



WORKER RIGHTS CONSORTIUM

WORKER RIGHTS CONSORTIUM ASSESSMENT
re CHONG WON FASHION, INC. (THE PHILIPPINES)
(Facility recently renamed “C. Woo Inc.”)

REPORT OF FINDINGS and RECOMMENDATIONS

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List of Abbreviations Used in this Report

The following acronyms and abbreviations appear in this report in reference to government agencies and programs, non-governmental organizations, and legal terms that are discussed in the text:

CEPZ	Cavite Export Processing Zone, the industrial zone where the Chong Won factory is located
DOLE	Department of Labor and Employment, the Filipino government agency with jurisdiction over labor relations matters
Jantro	Jantro Security Agency, a private security firm contracted by PEZA (see below) to provide security services in export processing zones
NLRC	National Labor Relations Commission, a body of DOLE
NMCW-Ind	Nagkakaisang Manggagawa sa Chong Won-Independent (United Workers at Chong Won-Independent), the union elected in 2004 by Chong Won employees as their representative
PEZA *	Philippine Economic Zone Authority, a corporation owned and operated by the Filipino government that manages export processing zones
PhilHealth	The Philippines' national health insurance program
SCW	Solidarity of Cavite Workers, a worker organization active in the CEPZ
SEBR	Sole and Exclusive Bargaining Representative, the legal term for a union that has been deemed by DOLE to be the only worker body authorized to negotiate on behalf of the workers at a factory
SSS	The Philippines' national Social Security System
WAC	Workers' Assistance Center, a labor rights group that has provided support to workers at Chong Won

* PEZA is a government agency, attached to the Department of Trade and Industry, whose director is appointed by the President of the Philippines. PEZA's function, according to the Filipino government, is to "operate, administer, manage and develop" export processing zones, exercising "general supervision" over the "development, plans, activities and operations" of the zones (see: www.peza.gov.ph/about_peza.htm). PEZA, and its local arm in Cavite, the Cavite Export Processing Zone Authority, are responsible for management of the CEPZ. It is important to note that PEZA's authority does not extend to the realm of labor relations, which are under the authority of DOLE.

Executive Summary

This report outlines the findings and recommendations of the Worker Rights Consortium (WRC) concerning labor practices at Chong Won Fashion Inc. (recently renamed “C. Woo, Inc.”), a factory located in the Cavite Export Processing Zone (CEPZ), in Southern Tagalog Province, Philippines. Chong Won has produced casual apparel for a number of brands and retailers, including university licensees and a Wal-Mart supplier, known as One Step Up, which is the factory’s primary customer.

This report reviews the conclusions of an investigation by a WRC Assessment Team that was launched in response to a worker complaint received by the WRC, alleging labor rights violations at Chong Won. The primary on-site investigation was conducted between October 28 and November 2, 2006; additional investigation and research was carried out by the WRC both before and after these dates. This document also outlines the response of Chong Won management to the WRC’s findings and recommendations, as well as the response of buyers, including Oarsman Sportswear and Wal-Mart Stores, Inc. and its supplier, One Step Up.

The WRC investigators found serious and ongoing labor rights violations at Chong Won, including minimum wage violations, forced overtime, violations of workers’ right to unionize and bargain collectively, and, of particular concern, collusion by factory management with government agents in violence against workers engaged in a lawful and peaceful strike. Chong Won’s practices in these areas violate Filipino law, university codes of conduct, and applicable corporate codes, including Wal-Mart’s “Standards for Suppliers.” With respect to freedom of association, Chong Won’s misdeeds are among the most egregious and persistent that the WRC has encountered. To date, the response of Wal-Mart and other buyers to the violations that have been identified at Chong Won has been entirely inadequate.

In view of the anti-union violence that has taken place at Chong Won, and the alarming increase in violence against trade unionists and human rights advocates throughout the country, the WRC undertook, in addition to our assessment of labor practices at the factory, an examination of the broader issue of political violence in the Philippines and its implications for efforts to protect worker rights. Reports by credible human rights organizations inside and outside the Philippines have implicated the Filipino government and army in this violence; a recent report by a high-level Filipino government commission confirms the army’s role. Some of the cases of political violence have directly affected labor rights groups that work with employees of apparel factories, including factories producing collegiate apparel, and the growing human rights crisis in the Philippines therefore has direct and immediate implications for efforts to enforce labor rights protections through university and corporate codes of conduct. The violence should be of concern to all university licensees and all other brands and retailers sourcing from the Philippines. We discuss the conclusions of our research in this area in a special section at the end of this report.

Introduction

This report outlines the results of an investigation by the Worker Rights Consortium (WRC) of labor practices at Chong Won Fashion, Inc. Pursuant to the WRC Investigative Protocols, the WRC undertook this investigation in response to a complaint alleging labor rights violations at the factory, submitted by multiple employees of Chong Won. This document details the WRC's findings and recommendations to date, as well as the responses of Chong Won management, of Wal-Mart – whose supplier, One Step Up¹, is Chong Won's primary customer, and of other buyers.

Chong Won Fashion, Inc.² is a garment manufacturer located in the Cavite Export Processing Zone (CEPZ), Rosario, Cavite, Philippines. The factory was formerly the subsidiary of a corporation based in Seoul, Korea, but the parent corporation no longer exists and Chong Won is now incorporated in the Philippines as a stand-alone corporate entity. Chong Won's total workforce has fluctuated between 250 and 900 employees over the past six years.

Chong Won has produced casual women's and men's apparel for a variety of brands, including Wal-Mart/One Step Up and Oarsman Sportswear, a university licensee. According to university disclosure data, Chong Won has produced multiple orders of university logo apparel for Oarsman Sportswear over several years and has been reported by Oarsman as a collegiate supplier as recently as October of 2006; however, when the WRC contacted Oarsman, company representatives claimed that they could not determine whether they had used the factory. Oarsman has not acknowledged responsibility for code of conduct compliance at Chong Won and has played no role in efforts to address labor rights violations at the factory (see further discussion in the section of this report concerning the response of university licensees). The factory's primary customer at this time is One Step Up, a supplier of Wal-Mart Stores, Inc. All recent production at the factory has been for One Step Up/ Wal-Mart. For this reason, and in view of Oarsman's non-cooperation, Wal-Mart has been the primary focus of the WRC's efforts to secure constructive buyer intervention.

The WRC began its assessment in late October of 2006 and concluded primary investigative work in mid-November. On-site investigation in the Philippines was conducted by a WRC Assessment Team between October 28 and November 2. Substantial additional research and investigative work was carried out both prior to and after these dates by WRC staff and consultants. A summary of the WRC's findings and recommendations was presented to Chong Won, Wal-Mart and other concerned parties during the last week in November.³

¹ One Step Up's orders at Chong Won are placed by its buying agent, ONA.

² Chong Won recently changed its name to "C. Woo Inc."; however, in this document we refer to the company as "Chong Won," which is the name by which the company is widely known.

³ This full report is a substantial amplification of the summary of findings and recommendations provided to Chong Won and Wal-Mart in November. That document was a concise summary, prepared in order to ensure that recommendations for remedial action would be received, and could be acted upon, as soon as possible. The present report includes substantially more detail in its review of the evidence gathered by the WRC Assessment Team. There are also two issues identified in the November document, concerning vacation leave policy and the quality of the factory's drinking water, that are not discussed in this report. The WRC is conducting supplementary research in both areas so that our recommendations can be amplified; these issues will be discussed in a follow-up document when this research is complete.

Sources of Evidence and Scope of Investigation

In the course of this investigation, the WRC gathered evidence from the following sources:

- Interviews with Chong Won management and their legal counsel
- Interviews with the Nagkakaisang Manggagawa sa Chong Won-Independent or “United Workers at Chong Won” (NMCW-Ind), the union legally authorized to represent Chong Won employees, and the union’s legal counsel
- Interviews with more than 50 Chong Won production employees (including both regular and contract workers)
- Interviews with family members of production employees, including one deceased employee
- Interviews with workers from the former SP Ventures factory, a factory near Chong Won
- Interviews with the Department of Labor and Employment (DOLE), including the National Conciliation and Mediation Board officer that served as the mediator between Chong Won management and the union on several occasions
- Interviews with the representatives of the Philippines Export Processing Zone Authority (PEZA) and Cavite Export Processing Zone Authority
- Interviews with the staff of the Workers’ Assistance Center (WAC), a labor rights NGO
- Interviews with organizers of Solidarity of Cavite Workers (SCW), a regional labor alliance to which NMCW-Ind is affiliated
- Communications with collegiate licensees Oarsman Sportswear and Steve & Barry’s University Sportswear
- Interviews with members of Wal-Mart’s Global Procurement staff
- Interviews with additional witnesses to the events that occurred outside Chong Won after NMCW-Ind established a picket line in September
- A review of more than 150 documents, including personnel and disciplinary records of the factory, worker pay stubs, police reports, medical records, court documents, photographic evidence, and other materials

Based on preliminary research by WRC staff and consultants, a number of areas were identified for investigation by the WRC Assessment Team, in order to determine whether violations of law and of codes of conduct had occurred. These included: Hours of Work and Wages, Use of Contract Labor, Freedom of Association and Collective Bargaining, Legally Mandated Benefits, and Occupational Health and Safety.

In the following sections, we summarize our findings with respect to each of these areas and, where appropriate, list our recommendations for remedial action. Thus far, Chong Won management has neither accepted nor implemented any of the WRC’s recommendations – all of which, as noted above, were conveyed to the company in November and also shared at that time with Wal-Mart. Wal-Mart and the other buyers have failed to take meaningful action to compel Chong Won to cease its violations of worker rights.

Findings and Recommendations

Non-Payment of Statutory Minimum Wage

Findings

The WRC Assessment Team examined payroll records from July of 2005 to October of 2006 and found that 30 to 40% of the factory's workforce during this time period earned less than the regional minimum wage. These workers received salaries that ranged from 180 to 242 Philippine pesos (US\$3.66 - 4.96) for a standard eight-hour workday (or 46 to 62 cents an hour, US). The regional minimum wage is 272 pesos (US\$5.53) a day.⁴ While Filipino law allows employers to pay workers in some employment classes wages as low as 75% of the legal minimum, Chong Won is violating the law by paying sub-minimum wages to more employees than the law allows.

Chong Won management provided two justifications for the large number of employees paid below the legal minimum wage. Management first explained, in interviews with the WRC Assessment Team, that it is company policy to pay "low skill" contract workers, who have been assigned jobs such as "trimmer" and "helper," a salary of 204 Philippine pesos (US\$4.15) a day (75% of the minimum wage). However, Filipino law stipulates that contract workers must be paid the full minimum wage, regardless of their skill level.⁵

Subsequently, in a letter to the WRC, Chong Won management offered an additional explanation, stating that "those paid of [*sic*] the wage below the minimum might be those who were duly enrolled by [Chong Won] to its duly accredited (TESDA⁶ accredited) apprenticeship program." However, while it is legal in the Philippines to pay workers classified as "apprentices" 75% of the minimum wage for up to six months,⁷ employers may not at any time assign this status to more than 20% of their overall workforce – thus, no more than 20% of the workers at a factory can be paid less than the legal minimum wage, for any reason.⁸ Since Chong Won's practice is to pay 30% to 40% of workers the

⁴ Wage Order No.IVA-11, Setting the Minimum Wage for Calabarzon Area. Effective the first week of August, 2006.

⁵ DEPARTMENT ORDER NO. 18 – 02, Series of 2002. RULES IMPLEMENTING ARTICLES 106 TO 109 OF THE LABOR CODE, AS AMENDED, Section 6(c)(ii) states that: it is prohibited to "require him [the contractual employee] to sign a letter of employment... [with] a waiver of labor standards including minimum wages."

⁶ The Technical Education and Skills Development Authority of the Philippines, which approves apprenticeship programs."

⁷ DEPARTMENT ORDER NO. 68-04, Series of 2004. E. ENTITLEMENT OF THE APPRENTICES: "Apprentices shall be entitled to receive a wage not less than 75 percent of the prevailing minimum wage and benefits such as social security and health benefits, and overtime pay." Another employment class, known as "learners," can also be paid 75% of the minimum wage, for up to three months. However, the combined total of apprentices and learners may not be more than 20% of an employer's workforce. (Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442, AS AMENDED. Book III, Article 75, c.)

⁸ DEPARTMENT ORDER NO. 68-04, Series of 2004. C. COVERAGE: 1. The number of apprentices for each participating enterprise shall not be more than 20 percent of its total regular workforce.

sub-minimum wage, the WRC investigators concluded that even if 20% of the workforce is properly classified as apprentices, 10% to 20% of Chong Won employees are being paid illegally low wages.

Chong Won management does not clearly identify, in its payroll and individual employee records, which workers are classified as apprentices and which are simply contract workers. For this reason, it was not possible to determine the exact number of workers who are being underpaid or, in many cases, which specific workers are involved. This poor record-keeping is itself an indication of a lack of commitment to compliance with the minimum wage and other employment laws. Nonetheless, despite the confusion created by Chong Won's record-keeping practices, the evidence is clear that the above-described minimum wage violations have occurred.

Compounding these wage violations, all of the employees shown in the payroll with salaries ranging between 180 and 242 pesos a day are also shown to regularly perform overtime (of two or more hours a day). Since these employees' overtime hours are calculated using their daily wage rate, all Chong Won employees who are receiving illegally low salaries for regular hours are also receiving illegally low overtime compensation.

The WRC's conclusions in this area were further corroborated in discussions with Wal-Mart's local compliance officer, who stated that audits the retailer had previously conducted at Chong Won had yielded similar findings concerning failure to pay the minimum wage and excessive use of apprentices.

Wal-Mart's response to the WRC's investigation is discussed at length later in this report; however, it is worth noting at this juncture that although Wal-Mart reported identifying minimum wage violations, they had clearly not corrected them (the Wal-Mart staff person asserted that there had been some improvement in this area at Chong Won, but acknowledged that the problem persisted). Wal-Mart's failure to achieve remediation of these serious violations reflects poorly on the company's labor rights compliance program. Minimum wage is among the most fundamental code of conduct issues. Payment of illegally low wages causes significant harm to workers each day that it persists. As the factory's primary customer for several years, Wal-Mart should have taken more aggressive steps to compel Chong Won to cease this practice.

Recommendations

Based on these findings, the WRC recommended that factory management take the following steps:

- Classify no more than 20% of the workforce as apprentices (or as learners, another special employment status). Ensure that the wages of all apprentices are increased to 100% of the minimum wage after they complete six months of service (three months in the case of learners), as required by law.
- Pay all contract employees the minimum wage, whether they are regarded as “low skill” or not.

Failure to Provide Legally Mandated Benefits

Findings

An examination of the factory’s payroll records revealed that approximately 10% of Chong Won employees are not enrolled in the Philippines Social Security System (SSS) or the National Health Insurance Program (commonly referred to as “PhilHealth”). SSS is a mandatory defined benefit pension program which is provided for private sector workers. PhilHealth is a mandatory government health insurance program. Private sector employers are legally required to enroll all workers in both programs, whether they are permanent employees or contract workers.⁹

Discussions with Chong Won management confirmed the WRC’s conclusion. Chong Won management justified its failure to enroll some employees by claiming that these are new employees who are in the process of being enrolled; however, payroll records reviewed by the WRC showed that there are workers who have been working at Chong Won a year or longer who are not enrolled in the program. Wal-Mart compliance staff reported that Wal-Mart’s auditors had also identified this problem.

Recommendations

The WRC recommended that factory management take the following steps:

- Enroll all employees, at the time of hire, in the PhilHealth and Social Security programs. Make retroactive contributions (back to the original date of hire) for all workers who have been working at Chong Won without having been enrolled in these programs.

⁹ According to the Republic Act (RA) 8282 of the Social Security Act of 1997, Sec 9 on Compulsory Coverage, employers are obliged to enroll their workers in the SSS and make a contribution for each employee. PhilHealth is provided for under RA 7875, or the National Health Insurance Act of 1995, which also mandates compulsory coverage.

Forced and Excessive Overtime

Findings

A series of Chong Won employee interviews showed that Chong Won workers have been forced to perform overtime without the right to refuse, in violation of the Labor Code of the Philippines.¹⁰ A series of Chong Won employee interviews and examination of the company's payroll records also showed that workers have performed amounts of overtime in excess of what is allowed under university codes of conduct and under Wal-Mart's code.¹¹ Payroll records as recently as October 11 to October 25, 2006 showed that some employees had performed between eighteen and twenty-seven and a half hours of overtime a week. Workers testified that when orders are high at the factory, management requests that workers perform shifts of up to twenty-four hours at a stretch, approximately every two weeks. All workers interviewed stated that they had found it very difficult to decline overtime and that in some cases workers were verbally reprimanded or suspended from work for up to fifteen days for declining. The Labor Code of the Philippines delineates only a few special circumstances under which employers can impose mandatory overtime on employees; the cases reported by Chong Won workers do not qualify.

Workers also reported that if they agree to work overtime for a certain number of hours, but then later in the evening the overtime shift is extended, or if something happens such that a worker needs for personal reasons to leave before the overtime shift is complete, it is very difficult to get permission to leave the factory. Workers reported that they must go through the process of obtaining signed permission from multiple supervisors and managers in order to be able to pass out of the factory gate and that this permission is routinely refused.

Management denied the allegations of forced and excessive overtime. Management representatives stated that the factory has only very rarely performed overtime beyond 10:00 p.m. and that it was usually only the packing division that had to occasionally stay until around 1:00 a.m. Management presented the WRC with overtime sign-up sheets which, according to management, demonstrate that overtime is voluntary. Management presented the WRC with a "gate pass" form which does include a space for three different signatures. Management acknowledged that once an employee agrees to work overtime he or she must stay until all work is done, even if it takes substantially longer than workers were originally told.

With respect to management's denial that excessive overtime has been performed, payroll records contradict management's claims. It is also important to note that, with respect to the packing division, management admitted to overtime shift lengths that are in excess of

¹⁰ PRESIDENTIAL DECREE NO. 442, AS AMENDED. Book III, Articles 89 and 92.

¹¹ Most university codes limit overtime to a maximum of twelve hours per week, an amount exceeded in a single day, in some instances, at Chong Won. Most corporate codes also limit hours per week and/or per day. Wal-Mart's code of conduct prohibits workdays in excess of fourteen hours daily; this is a high limit relative to many other corporate codes, but nonetheless a limit exceeded by Chong Won. The national labor law of the Philippines does not cap overtime hours; however, overtime must be voluntary and properly compensated.

what is allowed by applicable codes of conduct. As to the mandatory nature of overtime, management's denials were not as credible as the testimony of Chong Won employees, which included recollection of numerous specific incidents where workers suffered disciplinary action for seeking to exercise their lawful right to refuse overtime. The fact that workers are asked to sign a sheet indicating their consent is not proof that overtime is voluntary, since workers who can be coerced into performing overtime can also be coerced into signing a consent form. Moreover, management's frank acknowledgment that it is factory policy to keep all workers who begin an overtime shift in the factory until the shift is over, even if the shift lasts far longer than the length of time workers agreed to stay, demonstrates that management does not understand nor respect the concept of voluntary overtime.

In discussing the importance of respecting the right of workers to decline overtime, the WRC Assessment Team brought to the attention of management the case of one Chong Won worker who had severe asthma and was sometimes absent from work due to this serious health problem. Members of this worker's family told the WRC that she had often reported feeling pressured to work overtime despite her health condition. Her family reported that she had frequently requested not to work overtime but had told them that she was instructed by her supervisor that she had to stay at the factory because it was "company policy." They said that she had reported being threatened with fifteen days suspension if she refused to work overtime. After a while this employee stopped trying to refuse, in order to avoid harassment by supervisors, and because, according to her family, she believed that continuing to refuse would cause her to lose her job.

This employee died in November of 2005, the morning after working an overtime shift until 8:00 p.m. Several of this worker's colleagues testified that the worker was seriously ill during her final shift at the factory and had requested that she be relieved from staying until the end of the overtime shift. Her death certificated stated, "'Cause of death: CP [cardio-pulmonary] arrest, probably due to severe respiratory acidosis."¹² This means that her heart stopped beating because her lungs ceased functioning and were no longer able to oxygenate her blood or expel carbon dioxide. It is not possible to conclude from the available evidence whether or not the overtime shifts she was forced to work, including the shift the evening before her death, were a significant cause of this worker's demise. Regardless, an employee with her medical condition should never have been forced to work overtime against her will.

This worker's circumstance illustrates why it is essential for employees to have the right to decline overtime when they need to do so. Despite the grueling nature of apparel work, most workers want to work overtime in most cases, as a result of the low wages paid for straight time work. However, even workers who wish to work overtime in general occasionally want or need to refuse it – for health reasons, due to child care obligations, or simply because of fatigue. Denying workers the right to refuse overtime is both illegal (in most countries) and dangerous.

¹² Chong Won employee's death certificate, Saint Martin Hospital, Cavite, November 13, 2005.

When the WRC raised the case of the deceased worker with Chong Won managers, they at first did not remember the employee. Upon further discussion managers recalled the case, but claimed that the worker died while on leave. The testimony of her family and her doctor's records contradict this claim. Later, after reviewing a draft of these findings and recommendations, Chong Won management stated in a communication to the WRC that "the fact that management was not at first familiar with her case when it was raised by WRC was a non-issue...considering that it is natural for the management not to be able to recall every case involving its workers especially those that occurred for [sic] more than a year ago." In fact, whether or not it is "natural" for managers to be able to recall the cases of workers who died while in the company's employ, they have an affirmative legal obligation to do so. The Labor Code of the Philippines requires that "all employers keep a logbook to record chronologically the sickness, injury or death of their employees, setting forth therein their names, dates and places of the contingency, nature of the contingency and absences. Entries in the logbook shall be made within five days from notice or knowledge of the occurrence of the contingency."¹³ When the WRC reviewed this case with management, they were able to provide some copies of sick leave forms and other requests for leave of absence, but nothing was recorded in a clear chronological order or logbook format.

Recommendations

The WRC recommended that factory management take the following steps:

- Make all overtime for production workers voluntary. Allow workers to notify their supervisor of their decision to decline at any time up to the point that the overtime hours begin. If the overtime schedule needs to be extended beyond the timeframe originally provided to workers, allow workers the opportunity to decline the extension. Post these rules prominently in the factory. Make it clear to supervisors that no worker can be disciplined or punished in any way for refusing to work overtime. Take disciplinary action against any supervisor who violates this policy. Make the process for exiting the factory gates after normal business hours less cumbersome for employees.

Misuse of Contract Labor

Findings

On the subject of management's use of contract labor, the WRC investigators reviewed payroll records provided by management from July of 2005 to the date of the investigation, as well as documents from the Department of Labor and Employment (DOLE) going back to 2004. The WRC also interviewed management and both regular and contract employees. Based on this information, the WRC was able to map the fluctuations in employment levels of regular and contract workers at Chong Won over the past several years. The WRC

¹³PRESIDENTIAL DECREE NO. 442, AS AMENDED Chapter IX RECORDS, REPORTS AND PENAL PROVISIONS Art. 205. Record of death or disability.

concluded that Chong Won has employed hundreds of contract workers in a manner that contravenes Filipino law.

The WRC's investigation identified three distinct categories of violations in this area that have been committed by Chong Won: 1) employing contract workers to do the principal work of the company, 2) employing contract workers for excessive lengths of time, and 3) employing contract workers in a manner that undermines the associational rights of the workforce. The laws limiting the use of contract labor are important because contract workers enjoy fewer rights and benefits than regular employees with respect to job security, wage increases, severance and the right to unionize and bargain collectively.

- Employing contract workers to do the principal work of the company: For the past several years (from the end of 2004 to the present), Chong Won has primarily hired contract workers, rather than permanent employees. These contract workers perform the normal daily functions of apparel production, as opposed to any special or time-limited assignments. These contract workers are therefore doing work that would otherwise be done by regular employees. Filipino law prohibits the use of contract workers to perform the functions of regular employees.¹⁴ Furthermore, worker testimony and payroll records showed that, during times when orders were low, management routinely gave work to contract workers and sent regular workers home on involuntary leave.
- Employing contract workers for excessive periods of time: Worker interviews, company payroll records and individual employee files show that many contract workers at Chong Won have been held in contract status beyond the legal time limit of one year. The law states that "...any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists (emphasis added)."¹⁵
- Employing contract workers in a manner that undermines the associational rights of the workforce: Under Filipino law, companies may not "contract out a job...when not done in good faith and not justified by the exigencies of the business and the same results in the termination of regular employees and reduction of work hours or reduction or splitting of the bargaining unit (emphasis added)."¹⁶ By law, contract workers may not be members of a union. Thus, by hiring primarily contract workers from late 2004 (which is when workers voted to unionize) through the present time, and by assigning to these workers the regular work of the factory,

¹⁴ PRESIDENTIAL DECREE NO. 442, AS AMENDED Article 280, *Regular and Casual Employment*, states that: "An employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee..." Section 6 of the Rules and Implementing Articles numbers 106 to 109 of the Labor Code "prohibits" companies from "Requiring the contractual employee to perform functions which are currently being performed by the regular employees of the principal or of the contractor or subcontractor."

¹⁵ Ibid.

¹⁶ Ibid.

Chong Won management has both nullified the associational rights of those contract workers and caused the membership of the union to be a fraction of the size it would otherwise be, thus undermining the union's strength and bargaining power. In so doing, management has violated both Filipino law and the freedom of association provisions of applicable codes of conduct.

In addition to the loss of associational rights, workers who are placed and maintained in contract status have no right to severance in the event of dismissal and do not accrue the seniority that is the basis upon which wage increases are customarily granted to production workers in the Philippines.

In interviews with the WRC Assessment Team, Chong Won management not only admitted that it employs contract workers in the manner described above, but stated that the factory has done so for many years and vigorously defended this as an appropriate employment practice. Management stated that it is the company's common practice to hire a contract worker for five months, let the person go after the contract expires, and then rehire the person after three months for another five-month contract. Management stated that a contract worker might receive numerous such five-month contracts and denied that this practice of employing contract workers for more than a year is illegal. Management also acknowledged that contract workers routinely do the regular production work of the factory and also denied that this practice is illegal. Management stated in a letter to the WRC that "the Philippine Labor Law as amended does not prohibit the hiring of contractual workers ... This practice has been a long and common practice since time immemorial not only of [Chong Won] but almost all of the industrial establishments within and outside the PEZA. It is therefore, fallible to state that such long and common practice ... can be said to have served as a utility for [Chong Won] to evade its workers rights and benefits..."¹⁷

As outlined above, Filipino law allows for the use of contract labor only on a short-term basis and only for the purpose of carrying out work outside of the principal work of the factory. The law is unambiguous on these points. Chong Won management is correct that it is common practice amongst many (though not all) industrial establishments in the Philippines to use contract labor in an excessive and unlawful manner. However, the fact that an unlawful practice is common does not make it any less unlawful, nor any less damaging to workers.¹⁸

Recommendations

Remediation of these violations cannot be undertaken effectively until the resolution of the current strike, since it requires the return to work of striking employees (see the section of this report on violations of the right to organize and bargain collectively). The WRC recommends that factory management take the following steps, immediately after the strike has ended:

¹⁷ Letter from Chong Won management to the WRC, received December 12, 2006.

¹⁸ The illegal use of contract labor is, in fact, a growing trend throughout the global apparel industry, something that is of concern to the WRC and other labor rights monitors.

- Reassign to regular employees all work now being performed by contract workers that was previously performed by regular employees and/or that constitutes the principal and regular work of the company.
- Grant regular employment status to all contract workers who have worked at Chong Won for a cumulative total of more than twelve months.
- Grant regular employment status to all apprentices who have been working at Chong Won for more than six months and all learners who have been working at the factory for more than three months.
- In the future, use contract workers solely in a lawful manner: for carrying out short-term assignments that are not part of the regular work of the factory. Hire workers as apprentices and learners only for the lawful purpose of training them, with the intent that they will become regular employees immediately after completion of the requisite three or six-month training period.

Failure to Provide First-Aid Medicines and Supplies

Findings

All of Chong Won's first aid boxes were empty upon inspection. A list of medicines that should be inside the box was posted near the first aid box, but there was no record of when the supplies had run out or when they would be refilled. Representatives of Chong Won management also could not give any indication of when the boxes would be refilled. According to the Philippine Labor Code, each company/workplace must make available ready access to First Aid inside the workplace. Failure to provide properly stocked first aid boxes is also a violation of applicable codes of conduct, which require that factory managers maintain a safe workplace.

Recommendation

The WRC recommended that factory management take the following step:

- First Aid boxes should be fully stocked and promptly refilled at all times. The first aid boxes' contents should be monitored by appropriate managers and/or workers assigned to the task.

Violations of the Right to Organize and Bargain Collectively; Violence Against Workers Engaged in a Lawful Strike

Findings

Based on extensive evidence gathered by the WRC Assessment Team, the WRC found that Chong Won management has engaged in numerous acts of interference, intimidation and retaliation against workers seeking to exercise their right to unionize and bargain collectively. These conclusions are overwhelmingly supported by witness testimony – including the testimony of workers, union leaders, government officials, and eye-witnesses to key events, and by the documentary evidence – including government records, legal filings, court rulings, and photographs. The company’s actions constitute violations of Filipino law¹⁹ and of the freedom of association provisions of applicable codes of conduct.

Management’s transgressions include dismissing workers engaged in a lawful strike; employing replacement workers during a lawful strike, which is illegal in the Philippines; colluding with police and other security personnel in the use of intimidation and violence to interfere unlawfully with peaceful picketing; attempting to prevent workers from participating in an official union certification election; refusing to comply with the binding directives of the Filipino Department of Labor and Employment; refusing to bargain with a duly constituted union, as required by Filipino law; demoting and transferring union officers in a retaliatory manner; and illegally aiding the formation of a worker body for the purpose of undermining a duly constituted union.

Refusal to Bargain: Chong Won management has refused, for more than two years, to enter into contract negotiations with the legally recognized union representing Chong Won employees, Nagkakaisang Manggagawa sa Chong Won-Independent or “United Workers at Chong Won” (henceforth, “NMCW-Ind”). Filipino law requires companies to bargain with legally recognized unions.²⁰ Applicable codes of conduct require factories to respect the right of workers to bargain collectively.

NMCW-Ind was selected by Chong Won workers as their bargaining representative in August of 2004. Consistent with Filipino law, the NMCW-Ind filed in late 2003 for a certification election with the Department of Labor and Employment (DOLE), which granted the union’s petition. In the Philippines, a certification election allows workers to decide whether they wish to be represented in their workplace by a particular union. Typically, these elections are held within a factory’s workspace and are facilitated by DOLE. Upon learning that the union had filed for a certification election, the management of Chong Won made several appeals and petitions in an effort to prevent the election from taking place, despite a standing Department Order, issued by DOLE,²¹

¹⁹ Article 246 Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442.

²⁰ Article 248(g) Labor Code of the Philippines, PRESIDENTIAL DECREE NO 442: it is “unlawful for an employer to... violate the duty to bargain collectively”. Republic Act No. 6715, Section 20, Article 250 (a)-(e), Procedure in Collective bargaining (a): “When a party desires to negotiate an agreement it shall serve written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than 10 calendar days from receipt of such notice...”

²¹ DOLE Department Order 40-03.

prohibiting any such appeals. Chong Won's legal actions substantially delayed the election, but all of the company's appeals were ultimately rejected and the election was ordered to proceed on August 5, 2004. Chong Won refused to allow DOLE to conduct the election on factory grounds, so employees who wished to participate had to go outside the factory gate in order to cast their vote. Despite this inconvenience, almost all workers who were eligible voted in the election. The vote was 280 in favor of the union, out of 283 ballots cast (out of 300 eligible voters).

After the election results were announced, Chong Won management began filing voluminous additional appeals and petitions to challenge the authority of the union, a legal campaign which continues to the present, twenty-eight months after workers voted overwhelmingly for unionization and more than two years since the government declared NMCW-Ind to be the workers' lawful representative. Immediately after the election Chong Won filed a protest challenging the results. On November 12, 2004 the regional Mediator-Arbitrator, an official of DOLE, issued an order denying Chong Won's protest. The union was then certified as the sole and exclusive bargaining representative (SEBR) of all regular rank-and-file workers at Chong Won. On December 8, 2004 management appealed this decision to the Office of the Secretary of DOLE. The Secretary rejected this appeal on April 21, 2005. On March 14, 2005 Chong Won management filed an Urgent Motion for Issuance of Temporary Restraining Order on the execution of the order by DOLE declaring the union as the SEBR. On May 10, 2005 the Court of Appeals denied Chong Won's motion. On May 12, 2005 management filed a Motion for Reconsideration of DOLE's April 21, 2005 decision. This Motion was rejected on June 27, 2005. On July 9, 2005, an Entry of Judgment was issued by the Office of the Secretary of DOLE declaring the finality of the order certifying the union as the SEBR of Chong Won workers. Chong Won then filed a Petition for Certiorari with the Court of Appeals, essentially an effort to get the Court to overturn DOLE's decision. On August 31, 2005 the Court of Appeals denied this petition. The company moved for reconsideration of Court's decision and, on April 4, 2006, was again denied.

This did not end Chong Won's legal campaign to overturn the results of the election, nor its refusal to bargain with the union, which has submitted multiple official requests to Chong Won seeking to commence negotiations, all of which have been ignored.²² Chong Won has two additional petitions pending before the Court of Appeals, one challenging the validity of the union election, the other questioning the legal status of the union as an organization. Chong Won management states the company will bargain with the union – when, and, if all pending cases are resolved in the union's favor.

It is the WRC's finding that Chong Won has abused the legal system in the Philippines as a means to evade its obligation to recognize and negotiate with the workers' chosen representative. Under applicable codes of conduct, a company may not use a flurry of legal filings to justify a protracted refusal to respect workers' rights. Nor may a company hide behind a legal system that fails to provide meaningful or timely enforcement of labor

²² The union has filed seven Letters of Intent, which constitute a formal request to begin legally mandatory bargaining. These letters are dated April 21, 2005; June 3, 2005; July 5, 2005; August 1, 2005; August 5, 2005; April 18, 2006; May 17, 2006; and June 24, 2006.

statutes. Indeed, one of the primary reasons codes of conduct exist is because countries' legal systems have often proved too weak and too pliable to prevent unscrupulous employers from acting in ways that effectively nullify workers' exercise of their rights. Therefore, even if Chong Won's pending legal filings constituted a technical justification under Filipino law for the company's ongoing refusal to bargain, Chong Won's actions would still be in violation of applicable codes of conduct.

However, a careful review of the case's tortured legal history reveals that Chong Won's dilatory tactics are not, in fact, justified under Filipino law. Because an Entry of Judgment has been issued by the Office of the Secretary of DOLE, both the certification of the union and Chong Won's consequent obligation to commence bargaining carry legal force, until and unless DOLE is restrained by the Court. Since Chong Won's request for a temporary restraining order was denied by the Court of Appeals, Chong Won's refusal to bargain constitutes a clear and ongoing violation of Filipino law. Thus, Chong Won's actions are improper from the standpoint of domestic law, as well as applicable codes of conduct.

It is notable that the company also failed to participate meaningfully in the mediation process overseen by the National Conciliation and Mediation Board of DOLE. Chong Won repeatedly failed to attend mediation hearings, as reported to the Assessment Team by the DOLE mediator assigned to the case.²³

The WRC Assessment Team discussed this long legal campaign with both DOLE officials and Wal-Mart's compliance staff. Both the government officials, and the Wal-Mart compliance team, expressed agreement with the finding that Chong Won has abused the legal system. Both also agreed that the best way forward would be for Chong Won to drop its pending appeals and finally commence negotiations with the NMCW-Ind union.

Use of Violence Against Striking Workers: Chong Won employees have been subjected to violence and harassment by agents of the company and of the export zone authority in retaliation for engaging in a lawful strike and picket. Filipino law specifically forbids any interference with the picketing of lawfully striking workers through means of violence or intimidation.²⁴ The law also specifically prohibits companies from employing strike-breakers to replace striking workers and prohibits police personnel, all other public officials and employees, and all other armed persons from bringing strike-breakers or

²³ For more than a year prior to the strike, officers and members of NMCW-Ind attended more than twenty negotiation and mediation sessions called by National Conciliation and Mediation Board (NCMB-DOLE). The NCMB-DOLE mediator assigned to the Chong Won case reported to the WRC's Assessment Team that, unlike the union, Chong Won management frequently failed to appear at the scheduled mediation sessions. For example, from July to September of 2006 there were at least ten negotiation sessions held, but management only sent representatives to four of these sessions. DOLE reported to the WRC that Chong Won management would sometimes call the regional office of DOLE and simply say, "Our position has not changed", thus refusing to attend the mediation session.

²⁴ Article 264 (a) of the Filipino Labor Code establishes that:

"a. No person shall obstruct, impede, or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by employees during any labor controversy or in the exercise of the right to self-organization or collective bargaining, or shall aid or abet such obstruction or interference."

replacement workers onto factory premises during the course of a strike.²⁵ Applicable codes of conduct prohibit interference, through violence or other means, with the lawful associational activities of workers, including lawful strikes.

The instances of violence took place during the course of a lawful strike organized by Chong Won workers. After waiting in vain for more a year for management to fulfill its legal obligation to negotiate a collective bargaining agreement, the NMCW-Ind union filed a notice of strike with DOLE on July 5, 2006. The reasons cited by the union for the strike in its petition to DOLE were: Chong Won's refusal to engage in collective bargaining despite a legal obligation to do so; the alleged illegal dismissal of two union officers; and alleged discrimination against and harassment of active union officers and members. After reviewing the petition, DOLE authorized the union to undertake the strike. DOLE's binding decision was released on July 19, 2006. On August 11 the union held a vote amongst all union members (221 persons) regarding the strike; 181 members voted in favor of striking, 22 did not support the strike. Given the overwhelming majority in support of the strike the union proceeded with its plans.

The strike began on September 25, 2006. Roughly 200 workers, the vast majority of them regular employees and members of the union, chose to participate in the strike. The striking workers formed and maintained a lawful picket line in front of the factory, with the intention of manning the picket line continuously until management agreed to negotiate.

The two primary instances of violent attack on the striking workers discussed in this section involved efforts by police working for the Philippine Economic Zone Authority (PEZA)²⁶, Jantro²⁷ security guards employed by PEZA, and Chong Wong management to bring illegal replacement workers into the factory. As noted above, escorting replacement

²⁵ Article 264 (b) and (c) of the Filipino Labor Code establishes that:

"b. No employer shall use or employ any strike-breaker, nor shall any person be employed as a strike-breaker.

c. No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: Provided that nothing herein shall be interpreted to prevent any public officer from taking any measure necessary to maintain peace and order, protect life and property, and/or enforce the law and legal order. (As amended by Executive Order No. 111, December 24, 1986)"

²⁶ Philippine Economic Zone Authority (PEZA) is a government corporation established through legislative enactment known as "The Special Economic Zone Act of 1995". The Philippine Economic Zone Authority (PEZA) is a government agency, attached to the Department of Trade and Industry, whose director is appointed by the President of the Philippines. PEZA's function is to "operate, administer, manage and develop" export processing zones, exercising "general supervision" over the "development, plans, activities and operations" of the zones (see: www.peza.gov.ph/about_peza.htm). PEZA, and its subsidiary, the Cavite Export Processing Zone Authority (CEPZA), are responsible for management of the Cavite Export Processing Zone, where Chong Won is located. It is important to note that PEZA's authority does not extend to the realm of labor relations, which are under the authority of the Department of Labor and Employment (DOLE).

²⁷ Jantro Security Agency is a private security guard firm. PEZA contracts extensively with this firm to guard its zones.

workers into a factory during a lawful strike is explicitly prohibited by Filipino Law. The Filipino Labor Code establishes that “no employer shall use or employ any strike-breaker” to replace striking workers and that “No public official or employee, including officers and personnel of the... Armed Forces... and Police, or armed person shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers...or work in place of the strikers.”²⁸

The following accounts are based upon the credible and mutually corroborated testimony of both striking and non-striking workers and other eye-witnesses to the events.

The first incident of violence took place on the morning of September 25, the first day of the strike. On this day approximately 200 workers formed a picket in front of the Chong Won factory gate. Approximately 500 other workers came to the factory that day, but did not join the picket line. Of these 500 workers, fewer than ten were regular employees; the vast majority were contract workers summoned to the factory by management to serve as strike breakers. As soon as the strikers formed their picket in front of the factory, Chong Won’s Production Manager, Antonio Felismino, approached the striking workers and asked them to disperse. The striking workers said they were engaged in a legal strike and picket and would not disperse unless management agreed to sit down and negotiate a collective bargaining agreement. Mr. Felismino then brought out a bullhorn and gave a brief speech to the approximate 500 contract workers, who had been called to the factory that day by management, in anticipation of the strike. He promised them that if they stayed at the factory they would each be paid 500 Philippine pesos (\$10 US) for the day, twice the normal daily rate of pay.

After making this announcement, Mr. Felismino went to the office of the Cavite Export Processing Zone Authority.²⁹ Shortly thereafter, he returned to the factory, accompanied by approximately 20 PEZA police officers and 50 Jantro security guards (working on PEZA’s behalf). A fire truck also pulled up in front of the picket line.

The most senior representative from PEZA police force approached the union president on the picket line and requested that the union end the picket. The union president refused, informing the police representative that the strike was lawful and that it was being conducted because all other means for compelling Chong Won to accept its legal obligation to negotiate had failed. It is important to note that PEZA has no authority under Filipino law to rule a strike illegal or to order a picket terminated; this is the sole prerogative of DOLE.³⁰

²⁸ Article 264 (c) of the Filipino Labor Code.

²⁹ The Cavite Zone Authority is the local arm of PEZA. Since PEZA directly controls the police force whose actions figure prominently in this report, and since PEZA and its Cavite arm are legally interchangeable, all subsequent references in this report, whether to the national or local entity, make use of the acronym PEZA.

³⁰ Article 217-226, and Article 263 (d), (g), and (i) of the Labor Code of the Philippines stipulates that only the National Labor Relations Commission (NLRC) of the Department of Labor and Employment (DOLE)—particularly the Labor Arbiters—have jurisdiction to determine legality of strikes. If an employer or employee is unsatisfied with the decision of a Labor Arbiter they may make an appeal to the Commission.

Shortly after the president of the union declined to end the picket, the group of roughly 50 Jantro security guards, armed with shields and bamboo clubs, known as “yantok”, stepped forward. Further dialogue then ensued between the lead PEZA police officer and union officials, in which the PEZA officer again requested that the strike be cancelled and asserted that the strike was illegal. In response, the union officials asked if there was an order from DOLE proclaiming the strike illegal. The lead PEZA officer, who witnesses testified became visibly enraged by the union official’s response, shouted to the striking workers that they must disband the picket line so that the police and security guards could escort a group of replacement workers into the factory. When the picketing workers refused to disband, the Jantro guards attacked the striking workers. During the melee, more than 40 workers, the strong majority of them women, were struck by the guards with bamboo clubs. As a result, fourteen workers suffered serious injuries to their heads, arms, and legs. The WRC reviewed photographs, which corroborated claims by workers of severe bruises, swelling, and cuts sustained in the confrontation. Despite the attack, many of the striking workers held their ground and the Jantro guards eventually withdrew, with the picket line more or less intact and with no strike-breakers having entered the factory.

On September 26, Jantro erected checkpoints at either end of the street that runs in front of the Chong Won factory, thus controlling access to and from the picket line. At this point, there were roughly 70 picketers left, the remainder having chosen not to return out of fear of further violence (or, in some cases, unable to return, because of injuries suffered in the attack). After erecting its checkpoints, Jantro refused to allow any union members access to the factory; only replacement workers were allowed through. Some union members were denied entry to the CEPZ altogether and in some cases their zone passes were confiscated.

On September 27, 2006, Chong Won management and PEZA launched a second assault on the picket line. By roughly 7:00 a.m. on that day, a large crowd of contract workers had again gathered outside the factory, having been summoned by management. At that time, Mr. Felismino announced to the contract workers that they would soon be escorted inside the factory by Jantro security. At approximately 9:00 a.m. a large assembly of armed security and police personnel arrived at the factory, including Jantro security guards, PEZA police, Rosario police, and SWAT police. The lead PEZA police officer approached the striking picketers and requested that the picket line be disbanded so that the contract workers could be escorted into the facility. Representatives of the union replied that they would not disband their lawful picket line so that illegal replacement workers could enter the facility. Following several minutes of debate between the PEZA officer and worker representatives, the private Jantro security guards began beating their shields with their clubs, apparently to communicate a final warning to the striking workers. Then, moving in formation, the Jantro guards marched up to the picket line and began assaulting workers with their clubs and shields. Twenty-two workers suffered injuries during the attack, primarily to their heads and legs; many required medical treatment. The Jantro guards’ second attack was successful in breaking the picket line, which enabled them to escort roughly 100 contract workers into the factory.

After the attack on September 27, the size of the picket line was again diminished, with workers leaving due either to injury or fear of additional violence. With Jantro denying union members access to the factory, the union was unable to reinforce the picket line. The only way the few remaining picketers were able to maintain the line was by remaining on the line indefinitely. Jantro security guards have tried to prevent anyone from bringing food and water to the strikers, in an attempt to starve them off the picket line. Nonetheless, approximately one dozen tenacious individuals have succeeded in holding the line and remain there as of the date of this report.³¹ However, the picket line is no longer substantial enough to be effective in preventing replacement workers from entering the factory. Staffed by strike-breakers, Chong Won has been operating since September 27.

The Assessment Team also reviewed evidence concerning a third incident in which lawful picketers were confronted by security personnel. The incident occurred on the morning of October 19. At roughly 8:30 a.m., a group of about 400 contract workers, apparently acting on management orders, came out of the factory and into the area where the picketing was taking place. At this point, there were thirteen workers on the picket line, the majority of them women. The picketers were then surrounded by a group composed of twelve PEZA police officers, eight municipal police officers, thirty Jantro security guards, and fifteen individuals in civilian clothes. The production manager, Mr. Antonio Felismino, was again present and acted as de facto leader of the security personnel. He gave orders for the group to dismantle the tents that had been erected by the picketing workers. Some members of the group then proceeded to grab the workers, pulling them away from the picket line so that others could proceed to demolish the tents and confiscate the strikers' signs and placards. These materials were then carried away by the individuals in civilian clothes and placed inside a PEZA vehicle. The thirteen workers did not attempt to mount a strong defense of the picket line. In testimony to the Assessment Team, the workers stated that they chose not to resist because they were vastly outnumbered and feared for their physical safety. After PEZA force left, the workers reformed the picket line, albeit without their tents and most of the signs and placards.

Jantro security guards have continued to harass the remaining picketers, confiscating whatever materials they find on the picket line, shouting verbal abuse, and continuing to prevent the delivery of food and water. In some of the most recent incidents, Jantro has been aided in its efforts by Chong Won security guards and members of the newly formed Caretaker Committee (for further explanation of this entity, please see that subsection of this part of the report regarding the Caretaker Committee).

In interviews with the WRC, Chong Won management and PEZA officials asserted that the use of force to disperse the picket line was lawful, under a provision of the Filipino Labor Code that prevents striking workers from committing "any act of violence, coercion or intimidation or obstruct[ing] the free ingress to or egress from the employer's premises for lawful purposes, or obstruct[ing] public thoroughfares."³² The WRC found these claims to be without merit, for the following reasons:

³¹ At the request of the union, the WRC has chosen not to disclose the means through which the remaining picketers are obtaining food and water.

³² PRESIDENTIAL DECREE NO. 442, AS AMENDED. Book III, Article 264 (e).

- 1) The striking workers did not prevent members of management or factory security from entering or exiting the factory during on dates in question (September 25-27). Striking workers only refused to break the picket line when PEZA police and Jantro security guards were attempting to bring illegal replacement workers into the factory – by definition, not a “lawful purpose.”
- 2) The workers did not block any public thoroughfare.

Management’s and PEZA’s assertion that it was illegal for the strikers to attempt to prevent security personnel from escorting contract workers into the factory would only have merit if the evidence showed that the contract workers were not strike-breakers but were all legitimate employees, seeking to do their jobs in spite of the strike. The evidence is overwhelming that the contract workers were indeed strike-breakers. This question is discussed at length in the next sub-section of this report.

PEZA police officers and the Jantro security guards also claimed that the use of violence was justified because some of the striking workers were armed with sharpened sticks, scissors and other sharp objects and had used these weapons to injure the security personnel. PEZA has pursued criminal charges against some of the striking workers based on these allegations. However, evidence gathered during the WRC’s inquiry supports the conclusion that Jantro’s and PEZA’s claims are false. Both striking and non-striking workers testified credibly that the participants in the strike did not possess or use any weapons. Additionally, worker representatives provided the WRC Assessment Team photographs of the scene, taken just prior to the confrontation (according to testimony and the time and date stamp on the photographs), which show the striking workers to have been unarmed.³³

For their part, PEZA officials did not present persuasive evidence that the workers possessed weapons. PEZA officials did show the WRC Assessment Team several close-up images purportedly showing injuries to PEZA police incurred at Chong Won. However, the photographs included no time and date stamp and did not show the subjects’ faces. It is impossible to verify the identity of any of the subjects and there was nothing in the photographs that showed them to be related to the events at Chong Won, or even indicated with certainty that the subjects were police personnel.

In assessing the allegations of violence by the striking workers, the WRC investigators gave particular weight to the fact that the allegations were not made by PEZA and Jantro

³³ Credible worker and witness testimony did indicate that several individuals unknown to the striking workers, who were not known to be employees of the factory, appeared on the scene armed with screwdrivers and other sharp objects and tried, unsuccessfully, to join the picket line. According to worker testimony, worker representatives informed PEZA and Jantro of the presence of these individuals, but the officers did nothing in response. While it remains unclear who these individuals were (the unproven hypothesis of many workers is that they were planted by PEZA or Chong Won management), the testimonial evidence is clear that they were not union members and were not acting at the behest of the union.

until a month after the picket line confrontations occurred. No such allegations were made at the time of the events; they surfaced only after international observers began to scrutinize PEZA's actions. Moreover, PEZA security personnel did not make a single arrest of a worker for possession or use of a weapon, though arrests would have been legally justified had such weapons been in evidence. When the WRC Assessment Team asked why PEZA and Jantro security personnel on the scene did not arrest the workers who allegedly attacked them with stabbing weapons, or why they did not at least confiscate these weapons, PEZA officials replied that this was due to the "kindness" and "tolerance" of the security personnel. The disingenuousness of this response revealed a lack of candor on the part of these officials and further undermined their credibility.

In summary, the WRC found that Chong Won, aided by government forces, violated Filipino law and applicable codes of conduct by subjecting workers to violence and property destruction as a means of restricting the lawful exercise of their associational rights. The WRC found that allegations by PEZA and Jantro of unlawful violence by the striking workers were false, a conclusion based on credible eye-witness and photographic evidence contradicting PEZA's claims, the absence of any credible evidence in support of these claims, and the *post hoc* nature of the allegations.

It is important to understand that the use of force to disband the lawful picket line at Chong Won was a joint enterprise of Chong Won management and PEZA (and, therefore, of the Filipino government, of which PEZA is a part). PEZA's violent and unlawful assaults on the striking workers were carried out at the request, and with the support, of Chong Won management, as illustrated by the central role played by the Chong Won Production Manager. Management made no attempt to deny this, openly acknowledging in interviews with the WRC that they solicited and welcomed PEZA's actions. Management did not, of course, admit that its actions or PEZA's were illegal, as explained above.³⁴

Illegal Use of Contract Workers to Replace Striking Workers: Evidence gathered by the Assessment Team demonstrates that Chong Won illegally sought to use workers hired on contract status as replacements for workers engaged in a lawful strike. As noted above, the Filipino Labor Code prohibits employers from hiring individuals as "strike-breakers."³⁵ The law also prohibits employers from contracting out the core work of an enterprise in response to an imminent or actual strike,³⁶ and from contracting out jobs previously

³⁴ The attack on October 19 appears to have been undertaken on the order of a senior PEZA manager, Attorney Mary Jane Arada. Ms. Arada's name was invoked by Antonio Felismino as the source of his authority, as he instructed the security guards, PEZA police and others to demolish what remained of the picket line. She was seen by the strikers, in a parked car, watching as the events of that morning unfolded. Ms. Arada is a senior official of PEZA at the national level, working at the agency's headquarters in Manila. Her involvement constitutes evidence that PEZA's actions at Chong Won were the product of organizational policy, rather than of the aberrant behavior of local decision-makers.

³⁵ Article 264 (b) and (c) of the Filipino Labor Code.

³⁶ Section 6(e) of the Rules and Implementing Articles 106 to 109 of the Philippine Labor Code, Department Order No. 18-02, prohibits the "contracting out of a job, work, or service directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent."

performed by union members, if the effect is to interfere with workers' exercise of their associational rights.³⁷

Company records and evidence gathered from interviews with contract workers currently employed at Chong Won indicate that during the three month period between the time the union gave notice of the strike and the strike's inception, management systematically placed union members on forced, unpaid leave and assigned their responsibilities to contract workers. As of June of 2006, the month prior to the union's notice of strike, there were approximately 250 regular workers in the plant, almost all of them union members, and approximately 100 contract workers. The union issued its strike notice on July 5. Management then proceeded, over a period of weeks, to place all of the unionized workers on leave. (These workers remained on involuntary leave until 116 of them were issued termination notices on September 30.) The factory maintained in employment the 100 contract workers who were in the factory at the time of the strike notice.³⁸

During this same period – the weeks and months after the strike notice but before the strike – management proceeded to hire hundreds of additional contract workers (the WRC could not verify the exact number). However, with few exceptions, the new contract workers were not actually given any work in the factory. Instead, they were left “on-call” – under contract, but unpaid and unemployed, waiting to be called to the factory to work. The large group of contract workers that assembled at the factory on September 25 and 27 at management's request (some of whom ultimately entered the factory on September 27), consisted of a mixture of these workers – hired after the strike notice and in most cases never previously called to the factory – and contract workers who were hired at Chong Won prior to the strike notice.

At each juncture, management's actions vis-à-vis contract workers were in violation of Filipino law. It was illegal for management to place all union members on voluntary leave after the strike notice and then to assign contract workers to do their work, since laying off the entire union obviously interfered with workers' ability to exercise their union rights. It was illegal for management to substantially increase the number of contract workers in its employ after the strike notice was given, since this constituted contracting out work by reason of an imminent strike. And it was illegal for management to attempt to introduce contract workers into the factory on September 25 and 27, since their only conceivable function was to do work that would otherwise have been done by the striking workers.

In interviews and other communications with the WRC, management denied that the hundreds of contract workers that it assembled at the factory on September 25 and 27 were strike-breakers, insisting that they were simply employees of the factory who had chosen not to participate in the strike. Management argued that it was irrelevant that many of these

³⁷ Section 6(f) of the Rules and Implementing Articles 106 to 109 of the Philippine Labor Code, Department Order No. 18-02, states that it is “prohibited” to “contract out a job, work or service being performed by union members when such [action] will interfere with, restrain, or coerce employees in the exercise of their rights to self organization.”³⁷

³⁸ This contradicted the long-standing practice at Chong Wong of laying off employees with the least seniority first (the so-called “last-in, first-out” rule).

workers had been hired only after the strike notice was given and had never actually worked at the factory, since, according to management, this was merely a case of management expanding its workforce in anticipation of increased orders. To summarize management's position: Chong Won hired hundreds of contract workers after receiving a strike notice, kept these workers on call until the strike commenced, and called them to the factory on the day of the strike – all for purposes unrelated to the strike. This is not a credible claim, particularly in light of management's amply demonstrated hostility to the union and previous unlawful acts of anti-union discrimination and retaliation.

Unlawful Termination of Striking Workers: Chong Won has sought to terminate the employment of 116 workers who participated in the factory-wide strike. The workers were given “notice of termination” on September 30, 2006. The termination of these workers, should the terminations be carried-out, would violate provisions of Filipino law³⁹ and applicable codes of conduct which prohibit retaliation against workers for the exercise of their associational rights.

The reason cited by Chong Won management for the dismissal of these workers is their participation in the strike, which the company has asserted is illegal. Thus, a determination of the legality of the intended firings rests on a finding of whether or not the strike and picket were lawful. The Assessment Team found the strike was lawful and that the mass dismissal is therefore unjustified.

As outlined above, the regulatory arm of the Filipino government with jurisdiction in these matters deemed the strike lawful. The Department of Labor and Employment (DOLE) is the only regulatory agency of the Filipino government charged with ruling whether industrial strikes or other industrial actions taken during labor disputes are consistent with the law.⁴⁰ As discussed above, prior to undertaking the strike, the NMCW-Ind union formally sought the approval of DOLE to carry-out the strike. On July 19, 2006, DOLE granted the union formal authority to undertake the strike, pronouncing it lawful.⁴¹

Chong Won argued, in interviews and in a communication to the WRC sent on December 12, 2006 that while the union may have had the right to strike, the union's actions on the picket line, which management claims were unlawful, rendered the strike illegal. As explained above, the Assessment Team reviewed the allegations of management and PEZA that the strikers engaged in unlawful acts and found them to be baseless. Moreover, DOLE

³⁹ Article 246 Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442.

⁴⁰ Article 217-226, and Article 263 (d), (g), and (i) of the Labor Code of the Philippines provides clarification that only the National Labor Relations Commission (NLRC) of the Department of Labor and Employment (DOLE)—particularly the Labor Arbiters—have jurisdiction to determine legality of strikes. If an employer or employee is unsatisfied with the decision of a Labor Arbiter they may make an appeal to the Commission.

⁴¹ The WRC Assessment Team also independently reviewed the merits of the union's request to DOLE for permission to undertake the strike. Under Filipino law, strikes can be lawfully carried-out in response to “bargaining deadlocks and unfair labor practices.” The practices of Chong Wong to which the union objected constitute unfair labor practices: refusal to engage in collective bargaining, illegal termination of two union officers, and discrimination against and harassment of union officers and members. See: DEPARTMENT ORDER NO. 40_A-03, Series of 2003. ARTICLE I. Section 5, Rule XXII of Department Order No. 40-03, the Implementing Rules of Book V of the Labor Code of the Philippines: “Grounds for strike or lockout. - A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices.”

is the only entity with the authority to declare a strike illegal or to revoke the authorization given to a union to carry-out a strike. Even if the workers had committed infractions on the picket line, this would not have affected the legal status of the strike without action by DOLE. No such action was taken. Indeed, when Chong Won management called on PEZA police and Jantro security guards to forcefully disband the picket line established as part of a lawful strike, it was these three parties that violated the law (and PEZA violated a standing Memorandum of Understanding between PEZA and DOLE).⁴²

Unlawful Termination of Union Leaders: The Assessment Team found that Chong Won illegally terminated two workers, one of whom is an elected leader and the other an active member of the NMCW-Ind union. The workers are Monina Eugenio, terminated in July of 2006, and Sellwyn Simpan, terminated in September of 2006. In the case of both workers, Chong Won management cited alleged disciplinary infractions as justification for the dismissals. However, the WRC Assessment Team found in one case that no infraction had occurred, and, in the other, that the infraction either did not occur or was grossly exaggerated by management.

Because the fired workers were well-known union leaders, because of the clear anti-union animus displayed by management on numerous occasions, and because of the absence of any legitimate basis for their dismissal, the WRC investigators concluded that the two workers were fired because of their lawful union activities. It is unlawful under Filipino law and applicable codes of conduct to dismiss a worker in retaliation for their participation in a trade union.⁴³

In terminating Sellwyn Simpan, a cutting machine operator who is also an active member of the NMCW-Ind union, Chong Won management accused this worker of attempting to steal a piece of cloth from the factory in order to make a tank top for himself. He was suspended on August 9, 2006 and terminated on September 7.

⁴² A Memorandum of Understanding between DOLE and PEZA clarifies the division of responsibility and jurisdiction between DOLE and PEZA over labor code violations and labor disputes. The Memorandum recognizes DOLE as the “government agency tasked to implement the state policy and specifically mandated to promote and protect workers’ rights and welfare and to maintain industrial peace by promoting harmonious relationships between workers and employers.” Specifically, “in cases of Notices of Strikes...DOLE-NCMB [National Conciliation and Mediation Board] shall provide conciliation and mediation services in accordance with existing rules and regulations in the handling of labor disputes and may be assisted by PEZA.” (DOLE-PEZA Memorandum of Agreement, March, 27th, 2006, Manila.). It is stated further in the *Implementing Guidelines* of the Memorandum that, while the two parties should take a “single team approach,” DOLE retains its position as the head authority (“lead the core group”) when it comes to issues of strikes and lockouts. It also bears noting that the Filipino police forces can use such force as is necessary to maintain public order and safety, among other social objectives, but they have no authority to render judgments on whether industrial job actions such as strikes or lock-outs meet the legal requirements for undertaking such actions. Such determinations are left solely to DOLE and the NLRC (Art. 264 of the Labor Code of the Philippines).

⁴³ Article 246 Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442, AS AMENDED.

The Assessment Team did not find the justification for the termination credible, for the following reasons:

- 1) Conflicting accounts of the alleged theft provided by management: In an interview with the WRC investigators, the company's President asserted that the management had found Mr. Simpan wearing the cloth. However, a different member of management, the plant manager, Mr. S. H. Choi, provided contradictory testimony to the effect Mr. Simpan had not been wearing the garment, but rather had been seen merely examining the piece of cloth. Subsequently, both members of management acknowledged that the worker had only put on the garment after members of management insisted that Mr. Simpan go upstairs to the factory office and try it on (apparently so management could attempt to prove that the cloth was suitable to Mr. Simpan's shirt size).
- 2) The implausibility of the accusation: Management claimed that it was Mr. Simpan's intent to sew the piece of cloth into a tank top for him to wear. Mr. Simpan, however, testified that he does not have the skills to do so. Mr. Simpan was employed in the cutting department of Chong Won and is not trained in sewing.
- 3) The allegation speaks not to any actual theft, but to Mr. Simpan's state of mind: At no time did management allege that Mr. Simpan attempted to remove the piece of the cloth from the factory. Rather, management claims that Mr. Simpan intended to steal the cloth, something Mr. Simpan denies. Whether or not Mr. Simpan intended to steal company property, there is no disagreement about one point: he did not, in fact, steal anything. Neither Chong Won company policy, nor Filipino law, allows for the dismissal of a worker based on inappropriate thoughts.

Given that the allegation itself is not that Mr. Simpan stole, but that he thought about stealing; given that management provided contradictory accounts of the alleged incident; and, given that Mr. Simpan does not possess the skills to sew the tank top that management accused him of intending to sew, the WRC investigators concluded that there was no legitimate basis for Mr. Simpan's dismissal.

In the case of Monina Eugenio, a sewing machine operator who serves as the NMCW-Ind union's Public Relations Officer, Chong Won management alleged that Ms. Eugenio hit a member of management, was rude and disobedient to the same member of management, and came to work without authorization at a time when she was on forced leave. She was terminated on July 15, 2006. (The factory did not present its letter of termination to Ms. Eugenio until August 16, and it bears that date, but the firing took place on July 15.)

The WRC's examination of the events in question found that no infraction warranting termination was committed by Ms. Eugenio.

The alleged offenses concern an argument which occurred on July 15 between Ms. Eugenio and a member of management, the plant manager, Mr. Choi. The argument concerned the company's practice of placing regular, unionized workers on unpaid, forced leave and replacing them with contract workers (a practice which, as discussed above, violates Filipino law). Ms. Eugenio had herself been placed on forced leave prior to July 15. On the day in question, she had been recruited by a contract worker, who desired a rest day, to work in her place. However, during the course of her shift, the company plant manager, Mr. Choi, spotted Ms. Eugenio, reprimanded her for being at work, and then called her into his office to discuss the issue further. The two argued, both before and after entering Mr. Choi's office, over the question of Ms. Eugenio's presence at the factory and over the legitimacy of management's policy of mass lay-offs of union members.

Management asserts that Ms. Eugenio physically attacked Mr. Choi, in what management described as a "violent, rude, insulting show of force." Ms. Eugenio testified that during an argument in his office, Mr. Choi, boiling with rage, became verbally abusive to Ms. Eugenio and began jabbing his finger a few inches from her face. She says that she responded by pushing his hand away. Management claims that Mr. Choi was pointing at the door at the time his hand was "slapped." The WRC investigators could not determine which version of events was correct: Ms. Eugenio's claim that she responded to a threatening gesture from Mr. Choi, or Mr. Choi's claim that he was pointing innocently at the door. However, Mr. Choi was not injured in any way and there is no allegation that anything more occurred than one person's hand slapping another's. The WRC therefore could not credit management's assertion that a "violent...show of force" had been perpetrated that would warrant the dismissal of a worker.

Nor was Ms. Eugenio's presence at the factory on the day in question a legitimate basis for her termination. Management does not dispute that Ms. Eugenio was asked by another worker to take her shift. Management does not allege that Ms. Eugenio, at the time she was approached by Mr. Choi, was doing anything other than working in a proper manner on the production line. Ms. Eugenio had been unlawfully placed on forced leave and replaced by contract labor. Deprived of her livelihood, she was subsequently offered an opportunity to earn a day's pay by a fellow worker. Her course of action in acceding to this request was an entirely reasonable one and would not constitute just cause for dismissal under any equitable disciplinary regime.

Nor are management's allegations of "discourtesy" and "rudeness" a legitimate basis for dismissal. The WRC investigators concluded that what transpired between Mr. Choi and Ms. Eugenio was an argument, initiated by Mr. Choi when he confronted Ms. Eugenio on the production line, in which both parties behaved angrily and emotionally – not one in which Ms. Eugenio engaged in an unprovoked display of discourtesy. Moreover, the entire confrontation would never have occurred had Chong Won not illegally deprived Ms. Eugenio, and her fellow union members, of their gainful employment at the factory.

In the absence of any legitimate basis for the dismissal of these two workers, the WRC investigators concluded that the dismissals were motivated, largely or wholly, by anti-union animus. As noted, both workers are recognized leaders of the NMCW-Ind union,

one an elected official and the other among the union's most active members. They were terminated in the weeks after management received the union's strike notice and at time when management was engaged in a campaign of retaliation against the union and its leaders and members. The only plausible explanation for the dismissals, and for management's decision to present fabricated and/or exaggerated claims to justify them, was the desire of management to punish these two union leaders for their participation in union activities that were entirely lawful but a source of great annoyance to Chong Won.

Discrimination Against & Harassment of Union Members: Chong Won management has engaged in a pattern of discriminatory treatment and harassment of union members. Such treatment violates provisions of Filipino law which prohibit discrimination and other forms of retaliation against workers for joining a trade union or otherwise pressing collectively for improvements in their employer's labor practices.

One means through which union members were subjected to discriminatory treatment and harassment is the forced isolation of union activists. In September of 2005, factory management transferred the president of the NMCW-Ind union and eight of the most active officers and members, along with their sewing machines, into the facility's stock room. The workers were confined to this space for nearly a month. During this period, the workers' communication with other workers in the facility was severely restricted. In October of 2005, at the time they were transferred back to the main factory floor, management changed their assignment from members of the sewing department to the trimming department. This move represented a demotion in terms of job status (though not in terms of compensation). The workers remained in the trimming department until the strike of September 25, 2006 began. The forced isolation of union leaders is a clear violation of employees' associational rights.

In late November of 2005, management relocated all of the most active members of the union to two production lines. On September 19, 2005, leaders of the union had sought to organize a work "slow down," wherein members of the union would refuse to perform overtime work in protest of management's unlawful refusal to bargain with the union. Since overtime work in the Philippines must be voluntary (except in extraordinary circumstances), the refusal to perform overtime, for any reason, cannot be grounds for punishment. Nonetheless, on the following day, Chong Won effected the relocation of the union leaders and activists. Management then announced that these two lines would not be permitted to work overtime in the future.

In a letter to the WRC, Chong Won management acknowledged that the reassignment of workers was carried out specifically in retaliation for the workers' protest:

“In many occasions, some Worker Assistance Center (WAC) [*sic*]⁴⁴ loyal supporters in a sinister conspiracy and in an orchestrated manner refused rendition of overtime until such time that management gives in to their demand... This ill motivated strategy of the WAC group prompted Chong Won to implement a self-preserving counter scheme to frustrate WAC's destructive desire, by implementing a work shifting schedule and validly transferring (with loss of necessarily demoting them) the WAC loyal union members from certain production line to another in such away that their refusal to render overtime would only have a minimal impact in the continuous running of the production lines.”

Relocating workers in retaliation for a lawful labor action violates both Filipino law and code of conduct provisions protecting workers associational rights. The fact that the workers' protest hindered production does not change this fact; indeed, the point of lawful strikes and slowdowns is to pressure management by hindering production. The fact that management has openly acknowledged these violations, and presented them as ostensible evidence of the union's malfeasance, indicates a lack of understanding on the part of management of its legal and code of conduct obligations.⁴⁵

Inappropriate Involvement by Management in Formation of a Worker Representative Body: Chong Won management has illegally involved itself in the formation of a collective worker organization as a means of supplanting the role of the legitimate and lawfully constituted trade union. Involvement by management in the creation of labor organizations and interference in the affairs of such organizations is prohibited by Filipino law⁴⁶, conventions of the International Labor Organization, and applicable codes of conduct.

Shortly after the NMCW-Ind strike began, a new entity called the “Caretaker Committee” surfaced in the factory, purporting to represent employees. The self-proclaimed purpose of the Caretaker Committee was to, “represent [Chong Won workers] pending the

⁴⁴ WAC is a leading Filipino worker rights organization that provided substantial support to workers at Chong Won during the initial union organizing drive, in the period after workers formed the union and were seeking to exercise their right to bargain, and during the strike. Chong Won management has adopted the practice of erroneously referring to the NMCW-Ind union as “WAC.” Since management is well aware of the union's correct name, and of the distinction between WAC and the union, its use of this misnomer is apparently intentional and is presumably intended to imply that the union is not a legitimate organization of Chong Won workers but an entity that is external to the factory.

⁴⁵ It bears noting that, during the period in which union workers were denied access to overtime, contract employees and apprentices were granted overtime work. This practice violates a requirement in Filipino law that overtime work is to be carried-out by only regular employees if regular employees are available to perform the work. See: DEPARTMENT ORDER NO. 68-04, Series of 2004. E. ENTITLEMENT OF THE APPRENTICES: An apprentice can work overtime provided there are no regular workers to do the job and the time spent on overtime work is duly credited to his training hours.

⁴⁶ Article 248 (d) Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442, AS AMENDED.

impeachment proceedings against the striking workers and former union officers.”⁴⁷ The Caretaker Committee’s First Resolution of October 11 further stated that, “The...union leaders and active participants who stage the illegal [*sic*] strike and blocked the company’s gate are no longer recognized as members in good standing of the union...”⁴⁸ The Caretaker Committee stated that it intended to negotiate a collective bargaining agreement with management, in order to bring an end to the strike and to bring clarity to a few issues regarding worker benefits. Both Chong Won management and Wal-Mart initially treated the Caretaker Committee as a legitimate representative worker body, despite clear evidence that it did not have the legal jurisdiction to represent Chong Won workers.⁴⁹

The WRC’s investigation identified three categories of violations committed by Chong Won management through its actions vis-à-vis the Caretaker Committee: 1) Chong Wong managerial personnel actively assisted in the organization of the Committee, 2) members of Chong Won’s supervisory workforce were installed as founding officers of the Committee in violation of the law, and 3) Chong Wong management provided material support to the Caretaker Committee, in conflict with Filipino law:

- 1) Chong Wong managerial personnel actively assisted in the organization of the committee: During working hours, supervisory personnel aggressively collected signatures on a resolution in support of the formation of the Caretaker Committee. Workers interviewed by the WRC testified that the aggressive approaches by the supervisors caused them to feel under strong pressure to sign the forms and to feel that if they did not sign they would be reprimanded or punished in some way by their superiors. Many workers reported not being given enough time to read the document they were being asked to sign. Some workers reported that they were not provided an opportunity to see the wording of the “Caretaker Committee” resolution at all, but rather were asked to sign a blank document. The aggressive and deceptive recruitment efforts of the supervisors violated provisions of the Filipino labor code that prohibit managerial personnel from initiating labor organizations.⁵⁰
- 2) Two members of Chong Won’s supervisory workforce were themselves illegally members and founding officers of the committee: The October 11 Resolution from the Caretaker Committee lists ten people as the, “temporary union leadership”, two of whom were supervisors in the factory,

⁴⁷ Caretaker Committee, Resolution No. 1, Series of 2006, signed October 11, 2006.

⁴⁸ Ibid.

⁴⁹ As stated above, the standard procedure for worker representative bodies to become legally recognized is to go through a Certification Election (CE); if there are two potential worker representative bodies at a workplace then the CE becomes obligatory (Department Order No. 9 (series of 1997), Rule IX, Section 2).

⁵⁰ Article 248 (a) & (d) Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442, AS AMENDED.

“It shall be unlawful for an employer to commit any of the following unfair labor practices:

- (a) To interfere with, restrain or coerce employees in the exercise of their rights to self-organize;
- (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters.”

Dante Tahimik (Supervisor of the Packing Department) and Fernando Torres (Supervisor of the Sample Department). In an apparent effort on the part of Chong Won management to bring legitimacy to the Committee, these individuals have since resigned. Nevertheless, the membership of the supervisors in the founding Committee violates provisions of the Filipino labor code which prohibit members of an employer's supervisory workforce from serving as members of a trade union or representative worker body of rank-and-file employees.⁵¹

- 3) Chong Wong management provided material support of the Caretaker Committee in a way that is illegal under Filipino law and such that it discriminated against the representative labor union: Management provided the Caretaker Committee with access to company resources, such as the use of the company car to visit Wal-Mart's office in Manila, and allowed the Committee members to take leave in order to attend these meetings (courtesies that management had never extended to the legitimate trade union). In providing this material support, Chong Won violated provisions of the Filipino labor code, which prohibit employers from providing material support to labor organizations.⁵²

It is also important to note that the formation resolution was signed by approximately 100 contract workers at Chong Won. Contract workers in the Philippines do not have the legal right to join a union. There is some irony in the fact that contract workers, hired on that status by Chong Won management exactly because this ensured that they could not legally join the NMCW-Ind union, were subsequently welcomed by management as members of a company union.

The evidence is overwhelming that the creation of the Caretaker Committee constituted an unlawful attempt by management to establish a company union as a means to undermine the duly constituted trade union at the factory. It is regrettable that, despite the obviousness of management's ploy, Wal-Mart initially chose to confer legitimacy on this bogus entity by treating it as a legitimate labor organization – and, indeed, affording it more respect than the legal union.

⁵¹ Article 245 (As amended by Section 18, Republic Act No. 6715, March 21, 1989): "Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own."

⁵² Article 248 (d) Labor Code of the Philippines, **PRESIDENTIAL DECREE NO. 442, AS AMENDED**. "It shall be unlawful for an employer to commit any of the following unfair labor practices: ... (d) "...giving of financial or other support to it or its organizers or supporters."

Recommendations

The WRC recommended that factory management take the following steps (some of these recommendations also apply to PEZA):

- Drop all outstanding appeals against the union, NMCW-Ind, and immediately recognize NMCW-Ind as the sole and exclusive bargaining representative of the regular employees of the factory.
- Enter into negotiations with NMCW-Ind for a collective bargaining agreement, without further delay. Demonstrate good faith by immediately developing concrete ground rules and a negotiation schedule with the union and making a contract proposal in response to the multiple drafts that have already been submitted by NMCW-Ind.
- Provide complete financial records, going back at least three years, as requested by the union, which Chong Won is obligated to do by law.⁵³ If these documents prove that financial hardship precludes the negotiation of wage increases at this time (as Chong Won has claimed), proceed to negotiate all non-monetary aspects of a collective bargaining agreement with NMCW-Ind.
- Scrupulously follow the “last-in, first-out” policy with regards to how work is apportioned among employees, at times when orders are low. Regular workers with greater seniority should never be forced to take leave while contract workers are given work.
- Adhere to Filipino Law in terms of transfer and demotion of employees and ensure that such disciplinary actions are never undertaken in a discriminatory manner or as retaliation against workers for the exercise of their associational rights.
- Ask PEZA to allow striking workers to go in and out of the CEPZ freely in order to join their colleagues at the lawful picket line in front of the factory. Ask PEZA to instruct Jantro to immediately remove the check-points on the street on either side of the picket area, so that strikers can come and go freely and any party interested in talking with the strikers can freely access the area. Ask PEZA to promptly return any zone entry passes that have been confiscated during the strike.
- Instruct factory security personnel to refrain from all acts of harassment, intimidation or other unlawful actions against the strikers and their supporters. Ask PEZA to ensure that its police personnel, and the Jantro security guards acting at their behest, do the same.

⁵³ Article 242 (c) Labor Code of the Philippines, PRESIDENTIAL DECREE NO. 442, AS AMENDED: “A legitimate labor organization shall have the right: ... (c) to be furnished by the employer, upon written request, with the annual audited financial statements, including the balance sheet and the profit and loss statement within (30) calendar days from the date of receipt of the request...”

- Ask PEZA to drop all false criminal complaints lodged against the strikers, arising from the events of September 25 – 27, 2006.
- Offer immediate reinstatement to all of the 116 striking workers who have been illegally terminated.
- Offer immediate reinstatement to Monina Eugenio and Sellwyn Simpan.
- Cease efforts to promote the Caretaker Committee as a legitimate worker body.

Factory and Brand Response

Response of Chong Won

Chong Won has insisted that all of the WRC's findings are in error, claiming that they are the product of bias and are contrary to the facts; however, Chong Won has failed to provide any persuasive evidence or credible legal argument in support of this position. On November 28, 2006, the WRC provided Chong Won management with a summary of its findings and recommendations for remedial action. In a letter to the WRC, sent by electronic mail on December 12, 2006, Chong Won management, through legal counsel, stated that it "vehemently opposes and negates WRC's findings and recommendations in [their] entirety"⁵⁴ and termed these findings "bias[ed], one sided, baseless and contrary to facts and competent evidence on hand."⁵⁵ However, in this letter, and in other communications, management failed to cite relevant facts to substantiate its position. Instead, as outlined throughout this report, management's defense of its practices, and its rejection of the WRC's findings, rested on misrepresentations of fact and mischaracterizations of the Filipino Labor Code.

It is important to note that prior to the publication of this report, the WRC offered to meet with Chong Won management to review each of the findings and to provide management with an opportunity to submit any additional information or evidence in support of its position. Management agreed to this meeting and then, at the last moment, called it off.

Chong Won's refusal to accept the WRC's findings has been matched, unsurprisingly, by a refusal to undertake any corrective action. There has been no substantive improvement with respect to any of the violations outlined in this report. Indeed, the situation has continued to deteriorate, as Chong Won has proceeded in its efforts to use a combination of physical force, psychological intimidation, and legal subterfuge to crush the efforts of Chong Won employees to exercise their lawful right to organize, bargain and strike.

The overall impression that Chong Won gives is of a management entirely unable to comprehend or to accept that its employees have rights and that the company has an obligation to respect them. The WRC is concerned that such an intransigent position could result in a significant loss of business for Chong Won. The WRC will continue to try and work with management and the union to achieve a positive resolution. Meanwhile, the WRC encourages all of Chong Won's past, current and potential future customers to impress upon the management team the urgency of resolving these serious code violations as soon as possible. Until progress has been made in the remediation process the WRC cannot recommend Chong Won as a source for university logo apparel.

⁵⁴ Omar Francisco, Chong Won's legal counsel, e-mail sent to WRC December 12, 2006.

⁵⁵ Ibid.

Response of University Licensees

As noted in the introduction of this report, university disclosure data shows Chong Won as producing multiple orders of collegiate apparel for university licensee Oarsman Sportswear – over a period of several years and as recently as October of 2006. However, when contacted by the WRC, the company stated that it did not know and could not determine whether it had used the factory or not. Oarsman’s representative suggested that the company’s former owner, Hartwell Industries, Inc., may have purchased mesh jerseys and shorts from this facility several years ago. Oarsman Sportswear was sold by Hartwell Industries in September of 2004. Oarsman could not explain why, if it had not used the facility, or had not done so recently, the factory continued to appear in disclosure data provided to the WRC by the Collegiate Licensing Company on Oarsman’s behalf.

Despite the company’s unwillingness to acknowledge a connection to the factory, Chong Won confirmed that it had indeed produced collegiate licensed goods for Oarsman in the past. The time period identified by Chong Won coincided with many of the violations outlined in this report.

The WRC therefore sought Oarsman’s assistance with the remediation process, notwithstanding the company’s unwillingness to acknowledge an official relationship. Oarsman has refused to assist with remediation and has stated that it does not foresee doing any future business with Chong Won.

Both Chong Won employees and management also reported that the factory produced apparel for Steve and Barry’s University Sportswear, in 2002 and 2003. When the WRC approached Steve and Barry’s, the licensee insisted that it had never done business with Chong Won and that it has no suppliers in the Philippines. The WRC has, on multiple occasions in the past, positively identified Steve and Barry’s production in factories of which Steve and Barry’s was, or claimed to be, unaware – so the possibility very much remains that Chong Won was a Steve and Barry’s supplier. Nonetheless, because of the conflicting claims, and because Steve and Barry’s production, if it did take place, occurred well before the period covered by the WRC’s investigation, the WRC has not pursued the issue with this licensee.

Response of Wal-Mart

Because Chong Won’s primary customer is the Wal-Mart supplier, One Step Up, the bulk of the WRC’s remediation efforts have been focused on Wal-Mart, which is in the best position to affect change at the factory. All of Chong Won’s production since the middle of 2006 has been for One Step Up/ Wal-Mart. Despite the urgency of the situation at the factory, and despite multiple entreaties from the WRC and other organizations, Wal-Mart has failed to take timely or effective action to compel Chong Won to act on the WRC’s recommendations – or do anything else to correct the severe violations of worker rights that have occurred.

It is important to note that before the WRC had any contact with Wal-Mart regarding the industrial dispute at Chong Won, two international labor rights groups, the International Labor Rights Fund (ILRF) and the Maquila Solidarity Network (MSN), had already had extensive, and reportedly unproductive, exchanges with Wal-Mart regarding this case. Both organizations have expressed disappointment with Wal-Mart's response. ILRF has reported a failure by Wal-Mart to take aggressive action to remediate violations at the factory and a series of contradictory statements and unfulfilled commitments. The WRC's interaction with Wal-Mart over this case lends credence to ILRF's complaints.

Wal-Mart's own audits of Chong Won yielded findings consistent in key areas with the WRC's, but Wal-Mart has nonetheless failed to take effective action. At the outset of the WRC's assessment of Chong Won, Wal-Mart's Global Procurement office in Manila reported to the WRC Assessment Team that they had already conducted two compliance audits at Cong Won – one which they commissioned from an auditing firm called Intertek Testing Services (ITS), and another performed by their own Global Procurement staff. The results of these two audits have never been made public, but Wal-Mart's Manila staff shared some of their key findings with the WRC. Wal-Mart and its outside auditor found under-payment of the minimum wage for some employees; failure to ensure that all employees are properly enrolled in the national Social Security System and the National Health Insurance Program; excessive use of apprentice workers; inappropriate use of short-term contract workers; illegal activities related to the formation of the so-called Caretaker Committee; and misuse of the legal system by Chong Won management in order to avoid recognizing and negotiating with NMCW-Ind. Despite this, the WRC has been unable to persuade Wal-Mart to act aggressively to protect Chong Won's employees. At higher levels of the company, Wal-Mart has not been willing even to acknowledge some of the audit results reported by its own local staff.

There was some indication, in the days immediately after the WRC's on-site investigation, that Wal-Mart might force Chong Won to drop its intransigence. After months of pressure from MSN and ILRF, Wal-Mart finally agreed to hold meetings at its office in Manila of all the concerned parties. Wal-Mart convened two meetings, the first on November 3, the second November 7, 2006. Both were attended by representatives of Chong Won, NMCW-Ind, One Step Up, its buying agent ONA, and WAC. During the first of the meetings, Wal-Mart was more forthright in acknowledging their own findings of violations than they had been in the past and more forthcoming with requests for remedial action. Specifically, Wal-Mart encouraged management to 1) forego further legal appeals, accept its obligation to recognize the union, and start negotiating a collective bargaining agreement; and 2) reinstate the 116 fired strikers and the two union leaders dismissed before the strike. During this meeting Chong Won management, presumably in response to Wal-Mart's posture, was more conciliatory in tone than in past discussions. While Chong Won did not accede fully to any of Wal-Mart's requests, the company did indicate a greater willingness to consider remedial action than it had displayed in any prior discussion (for example, in meetings over the prior year facilitated by DOLE's National Conciliation and Mediation Board). In an e-mail to the WRC on November 3 Wal-Mart offered these reflections on the outcome of the meeting:

- “The President of CWF [Chong Wong] – Mr. Kim – articulated that he could not afford to negotiate a CBA [collective bargaining agreement] based on the financial situation of his factory. The WAC and the union officers agreed to review the CWF financial records [of the past three years, as they are entitled to by law for contract negotiations] in order to verify Mr. Kim's claim. If the records support the claim, the WAC and the union officers will propose a new CBA.”⁵⁶
- “Regarding the reinstatement of the 116 workers who have been terminated, Mr. Kim explained that he cannot take all of the workers back. It was concluded that he will submit a list of the workers he wants to consider for reinstatement.”⁵⁷
- “...The fact that both parties ha[ve] started to listen to each other is a sign of progress. Consensus between the different parties can only be reached through dialogue. A follow-up meeting is scheduled on November 7. We are hoping that this meeting will be conclusive.”⁵⁸

Unfortunately, both Wal-Mart's show of firmness and the more cooperative attitude that this elicited from Chong Won were short-lived. During the follow-up meeting at Wal-Mart's office on November 7, Chong Won management failed to supply most of the financial information it had promised to share. Nor did management follow-through, then or later, on its promise to provide a list of employees, from the group of 116 fired strikers that would be considered for reinstatement. Nor was progress made or promised in any of the other relevant areas. Wal-Mart, instead of admonishing Chong Won for renegeing on its commitments and pressing for the action that had been promised, offered no critical response. The meeting ended abruptly, with Wal-Mart's Global Procurement staff person stating that she was “very busy” and thus unable to agree to another meeting date at that time.

Shortly thereafter Wal-Mart pulled back both from its willingness to acknowledge that violations had occurred at Chong Won and from its earlier requests for action. On November 17, Wal-Mart announced to MSN, ILRF and the WRC that it could apply no additional pressure and would make no further specific requests for remediation until it could conduct another investigation of the case⁵⁹ – that it was, in effect, rescinding the few demands it had previously made of Chong Won. The WRC wrote to Wal-Mart and asked what issues the company felt needed further investigation or clarification, given that Wal-Mart already had both the results of its own two audits and a full summary of the findings and recommendations arising from the WRC's inquiry – all pointing clearly to the need for swift remedial action.⁶⁰ Wal-Mart has never provided a clear answer to the question of why another review, and the resulting delay, was warranted.

⁵⁶ Suze Francois, Social Responsibility Specialist, Global Procurement Wal-Mart Inc. e-mail sent Friday, 11/3/2006, 5:11 p.m.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Phone conversation between Wal-Mart and MSN.

⁶⁰ E-mail sent from the WRC to Rajan Kamalanathan and Suze Francois of Wal-Mart's Global Procurement department, sent: Friday, November 17, 2006 2:57 p.m.

Alarmed at Wal-Mart's decision, the WRC stated the following in an e-mail to the company on November 17:

“..Time is of the essence. More than one hundred employees have been without work for the past several weeks. Every day these workers experience harassment and intimidation as they struggle to express their legal rights to union representation, collective bargaining, and statutory wages and benefits guaranteed under the Filipino labor code. The facts could not be clearer. What is needed now is not for Wal-Mart to engage in yet another review of the facts but to act on the recommendations put forward by Wal-Mart, ONA, and One Step Up during the meetings in early November: i.e., the immediate reinstatement of the 116 workers, the immediate end of harassment and intimidation of workers supporting the strike, and the immediate beginning of CBA negotiations between Chong Won management and NMCW-Ind.”⁶¹

Despite protests from NMCW-Ind, WAC, and the WRC and others, Wal-Mart insisted on proceeding with a new audit.

In light of Wal-Mart's decision, the WRC has attempted on multiple occasions to persuade Wal-Mart to take at least some action on the gravest and most urgent issues at the factory, while waiting for this new audit to be completed – most importantly, steps to protect the lawfully striking workers from additional harassment and intimidation. These efforts have been unsuccessful. Among other attempts, on November 29 the WRC discussed the situation at Chong Won with Rajan Kamalanathan, the head of Wal-Mart's global labor rights compliance program, at an event in Washington DC. Mr. Kamalanathan acknowledged in this discussion that there might be some remediation items that be could addressed while Wal-Mart's new investigation was underway, declining to enumerate these at the time but offering to follow up by e-mail. Mr. Kamalanathan noted that he would be in the Philippines in early December, at the same time as WRC staff, and that a meeting could be held there to discuss potential action on the most urgent issues if it proved impossible to address the question over e-mail. Unfortunately, this was the last the WRC has heard from Mr. Kamalanathan, who did not respond to any follow up communications.

Since November, Wal-Mart has done nothing to address the grave violations of worker rights at Chong Won – at least nothing of which the workers at Chong Won, or any of the concerned organizations inside or outside the Philippines, have been informed. No concrete demands have been placed on Chong Won; no meaningful pressure has been applied. As a result, there has been no progress on the ground. Wal-Mart has claimed that the orders it placed at Chong Won in the fall were placed in order to maintain a business relationship that would allow the company to retain influence over the factory. However, in the absence of any effective remediation effort linked to those orders, all that has happened is that Wal-Mart has succeeded in procuring inexpensive products, manufactured by illegal strike-breakers, from a factory with an appalling record of labor rights abuses.

⁶¹ Ibid.

Wal-Mart has also failed to provide any substantive response to the summary of findings and recommendations provided to the company by the WRC in November. Despite the initial acknowledgment by local Wal-Mart compliance staff in Manila that the WRC's conclusions were largely consistent with the findings of Wal-Mart's own audits, senior Wal-Mart staff later questioned the validity of the WRC report. Wal-Mart representative Suze Francois stated in a phone conversation in early December that Wal-Mart did not believe all of the WRC's findings were accurate, but refused to offer any specifics. Ms. Francois did state that Wal-Mart would soon provide a written response that would identify the areas where the company disagreed with the WRC's conclusions and offer evidence to support the company's position. Indeed, so insistent was Ms. Francois on the importance of this forthcoming corrective that she implored the WRC to delay release of its formal report until Wal-Mart could speed it to Washington. As it happened, the WRC did delay its official report from a planned release in December, though for reasons unrelated to Wal-Mart's entreaties. Nonetheless, two months have passed since Ms. Francois urged the WRC to stop the presses and Wal-Mart's critique of the WRC's findings has yet to appear.

Considering the gravity of the situation at Chong Won, Wal-Mart's inaction and dilatory tactics are inexcusable. A major Wal-Mart supplier factory has carried out a two-year assault on a lawfully-constituted union, operating under the supposed protection of Wal-Mart's code of conduct. This assault has now expanded beyond the realm of the legal, psychological and economic to encompass organized violence, resulting in serious injuries to workers. More than a hundred workers have been illegally fired and almost every unionized employee has been expelled from the plant. All of this is taking place against a backdrop of worsening political violence that has involved, among many other murders of worker rights advocates, the assassination of a Bishop who founded the very labor rights organization that helped launch the union drive at Chong Won – an organization whose integrity and legitimacy have been repeatedly and publicly attacked by Chong Won management. All of this has been amply documented in multiple factory audits and investigations, to the point where no serious person disputes the basic facts. And Wal-Mart's response to all of this is to refrain from any meaningful intervention on the grounds that another investigation must take place. (Of particular note in this regard is Wal-Mart's claim that the WRC's investigation does not qualify as an independent inquiry, and that only an investigation carried out by an organization hired and paid by Wal-Mart can assess the situation with the proper objectivity.)

It is not customary for the WRC, in the context of a report about a specific factory, to offer a broad critique of a brand's or retailer's approach to labor rights issues; however, in this case we would be remiss if we did not comment on the obvious implications of Wal-Mart's inaction: If Wal-Mart will not act in a timely fashion to protect the rights of workers in the face of violations as grave as those committed at Chong Won, then the company's code of conduct is meaningless.

Conclusion

Reportedly, Wal-Mart's new audit will be completed shortly. However, the hour is now very late. The history of remediation efforts related to violations of associational rights offers a clear lesson: in cases of mass firings of unionists, particularly where intimidation and violence are involved, swift action is usually essential if effective remediation is to be achieved. For psychological, logistical and economic reasons, restoring the *status quo ante* – with workers back at work and ready, willing and able to exercise their union rights – is difficult even when action is immediate. It is far harder when months have been allowed to pass without meaningful remediation.

It is therefore incumbent on Wal-Mart to cease its foot-dragging and intervene immediately and aggressively at Chong Won. Wal-Mart is an enormously powerful actor with ample ability to marshal the carrots and sticks necessary to influence the behavior of a supplier factory. Wal-Mart has the power to compel Chong Won to halt the violent assaults on lawfully striking workers, offer reinstatement to those workers who have been unlawfully dismissed, and recognize the union and begin bargaining. While this may not bring every worker back to the factory, it is imperative that Wal-Mart act to achieve the full measure of the remediation that is still possible – both for the sake of those Chong Won workers who will benefit and in order to send a clear and unequivocal message to all of the interested parties in the Philippines that violent repression of the rights of workers will not be tolerated by global apparel brands and retailers.

Special Section: Political Violence in the Philippines and the Implications for the Protection of Worker Rights

Introduction

The events at Chong Won have taken place in the context of increasing politically motivated violence in the Philippines, of which trade unionists and worker rights advocates have been a primary target. The WRC has examined the human rights crisis in the Philippines, particularly as it affects labor rights advocates and organizations, as part of our investigation at Chong Won. Violence against workers who are organizing, and against civil society leaders who support organizing, must obviously be of central concern to labor rights monitors. In addition to the horrific consequences for the individuals directly targeted and their families, violence against worker leaders and their allied non-governmental organizations deeply constrains, and in some cases effectively destroys, the capacity of all workers to exercise their rights. The following is a discussion of the human rights situation in the Philippines and its impact on labor rights advocates, with particular emphasis on two murders of special relevance to the situation at Chong Won and in the Cavite Export Processing Zone. The discussion concludes with a recommendation for a useful step that can be taken by university licensees and other brands to pressure the government of the Philippines to enforce the rule of law.

Over the last several years, respected members of the clergy, human rights groups, elected officials and credible media sources have reported on a frightening surge in political murders in the Philippines, including 74 murders of labor activists. Amnesty International has documented a total of 240 politically motivated murders. A Filipino government Task Force has identified 188 such killings. Filipino human rights groups cite substantially larger numbers.

Trade unionists, community organizers, clergy and church workers, human rights advocates, and elected officials have all been targeted. The Committee for the Protection of Journalists says that among these politically motivated murders, twenty-two journalists have been killed since 2000, making the Philippines the most dangerous country in the world for journalists over this period.⁶² The U.S. think tank Freedom House cited “the government's intimidation of elements in the political opposition”⁶³ in downgrading its assessment of civil liberties in the Philippines. The violence has also drawn the condemnation of the European Union, Human Rights Watch and the Catholic Church, all of which have called on President Gloria Macapagal Arroyo to take action to stop the bloodshed.

While Filipino authorities have, in various cases, denied that the murders are political in nature, these claims have been roundly rejected by the international human rights community and Filipino human rights groups. Amnesty International reports that “...the

⁶² The Heritage Foundation, “In Philippines, killing of journalists growing problem,” Dana Dillon, April 17, 2006. <http://www.heritage.org/Press/Commentary/ed041706c.cfm?RenderforPr...>

⁶³ *Another Notch Down for Manila*. The Wall Street Journal Online, Review & Outlook. December 22, 2005. Copyright 2006 Dow Jones & Company, Inc. <http://online.wsj.com/article/SB113520070861328715.html>

killings are not an unconnected series of criminal murders, armed robberies or other unlawful killings. Rather, they constitute a pattern of politically targeted extrajudicial executions...” Amnesty cites repeated credible reports that “members of the security forces have been directly involved in the attacks, or else have tolerated, acquiesced to, or been complicit in [the killings].”⁶⁴

Violent Repression of Lawful Union Activities and Attacks on Union Leaders and Worker Rights Advocates

The WRC found ample evidence that the climate of political violence in the Philippines has interfered with lawful worker organizing and labor rights advocacy, both in the Chong Won case and more generally. The Workers’ Assistance Center (WAC) – one of the nation’s leading labor rights non-governmental organizations – has been supporting the workers at Chong Won since 2000. Over the last five years, WAC has faced violence, threats of violence, and other tactics of intimidation. WAC’s Board Chairman, Bishop Alberto Ramento, was murdered in October of 2006. Other WAC staff and board members have received death threats via phone and in person.

PEZA has increasingly treated WAC not as a legitimate NGO engaged in lawful activities, but as if it were an enemy of the state, with lawful protest actions drawing violent repression from forces acting at PEZA’s behest. When WAC was first established in 1996, the group’s right to advocate for workers in the CEPZ was respected by PEZA, which permitted WAC staff to visit the zone and helped to arrange factory visits. In 1997, WAC helped bring about the establishment of the first independent union in Cavite – at Sama Corporation, a factory producing “uppers” for athletic shoes for brands such as Nike. The formation of this union served as a catalyst for the establishment of a zone-wide coalition for workers, called Solidarity of Cavite Workers (SCW). By 2001, SCW and WAC had assisted ten other unions in establishing themselves inside the CEPZ.

Towards the end of 2000, WAC and SCW began to see a dramatic shift in PEZA’s approach to trade unionism in Cavite. October 19, 2000 marked the first violent crack down on strikers inside the zone by PEZA representatives. A senior member of PEZA management assaulted an SCW organizer on a lawful picket line. After a video tape of the incident was made public, PEZA officials apologized to SCW and WAC, but since then PEZA has consistently acted to hinder WAC and SCW in their efforts to support peaceful organizing and protest by workers in the CEPZ. Most recently, during the strikes at Chong Won and Phils Jeon (another garment factory in the zone), Jantro Security Guards, at the order of PEZA, used force to escort replacement workers through the picket line, hitting the lawfully striking workers and SCW organizers in the head and legs with bamboo clubs. One SCW organizer and one Phils Jeon worker needed medical treatment after sustaining severe blows to the head.

⁶⁴ Amnesty International, “PHILIPPINES: Political Killings, Human Rights and the Peace Process” *AI Index: ASA 35/006/2006*.

Of especially grave concern, senior members of PEZA staff have made the unfounded accusation that WAC and SCW are part of the New People's Army, an armed insurgent group in the Philippines that is on the U.S. government's list of terrorist organizations and is the subject of a counter-insurgency campaign by the Filipino army. This accusation is an attempt to de-legitimize lawful and peaceful worker rights advocacy by associating it with terrorism. It makes everyone involved in WAC and SCW a potential target of violence.

The Murders of Bishop Alberto Ramento and Jesus Buth Servida

Two powerful examples of political violence are the recent murders of WAC's board chairman, Bishop Alberto Ramento, and of Jesus Servida, a prominent trade unionist in the Cavite area and a member of SCW. The following accounts of these assassinations are based on the findings of respected human rights groups, reports by credible media sources, and the WRC's own research, including witness interviews and analysis of original documents.

In addition to being a leader of WAC, Bishop Alberto Ramento was the ninth Obispo Maximo (the titular head) of the Independent Church of the Philippines, which is part of the Episcopal Church and has a following of more than one and a half million Filipinos. Bishop Ramento was widely known for speaking out on worker rights issues and for criticizing the failure of the Filipino government to do more to stop political violence. He presented at WAC educational forums attended by Chong Won workers and in other ways supported WAC's efforts at Chong Won, though he had no personal involvement in the current strike. He was also engaged in efforts to defend the rights of tenant sugar cane farmers and mill workers at Hacienda Luisita, a sugar plantation owned by one of the Philippine's wealthiest families. Among other activities, Bishop Ramento ran a soup kitchen at his parish in Tarlac, Central Luzon, which served some of the families of striking mill workers. After a fellow clergyman and student of Bishop Ramento's, Fr. William Tadena, was murdered on March 13, 2005, in apparent retaliation for his support of the farmers and workers at Hacienda Luisita, the Bishop also emerged as a vocal critic of the Hacienda owners and the Arroyo government. In May, Bishop Ramento signed a statement from the Supreme Council of Bishops decrying the rising tide of political killings, opposing an unpopular amendment to the Filipino Constitution, and calling for President Arroyo's resignation. On September 6, 2006, the Bishop signed another public statement calling on the Arroyo government to take action to stop political killings.

Bishop Ramento began receiving death threats after Father Tadena's murder in March of 2005. The threats came by way of telephone and text message, and sometimes in person. The frequency of the threats escalated in May of 2006 after the Bishop signed on to the statement calling for President Arroyo's resignation and soon became a daily occurrence. Fearing for their safety, Bishop Ramento forbade family members to visit him in Tarlac.

On October 3, 2006, Bishop Ramento was stabbed to death while sleeping in his church living quarters. Bishop Ramento's murder, which came just days after the strike began at Chong Won, was viewed by the striking workers and their supporters, and by labor rights

and human rights advocates throughout the country, as a clear sign that worker advocacy and social protest in today's Philippines are "crimes" punishable by death.

In another act of violence against a prominent labor leader in the Cavite region, Jesus Buth Servida, a union organizer at Yazaki-EMI, a Japanese-owned car parts factory, was shot and killed by an unknown assailant on December 11, 2006. At the time of the shooting, he was sitting in his car, waiting to enter the front gate of the factory. Yazaki-Emi is located in the EMI Special Economic Zone, less than 18 miles away from the CEPZ, where Chong Won is located. Servida was a leader in the SCW coalition and had been engaged in union organizing activities in Cavite since being fired from Yazaki-EMI, along with other union officials, in December of 2005. Another union organizer, Joel Sale, was in the car with Servida. Sale sustained three gunshot wounds, in his face, back and torso. He spent several days in intensive care, but ultimately survived.

Servida's murder was preceded by the shooting of Gerardo Cristobal, the former president of the union at Yazaki-EMI, eight months earlier. Cristobal and a companion were ambushed, just outside the factory area, by three men wearing hoods. Cristobal was seriously injured, but survived the shooting. Cristobal fired back at his assailants in self defense, killing one of them. The attackers were later identified by authorities as members of a government police unit. Police blamed the incident on Cristobal.

The national legal aid organization that has provided legal assistance to Chong Won workers, Pro-Labor Legal Assistance Center (PLACE), has also experienced death threats to its staff and intense surveillance of its office in Manila. At the beginning of October of 2006, PLACE staff reported the strange behavior of a person frequently passing by their office to local police. On October 5, 2006, Military Intelligence Pfc. Rommel Felipe Santiago was detained by local police officials outside the PLACE office. Pfc. Santiago explained to the police that he had been ordered to conduct surveillance on Attorney Remegio Saladero, a labor lawyer at PLACE. Attorney Saladero is the lead counsel for the family of another murdered union leader, Diasdado "Ka Fort" Fortuna, and also represents the employees of the Nestle Cabuyao Factory, who have been on strike for four years. The surveillance and death threats forced the PLACE attorneys into hiding; they have only just recently been able to return to their offices.

Judicial Impunity

In the vast majority of cases, the murders of unionists, human rights advocates, journalists and others have not been the subject of credible investigation by Filipino authorities. Amnesty International reports that, "...while the authorities routinely launch police investigations into political and other killings...the majority of investigations do not meet international standards." Amnesty reports that government investigations "have not led to the conviction of any of the perpetrators of the hundreds of killings" over the last five years. Amnesty cites the findings of an international panel of jurists which examined 25 murders of lawyers and judges in the Philippines and found that in none of the cases were the perpetrators brought to justice. Amnesty also reports that of 114 recorded killings of members of progressive political parties, suspects have been arrested in a total of three

cases. None have been convicted. The failure of the government to conduct legitimate investigations was also harshly criticized by the conservative Heritage Foundation, which recently said in an article about the killing of journalists that, “government foot-dragging when it comes to apprehending the killers is unacceptable for a country that receives such large amounts of American aid.”⁶⁵

The cases of Bishop Ramento and Jesus Servida are illustrative of the nature of the government’s inquiries, which have been rushed and grossly substandard. Investigators have failed to interview key informants, including the immediate family members and professional colleagues of the victims. Crime scene procedures have been sloppy, with crucial evidence lost or tampered with.

Immediately after Jesus Servida’s murder, Superintendent Efron Castro, the police chief of the town of Imus, stated publicly that his investigation would focus solely on “business rivalry” as the reason for Servida’s murder, eschewing any inquiry into possible government involvement – despite the fact that the killing was part of a clearly established pattern of violence against worker rights advocates. Police conducted their investigation without ever talking to Servida’s wife or other key witnesses.

The inquiry into Bishop Ramento’s murder proceeded along similar lines. The police investigator concluded, with astonishing speed, that the Bishop was not the victim of a politically-motivated assassination, but the random victim of a petty robbery. Among other glaring irregularities in the investigative process were the failure of the police to do anything to secure the crime scene, absurd errors of fact and logic in the investigators’ official theory of the crime, and the failure of investigators to interview a single member of Bishop Ramento’s church or family. Though the investigation lacked any credibility, the investigator received no reprimand from his superiors. Instead, he was presented with an award for “solving” the crime in “record time.”⁶⁶

In September of 2006, under growing pressure from the international human rights community, President Arroyo created an investigative commission to examine the political killings. The body is known popularly as the “Melo Commission,” after its chair, Supreme Court Associate Justice Jose Melo. The Melo Commission issued a report on January 30, 2007 in which it stated that “elements in the military” were behind some of the murders. The following day (January 31) the chief of the Filipino armed forces publicly acknowledged that soldiers were behind the summary execution of political activists. “We acknowledge that some members of the armed forces have been involved in the deaths of

⁶⁵ The Heritage Foundation, “In Philippines, killing of journalists growing problem,” Dana Dillon, April 17, 2006. <http://www.heritage.org/Press/Commentary/ed041706c.cfm?RenderforPr...>

⁶⁶ A further indication of the Filipino government’s attitude toward the murder of one of the nation’s most esteemed and prominent religious figures, was the failure of President Arroyo to issue any statement of condolence at the time of the Bishop’s death and her decision not to send a representative to his funeral, which was attended by thousands of mourners, including a long list of prominent Filipinos.

some members of militant organizations," said Chief of Staff General Hermogenes Esperon in a press conference. We definitely do not condone these [killings]."⁶⁷

It is important to note that the findings of the Melo Commission cover only a small portion of the murders that have taken place since 2001. When the Commission was first established, the panel stated that it would be unable to provide protection from reprisals for all witnesses that testified. While President Arroyo has encouraged "witnesses and families and relatives of victims of political violence to come forward"⁶⁸ her government's refusal to guarantee the safety of those who testify ensured that relatively few would do so.

Despite the limitations of the Commission's process, its findings and the army's admissions constitute a breach in the wall of government denial. However, whether this will lead to any reduction in the violence, or to the prosecution of those responsible for recent killings, remains to be seen. President Arroyo's attempt to downplay the significance of the Commission's findings by arguing that "most members" of the armed forces were not involved in political violence⁶⁹ was not an encouraging sign.

Consequences for Worker Rights and Code Enforcement

Workers cannot effectively exercise their right to organize when their leaders, their legal advocates, and their defenders are murdered or threatened with death. Some courageous workers persevere under even the most horrible circumstances, but the right to freedom of association is gravely undermined by such violence. Thus, the murders and intimidation of trade unionists and worker rights advocates in the Philippines are not only heinous crimes against the individual victims and their families; they are an attack, and an effective one, against the basic rights of free speech and free association.

Needless to say, the violence against trade unionists and labor rights advocates, and the decline of the rule of law, also hinders the ability of the WRC and other monitors to enforce codes of conduct at factories in the Philippines. In a climate of violence and judicial impunity, workers are often too fearful to lodge complaints, witnesses too fearful to talk to investigators, and investigators themselves constrained by threats to their own security. In the Chong Won case, the WRC's investigation was only feasible because of the courage of workers and worker rights advocates associated with the case, and because WRC staff and local investigators were willing to proceed under adverse circumstances, albeit with security precautions.

There is, of course, relatively little that labor rights monitoring organizations can do to address a nationwide human rights crisis. However, in addition to our primary focus on efforts to achieve a just resolution to the Chong Won case, we are working with other labor rights and human rights organizations to raise awareness of the problem in the United States and to encourage intervention by apparel corporations with the clout to influence the Filipino government.

⁶⁷ Barbara Mae Dacanay, *Army admits to extrajudicial killings*, Gulf News, Jan. 31, 2007.

⁶⁸ Ibid.

⁶⁹ *Arroyo says vast majority of military not involved in political killings*, Reuters, Jan. 31, 2007.

Recommendation

In a positive development, several major apparel brands, at the urging of the Maquila Solidarity Network, sent a joint letter of concern to President Arroyo in November – decrying the violence and calling for action by the Filipino government. The signatories included Gap, Jones Apparel Group, Liz Claiborne, Polo Ralph Lauren, Phillips-Van Heusen and Wal-Mart. In the letter, the brands urged Arroyo to take “proactive measures” to ensure the physical safety of workers and protect their rights. The letter further requested that Arroyo “support, and fully cooperate with, independent and impartial investigations into the killing of Bishop Alberto Ramento, chair of the Board of Directors of the Workers Assistance Center, and the shooting of Gerardo Cristobal, former union president and a member of the Solidarity of Cavite Workers.” To view the full letter, [please click here](#).

The WRC recommends that all collegiate licensees sourcing from the Philippines send a similar letter to President Arroyo, expressing concern for the rash of killings and harassment of trade unionists and labor rights advocates and calling for thorough investigations into the murders of Jesus Servida and Bishop Ramento, and the shooting of Gerardo Cristobal. The WRC further recommends that licensees sourcing from the Philippines send a letter to Attorney Lilia B. De Lima, Director-General of PEZA, asking that PEZA and its agents refrain from any further violence against Chong Won workers engaged in a lawful strike. Each licensee should also communicate to all of its suppliers in the Philippines that any collusion with government forces in violence against workers will not be tolerated. The WRC is prepared to assist licensees with the process of communicating with the government of the Philippines.

According to factory disclosure data provided to the WRC by the Collegiate Licensee Company, the Licensing Resource Group and individual universities, the licensees listed below have each sourced from at least one factory in the Philippines over the last year. Those licensees with three or more supplier factories in the Philippines are denoted with an asterisk.

Ashworth	M Lahart	Russell Athletic
Charles River Apparel*	Majestic Athletic Wear	Tchotchke's
Cutter & Buck	Nike*	Team Edition Apparel
Delmar Collegiate	Oarsman Sportswear	Three Jays Imports
Heisman by Reebok	Onfield Apparel Group	Trinity Plaques
Gear for Sports	Page & Tuttle	Under Armour
Jadon	Reebok*	Vantage Custom Classics
Jansport*	Rocking Horses Etc	