

Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case

Report prepared for the Fair Labor Association
by the Maquila Solidarity Network (MSN)

June 2007

Executive Summary and Recommendations¹

■ **The situation of the ex-Hermosa workers**

The closure of the Hermosa Manufacturing facility in El Salvador in May 2005 left former Hermosa workers without jobs, without back wages, without severance pay, without health insurance and without employee pensions. Workers have lost their homes, their health, and many – in particular those who had organized a union at the factory – remain unemployed to this day.

At least five of the women among the 63 organized ex-Hermosa workers have reportedly lost their formerly subsidized homes because their former employer didn't remit their contributions to the Social Housing Fund despite deducting payments from their wages. Some are suffering serious illnesses, including cancer, and no longer have access to ISSS health care, despite promises by the Salvadoran government.

■ **Actions by Buyers and FLA to Date**

Brands and licensees who are members of the Fair Labor Association (FLA) were amongst the buyers who sourced apparel products at the Hermosa facility during the last five years of its operations, and the closure is the subject of a third party complaint under the FLA Third Party Complaint system. As of the date of submission of the MSN report, that complaint had not yet been closed.

The FLA and FLA member companies, principally adidas Group, Nike and Russell, put considerable time and staff resources into advocating with various branches of the Salvadoran government, the employer and other Salvadoran institutions in an attempt to gain compensation and employment opportunities for the workers.

¹ The full report is available in both Spanish and English through the FLA and MSN websites.

■ Few Concrete Results

Despite these efforts, few concrete results were achieved. Although the government initially promised to provide workers access to ISSS health care programs, it failed to carry through on that promise.

Although a number of former Hermosa workers have been hired in some factories, including at Chi Fung, a nearby factory that produces for some of the same buyers, and at MB Knitting, which is owned by the former owner of Hermosa, not one of the organized workers has been hired at another garment factory in El Salvador.

The organized ex-Hermosa workers believe they are being blacklisted and will not receive employment opportunities at Chi Fung unless the buyers insist that they received priority in future hirings.

While acknowledging that there has been discriminatory hiring practices at Chi Fung in the past, buyers point to recent training programs and changes in hiring procedures at Chi Fung that they believe have eliminated discrimination in hiring.

Workers allege that there has been discrimination in hiring at Chi Fung against organized ex-Hermosa workers since the training and changes in hiring procedures, which resulted in workers being denied employment at the factory.

■ The Fair Labor Association's Emergency Fund

On December 22, 2006, the FLA announced the creation of an Emergency Fund "to provide immediate and direct assistance to the [former Hermosa] workers while efforts continue to hold the government of El Salvador and the factory owner responsible for carrying out their legal obligations to the workers."

The FLA media release also refers to continuing efforts to find jobs for the workers and to eliminate blacklists.

In late December the Fund made a distribution of \$36,000 to a total of 57 ex-Hermosa workers the equivalent of about 2 ½ - 3 months wages for each worker. The \$36,000 distributed was described as an initial distribution to be followed by a second distribution.

■ The MSN report

As a condition of setting up the Emergency Fund, the FLA committed to reviewing the impacts of the Fund and considering further measures to remediate the situation of the ex-Hermosa workers. In January 2007, the FLA contracted the Maquila Solidarity Network (MSN) to carry an assessment as part of its review process.

Based on interviews with FLA Participating Companies, staff and NGO members, other companies that had sourced from the Hermosa factory in El Salvador, and the various international and Salvadoran stakeholders in this case, the MSN report documents their different perceptions and concerns about the Fund and what responsibilities buyers have in this case and in other similar situations in which a supplier fails to fulfill its legal obligations to workers, and government fails to see that those obligations are met.

■ Findings and Conclusions

The FLA took a risk in deciding to create the Hermosa Emergency Fund. From the interviews conducted, it appears that the risk was worth taking, though the amount distributed to date was almost universally viewed as insufficient:

- The severe difficulties faced by the workers and the failure of both the factory owner and the Salvadoran government to meet their legal responsibilities to those workers are well established and beyond dispute.
- While there is general agreement on all sides that the amount of the initial Emergency Fund distribution was grossly inadequate, there is no doubt that the initial distribution made a real difference for these workers at a critical time.
- There was also general agreement that the initial distribution was carried out by FESPAD in a fair, impartial and effective manner.
- Although some of the brands interviewed felt that it was difficult to get the FLA to nail down the operational details of the Emergency Fund, making it unclear exactly what donors were committing to, on the whole there was little criticism of the operational details on the FLA's side.
- Most criticism was focused on the conceptualization of the Fund and the amount of the initial distribution, rather than the execution of the project.

The greatest area of disagreement among those interviewed was the question of whether the buyers have a moral obligation to fully compensate the former Hermosa workers for the monies owed to them by their employer.

- Many buyers expressed concern that the Emergency Fund may set a precedent for monetary contributions in similar situations.
- Buyers interviewed were unanimous in their opinion that while they were willing to accept a responsibility to lobby governments and pressure suppliers to ensure that legally-required wages, severance and other payments are made to workers, they do not accept responsibility to pay those amounts themselves.
- The organized ex-Hermosa workers, the trade unions, and international NGOs were unanimous in their opinion that brands do have a responsibility to compensate workers when employers and governments have failed to meet their obligations to those workers.
- Some NGOs and trade union organizations interviewed challenged the idea that providing humanitarian assistance in the Hermosa case might set a precedent for brands, pointing to the fact that there have been other humanitarian funds created to address similar situations and that those funds generally delivered more financial support to workers than has the FLA Emergency Fund to date.

In addition to making recommendations specific to the Hermosa case, the MSN report proposes measures that should be taken by brands to ensure that suppliers meet their legal obligations to workers in the event of a factory closure in the future.

The report concludes that where buyers have failed to perform due diligence to ensure that wages, severance, social security and other legally-mandated benefits are properly funded in the event of a factory closure, it is their responsibility to account for that failure. Their shared responsibility to ensure that the workers are properly compensated should flow, at least in part, from the buyers' failure to take preventative measures that are within their power to prevent the abuse of the workers manufacturing their products.

Recommendations:

A. FOR FURTHER ACTION IN THE HERMOSA CASE

The FLA, in its initial announcement of the Emergency Fund, made clear that the Fund is intended only to provide immediate assistance to the workers while efforts to remedy the overall situation continue.

1. A second round of Emergency Fund distributions

- The FLA should actively encourage all brands whose products were made at Hermosa, both FLA and non-FLA companies, to make a second and final contribution, with the expressed objective of raising an additional \$100,000, to be distributed within the next three months.
- Any additional monies collected should go to the organized ex-Hermosa workers who have been unable to gain alternative employment.

2. Requiring/encouraging suppliers to provide preferential hiring to the organized ex-Hermosa workers

- Where there is evidence that any former Hermosa worker was subjected to blacklisting at their other Salvadoran supply factories, brands should insist, at minimum, that corrective action be taken and that those workers be given immediate priority hiring.
- The FLA should verify whether the training and changes in hiring practices at the Chi Fung factory have been effective in eliminating discrimination in hiring.
- The FLA, in consultation with the organized ex-Hermosa workers, should identify an acceptable independent party to monitor the hiring process at Chi Fung, to ensure that the new hiring practices are followed and that anti-union discrimination is not present. If an acceptable third party is present to monitor hiring, the organized ex-Hermosa workers should be encouraged to apply for positions open at Chi Fung.

- Because workers believe that qualifying examinations are now being unfairly used as another means of blacklisting, whoever monitors the hiring process must ensure that any skills testing is necessary and relevant to the specific position(s) for which the worker is applying and that on-the-job training is available where testing reveals a need for improvement in a particular area.
- Because reports of discrimination in hiring at Chi Fung have discouraged organized ex-Hermosa workers from applying for employment at the factory, all the organized ex-Hermosa workers should be treated as a class and offered preference in future hirings at Chi Fung irrespective of whether they have applied for employment previously at the factory.
- Brands that sourced from Hermosa should also strongly encourage their other suppliers in El Salvador to offer priority hiring to any of the organized ex-Hermosa workers, as well as other former Hermosa workers who are currently unemployed, who are qualified to do the work in question.

3. Further joint pressure on the Government of El Salvador to deliver on its promise of ISSS health care

The FLA should encourage all FLA Participating Companies and licensees who source from El Salvador, as well as other companies that sourced from Hermosa, to join with the FLA in signing an Open Letter to the Government of El Salvador, strongly urging the Government to fulfill its promise to provide ISSS health care to the unemployed ex-Hermosa workers for a period of one year. Further, upon its release, the letter should be sent to the Salvadoran and US media.

4. Meeting of stakeholders in El Salvador

In collaboration with the ITGLWF, the FLA should convene in El Salvador a meeting of stakeholders to discuss, at minimum, the recommendations contained in this report and other possible means of addressing the outstanding issues. The parties involved in that meeting should make use of their presence in the country to publicly advocate for the Government of El Salvador to assist the ex-Hermosa workers and put in place further legal safeguards to prevent future “Hermosas” from happening.

B. PREVENTATIVE RECOMMENDATIONS

The following is a set of recommendations that are intended to avoid some of the specific injustices that accompanied the Hermosa closure.

1. Social Security and Other Payments

Buyers need to ensure that legally-mandated payments to social security, pension or other legally required contributions are not only recorded, but also that the deposits are completed.

2. Severance Payments

Buyers and the FLA should explore the following options for proactive measures to ensure that their suppliers are able to make legally-required severance payments in the event of a closure:

- The creation of escrow accounts to protect severance funds for the employees, either administered by suppliers as a group, industry associations, national governments, or as a code requirement for individual suppliers.
- A contractual hold-back of a percentage of order payments to suppliers until they receive certification that all contract conditions are met, including proof that all applicable payments to workers and contributions to government social security and other programs have been made.
- Allowing suppliers to make severance payments annually to workers. If this method is followed it is critical that the supplier respect seniority rights, rather than “re-hired” workers being considered “new” employees.

3. Facilitating alternative employment

Buyers’ efforts to facilitate alternative employment for retrenched workers should focus on, in order of priority:

1. Finding comparable jobs in the apparel sector, whenever possible in factories owned by the same employer and/or used by the same buyer(s);
2. Training for jobs with comparable income in other sectors; and
3. Providing support for income generating projects in workers’ communities.

Where buyer sourcing decisions lead to retrenchment, those buyers must play an active role in assisting workers to obtain alternative employment. Buyers should work with suppliers, governments, trade unions, NGOs and other buyers to:

- Encourage their remaining suppliers in the area to hire laid-off workers on a preferential basis;
- Provide assistance in locating alternative employment and referrals;
- Provide support for re-training for alternative employment; and
- Provide start-up loans or funding for small businesses.

4. Advocacy

In countries where buyers source a considerable amount of products, buyers should advocate for better government regulations and enforcement of existing regulations regarding contributions to social security, pension, housing and other government programs, as well as severance and worker entitlements.

5. Humanitarian or Compensation Funds

The report does not recommend that the FLA establish a permanent humanitarian fund at this time. This is not to suggest that the FLA or buyers involved in this case should refrain from setting up similar funds on an ad hoc basis in response to emergency situations.

6. Brand Responsibility

It was beyond the scope of the study to adequately answer the question of whether buyers should be considered jointly liable for the failure of their suppliers to meet their statutory obligations to workers. Clearly this will continue to be a subject of debate between companies and trade union and non-governmental organizations.