocally required them to do so.<sup>20</sup> PT Dae Joo Leports was unwilling to pay for any ongoing health care, including visits to neurologists and ear, nose, and throat specialists. As a result, Sukati relied on analgesics and sinus medications that she paid for out of pocket as a means of controlling her pain, while the underlying condition went untreated.

In March 2003, Sukati experienced a recurrence of her most acute symptoms, including severe headaches and disorientation, and her rapidly deteriorating health made it impossible for her to continue working. When Sukati again sought assistance from the factory, the personnel manager stated that he would not authorize further treatment without proof of positive correlation to the injury of 2000. However, when a second CT scan demonstrated that the condition was a result of the initial work-related injury, and the doctor at the company's own clinic agreed with the analysis, the personnel manager continued to refuse to authorize treatment, and actively prevented Sukati from meeting with upper level management.

## **Recommendations**

The WRC recommended that the factory pay for adequate care for all work-related illnesses and injuries, as required by law. The WRC also recommended that the factory provide all employees with JPK health insurance coverage, or a superior alternative, as required by law. The WRC noted that if the factory chose to use JPK as their health insurance plan they must provide all employees with JPK cards and instructions on use, as quickly as possible. If the company chose a superior insurance alternative to JPK, the WRC stressed, management would have to pay special attention to educating employees on the proper use of their health benefits, since insurance procedures can often be confusing and are currently unfamiliar to most employees.

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<sup>19</sup> This would be categorized as a work-related injury under PER-04/MEN/1993, Article 2 since it happened at her place of employment.

<sup>20</sup> PER-83/PEM/2000 and Appendix II of PER-04/MEN/1993 state that medical "operations" are also included under the "medical and/or curative treatment" covered by mandatory work-related accident compensation. (PT Jaminan Sosial Tenaga Kerja (Persero), *Kumpulan Peraturan Perundangan Jamsostek*, Jakarta, January 2003, p.87)

In terms of the cases of anemia at the factory, the WRC recommended that all workers be allowed to seek treatment at the company's expense – since workers are eligible for such treatment under JAMSOSTEK regulations – and that all workers be tested for anemia, given the substantially elevated rates of incidence indicated in the tests conducted by the WRC Team. As a general matter, the WRC noted that the factory's approach with respect to anemia should be guided by two principles: firstly, the prioritization of annual exams, as required by law,<sup>21</sup> in order to promote early intervention, and secondly, the understanding that the most effective way of preventing anemia is good nutrition (addressed at greater length later in this report, in the section on food stipends). Since management provides food stipends and space where food vendors can set up stalls during the lunch break, management is legally obligated to provide some nutritional guidance, especially to employees who are known to have a medical condition influenced by their diet.<sup>22</sup> One means through which management could assist anemic employees is by providing them with a brochure, flyer, or some other form of basic information regarding recommended dietary choices for people with anemia.

With respect to Sukati's case, the WRC wrote to PT Dae Joo Leports management, to VF and to adidas-Salomon/ Agron, describing in detail her condition and the treatment she required, and calling for immediate intervention to ensure that Sukati received the care she needed, at the medical facility of her choice, and at the company's expense. The WRC emphasized that Sukati's case was not intended to be the main focus of the recommendations in terms of remediation in the area of health care. Her case was, however, an urgent problem, and one that served as a powerful illustration of why it was so important for management to meet its legal obligation to provide health insurance to all employees.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

VF and adidas/Agron agreed that PT Dae Joo Leports had a legal obligation to provide JPK or better health coverage and urged action by the company. Both licensees communicated their views to the factory in May. VF asked the factory to provide proof of full enrollment and payment by the factory by the end of July. By late June, as reported to the WRC by employees, and as reported in an audit conducted on behalf of VF and Jansport, the factory had decided to select an alternative health insurance plan to JPK.

PT Dae Joo Leports management, along with SPTSK representatives, selected Koja Hospital as the primary healthcare provider for all employees and their family members (up to three children per family). On July 3, the WRC was provided with a brochure about the hospital's facilities. A benefit package is currently being developed with Koja Hospital (with input from the SPTSK bargaining committee) that is intended to be better than JPK; exact details were to have been finalized by the end of July. PT Dae

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<sup>21</sup> PER-02/MEN/1980 Article 3 (2) requires all employers to arrange for "medical examinations of all employees at least once a year, unless an exception has been given by the General Director of the Labor Relations and Workers Protection Board."

<sup>22</sup> An obligation imposed on the factory by PER-03/MEN/1982 Article 2, which emphasizes: "(i.) Giving advice on the planning and establishment of workplaces, the selection of personal protective equipment deemed necessary and on nutrition and arrangement of meals in the workplaces" and "(k.) Development and supervision of workers having certain health defects; ..."

Joo Leports management promised to send the WRC a copy of the benefits and implementation plan set up through Koja Hospital, once complete. As of August 18, 2003 no such plan has been delivered.

The WRC understands that smooth implementation of the benefits package may take more time than originally envisioned, and is encouraged by PT Dae Joo Leports' efforts thus far to fulfill this legal requirement. Assuming that the factory follows through, this is a very positive outcome that will bring the factory into full compliance with College and University Codes of Conduct in this critical area and have a significant positive impact on the lives of PT Dae Joo Leports employees. VF/ Jansport and adidas-Salomon/ Agron deserve much credit for their prompt efforts on this front.

During the interim period, all expenses arising from medical referrals by the factory doctor will be paid in full by the company. It is still not possible for employees to be reimbursed for medicine they purchase outside of the factory, even if the factory's visiting doctor writes the prescription. The WRC strongly recommends reimbursing employees for, or subsidizing, medicines prescribed by the factory doctor.

With respect to anemia, VF has asked the factory to make sure that all workers who have not had a medical exam receive one, as required by law. PT Dae Joo Leports agreed and quickly reported to VF that vitamin supplements recommended by doctors specifically for anemia are now available in the factory clinic. In July 2003 the WRC examined the supplements and found them to be of good quality and content. However, currently there are only 10 employees who are taking the supplements, a surprisingly low number considering the relatively high rate of anemia indicated by the WRC's Occupational Health and Safety survey in March. The WRC believes that part of the reason why so few people are making use of the supplements is that there has not been any public announcement about their availability. The WRC recommends that the factory clinic make blood testing for anemia a routine part of the check-up of any employee who comes to the clinic, and further recommends the posting of an announcement regarding the availability of supplements. This proposal is an element of broader recommendations related to the legal requirement that employers provide annual health exams (*please see section on Occupational Health and Safety*).

There have been substantial and very positive developments in the case of Sukati. The licensees supported the WRC's recommendation that the factory assume full responsibility for Sukati's medical care and, after substantial communications between the WRC, the licensees, and the factory, management did take the necessary action. Sukati, who was ultimately hospitalized because she could no longer care for herself, received proper treatment for her head injury beginning in early May and began to recover. Her doctors report that she has responded well to treatment. In late June, after an absence of five months, Sukati was healthy enough to return to work. The WRC believes that the timely and aggressive involvement of the licensees was a crucial factor in resolving this issue.

## **Food and Transportation Stipends**

### **Allegations**

Workers alleged that the factory did not provide adequate stipends to workers for food and transportation.

### **Findings**

While workers reported that the daily food stipend of 1,500 Rupiah was sorely inadequate, it is nevertheless the case that this amount appears to be fairly standard for similarly situated factories in the KBN; furthermore, there is no requirement under law that factories provide more. Similarly, even though the factory makes no provision for transportation to and from work, there is no legal obligation for them to do so. The WRC Assessment Team therefore concluded that these are not violations of College and University Code of Conduct provisions in the area of wages and benefits.

The WRC has, however, recommended to PT Dae Joo Leports and to the licensees that they give consideration to the amount of the food stipend, both from the perspective of the benefits that the factory would stand to derive from a better nourished and therefore more productive workforce, and in terms of the reality of workers' lives and the difficulty of affording decent nutrition. (For example, a full and balanced lunch costs at least 5,000 Rupiah). Any action the factory and licensees take in this regard would be voluntary and beyond obligations imposed on them by College and University Codes of Conduct. The ongoing collective bargaining process is one possible mechanism through which the issue could be addressed.

## **Occupational Health and Safety**

### **Allegations**

The WRC examined complaints that PT Dae Joo Leports was not a safe and healthy environment for workers; specifically, that management failed to arrange for appropriate personal safety equipment, that it restricted access to bathrooms, that it did not provide adequate ventilation or cool drinking water, and that ergonomic problems were widespread.

### **Findings**

The Assessment Team found that the absence of personal safety equipment (PSE) was a serious problem at PT Dae Joo Leports. Workers told the WRC Assessment Team that they rarely received masks while engaging in fusing operations, which produce quantities of smoke, or in the cutting area, where, they asserted, there are many filaments of synthetic fabric in the air. During its factory walkthrough, the Assessment Team confirmed that most workers in these divisions were not wearing masks. The outcome, as

both factory clinic staff and employees stated, was that many workers at PT Dae Joo Leports have some degree of respiratory trouble (chest discomfort and chronic coughing were the most common complaints, though it was also reported that six workers were diagnosed with pulmonary tuberculosis last year). During the walkthrough, workers in the cutting division were also seen operating machines without protective gloves. Workers throughout the factory described witnessing accidents to workers in the cutting division, involving injuries to hands and arms from the unshielded blade of the cutting machines.

There were other problems at the factory, each implicating provisions in College and University Codes of Conduct regarding the employer's obligation to ensure a safe and healthy working environment. The problems noted below were either cited by workers, noted during the Assessment Team's factory walkthrough, or observed during the health and safety survey on March 14:

- Several workers described experiencing or witnessing accidents involving the low-hung target boards at the end of every production line, with injuries ranging from mild concussion to neurological damage, as in the case of Sukati (see above).
- The health and safety survey, led by HIPERKES, indicated that the cutting, embroidery, sewing and packing divisions could be excessively hot and humid during certain times of the day,<sup>23</sup> and that noise levels in the cutting, sewing, and embroidery divisions surpassed the legally acceptable limit.<sup>24</sup>
- Workers described restrictions on their access to the bathrooms, such that only a few workers would be permitted to use the bathroom at any given time, and each worker could request access no more than a couple of times a day, on penalty of receiving a written warning or verbal abuse from the supervisor.
- Most workers complained of chronic pain that, according to the occupational health experts on the WRC Assessment Team, was probably linked to the repeated performance of tasks that placed stress on the same body parts.

## **Recommendations**

The WRC recommended, first and foremost, the creation of an Occupational Health and Safety Committee comprised of workers' and management representatives, as required by law,<sup>25</sup> as a crucial preliminary step towards the resolution of most of these concerns. For example, the Committee would be able to work towards ensuring that appropriate PSE for the various divisions (masks, gloves, earplugs, finger guards on sewing machines etc.) was made available, and that the systems were in place to ensure worker compliance, through trainings on PSE use and suitable incentives for doing so. The Committee could also be involved in the coordination of annual health checks of all employees, fire drills, and other factory-wide health and safety issues. Furthermore, the Committee would work with management, and with outside health experts when needed, to identify areas where ergonomic problems and risks exist and to develop a meaningful ergonomic health program.

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<sup>23</sup> Laporan Hasil Uji HIPERKES, PT Dae Joo Leports, March 14, 2003

<sup>24</sup> Laporan Hasil Uji HIPERKES, PT Dae Joo Leports, March 14, 2003

<sup>25</sup> PER-04/MEN/1987

The structure and role of this committee is defined by law to a significant degree (at a minimum, it should receive regular training and should coordinate the dispersal of information regarding the proper usage of health and safety equipment, the correct handling of certain hazardous machines, and the process for using JAMSOSTEK), but exceptional issues related to the Committee's rights and responsibilities should properly be addressed through negotiation with workers during the PKB process.

As the WRC noted in the letter regarding findings and recommendations that was sent to the factory on April 1, a number of issues needed prompt resolution by management, prior to the formation of an Occupational Health and Safety Committee. The WRC listed the following as matters requiring urgent attention:

- Preliminary measures in terms of providing generally appropriate PSE must be taken, in response to specific worker complaints. Thus, workers in the fusing and cutting divisions must have ample access to masks, and workers in the cutting division must receive gloves. All sewing machines should be equipped with basic finger guards to reduce the incidence of puncture wounds.
- Windows and doors should be left open as far as possible to increase ventilation within the factory. More fans and/ or air conditioning should be installed in areas or divisions where temperatures were found to exceed 32 degrees Celsius.
- The factory must intervene by arranging for special evaluative medical exams wherever particular work-related health problems seem prevalent (such as the high incidence of tuberculosis in the cutting division), as required by law.<sup>26</sup>
- PT Dae Joo Leports management must take steps to decrease the noise levels in the cutting, sewing, and embroidery divisions. Employees in these divisions must receive ear and hearing protection as well as training concerning the importance of wearing this equipment.
- Workers should have unhindered access to bathroom facilities (without having to wait for permission from a supervisor) as frequently as required during the workday.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

In its April 28 communication with the WRC, PT Dae Joo Leports noted that an Occupational Health and Safety Committee had been set up in the factory, consisting of one or two workers from each production line. The Committee had had its first meeting, and was to be trained about the use of the first aid boxes, basic principles of emergency treatment, and ergonomic issues, on a quarterly basis. The Committee would also be placed in charge of a checklist on other occupational hazards, and would meet regularly with upper management at the factory to discuss the results. The WRC was given a copy of the Committee's structure and training materials on July 3, and these appeared to be in full compliance with the law.

In its letter to the WRC, the company pointed out that the divisions where PSE was particularly important had received masks, gloves, earplugs etc. as required, but that workers constantly lost the equipment or refused to wear it, finding it troublesome. Management did, however, make a commitment to continued trainings regarding the importance of the proper use of PSE. Both adidas-Salomon/ Agron and VF indicated to

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<sup>26</sup> PER-02/MEN/1980 Article 5

the WRC that they would prioritize the issue of why workers at PT Dae Joo Leports were reluctant to use the provided PSE, and would inquire into whether the equipment was indeed appropriate for the specified purpose.

In terms of the other concerns raised by the WRC:

- The company took exception to the concerns raised with respect to the target boards, arguing that they did not present as severe a hazard as was claimed. However, given the concerns expressed by the WRC and by workers at PT Dae Joo Leports, VF agreed to intervene in the matter, clarifying to the factory that all low-hanging signs must be raised, mounted on a wall or on a post, or moved out of the path of workers.
- Management agreed to increase the number and strength of fans on the production floor. After these additions, the ambient temperatures generally did not exceed 32 degrees Celsius. There are still a few areas, however, where temperatures continue to reach 34-35 degrees by afternoon. The WRC is currently helping Dae Joo Leports management locate an appropriate Occupational Health and Safety engineer with expertise in ventilation and temperature control through HIPERKES, Sucofindo (a private consulting firm), or another agency.
- PT Dae Joo Leports acknowledged that the embroidery division was noisy, and agreed to provide workers with more effective earplugs as a temporary solution to the problem.
- PT Dae Joo Leports denied that there were any limitations on how frequently workers could go to the bathrooms, or how many could go at any one time. The WRC believes that this could be another example of upper level management policy not being made sufficiently clear to line supervisors who might believe, in the absence of other information, that placing restrictions on workers' mobility could be an acceptable means of ensuring that production targets are met. Adidas-Salomon/ Agron stated that, in addition to working with management to ensure that there was free access to bathrooms, they would also investigate the issue of why bathroom access had become such a problem, in order to determine whether underlying concerns were present, such as insufficient bathrooms.
- PT Dae Joo Leports believed that the concerns raised by the WRC's occupational health and safety experts in terms of ergonomics implied that the organization saw job rotation as the most suitable means of remedying the problem. As management pointed out, most workers want to remain in the same division, performing the same task, since they develop aptitude and efficiency in the performance of that task, and are better able to meet targets. Management acknowledged that it was also in the interests of the factory to keep trained workers in the same division, adhering to the theory that repeated performance of the same task enhances productivity. However, the company conceded that any worker who complained of task-related pain or injury would be permitted to transfer to another division.
- On July 3, WRC staff members discussed with PT Dae Joo Leports management the various ways management could fulfill its legal obligation to conduct annual health exams without this becoming too financially burdensome or disruptive to the flow of production. One of the simplest ways to implement this requirement would be to expand the check-up that takes place when an employee comes into

the factory clinic with a specific problem. This could involve the testing of blood, stools and/ or urine, the measurement of height, weight and blood pressure, the examination of eye sight, hearing, respiratory system, etc. In conjunction with this, the record keeping at the PT Dae Joo Leports clinic would have to improve so that the company and any auditor could verify when any given employee had last received a physical exam. Another means of fulfilling this legal requirement could be to conduct a random sample survey, examining the health a few employees from each department once a year. The number of employees to be examined would be in proportion to the size of each department. PT Dae Joo Leports management should develop their methodology and implementation plan with the help of HIPERKES, Sucofindo, and/ or Dr. Trevino Pakasi (a member of the WRC's Factory Assessment Team).

- In conversation with the WRC, adidas-Salomon/ Agron expressed the conviction that it would be useful to learn more about management's general views on health and safety issues, with the underlying goal of determining how the entire structure of occupational health and safety at PT Dae Joo Leports could be improved and integrated into management systems. In an email dated May 14, the WRC provided PT Dae Joo Leports and the brands with some further information on relevant standards in Indonesian law, which should help guide the factory's process of setting up new structures.

## **Women's Rights**

### **Allegations**

The Assessment Team investigated claims that PT Dae Joo Leports did not respect its legal obligation to provide women workers with menstrual leave.

### **Findings**

According to the unanimous testimony of the workers interviewed by the Assessment Team, women employed at PT Dae Joo Leports are routinely forced to take payment in lieu of the two days of paid menstrual leave to which they are entitled, in violation of an Indonesian law guaranteeing that women shall not be compelled to work on the first and second days of their menstrual cycle.<sup>27</sup>

### **Recommendations**

The WRC recommended that female workers wishing to take menstrual leave be permitted to notify the company verbally or in writing the day before, or the day after taking such leave. As is currently the case at PT Dae Joo Leports, workers who decide to work rather than rest for those two days should continue to be paid at twice their base wage in lieu of leave. Access to this leave may not be made contingent on provision of a doctor's note or any other form of proof, since the invasion of privacy that would accompany *any* third-person determination of whether an employee is menstruating is unacceptable. The issue of proof, for obvious reasons, is one that is of particular concern to female workers.

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<sup>27</sup> UU-12/1948, Article 13(1)

## **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

PT Dae Joo Leports informed the WRC on April 28 that female employees would be allowed to take menstrual leave, consistent with the WRC's recommendation and as required by law. The WRC commends management and the SPTSK union for resolving this issue through negotiation, and hopes that ongoing implementation of this policy, particularly at the level of workers' immediate supervisors and mid-level management, will be equally straightforward. It should also be noted that VF and adidas-Salomon/Agron agreed to support the WRC's recommendation that access to menstrual leave be provided to women requesting it without hindrance and without examination by any third party.

## **Forced Overtime**

### **Allegations**

The Assessment Team reviewed allegations that workers at PT Dae Joo Leports were required to work at least two hours of overtime per day, whether or not they wished to do so, and that in some instances workers were required to work until 11PM or later in order to meet production deadlines. The WRC also reviewed the allegation that the company used deceptive and coercive means to compel some workers to accept work on shifts other than the day shift.

### **Findings**

According to credible worker testimony, workers in most divisions of the factory were required to work two extra hours per day, beyond the standard legal workday. They noted that this overtime work was appropriately compensated, according to law,<sup>28</sup> which is to the factory's credit, given that improper overtime compensation is a problem at many factories in Indonesia. The Assessment Team also found that roughly once a month, workers in certain divisions were required to work until approximately 11PM, sometimes for several nights consecutively, usually in order to prepare for imminent shipments. With respect to both types of overtime, workers were not given the option of declining the extra hours. This is in violation of Indonesian law, which requires that *all* overtime hours be voluntary.<sup>29</sup> Management denied that overtime was mandatory but could not identify any existing system or procedure for notifying workers in advance of the availability of overtime and obtaining their consent. Given the consistency of worker testimony on this point and the absence of any mechanism for notice and consent, the Team concluded that overtime was effectively mandatory for many PT Dae Joo Leports workers, even though this might not have been the factory's official policy. The Team noted that supervisors, rather than senior managers, might bear the most direct responsibility for imposing mandatory overtime on workers, since supervisors administer the factory's policies at this level. This is fairly common and it is important to note that in most factories where workers are subjected to forced overtime, there is no official

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<sup>28</sup> KEP-72/Men/84. This Ministerial Decree on Overtime Wage Calculation states that the first hour of overtime must be compensated at 150% times one's hourly wage, and the second hour at 200%.

<sup>29</sup> UU13/2003 Article 78(1)a. This article clearly states that any overtime requested by the employer, "must be agreed upon by the employee(s) involved."

policy to this effect; rather, supervisors (with the knowledge or encouragement of upper management) make it clear to workers that they are expected to stay beyond the regular workday, and assert that there will be consequences for those who refuse.

While PT Dae Joo Leports generally has a single-shift workday (7AM – 4PM), the factory occasionally operates around the clock, and hence the workforce is divided between three eight-hour shifts. Complaints regarding the use of pressure and deception in filling the evening and night shifts could not be adequately verified, however. In addition, the WRC had been told that workers were offered 6,000 Rupiah incentives to work the later shifts, but that the promise of this allowance was ultimately withdrawn. While this is troubling, it does not amount to a violation of Code of Conduct provisions concerning work hours or wages and benefits. Furthermore, the WRC is pleased to report that workers are currently receiving the 6,000 Rupiah allowance; management agreed to this during the collective bargaining process currently underway at the factory. The WRC also inquired into allegations that workers who complained about having been assigned to evening and night shifts had been transferred, demoted, or fired. It was concluded that line supervisors were responsible for these sporadic measures, and that upper management was almost unaware of the problem. The WRC emphasizes, however, that upper management must communicate disciplinary policies and grievance procedures to all supervisors and must monitor implementation carefully.

### **Recommendations**

The WRC recommended several steps to ensure that overtime hours at the factory are engaged in voluntarily. Firstly, all workers must be informed through notices posted prominently on the factory premises that there is no obligation to stay beyond the end of a standard workday, and that they will not be penalized in any way for declining overtime work. Secondly, all supervisors should be trained about this policy. Finally, management must establish a system whereby workers are notified in advance that overtime is available that day (when this is the case), and are provided with an opportunity to notify the line supervisor if they do not wish to stay.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

The brands and the factory agreed that the best way to ensure that overtime is voluntary (as management says they have intended for it to be) is for management to state its policy in clear, comprehensible language, post it on the factory premises, and train supervisors on the implementation of the policy. The WRC is disappointed to note, however, that employees are still expected to work two hours of overtime. Moreover, during the past month there have been a few instances when workers have been ordered to perform repairs on rejected products off the clock, after the end of the regular workday, when the performance of such work should have been considered overtime.

Management stressed – by way of arguing that overtime had never been mandatory – that most workers actually want to work overtime, because the higher pay is a strong incentive. It is important to understand that most workers in apparel factories like PT Dae Joo Leports do indeed want to work overtime on most days that extra hours are available, and some workers may want to work overtime in every case where it is offered. The reason is the one management cites: workers need the money. However, it is clear from worker testimony at PT Dae Joo Leports (and other facilities) that workers

also want the right to refuse overtime on those (usually rare) occasions when an emergency, a personal obligation, or simple exhaustion makes it undesirable or impossible to stay beyond the end of the regular workday. Forced overtime is illegal in Indonesia and in many other countries, and thus workers always retain the option of leaving at the regular time when they need to do so, and must not suffer reprisals (in the form of disciplinary action, restricted access to overtime in the future, or harassment from supervisors) for exercising this right.

On July 3, the WRC received a copy of the overtime policy language that has been developed through the PKB negotiations. The WRC noted that the policy does not attempt to eliminate the practice of obligatory overtime, but rather codifies and reinforces it, through the use of language such as: “Employees directly ordered by their supervisor(s) to perform overtime of up to two hours are obligated to perform this overtime in accordance with the order.” This renders the policy in conflict with Indonesian law,<sup>30</sup> as well as with College and University Codes of Conduct. PT Dae Joo Leports management agreed to work with SPTSK to revise the language of this section so as to clarify that the right of employees to choose to perform, or refuse to perform overtime, is absolute. Management agreed to send the WRC a copy of the new language as soon as it is developed; to date, no such documentation has been received.

## **Other Forms of Involuntary Labor**

### **Allegations**

The Assessment Team investigated claims that management sent workers from the factory’s quality control division (known as “Inspek”) on extended postings to distant subcontracting facilities. It was alleged that Inspek workers were assigned to postings outside PT Dae Joo Leports based on discriminatory criteria, that they were presented with no option to refuse these postings, that they received little or no information about the length of these postings, and that they were inadequately compensated for the additional costs of transportation and lodging that they incurred.

### **Findings**

As a preliminary matter, it should be noted that not all of the production processes involved in making the backpacks that are shipped by PT Dae Joo Leports actually take place onsite. It emerged, during the course of the WRC’s assessment, that PT Dae Joo Leports subcontracted the production of certain parts of its backpacks (backs and straps) to other factories in the greater Jakarta region.<sup>31</sup> The WRC expressed concern about this phenomenon since none of these production facilities appeared in the disclosure data it had received from the collegiate licensees sourcing from PT Dae Joo Leports. The WRC urges licensees to inform all factories from which they source that they must disclose all subcontracting and outsourcing, in order to allow for oversight of labor standards at these

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<sup>30</sup> UU-13/2003 Article 78(1)

<sup>31</sup> In Bogor, PT Dae Joo Leports sources from PT Wool Tari, PT Sumber Aneka, PT Sumber Rejeki, PT Dwi Cipta, and PT Muliya. In Tangerang, it sources from PT B.S. Prima and PT Buntir Kasih, and in Bekasi, from PT Yulsant, PT Dae Yong, and PT Gil Ju. Until 2001 PT Dae Joo Leports also contracted with PT Ku Ju in Purwakarta for parts.

facilities as required by College and University Codes of Conduct. The issue also had a direct bearing on the assessment of worker rights at PT Dae Joo Leports itself. Since the nearest of these subcontracting facilities was at least an hour away by road, and the furthest was at a distance of three to four hours, the factory posted Inspek employees at these sites for extended periods of time, which meant that, in terms of the labor rights of these employees, the subcontract factories' practices and policies would govern.

The WRC Assessment Team did not conduct an assessment of labor rights compliance at these subcontracting facilities. The Assessment Team did generate findings concerning the practices of PT Dae Joo Leports with respect to the posting of Inspek employees, however, and found that the practices of PT Dae Joo Leports violated College and University Codes of Conduct in the following areas:

- *Discrimination*: The factory deliberately chose unmarried women from the Inspek division to fill these posts, assuming that these women have the fewest family obligations, and are hence the most mobile. Some unmarried women did not like having the burden of such a stressful life-change forced upon them. Unmarried female employees who objected to being posted outside the factory testified that they faced harsh verbal criticism and harassment, and those who resisted pressure and refused the posting altogether testified that they were demoted to other, sometimes lower-paying positions in the factory. While the WRC agreed that PT Dae Joo Leports had the right to assign employees to such posts, it did not have the right to use discriminatory means in making these assignments.
- *Length of posting*: Inspek employees typically received no indication as to how long any particular posting would last, until they were actually given orders to return: workers reported that previous postings lasted for periods ranging from a few weeks to two years. The workers noted that this uncertainty was very arduous, and it took a significant toll on their personal lives. Indonesian law requires that a worker's job specifications be reflected accurately in his or her letter of appointment,<sup>32</sup> but the letters of appointment of Inspek employees did not mention out-posting as an element of the job.
- *Salaries and benefits*: Out-posted employees received a stipend of 60,000 Rupiah a month to cover their housing needs during the out-posting period; however, housing at these locations of the postings that was comparable in quality to the housing used by these workers when they lived near PT Dae Joo Leports generally cost a minimum of 200,000 Rupiah a month. (Of course, many Inspek employees continued to pay rent on their accommodations in North Jakarta during their absence, since they were given no information about the length of the posting). As a result, many out-posted workers found themselves compelled to live in a small rented space along with six to seven other occupants (as opposed to living with one to three other people in a comparable space in Marunda). No provisions were made for the expenses associated with the many household necessities that workers would have to transport or buy. In addition to the fact that stipends were pegged well below real costs, workers testified that the money often took two to three weeks to be transferred to them, forcing them to go into

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<sup>32</sup> UU-13/2003

debt or to live on an even more modest budget while in transition from one living situation to another.

- *Availability of healthcare:* Inspek employees, like other employees at PT Dae Joo Leports, received JAMSOSTEK cards to cover reimbursement for medical care arising from workplace injuries, but were not provided with general health insurance, in violation of Indonesian law. Workers alleged that many of the subcontracting plants did not have in-house clinics, or access to an export processing zone clinic. Thus, like regular PT Dae Joo Leports employees, but to an even greater extent, outsourced Inspek employees were without adequate health coverage. The WRC reviewed numerous cases of outsourced Inspek employees who suffered significant damage to their health because they were not provided with healthcare – despite multiple requests – either by PT Dae Joo Leports or by the subcontracting facility.

One incident recounted by workers exemplifies the potential hazards of such a system. In March 2001, an Inspek worker who had been at PT Dae Joo Leports for three years, and had been posted to the sourcing plant PT Ku Ju in Purwakarta in October 2000, began experiencing severe respiratory problems. She sought medical advice at a clinic in Purwakarta and faxed her bills to the personnel manager of PT Dae Joo Leports in April 2001. She was not reimbursed, nor did she receive any acknowledgement of receipt from the factory. Finding visits to the clinic unaffordable, this employee treated her cough with over-the-counter cough syrups and tablets for several months, but her condition continued to deteriorate. In July 2001 she started to cough up blood and, out of desperation, she sought professional medical help. She amassed medical expenses for treatment that included a chest X-ray (50,000 Rupiah) and prescription medicine (200,000 Rupiah/ month), but her requests for reimbursement continued to be ignored. It is suspected that she had tuberculosis, but since she could not afford to have many diagnostic procedures performed, her family remains uncertain about the exact cause of her death on October 26, 2001.

## **Recommendations**

The WRC limited its recommendations in this area, believing that the complex contours of this situation would be best addressed through the collective bargaining process. The WRC therefore sought a commitment that management would contend with the concerns of Inspek employees through negotiation with the SPTSK union at the factory. In terms of ensuring compliance with College and University Codes of Conduct, however, the WRC recommended that, at a minimum, the factory must ensure the following:

- Employees entering the Inspek division should be told at the outset of their employment that this division might require some work time away from Marunda.
- All Inspek employees, whether single or married, male or female, must be treated equally in terms of decisions about assignments to subcontracting facilities.
- All out-posted Inspek employees who accept a posting outside of Marunda should receive a job description clearly explaining all benefits and the length of the posting well before their departure for the post. The length of posting may be

- extended only through negotiations between management and the employee, with the assistance of a union representative, should the employee deem it necessary.
- A standard benefits package, setting realistic housing and food stipends, should be negotiated between employees of the Inspek division, their union representatives and management. The WRC recommends this benefits package be included in the PKB, and, in addition, in the description of each individual's posting assignment.
  - Out-posted Inspek employees, like all PT Dae Joo Leports employees, must be provided with JPK coverage, or a superior alternative.
  - Inspek workers posted at plants without in-house clinics should have appropriate access to basic first aid, either through a first aid kit that is provided to them by the PT Dae Joo Leports clinic before departure, or through a medical stipend, the amount of which should be determined through negotiations between management and the unions.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

There has been substantial progress on this front, though some issues remain unresolved.

The company denied that there was any discrimination between Inspek employees on the level of marital status or gender. However, management agreed to make its non-discrimination policy public and to issue instructions to the personnel department to ensure the implementation of this policy, as well as of the policy that management at all levels must refrain from verbal abuse and harassment of workers reluctant to go on a posting. VF committed itself to encouraging the factory to settle this issue promptly and agreed that such postings should be voluntary whenever possible.

The company agreed that job descriptions and the length of job postings for Inspek employees should be determined and communicated to the workers well before their departure. On July 3, the WRC was provided a sample of the new "work assignment" form that would be used for Inspek employees who were to be out-posted. The form shows that changes recommended by the WRC have been made; it provides a clear statement of the start and end dates of the assignment and a listing of all benefits.

The company also agreed to an increase in benefits (such as free housing for Inspek workers at their posts).

The question of health care for Inspek employees is not fully resolved as yet. Management has pledged to provide coverage for all out-posted Inspek workers but has yet to propose a viable mechanism to ensure access to health services for employees who are posted many hours away from the health clinic in North Jakarta where the factory intends to provide health care for regular employees. The WRC has urged management to insure that the new health insurance program it is putting in place makes adequate provisions for out-posted Inspek employees.

Management has agreed that any costs for emergency care incurred by out-posted employees will be covered and has committed to provide a first aid kit and a collection of the same medicines provided in PT Dae Joo Leports' clinic for workers to take with them in the field. The WRC has recommended that additional medicines and protective gear be included in the first aid kit of workers being assigned to PT Wool Tari, given that this

factory uses a variety of potentially dangerous chemicals in its silk-screening procedures.

With respect to the out-posted employee who died in October of 2001, PT Dae Joo Leports denied that the company had ever received any faxes from her requesting reimbursement for medical treatment, and claimed that upper management, at least, had remained unaware of her death until the WRC brought the case to their notice. Again, it is alarming that a matter as significant as the illness and death of an employee should not have been reported to upper management, and the WRC continues to urge that the company exercise greater oversight over the functioning of the personnel department and to demand greater accountability from the personnel manager.

## **Misuse of the Contract Labor System**

### **Allegations**

The Assessment Team was presented with the claim that a number of workers at PT Dae Joo Leports were retained on successive short-term contracts for extended periods without their positions being regularized, in violation of Indonesian laws operative at the time.

### **Findings**

Between 250 and 300 of the 1300 workers employed at PT Dae Joo Leports at the time of the WRC assessment were employed on a contract basis. The Assessment Team found that the manner in which contract labor was used at the factory violated domestic law and, in addition, provisions of College and University Codes of Conduct regarding harassment and abuse. The following violations were documented:

- Since contract workers are covered under the Employment Act,<sup>33</sup> they must receive insurance coverage, annual leave, etc. At PT Dae Joo Leports, contract workers were not enrolled in the insurance programs provided to other employees.
- Secondly, under the Indonesian law applicable at the time of the assessment, it was not lawful for contracts to be renewed more than once, or for an employee to work more than a total of three years, without converting the worker's status to that of permanent employment.<sup>34</sup> There were workers at PT Dae Joo Leports who had worked under more than two successive short-term contracts, and workers who had worked in excess of three years, without having been made permanent employees.
- Many workers had their contracts extended or renewed, or in some cases became permanent employees, but never received the legally mandated documentation clarifying their status. They should have received either a surat kerja (employment letter; also known as "SK") or a surat pengangkatan (letter of promotion).

According to PT Dae Joo Leports management, there were no cases of contracts having been renewed more than once without workers having been made permanent. The WRC welcomed this commitment to compliance with the law; however, testimonial and

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<sup>33</sup> UU-03/1992, Article 4

<sup>34</sup> PER-02/MEN/1993

documentary evidence from employees throughout the factory's various divisions demonstrates that, regardless of the intentions of upper management, illegal renewal and extension of short-term employment contracts was common on the factory floor. Management stated that the mechanism for ensuring compliance in this area was to ensure that at the conclusion of the second contract period, some workers would be made permanent while others would be let go. Management then acknowledged that if workers who had been released at the end of their second contract came back during a subsequent recruitment, they could be rehired as new contract employees. Although management viewed the issue differently, such practice was in clear contravention of the law applicable at that time.

### **Recommendations**

The WRC urged that PT Dae Joo Leports' practices with respect to the use of contract labor follow applicable Indonesian law regarding terms of employment and limitations on renewal of short-term contracts. The WRC recommended that any employee who had had his or her contract extended more than once, or who had been employed at PT Dae Joo Leports for more than three years should be offered a position as a permanent employee and presented with a contract in writing stating the change in status.<sup>35</sup>

At the time of the Assessment Team's meeting with PT Dae Joo Leports management, it was asserted that contract workers had just begun to receive those insurance benefits available to other workers as of the beginning of February 2003. The WRC welcomed this new policy and recommended that it continue to be implemented in compliance with the law.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

In its communication dated April 28, PT Dae Joo Leports contested the WRC's interpretation of the labor law, and asserted that, to the best of the company's knowledge, Indonesian law allowed the factory to have contract workers for two years and then to renew their contract up to twice a year, with a month's rest between renewals. As the WRC has noted above, and as a regional Standards of Engagement representative from adidas-Salomon agreed, the company's policies do violate the law as it stood at the time that these actions were taken.

In the interim period between the Assessment Team's visit, and the issuance of this report, a new law regulating labor practices has gone into effect in Indonesia.<sup>36</sup> While this law substantially changes the obligations of companies with respect to contract employees, PT Dae Joo Leports cannot use this as a defense with respect to the fixed-term contract workers who were hired before that law went into effect and whose right to be made permanent accrued under the pre-existing legal regime.

VF concurred with the WRC's analysis of this problem and agreed to inform PT Dae Joo Leports that any contract employees who had had their contracts renewed more than twice and/ or had been employed for more than a cumulative total of 36 months *before* the law was changed, should have their status converted to that of permanent employees. The WRC joined VF in urging that the transition happen without the

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<sup>35</sup> PER-02/MEN/1993 Articles 4, 5, 6, 8.

<sup>36</sup> UU-13/2003

harassment, intimidation, or termination of any worker. By May, the majority of short-term contract assignments expired and a small number of these previous contract employees (18 in total) were promoted to full-time, permanent employees. Management has stated that it has made this option available to other former contract employees who have earned the right to permanent status during the period of validity of the previous legal structure.

### **New Developments**

On July 3, the WRC was given a copy of a sample SK given to a former contract employee who recently gained permanent employee status. The letter appeared to be legally sufficient.

At the same time, it has become clear that most employees at PT Dae Joo Leports do not yet hold an SK, although all employers in Indonesia are required to supply these documents to all employees. In early July, out of the approximate 1,300 employees, it appeared that only the 18 former contract employees who recently gained permanent status held copies of their SK. Workers who do not have an SK have no proof of their employment status or their date of hire.

### **Additional Recommendations**

The WRC has asked PT Dae Joo Leports management to fulfill its legal obligation to provide all employees (contract or permanent) with an employment letter at the time of their hire. With respect to contract employees, in order to be in compliance with UU-13/2003, the factory must provide such employees an SK at the beginning of their contract term. With respect to permanent employees, PT Dae Joo Leports has the option of providing an SK at the time of hire or a “surat pengangkatan” (letter of promotion) once employees have finished the trial period (massa percobaan).<sup>37</sup> PT Dae Joo Leports management agreed to implement this recommendation as quickly as possible, though it has not yet done so.

## **Water**

### **Allegations**

The WRC assessed allegations that the drinking water supplied to factory employees was not suitable.

### **Findings**

During the Assessment Team’s factory walkthrough, it was found that the drinking water at PT Dae Joo Leports was reasonably clean, but hot. Management explained that the provision of hot water enabled workers to make tea or coffee, should they wish to do so. However, given the elevated temperatures in the production facility, the failure to provide cool water is a violation of College and University Codes of Conduct in the area of occupational health and safety. Water samples tested by the Indonesian Department of Health Laboratory revealed that PT Dae Joo Leports’ drinking water had levels of organic matter that were high (5.37 mg/l) but within acceptable limits.

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<sup>37</sup> See UU-13/2003 Article 51, 52, 53, 54, and 63 for further clarification

According to the technicians who examined the water sample, the organic matter identified could, however, cause gastric discomfort to workers whose immune systems were weak or compromised.<sup>38</sup>

### **Recommendations**

The WRC recommended that PT Dae Joo Leports either improve its current water boiling/ filtration system, or provide drinking water dispensers with an additional filtration system. The WRC also recommended that all drinking water dispensers have both hot and cold taps.

### **Response from PT Dae Joo Leports and Licensees and Status of Remediation**

In its letter of April 28, PT Dae Joo Leports stated that it was “thinking of” providing more water dispensers. VF agreed to inform the company that this matter was not negotiable and that they must provide ample cool, clean water, either through an outside contractor or by improving their own water treatment process. By July 3, PT Dae Joo Leports management had significantly improved its drinking water supply by upgrading its filtration system, purchasing new water dispensers, and allowing the water to cool overnight before serving it to employees.

In July, the WRC suggested to management that it would be greatly beneficial if a cooling tank for the freshly boiled water could be constructed, so that the scalding water would not have to be poured directly into the plastic water dispenser bottles, since this practice could result in the decay of the plastic and the release of hazardous chemicals. Employees have also reported that this process sometimes results in foul-smelling water. The WRC is currently helping PT Dae Joo Leports management locate a consultant from HIPERKES, Sucofindo, or another occupational health and safety agency for advice on constructing a better water-cooling system.

### **Ongoing Remediation**

The WRC appreciates the responsiveness of the Dae Joo Leports Corporation, and the brands’ perseverance and readiness to assume responsibility for improving working conditions and labor practices at this factory. The WRC will continue to work with VF and adidas-Salomon/ Agron to monitor the remediation process at PT Dae Joo Leports. While there has been substantial progress, a number of commitments made by factory management have not yet been fulfilled. The WRC will recommend to the brands the development of an agreed-upon set of goals, and deadlines for the factory to complete the remediation process. It is imperative that the factory fulfill outstanding commitments, most importantly by implementing its plan to provide legally mandated health benefits to all employees and by negotiating a legally valid collective bargaining agreement.

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<sup>38</sup> Hasil Pemeriksaan Laboratorium Departmen Kesehatan RI, March 18, 2003 Jakarta

## Appendix

### Members of WRC Assessment Team for PT Dae Joo Leports, the KBN and other KBN Production Facilities

#### *Trevino Pakasi MD*

Dr Pakasi has an MD in occupational medicine from the University of Indonesia and currently teaches occupational medicine at the University's Faculty of Medicine. He is also a consultant on occupational health and safety issues with the international NGOs Mercy Corps and World Vision. The industries where he has engaged in audits include cement factories, textile factories and communications operations. Dr Pakasi's team of experts from the Department of Community Medicine included:

- *Nuri Purwito Adi*, MBBS
- *Adianto Nugroho*, MBBS
- *Ronald E. Pakasi*, MD
- *Indah Suci Widyahening*, MD, MSc

#### *Vony Reyneta Esq.*

Ms. Reyneta serves as the director of the Jakarta office of Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan (Indonesian Women's Association for Justice; LBH-Apik). The organization provides legal consultations, counseling and representation to women who have experienced injustice, including domestic violence, sexual violence, trafficking, and torture. LBH-Apik also provides trainings for women's groups, engages in research on gender issues, and undertakes research and documentation. Ms. Reyneta's team from LBH-Apik also included:

- *Dini Anitasari*, Coordinator of Education and Training LBH-Apik

#### *Ecoline Situmorang Esq.*

A lawyer in the Jakarta office of Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia (Indonesian Legal Aid and Human Rights Association; PBHI), Ms. Situmorang has served as counsel in several internationally prominent cases in domestic labor law. She is involved in issues that range from the reform of labor law to the defense of basic civil rights.

#### *Ashwini Sukthankar*

WRC Director of Research and Investigations

#### *FX Supiarso*

WRC Field Representative/ Indonesia

Supiarso is also former staff member, and continuing active volunteer of the Socio-Cultural and Economic Division at Yayasan Lembaga Bantuan Hukum Indonesia (Legal Aid Institute of Indonesia; YLBHI).

#### *Agatha Schmaedick*

WRC Program Associate/ Asia