



Kukdong Report

WRC INVESTIGATION re COMPLAINT AGAINST KUKDONG (MEXICO)

PRELIMINARY FINDINGS AND RECOMMENDATIONS

January 24, 2001

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1. Background

On January 18, 2001, four workers at the Kukdong apparel factory in Atlixco, a small Mexican municipality in the State of Puebla, submitted a formal written complaint to the WRC. The Kukdong factory (officially "Kukdong International Mexico S.A. de C.V.," herein "Kukdong") produces apparel for final sale by several WRC-affiliated universities. This apparel is produced for Nike under licensing arrangements between Nike and those universities. Kukdong also produces apparel for Reebok.

The complaint alleged labor abuses which, if they truly occurred, would constitute serious violations of Mexican and international law and of provisions in the Codes of Conduct enacted by universities affiliated with the WRC. In response to the written complaint and earlier verbal complaints, a WRC delegation traveled to the State of Puebla, and to Mexico City, and conducted a fact-finding investigation from January 20 to January 23. The delegation included, among others, law professors and attorneys knowledgeable in Mexican, United States, and international labor law and experienced in the practice of labor law on behalf of both managers and workers. A list of the members of the fact-finding mission is attached to this statement.

The complaints against Kukdong alleged, among other things, that managers and supervisors of the Kukdong enterprise (1) unlawfully employed children; (2) physically assaulted and verbally abused workers; (3) unlawfully refused to provide maternity leave

and maternity benefits to pregnant workers; (4) locked workers inside the factory gates during lunch breaks and provided rancid food to workers, causing numerous illnesses; (5) penalized workers for exercising their legal entitlement to take sick leave; (6) fired workers for engaging in union activity; (7) paid wages below the minimum wages stipulated in law and in university codes; and (8) by refusing to reinstate workers who participated in a work stoppage on January 9 through January 11, 2001, and by threatening additional reprisal against those workers, violated and continue to violate the terms of a legally binding, written agreement negotiated and signed by Kukdong on January 13, 2001, under the auspices of the Conciliation and Arbitration Board of Puebla (the Mexican governmental entity authorized to conciliate labor disputes).

2. Reasons for Issuing this Statement of Preliminary Findings and Recommendations

The WRC intends, within approximately two weeks, to complete and release a full report of the extensive evidence gathered by the fact-finding mission.

Upon completing its extensive interviews and document search in Mexico, the delegation concluded that there is: a) at the very least, substantial credible evidence of severe ongoing violations of worker rights in a number of areas, and b) the potential for irreparable harm to the well-being and safety of Kukdong workers if immediate action is not taken to reinstate workers who participated in the January 9-11 work stoppage. In light of these findings, the WRC concluded that affiliated universities should, without delay, receive a statement of preliminary findings coupled with recommendations for immediate action.

3. Parties Interviewed by the WRC Delegation

The WRC delegation interviewed, and sought relevant documentation, from the following parties:

- Approximately 30 Kukdong workers. The delegation interviewed workers at the Kukdong factory itself, as well as in three of their home villages (from which workers commute to the factory). These interviewees included both supporters and opponents of the three-day work stoppage that precipitated the complaint to the WRC.
- Approximately five Kukdong managers, including the factory's general manager and chief human resources manager, and Kukdong's labor attorney.
- Officers and delegates of the CROC (Confederacion Revolucionario de Obreros y Campesinos), the union that is party to the existing collective employment contract with Kukdong.
- Officers of the UNT (Union Nacional de Trabajadores) and its affiliates, some of whom provided counsel to the participants in the work stoppage at Kukdong.

- Representatives of well-reputed human rights and labor rights organizations that are active in the State of Puebla.
- Members of the Conciliation and Arbitration Board vested by Mexican law with jurisdiction over Kukdong labor relations.
- A representative of the Ministry of Social and Economic Development of the State of Puebla.
- Professors of economics at the Benmerita Universidad Autonoma de Puebla who are conducting comprehensive research on labor relations and conditions in the manufacturing districts of Puebla, including the district where the Kukdong factory is located.
- A Professor of labor relations at the Universidad Nacional Autonomo de Mexico (UNAM).
- A Mexican attorney contacted by the International Labor Rights Fund, at the request of Nike, and asked to conduct an independent investigation and mediate in the aftermath of the work stoppage.
- A representative of Reebok who was in the process of conducting an investigation of the Kukdong labor dispute.

4. Preliminary Findings of Fact

The WRC delegation found substantial credible evidence of the following facts, each of which is corroborated by evidence adduced from more than one of the parties enumerated above:

- The Kukdong factory has employed children aged 13 through 15 for workdays of nine to ten hours. (This fact was admitted by Kukdong management.) The employment of workers under age 16 for more than six hours per day violates Article 123 of the Mexican Constitution.
- Kukdong managers and supervisors have committed, and continue to commit, sporadic acts of physical assault and verbal abuse against workers. These acts range from physical assaults such as blows by hammer and screwdriver, to slaps on the front and back of workers' heads, to screaming of racial epithets and obscenities. (This fact was admitted by Kukdong managers, although managers disagreed with workers about the frequency and severity of the physical and verbal assaults, and about whether such assaults continued after December 14, 2000.)
- Kukdong has unlawfully denied maternity leaves and benefits and sick leaves as required by Mexican labor law.

- Many workers at Kukdong are not paid the minimum wage mandated by Mexican law for the occupation of seamstress. The Kukdong wages are grossly insufficient to meet the barest needs of a family of three. (The Kukdong General Manager conceded that it would be difficult even for a single person to live on the wages of a Kukdong worker.) A worker with one dependent would fall below the commonly recognized line of “extreme poverty.” Kukdong wages compare unfavorably to wages earned by similarly situated workers in the apparel and textile industry in this region of Mexico.
- On more than one occasion, workers developed rashes, fevers, and stomach disorders after eating rancid meat or other unhealthful food in the factory cafeteria. (One or more of the workers sickened by company food was among the workers denied sick leave as required by Mexican labor law.) Workers are locked inside the company gates during their lunch breaks. It is true that workers may bring their own food to eat for lunch. However, when Kukdong recruited its workforce from villages in the region, Kukdong promised to provide healthful daily breakfasts and lunches. Some workers considered that promise a significant term of employment, in light of their severe poverty and their lack of time to eat breakfast at home. Many workers leave their homes well before dawn and before breakfast time to start workdays that are as long as fifteen hours (including ten hours of work and five hours of commuting). In addition to the problems with lunchtime meals, the Kukdong breakfasts consist only of bread and coffee. Such breakfasts violated workers’ reasonable expectations in a culture in which breakfast is generally a substantial meal.
- On January 3, 2001, Kukdong fired five supervisory workers who were leaders of a drive to replace the CROC with a new union. The purportedly legitimate grounds for dismissal – asserted *post hoc* by Kukdong managers – were utterly incredible (and contradictory) and therefore pretextual. After the dismissals, managers on some occasions accused the five workers of embezzling garments on unspecified dates well before the date on which they were concurrently discharged; and on other occasions accused the supervisory workers of failing to give lunch coupons to rank-and-file workers, or of taking away these coupons, on a date well before the date of discharge. These accusations were not made at any time before the firing. In sum, there is substantial credible evidence that when Kukdong managers fired the five supervisory workers, the managers were motivated exclusively by their hostility to the workers’ exercise of their right of free association.
- On January 9, hundreds of Kukdong workers began a work stoppage in support of the demand to replace the CROC with a new union. Most Kukdong workers supported this stoppage. The workers firmly believed that the CROC is a corrupt organization that imposed itself on the workers (and on the Kukdong enterprise) by illegitimate and unlawful means. The workers occupied the outdoor patio lying between the factory building and the fence surrounding the factory compound. On January 11, pursuant to a court order, several hundred riot police entered the compound and forced the workers out of the factory gates. (Witnesses interviewed by the WRC delegation recounted instances of beatings and other unnecessary force by the police and by CROC officials who were allegedly in command of the police contingent, and reported several injuries suffered by workers, including two serious injuries. Kukdong management and CROC officials deny that any injuries occurred and that they participated in any use of force against the workers.)

On January 13, under the auspices of the Conciliation and Arbitration Board of Puebla, Kukdong's authorized representative signed a written agreement to reinstate all workers who wished to return to their positions, without discrimination against workers who participated in the work stoppage. Kukdong thereafter refused to reinstate a large number of workers who were willing to return to work but whom Kukdong managers, Kukdong security guards and CROC officials identified as participants in the work stoppage. Other workers were forced to sign statements of loyalty to the CROC as a condition of reinstatement. Before the work stoppage, Kukdong employed roughly 900 workers. As of January 22, although management claimed that roughly half of the employees had returned to work, the WRC delegation observed a workforce that was considerable smaller, approximating 250 workers or less.

On January 22, the General Manager of Kukdong stated unequivocally that the factory had production orders sufficient to employ the same number of workers employed before the stoppage and that, indeed, he urgently desired to recruit new employees. Yet Kukdong has not reinstated the hundreds of idled employees who worked at the factory before the stoppage. A substantial but indeterminate portion of those idle employees, likely numbering in the hundreds, are ready and willing to return to work if they are assured Kukdong will honor its January 13 agreement to reinstate all workers without discrimination against those who participated in the stoppage.

With respect to one allegation communicated verbally to the WRC – that Kukdong did not pay workers for time spent on breaks – the delegation concluded that the alleged facts, even if true, would not establish a violation of Mexican law or university Codes of Conduct.

5. Grounds for Immediate Action by Affiliated Universities

Based on the substantial credible evidence capsulized in the previous section, the WRC concludes that affiliated universities have strong grounds for concern that Kukdong may stand in violation of provisions of their Codes of Conduct governing child labor, physical and verbal abuse, payment of minimum or living wages, and freedom of association. As to those affiliated universities whose Codes of Conduct require licensees and their contractors to comply with applicable local labor laws, the evidence provides strong grounds for concern that Kukdong has violated Mexican and international law as to child labor, physical abuse, payment of minimum wages, gender discrimination, maternity leave, sick leave and freedom of association.

In its full Report (to be completed in about two weeks), the WRC will present (1) a more detailed assessment of the facts; (2) firm conclusions with respect to all allegations as to whether, by a preponderance of all the evidence, Kukdong has violated provisions of university Codes of Conduct; and (3) specific recommendations for further remedial action, as warranted.

At this preliminary stage, however, the WRC can firmly conclude that:

- By refusing to reinstate workers and by coercively inducing workers to resign, Kukdong violated its legally binding agreement to reinstate all workers who wish to return to work, without discrimination against those who participated in the stoppage.
- In firing the five supervisory employees who are leading supporters of replacing the CROC with a new union, Kukdong violated the principle of freedom of association codified in Mexican law, ILO conventions, and university Codes of Conduct.

On the basis of these firm conclusions, the WRC recommends – indeed urges – that affiliated universities immediately take steps to seek the reinstatement of (1) the five supervisory workers and (2) all workers idled after the stoppage who are willing to go back to work.

The reinstatement of these two groups of workers is urgent for at least four reasons:

First, the workers at Kukdong live in severe poverty. Those who lost their jobs face potential economic and human catastrophe – for themselves and their families. This is true of all idled Kukdong workers, but the situation is especially urgent for the single mothers among the predominantly female Kukdong workforce.

Second, if the idled workers are not quickly reinstated, there is a great risk of irreparable damage to their right of association. To the extent that the idled workers consist disproportionately of supporters of an independent union at Kukdong, failure to reinstate those workers will likely extinguish the associational activities of those Kukdong workers – whether idled *or* still working – who seek an alternative to the CROC union, which they firmly believe to be corrupt and undemocratically entrenched. The size and passion of the three-day work stoppage suggest that such an alternative union may well have the support of a large majority of those working at Kukdong before the stoppage.

Third, a failure to reinstate idled Kukdong workers will also likely chill the associational activities of workers throughout Puebla, indeed throughout all of Mexico, who wish to replace unions they perceive to be corrupt and illegitimate with democratic unions of their own choosing.

Finally, sustaining and increasing employment at Kukdong is important to the economic development of this impoverished region of Puebla. This is especially true if Kukdong not only maintains or increases the number of jobs but also “continuously improves” the working environment and compensation of its employees – a goal to which officials of Kukdong, Nike and Reebok have publicly pronounced their commitment.

6. Specific Recommendations for Immediate Action by Affiliated Universities

The WRC recommends to affiliated universities that they immediately communicate with officials of Reebok, Nike and Kukdong. Affiliated universities should urge those three enterprises immediately to take all actions necessary to:

- (1) reinstate *all* workers in the two categories specified in Section 5 above, including all those who purportedly or actually signed “resignation” documents.
- (2) ensure that Kukdong’s senior managers are held responsible for securing the free return to the factory of idled workers, without overt or subtle obstruction or intimidation by Kukdong security personnel, middle managers, supervisors or coworkers, or by officers, delegates or other agents of the CROC.
- (3) ensure that Kukdong’s senior managers are held responsible for securing the non-discriminatory treatment of workers in the two specified categories – that is, Kukdong’s senior managers must take proactive measures to ensure that those workers are not subject to threats, intimidation, penalties, or reprisals in any manner by Kukdong managers, supervisors or coworkers, or by CROC officers or agents, whether these actors engage in such threats, intimidation, penalties or reprisals (a) through discrimination in the terms and conditions of employment of those workers after their return to their factory; (b) through their own actions outside the workplace; or (c) indirectly through actions encouraging or supporting threats, intimidation, penalties or reprisals by local police forces or other government authorities or personnel. Workers who returned to work only under the condition that they sign statements of loyalty to the CROC must be informed that these statements are null and void. Kukdong must publicly state that it will not pursue criminal or civil charges against any workers who participated in the work stoppage, including the five supervisors fired prior to the stoppage. Affiliated universities should further urge the companies to discourage local government authorities from pursuing criminal or civil charges.
- (4) support the WRC’s future efforts to undertake a robust program of outreach to the communities where workers in the two specified categories live, in order to advise them of their rights to return to work and assist them in achieving reinstatement. In undertaking this program, the WRC urges a cooperative effort among itself, locally affected workers, local worker rights and other human rights organizations, the Fair Labor Association, the International Labor Rights Fund, Nike and Reebok.
- (5) support the WRC’s future efforts to monitor the Kukdong senior managers’ fulfillment of the responsibilities enumerated above – including the immediate placement of independent monitors inside the plant specifically charged with ensuring that workers are able to return to work without fear of reprisal, with such monitors to remain in place until tensions have cooled and workers who wish to return have returned. In order to facilitate such monitoring, the WRC urges a cooperative effort among itself, locally affected workers, local worker rights and other human rights organizations, the Fair Labor Association, the International Labor Rights Fund, Nike and Reebok.
- (6) continue Nike and Reebok’s short-term and long-term economic relationships with Kukdong while those enterprises take the remedial measures enumerated above – consistent with the WRC’s policy that licensees should not “cut and run” in the face of labor disputes and code-of-conduct violations.

The WRC urges affiliated universities to immediately convey to Nike, Reebok and Kukdong their commitment to implement these recommendations. The WRC will provide whatever assistance affiliated universities may require.

Appendix 1: Members of the WRC Fact-Finding Mission to Mexico

- Mark Barenberg, Professor of Law at Columbia Law School; chairperson of the WRC Board; and leader of the delegation
- Marcella David, Professor of Law at the University of Iowa College of Law; serving on the WRC Board as a representative of the caucus of administrations of WRC-affiliated colleges and universities
- Reverend David Dyson, Pastor of Lafayette Avenue Presbyterian Church (Brooklyn, NY); representative on the WRC Board
- Marikah Mancini, graduate student in economics at Purdue University; student representative on the WRC Board
- Scott Nova, WRC Executive Director
- Rodrigo Olvera, Coordinator of Labor Rights Office, CEREAL (Centro de Reflexion y Accion Laboral)

Observer: Jerry Morales, Professor of Law at University of Arizona School of Law; Partner at Snell and Wilmer, L.L.P.

Appendix 2: Contact Information

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