

**To:** Nils Helander; Thomas Touborg; Chanchai Lertkulthanon,  
Pandora Production Co., Ltd.  
**From:** Benjamin Hensler, General Counsel and Deputy Director for Research and Policy  
**Re:** Labor Rights Violations at Pandora Production Co., Ltd., (Thailand)  
**Date:** November 15, 2019

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## I. Introduction and Summary

This memorandum discusses—and requests your company’s response—concerning labor rights violations at Pandora Production Co., Ltd., (Thailand) (“Pandora”). As you know, Pandora is a Danish owned Jewelry factory located in the Gemopolis Industrial Estate in Bangkok, Thailand, which currently employs more than 7,000 workers. Pandora is a supplier to Pandora Jewelry, LLC (“Pandora Jewelry”) of jewelry produced under licenses from universities in the United States that are affiliated with our organization, the Worker Rights Consortium (“WRC”).<sup>1</sup> We note that both Pandora and Pandora Jewelry are fully owned subsidiaries of Pandora Group, a publicly traded company headquartered in Denmark.<sup>2</sup>

The WRC investigates labor rights violations in factories involved in production of goods licensed by our affiliate universities in order to assess and ensure these factories’ compliance with these universities’ labor rights standards—which is a contractual obligation of licensees such as Pandora Jewelry.<sup>3</sup> The WRC initiated our investigation of Pandora in response to a complaint received from factory workers in July 2019. We note that Pandora also supplies jewelry (which is not subject to university licenses) to the Walt Disney Company,<sup>4</sup> which maintains its own contractual labor rights standards for its vendors, including Pandora.<sup>5</sup>

In early 2018, workers at Pandora began organizing a union at the factory. As discussed in detail in this memorandum, the company’s response was to violate workers’ freedom of association rights by retaliating against employees who were leaders and activists in this effort—firing *en masse*, in February 2018, 73 of the plant’s workers, the majority of whom were members of the union’s executive committee or an associated union subcommittee.

Despite this severe repression of their freedom of association rights, workers at Pandora persisted in their union organizing efforts. By the beginning of 2019, more than 5,000 out of the factory’s roughly 7,000 employees had joined the union, which, during this same time also negotiated an initial collective bargaining agreement with the company. However,

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<sup>1</sup> Worker Rights Consortium, “Affiliate Institutions,” available at: <https://www.workersrights.org/affiliates/affiliate-institutions/>.

<sup>2</sup> Pandora Group, “Annual Report” (2018), available at: <https://investor.pandoragroup.com/static-files/806f8a35-915f-4452-a147-94be22ddd4a8>.

<sup>3</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards.”

<sup>4</sup> Walt Disney Company, “Facility List,” available at: <https://www.thewaltdisneycompany.com/wp-content/uploads/2018/12/Facility-list.pdf>.

<sup>5</sup> Walt Disney Company, “Code of Conduct for Manufacturers,” available at [https://www.thewaltdisneycompany.com/wp-content/uploads/2015/11/Code\\_of\\_Conduct\\_English.pdf](https://www.thewaltdisneycompany.com/wp-content/uploads/2015/11/Code_of_Conduct_English.pdf).

despite this agreement, which, under Thai law, obligated Pandora to refrain from terminating employees who are union members without just cause,<sup>6</sup> in February 2019, the company conducted another mass termination, of roughly 100 workers, in which more union members were unlawfully discharged.

This memorandum concerns the WRC's preliminary findings regarding these two mass terminations, by which Pandora has not only contravened Thai labor laws but also placed Pandora Jewelry in violation of its obligations under university labor standards for licensees<sup>7</sup> and put Pandora, itself, out of compliance with its obligations under Disney's labor standards for vendors.<sup>8</sup> The WRC's preliminary findings concerning the two incidents that gave rise to these violations are, in summary, as follows:

- In February 2018, Pandora retaliated against workers' exercise of freedom of association, as protected under international labor standards and relevant codes of conduct, by firing 73 workers, the majority of whom were employees who were union leaders and activists, and, subsequently, refusing to correct this violation by reinstating these workers with full back pay; and
- In February 2019, Pandora unlawfully included employees who are union members covered by the factory's collective bargaining agreement—and as such are legally protected against discharge without just cause—in a group of roughly 100 workers whom the company involuntarily terminated, and, subsequently, refused to correct this violation by reinstating these workers with full back pay.

With respect to both incidents, Thai government labor authorities found that Pandora's conduct violated the country's labor laws.<sup>9</sup> The labor authorities determined that, in the mass firing in February 2018, Pandora unlawfully targeted employees who were union leaders and activists among those workers who were discharged;<sup>10</sup> and that, with respect to the February

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<sup>6</sup> Thailand Labor Relations Act B.E.2518 (1975), § 123 (“During the enforcement of the working condition agreement or award, no employer shall dismiss the employee, representative of the employee or director, member of Sub-committee or member of the labor union or the director or member of the Sub-committee of the labor federation who related to the demand, unless such person: (1) performs his duties dishonestly or intentionally commits a criminal offence against the employer; (2) willfully causes damage to the employer; (3) violates the regulation, rule or lawful order of the employer after a written warning or caution has been given by the employer. If there is a serious circumstance, such warning or caution may not be made. In this regards, the aforesaid regulation, rule or order shall not be made with a view to obstruct such person from doing any act related to the demand; (4) unreasonably neglects his or her duty for three consecutive days; (5) performs any acts which encourage, assist or induce any person to violate the working condition agreement or award.”).

<sup>7</sup> See, Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II.B.9 (“Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining.”).

<sup>8</sup> Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference”).

<sup>9</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018), *in re Pandora Production*, *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562, and *in re Pandora Production*, Labor Relations Committee, Order 45-49/2562 (May 8, 2019).

<sup>10</sup> Thailand Labor Relations Act 1975 (B.E.2518), § 121 (1-2) (“No employer shall: (1) terminate the employment or act in any manner which may cause an employee, a representative of the employee, a director of labor union or a director of labor federation being unbearable to continue working with due to the fact that the employee or labor union calls for a rally, files a complaint, submits a demand, participates a negotiation or institutes a law suit or being a witness or submits evidence to the competent officials under the law on labor

2019 terminations, the company fired employee union members covered by the factory's collective bargaining agreement, who, as result, were legally protected from discharge without just cause, amongst the workers whom the factory dismissed.<sup>11</sup> The WRC has conducted in-depth interviews with workers from Pandora, whose testimony confirmed the accuracy of these determinations.

In the concluding section of this memorandum, the WRC recommends and identifies the remedial measures that are necessary for Pandora to take to address these very serious violations of university licensing standards and Disney's vendor code of conduct, most importantly, the reinstatement, with full back pay, of the workers affected by these retaliatory and unlawful mass terminations.

This matter requires your urgent attention. We are requesting that you respond to this memorandum by November 29, with whatever relevant additional information you may have concerning the violations discussed herein, and with a clear statement of whether Pandora intends to implement the remedial steps that we have identified as necessary in order to correct these violations of university and brand codes of conduct.

## **II. Methodology**

The findings outlined in this memo are based on the following sources of evidence:

- Offsite interviews with 18 current and former Pandora workers, conducted in July and August 2019;
- Review of the decisions of Thai government labor authorities (Labor Relations Committee and Labor Court);<sup>12</sup>
- Review of company documents provided by workers, including notices of dismissal; and
- Review of relevant Thai labor laws and international labor standards.

## **III. Preliminary Findings**

### **A. Violations of Freedom of Association—Retaliatory Mass Termination of Employee Union Officers and Members in 2018**

Workers at Pandora began organizing a union at the factory in early January 2018. On January 30, 2018, their newly formed union, the Pandora Labor Union, was officially registered by the Thai Ministry of Labor, and, on the following day, held its first general meeting. One hundred and thirty-four out of the 150 employees who were members of the union at that time met to establish a union executive committee comprised of 35 of these employees and to authorize the union to submit collective bargaining demands to the

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protection or to the Registrar, conciliation officer, labor dispute arbitrator or Labor Relations Committee under this Act or to the Labor Court, or due to the fact that the employee or Labor union preparing to do so; (2) terminate the employment or act in any manner which may cause an employee being unbearable to continue working with due to the fact that such employee is a member of the labor union;[...]"

<sup>11</sup> Thailand Labor Relations Act B.E.2518 (1975), § 123.

<sup>12</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018), *in re Pandora Production*, *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562, and *in re Pandora Production*, Labor Relations Committee, Order 45-49/2562 (May 8, 2019).

company when the number of workers who were union members equaled 20% of the factory's total workforce—the minimum level required under Thai law for a union to submit such demands.<sup>13</sup>

Pandora's management was aware of and expressed concern regarding workers' exercise of freedom of association by forming their union. In particular, both the WRC and Thai government labor authorities gathered mutually corroborative evidence that the factory's human resources managers questioned workers about their union activities.

Significantly, these inquiries by factory management included soliciting from employees the identities of which workers had joined the union. To cite a specific example, one worker testified to the Labor Relations Committee that on January 31, 2018, the same day that the union held its first general meeting, one of the factory's human resources officers asked this worker whether he thought that efforts to organize a union at the factory were good or bad and whether the employee knew of workers who had joined the union.<sup>14</sup>

Starting on the following day, January 31, certain employees who were active union members began openly recruiting other employees to join the union. The union posted messages on Facebook inviting workers to join the union and informing them of the locations where employees could get membership forms to do so. These locations were a tent that the union pitched roughly 100 meters from the main gate of the Gemopolis Industrial Estate, where the factory is located, and a table that the union placed in a different location about 500 meters from Pandora.

### **1. Unlawful Termination of Employee Union Executive Committee Member on February 2, 2018**

On February 2, 2018, two days after the employees' newly founded union began its membership drive, the company fired one of the workers who was a member of the union's executive committee and who was playing an active role in recruiting other employees to join the union. Before she was terminated, the union leader was summoned to the factory's human resources office, without being told the reason, but only that "If you don't go [voluntarily], the [factory's] chief of administration will tell the security guard to drag you [in]!"

At the human resources office, the employee was led into an office where a company representative told her that because the factory's production orders had declined, the company needed to reduce the number of employees at the factory. He then provided her with two documents—a "voluntary resignation" form and a standard termination letter—and told her that she had to sign one of them but could choose which one. If the worker signed the "voluntary resignation" form, the company representative said, she would receive, besides her legally mandated severance payment, an additional amount of "assistance money." If she signed the termination letter, however, she would only receive her legally mandated severance payment.

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<sup>13</sup> Thailand Labor Relations Act 1975 (B.E.2518), §15 ("An employers' association or labor union may submit demand under section 13 to the other party on behalf of Employers or Employees who are members thereof. The number of employees who are members of the labor union must not be less than one-fifth of the total number of employees.")

<sup>14</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018).

When the worker refused to sign either letter, the company representative told her that she would be dismissed anyway. A company human resources officer and a security guard then brought the worker her belongings from her locker and escorted her from the factory premises.

As discussed in greater detail below, the Thai government labor authorities and labor court subsequently determined that Pandora terminated this worker unlawfully, in retaliation for her union activities.<sup>15</sup> The WRC concurs with this finding.

As already noted, Pandora's management clearly was aware of and concerned about the workers' union organizing, and the employee who was terminated in this case was a member of the union's executive committee, who was active in recruiting other workers to join the union. Moreover, the timing of the worker's termination points toward its retaliatory nature, as the company fired her only two days after the union began openly recruiting members and three days after the factory management is known to have interrogated employees in order to identify those workers who were union activists.

The factory also displayed a hostile animus toward this worker union activist and a determination to immediately remove her from the factory, which is inconsistent with the factory's assertion that she was terminated for ordinary economic reasons on an objective basis. Specifically, when the worker questioned why she had been summoned to a meeting, she was told that the factory's top management was prepared to have her physically "dragged" to the meeting against her will—a response that would have been completely disproportionate if the actual purpose of the meeting was simply to inform a worker she had been selected for layoff due to ordinary economic reasons, but it is unremarkable if, as both the WRC and the Thai government labor authorities found, the company believed it was removing one of the ringleaders of a burgeoning union organizing effort.

In general, the company's claim that it terminated the worker on February 2 due to an economic need on the part of the factory to "restructure" is not at all credible. In this case, the worker was terminated *before* the company issued its announcement that it was "restructuring"—which did not occur until February 4, two days later.<sup>16</sup> Moreover, even the subsequent announcement of "economic restructuring" was blatantly pretextual. As discussed further below, the company acknowledged before the Thai government labor authorities that it did not involve the members of its production management in selecting which workers were to be terminated, as would be usual in the case of an actual economic downsizing,<sup>17</sup> where the company would wish to maintain productivity of its operations while reducing headcount and, in some cases, did not even provide these managers with any advance notice of the terminations.<sup>18</sup>

Finally, the company did not present any credible evidence before the Thai government labor authorities and labor court to explain why it selected for termination this individual

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<sup>15</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018), *in re Pandora Production*, *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

<sup>16</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018).

<sup>17</sup> *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

<sup>18</sup> *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

employee, who was one active member of the union’s executive committee, which had fewer than 40 members in total, out of the factory’s then-current total workforce of more than 9,000, as part of a supposed “economic restructuring.” The WRC concludes therefore, consistent with the determinations of the Thai government labor authorities and labor court that the worker’s termination on February 2 was an act of illegal retaliation for this employee’s exercise of freedom of association. The firing of this worker, therefore, placed Pandora in violation of both university standards for production of licensed goods and Disney’s standards for the conduct of its vendors.<sup>19</sup>

## **2. Illegal Mass Termination of Employee Union Leaders and Activists and Other Workers on February 5, 2018**

### **a. Factual Summary of Incident**

By Sunday, February 4, 2018, more than 2,800 workers had joined the union. As this number exceeded 20% of Pandora’s workforce—the legal threshold for a union to submit collective bargaining demands to an employer—the union held a meeting with employees at which they formulated a set of such demands to submit to the company on the following day. At the same meeting, the members of the union’s executive committee also established a subcommittee of 48 other employee union members, who had been most publicly active in recruiting other workers to join the union, to assist the executive committee in the union’s organizing work.<sup>20</sup>

Late at night on the same day—Sunday, February 4 at 10:45 p.m.—Pandora issued an announcement stating that the factory needed to “restructure” and, therefore, would be dismissing an unspecified number of employees.<sup>21</sup> As the factory’s nightshift generally does not work on Sunday evenings, employees on the factory’s dayshift were the first workers to see this announcement as they arrived at the factory on the morning of February 5, 2018.

On the morning of February 5, the employee who is the union’s president brought to the factory to submit to the company the union’s list of collective bargaining demands, along with the union’s registration documents and a list of the members of its executive committee. At 10:00 a.m. that morning, however, before he was able to submit these forms to the factory management, the employee union president was told by the line leader (foreperson) on the production line where he worked that he would have to attend a meeting.

When the employee union president entered the meeting room to which he had been ordered to report, he saw that the factory’s engineering director already was meeting there with roughly ten other workers. The employee union president heard the engineering director announce that the company was restructuring.

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<sup>19</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code standards,” Schedule I, Section II.B.9 re Freedom of Association and Collective Bargaining (“Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining.”), and the Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference”).

<sup>20</sup> Thailand Labor Relations Act B.E.2518 (1975), §100 (“A Labour Union shall have a Committee to carry out its activities and act as a representative of the Labour Union in dealings with a third person. For this purpose, the committee may entrust one or several Committee members to act on its behalf. The Committee may appoint a Sub-Committee to carry out any work as entrusted.”)

<sup>21</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018).

The employee union president then gave a copy of the union's registration documents and executive committee list to the company's engineering director and requested that the latter forward these forms to the factory's top management. At the same meeting, shortly after he gave these documents to the engineering director, the employee union president was informed that the factory management was terminating him.

Throughout the same day, the factory management also terminated 71 other workers from both the factory's dayshift and its nightshift. Among the discharged workers, in addition to the union president, were 38 out of the 48 union activists who were members of the union's recently formed subcommittee and three other workers who were members of the union's 35-employee executive committee.<sup>22</sup> The group of workers who were dismissed also included the wife of the employee union president, who was not a member of the union's executive committee or subcommittee, but also had been active in recruiting other workers to join the union.

The workers from the dayshift who were dismissed testified that they were directed to a room in a different building on the factory premises than ones where they ordinarily worked. Two police officers reportedly were stationed outside this building, and two security guards were standing inside the building, next to the door to the meeting room. Inside the room were three factory managers who had positioned a video camera to record the meetings.

Throughout the day, the managers met with workers who were summoned to this room, in groups of three to 10 employees, and informed them that they were being terminated. The managers claimed to the workers that they were being dismissed, because the company needed to restructure its operation and gave the employees documents stating the amount of compensation that they would receive on account of their termination but did not provide them with formal letters of termination. In one instance, when one of the workers asked the managers why the company had selected them for termination, the manager, Wirat Kangwaansomwong, refused to provide a reason and instead told the worker that they would receive their severance payments within three days.

After the managers gave the workers the documents that stated the amount of compensation that they would receive as severance, the managers then directed them to another room, in which two other factory security guards were stationed. There, one of the factory's human resources officers and another security guard presented the workers with their belongings from their lockers and then escorted them from the company premises.

Twice on the same day, at 10:00 a.m. and again at 4:50 p.m., Pandora's human resources department sent text messages to those workers on the factory's nightshift whom the company had selected for dismissal notifying them of their termination, again, allegedly due to the company's restructuring. The text messages also stated that the discharged workers

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<sup>22</sup> The greater prevalence, among the workers whom Pandora terminated on February 5, 2018, of workers who were members of the union's *subcommittee* relative to those who were members of the union's *executive committee* may reflect (1) the former's involvement in the union's highly visible membership drive, which involved, in particular, posts on Facebook under the subcommittee members' own names; and (2) the company's likely greater awareness of the latter group as being legally protected against retaliation for union activities. It should also be noted that although a smaller percentage of the executive committee members were dismissed, those who were fired includes two of the union's four top officers—its president and its secretary.

would receive their salaries, legally mandated severance benefits, pay in lieu of advance notice of their termination, and any unused annual leave that they had accrued.

As they were unsure of the validity of these messages, however, and to avoid accusations of absenteeism, most of the employees who received these messages decided to report to work as usual. Yet within an hour of their arrival at the factory, these workers were directed to report to the management, which informed these workers, as well, that they were being terminated, because the factory needed to restructure its operations. These workers were then escorted off the company premises by the security guards, in the same manner as the workers dismissed during the day shift.

## **b. Analysis of Violations**

As discussed in greater detail below, Thai government labor authorities and the Thai labor court subsequently found that Pandora terminated both the employee union president and the 42 other workers fired on February 5 who were members of the union executive committee and subcommittee unlawfully, in retaliation for their union membership and organizing.<sup>23</sup> The WRC concurs and finds, as well, that the company's discharge of the employee who is the wife of the union president, was similarly retaliatory and, therefore, a further violation of associational rights under international labor standards, university licensing standards, and Disney's standards for vendors of its branded goods.

As already noted, the factory management knew and expressed concern about the workers' associational activities and questioned employees regarding the identities of the workers involved in the union. The employee union president, his wife, and the other 41 workers terminated on February 5, who were members of the union's executive committee and subcommittee, all were publicly active in forming the union and recruiting other workers to become union members.

Moreover, the timing of the company's termination of these workers strongly supports the finding that it was retaliatory in nature, as the company announced the mass dismissal only five days after the union began openly recruiting members and on the very same day that the workers met to establish their demands for collective bargaining.

As already discussed, the company's claim that it terminated these workers due to a need to "restructure" is sorely lacking in credibility. As already noted, the company has acknowledged that it did not involve its production managers in selecting which workers were to be terminated<sup>24</sup>—as would be expected in the case of an actual economic layoff, where the goal is to reduce headcount while retaining the most productive workers—and, in some cases, did not provide these managers with any advance notice of the terminations, which would be expected if the company was concerned with maintaining the productivity of its operations through the layoff process.<sup>25</sup>

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<sup>23</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018), *in re Pandora Production*, *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

<sup>24</sup> *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

<sup>25</sup> *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.



Further underscoring the irregular nature of the company's action, the terminations were announced on Sunday night, which is not a regular workday at the factory, and the workers who were discharged were not given formal letters of termination. Moreover, this timing, while undermining the claim that the firings were undertaken on an objective economic and non-retaliatory basis, gives further support to the conclusion that the mass discharge represented a hurried response by the management to the workers' rapid progress in forming their union, recruiting other employees to join it, and formulating their collective bargaining demands.

The company also did not present any credible evidence before the Thai government labor authorities and labor court, nor did it provide any explanation to workers when they inquired, regarding the process by which it selected for termination this particular group of 71 employees. Likewise, the company has advanced no non-retaliatory reason for why nearly 60% of this group of 71 workers, who represented less than one percent (1%) of the factory's then-current total workforce of more than 9,000 employees should be comprised of union activists—i.e., members of the union's 35-worker executive committee (including the union president) or its 48-worker subcommittee or otherwise involved in recruiting other employees to join the union (in the case of the union president's wife).

Statistical analysis demonstrates conclusively that it is virtually impossible that this overrepresentation of workers who are members of the union executive committee or the union subcommittee among the employees whom the factory management selected for termination could have occurred accidentally. At the time, the members of the union's executive committee and subcommittee totaled 83 employees, which represented only 0.92% of Pandora's total workforce of more than 9,000. However, as noted, members of the executive committee and subcommittee comprised 59% of the workers whom the company selected for termination on February 5. Statistical calculations conducted for the WRC by a professional statistician at Pennsylvania State University determined that the chance that members of the union's committee members and subcommittee members would randomly comprise such a disproportionate share of the workers who were selected for termination was less than .000001, or one in a million.

This irrefutable statistical evidence strongly supports the conclusion that Pandora deliberately targeted union leaders and activists in selecting the workers whom it terminated on February 5, 2018. Based on this analysis, along with other previously cited evidence that reveals the terminations' retaliatory nature—Pandora management's admitted knowledge of workers' organizing efforts, the timing of the terminations only days after the inception of open public union activities by the employees who were discharged, and the clearly pretextual nature of the company's claim that the terminations were due to the need for economic "restructuring"—the WRC concludes that Pandora's mass termination of workers on February 5, 2018 was motivated by animus toward the exercise of freedom of association by those workers who were leaders and activists in organizing a union at the factory.

With respect to the 43 workers discharged on February 5, 2018, who were members of the union's executive committee and subcommittee, the WRC concurs with the determination of government labor authorities and labor court, as detailed below, that their terminations

violated Thai law, which prohibits firing without cause workers who are union members,<sup>26</sup> and therefore also violated university licensing standards and the Disney vendor code of conduct.<sup>27</sup>

With regard to the employee who is the wife of the union president, as discussed below, the government labor authorities, when subsequently considering her discharge, did not rule that her termination violated Thai law (apparently because, although she participated in union activities, she was not a member of either the union committee or subcommittee). However, the WRC finds that because her firing was on account of her involvement in the union's activities, the worker's termination still violated her right of freedom of association as protected under international labor standards and, by extension, contravened both university licensing standards and the Disney vendor code of conduct.<sup>28</sup>

Finally, with respect to the 28 other workers among the 72 employees whom the company terminated on February 5, who were not members of the union's executive committee or its subcommittee, the WRC finds that their discharges also constituted a violation of freedom of association, as protected under international labor standards, as well as university licensing standards and the Disney vendor code of conduct. Even if these workers had not, prior to their termination, joined the union or engaged in other union activities, the company's motivation in discharging them—*along with* those workers who *were* union activists and members—was to suppress exercise of freedom of association at the factory.<sup>29</sup> Therefore, these nonunion workers, as well, suffered material harm as a result of Pandora's violation of its obligation, under university licensing standards and the Disney vendor code of conduct, to respect associational rights.<sup>30</sup>

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<sup>26</sup> Thailand Labor Relations Act 1975 (B.E.2518), § 121 (1-2) (“No employer shall: ... (2) terminate the employment or act in any manner which may cause an employee to feel it unbearable to continue working with due to the fact that such employee is a member of the labor union;[...].”).

<sup>27</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II. A (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.”), *and* Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will comply with all applicable laws and regulations, including those pertaining to the manufacture, pricing, sale and distribution of merchandise. All references to ‘applicable laws and regulations’ in this Code of Conduct include local and national codes, rules and regulations as well as applicable treaties and voluntary industry standards.”).

<sup>28</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II.B.9 re Freedom of Association and Collective Bargaining (“Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining.”), *and* Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference.”).

<sup>29</sup> The mass termination on February 5 also was a violation of freedom of association committed against those workers who were not union members and is readily apparent if one considers the result if, hypothetically, Pandora had decided, as have some employers when faced with the establishment of a union, to shut-down the factory entirely and terminate the entire workforce. See, e.g., WRC, “Factory Investigation: Jerzees Choloma, Jerzees de Honduras, Jerzees Nuevo Dia” (2009), <https://www.workersrights.org/factory-investigation/jerzees-choloma-jerzees-de-honduras-jerzees-nuevo-dia/>. The closure of an entire factory and termination of its employees in retaliation for unionization is a violation of freedom of association—and a form of collective punishment—that harms both those workers who support the union and those who are neutral or even oppose unionization.

<sup>30</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II.B.9 re Freedom of Association and Collective Bargaining (“Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining.”), *and* Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference.”).

### **3. Denial of Freedom of Association through Refusal to Reinstate Illegally Terminated Employee Union Leaders and Activists**

After being terminated by the company on February 5, 2018, the 45 employee union leaders and activists whom the company had discharged filed a complaint with the Thai government's Labor Relations Committee charging Pandora with having dismissed them on account of their active membership in the union. On May 2, 2018, the Labor Relations Committee concluded that the dismissal of 44 out of these 45 workers who were union members violated the Thai law that protects such employees from retaliatory discharge.<sup>31</sup> In finding that their firings were retaliatory and unlawful, the Labor Relations Committee noted that these workers had all joined the union, themselves, and had all openly recruited other members in person and over social media. The Labor Relations Committee also found that these workers had engaged in other legally protected conduct by taking part in submitting the union's demands to Pandora, and that the company had further violated the law by retaliating against them for this activity. With respect to the termination of the wife of the union president, however, the Labor Relation Committee ruled that although she had played an active role in recruitment of members to the union, because this employee was not, herself, a union member, she was not legally protected against retaliatory dismissal.<sup>32</sup>

Based on this determination, the Labor Relations Committee ordered Pandora to reinstate with full back pay the 39 out of the 44 terminated union members who wished to return to work and to pay damages totaling 633,510 Thai Baht (USD 21,150) to the five other employees in this group, who did not want to be reinstated.<sup>33</sup>

Although it did pay the required damages to the five workers who did not wish to return to the factory, Pandora refused to comply with the Labor Relations Committee's directive that it reinstate the 39 illegally terminated employees who did wish to return to work. Instead, in early June 2018, Pandora filed with the Thai Labor Court both an appeal of the Labor Relations Committee's decision and reinstatement order, and a petition seeking relief from the Labor Relations Committee's reinstatement order while its appeal was pending. In its petition, Pandora pledged that, should the company be granted such relief, it would maintain the workers' status as company employees and pay them their regular salaries, while its appeal was pending. On June 12, 2018, the Labor Court granted the company's petition.<sup>34</sup>

Although Pandora had a right, under Thai law, to appeal the Labor Relations Committee's ruling, and although the company agreed to maintain the workers' salaries and employment status while its appeal was pending, the company's delaying reinstatement and back pay for the employees it had fired in retaliation for union activities constituted a further violation of

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<sup>31</sup> Thailand Labor Relations Act B.E.2518 (1975), §121 ("An employer shall not: (1) terminate the employment of or take any action which may result in an employee, a representative of an employee, a committee member of a labor union or labor federation being unable to continue working, as a result of employee or labor union calling a rally, filing a complaint, submitting a demand, negotiating or instituting a law suit or being a witness or producing evidence to competent officials under the law on labor protection or to the registrar, conciliation officer, labor dispute arbitrator or labor relations committee member under this Act, or to the labor court, or as a result of the employee or labor union being about to take the said actions (2) terminate the employment of or take action which may result in an employee being unable to continue working as a result of the said employee being a member of a labor union.").

<sup>32</sup> *In re Pandora Production*, Labor Relations Committee, Order 209-253/2561 (May 2, 2018).

<sup>33</sup> *Id.*

<sup>34</sup> *In re Pandora Production*, Labor Court, black case number 4015/2562

its workers' freedom of association. First, while, after its petition was granted in June 2018, Pandora *began* paying wages to the workers who were awaiting reinstatement, these workers were not made whole for the wages they had already lost since they were terminated in February. Moreover, barring employees—especially those who are union leaders and activists—from the workplace on account of their union activities, as Pandora accomplished through its appeal, violates both the freedom of association of these employees, who are obstructed in being able to associate with the other workers inside the factory, and the workers still employed at the factory, who are deprived of the ability to draw upon the leadership and activism of the terminated employees in furthering and maintaining organization of the union.<sup>35</sup>

Furthermore, Pandora did not provide any payment of wages during the four months the Labor Relations Committee had deliberated the case and claimed that as they received the order from the Labor Relations Committee on June 5, 2018, wherein they were ordered to comply within ten days, they only had to provide pay from June 15, 2018, onwards. As a result, workers did not receive any compensation for almost four and half months between their dismissal in February 2018 and the beginning of payments on June 15, 2018.

Just as significantly, the absence of the terminated union leaders and activists from the factory has an unavoidably chilling effect on the ability of the other workers inside the plant to exercise their freedom of association—and, therefore, effects a further violation of this right—because the inability of the former group of workers to return to the factory sends a message to the latter of the possible consequence if they, themselves, participate in union activities.<sup>36</sup> As a result, Pandora's appeal of the Thai Labor Relations Committee's ruling that the workers should be reinstated and the resulting delay in workers returning to the factory, while within the company's rights under Thai law, represented yet an additional violation of its workers' freedom of association rights under international labor standards and, by extension, university codes of conduct for licensed goods and Disney's code of conduct for its vendors.

#### **4. Denial of Freedom of Association by Compelling Illegally Fired Workers to Accept Monetary Compensation instead of Reinstatement with Back Pay**

The Labor Court did not issue its verdict in Pandora's appeal until May 7, 2019, more than one year after the Labor Relations Committee ruled that the company had illegally terminated the 44 employee union leaders and ordered the reinstatement of 39 of these workers. The Labor Court confirmed the findings of the Labor Relations Committee that Pandora had violated Thai labor law by dismissing workers who were legally protected from retaliation on account of their being union members, as well as members of the union committee or subcommittee.

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<sup>35</sup> See e.g., International Labor Organization, Freedom of Association. Compilation of decisions of the Committee on Freedom of Association (6th ed. (rev.) 2018), p1171 (“In certain cases of dismissals in which judicial proceedings were ongoing, if the decision concludes that there have been acts of anti-union discrimination, the Committee has requested the reinstatement of the workers concerned as a priority solution.”).

<sup>36</sup> See, e.g., International Labor Organization, Freedom of Association. Compilation of decisions of the Committee on Freedom of Association (6th ed. (rev.) 2018), p1131 (“Especially at the initial stages of unionization in a workplace, dismissal of trade union representatives might fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply join the union.”)

In affirming that the company terminated the workers unlawfully because of their union activities, the Labor Court found that the company clearly was aware of the workers' union activities. The Labor Court observed that days prior to the mass termination in February 2018 the factory's human resources staff had inquired workers about the attempt to organize a union, and then had chosen which employees were to be terminated—and had made this selection contrary to the company's normal practice in cases of actual economic layoffs, without the involvement of the factory's production managers.<sup>37</sup>

During the period of delay caused by the company's appeal, Pandora actively lobbied the workers whom the company had illegally fired and had refused to accept a monetary settlement in lieu of returning to the factory. Having lost their jobs due to the company's lawbreaking and intransigence, more than three-quarters of employees eventually conceded to the company's settlement and accepted payment of monetary damages in lieu of reinstatement.

As a result, by the time the Labor Court's ruling was issued, only nine of the 44 workers that the company had illegally terminated continuing to press for their legal right to reinstatement to their jobs in the factory. Moreover, despite affirming that the company's mass termination of employee union members was illegal, the Labor Court failed to affirm the Labor Relations Committee's reinstatement order with respect to the nine remaining employees, accepting the company's claim that their return to the factory could potentially result in conflict at the workplace. As a result, the Labor Court permitted Pandora to pay damages to the remaining nine workers, of the 44 that it had illegally fired 16 months earlier, in lieu of allowing them to return to their jobs at the factory.<sup>38</sup>

Pandora's refusal to reinstate the 39 remaining workers it illegally fired in retaliation for their union activities, although accepted by the Thai Labor Court, constituted a further violation of employees' right to freedom of association under international labor standards, university codes of conduct for production of licensed goods, and Disney's code of conduct for its suppliers. The International Labor Organization (ILO) Committee on Freedom of Association, the highest expert body charged with interpretation and application of this fundamental workplace right, has consistently found that freedom of association rights are not respected when employers who terminate workers for union activities are allowed to simply pay them compensation rather than reinstate them to their jobs.<sup>39</sup> The US State Department, in its most recent Thailand Country Report on Human Rights Practices specifically criticized the Thai Labor Courts for permitting employers to avoid reinstating illegally fired workers "when employers ... claimed they [and the fired workers] could not work together peacefully,"<sup>40</sup> as failing to protect Thai workers' freedom of

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<sup>37</sup> *In re Pandora Production*, Labor Court, black case number 4015/2561 and red case number r.2140/2562.

<sup>38</sup> *Id.*

<sup>39</sup> See e.g., International Labor Organization, *Freedom of Association*. Compilation of decisions of the Committee on Freedom of Association (6th ed. (rev.) 2018), p 1106. ("It would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities."), p1169 ("If it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay.") and p1171 ("In certain cases of dismissals in which judicial proceedings were ongoing, if the decision concludes that there have been acts of anti-union discrimination, the Committee has requested the reinstatement of the workers concerned as a priority solution.").

<sup>40</sup> *Id.*

association rights.<sup>41</sup> The problematic nature of this practice is particularly apparent in this case, where the sole matter at “dispute” between Pandora and the terminated workers is that the latter wished to legally exercise their fundamental right to freedom of association—to form a union and collectively bargain—and the company insisted on illegally firing them to prevent them from exercising this same right.

University labor codes of conduct for the production of licensed goods state clearly that when the legal system in the country where these goods are manufactured fails to adequately protect fundamental worker rights, it is the obligation of the licensee to take action, itself, to ensure these rights are respected—rather than, as Pandora has done here, flout compliance and take advantage of the weakness of the local legal system.<sup>42</sup>

Pandora has provided no reason for refusing to reinstate the workers it unlawfully fired more than twenty months ago that would provide *any* legitimate justification for this blatant violation of workers’ freedom of association rights. As a result, the WRC finds that Pandora’s actions to compel the workers—whom it had illegally terminated in retaliation for union activities—to forgo reinstatement to their jobs in the factory in favor of solely monetary compensation, represented yet a further violation of freedom of association under both international labor standards and, by extension, university codes of conduct for production of licensed goods and Disney’s code of conduct for its vendors.

## **5. Violation of Freedom of Association through Denial of Compensation Legally Owed to Unlawfully Terminated Workers**

Adding insult to the many injuries the company had already inflicted on its workers’ associational rights, the union committee member whom the company unlawfully dismissed on February 2, 2018, still has never been paid the compensation that the court ordered Pandora to provide. And while the other eight illegally terminated workers to whom the Labor Court ordered Pandora to pay damages did receive these funds, on July 15, 2019 the company petitioned a Thai appeals court to ‘claw back’ this money from these workers,<sup>43</sup>

This conduct on the part of the company constitutes still another violation of the workers’ associational rights. As noted above, international labor standards establish that in the case of termination of employees in retaliation for union activities, offering *both* reinstatement of the fired workers *and* back pay compensation for the period between the workers’ discharge and

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<sup>41</sup> See, e.g. US State Department, “2018 Country Reports on Human Rights Practices: Thailand,” (March 13, 2019) (“In some cases judges awarded compensation in lieu of reinstatement when employers or employees claimed they could not work together peacefully; however, authorities rarely applied penalties for conviction of labor violations, which include imprisonment, a fine, or both.”).

<sup>42</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II.A. (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles. Where there are differences or conflicts with the Code and the laws of the country(ies) of manufacture, the higher standard shall prevail, subject to the following considerations. In countries where law or practice conflicts with these labor standards, Licensees agree to consult with governmental, human rights, labor and business organizations and to take effective actions as evaluated by CLC, the applicable Collegiate Institution(s) or their designee, and the applicable Licensee(s) to achieve the maximum possible compliance with each of these standards. Licensees further agree to refrain from any actions that would diminish the protections of these labor standards.”)

<sup>43</sup> *In re Pandora Production*, Labor Court, black case number r.4015/2561 and red case number r.2140/2562

their reinstatement are the *minimum* adequate remedies compliant with respect for freedom of association.<sup>44</sup>

In this case, Pandora, having already denied reinstatement to the workers whom it illegally terminated, now seeks to penalize those among the latter who, consistent with their rights under international labor standards, held out to return to their jobs at the factory by denying them monetary compensation as well. By seeking to inflict a further penalty on these employees for having attempted to vindicate their freedom of association rights, Pandora further exacerbates its violation of university licensing standards and of Disney's standards for vendors of its branded goods.

## **B. Terms of Employment—Unlawful Dismissal of Employee Union Members in February 2019**

### **1. Unlawful Dismissal of Employees Protected by Collective Bargaining Agreement**

As noted in the introduction to this memorandum, despite the company's mass termination in February 2018 of leaders and activists of the workers' then-newly formed union, the factory employees persevered in their union activities. By December 2018, the union had negotiated and signed an initial collective bargaining agreement with Pandora and, by January 2019, had recruited more than 5,000 workers at the factory to become union members. The following month, however, Pandora conducted another mass dismissal of workers, resulting in the unlawful termination of 17 employee union members.

On February 5, 2019, Pandora announced that the company was instituting a volunteer resignation program under which workers who resigned from their jobs would receive an additional payment from the company in addition to any terminal compensation they were legally owed. The company informed workers of the program via postings on notice boards that are mounted on the walls in each department of the factory.

In the announcement, Pandora stated that the company needed to terminate the employment of 700 workers—500 employees from the Bangkok factory whose labor practices are the subject of this memorandum, and 200 employees from another factory located in Lamphun, a city in northern Thailand, 665 kilometers (roughly 415 miles) north of Bangkok. According to information that the company subsequently provided to the Thai government's Labor Relations Committee, eligibility for the voluntary resignation program was limited to employees who had been hired prior to September 5, 2018, held positions as production or support workers or as junior or middle managers, and had received an annual performance evaluation, in 2016-2018, with a "grade" of one point ("should improve") or two points ("fair") out of four (with four points being the highest score and one being the lowest).<sup>45</sup>

Pandora stated in its announcement to employees that it would form a committee to consider the eligibility of workers who had applied for voluntary resignation and that the deadline for

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<sup>44</sup> See e.g., International Labor Organization, Freedom of Association. Compilation of decisions of the Committee on Freedom of Association (6th ed. (rev.) 2018), 1169 ("If it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay.") and p1171 ("In certain cases of dismissals in which judicial proceedings were ongoing, if the decision concludes that there have been acts of anti-union discrimination, the Committee has requested the reinstatement of the workers concerned as a priority solution.").

<sup>45</sup> *In re Pandora Production*, Labor Relations Committee, Order 45-49/2562 (May 8, 2019).

workers to apply for the program was February 6, 2019, for dayshift workers and February 7 for nightshift workers. According to the information that the company provided to the Labor Relations Committee, between February 5 and 7, 1,429 employees applied for the company's voluntary resignation program. However, the company reported, only 576 workers had been approved by the company's committee as eligible to participate.

On the morning of February 11, 2019, the company announced through the factory's public address system, that the number of workers who were eligible for and had submitted applications to the voluntary resignation program was fewer than the company was seeking, and, therefore, the company needed to terminate additional workers. During the remainder of the day, the factory's management summoned to meetings approximately 100 workers who had not applied for the voluntary resignation program.

During the meetings on February 11, managers told these workers that the company had selected them for termination based on their performance record over the past three years, and that, if they applied for the voluntary resignation program, they would receive their legally due severance payment and an additional sum of money, but if they did not agree to resign, they would be involuntarily terminated and receive only their legally required severance benefits.

Some of the workers at the meetings attempted, unsuccessfully, to prevail upon the management, to reverse its decision to designate them for termination, while others agreed to apply for the voluntary resignation program, and some others simply refused to resign. Following the meetings, company security guards escorted workers to the factory's locker room to collect their belongings and then out of the factory premises. This procedure caused considerable concern and inconvenience for those workers on the factory's night shift who were escorted out of the factory at 12:30 a.m. and were not provided any transportation to their homes—despite the fact that the company owns several buses that are regularly used for transporting employees.

The workers who had been summoned to the meetings on February 11 and who did not agree to apply for 'voluntary resignation' subsequently received letters from Pandora informing them that they had been terminated from the company and demanding that the workers keep confidential, on pain of criminal and civil prosecution, not only Pandora's business and production information but also any details about their employment and dismissal.

For the roughly 100 workers whom the company summoned to the meetings on February 11, the choice managers presented to them—involuntary termination or 'voluntary resignation,' which was the same choice that the company presented to the first of the employee union leaders whom it fired in February 2018—meant that the latter option was, in reality, not 'voluntary' at all. In actuality, the choice that Pandora gave these employees was merely between outright firing and constructive discharge (i.e., forced resignation). The WRC's finding, therefore, is that, with respect to all the workers summoned to the meetings on February 11, the company's action amounted to involuntary termination of their employment.

Regarding those workers in the group of employees selected for involuntary termination on February 11, 2019, who were members of the union, this action on the part of the company was unlawful. As noted above, in December 2018 Pandora signed a collective bargaining agreement with the workers' union. Under Thai labor law, once such an agreement has been signed, the employer party to it is prohibited, while the agreement remains in effect, from



terminating any of its workers who are members of the union whose demands concerning labor conditions were the subject of the negotiated agreement, except in a limited number of circumstances involving employee misconduct—establishing, for all intents and purposes, a ‘good cause’ standard for termination of union members.<sup>46</sup>

The grounds that Pandora articulated for selecting this group of workers for involuntary termination—low performance evaluations—does not fall under any of the categories of misconduct for which termination of union members protected by a collective bargaining agreement is legally permissible.<sup>47</sup> As a result, the WRC finds that Pandora’s inclusion of workers who were union members in the group of roughly 100 employees whom the company selected for involuntarily termination on February 11, 2019, violated the labor law and, thereby, also university labor standards and Disney’s vendor code of conduct.<sup>48</sup>

## **2. Compelling Illegally Fired Workers to Accept Partial Monetary Compensation instead of Reinstatement with Back pay**

The WRC’s finding that Pandora unlawfully terminated employees who were union members on February 11 is confirmed by similar determinations reached with respect to the company’s conduct by the Thai government labor authorities. Unfortunately, rather than reinstate with full back pay the employee union members whom it had unlawfully terminated, the company compelled these workers, through actual manipulation of, as well threats to further manipulate, the Thai legal system, to accept, instead, only partial monetary compensation, without reinstatement to their jobs. In doing this, as explained below, Pandora failed to adequately correct the violation of university licensing standards and the vendor standards of its buyer, Disney, that the factory management had committed by terminating these employees.

From late February through March 2019, 17 of the employees involuntarily terminated on February 11 who were union members filed complaints against Pandora with the Thai Labor Relations Committee charging that their dismissals were illegal, because the workers were

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<sup>46</sup> Thailand Labour Relations Act B.E. 2518 (1975), § 123 (“While an agreement relating to conditions of employment or a decision or award is still in force, an employer is prohibited from dismissing and employee, representative of an employee, member of committee or sub-committee or member of a labor union, or member of the committee or sub-committee of a labor federation who is related to the demand”).

<sup>47</sup> Thailand Labor Relations Act B.E.2518 (1975), § 123 (“During the enforcement of the working condition agreement or award, no employer shall dismiss the employee, representative of the employee or director, member of Sub-committee or member of the labor union or the director or member of the Sub-committee of the labor federation who related to the demand, unless such person: (1) performs his duties dishonestly or intentionally commits a criminal offence against the employer; (2) willfully causes damage to the employer; (3) violates the regulation, rule or lawful order of the employer after a written warning or caution has been given by the employer. If there is a serious circumstance, such warning or caution may not be made. In this regards, the aforesaid regulation, rule or order shall not be made with a view to obstruct such person from doing any act related to the demand; (4) unreasonably neglects his or her duty for three consecutive days; (5) performs any acts which encourage, assist or induce any person to violate the working condition agreement or award.”).

<sup>48</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II. A (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.”), and Walt Disney Company, “Code of Conduct for Manufacturers” (“Manufacturers will comply with all applicable laws and regulations, including those pertaining to the manufacture, pricing, sale and distribution of merchandise. All references to ‘applicable laws and regulations’ in this Code of Conduct include local and national codes, rules and regulations as well as applicable treaties and voluntary industry standards.”).

fired while a collective bargaining agreement between their employer and their union was in effect.<sup>49</sup>

Also in late February, these same 17 workers brought an additional case against the company at the Thai Labor Courts challenging their terminations.<sup>50</sup> The Labor Court convened a process of mediation between the parties, as a result of which, in March 2019, the company reached a settlement with 12 of the 17 workers, under which Pandora would pay them each between 30,000 and 40,000 Thai Baht (USD 950 to 1300), in return for withdrawing both this case and the complaint that these 12 had brought before the Thai Labor Relations Committee.

The five workers who were not party to the March 2019 settlement in the case before the Labor Court continued to pursue the complaint that they had submitted to the Labor Relations Committee. In May 2019, the latter found in the five employees' favor, ruling that their dismissal violated Thai law<sup>51</sup> and ordering Pandora to pay the five workers who were not party to the Labor Court settlement a total of 981,019 Thai Baht (USD 32,201)—an average of USD 6,440 per employee. However, as it did previously with respect to the ruling by the Labor Relations Committee in favor of the workers whom the company unlawfully terminated in 2018, Pandora then appealed to the Thai Labor Court to overturn the Committee's order.

The Labor Court consolidated Pandora's appeal of the Labor Relations Committee's order with the related case already brought before the Labor Court by the 17 workers concerning their termination and held hearings on the matter on August 27 and 29, 2019. At the hearings, a company representative told the worker plaintiffs that, even if the employees prevailed at the Labor Court, Pandora would appeal the case up to Thailand's Supreme Court, with the result that the matter would drag on for years. The company representative proposed, instead, that Pandora and the workers agree on a settlement instead. As a result, workers reported to the WRC, the matter was resolved by the five workers agreeing to accept payment of 65% of the damages originally awarded by the Labor Relations Committee.

The WRC finds that Pandora compelling the 17 employee union members, who had brought complaints concerning their illegal firing in February 2019 before the Thai Labor Relations Committee and Labor Court, to settle for only partial monetary compensation (rather than reinstatement with full back pay) constituted a further violation of these employees' rights under both university codes of conduct for production of licensed goods and Disney's vendor code of conduct. As discussed above the company's termination of these employees violated Thai law,<sup>52</sup> which effectively prohibits termination of union members covered by collective

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<sup>49</sup> *In re Pandora Production*, Labor Relations Committee Order 45-49/2562.

<sup>50</sup> Act on the Establishment of and Procedure for Labor Court, B.E. 2522 (1979), § 49 [I]n the dismissal case, if the labor court thinks the dismissal is unfair, it shall order the employer to reinstate the employee at the same level of wage at the time of dismissal. However, if the Labor Court thinks that such employee and employer cannot work together, it shall fix the amount of compensation to be paid by the employer which the labor court shall take into consideration the age of the employee, the working period of employee, the employee's hardship when dismissed, the cause of dismissal and the compensation the employee is entitled to receive.

<sup>51</sup> Labor Relations Act B.E. 2518 (1975), § 123 [W]hile an agreement relating to condition of employment or a decision or award is still force, an employer is prohibited from dismissing on an employee, representative of an employee, member of a committee or sub-committee or member of a labor union, or member of the committee or sub-committee of a labor federation who is related to the demand [.....]

<sup>52</sup> Labor Relations Act B.E. 2518 (1975), § 123 [W]hile an agreement relating to condition of employment or a decision or award is still force, an employer is prohibited from dismissing on an employee, representative of an

bargaining agreements without just cause, and, therefore, by extension, it also violated both university licensing standards and Disney’s standards for its vendors.<sup>53</sup> Remediating such violations requires, at minimum, making the affected workers whole—by reinstating them to their former positions, with no loss of pay in the interim period.

The WRC finds that the outcome that Pandora compelled the terminated union members to accept—through, in part, a threat to require the workers to litigate their case to the Thai Supreme Court, which would have been highly burdensome for these workers—partial monetary compensation, fell far short of that minimum adequate level of remediation. Therefore, Pandora’s violation of these workers’ rights remains unremedied, even though these employees ultimately accepted the company’s offer of partial compensation and even though the Thai Labor Court, itself, acceded to this settlement.

As previously noted, the US State Department has criticized the Thai Labor Courts for permitting employers to avoid reinstating workers whom they have illegally fired.<sup>54</sup> Again, under university codes of conduct, when legal practices in a country fail to adequately protect basic labor rights (including the right of workers to be treated in accordance with the labor laws), it is the obligation of the licensee to take action to ensure these rights are fully respected—rather than take advantage of the weaknesses of the legal system to avoid remediation of violations.<sup>55</sup> As a result the WRC finds that Pandora’s actions to compel the workers whom it had illegally terminated to accept only partial compensation from the company represented yet a further violation of university codes of conduct for production of licensed goods.

#### **IV. Recommendations**

The WRC has found that Pandora has committed very serious violations of its employees’ rights under Thai law, international labor standards, and, by extension, university codes of

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employee, member of a committee or sub-committee or member of a labor union, or member of the committee or sub-committee of a labor federation who is related to the demand [.....]

<sup>53</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II, A. (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.”), *and* Walt Disney Company, “Code of Conduct for Manufacturers.” (“Manufacturers will comply with all applicable laws and regulations, including those pertaining to the manufacture, pricing, sale and distribution of merchandise. All references to “applicable laws and regulations” in this Code of Conduct include local and national codes, rules and regulations as well as applicable treaties and voluntary industry standards.”).

<sup>54</sup> See, e.g. US State Department, “2018 Country Reports on Human Rights Practices: Thailand,” (March 13, 2019) (“In some cases judges awarded compensation in lieu of reinstatement when employers or employees claimed they could not work together peacefully; however, authorities rarely applied penalties for conviction of labor violations, which include imprisonment, a fine, or both.”).

<sup>55</sup> Collegiate Licensing Company, “Special Agreement on Labor Codes of Conduct, Labor Code Standards,” Schedule I, Section II, A (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles. Where there are differences or conflicts with the Code and the laws of the country(ies) of manufacture, the higher standard shall prevail, subject to the following considerations. In countries where law or practice conflicts with these labor standards, Licensees agree to consult with governmental, human rights, labor and business organizations and to take effective actions as evaluated by CLC, the applicable Collegiate Institution(s) or their designee, and the applicable Licensee(s) to achieve the maximum possible compliance with each of these standards. Licensees further agree to refrain from any actions that would diminish the protections of these labor standards.”)

conduct for licensees and Disney's standards for its vendors. To adequately correct these violations Pandora must take the following remedial steps:

- Offer reinstatement with full back pay to all 73 workers who were dismissed in February 2018. These workers should be offered reinstatement to their former positions in the factory with the wages, benefits, and seniority which they would have received had they not been terminated. Back pay must be provided for the period from the employee's termination to the date 14 days after they receive such offers of reinstatement, minus any severance payments or other compensation that they had received from the company in the interim. If any of the terminated workers do not wish to be reinstated, they must still be provided with this back pay, minus any severance payments or other compensation that they had received from the company in the interim.
- Offer to all of the employees who were union members among the roughly 100 workers who were involuntarily terminated in February 2019—including, but not limited to, the 17 workers who submitted complaints concerning their termination to the Thai government labor authorities—reinstatement to their former positions in the factory with the wages, benefits, and seniority which they would have received had they not been terminated. Back pay must be provided for the period from the employee's termination to the date 14 days after they receive such offers of reinstatement, minus any severance payments or other compensation that they had received from the company in the interim. If any of the terminated union members do not wish to be reinstated, they must still be provided with back pay for the period from their termination to the date 14 days after they receive such offers of reinstatement, minus any severance payments or other compensation that they had received from the company in the interim.
- Going forward, conduct any economic layoffs or any other terminations in accordance with Thai law, without discrimination against workers on account of their union activities, and inform the factory's employees, through a written notice posted in the factory and verbal announcement of its text, of the company's commitment to comply with the law in this regard.

We look forward to Pandora's response to this memorandum and its commitments regarding the recommendations listed above. We would appreciate your response by November 29. Thank you very much.