



On January 24, 2015, the Textile Industry Union of El Salvador (Sindicato de la Industria Textil de El Salvador, SITS), at the time affiliated with the Union Federation of El Salvador (Federación Sindical de El Salvador, FESS), filed a Third Party Complaint with the Fair Labor Association (FLA) alleging violations of hours of work and payment of overtime by the factory F&D, S.A. de C.V. (hereinafter “F&D”), located in El Salvador. FLA-affiliated Participating Company Hanesbrands sources from F&D.

More pointedly, the complaint alleged that F&D maintained a system of production goals that implicitly required workers to work hours beyond their normal work schedules for which they were not compensated at overtime rates and moreover that the monetized production goals failed to reflect increases in the minimum wage approved by the Government of El Salvador. The alleged violations would appear to be inconsistent with FLA Compliance Benchmarks C.7, Calculation Basis for Overtime Payments<sup>1</sup> and C.2, Minimum Wage<sup>2</sup>.

The FLA accepted the complaint for review under the Third Party Complaint procedure on February 2, 2015, and moved it to Step 2. Pursuant to Step 2, the Participating Company or College or University Licensee has up to 45 days to investigate the alleged noncompliance internally and inform the FLA. Subsequently, the FLA moved the case to Step 3. Under Step 3, the FLA engaged an independent third party to carry out an assessment.

### **Background: Earlier Third Party Complaint at F&D**

The SITS union filed a Third Party Complaint with the FLA in early 2011 alleging a range of violations of the FLA Workplace Code of Conduct at F&D. In particular, the complaint alleged violations in the areas of payments of wages and benefits, overtime compensation, and freedom of association. An assessment of the complaint carried out by Hanesbrands pursuant to Step 2 of the Third Party Complaint process, combined with the results of an IEM conducted by the FLA at this facility in December 2010, provided a rich picture of the labor situation at the factory. Hanesbrands’ assessment report documented the extensive remediation that had been put in place by the factory since the beginning of 2011. In June 2011, the FLA issued a public interim report on the Third

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<sup>1</sup> C.7 states: “Employers shall compensate workers for all hours worked.” Meanwhile, the benchmarks under C.7 state: C.7.1, “The factory shall comply with all applicable laws, regulations and procedures

<sup>2</sup> C.2 states: “Employers shall pay workers at least the legal minimum wage or the prevailing industry wage, whichever is higher, for regular working hours (not including overtime). Workers should also be informed about the legal minimum wage.”

Party Complaint<sup>3</sup>. The FLA recommended that Hanesbrands work with F&D management to:

- Provide freedom of association training to managers and supervisors in order to eliminate remnants of anti-union discrimination that may still be present in the factory;
- Carefully monitor against anti-union discriminatory practices, in particular around overtime opportunities and production goal setting;
- Take appropriate disciplinary measures against supervisors who demonstrate abusive and anti-union behavior toward workers;
- Retroactively make corrective payments to workers for the calculation errors made in the 2010 Christmas and vacation payments; and
- Retroactively pay contributions to the Salvadorian Social Security Institute (ISSS) and Pensions Fund Carriers (AFP) for those workers affected.

In February 2012, the FLA commissioned the Grupo de Monitoreo Independiente de El Salvador (GMIES), a third-party monitoring organization, to verify the implementation and status of remediation at F&D. GMIES verified that improvements had occurred with respect to a number of issues, among them calculation of Christmas bonuses, severances and vacation pay; right for new mothers to have a one-hour daily break for nursing/lactation; body search procedures; freedom of association issues; payment of suspended workers; and payment of overtime for new workers. GMIES also found that remediation was still pending with respect to other issues, among them timely payment of social security contributions; granting of loans to employees; disciplinary system; intimidation and threats against union leaders; verbal abuse; and selected safety and health issues. GMIES also identified a new noncompliance in the area of application of disciplinary procedures in cases involving physical and verbal violence and theft of belongings within the factory, particularly in cases where union leaders were involved.

The FLA recommended that Hanesbrands continue to work with F&D in the remediation of pending issues and in particular recommended that Hanesbrands and F&D focus on developing and implementing a disciplinary system that:

- Had written rules, procedures and practices that embody a system of progressive discipline;
- Ensures that managers and supervisors are fully familiar with the workplace disciplinary system and in applying appropriate disciplinary practices;
- Will be communicated to all workers; and
- Include a third-party witness during imposition and an appeal process.

Thus, the FLA considered that the Third Party Complaint had been completed. As it was evident from the assessment carried out by Hanesbrands and the verification by GMIES

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<sup>3</sup> The Interim and Final FLA Reports on the Third Party Complaint, together with a verification of remediation conducted by third party monitor GMIES, are available at <http://www.fairlabor.org/report/fd-sa-de-cv-el-salvador>

that there were significant communications challenges between management and labor organizations at F&D, the factory and the unions -- with the support of Hanesbrands -- agreed to form a dialogue table moderated by an ombudsperson. Lic. Ena Lilian Núñez, a local attorney and specialist on labor rights. The dialogue table met either monthly or bi-monthly during 2013-2014, with participation from management, the SITS union and the FESS Federation, and representatives of Hanesbrands, with representatives of the Worker Rights Consortium (WRC) and the FLA also attending on occasion as observers.

### **2015 Third Party Complaint**

As mentioned earlier, on January 24, 2015, SITS filed a Third Party Complaint alleging that F&D maintained a system of production goals that implicitly required workers to work hours beyond their normal work schedules for which they were not compensated at overtime rates and moreover that the monetized production goals failed to reflect increases in the minimum wage approved by the Government of El Salvador. Hanesbrands agreed to carry out an assessment of F&D's production incentives and compensation while an independent investigator selected by the FLA would conduct an assessment of the factory's hours of work system and payment of overtime.

**Hanesbrands' Assessment:** In March 2015, a team of five Hanesbrands experts consisting of a CSR representative from headquarters, CSR representatives from El Salvador and Honduras, an HR manager from El Salvador, and a production engineer with responsibility for the Central American region, visited F&D with the objective of analyzing the strengths and weaknesses of F&D's production processes and compensation program. The analysis included:

- Payroll review;
- Timecard analysis;
- Production goals and Standard Allowable Hours (SAH) analysis;
- Compliance of systems with legally required compensation and benefits; and
- Overtime analysis.

The conclusions reached by the Hanesbrands team and recommended actions were as follows:

- The company's payment system lacks clarity; the pay stubs received by workers do not separate the workers' earnings associated from overtime premium v. production incentive. Thus, workers cannot tell from the pay stubs whether the pay they received complied with overtime premium pay requirements. A redesign of the pay stubs to make the information clearer to workers should be carried out.
- The factory's pay period runs from Wednesday to Tuesday, but the production bonus is calculated on the basis of Monday-Friday production. The Hanesbrands team confirmed that pay calculations are being done correctly, but the different time frames make it very difficult for workers to keep track of their earnings. To the extent possible, the time frames for these processes should be consolidated into one.

- Although line/module balancing – the optimum distribution of workers/operations within a production line/module – leads to higher efficiency and potentially higher pay for workers, it has not been used widely in the factory (it is only being used in new styles) because the union claims that it promotes discrimination and overwork. The company and the union need to continue to discuss the benefits of this system to achieve broader application within the factory.
- F&D is paying at least the statutory minimum wage required by Salvadorian law, including the minimum wage increase that became effective on January 1, 2015, and workers are receiving at least the legally-mandated benefits.
- Production goals set by the factory are achievable within regular working hours; efficiency has room for improvement and could be improved if absenteeism were reduced.

**FLA-Commissioned Third Party Assessment:** In April 2015, an independent expert on labor law visited F&D on behalf of the FLA to conduct an assessment of the situation at the factory regarding hours of work/overtime. Specifically, the terms of reference for the expert's investigation at F&D included determining whether:

- All hours worked by workers either before or after regular working hours, during lunch breaks, or on Saturdays, were properly recorded in payroll records.
- Such hours were paid at a rate that reflected the legally-required overtime premium.
- Pay stubs issued to workers accurately reflected the number of regular hours worked, the number of overtime hours worked, and the pay received for each category of work, including legal and voluntary deductions, and bonuses paid for achieving production goals.
- All workers punched in and out by themselves for all categories of work, including overtime performed on Saturdays.
- Regular and overtime pay rates reflected the increase in the minimum wage decreed by the Government of El Salvador effective January 1, 2015.
- Workers enjoy all factory-provided and legally-required breaks and, if not, whether workers are compensated for the additional work time.

The results of the independent investigation included the following:<sup>4</sup>

- The punch-in and punch-out system only records the beginning and end of a shift. Therefore it cannot be used to determine whether work was performed during the lunch period. Workers interviewed by the investigator stated that it was common for workers to labor during the lunch period to be able to reach bonus levels but that this is not possible to do since mid-February as the factory now shuts down the electricity during lunch breaks.
- Most workers who worked on Saturdays in order to reach production goals did not punch in and out and therefore their hours worked were not recorded.

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<sup>4</sup> The full independent investigation reports, in English and Spanish, are available at <http://www.fairlabor.org/report/fd-sa-de-cv-factory-el-salvador>.

Workers who were specifically requested by management to report for Saturday work – typically workers who achieved production goals during the week – did not always have their additional hours of work properly reflected in the payroll records.

- Many workers do not understand the system of bonuses for achievement of production goals at F&D.
- Although all workers are paid at least the minimum statutory wage, including the adjustment to minimum wages decreed by the government at the beginning of 2015, the majority of workers interviewed and representatives of the union indicated that the minimum wage increase adversely affected their earnings. Factory representatives admitted that the factory chose not to raise production bonuses in accord with the statutory minimum wage increase.
- Workers expressed the view that they are under severe stress in meeting the very high production goals set by the factory. The stress adversely affects workers physically and psychologically. The system of production goals at F&D is not having the intended purpose of motivating workers and improving overall efficiency.

The remedial recommendations proposed by the independent expert included:

- Ensure that the factory records all hours worked by employees, whether regular hours or overtime hours, and that workers are compensated appropriately for all hours worked.
- Include in the pay slips the level of efficiency reached by workers and other information that will allow workers to keep abreast of their work hours and earnings.
- Factory to conduct a comprehensive review of the bonus system with the intention of making it a tool to improve factory efficiency and worker earnings, consistent with national law and protecting worker safety and health.
- Revitalize labor-management dialogue and develop ways and means to implement agreements arising from the dialogue.

**Remediation Plan:** Hanesbrands and F&D management have developed a remediation plan that addresses the recommendations made by the independent expert. The plan consists of the following elements:

- Factory to install a biometric time and attendance system to record all hours worked by employees. System to be in place by the end of July 2015. System ensures that mandatory breaks are taken. Status of action: Completed.
- Factory to put in place system to pay overtime hours worked by employees who chose to work additional hours at the appropriate overtime rate. Since February 2015, factory has eliminated this possibility, as it is not permitting unscheduled overtime on Saturdays. Workers are requested to start/finish production during the regular work schedule. For workers requested to work overtime, hours are recorded, paid at the appropriate rate, and documented in pay stubs. Status of action: Completed.

- Factory to include additional information on pay stubs regarding efficiency, hours worked, and compensation. Target date for new pay stubs: October 2015. Status of action: Completed. Because the factory produces numerous styles and a worker may work on different styles during the same pay period, factory has been publishing weekly time and pay rates for each style in bulletin boards within the factory.
- Factory to provide workers with pay stubs that can be used for official processes. Status: Completed. Factory argues that current pay stubs have legal standing in courts and therefore there is no need to revise them.
- Factory to review overall production bonus system to ensure that it promotes efficiency through achievable targets and reasonable bonus levels. Status: Ongoing. Factory already working to achieve this objective; Hanesbrands has provided technical assistance to F&D in the review of the production bonus system. The system has been discussed with union representatives; intermediate bonus goals have been established for those teams that were not able to fully reach the next level.
- Revitalize labor-management dialogue. Status: Ongoing. Factory and union have agreed to establish a new dialogue table. Lic. Javier Rivas has been selected to serve as the chair of the table. Meetings started in August 2015. Mr. Rivas has been successfully conducting the meetings with a pre-established schedule that has been respected by labor and management. Hanesbrands periodically receives reports of meetings and minutes from Mr. Rivas.

### **FLA Comments and Next Steps**

The Third Party Complaint brought forward by the SITS union identified a number of practices at the F&D regarding hours of work, payment, and production bonus system that were not sufficiently clear and/or not well understood by workers. The remediation plan put in place by the factory and, more importantly, the ongoing dialogue table being chaired by Lic. Rivas, should go a long way toward improving communication and getting clarification on practices at the factory. The FLA recommends that Mr. Rivas continue to chair the dialogue table until workers and management are able to conduct the dialogue without involvement by a third party.