



## WORKER RIGHTS CONSORTIUM

### UPDATE ON MINIMUM WAGE VIOLATIONS

#### IN BANGALORE, INDIA

April 28, 2010

#### **I. Summary Introduction**

As discussed in our preliminary report issued on March 5, 2010, the current practices of apparel factories in Bangalore, India with regard to the issue of minimum wage continue to raise serious questions regarding the industry's approach to compliance with Indian labor law and codes of conduct. Unfortunately, the conduct of garment factories in Bangalore since we issued our preliminary report has given only heightened cause for concern.

As we stated in our earlier report, on March 4, 2009, the WRC sent a memo to collegiate licensees and other major U.S. and European apparel brands sourcing in Bangalore noting that the city's apparel industry was refusing to implement an increase in the legal minimum wage for garment workers which had been issued by the state government of Karnataka (where Bangalore is located) in March 2009. We pointed out that the new minimum wage had been legally binding since that date and that, under both buyer and university codes of conduct, workers must be compensated for all back wages owed as a result.

The response of most buyers contacted by the WRC was encouraging. Most expressed that they concurred with the WRC's findings and would be sending a communication to their supplier factories requesting implementation of the March 2009 increase in the minimum wage and a plan by which affected workers would be paid the resulting arrears. The response of the Bangalore garment industry, however, was disturbing. Rather than actually comply with the minimum wage law and pay their workers the income they have been illegally denied for over a year, garment

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manufacturers, instead, continued to pursue a political lobbying effort to have the wage increase repealed.<sup>1</sup>

As has been publicized by various industry parties, including the Clothing Manufacturers Association of India (CMAI), these efforts were partially successful. On March 30, 2010, the Karnataka labor department announced that the minimum wage for the lowest-paid classifications of worker, at 126.97 rupees (USD 2.75) per day, had been set too high in March 2009 as a result of a “clerical mistake,” and was to be adjusted downward to 122.26 rupees per day, thus repealing a *portion* of the March 2009 increase.<sup>2</sup>

The retroactive (partial) repeal of a minimum wage increase is something the WRC has never encountered previously, in India or elsewhere, and seems clearly to violate the spirit (and quite possibly the letter) of Indian labor law. Calling the March 30, 2010 revision of the March 2009 minimum wage a correction of a “clerical error” is a clear misnomer. Instead, pressure from local manufacturers appears to have caused the government to retroactively lower the minimum wage, while using the claim of “clerical error” as a thin pretext. As explained below, the actual methods used by the government to recalculate the wage demonstrate that the government is acting not to correct a “clerical error,” but to retroactively change policy in a manner highly detrimental to the industry’s lowest-paid workers.

It is crucial to note that even if this retroactive lowering of the minimum wage was a lawful act – and its legality has been challenged by garment worker organizations in the Karnataka High Court<sup>3</sup> – the repeal is, at most, *partial*. However one regards the revised notification, the WRC estimates that *garment manufacturers still owe these workers, at minimum, nearly eight million dollars in back wages*. Yet at least one major garment manufacturer already has seized upon the recent revision of the March 2009 increase to claim that it no longer owes *any* back wages to its workers for its prior failure to obey the law – a claim that, as explained below, is flatly contradicted by this company’s own records.

The message these events send to both garment workers and manufacturers, in Bangalore and elsewhere, is a deeply troubling one: Employers can, for nearly a year, openly cheat their workers by simply refusing to comply with minimum wage laws. Then, so long as the employers are politically influential enough to procure an administrative “fix” from local governments, they can obtain retrospective absolution for their past law-breaking. This is a deeply dangerous precedent.

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<sup>1</sup> A key recommendation in the WRC’s previous memo was that buyers also request that manufacturers cease their lobbying to have the State of Karnataka repeal the March 2009 increase. We noted that, as the increase was the first hike in basic wage levels in the apparel industry since 2001, and, as the cost of living in Bangalore has risen during this period by more than 60%, any such effort by factory owners was inappropriate and should not be condoned. The latest developments in this situation underscore the importance of that recommendation.

<sup>2</sup> See, Government of Karnataka, Minimum Wages Notification No. KAE 69 LMW 2009 (Mar. 30, 2010).

<sup>3</sup> See, Karnataka High Court, Case No. 14135/2010.

The WRC continues to ask apparel brands and retailers to take meaningful measures to address the apparent legal and political impunity with which the Bangalore garment industry avoids its obligations to its poorest workers, not the least of which would be to require their suppliers to pay the sizeable wage arrears owed to these employees.

## **II. Review of Recent Events**

### **A. March 4, 2010: WRC Sends Memorandum to Buyers re Minimum Wage Violations**

On March 4, 2010, the WRC sent a memorandum to university licensees and other major apparel brands and retailers sourcing from Bangalore noting that while Minimum Wages Notification No. KAE 46 LMW 2006, which had been issued by the Department of Labour of the State of Karnataka, and legally taken effect, in March 2009, significantly increased the minimum wage for the apparel sector (the “tailoring industry”), the Bangalore garment industry was refusing to implement the increase as it applied to their lowest-paid classifications of employees, who made up an estimated one-third of the industry’s workforce, or roughly 125,000 persons. Our memorandum noted that certain manufacturers had cited, as an excuse for not paying the minimum wage, the fact that the CMAI had made a request to the Karnataka Labour Department that the increase be repealed.

The WRC pointed out that the request to the Karnataka government by the CMAI to lower the minimum wage had no bearing on the fact that it is, and has been, legally binding on employers, and that back wages are due to workers as a result of the manufacturers’ failure to comply with the law. The WRC urged buyers to ask their suppliers to disown the CMAI’s attempts to lower the minimum wage, noting that the sixty percent rise in the cost of living in Bangalore since the basic minimum wage was last increased in 2001, was far higher than the increase during that period in minimum wages for garment workers – even including the March 2009 hike.

### **B. Buyers Call on Suppliers to Pay Minimum Wage and Back Pay Owed to Workers:**

In response to our memorandum of March 4, 2010, the WRC was informed in mid-March, both verbally and in writing, by a number of leading apparel buyers, including Adidas, Gap, H&M, Levi-Strauss, New Wave Group (parent of collegiate licensee Cutter and Buck), and Phillips Van Heusen (“PVH”), that they shared the WRC’s position that the March 2009 increase was legally binding upon garment manufacturers, and that they had written to their suppliers requesting that it be implemented, and that wage arrears paid to the affected workers. The WRC also was made aware that some of these companies had met with a number of other buyers in Bangalore on March 12, and that those present had indicated that they would be requesting their suppliers to increase wages to implement both the March 2009 minimum wage increase, and a new increase in the Dearness Allowance (commonly known as the “DA”), a cost-of-living adjustment which must be paid on top of the basic minimum wage, that was scheduled to go into effect on Apr. 1, 2010. In addition, each brand also individually would request their suppliers to indicate, within thirty days, the number of workers affected by not having previously implemented the March 2009 increase, and how payment of the resulting wage arrears would be provided.

Responses to our communication from collegiate licensees varied greatly. As noted above, Cutter and Buck, whose parent company, the Swedish firm, New Wave Group, AB, has one supplier

factory in Bangalore that produces collegiate licensed apparel, and Adidas, which sources only non-collegiate licensed products from Bangalore, responded promptly and substantively to our memo. Unfortunately, two other licensees, Vantage Custom Classic, which sources collegiate licensed apparel from Bangalore, and Nike, which sources only non-collegiate goods from the city, did not respond at all. Most puzzlingly, VF, which sources collegiate licensed apparel from one of Bangalore's largest manufacturers, asserted that the minimum wage increase was not legally binding – a position at odds with not only that of the WRC, but also every other apparel buyer that responded to our communication.

### **C. March 28, 2010: Bangalore Municipal Elections Bring State Government Allies to Power**

On March 28, 2010, elections were held in Bangalore for the Brihat Bangalore Mahanagara Palike (BBMP), the Bangalore municipal government, in which the Bharatiya Janata Party (BJP), which already controlled the state government of Karnataka, unseated the incumbent Congress and Janata Dal – Secular (JS-D) parties.

The timing of the 2010 BBMP elections is significant in relation to the issuance of the revised notification partially repealing the March 2009 minimum wage increase, as once the polling on March 28 was past and its local candidates had just been elected to five-year terms, the risk receded for the BJP state government that extending this favor to garment manufacturers at workers' expense might engender a popular backlash against its candidates in the local Bangalore election.

Indeed the BJP government already was on record indicating its willingness to bend its labor regulations to cater to Bangalore's apparel manufacturers. Shortly after the BJP attained power in the state government in 2008, Karnataka adopted an official policy of aggressively courting investments in apparel and textile manufacturing, by offering, among other enticements, "easy employment rules" for factory owners.<sup>4</sup>

### **D. March 30, 2010: State Government Issues Partial "Repeal" of 2009 Wage Increase**

Only three days after the Bangalore municipal elections, on March 30, 2010, the Karnataka government issued a new minimum wage notification, No. KAE 69 LMW 2009, which stated that there had been a "clerical error" in the March 2009 minimum wage notice for the apparel sector. The new notice specified a revised schedule of minimum wages, under which wages for the lowest-paid garment workers, including the DA, were reduced from 126.97 to 122.26 rupees per day.

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<sup>4</sup> Madhurima Nandy, "Karnataka Drafts New Policy to Attract Textile Investment," *Mint* (Jun. 4, 2008) <http://www.livemint.com/2008/06/04224346/Karnataka-drafts-new-textile-p.html>. *Mint* is an Indian business periodical that is a joint venture of the *Wall Street Journal* and the *Hindustan Times*, <http://www.htmedia.in/RightListing.aspx?page=Page-HTMedia-EnglishPrint>.

Yet the correction of a “clerical error” – which was cited as the reason for the new notice – did not involve, as one might ordinarily expect, fixing a typographical error, relocating a misplaced decimal point, or correcting a mistake in arithmetic. Instead, in adjusting the minimum wage downward, the state government made wholesale changes to the way the minimum wage is calculated, which are inconsistent, unprecedented, and run directly counter to its own prior policies and procedures.

Stated as simply as possible, the revised notification changed both: (1) the way in which the DA cost of living adjustment relates to the basic minimum wage, and (2) the way the DA, itself, is calculated. First, the supposed “clerical error” cited by both the manufacturers in requesting the repeal, and the state government in granting it, was that in the original March 2009 notification, the basic minimum wage was calculated based on the cost of living in 2005, with the additional DA calculated based on the increase in the cost of living from 2006 to the present. But in the revised notification, the basic minimum wage is calculated based on the cost of living in 2007, with the Dearness Allowance based on the increase in the cost of living since 2008. This is hardly a correction of a “clerical error” – it is a clear change in *methodology*.

Importantly, and contrary to its own policies, the state government also reset – downwards – the rate at which the minimum wage is increased relative to a rise in the cost of living. In October 2008 while discussing the increase in the basic minimum wage that eventually was issued in March 2009, the Karnataka Minimum Wage Advisory Board, a tripartite body, recommended, that increases in the cost of living be incorporated into the basic minimum wage at a ratio of .04 rupees for every one percent rise in consumer prices above their level in 1960.<sup>5</sup> The Board’s recommendation was accepted by the state government and the March 2009 minimum wage notice was calculated on that basis. In the revised notification of March 2010, however, in accounting for the increase in cost of living during 2006-2007, this ratio was reduced, without explanation or justification, to .03 rupees, which had been the state’s practice prior to October 2008.

In other words, the revised notification, far from correcting a “clerical error,” is an unprecedented and methodologically inconsistent “fix” instituted for the benefit of factory owners. It replaces a wage calculated based on 2005 cost of living data with a figure based on newer data from 2008. Yet at the same time, it discards a standard for applying the data which was adopted in 2008, in favour of an older standard that was no longer in use.

Finally, the reissuance of a legal minimum wage standard – which had already been in effect for over a year – with an adjustment *downwards*, when consumer prices have continued to show significant inflation,<sup>6</sup> is, in the experience of the WRC, extraordinary and unprecedented. Also

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<sup>5</sup> Karnataka Minimum Wage Advice Board, Minutes of Meeting of October, 2008 (copy on file with the WRC). Significantly, the reason given for increasing the ratio was that that the cost of living had greatly increased, which imposed a burden on workers, particularly, women workers, whom, it was noted, make up the majority of employees in the apparel industry. Ibid.

<sup>6</sup> See, Ministry of Labor and Employment - Labor Bureau, *Consumer Price Index Numbers for Industrial Workers for Year 2009*, <http://labourbureau.nic.in/indtab.html>.

remarkable is the fact that the revised minimum wage notification is apparently meant to be retroactive, conveniently relieving garment manufacturers of millions of dollars in wages owed to workers that they have illegally been refusing to pay.

### **E. April 6, 2010: Leading Garment Manufacturer Denies All Wage Arrears**

Regardless of the motives for the revised notification, the fact remains that even if one accepts the legitimacy and legality of a retroactive reduction in the minimum wage from 126.97 to 122.26 rupees per day, Bangalore's garment manufacturers still have cheated an estimated 125,000 of their lowest paid workers of millions of dollars in wages over the past year. These wages are still owed to workers.

From March 2009 through March 2010, these workers were each paid a wage of 113.2 rupees per day, amounting to an underpayment, even under the revised notification, of 9.06 rupees per day, or 235.56 rupees per month. **Each of these workers is still owed, at the very minimum, 2826.72 rupees (USD 63.73) as a result of manufacturers' failure to pay the minimum wage for the past twelve months. The estimated wage arrears for the Bangalore apparel industry, then, are still 353,340,000 rupees, or nearly eight million dollars.**

Unfortunately, however, it appears that some of the leading garment manufacturers in Bangalore are seizing upon the *partial repeal* of the March 2009 minimum wage increase that the industry has managed to procure from the state government as the basis for claiming that they are now absolved of *any wage arrears* to their lowest-paid employees from their past twelve months of defying the law. The WRC has obtained an April 6, 2010 letter written by Mr. Rajendra Hinduja, managing director of Gokaldas Exports Ltd., India's largest garment manufacturer, which employs 47,000 workers in Bangalore, in which Mr. Hinduja states, referring to the revised notification, that "With this correction issued by the Government of Karnataka, there is no violation and neither any worker has been deprived of his rightful dues."<sup>7</sup> However, in clear contradiction to Mr. Hinduja's claim, the WRC has obtained paystubs issued by Gokaldas and other major manufacturers during the period from March 2009 to March 2010, indicating that workers were being paid 113 rupees per day,<sup>8</sup> not the 122.26 rupees per day mandated under the revised notification.

### **III. Updated Recommendations to Buyers:**

In light of the indications that Bangalore apparel manufacturers have used their political influence to have the minimum wage lowered to avoid paying wages owed to their lowest-paid workers, and, further, continue to violate their obligations to their workers under buyer codes of conduct, Indian law and international labor standards, the WRC has issued the following updated recommendations to collegiate licensees and other apparel buyers:

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<sup>7</sup> Copy of letter on file with the WRC.

<sup>8</sup> Copies of pay slips on file with the WRC.

1. To require their Bangalore suppliers to pay workers no less than the original minimum wage as issued in March 2009,<sup>9</sup> plus subsequent increases in the DA cost of living adjustment;
2. To require their Bangalore suppliers to fully compensate all affected workers for any failure to pay them the minimum wage as issued in March 2009, plus applicable DA cost of living adjustments, during the period from March 2009 to March 2010.
3. The WRC has asked buyers to collaborate with the WRC and other stakeholders in forming a committee to review and verify compensation paid to apparel workers during the period of March 2009 to March 2010, to calculate the underpayment of wages and other fringe benefits (employee provident fund contributions, etc.), and to request and oversee buyers' disbursement to workers of compensation for the same.
4. To reduce incentives for manufacturers to continue to violate and seek reductions in minimum wage, the WRC recommends that buyers review their purchasing practices to ensure that they are paying their suppliers prices that enable factories to pay no less than the minimum wage as originally noticed in March 2009, plus subsequent increases in the DA cost of living adjustment.

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<sup>9</sup> Requiring payment according to the original March 2009 notification is appropriate in recognition of the fact that the partial repeal of the notification is of questionable legitimacy and legality, and so as not to reward the apparel industry for its twelve-month refusal to pay the minimum wage.