



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re LIANGLONG SOCKS CO. LTD (CHINA)**

FINDINGS, RECOMMENDATIONS, AND STATUS REPORT

April 3, 2008

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I. Executive Summary

This is a report of a Worker Rights Consortium (WRC) labor rights assessment of Lianglong Socks Co. Ltd (hereafter “Lianglong”), a hosiery factory in Zhuji City, People’s Republic of China. Zhuji City is located in the eastern Chinese province of Zhejiang and is a major center of hosiery production. Lianglong is a producer of hosiery for RJ McCarthy, a supplier of Catholic school uniforms for a number of Catholic District School Boards in Ontario, Canada. The factory also reportedly produces for Wal-Mart.¹ According to factory management, Lianglong employs roughly 200 workers.

The WRC carried out this assessment on behalf of the our organization’s Ontario Catholic School Boards Affiliate, a group of Catholic District School Boards in Ontario that affiliated with the WRC in 2006. The WRC assists the Boards with the enforcement of their fair labor policies, which require that manufacturers of school uniforms comply with specific labor and human rights standards.

The WRC conducted an on-site inspection of the factory on January 22, 2008, which included extensive interviews with management, a physical inspection of work areas, dormitories and bathrooms, and a review of various factory records. The on-site visit was preceded by off-site worker interviews as well as other background research.

The WRC identified very serious labor rights violations at Lianglong. Problems included forced and excessive overtime, with many workers required to work every day of a given month, without a single day off; failure to properly compensate workers for overtime hours worked; the illegal withholding, for an extended period of time, of a substantial amount of workers’ monthly pay; failure to provide legally mandated social benefits; and run-down, unclean, and inadequate dormitory accommodations and bathrooms.

In early March, the WRC communicated our findings, and a series of recommendations for remedial action, to RJ McCarthy and to factory management. We asked RJ McCarthy to follow up with the factory. RJ McCarthy asked its Hong Kong-based sourcing agent² to travel to Lianglong and meet with management. During this meeting, management gave its response to the findings and recommendations. RJ McCarthy then relayed this information to the WRC.

In its response, management denied several of the WRC’s findings and did not agree to take corrective action in many areas – including all overtime violations, all wage violations, and its failure to allow worker rights information to be provided to employees. The factory says it is

¹ The WRC has been unable to determine which other apparel companies buy from Lianglong; the factory was not willing to provide this information. RJ McCarthy has reported to the WRC that Wal-Mart is a customer of the factory.

² RJ McCarthy utilizes the services of a sourcing agent to purchase product from Lianglong. It is the agent, not RJ McCarthy, that has the direct relationship with the factory. This is common practice for many apparel companies that source overseas.

taking action, or has already taken action, with respect to dormitories and bathrooms³ and mandatory benefits. Substantial clarification is needed with respect to these representations. In the areas where management denied the WRC's findings, it provided no persuasive evidence in support of its denials. On a number of issues, management provided no substantive response at all. Nothing in management's response constituted a basis for any revision of the WRC's conclusions.

RJ McCarthy has agreed to press Lianglong to correct all of the violations identified by the WRC assessment. RJ McCarthy has informed the WRC that it will provide management with a letter asking for concrete commitments, with clear deadlines, with respect to each area where corrective action is needed. Remaining a customer, while working to secure remediation of labor rights violations, is the appropriate response for a company when violations are identified at a supplier factory.

The WRC does have concerns about RJ McCarthy's ability to effectively influence the factory. RJ McCarthy is a small customer of Lianglong, representing less than 1% of the factory's overall sales. While RJ McCarthy is obligated to use whatever leverage it possesses, and has agreed to do so, it is unclear whether the factory will make all of the required changes at the company's request. If full remediation is to be achieved, it may be necessary for one or more of Lianglong's other buyers to intervene as well.

If RJ McCarthy is successful in securing a credible commitment from the factory to undertake all of the necessary corrective action, the WRC will monitor progress to ensure that the factory fulfills its commitments and will report on the outcome. If the factory does not agree to correct all of the identified violations, the WRC will report accordingly.

It should be noted that some of the violations identified in this report are, unfortunately, relatively common in China (as well as in some other apparel exporting countries). Forced, excessive and improperly compensated overtime, for example, are problems in many Chinese export factories. Illegally withholding a substantial amount of workers' pay every month (to be paid only at the end of the year) is a more unusual violation, though it appears to be the local practice in Zhuji City, where Lianglong is located. However, while the violations identified are not unique to Lianglong, they nonetheless constitute very serious abuses of worker rights and breach numerous provisions of Chinese law and the School Boards' fair labor policies.

In the remainder of this report, we review the WRC's findings at Lianglong Socks, discuss the evidentiary basis of these findings, and list our recommendations for remedial action. We also review management's response to the findings and recommendations, as reported to us by RJ McCarthy.

³ With respect to dormitories and bathrooms, the factory has stated to RJ McCarthy that it was already planning to renovate prior to the WRC's inquiry.

II. Sources of Evidence

The findings presented in this report are based on evidence gathered by the WRC from the following sources:

- Interviews with fourteen current employees of Lianglong, conducted off-site and without the involvement of factory management
- Interviews with senior factory managers
- Review of payroll records, time records, employee rosters, and other relevant documents provided to the WRC by factory management
- A physical inspection of the factory, including production areas, dormitories, bathrooms and the cafeteria
- Interviews with six workers chosen by the WRC from the employee roster and conducted in an office provided by management (NB: The WRC does not consider on-site worker interviews to be a reliable source of information, particularly in China, where coaching of workers is widespread and where workers often fear that providing candid testimony will result in retaliation – these interviews were conducted primarily to assess the degree to which workers at the factory have been coached.)
- Interviews with individuals who work in the area immediately around Lianglong, including both employees of other factories and local merchants
- Review of applicable provisions of Chinese law, Catholic District School Board labor policies, and RJ McCarthy's Manufacturer's Code of Conduct

Subsequent to the assessment, the WRC gathered additional information from the following sources:

- Verbal and written communications with representatives of RJ McCarthy
- Lianglong management's responses to the WRC's findings, collected by RJ McCarthy's sourcing agent and presented to the WRC in writing

The investigative work, and evidentiary analysis, were carried out by the WRC's China Field Director, other Hong Kong-based labor rights experts, and the WRC's Executive Director, who participated in the on-site inspection.

III. Findings, Recommendations, and Response of Factory Management

The following section details the WRC's findings in each area addressed by the assessment: 1) Maintenance of Payroll and Time Records; 2) Overtime; 3) Wages and Payment; 4) Legally Mandated Benefits; 5) Health and Safety; and 6) Freedom of Association. With regard to each violation identified, the WRC has recommended specific remedial action that is necessary to bring the factory into compliance with applicable policies. These recommendations are listed following the discussion of the findings in each area. Lianglong's response with respect to each

category of findings and recommendations, as reported to RJ McCarthy's sourcing agent, are also reviewed.

The labor practices described in this report are discussed primarily in terms of applicable Chinese law. It is important to note that all violations of Chinese law identified below also constitute violations of the Ontario Catholic District School Boards' fair labor policies and of the RJ McCarthy Manufacturer's Code of Conduct – because all of these codes require compliance with domestic law. In some cases, violations of other specific provisions of the Boards' policies and the RJ McCarthy code are also noted.

Maintenance of Payroll and Time Records

Findings

Verification of labor rights compliance requires that a factory's management maintain complete and accurate payroll records, time records, and other data concerning employees' hours of work and compensation. These documents must be made available to labor rights inspectors upon request.

The payroll and time records provided to the WRC investigators by the management of Lianglong, which covered the months from March 2006 through December 2007, did not constitute a complete and accurate record of compensation and work hours at the factory. These records contained numerous, glaring omissions and contradictions, indicating that the factory deliberately provided erroneous information to the WRC.

The problems with the payroll and time records, as observed by the WRC investigators, included the following:

- 1) The list of workers on the payroll did not change, in any way, between the March 2006 payroll and the August 2007 payroll. The same names were provided for each month. These records thus state that no worker left the factory's employ, and no new worker was hired, over a period of nearly a year and a half, something that is a practical impossibility. Moreover, management stated that the employee turnover rate at the factory has been in excess of *50% per annum*.
- 2) The payroll records, for all months, included information for exactly 115 workers, with no variation. According to statements by management, there are roughly 200 workers employed at the factory.
- 3) There are numerous employees listed on the payroll records for a given month whose names do not appear on the time records for that month, and vice-versa.
- 4) Variations in pay for each worker were minimal throughout this entire period. The factory is, according to management, using a piece rate pay system, which would inevitably result in significant fluctuations in each worker's pay over time.⁴

⁴ Unless the worker is only producing enough in each pay period to earn the minimum wage, which, according to management, is not the case for workers at Lianglong.

On January 24, two days following the on-site inspection, the WRC provided management with a detailed letter outlining the discrepancies in the records and offering management an opportunity to address them. After receiving no response to this written inquiry, the WRC telephoned the factory in late January and was told that management would respond to the letter after the Chinese New Year, in mid-February. However, as of March 12, when the WRC notified the factory of our findings, we had still received no reply to our queries. The factory finally responded in its meeting with RJ McCarthy's sourcing agent, but this response was largely without substance. The factory ignored all of the discrepancies, save one,⁵ providing no substantive explanation for the state of the records. The factory simply reiterated its position that the records are accurate and that any problems observed must be the result of misinterpretation.

In view of the gross anomalies in the payroll records provided to the WRC, as well as the factory's inability or unwillingness to provide additional information that would explain these anomalies, the WRC was forced to draw the conclusion that management presented the WRC investigators with records that were modified for our benefit. The omissions and contradictions were far too numerous and obvious to be a product merely of poor record-keeping. Management's unwillingness to provide accurate payroll and time records constitutes a particularly serious form of non-cooperation with the monitoring process.

It is important to note that despite the state of these records, the WRC investigators were able to glean significant useful information from them regarding labor compliance at the facility. When factory records are altered by management for the benefit of labor rights inspectors, the goal is never to make labor conditions appear *worse* than they actually are. Any incriminating information that is left in altered records, and that shows a clear pattern of non-compliance, may therefore be assumed to be accurate, since this constitutes an admission against interest on the part of the factory. The records provided by Lianglong management, while clearly altered prior to their presentation, contain information indicating significant areas of non-compliance with applicable laws and regulations concerning wages and hours of work – information that is consistent with testimony on these issues from workers interviewed off-site.

Recommendations

The WRC recommended that Lianglong maintain complete and accurate payroll records, time records, and employee rosters and that factory management provide these records, unadulterated, to authorized labor rights inspectors.

⁵ In explaining why many workers appeared on payroll records well before the dates of hire listed in the employee roster, management stated that these were originally temporary workers. Management had not previously provided the WRC with any indication that it is using temporary labor. The WRC will seek to verify this claim during the follow-up monitoring process. Given the numerous other contradictions in the records, and management's failure to offer any substantive explanation for them, the veracity of management's claim on this particular question is not material to the WRC's overall finding that management provided inaccurate records.

Factory Response

As noted above, Lianglong management insists that the factory does keep accurate and comprehensive payroll records. In view of the glaring contradictions in the records, and the fact that management has not offered a substantive explanation for them, this is not a credible statement. The WRC maintains its finding. RJ McCarthy has agreed to ask the factory to keep proper, accurate and complete records and to make these available to labor rights inspectors in the future.

Overtime

Findings

a. Overtime Hours

Chinese law requires that all workers receive at least one day off per week.⁶ The law also sets 36 hours as the maximum number of overtime hours that may be worked in one month and requires that all overtime be voluntary.⁷ In addition, provisions of the Catholic District School Board's labor policies require that overtime be voluntary and be utilized only in exceptional circumstances.⁸

At Lianglong, many employees are required to work seven days a week, in many cases without a single day off in a month, in violation of Chinese law and School Board policies. Workers interviewed off-site testified that the work schedule provides no rest days. Time records provided by the factory corroborate this testimony. They show that in the cases of numerous workers, a full day of labor was performed every day of a given week – and, in some cases, every day of a given month. These records, which were provided by management, contradict management's claim, made to the WRC investigators, that all workers receive at least one day off per week. The exact percentage of workers compelled to work these hours is not known, because the payroll and time records provided to the WRC are, as explained above, incomplete and contradictory. However, testimony from workers interviewed off-site, and the evidence that could be gleaned from the records provided, indicate that at least one third, and probably more than half, of the workforce is in this position. Although the time records show some variation, it

⁶ Labor Law, Article 38, The employing unit shall guarantee that its staff and workers have at least one day off in a week.

⁷ Labor Law, Article 41, The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and laborers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of laborers is guaranteed. However, the total extension in a month shall not exceed thirty-six hours.

⁸ For example, the "Sweatshop Free Purchasing Policy" of the Toronto Board states: "Overtime work (work exceeding 48 hours per week) shall be voluntary, shall not exceed 12 hours per employee per week, will not be requested other than in exceptional and short-term business circumstances, and will always be remunerated at a premium rate."

is primarily workers in what management calls the “production” department who are forced to work without rest days.

It should be noted that the workers interviewed inside the factory stated that they receive one day off every week. This testimony was not credible. When asked by WRC investigators to name the last day they had off, none of the workers was able to remember. Moreover, WRC investigators reviewed time records for some of these workers and the time records showed that these workers had received no days off in recent weeks. It was the conclusion of the WRC investigators that workers had been coached concerning their testimony. This is a common problem in China and a reason why off-site interviews are critical to effective labor rights monitoring in this country.

According to off-site worker testimony, overtime hours worked at the factory are compulsory. This is also a violation of Chinese law and School Board policies. In addition, because they are working every day, many workers at Lianglong are working at least 64 overtime hours in a month, in violation of the legal maximum of 36 hours.⁹

b. Overtime Compensation

Chinese law requires that workers be paid for all overtime hours worked and that these hours be paid at a premium rate. Specifically, employers must compensate workers at a rate of 150% of regular wages for overtime hours worked on weekdays, 200% for hours worked on rest days (i.e., weekends), and 300% for work performed on statutory holidays.¹⁰

When asked about overtime compensation rates at the factory, management stated to the WRC that when employees work overtime, which management claimed (erroneously) is a rare occurrence, they are *not* compensated monetarily for this work. It is important to note that management did not say that no overtime *premium* was paid, but that workers received no pay *whatsoever* for overtime hours. Management stated that workers are instead granted compensatory time. Management stated that workers are not paid for this compensatory time. This struck the WRC investigators as highly unusual, since management appeared to be saying that workers who were required to work overtime were denied any pay for their overtime hours and were “compensated” by being offered unpaid time off. Neither option would result in

⁹ As noted above, time records provided by management, and off-site worker testimony, showed that a substantial number of Lianglong employees work every day of a given month. The standard workweek in China is 40 hours, covering five eight-hour days. Thus, an employee who works a full shift every day of the month is working at least eight extra days and at least 64 extra hours (and as many as ten extra days and 80 extra hours, depending on the calendar). This is exclusive of any hours in excess of eight that an employee may work on a given day.

¹⁰ Labor Law, Article 44, The employing unit shall, according to the following standards, pay laborers remunerations higher than those for normal working hours under any of the following circumstances: 1, pay no less than 150 percent of the normal wages if the extension of working hours is arranged; 2, to pay no less than 200 percent of the normal wages if the extended hours are arranged on days of rest and no deferred rest can be taken; and 3, to pay no less than 300 percent of the normal wages if the extended hours are arranged on statutory holidays.

workers actually being paid for the overtime hours they work. The WRC sought clarification on this issue, and management stated that we had understood the practice properly.

The time records provided by management showed that overtime hours had been worked, but corresponding payroll records did not indicate that any overtime compensation had been paid for these hours, which is consistent with management's admission that workers are not paid for overtime.

The inaccurate and incomplete payroll records provided to WRC investigators by management made it impossible to determine with confidence how many hours a given employee worked and how much he or she was compensated for that time. Management claimed, and payroll records indicate, that the actual monthly wage earned by workers is well in excess of the legal monthly minimum of 750 *yuan* (\$107 Canadian) exclusive of overtime. However, given that many workers are working every day of a given month, even if these pay figures are accurate, the total pay indicated for some workers is less than the amount legally required, once legally mandated overtime compensation is taken into consideration. Thus, whether management is paying workers higher than the minimum wage, but failing to compensate workers for overtime hours, or compensating workers for overtime hours at a level below what the law requires, it is clear from payroll records as well as management's statements that the factory is not complying with Chinese law governing overtime compensation.

Thus, both management's admission about overtime compensation, and the records provided by management, support the conclusion that workers are not being properly compensated for overtime hours.

Recommendations

The WRC recommended that the factory do the following: 1) Cease the practice of requiring some employees to work seven days a week with no rest day; 2) Cease the practice of requiring employees to work overtime without proper compensation; 3) Observe applicable Chinese law requiring that overtime be voluntary and compensated at a premium; 4) Calculate the total underpayment for overtime hours to each employee since his or her date of hire; 5) Provide full back pay to those workers who were undercompensated; 6) Provide RJ McCarthy and the WRC with credible documentation of the calculations that were made and credible proof that workers received their back pay.

Factory Response

In response to the WRC's finding that overtime is compulsory, in violation of Chinese law, factory management stated that overtime is voluntary and that workers choose to work large amounts of overtime in order to maximize their pay during the year so that they are able to take a longer period of leave in their home village at the time of the Chinese New Year (all workers at Lianglong are migrants from another region of China). While the WRC does not doubt that many workers are glad to be able to augment their low wages by working overtime, the statement that overtime is voluntary is contradicted by the off-site worker testimony, which was uniform on this

point. Nor is it plausible that the workers at Lianglong who are working every day of the month are all invariably content to voluntarily deny themselves any day of rest.

With respect to the WRC's finding that overtime is excessive, the factory has failed to provide any response.

In response to the WRC's finding that the factory does not compensate workers properly for overtime hours, the factory stated that the factory withholds a portion of worker pay and remits it to the employee either upon the employee's departure from the factory or at other predetermined times of the year, in most cases just prior to the Chinese New Year in February. This point is not relevant to the question of whether overtime hours are properly compensated, since it concerns the question of *when* workers are paid, not *how much* they are paid. (This admission is relevant to the WRC's finding concerning illegal withholding of workers' wages, as discussed below.)

Management's responses on the issue of overtime are discouraging. Management failed to respond to the WRC's finding concerning excessive overtime. And management's response to our findings that overtime is mandatory and is not properly compensated is to deny the findings without offering any persuasive evidence to support these denials. Management has thus neither acknowledged that its overtime policies violate the law, nor made any commitment to correct these violations. RJ McCarthy has agreed to ask the factory to undertake the corrective action the WRC has recommended.

Wages and Payment

Findings

a. Withholding of Pay and Documentation of Payments

The Chinese Labor Law requires that workers be paid monthly. Wages cannot be withheld or delayed.¹¹

Workers interviewed off-site testified credibly that management withholds a substantial portion of workers' pay *throughout the course of the year* and pays the accumulated arrears in a lump sum to each worker just before the Chinese New Year. Local residents with knowledge of the practices of the area's hosiery factories testified that such withholding of wages is a common practice.

According to off-site worker testimony, management pays workers only a portion of their wages each month; several workers estimated this amount at roughly 400 *yuan*. The minimum wage in this region is 750 *yuan* per month, exclusive of overtime (as discussed above, the actual amount owed to most workers is substantially greater because they work many hours above the standard 40-hour workweek). Workers testified that the partial payment they receive is referred to by

¹¹ Labor Law, Article 50, Wages shall be paid monthly to laborers themselves in form of currency. The wages paid to laborers shall not be deducted or delayed without justification.

management as “pocket money,” for workers to use while they wait until the Chinese New Year to receive their full pay.

When interviewed on January 22 by the WRC investigators, management firmly denied that workers’ wages are withheld in this manner, stating that workers receive their full pay each month. In order to resolve this issue, the WRC asked management to provide evidence that workers were actually paid the proper amount each pay period – i.e., pay stubs and/or bank records showing the actual disbursement of funds. It should be noted in this regard, that the labor rights policies of the School Boards require that workers be provided with written and understandable information about their wages and how they are calculated each time that they are paid.¹²

Management could not supply any proof of proper payment. Management stated that the only pay stubs ever provided to workers are in the form of a photo-copy of that worker’s payroll record for the period in question. Management said that the worker’s record is copied off of a page containing records for many workers, with the record specific to that worker then cut out and handed to the worker as a small strip of paper, and that this constitutes a pay stub. Management further stated that this practice had been discontinued because workers “did not really want” these pay stubs and that a stub is now only provided when a worker specifically requests it.

The payroll records provided to the WRC contain what management stated is the signature of each worker for each pay period. Management stated that these signatures constitute acknowledgment of receipt of payment. However, the payroll records are simply that, records of the amount owed to each worker. The records do not indicate that the signature represents an acknowledgment of payment received. Moreover, the signatures appear, in most cases, to have been written by the same individual – i.e., by one person signing each worker’s name.

Management provided false payroll records to the WRC investigators and failed to provide any credible proof of payments in the proper amount to workers. In view of these facts, and given the credible testimony of workers interviewed off-site, the WRC concluded that management does not pay workers the amount they have earned for each monthly pay period and withholds a substantial amount for payment at a later date. This violates Article 50 of the Chinese Labor Law governing payment of minimum wages, as noted above. It also has the effect of depriving workers of the right to freely choose to leave the factory’s employment during the course of a year, since to do so would be to sacrifice a large portion of the wages the worker has already earned. Thus, Lianglong is not only failing to compensate workers in the amounts required by law; management is also withholding, for an extended period of time, a substantial portion of whatever wage management does decide workers have earned.

¹² For example, the York Board’s “Fair Labour Policies” state as follows: “All workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.”

In addition, the factory's failure to provide proper pay stubs violates the Ontario Catholic School Boards' fair labor policies.

b. Minimum Wage

The legal minimum wage in Zhuji City, as noted above, is 750 *yuan* per month. Chinese law does not allow for any worker to receive pay lower than the legal minimum, regardless of his or her level of seniority or productivity (there is no "training wage").¹³

Management stated that new workers in the "production" department are paid only 400 *yuan* per month for their first month of work, because, according to management, their productivity is low. In this case, management directly admitted to pay policies that violate the law.

c. Docking of Wages

Management also stated that in "extreme cases" of indiscipline and/or poor performance, workers are penalized by having their pay docked. Management stated that such cases are unusual. This is nonetheless an illegal practice under Chinese law concerning minimum wages, as cited above. Some School Board labor policies also explicitly prohibit this practice.¹⁴

Under the Labor Contract Law that went into effect on January 1, 2008, employers are required to provide all employees with a valid work contract. These contracts may not include financial penalties for workers who choose to leave employment prior to the end of the contract term.¹⁵ Contracts provided to workers at Lianglong Socks contain a clause requiring workers to pay 1,000 *yuan* to management if they voluntarily leave the factory's employee while the contract is in effect. This penalty is illegal under the Labor Contract Law and also violates Board policies concerning the right of employees to leave their employment upon reasonable notice.¹⁶

¹³ Labor Law, Article 48, The State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record. Wages paid to laborers by the employing unit shall not be lower than the local standards on minimum wages.

Labor Contract Law, Article 20, The wages of a worker on probation, may not be less than the lowest wage level for the same job with the Employer or less than 80 percent of the wage agreed upon in the employment contract, and may not be less than the minimum wage rate in the place where the Employer is located.

¹⁴ For example, the York Board's "Fair Labour Policies" state: "Deductions from wages as a disciplinary measure shall not be permitted..."

¹⁵ Labor Contract Law, Article 25, With the exception of the circumstances specified in Articles 22 and 23 hereof, an Employer may not stipulate with a worker provisions on the bearing of liquidated damages by the worker.

¹⁶ For example, the Toronto Board's "Employment Standards," as enumerated in the Board's "Sweatshop Free Purchasing Policy," state that: "Workers are not required to lodge deposits...are free to leave their employer after reasonable notice."

Recommendations

The WRC issued the following recommendations: 1) Cease the practice of withholding workers' wages during the course of the year; 2) Pay all workers in full on each pay date; 3) Pay in full any wages currently being withheld; 4) Provide workers with a proper pay stub for each pay period, accurately stating the hours of work, the rate at which these hours were compensated, any applicable deductions, and the total amount paid; 5) Cease the practice of paying a wage below the legal minimum to new workers; pay at least the legal minimum to all employees, regardless of seniority or productivity; 6) Cease the practice of docking employees' pay as punishment; 7) Remove from employee contracts the clause requiring workers to compensate factory management if they leave voluntarily during the term of the contract.

Factory Response

In its response to RJ McCarthy, Lianglong admitted its practice of withholding workers' pay (after having denied this during the on-site inspection in January). However, despite its admission, management has given no indication that it intends to stop this illegal practice. Instead, according to a conversation reported to us by RJ McCarthy, management has tried to defend the practice – arguing that the factory is doing workers a favor by withholding a large portion of their pay, because otherwise the workers would spend it irresponsibly.¹⁷

The factory responded to the WRC's finding regarding payment of the minimum wage by stating that all employees at Lianglong earn more than the monthly minimum wage of 750 *yuan* per month and furthermore that workers are provided with meals and living accommodations at no cost. The issue of meals and dormitories is not relevant. Under Chinese law, meals and dorm rooms cannot be substituted for wages. Management's claim that all workers are paid more than the legal minimum contradicts its previous statement to the WRC investigators that workers are paid less than the minimum wage during their first month of employment.

The factory also did not respond to the WRC's finding that management docks workers' pay for disciplinary reasons in violation of Chinese law.

The factory did not offer any response to the recommendation that workers be provided with pay stubs clearly reporting hours worked and wages paid.

The factory did state that it began to comply with the 2008 Labor Contract Law at the start of the Chinese New Year in February. If this is the case, and if the new contracts omit the clause in the prior contracts requiring workers to compensate management if they leave before the end of their

¹⁷ The actual motive behind this policy is unclear. Management may be withholding pay as a means of discouraging turnover. In its recent admission that it does withhold pay, management stated that when a worker quits, the worker receives all pay previously withheld; according to worker testimony, however, workers who leave before the end of the year do not receive any of their withheld pay. The purpose may also be to improve cash-flow.

contract, then this is a positive step. The WRC will seek to verify this claim during the follow-up monitoring that will take place if agreement is reached on an overall corrective action plan.

Legally Mandated Benefits

Findings

Under Chinese law, employers must provide social security (pension), workers' (injury) compensation, disability insurance, and maternity benefits to employees.¹⁸ The factory admitted that, at the time of the on-site inspection, it did not provide any of these benefits, something also reported in off-site worker testimony. Management stated that the factory intended to begin providing the first three benefits in the near future (in response to the new Labor Contract Law, which went into effect on January 1, 2008).¹⁹ Management stated that the factory did not intend to provide maternity benefits, arguing that the workers are so young that they are unlikely to become pregnant.²⁰ The WRC thus found the factory to be in violation of Chinese law concerning mandatory benefits.

Recommendations

The WRC recommended that Lianglong enroll all workers in all legally mandated social benefit programs, without delay, including the program that provides maternity benefits.

Factory Response

In response to this recommendation, factory management stated to RJ McCarthy's agent that Lianglong has begun complying with the Labor Contract Law as of the start of the Chinese New Year in February. The benefit programs have long been mandatory, and are not a product of the new law. However, we assume the factory's response is meant to convey that it is now providing these benefits, consistent with its earlier statement to the WRC that it intended to do so, and that this commitment is now stated in workers' employment contracts, as the new law requires. If true, this is a positive step. The claim will need to be verified through follow-up monitoring. The factory did not indicate whether it has changed its position with respect to maternity benefits. This issue will need to be clarified.

¹⁸ Labor Law, Article 3, Laborers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labor, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training on vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labor disputes, and other rights relating to labor as stipulated by law. See also Zhuji City Government Office Opinion on the Strengthening of Social Insurance Fee Collection, Zhuzhengbanfa (2007) No. 50, Section 1.

¹⁹ Labor Contract Law, Article 17, An employment contract shall specify the following matters: ... (7) social insurance.

²⁰ According to factory personnel records, many workers at Lianglong Socks are 17, 18, or 19 years old.

Health and Safety

a. Dormitories and Restrooms

Findings

1. Dormitory and Restroom Conditions

The Boards' labor policies require that factories provide clean toilet facilities and that dormitories be clean, safe, and adequate to meet workers' basic needs.²¹

The dormitories in which factory employees live are sub-standard. The buildings are dirty and dilapidated. They lack proper electrical wiring; WRC investigators observed exposed, jury-rigged wires running the length of dormitory hallways. Physical access to the women's dormitory is down a steep incline and the pathway is unsafe: it consists of mud, rock and broken pavement (this is of particular concern since workers have to take this path, at night, to reach the only bathroom facilities available to them).

The factory maintains one women's and one men's restroom, each with three toilets, for a workforce of 200 (this is the number of workers provided by management). The bathrooms are located in a separate building, with its own entrance, in the middle of the factory grounds. Since the dormitory buildings have no bathrooms, these central restroom facilities also serve the dorms; thus, workers must leave the dorm buildings to use the bathroom. Chinese law requires that all workers housed in dormitories have access to a bathroom that is no more than twenty meters from their room. The factory's centralized "outhouse" is much further than twenty meters from the rooms in which many workers are housed.²² The men's bathroom, as observed by WRC investigators, had no toilet paper, was not clean, and had an odor far more noxious than is tolerable for a public restroom.

2. Heat in Dormitories and Work Areas

The factory is entirely unheated, as are the dormitories, bathrooms, and the cafeteria (the only exception is the management offices). This is despite the fact that winter temperatures in the area can be below freezing. For example, on the day WRC investigators inspected the factory, the high temperature in the area was 2 degrees Celsius. The low that night was -1 degree Celsius. The temperature did not rise above 3 degrees Celsius until nearly two weeks later, on February 3. During that period of time, the temperature dropped as low as -3 degrees Celsius on multiple occasions.

²¹ For example, the York Board's "Fair Labour Policies" state that: "Access to clean toilet facilities and to potable water...shall be provided. Accommodation, where provided, shall be clean, safe and meet the basic needs of the workers."

²² Regulations on the Construction and Design of Standard Dormitory (JGJ36-87) point 3.3.1

Chinese law requires factories, in areas where the average monthly temperature is below 8 degrees Celsius for three months or more, to provide some form of heating. Average monthly temperatures in the area where Lianglong is located²³ are below 8 degrees in December, January and February. The factory is thus in violation of the law.²⁴

It is important to understand that the cold temperatures and lack of heat are not only a problem for Lianglong employees during the workday, but at all hours. These workers do not return to a heated home after their workday is over. They remain on factory grounds, eating in the cafeteria, using the restrooms, and resting and sleeping in the dormitories, all of which are unheated. Thus, during the winter months, workers at Lianglong live, for days at a time, in temperatures that are at, near or below freezing. The only warmth is afforded by clothing the workers themselves must provide and by blankets provided in the dormitories. Workers' access to warm water, for showers, is limited to three evenings per week.

For purposes of comparison, most municipalities in Canada require landlords to maintain a minimum temperature in all dwellings the landlord operates – generally 20 or 21 degrees Celsius. For example, Toronto Municipal Code, Chapter 497, Article 1, states: “A landlord shall provide heat to a dwelling unit that is rented or leased and that is normally heated at the landlord's expense so that a minimum air temperature of 21 degrees Celsius is maintained in all areas of the dwelling unit from the 15th day of September in each year to the 1st day of June in the following year.” The dormitory rooms in which Lianglong workers live are unheated, despite the fact that low temperatures in December and January are 5 degrees Celsius or lower on most days and at or below 0 degrees Celsius roughly 25% of the time.

With respect to some labor practices, it is not reasonable to expect factories in poor countries to meet standards comparable to those that apply in Canada and the United States. Some standards, however, should be universal – including the right of workers to a minimal level of comfort and dignity while on the premises maintained by their employer. Workers in China are no better suited to living through temperatures near, at, or below freezing, with no access to heat, than are Canadian workers. It is the WRC's conclusion that in addition to violating Chinese law, Lianglong's failure to provide heat during the winter months to the dormitories it operates violates those provisions of the Catholic District School Boards' labor policies that require that workers be treated with dignity and respect.

Recommendations

The WRC recommended that Lianglong take the following steps with regards to the dormitories:

- 1) Conduct all repairs, renovations and cleaning necessary to ensure that the men's and women's dormitories are clean, properly ventilated, properly wired, and accessible by safe and easily

²³ Because historical temperature records are not available for Zhuji City (only current-day temperatures), we have used historical temperatures reported for Hangzhou, the nearest city for which these data are available, as a proxy. A comparison of daily temperatures in the two cities during the month of February 2008 shows that Zhuji is actually colder than Hangzhou.

²⁴ Hygienic standards for the Design of Industrial Enterprises GBZ1-2002, point 5.2.2.1

navigable paths; 2) Ensure that wiring and ventilation in all dorm rooms are adequate to allow for the safe operation of space heaters; 3) Provide a space heater or heaters for each dorm room adequate to heat that room to a comfortable temperature; 4) Ensure that these heaters are properly maintained; 5) Provide dorm residents with clear instructions on the safe operation of these devices and closely monitor their use to ensure fire safety.

With regards to the restroom facilities, the WRC issued the following recommendations: 1) Maintain clean men's and women's bathrooms; ensure that workers using these bathrooms are not forced to tolerate persistent, noxious odors; ensure that bathrooms are supplied at all times with adequate toilet paper, paper towels and soap; 2) During the months of December, January, February and March provide an adequate supply of hot water for showers every evening, rather than three days per week; 3) Construct such additional bathroom facilities as are necessary to ensure that every resident worker has access to a bathroom no more than twenty meters from his or her dormitory room.

Factory Response

The factory stated to RJ McCarthy's agent that it plans to rebuild the dormitories and upgrade the bathroom facilities, that construction is scheduled to begin in August 2008, and that it is expected to be completed by December. Although the factory's response as provided to the WRC did not make clear which of the violations would be addressed by the reconstruction, RJ McCarthy stated to the WRC in a subsequent telephone conversation that the new buildings would be equipped for heat²⁵ and that RJ McCarthy expected that the other violations would be addressed by the new buildings. RJ McCarthy will seek confirmation of this from the factory in the near future. The dorms and bathrooms will, of course, need to be inspected after construction is complete. If adequate dorms are constructed, this will be a major step forward.

Notwithstanding the factory's construction and renovation plans for later in the year, it is important to note that there are some problems the factory can fix immediately, including cleaning the restrooms on a regular basis and ensuring that they are stocked with toilet paper at all times. A corrective action plan should include these immediate steps.

²⁵ The factory also stated in its response (by way of defending its failure to provide heat in the dormitories and other buildings) that it is common for most factories, shops, and even homes in this region of China to be unheated because the weather is, according to the factory, "relatively mild." Management stated that this year has been abnormally cold. As explained above, the issue is a matter of law. Monthly average temperatures are 8 degrees Celsius or lower for three consecutive months in the area; the factory is therefore required to provide heat. Moreover, while the factory is correct that this winter has been colder than normal, long stretches of near-freezing weather are not unusual in the area. In January of 2007, for example, there was a stretch of nine consecutive days when the low temperature was between 2 degrees Celsius and -2 degrees. During that same month, there was a stretch of eleven days during which the *high* temperature was never above 8 degrees Celsius.

b. First Aid

Findings

WRC investigators observed no first aid kits in the production areas; failure to provide first aid kits violates the provisions of the School Boards' policies covering health and safety. For example, the Toronto Board's code states that a factory must maintain "A safe hygienic working environment...bearing in mind the prevailing knowledge of the industry..." Well stocked and readily accessible first aid kits are universally recognized as mandatory equipment in an apparel factory. The absence of first aid kits also violates RJ McCarthy's code of conduct.²⁶

Recommendations

The WRC recommended that Lianglong provide fully stocked, easily accessible first aid kits in all production areas.

Factory Response

The factory stated to RJ McCarthy's agent that there were two first aid kits at the factory at the time of the WRC's visit in January. The WRC investigators did not observe these first aid kits in the work areas they inspected; it is possible that there were kits in other work areas – although two first aid kits would be inadequate, given that the factory maintains at least five separate work areas, all on different floors and in two separate buildings. Nonetheless, the factory says it has installed new first aid kits at RJ McCarthy's request and RJ McCarthy's sourcing agent reports that he has observed that there are currently six first aid kits in place. This is a positive step. It will be important for the factory to maintain these kits in good order, keeping them fully-stocked. The WRC will inspect the kits during follow-up monitoring.

Freedom of Association

Findings

The Boards' fair labor policies require that workers have the right to form or join trade unions of their choosing and bargain collectively. Since Chinese law bans independent unions, the right to freedom of association is not respected in the factory (or in any other Chinese factory). This violates the Boards' policies in this area.²⁷

Because Chinese workers have no opportunity to be informed about their rights under the law and applicable codes of conduct by an independent union, the WRC seeks to provide this

²⁶ From RJ McCarthy's "Manufacturer's Code of Conduct": "[F]actories producing goods for R.J. McCarthy Ltd. must provide, well-lit and ventilated workstations, clean restrooms, fire exits and safety equipment, first aid supplies..."

²⁷ For example, the Toronto Board's "Sweatshop Free Purchasing Policy" states that: "Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively."

information to workers in the form of on-site worker trainings. While we in no way view this as a substitute for freedom of association, it is important that workers have this information. Some of the Boards' policies specifically reference the need for this type of training.²⁸ The WRC asked factory management to facilitate a training for some or all of the workers while WRC staff were in Zhuji City. This request was originally conveyed, through RJ McCarthy, prior to the date of the on-site inspection and was then reiterated during a meeting with management. The factory refused to grant this request. Management stated the view that workers do not need and would not benefit from this information and also cited the factory's busy schedule in advance of the Chinese New Year. Management agreed to consider facilitating such a training at a future date, but was unwilling to make any commitment. This refusal is in violation of Board policies concerning worker trainings.²⁹

Recommendations

The WRC recommended that Lianglong allow the WRC to conduct a legal rights training for all workers.

Factory Response

The factory did not provide any further response to the WRC's recommendation that a training be held.

IV. Response of RJ McCarthy and Current Status

RJ McCarthy has agree to ask Lianglong to correct all violations identified by the WRC by taking the actions recommended in each section of this report. RJ McCarthy has also committed to requiring the factory to develop a detailed remediation plan in area, including deadlines by which corrections will be made. We appreciate the company's positive and timely response.

As we have noted, RJ McCarthy is a small customer and its influence may be limited. RJ McCarthy has stated its intention to contact Wal-Mart and ask it to intervene.

We hope that the factory will agree to take all necessary corrective action – if not at RJ McCarthy's sole request, then at the urging of other customers. If a corrective action plans is agreed, the WRC will review it with RJ McCarthy in order to identify any deficiencies and will conduct additional monitoring as necessary to verify completion of particular steps.

²⁸ For example, according to the York Board's "Fair Labour Policies": "Whenever possible, suppliers and their subcontractors, in cooperation with the [York Catholic District School Board] and relevant local labour, human rights and non-governmental organizations, shall facilitate training of workers covered by the Policy on their rights under the Policy and local law."

²⁹ For example, the York Board's "Fair Labour Policies" state: "Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates and does not hinder the development of parallel means for independent and free association and bargaining."

Given the seriousness of the violations, the factory will need to undertake very substantial changes in its operations in order to come into compliance with applicable laws and standards and maintain this compliance over time. It is not clear whether the factory will be willing to do this. The factory's response to date, on balance, is not encouraging. The factory has said it will take action on some issues (with details remaining to be clarified), but has not agreed to do so with respect to many others: including all of the serious violations on wages and overtime. Moreover, such actions as attempting to justify the patently unlawful policy of withholding a large portion of workers' wages for up to a year raise grave doubts about whether this management is capable of making and maintaining a genuine commitment to respect the rights of its workers.

If the factory proves unwilling to fully remediate, and remains in violation of the School Boards' policies, RJ McCarthy has indicated to us that it will consider discontinuing its use of the factory (an appropriate step if all reasonable efforts to secure remediation have failed).

The WRC will continue to monitor and report on the situation at Lianglong.

Appendix: Discussion of Monitoring Procedures

The fact that RJ McCarthy was unaware of the serious violations at Lianglong raises concerns about RJ McCarthy's monitoring approach. Some of the labor rights violations at Lianglong are clear from a review of factory records and/or a basic visual inspection and should have been identified by any auditor, even if unable to interview workers off-site.

During the fall of 2007, Lianglong Socks moved to a new location in Zhuji City. Subsequent to the WRC's investigation, RJ McCarthy informed us that its agent had not notified the company of this move and that RJ McCarthy had therefore been unable to conduct any monitoring of the new facility. RJ McCarthy stated to the WRC that it had conducted a physical inspection of Lianglong's previous facilities and found them to be in good order, in compliance with the company's code of conduct. We recognize that the agent's failure to notify RJ McCarthy of its new location prevented the company from conducting a physical inspection of the new facility. At the same time, RJ McCarthy acknowledged that it does not seek to review factory records in the course of monitoring its suppliers. Had RJ McCarthy, or an auditor acting on the company's behalf, conducted such a review at the old facility, serious problems would have been apparent.

The WRC has therefore recommended that RJ McCarthy modify its approach to monitoring by including a thorough review of factory records. RJ McCarthy has agreed to do so. This is a constructive step. We hope this enhancement will improve the effectiveness of RJ McCarthy's efforts to ensure labor rights compliance by its suppliers.