

FINAL REPORT

Third Party Complaint, Bienno S.A. Guatemala
June 15, 2021

On January 31, 2020, the *Comité Ad Hoc de Trabajadores de Bienno S.A.* (hereinafter, “Ad Hoc Committee” or “the complainants”) filed a Third Party Complaint (“TPC”) with the Fair Labor Association (“FLA”) alleging a range of workers’ rights violations in the factory *Bienno Sociedad Anónima Guatemala* (“Bienno” or “the factory”). According to the complainants the factory failed to pay workers’ wages on time, did not pay required social security contributions, and violated workers’ freedom of association rights, including by discriminating against workers based on their union membership¹ and retaliating against worker representatives after they organized on behalf of workers’ economic and labor interests. The allegations, if substantiated, would violate a number of FLA Benchmarks related to Compensation, Non-Discrimination, and Freedom of Association.

The complainants alleged that three FLA-affiliated companies were sourcing from the factory. However, upon further examination, the FLA was able to confirm that only Hanesbrands Inc. (“Hanesbrands”) sourced from the factory as of the time the Complaint was submitted.

The FLA informed Hanesbrands on February 11, 2020 that the Complaint had been accepted and moved to Step 2 of the Third Party Complaint process. While Hanesbrands’ sourcing from the factory represented only one percent of Bienno’s total manufacturing capacity, the FLA determined that this was not a basis for rejecting the Complaint. Under Step 2, the affiliated company has up to 45 days to address the allegations and submit a report to the FLA with an assessment and potential remediation steps. Alternatively, the affiliated company may waive these measures and move the case to Step 3 under the TPC process, in which case the FLA then would commission an independent third party to conduct an investigation.

Hanesbrands opted to undertake its own assessment of the allegations and engaged an external independent auditor to conduct an on-site visit at the factory and carry out relevant interviews with factory management and workers, including all members of the Ad Hoc Committee. The auditor centered his assessment on the allegations filed by the complainants but also implemented a full social compliance audit based on Hanesbrands’ Global Standards for suppliers. After the auditor completed his work, Hanesbrands submitted an assessment report to the FLA on March 11, 2020. The assessment conducted by Hanesbrands corroborated most of the allegations filed by the complainants and reported additional examples of non-compliance with Guatemalan law and Hanesbrands’ Global Standards for suppliers.

The findings related to the allegations filed with the FLA were grouped in four categories:

¹ Beginning on May 27, 2019, a group of Bienno workers decided to organize and thereafter constituted an Ad Hoc Committee before the Labor Court (Ref. Number 01173-2019-04711). This worker organization was also registered and authorized by the Ministry of Labor. Therefore, under national law, the Ad Hoc Committee representatives are entitled to special legal protection and cannot be terminated without prior authorization by a Labor Court.

- **Delay in wage payments:** During the assessment, the auditor randomly selected pay periods from 2018 to 2020 and confirmed that there were at least six instances where employees were not paid following Bienno’s established pay periods.
- **Non payments of Guatemalan Social Security legal contributions:** The auditor reviewed the factory’s social security contributions for 2018 through 2020 and confirmed that Bienno was not regularly paying contributions to the Guatemalan Social Security Institute (IGSS).
- **Quality of drinking water:** The auditor found that only three workers among those interviewed reported that the water sometimes had a bad taste and on other occasions smelled bad; and
- **Freedom of association and discrimination against members of the Ad Hoc Committee:** The auditor interviewed all eleven members of the Ad Hoc Committee who expressed that they faced discrimination with respect to overtime work – saying that they do not receive equal opportunities to work overtime as do their coworkers with similar jobs. The auditor found that the factory does not have a clear overtime policy that includes a criterion for selecting workers to work overtime and also does not have a written policy on freedom of association. At the same time, during the payroll review the auditor confirmed that at least half of the Ad Hoc Committee members had been working some overtime.

The findings were communicated to the factory and Hanesbrands put in place a remediation plan to address the areas of non-compliance. Hanesbrands informed the FLA on the status of the implementation plan and the progress made by the factory as of April 2020. The most relevant remediation actions implemented by the factory, with the support of Hanesbrands, were:

1. At the time the initial assessment was finalized, the factory was up to date on all wage payments and no additional delays were occurring.
2. The factory reached a payment agreement with the Guatemalan Social Security Institute for all pending contributions. As a result of the payment agreement the IGSS had resumed providing full medical coverage to all workers.
3. Bienno management indicated that it had resumed the water testing process and had scheduled maintenance and filter changes. Bienno management was unable to submit evidence of remediation but employees indicated some improvements to the quality of the drinking water.
4. The factory developed a Freedom of Association policy and an overtime policy that includes employee selection criteria.

After the initial assessment was completed Hanesbrands and the FLA were made aware of additional allegations of anti-union discrimination against the Ad Hoc Committee members by factory management, including sudden changes made to the work schedules of nine Committee members. The complainants argued that the actions taken by the factory against the workers were in retaliation for the Complaint filed with the FLA.

The new allegations were included as part of the scope of the Third Party Complaint procedure, and Hanesbrands communicated them to the factory and indicated that it would seek to gather additional information from factory management – which verbally denied the allegations in a communication with Hanesbrands.

The FLA published its Summary Report setting out the above actions, as well as describing the new allegations, on its website on May 11, 2020,² encouraging Hanesbrands:

“to make all the efforts to work jointly with the factory in implementation of the elements of the remediation plan not yet completed, including to ensure compliance with FLA Freedom of Association and Non-Discrimination Benchmarks. That process should also include all efforts undertaken to assess the new allegations made by the complainants that were not part of the original Third Party Complaint. Hanesbrands should report to the FLA concerning any progress made in, or obstacles to, implementation of the remediation actions.”

Meanwhile, the full implementation of the remediation plan was put on hold, as on March 16, 2020 the Guatemalan Government had announced a nationwide lockdown due to the spread of the Covid-19 virus and suspended the operations of all non-essential businesses, including in the garment sector. As a result, the Bienno factory shut down operations and on March 23 management suspended all employment contracts. The complainants also alleged that the factory’s action in suspending all employment contracts occurred without the authorization of the Ministry of Labor, as required by Guatemalan law.

Despite the challenges for completing the remediation process due to the pandemic, Hanesbrands continued its engagement with the factory and held several follow-up meetings (virtually, not in person) with factory management. The following is a list of information and actions gathered by Hanesbrands through this process:

4/1/2020. The factory informed Hanesbrands that it has suspended employees due to the mandatory COVID-19 lockdown.

9/8/2020. The factory reported it was working only at 40% of capacity and all active employees were receiving payments on time. (Hanesbrands had access to a copy of the payroll showing that only 40% of their workforce were active because the factory is located in what the government considered to be a “COVID-19 red zone”.)

² <https://www.fairlabor.org/report/bienno-sa-guatemala-summary-report>

10/14/2020. Hanesbrands completed another review of the payroll that showed that all active employees were receiving their payments on time.

10/30/2020. Hanesbrands completed another review of the pending corrective actions, which indicated that not much additional progress had been made, but employees were being paid on time and receiving medical coverage.

12/3/2020. Hanesbrands completed its last review and confirmed that payroll was on time and no complaints had been received from employees regarding social security coverage.

Meanwhile, the FLA and Hanesbrands continued to receive information from the members of the Ad Hoc Committee and the *Comisión de Verificación de Códigos de Conducta (COVERCO)*, a leading Guatemalan labor rights organization that has been the liaison with the members of the Ad Hoc Committee and had longstanding relationships with both the FLA and Hanesbrands.

The members of the Ad Hoc Committee stated that after the factory partially resumed operations following the COVID-19 mandatory shutdown, all eleven Ad Hoc Committee members were not called back to work, which they cited as another example of discrimination based on their union membership. Factory management indicated in response that they were only allowed to operate at 40% of capacity and that their selection of employees was based on skills tied to product type demand.

In January 2021, the members of the Ad Hoc Committee sent a letter to the FLA and Hanesbrands reporting that their employment contracts remained suspended since late March 2020, without any further payment. They argued that the factory had been operating at its full capacity – even during the collective work suspension approved from March 23 until September 30, 2020 – and that since November 2020 it has been hiring new employees, including workers who replaced the Ad Hoc Committee members in their positions. They added that only fifty workers, including all members of the Ad Hoc Committee, had not been called back to work – providing evidence that this was in retaliation for their union activities. In addition, they reported that some workers had been having problems getting access to social security services.

Finally, on February 15, 2021, Coverco shared with the FLA and Hanesbrands a resolution from the Twelfth Labor Court of Guatemala ordering the factory to reinstate the members of the Ad Hoc Committee, based on a finding that they were entitled to special legal protection. The Ad Hoc Committee members showed up at the factory on March 12, 2021 to be reinstated as the Labor Court ordered, but the factory refused to comply with the legal resolution.

Coverco reported to the FLA that after the factory failed to reinstate the Ad Hoc Committee members, it appealed the first instance resolution. The case is now under the review of the First Chamber of the Court of Appeals for Labor and Social Security.

The above information all represents serious allegations against factory management that under normal circumstances certainly would warrant further investigation through the TPC process.

Moreover, the decision of the above-referenced labor court reflects an objective determination that the Committee members should be reinstated (though the factory obviously has the right to appeal that decision).

However, the Hanesbrands manufacturing agreement with Bienno expired in December 2020. At the time of expiration Hanesbrands decided not to renew its contract with Bienno, explaining that this was based on a strategic business decision. As a consequence, Hanesbrands exited the factory in December (where, as noted above, it was responsible only for a very small share of production) and ended its business relationship with Bienno.

Hanesbrands informed the FLA as well as Coverco (with which it has remained in regular communication) about its exit from the factory and its resultant inability to (1) continue enforcing the implementation of the remediation plan developed to address the initial allegations in the Third Party Complaint, and (2) investigate further the new allegations of anti-union discrimination filed by the complainants after the initial assessment was concluded.

In April 2021, Hanesbrands provided the FLA with a final follow-up status report of implementation of the remediation plan; however, reflecting the above, this only covered information available as of December 2020 when it had ended its business relationship with the factory. This report indicated as follows:

- No more payroll delays were occurring.
- All workers were receiving full medical coverage by the Guatemalan Social Security Institute.
- Issues with the quality of the drinking water had been partially addressed.
- The policies on Freedom of Association and overtime had not been properly implemented and communicated to employees, including to the members of the Ad Hoc Committee.
- The allegations of anti-union discrimination submitted after the initial assessment were not addressed prior to Hanesbrands' exit.

CONCLUSION

It is clear that notwithstanding the earlier efforts by Hanesbrands to work with the factory in implementing the remediation plan covering the findings in the March 2020 assessment report (and as set out in the May 2020 public FLA Summary Report), the decision to exit the factory and end any business relationship with Bienno in December 2020 has precluded both (1) full implementation of that remediation plan, and (2) an objective assessment of the additional allegations made by the complainants concerning anti-union discrimination against the members of the Ad Hoc Committee.

The FLA remains very concerned about those allegations, though it is encouraged that there now is a first instance court resolution ordering the reinstatement of the Ad Hoc Committee members. At the same time, the fact that the factory appealed that decision means that for the Ad Hoc Committee members any effective remediation through available local judicial remedies is still uncertain, pending the decision of the Court of Appeals.

Unfortunately, with Hanesbrands having exited the factory and with no other FLA affiliates sourcing from there, the FLA no longer has a basis for proceeding with the Third Party Complaint process. Should there be other non-FLA member companies sourcing from Bienno, the FLA hopes that this public Report will be helpful in outlining the issues and process to date and in advancing the efforts by the Ad Hoc Committee complainants, with the assistance of Coverco, to seek remediation of the serious issues they have raised.