



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT
re CONFECCIONES MAZARA (MEXICO)**

**FINDINGS, RECOMMENDATIONS, AND STATUS REPORT
SEPTEMBER 11, 2008**

**5 Thomas Circle NW Fifth Floor Washington, DC 20005
(202) 387-4884 Fax: (202) 387-3292
wrc@workersrights.org www.workersrights.org**

Table of Contents

- **Introduction**
- **Sources of Evidence**
- **Background**
 - Respect for Rights of Association in the State of Puebla, Mexico
 - Grupo Navarra and the Unionization and Closure of Vaqueros Navarra
- **Findings, Recommendations, and Status Report Regarding Labor Rights Compliance at Confecciones Mazara**
 - Freedom of Association: Nondiscrimination in Hiring
 - Occupational Health and Safety

Introduction

This report outlines the WRC's findings and recommendations regarding labor rights compliance at the Confecciones Mazara apparel factory. The factory is located in the City of Tehuacán in the State of Puebla in Southern Mexico.

The Confecciones Mazara factory was disclosed by Williamson-Dickie Corporation to the WRC and the City of Los Angeles as a manufacturer of goods sold by Williamson-Dickie to the City. As such, the facility is covered by the City's Sweat-Free Procurement Ordinance. The WRC conducted an investigation at Confecciones Mazara, pursuant to our role as the monitor contracted by the City to verify compliance with the Ordinance.

The WRC undertook the investigation in response to a complaint from an NGO in Tehuacán known as the Human and Labor Rights Commission of the Tehuacán Valley. The complaint alleged that the Confecciones Mazara plant had discriminated, in its hiring process, against job applicants who had previously worked at a factory known as Vaqueros Navarra and who had participated in, or were believed to have participated in, trade union activism at that factory. Such discrimination is known colloquially as "blacklisting."

The WRC's inquiry found strong evidence in support of the conclusion that the Confecciones Mazara plant engaged in blacklisting. The factory subjected workers applying for employment to a series of screening mechanisms that had the intent and the effect of excluding union sympathizers from potential employment. The blacklisting of workers for trade union activism represents a violation of Mexican law and therefore violates the requirements of the City's Sweat-Free Ordinance.

The WRC also conducted an onsite inspection of the factory with respect to occupational health and safety (OHS). We identified problems including a lack of protective equipment on sewing machines, lack of adequate and sanitary rest room facilities, and a lack of readily accessible and clearly marked first aid kits.

In light of these findings, the WRC provided a set of recommendations for corrective action to Confecciones Mazara management. With respect to the issue of blacklisting, the WRC's principal recommendation was that the company invite the blacklisted workers to apply again and provide them with right of first refusal for any open positions and that this process be monitored in such a manner as to eliminate, or dramatically reduce, the discretion of factory management in making their hiring decisions. In cases in which a company has a demonstrated clear intention to discriminate against a particular group of workers, such discretion is frequently abused to continue discriminatory practices toward that group. For this reason, short of simply offering the workers in question jobs, preferential hiring is the remedial action we have found to be most effective in cases of this type. The WRC also recommended that the company take measures to eliminate discriminatory screens in the hiring process going forward.

In response to the WRC's findings and recommendations, Confecciones Mazara has maintained the position that no discrimination of any kind has occurred.¹ The company agreed to one specific step concerning the hiring process: the elimination of a requirement that job applicants produce a document known as a *constancia* from their previous employer, something which the former Vaqueros Navarra workers in question could not possibly do.² However, management did not agree to provide the recommended preferential hiring to the workers in question. The company insisted that the changes made to the hiring process would ensure fairness to all applicants.

Toward the end of achieving some meaningful remediation in the case, the WRC communicated to Confecciones Mazara that – while not preferable – it would be reasonable for the company to be provided an opportunity to demonstrate its commitment to non-discriminatory hiring, with one critical condition: that the Confecciones Mazara assure ex-workers of Vaqueros Navarra that it intends to consider applicants in a non-discriminatory manner going forward. Without such action, there is a very strong likelihood that workers who were subjected to discrimination in the past will be reluctant to apply again. The WRC asked management to provide a written statement to the Human and Labor Rights Commission of the Tehuacán Valley, for circulation to potential applicants, making clear that it is committed to fair and non-discriminatory hiring practices and encouraging former Vaqueros Navarra workers to seek employment at the plant. Factory management rejected this recommendation.

Given the company's refusal even to provide a letter to reassure previously blacklisted workers that they can apply again without fear of further discrimination, the WRC cannot report that the company has taken meaningful corrective action with respect to the unlawful discrimination identified in this report, nor can we report that they have committed in good faith to do so.

The WRC also issued a number of recommendations relating to occupational health and safety. Factory management did agree to take the steps recommended in this area, although follow-through has not yet been verified.

The WRC has kept Williamson-Dickie fully informed of the WRC's findings and remediation efforts. We are now asking Williamson-Dickie to intervene directly to ensure that full remediation occurs on the blacklisting issue.

¹ As a practical matter, the WRC does not consider it essential that a company admit wrongdoing – to issue in effect a *mea culpa* – as part of remediation, so long as the actual steps management takes are sufficient to correct the violations in question.

² It is common practice for employers to refuse to provide such letters to workers who have been identified as unionists.

Sources of Evidence

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

- Interviews with general manager Rodolfo López, legal adviser María Eugenia Herrera González, and human resources manager Margarita López of Confecciones Mazara.
- Interviews with two current production supervisors at the factory, including the principal production supervisor.
- Interviews with twenty-three garment workers who had either applied for work at or were current employees of Confecciones Mazara. The interviews were conducted off-site.
- An interview with a representative of the FROC-CROC, the union entity which officially represents workers at the facility.
- A physical inspection of the plant in relation to occupational health and safety issues.
- Observation of the entrance area of the facility on dates on which hiring has occurred.
- An onsite review of relevant records, including information pertaining to hiring and dismissals at the plant, and a review of other additional relevant documents provided to the WRC by workers and local organizations.
- A review of relevant documents obtained from other sources, including legal submissions to the Mexican Labor Court regarding Confecciones Mazara and an alleged "blacklist" identifying workers whom employers are advised not to hire due to their past union activism.
- A review of Mexican labor and employment law, with guidance from specialists in the field.

Background

To understand the alleged violations at Confecciones Mazara in context, it is necessary to briefly review labor rights norms in the State of Puebla, Mexico and the events that led up to the complaint that triggered this investigation.

Respect for Rights of Association in the State of Puebla

The level of respect for workers' associational rights in the apparel export sector in the State of Puebla is very low. A central problem is rampant government collusion with employers to obstruct workers' exercise of the right to unionize.

A central reality in the Mexican apparel sector is that most major employers sign contracts with one of several "official unions."³ These organizations, which are unions in name only, have long-standing historical ties to the Institutional Revolutionary Party (PRI), which dominated Mexican politics at the national level for the bulk of the 20th

³ The largest of these organizations are the Confederation of Mexican Workers (CTM), the Regional Workers Confederation of Mexico (CROM), and the Revolutionary Confederation of Workers and Peasants (CROC).

century and which retains control of the state government and most municipal governments in the State of Puebla. The primary function of these organizations is to do the PRI's political bidding; their secondary function is to help employers prevent legitimate worker organizing. The contracts signed between official unions and employers – which are typically signed without the knowledge or consent of workers and which confer no benefits or rights upon workers beyond what is already guaranteed by law – are known as “protection contracts.” They benefit the official unions by providing a base of funding through member dues and a base of political support for the PRI (as members are often pressured to perform political work on behalf of the party). And they benefit the employer by “protecting” management from genuine unionization, as the presence of protection contracts makes it impossible in most circumstances for workers to exercise their rights to establish independent unions. As part of this system, Local Conciliation and Arbitration Boards (JLCAs), which are entities of the state government, aid the official unions by using bureaucratic maneuvers to block the registration of independent unions and avert legitimate union elections. Although this is a problem throughout Mexico, government interference in workers' exercise of their associational rights is particularly common in the State of Puebla.⁴

As a result of the official union system, it is virtually impossible for workers to exercise the right to organize an independent labor union in the region's apparel sector. Between 1989, when an independent union known as SUTIC was dissolved following the assassination of its leader, and the year 2001, there was not a single plant in the Puebla apparel industry where workers were able to organize an independent union.⁵ In 2001, workers organized an independent union at a factory known today as Mexmode (formerly “Kukdong Mexico”). Following a high profile international labor rights campaign and compliance assessments by the WRC and other organizations, serious violations at the plant – including the mass unlawful dismissal of union supporters – were corrected and the union negotiated a collective bargaining agreement providing for substantial improvements. To achieve this result, workers had to oust an official union known as the FROC-CROC, which had signed a protection contract with the company without workers' knowledge. As documented in the WRC's report on this case, the JLCA maneuvered illegally to block workers' petition to replace the official union.⁶ The government's intervention was only overcome through massive international pressure. The Mexmode factory remains, to date, the only independently unionized apparel export plant in the State of Puebla. However, as documented in a recent WRC follow-up report,

⁴ The Government of Puebla has been repeatedly criticized by international bodies, including the ILO Committee on Freedom of Association and the U.S. Department of Labor, for violations of workers' freedom of association. See U. S. Department of Labor, Public Report of Review of NAO Submission No. 2003-01 (PUEBLA), <http://www.dol.gov/ilab/media/reports/nao/pubrep2003-1.htm>; ILO Committee on Freedom of Association, Report No. 334, Case No. 2282 (Matamoros Garment); ILO Committee on Freedom of Association, Report No. 337, Case No. 2346 (Tarrant).

⁵ “Tehuacán: del calzón de manta a los blue jeans,” Martín Amaru Barrios Hernández and Rodrigo Santiago Hernández, Human and Labor Rights Commission of the Tehuacán Valley in collaboration with the Maquila Solidarity Network, 2003.

⁶ Worker Rights Consortium, Assessment re Complaint Against Kukdong (Mexico), Report and Recommendations, June 20, 2001.

the government of Puebla has recently intervened again unlawfully in the affairs of the union,⁷ jeopardizing the progress that has been achieved at this factory.

Under these circumstances, collective worker grievances regarding labor abuses in the Tehuacán apparel sector, rather than being channeled into a functional industrial relations process, have generally only found expression through spontaneous worker protests or individual legal complaints. According to Human and Labor Rights Commission of the Tehuacán Valley, there have been more than a dozen cases in recent years where workers have protested violations such as non-payment of the minimum wage, child labor, and unlawful dismissals and have submitted complaints to the local Labor Boards, but where no effective government enforcement action was ever taken.⁸

In those rare cases where workers have overcome the obstacles and succeeded in organizing independent labor unions, a last resort of employers opposing such efforts has been to shut down the factory in question. Since 2001, there have been three high profile cases in the Puebla apparel sector in which workers have organized independent unions, or come close to doing so. In each of these cases, management responded by closing the facility without notice and dismissing the workforce en masse. The WRC conducted an investigation concerning one of these plants, Tarrant Ajalpan, in 2003.⁹ In that case, the parent company – U.S. based Tarrant Apparel Group – closed the facility, dismissing roughly 1000 workers, shortly after the overwhelming majority of the plant's workers had signed documents supporting the creation of an independent union and had made progress toward securing the necessary legal status. The present report concerns the alleged blacklisting of workers who had sought to organize an independent union at another factory in the region, Vaqueros Navarra, which was shut down shortly after workers won a union election.

Grupo Navarra and the Unionization and Closure of Vaqueros Navarra

Because the issues of concern at the Confecciones Mazara plant are closely related to events at the Vaqueros Navarra plant, and because the plants themselves are closely related, we provide here some brief background information concerning the two factories and a brief review of the events preceding our inquiry.

Both Confecciones Mazara and Vaqueros Navarra are part of local business consortia that are owned by members of the Fernández family, a prominent investment force in the regional apparel sector. Vaqueros Navarra is part of a consortium known as Grupo Navarra, which is the principal investor in a local network that includes seven assembly

⁷ Worker Rights Consortium, Assessment re Mexmode S.A. de C.V. (Mexico), Findings and Recommendations, July 3, 2008.

⁸ "Tehuacán: del calzón de manta a los blue jeans," Martín Amaru Barrios Hernández and Rodrigo Santiago Hernández, Human and Labor Rights Commission of the Tehuacán Valley in collaboration with the Maquila Solidarity Network, 2003.

⁹ Worker Rights Consortium, Interim Report: WRC Inquiry Into Labor Rights Violations at Tarrant Ajalpan, September 15, 2003.

plants and two laundry facilities. Confecciones Mazara is part of a smaller network of factories known as Grupo Mazara, which includes three apparel assembly plants. The principal shareholder of the Vaqueros Navarra plant is Alfonso Fernández. Mr. Fernández's son, Alfonso Fernández Jr., is the principal shareholder of Confecciones Mazara.

The events investigated here concern the aftermath of an effort by workers at the Vaqueros Navarra plant to exercise their associational rights. In May 2007, workers at Vaqueros Navarra initiated a protest campaign concerning the plant's alleged failure to pay all of a legally mandated annual bonus to workers. The protest grew into an effort to establish an independent union, which came to enjoy broad support among the workforce. On July 11 of that year, workers held a general assembly and submitted paperwork to the JLCA as required by Mexican law to establish a labor union and to seek the right to represent the workforce in collective bargaining. In doing so, they were supported by the Human and Labor Rights Commission of the Tehuacán Valley and an independent union federation known as the Authentic Labor Front (FAT). The union was registered as an affiliate of the "September 19th" union federation, which is part of the FAT.

Vaqueros Navarra management launched an intense campaign to thwart the workers' independent unionization effort. This campaign, which was documented by a labor rights monitor contracted by the factory's customers, included various forms of harassment and intimidation.¹⁰ As part of the campaign, the company reportedly carried out a series of mass firings disproportionately affecting supporters of the independent union.¹¹

During the same period, the JLCA, acting in customary fashion, dragged its feet in processing the independent union's paperwork. It delayed for a period of months the union's bid for legal registration and the setting of a date for a union election. The process was complicated by the role of two official unions. The independent union learned in the course of its organizing that the factory had – without workers' knowledge or consent – already signed an agreement with the FROC-CROC. As a result, the independent union's leadership had to petition the JLCA to transfer the formal right to bargain on behalf of the workforce from the FROC-CROC to the independent union. While this effort was underway, an additional official union, known as CROM, entered the picture and sought the right to represent the workforce.¹² In what appeared to be part of the company's strategy to squelch the independent unionization drive, factory management facilitated the CROM's presence in the factory, allowing CROM representatives free access to the workforce to recruit workers during working hours,

¹⁰ The organization Verité was contracted by brands in the case to conduct an investigation concerning these issues. Verité's findings are summarized in some detail in a public letter to Grupo Navarra from Gap, American Eagle Outfitters, and Warnaco, dated October 18, 2007:
<http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/GrupoNavarraVeritéFindings.pdf>

¹¹ This was reported by Maquila Solidarity Network (MSN), which monitored developments and advocated on behalf of the independent union with brands and other stakeholders.

¹² Official unions in Mexico sometimes compete with one another to represent workers at particular enterprises, as occurred in this case, even though the final agreements they reach with employers are invariably the same and are of no benefit to workers.

while prohibiting the independent union from having the same access. The JLCA declined to act on the independent union's bid to represent the workforce for several months on the grounds that it needed to consider the competing claims of the two official unions.

A major international campaign on behalf of the workers was launched, coordinated by the Canadian advocacy organization Maquila Solidarity Network. The campaign was aimed at pressing the company to respect workers' associational rights by refraining from acts of union-related retaliation or interference and at pressing the government to certify the independent union and move forward with a fair secret ballot election to determine which union would represent the workforce. During this period, three US apparel brands that were current or former customers of Grupo Navarra – American Eagle Outfitters, Gap Inc., and Warnaco – sent a public letter to the company, outlining the findings of an inquiry by the monitoring organization Verité, which concluded that the factory had violated workers associational rights, and supporting the organization's recommendations. These recommendations included the cessation of discrimination against workers based on their membership in the independent union and non-interference with workers' exercise of their associational rights.¹³ Additionally, these three brands, as well as three additional companies – Abercrombie and Fitch, Express, and Levi Strauss – sent a public letter to officials of the State of Puebla, calling on the government to fix a date for a union election and to conduct the election in a neutral location and in a manner such that workers could register their preference without fear of retaliation.

Ultimately, a union election did occur on November 23, 2007. The process fell far short of basic international standards for such elections: workers were required to declare their preference regarding unionization publicly to a panel comprised of factory management, government officials, and representatives of the official unions. According to numerous reports, prior to the election, workers were told by management that the company would be shut down if the independent union won. Despite these threats and the anti-union campaign leading up the election, a majority of workers voted in favor of representation by the independent September 19th union.¹⁴

Several weeks later, in mid-December, the workforce was sent home for the Christmas holiday. The factory never reopened. After justifying a delay in reopening the plant by citing a supposed lack of raw materials, on January 23, 2008 – two months after the election – Vaqueros Navarra management announced it was closing the facility and dismissing all employees, effective immediately. The company claimed the closure was due to a lack of orders. However, subsequent to the closure, the Maquila Solidarity Network reported that several major brands had stated that they had in fact tried to direct orders to the Vaqueros Navarra factory, but had been rebuffed by the parent company.

¹³ Letter to Grupo Navarra from Gap, American Eagle Outfitters, and Warnaco summarizing Verité's conclusions, October 18, 2007. See the web location of this letter cited above.

¹⁴ The final tally was 263 workers in favor of the September 19 Union, 187 workers in favor of a union tied to the CROM confederation, and 3 workers in favor of staying with the FROC CROC union.

Since the closure, there has been a prolonged dispute over the payment of severance. At the time of the closure, the company announced that it could only afford to pay 50% of legally mandated severance. Following a series of demonstrations in the city of Tehuacán by workers demanding full payment, the worker group and the company ultimately agreed on a settlement in mid-February 2008, whereby the company would pay severance in accordance with the law, but with some of the compensation provided in the form of the donation of factory machinery to the workers (rather than in cash). However, there has since been a dispute over the valuation of the machinery; as of the issuance of this report, the matter remains unresolved.

Findings, Recommendations, and Status Report Regarding Labor Rights Compliance at Confecciones Mazara

1) Freedom of Association: Nondiscrimination in Hiring

Discrimination against workers on the basis of union activity is prohibited by Mexican law,¹⁵ Convention 87 of the International Labor Organization, and applicable corporate codes of conduct.

The WRC concluded that Confecciones Mazara engaged in unlawful discrimination against union supporters in hiring decisions, otherwise known as “blacklisting.” This conclusion is supported by multiple sources of evidence, each of which is reviewed below.

To test the allegation in the complaint received by the WRC that Confecciones Mazara was blacklisting applicants who had supported the union at Vaqueros Navarra, the WRC examined the cases of twenty former employees of Vaqueros Navarra who had applied for work at Confecciones Mazara. We conducted extensive interviews with each of these workers concerning their experience with the application process.¹⁶ The twenty workers were all veteran apparel workers with multiple years in the local industry. They differed from other applicants for work at Confecciones Mazara in no material way, except that they had supported the unionization effort at Vaqueros Navarra.

Of the twenty union supporters who applied, nineteen were rejected – a rejection rate of 95%. We sought to compare this rate of rejection to the normal rate of rejection for experienced workers applying for work at the Confecciones Mazara plant. However, despite requests from the WRC, management failed to produce the data needed to make this comparison. In fact, the company claimed that it did not maintain any data whatsoever concerning rejected job applicants or the number of applications received.

¹⁵ Article 123 of the Mexican Constitution; Articles 354-358 of the Federal Labor Law.

¹⁶ A number of these workers were recruited by the WRC to apply for work at Confecciones Mazara to ensure a valid test. This is a common method of testing the veracity of discrimination violations.

The company did provide the WRC with limited data on the number of workers hired during the three months preceding the WRC's on-site meeting with management. However, this information was falsified before it was provided to the WRC in written form. Management originally showed the WRC investigators a document containing the data; investigators examined it and then asked for a copy. Several hours later, after an extensive discussion between the investigators and management concerning the subject of alleged discrimination in hiring decisions, a document was provided to the investigators which was ostensibly the one previously shown to them, but which in fact differed dramatically.¹⁷ The new information was contradicted by a representative of the pro-management official union and by workers interviewed by the WRC investigators.

Factory management has an obligation to produce accurate data necessary to assess labor standards compliance. In this case, it failed to do so. The WRC thus could not compare the rejection rate for the union supporters noted above with the rate at which experienced applicants are normally rejected. While the 95% rejection rate for the union supporters is strikingly high in absolute terms, in the absence of such a basis for comparison, the WRC did not consider it to be conclusive evidence of discrimination.

The WRC therefore turned to an examination of the specific experiences of the twenty job applicants when they sought work at the factory. The WRC found that the factory subjected these job applicants to a series of screening mechanisms that had a clear discriminatory effect. These screening mechanisms included requiring that workers produce a document known as a "constancia" (a letter from their previous employer attesting to their prior employment status), something most trade unionists would be in no position to provide; asking workers verbally if they had been employed at Vaqueros Navarra; and comparing applicants' names against those appearing on actual blacklist.

It bears noting that different workers were subjected to different screening mechanisms (or combinations of mechanisms). This is not surprising given that different supervisors were in charge on different days, that the applicants in question applied over a period of more than six weeks, and that the factory's overall hiring procedure was not administered in a consistent manner, something that was clear from interviews with managers and supervisors at the facility.

Below we describe in more depth the screening mechanisms used to eliminate applicants perceived to be trade unionists:

¹⁷ Upon requesting the information during the on-site audit, the company initially showed the WRC a list of employee names indicating that roughly 25 workers were hired during the month of April. However, the document ultimately provided listed only 11 workers as having been hired during that month – a figure that was contradicted not only by the document originally presented by management, but by credible information from other sources.

- 1) A number of the workers applying at Confecciones Navarra were required to produce a *constancia* as a condition of being considered for employment.¹⁸ As explained earlier, a *constancia* is a document that employers generally provide to workers upon their departure from a job, confirming that they were employed at the enterprise.¹⁹ Relevant to this case, Vaqueros Navarra declined to provide any of the independent union's supporters with the document upon their dismissal in February 2008. It is common practice in Mexico, and in other countries in Latin America, for employers to refuse to provide *constancias* to unionists when they leave employment and to demand *constancias* from new job applicants – it is an effective means of keeping trade unionists out of the industry.

At Confecciones Mazara, most of the applicants were required to produce the *constancia* at the outset of the application process, immediately upon presenting themselves at the factory. Because they could not produce the document, their applications were not considered. In the case of a smaller number of workers, management did not initially request the *constancia* and proceeded to hire the workers. However, during their first day on the production lines, these workers were summoned by management and asked to produce the *constancia*. When they could not do so, they were dismissed.

It bears noting that, in interviews with the WRC investigators, senior factory management acknowledged the discriminatory effect of a *constancia* requirement. Indeed, the senior managers initially claimed that the factory did not impose such a requirement and that the purpose of this was to avoid potential discrimination. However, senior management's denial that the *constancia* requirement existed was belied not only by the testimony of the numerous workers who were required to produce the document, but by the testimony of the senior supervisor at the factory in charge of the hiring process. This individual openly acknowledged that workers are required to produce the document when they apply. After being presented with the WRC's findings, senior management acknowledged that the company was indeed requiring *constancias* at the time the former Vaqueros Navarra workers were applying.

- 2) An additional means by which Confecciones Mazara screened out union supporters from the hiring process was by simply rejecting applicants solely on the sole grounds that they had been employed at Vaqueros Navarra.

¹⁸ It bears noting that management typically referred to these documents as “letters of recommendation” in the context of conversations with workers and with the WRC. However, the documents are not in fact letters of recommendations, but simply documents stating a worker's start and end date of employment. Because these documents are generally referred to as *constancias*, not letters of recommendation, for the purposes of clarity we have referred to them as *constancias* throughout this report.

¹⁹ Note that such documents typically state only that an employee worked for a company for a given period and do not make any reference to their performance. In this case, some workers were requested to produce a “letter of good conduct” from their previous employer, in addition to the *constancia*.

A number of union supporters interviewed testified that immediately upon applying for work at the Confecciones Mazara plant, they were asked where they had worked previously. When they responded “Vaqueros Navarra,” they were told that they would not be considered for employment. There was no legitimate basis to exclude applicants solely on the basis of their past place of employment. The only conceivable purpose for this exclusion was to ensure that “troublemakers” from Vaqueros Navarra were not hired.

- 3) The third screening mechanism used by Confecciones Mazara was to check the names of applicants against a list of workers it had in its possession. The WRC was able to determine that this was an actual blacklist: a list of names of workers viewed as troublemakers, circulated among factory owners.

The WRC gathered credible testimony that factory management has relied on such a list to identify and exclude members of the September 19th union from employment. A number of workers reported that when they were asked by Mazara managers where they had worked previously, and they replied that they had worked at Vaqueros Navarra, the Mazara managers asked for their names, consulted a list, and then informed them that their application would not be considered. The following are representative examples of experiences described by workers in testimony to the WRC.

- One worker sought to apply for work at the plant on March 11, 2008. When she arrived at the front gate, she asked a company security guard if the company was hiring. The guard told her yes, and then asked her about her previous employer. The worker said she had been employed at Vaqueros Navarra. The officer then asked for her name and made a phone call to the factory’s payroll secretary. Shortly after, the secretary came outside and said that “there was no work for the troublemakers of September 19th.” The worker had not previously identified herself as a member of the September 19th union.
- Another worker sought to apply for work on April 2, 2008. Once inside the factory, a human resources manager asked him where he had worked previously. When he said “Vaqueros Navarra,” the manager took out a long list of names and searched for the worker’s name. The worker was able to observe his name on the third page. The manager then asked for the worker’s identification documents, went to a computer very briefly, and then told the worker that no position was available for which he was qualified. The worker had not at this point indicated what kind of position he was seeking nor provided any information about his qualifications.
- Another worker sought to apply for work on April 14, 2008. After completing paperwork for the application and handing it to the human resources manager, the manager asked her where she had worked previously. The worker responded, “Vaqueros Navarra.” The manager then took out a list of names. After finding the

worker's name on the list, the manager told the worker that if she had a *constancia*, she could be given work, but there was no job for her if she could not produce one.

The WRC was ultimately able to obtain a copy of one iteration of this blacklist (which is unusual, since these documents are generally closely guarded by factory managers). The WRC obtained the document from the Human and Labor Rights Commission of the Tehuacán Valley, which reported that it had obtained the list from a former Vaqueros Navarra worker, who had in turn obtained it from a personal friend who has been a supervisor at a third factory. The document is five-pages in length and is titled: "Lista de personal no recomendable para proporcionar empleo" (List of Workers Not Recommended for Hire). Below the title, which is typed, appears the following handwritten text: "Grupo Navarra; Dic/07; Afiliados a Martin Barrios" (Grupo Navarra, December 07, Affiliates of Martin Barrios). Martin Barrios is the head of the afore-mentioned Human and Labor Rights Commission. His organization, and he personally, played a leading role in supporting the September 19th union and he has been a vocal critic of labor rights abuses in the region. He is viewed by factory owners and managers as a union "ringleader." The rest of the document is an alphabetical listing of 551 names. Leaders of the September 19th union reported to the WRC that most of the individuals listed are members of the union or workers who have been involved in other protest campaigns supported by the Commission.

As noted above, the twenty workers who applied at Confecciones Mazara had varying experiences in the application process, in terms of the screening mechanisms that were utilized (some were asked for a *constancia* immediately upon applying, some were not asked for a *constancia* but had their names checked against a list, some were asked for a *constancia* – and then dismissed – only after being hired, etc.). Overall, of the twenty applicants in question, nineteen were subjected to one or more of the screening mechanisms described above.²⁰ The one applicant who was not subjected to any of the screening mechanisms was the only applicant who was hired and kept on at the factory.²¹

²⁰ Note that in some cases, one screening mechanism was a trigger for another. For example, in some cases, when a worker was asked where he or she had worked previously and he or she replied "Vaqueros Navarra," the manager then required that the worker produce a *constancia* from the company.

²¹ This worker was hired at the beginning of April, soon after the closure of Vaqueros Navarra. On the day the worker applied, two other former Vaqueros Navarra workers also applied. Those two workers were asked to produce the *constancia* and were denied employment on the basis of their failure to do so. In the case of the worker who was hired, management did not ask for a *constancia*, did not ask about the worker's previous place of employment, and did not check the worker's name against a blacklist. The worker did not have a *constancia* to produce and his name appears on the blacklist document obtained by the WRC.

In addition to the evidence reviewed above demonstrating that management used screening mechanisms that had the effect of ruling out union supporters, the WRC received testimony from workers concerning incriminating statements by managers to the effect that the screening mechanisms were designed for the express purpose of discriminating against unionists.

With respect to the *constancia* requirement, for example, one worker testified that upon applying for work, a human resources manager asked her where she had worked previously. When she replied “Vaqueros Navarra,” the manager asked her for a *constancia*. The worker replied that she did not have one. According to the worker’s testimony, the manager then told her, “For now we can’t give you a job, because they give letters of recommendation (by which the manager meant *constancias*) to everyone at Vaqueros Navarra, except those that behaved badly.” The worker replied that she had not behaved badly. The manager responded by saying that the company was asking for the letters because there was a conflict at Vaqueros Navarra created by a group of troublemakers, and that workers who left on good terms have *constancias*.

One worker, who was initially hired by the factory at the end of March 2008 and then fired on her first day of work, provided particularly revealing testimony. During her first and only day working on the production floor, a supervisor approached her and asked her which factory she had worked in previously. When the worker told him it was Vaqueros Navarra, the supervisor replied, “We’ll see if you’re not dismissed, because the company does not hire people from the September 19th union.” Later in the day, the worker was dismissed.

The WRC also interviewed current employees of Confecciones Mazara. Several of these workers testified that managers had instructed workers that they should not be seen in the community associating with workers from Vaqueros Navarra. A worker testified that the human resources manager told workers in a meeting that if they wanted to keep their job, they should stay clear of anyone associated with the September 19th union and that anyone seen associating with such people would be punished.

In sum, the very high rate of rejection experienced by union supporters who applied for work at Confecciones Mazara, management’s use of discriminatory screening mechanisms in the hiring process, and statements by management revealing the factory’s intent to discriminate against union supporters, constitute overwhelming evidence of blacklisting by Confecciones Mazara.

Recommendations

The WRC issued the following recommendations to Confecciones Mazara management with respect to the issue of hiring discrimination:

- Provide hiring opportunities to former workers of the Vaqueros Navarra facility on a preferential basis for any newly open positions in order to correct for past

discrimination. This means that workers who were employed by Vaqueros Navarra should be hired ahead of any other qualified applicant for available positions. In executing this process, the company should communicate with former Vaqueros Navarra workers to inform them that the company is hiring and inform them of the positions that the company is seeking to fill. The hiring process with respect to these workers should be monitored.

- Cease discrimination in the overall hiring process. Ensure that all factory personnel who interact with job applicants fully understand the company's position in this regard.
- Specifically, cease requiring that workers provide *constancias* from their previous employers as a condition of being hired.

Company Response

In response to the findings and recommendations outlined above, Confecciones Mazara management denied that it has discriminated against any employees from Vaqueros Navarra in hiring decisions. The company did not agree to provide preferential hiring opportunities to the former Vaqueros Navarra workers. The company did agree to end the practice of requiring workers to provide *constancias* as a condition of being hired and to consider all applicants solely on the basis of their qualifications and abilities.

While the WRC strongly preferred that the company commit to preferential hiring, we believed as a practical matter, given the company's posture, that it would be reasonable to provide the company with an opportunity to demonstrate its commitment to non-discriminatory hiring going forward, with one critical condition: that the company assure ex-workers of Vaqueros Navarra that it intends to consider their applications in a non-discriminatory fashion. For the company's commitment to non-discriminatory practices to be meaningfully tested, it is necessary that former workers from Vaqueros Navarra seek employment again at the plant. Without any explicit communication along these lines, there is a substantial likelihood that workers who were subjected to discrimination in the past will be reluctant to apply again. For this reason, the WRC asked management to provide a letter to the Human and Labor Rights Commission of the Tehuacán Valley,²² for circulation to potential applicants, making clear its commitments to fair and non-discriminatory hiring practices and encouraging former Vaqueros Navarra workers to seek employment.

Factory management has refused to issue the letter to workers. In response to the WRC's recommendation, the company instead sent two letters to the state government stating that it intends to obey the law. These letters did not encourage former Vaqueros Navarra workers to apply or reference these workers in any way. They are therefore of no value as

²² The Human and Labor Rights Commission is in ongoing contact with many of the former Vaqueros Navarra workers.

a means to communicate the necessary reassurance to workers who were blacklisted and might consider re-applying. The WRC asked the company a second time to issue a letter to workers and the company replied by stating its refusal to do so.

In view of the company's refusal even to provide a letter to reassure previously blacklisted workers that they can apply again without fear of further discrimination, the WRC cannot report that the company has taken meaningful corrective action with respect to the unlawful discrimination identified in this report, nor can we report that they have committed in good faith to do so.

As noted in the introduction, the WRC has kept Williamson-Dickie fully informed of the WRC's findings and remediation efforts. We are now asking Williamson-Dickie to intervene directly on the blacklisting issue to ensure that full remediation occurs in this case.

2) Occupational Health and Safety

The WRC's investigators conducted a physical inspection of the factory to review occupational health and safety (OHS) conditions and practices. The following problems were identified:

- *Lack of needle guards on sewing machines:* Mexican law requires that employers ensure that machinery used by employees is fitted with safety devices necessary to ensure safe operation.²³ A basic safety provision required for safe operation of sewing machines is the use of needle guards, which protect against laceration of workers' fingers as they pass cloth under the needle. The WRC's inspection found that many of the sewing machines used by workers lacked needle guards. Factory management acknowledged the problem, but claimed the machines were at one point fitted with guards and that workers themselves had removed them. Whether or not this is true, such protective equipment is essential for workers' safety and the company has an obligation to replace in a timely fashion any guards that are damaged or removed.
- *Unhygienic conditions in factory restrooms:* Mexican law requires that employers provide workers with clean, hygienic restroom facilities.²⁴ The factory had one restroom for men and one restroom for women, for a total of 490 workers. The inspection found the facilities to be unclean and in poor condition, with a noxious odor strong enough that it could be detected in the hallway leading to the restrooms. A worker was sent to clean the restrooms just as the inspectors were reviewing the plant. However, there was no indication that regular cleaning was carried out; management acknowledged that it did not maintain any cleaning log.

²³ Article 36 of the Federal Regulation of Security, Hygiene, and Environment in the Workplace.

²⁴ Article 13, 103, and 106 of the Federal Regulation of Security, Hygiene, and Environment in the Workplace.

- *Lack of clearly marked first aid kits in the production area:* Mexican law requires that employers provide first aid kits with materials adequate to provide emergency aid.²⁵ In the inspection of the production area it was noted that while the factory had first aid kits, they were not visibly marked and no information was posted in the factory regarding means of accessing first aid in the case of an emergency.
- *Accident Log:* Mexican law requires that employers maintain a log of all workplace accidents.²⁶ When asked during the on-site inspection to provide the accident log to the WRC investigators, management stated that it does not maintain a log. However, when subsequently informed of the WRC's findings, Confecciones Mazara stated that there had been a miscommunication with the managers with whom the investigators met during the site visit and that the company does in fact maintain an accident log. In response to a request from the WRC, the company sent a sample of the company's accident reports, credibly demonstrating that the factory does maintain the required records.

Recommendations

The WRC issued the following recommendations to Confecciones Mazara management with respect to issues of occupational health and safety:

- Install needle guards on all sewing machines in the plant. Adopt a policy that the use of such protective equipment is mandatory at the plant. Regularly inspect the machines to ensure that the guards have not been removed.
- Ensure that the facility's restrooms are clean and stocked with towels and toilet paper at all times. To accomplish this, we recommend that the facilities be cleaned and replenished at least twice daily. A log registering the time of each cleaning should be kept at the factory, visible to all personnel and available to monitors.
- Ensure that first aid kits are installed at well-marked locations in all of the production areas. Implement a system whereby designated workers are charged with maintaining the kits at all times. Provide training to these individuals to ensure they are capable of carrying out this function. Post notices at the first aid kits identifying the persons responsible for their maintenance.

²⁵ Article 148 of the Federal Regulation of Security, Hygiene, and Environment in the Workplace.

²⁶ Article 127 and 128 of the Federal Regulation of Security, Hygiene, and Environment in the Workplace.

Company Response

Management provided the following responses to the recommendations outlined above:

- On the issue of needle guards, factory management committed to providing needle guards on all sewing machines. (It also continued to insist that workers had removed the guards and stated it will implement an educational and disciplinary program to ensure that the guards are not removed again.)
- On the issue of restroom hygiene, factory management committed to implement a new maintenance and cleaning program for the factory's restrooms. This will include a log recording each cleaning of the facilities.
- On the issue of first aid, management claimed that it maintains first aid kits in the production area. It stated it will implement an educational program on their use and on that of the factory's medical clinic. Management stated that the medical clinic will provide workers with daily medical consultation by a medical doctor and nurse.