

WORKER RIGHTS CONSORTIUM FACTORY ASSESSMENT

Elim (Guatemala)

Findings, Recommendations, and Factory and Brand Responses



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WORKER RIGHTS
CONSORTIUM

5 Thomas Circle NW, Fifth Floor
Washington, DC 20005
(202) 387-4884 | www.workersrights.org

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I. Executive Summary

The following is a report of the Worker Rights Consortium (WRC) on violations of Guatemalan law and university labor standards and measures for remediation of such violations at Elim, a garment factory located in Mixco, Guatemala. Elim produces university licensed apparel for Outerstuff, College Vault, 5th and Ocean, Team Athletics, and Campus Lifestyle and non-university licensed apparel for New Era and Centric Brands, a licensee of PVH (Tommy Hilfiger, Calvin Klein).

In September 2020, after receiving a complaint from factory employees that Elim managers had retaliated against them for their exercise of the right to freedom of association, the WRC conducted an in-depth investigation of Elim's practices in this area.

The WRC's investigation found numerous, serious violations of freedom of association at Elim, including:

- **unlawful mass termination of 23 workers** on a single day in retaliation for forming a union and registering a collective dispute concerning working conditions;
- **multiple death threats by the factory's human resources manager against a worker** who was subsequently terminated for reporting these threats to Elim's plant manager;
- **threats of retaliatory firing and plant closure, along with an offer of a bribe to employees** in return for forgoing associational activities; and
- **retaliatory termination of workers for resisting unlawful wage and hour practices** by the company, including an illegal salary deduction and mandatory overtime without overtime pay.

During the same period, the university licensee, Outerstuff, along with other Elim factory buyers, New Era and Centric Brands, and the latter's licensor, PVH, undertook a separate investigation of the same reported violations. The findings of the buyers' investigation were consistent with those of the WRC.

On November 25, 2020, the WRC communicated to Elim and to the factory's buyers the WRC's findings concerning the violations of workers' right to freedom of association summarized above, all of which represented violations of Guatemalan law and, by extension, serious breaches of Elim's obligations under contractually binding university¹ and buyer² codes of conduct. The WRC's communication to Elim also outlined the remedial actions necessary for the factory to take in order to comply with Guatemalan law and university and buyer codes.

¹ Collegiate Licensing Company (CLC), Special Agreement Regarding Labor Codes of Conduct Sched. I, §§ 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 (B)(9) ("Licensees shall recognize and respect the right of employees to freedom of association...").

² See, for example, PVH, "A Shared Commitment," <https://www.pvh.com/-/media/Files/pvh/responsibility/PVH-A-Shared-Commitment.pdf>.

One week later, on December 2, 2020, Elim sent a response to the WRC in which its management stated its disagreement with these findings and declined to commit to take any remedial actions with regard to the violations that had been identified. On December 8, the factory's buyers informed the WRC that they had communicated to Elim's management that they were requiring the factory to fully remedy all of the violations of freedom of association that had been identified.

Instead of agreeing to remedy the violations, however, Elim's management announced that the company would be closing the factory permanently effective December 19. Elim's management stated that the reason for the closure was financial difficulty due to lack of orders. While there was evidence indicating that Elim, like many garment factories, had suffered a decline in orders since the beginning of the Covid-19 pandemic, workers had provided extensive, credible testimony that the management had made multiple threats to close the factory if workers continued to attempt to organize a union.

Therefore, the WRC found that the management's decision to close the Elim factory was motivated, at least in part, by anti-union animus and thereby represented a further violation of workers' associational rights. Since the management's decision to close the factory not only further violated freedom of association but also meant that the company's prior violations of workers' associational rights could not be fully remedied, the WRC requested that the factory's buyers commit to refraining from doing business going forward with Elim's owners at any other garment factory where they might resume operations. To their credit, the buyers made this commitment.

The WRC and the factory's buyers also agreed to ensure that the factory's workers receive all severance payments and other terminal benefits owed to them at the time of the factory's closure, as well as, in the case of workers who had been fired for participating in associational activities, back pay for the period from the date of their termination to the date of the closure. With the approval of the WRC, the university licensee, Outerstuff, and other factory buyers retained the independent Guatemalan factory monitoring organization, Commission for the Verification of Codes of Conduct (COVERCO), to determine the total amount owed to each of Elim's 377 employees, the portion of this amount that was paid by the factory's management at the time of the closure, and the remaining portion that was still outstanding. These buyers further committed to place into escrow pending payments to Elim for orders that the factory had completed prior to its closure, so that these funds could be used to ensure that each worker received the full amount of compensation they were owed.

COVERCO reported to the buyers and to the WRC that, when the factory closed on December 19, it paid its workers approximately US\$564,000 in severance and other terminal benefits. However, COVERCO observed the total amount Elim owed to its workers, including both severance payments and back pay for workers fired for associational activities, totaled more than US\$896,000. Therefore, the outstanding amount owed to workers after the factory's closure was roughly US\$332,000.

As they had previously committed, the factory's buyers transferred funds totaling this amount to an escrow account in Guatemala. The buyers further retained COVERCO to distribute the outstanding funds to the factory's 377 former employees. The distribution of these funds to workers in Guatemala began on March 27, 2021.

It is extremely unfortunate that Elim's management, rather than remedying the violations of workers' freedom of association it had committed, instead, chose to exacerbate these violations by closing the factory to further retaliate against its workers. The WRC recognizes, however, that the factory's buyers—including the university licensee, Outerstuff, as well as the brands, New Era, PVH, and Centric Brands—responded responsibly to the factory's actions by committing to refrain from doing business with Elim's former owners going forward and by ensuring that the factory's workers received all of their legally owed compensation.

Once the additional funds provided by the factory's buyers are fully distributed, the total amount of terminal compensation paid to the Elim workers, US\$896,000, will amount to more than six months' wages per employee. These funds will be crucial in enabling the Elim workers and their families to weather the loss of income caused by the factory management's decision to close the facility and protect them from yet a further violation of their rights.

II. Methodology

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

- Detailed interviews with workers employed by Elim. All interviews were conducted while workers were at offsite locations chosen by the employees;
- Written communication and telephone conversations with representatives of factory buyers and Elim management;
- A review of relevant documentary evidence, including company policies, dismissal notices and calculations of severance owed to fired workers, union registration documents, documents presented to and issued by the Guatemalan Ministry of Labor and the country's Second Labor and Social Provision Court;
- A review of independent auditors' reports prepared for licensees and other buyers concerning labor rights violations and proposed remediation measures at Elim; and
- A review and analysis of applicable Guatemalan labor laws and university codes of conduct.

III. Findings, Recommendations, and Factory and Brand Responses

A. Background

Workers interviewed by the WRC testified that, in April 2020, they started meeting during non-working hours and in locations away from the factory to discuss workplace concerns. These workers told the WRC that they were fearful of retaliation for exercising freedom of association at the factory because, in January 2019, the factory management had retaliatorily terminated a group of other workers for having formed an “ad-hoc committee” (a body through which, under Guatemalan labor law, workers may legally register a “collective dispute” to address socioeconomic concerns at their place of employment)³ at the factory.

Despite the workers’ fear of reprisals, and although, as discussed below, Elim management soon became aware of and began to retaliate against their associational activities, workers at the factory continued to meet to discuss problems in their workplace. On October 25, 2020, these employees formed their own ad-hoc committee in order to legally register a collective dispute concerning their working conditions. On the same day, these workers also formed a union, the Sindicato de Trabajadores de la Empresa Elim, Sociedad Anonima y Demas Empresas Anexas y Conexas (Sitrelimsac).

On the following day, October 26, 2020, the workers filed the necessary documentation with the Guatemalan Ministry of Labor to register the Sitrelimsac union. The union’s registration document named five employees as its elected leaders and 22 other employees as the union’s founding members. On the same day, this group of workers presented to the Guatemalan courts the documents required to establish their ad-hoc committee and register a collective dispute concerning their working conditions.

Later the same day, a Guatemalan labor court issued a protective writ requiring Elim to negotiate with the workers’ ad-hoc committee concerning the issues raised in the collective dispute the committee had registered. The writ prohibited the company from retaliating against any of the factory’s employees and, in particular, prohibited the factory from dismissing any of its employees without first obtaining permission to do so from the Guatemalan courts.

After workers began their associational activities in April 2020, Elim managers began to interrogate and issue retaliatory threats to the workers who were participating in these activities, including threats that they would be killed, fired, blacklisted, or suffer job loss from plant closure as a result of organizational activities as a result. Managers also fired workers in retaliation for speaking out about wage violations in the factory. As a final act of retaliation, the factory management made good on its threat to close the factory in retaliation for workers’ decision to organize a union. These violations are described in detail below.

³ Article 374 of the Guatemalan Labor Code allows for the establishment of an ad-hoc committee, made up of no more than three members. The purpose of this committee is to file a verbal or written complaint with the employer.

B. Violations of Workers' Right to Freedom of Association

Guatemalan law and university labor standards for the production of collegiate licensed apparel protect the right of workers to freedom of association⁴ and prohibit retaliation by employers for their exercise of this right.⁵ The WRC's independent investigation of the complaint filed by Elim workers found that, in retaliation for the workers' decision to organize a union, form an ad-hoc committee, and register a collective dispute, factory management committed a series of serious violations of workers' right to freedom of association.

1. August–September 2020: Interrogation of and Death Threats against Worker by Human Resources Manager in Retaliation for Associational Activities

A worker interviewed by the WRC reported that two representatives of Elim's factory management, Human Resources Manager, Edgar Ayala, and the Head of Industrial Security, Rudy Camey, threatened his life in retaliation for the worker's decision to participate in union organizing.

The worker informed the WRC that, on August 4, 2020, he was called to a private meeting inside the factory with the two managers. The worker reported that Manager Ayala patted him down, as if checking him for weapons or a microphone. The manager then took the worker's cell phone and began scrolling through the worker's text message history.

Ayala told the worker that the worker was not allowed to have a cell phone on the plant floor and, therefore, management was going to keep the phone for four days. Ayala then asked the worker if he was involved in the effort to form a union, which the worker then denied.

Ayala then told the worker, "Be careful because there are people asking me for money to kill you. They want me to pay them money to hurt you or kill you. Think about your family. Something bad could happen to you, then what will you do?"

According to the worker, later the following month, on September 24 or 25, 2020, Manager Ayala again threatened the same worker's life in retaliation for union organizing. The worker was again called to a private meeting inside the factory with Managers Ayala and Camey.

When the three were alone, Ayala again frisked the worker before speaking to him. Ayala then said to the worker, "Isn't it true that you are organizing a union?" The worker said that he was not. Ayala continued,

I know you are the one that is organizing [a union] because I received a call from a union confederation called CGTG, where you are involved, and they [the CGTG union confederation] are asking me for 50,000 quetzales to [let me] throw you out on the street and [in return for which] they will send me all of the names [of the workers who are organizing a union]. They want to sell you out. That is why I prefer to speak to you.

⁴ Constitution of Guatemala, Article 34 and CLC Special Agreement, Schedule I, § II(B)(9).

⁵ Labor Code of Guatemala, Articles 10 and 62 (c) and CLC Special Agreement, Schedule I, § II(B)(9).

You have a family so you should be careful because there are people who want me to pay them money to kill you. You are making a poor decision. The workers need their jobs. The [other] workers send me WhatsApp messages telling me I need to hurt you. They have asked me for money [to hurt you]. You should be careful. They know where you live and have seen the route you take [to come and go from the factory]. That is why I am telling you to be careful.

The worker asked Manager Ayala if he was being threatened and Ayala responded, “No, I am warning you. I am telling you this because there are a lot of people who want to kill you. You should think about your family.”

On October 12, 2020, the worker who received these threats sent a letter by WhatsApp message to Elim’s Plant Manager, Luis Choi, detailing the two incidents described above. In this letter, the worker asked Choi to take action with regard to Manager Ayala’s threats and stated that, if he did not, the worker would file a complaint with the Public Ministry (i.e., the Guatemalan public prosecutors’ office). Choi did not respond to this text message and as detailed below, two days later, on October 14, this worker was fired from his job at Elim.

Ayala’s multiple death threats against this worker and, as discussed below, the workers’ termination by Elim in retaliation for having reported these death threats to other company managers represented severe violations of university and buyer codes of conduct, which explicitly prohibit both physical, verbal, and psychological abuse of workers (of which death threats are a particularly severe example) and retaliation of any kind against workers for associational activities.⁶

2. August–October 2020: Threats of Retaliatory Firing and Plant Closure by Factory Line Supervisors

Threats of retaliation also were issued by the company’s line supervisors to workers who were participating in the union’s organizational meetings. For example, one of the workers interviewed by the WRC reported that his line supervisor, Mateo Quinilla, made frequent comments during the months of August, September, and October 2020 concerning this worker and other employees who were forming a union, threatening them with retaliatory firing or job loss from retaliatory closure of the factory.

This worker reported to the WRC that Quinilla frequently stated, “People here [at the factory] don’t know what they are doing, and they are going to find themselves without a job for doing what they are doing [i.e., organizing and participating in union meetings].” The same supervisor also told employees in his work area, “Workers are organizing, but we know about this and [those workers] are going to be fired.”

Quinilla reportedly also repeatedly told workers, “If you form a union, we are going to close down the factory. Then we will change the company’s name and continue working as if nothing has happened.” To reaffirm this point, he stated to workers, “The *maquilas* never lose. When a union is formed, we just keep working and we change our name. That’s why I wouldn’t get involved with the union.”

⁶ See, e.g., CLC Special Agreement, Schedule I, §§ II(B)(8)–(9).

Another worker testified that, during the same months, Supervisor Tomas Perez also issued threats and predictions of plant closure and retaliatory firing. Perez reportedly said to workers on many occasions, “If you are involved with organizing [a union], think carefully about what you are doing because this effort will damage the company.” Another regular comment by Supervisor Perez that this worker reported was: “You are getting involved in the union and, as a result, you are going to be fired and you won’t achieve anything. . . . You are harming the hand that feeds you.” Supervisors Quinilla and Perez’s multiple threats of retaliatory firing and plant closure represented further violations of university and buyer codes of conduct, which explicitly prohibit both verbal and psychological abuse of workers and retaliation of any kind against workers for associational activities.⁷

3. October 26, 2020: Interrogation, Offer of Bribe, and Threat of Blacklisting by Factory Managers

On October 26, 2020, the day after workers held the founding assembly to establish their union and their ad-hoc committee, Elim Human Resources Manager, Edgar Ayala, and company Production Manager, Jeong Suk Han, called two workers to the administrative offices and interrogated them about the activities of the organizing workers. Ayala told these workers that he had been informed of the formation of the union at the factory and asked the workers if they wanted money in exchange for abandoning their organizing efforts.

After offering the two workers this bribe, Ayala also offered these workers the opportunity to voluntarily resign and stated that the factory would provide severance benefits to them if they did (even though it ordinarily would not be required to do so).⁸ When these two workers told Ayala that they did not want to leave their employment and would not accept his offer of money, Manager Ayala told the workers that he could make sure that they would never be hired at another garment factory (i.e., blacklist them).

As detailed below, on the next day, October 27, Elim fired both of these workers. The manager Ayala’s retaliatory threats against, interrogations and attempted bribery of these workers represented severe violations of university and buyer codes of conduct, which explicitly prohibit verbal and psychological abuse of workers as well as retaliation of any kind against workers for or any other form of employer interference with workers’ associational activities.⁹

4. Retaliatory and Other Unlawful Mass Firings of Workers in Retaliation for Resisting Wage Theft and Other Associational Activities

The WRC’s investigation found that Elim fired at least 29 workers in retaliation for their exercise of the right to freedom of association in violation of the protective writ issued by the Guatemalan court prohibiting the company from dismissing workers without prior authorization. Notably, in the case of several of these workers, the cause of the company’s hostility to them was the workers’

⁷ See, e.g., CLC Special Agreement, Schedule I, §§ II(B)(8)–(9).

⁸ While Guatemalan law requires the payment of severance in a no-fault dismissal (Labor Code, Article 82), it does not require the payment of severance benefits when a worker voluntarily chooses to leave the company.

⁹ See, e.g., CLC Special Agreement, Schedule I, §§ II(B)(8)–(9).

resistance to the management’s imposition of unlawful wage practices (i.e., wage theft) at the factory. These retaliatory and unlawful dismissals are detailed below.

a. May 2020: Retaliatory Firing of Three Workers for Resisting Illegal Salary Reduction

In May 2020, Elim fired three workers in retaliation for their refusal to agree to a request from the company that all workers at the factory accept a salary reduction. In an October 22, 2020, letter to the WRC, Elim acknowledged that, earlier in the year, at the onset of the Covid-19 pandemic, the company had asked workers to agree to reduced pay for a period of several weeks.¹⁰

Elim’s management had asked workers to sign a document, which the WRC subsequently reviewed, in which workers supposedly agreed to a 25 percent salary reduction. In the same October 22, 2020, communication to the WRC, Elim claimed that, “Most of the employees understood the situation and accepted the wage deductions.” The company’s request, however, was unlawful, since the reduction brought workers’ pay below the country’s legal minimum wage and, therefore, asked them to waive their statutory rights under the labor law.¹¹

Workers’ refusal to accede to this unlawful request represented a lawful and protected exercise of associational rights. Therefore, the company’s dismissal in May 2020 of the three workers who refused to agree to the wage reduction constituted an act of retaliation for associational activity, in violation of both university and buyer codes of conduct.¹²

b. August and October 2020: Retaliatory Firing of Two Workers for Resisting Unlawful Underpayment of Overtime

On August 1, 2020, and October 14, 2020, the company fired two workers for resisting an unlawful demand from the company that they perform overtime work without receiving overtime pay. In July 2020, Elim agreed to reimburse workers for the unlawful pay reduction it had imposed on them in April and May 2020 while the factory was subject to a government-imposed “curfew”.

However, the company then informed its employees that, since, during the government curfew, their working hours also had been reduced, workers would now have to “repay” the company for this lost worktime by performing overtime for which they would be paid their regular rate of pay, rather than the legally required premium overtime rate.¹³

A number of employees resisted this further, unlawful demand by the company. On August 1, 2020, one of the resistant employees was called to Human Resources Manager Ayala’s office to meet with Ayala and the manager, Jeong Suk Han. There the managers asked the worker why he was refusing to work overtime and why he was inciting other workers not to work overtime.

¹⁰ Elim stated in its communication to the WRC that it had asked workers to accept a reduction in pay, not on account of the shortened work shift, but rather due the factory’s financial precarity.

¹¹ Article 120 of the Guatemalan Labor Code states that “Permanent workers who, as a result of a legal disposition or an agreement with the employer, work less than forty-eight hours during the week have the right to receive their full salary corresponding to the regular work week.”

¹² See, e.g., CLC Special Agreement, Schedule I, § II(B)(9).

¹³ Article 121 of the Guatemalan Labor Code requires employers to pay employees their regular wage for these hours plus an overtime premium of an additional 50% of the hourly rate.

The worker responded that he did not want to work overtime because the company was not paying its employees for the overtime hours at the legally required premium rate. The worker told the managers that he had not asked any other workers to refuse to perform overtime but had made this decision only for himself.

The worker then heard Jeong Suk Han say to Ayala, “Fire him.” To this, Ayala responded, “We’ll see what we can do with him.” That afternoon, the company fired the worker’s wife. The worker himself was fired 10 weeks later, on October 14, 2020, the same day that another worker activist was dismissed.

In a written communication to Elim, the WRC asked the factory management why the worker who complained about the factory’s improper payment of overtime hours was dismissed. In its October 22 response to the WRC, Elim stated that the worker was dismissed because he did not get along with his coworkers and had been involved in a physical altercation with another worker during the previous year.

Elim’s excuse for terminating the worker, however, was blatantly pretextual. The supposed altercation in fact involved a physical attack in February 2019 on the dismissed worker by another employee, who subsequently apologized for the incident and paid the dismissed worker compensation for the injuries inflicted on him during the attack.

Moreover, Elim not only did not explain why the dismissed worker should be held responsible for an incident for which another employee had already acknowledged culpability, but also did not provide any reason why it had waited to discipline the worker for this purported offense for 20 months. The company’s dismissals of both this worker and his wife therefore constituted further severe acts of retaliation for associational activity in violation of both university and buyer codes of conduct.¹⁴

c. October 2020: Retaliatory Firing of Worker for Reporting Death Threats from Manager

On October 14, 2020, Elim dismissed the worker who, as previously discussed, had been subjected to death threats by factory Human Resources Manager Edgar Ayala; two days prior to his termination, this same worker had filed a complaint regarding the threats with Plant Manager Luis Choi. In its October 22 communication to the WRC, Elim claimed that it dismissed this worker because he did not do his job well and lost his temper with other workers when they complained about the worker’s performance.

The company’s explanation for the employee’s firing, however, was clearly pretextual since, as the company acknowledges, the worker had been employed at the factory for five years without receiving a single disciplinary warning yet was terminated only two days after having reported receiving death threats from a member of management. The company’s dismissal of this worker constituted a further severe act of retaliation for associational activity in violation of both university and buyer codes of conduct.¹⁵

¹⁴ See, e.g., CLC Special Agreement, Schedule I, § II(B)(9).

¹⁵ See, e.g., CLC Special Agreement, Schedule I, § II(B)(9) and PVH “A Shared Commitment”.

d. October 2020: Retaliatory Mass Dismissal of 18 Union Leaders and Members

On October 27, 2020—one day after workers filed documents with the Guatemalan Ministry of Labor to register their union—Elim terminated 18 workers, all of whom had been named as leaders or members of the union in its registration documents.

The workers affected by this mass firing included 18 out of 22—more than 80 percent—of the union’s leaders and founding members. While Elim management told these workers that they were being fired as the result of a staff reduction, the timing of these terminations and the fact that they blatantly targeted leaders and members of the newly formed union made clear that the active motive for the mass firings on October 27 was retaliatory.

Moreover, as discussed below, all of these terminations were, in any case, unlawful, as they violated the protective writ issued the previous day by the Guatemalan courts, which prohibited Elim from dismissing any of its employees without first obtaining authorization from the Guatemalan authorities to do so. Elim made no claim that the company had obtained such authorization before terminating any of these workers.

The mass dismissal of the 18 union leaders and members on October 27 facially violated the Guatemalan Labor Code, which prohibits termination of the leaders and founding members of a newly formed union from the date that workers file the union’s registration documents with government authorities until sixty days after the union’s registration is issued.¹⁶

On October 29, the Guatemalan Ministry of Labor issued a finding that the termination of all 23 of these workers were unlawful and that the company was obligated to reinstate all of them to their former positions with full payment of their back wages for the period that they were out of work.¹⁷

The company’s mass dismissal of these workers constituted further severe acts of lawbreaking and retaliation for associational activity in violation of both university and buyer codes of conduct.¹⁸

e. October 2020: Unlawful Dismissal of Five Other Workers in Violation of Court’s Protective Writ

The remaining five workers whom the company included in the mass dismissal on October 27 were not union members. Nevertheless, their terminations were unlawful, as their dismissals violated the protective writ issued the previous day by the Guatemalan courts prohibiting Elim from dismissing any of its employees without prior authorization from the Guatemalan authorities.

As noted above, Elim made no claim that the company had obtained such authorization before terminating any of these workers. As also noted, on October 29, the Guatemalan Ministry of Labor issued a finding that these workers’ terminations were unlawful and that the company was obligated to reinstate all of them to their former positions with full payment of back wages for the period that

¹⁶ Labor Code of Guatemala, Article 209.

¹⁷ Ministry of Labor of Guatemala, Adjudication Number R-0101-06742-2020, October 29, 2020.

¹⁸ See, e.g., CLC Special Agreement, Schedule I, §§ II. (A) and (B)(9) and PVH “A Shared Commitment”.

they were out of work.¹⁹ The company’s dismissal of these workers constituted further severe acts of lawbreaking in violation of both university and buyer codes of conduct.²⁰

5. December 2020: Closure of Factory in Retaliation for Workers’ Exercise of Freedom of Association

On November 25, 2020, the WRC presented the findings of violations of university and buyer codes of conduct outlined above to Elim’s management and recommended that the factory take swift remedial action; the recommendations that the WRC shared with Elim are found in Section IV of this report. Elim, however, responded by stating its disagreement with the WRC’s findings and indicated that the factory was facing financial difficulty and would possibly close.

On December 8, 2020, the university licensee, Outerstuff, and the other brands that had commissioned an investigation of the alleged violations of freedom of association by Elim (New Era, PVH, and Centric Brands) informed the WRC that they had communicated to Elim their expectation that the factory respect workers’ rights. However, the brands also reported to the WRC that Elim had responded by informing them on December 4 that it would fully shut down factory operations on December 19, 2020.

Elim stated that the reason for closing the factory was “financial issues and lack of orders”. However, the WRC’s investigation determined that the closure of the factory was, at least in part, retaliatory in motive. This determination was based on the following evidence:

- As discussed above, between August and October 2020, the factory management reportedly issued repeated threats that, “If you form a union, we are going to close down the factory. [Then,] [w]e will change the company’s name and continue working as if nothing has happened.”
- Workers fired in retaliation for union organizing in October 2020 testified that, at the time of their dismissal, they were informed by Elim Plant Manager Luis Choi that if they wanted to be paid severance, they should dissolve the union. Choi told the workers, “Elim is going to close and then reopen its business under another name and in a different location.”
- Workers who were employed at Elim at the time that the factory’s closure was announced reported to the WRC that they had been told by management that the factory would close in December but then reopen in January and that non-union workers would be eligible for rehiring at that time.

All of these statements linked the factory’s closure to the management’s goal of eliminating the workers’ union and showed that retaliation against workers for their exercise of freedom of association was a *significant motive* for management’s closure of the factory—even if the factory’s loss of business for reasons not related to labor relations issues was also a reason for the decision to close.

¹⁹ Ministry of Labor of Guatemala, Adjudication Number R-0101-06742-2020, October 29, 2020.

²⁰ See, e.g., CLC Special Agreement, Schedule I, § II (A) and PVH “A Shared Commitment”.

The WRC’s findings in this regard were confirmed by the investigation carried out for the university licensee, Outerstuff, and other buyers from the factory. The report issued by the brands’ investigator found that the factory management threatened workers that Elim would “close the factory as an attempt to prevent the union[’s] formation.”

C. Factory’s Failure to Pay Full Severance and Other Obligations at the Time of the Factory Closure

Following Elim management’s announcement that it would close the factory and terminate the plant’s 350 current workers effective December 19, 2020, the WRC informed the university licensee, Outerstuff of its obligation to ensure that Elim’s workers received the full amount of their legally due severance payments, and other terminal benefits, as well all back pay due to those employees who had been retaliatorily terminated. The WRC also urged the other brands that were buyers from the factory to collaborate with Outerstuff in supporting the payment of this compensation.

Guatemalan law requires employers, in the case of a factory’s closure, to pay all employees legally required severance benefits,²¹ prorated monthly and annual bonuses,²² and all unused vacation pay.²³

The university licensee, Outerstuff, and the factory’s buyers, New Era, PVH, and Centric Brands, with the approval of the WRC, commissioned the independent Guatemalan monitoring organization, COVERCO, to determine the amount of terminal benefits paid to each of the workers by the factory management at the time of the factory’s closure and, by doing so, to identify the amount still owed afterwards to each of the workers.

In January 2021, COVERCO presented to the factory’s buyers a report, which these brands in turn shared with the WRC, indicating that the factory owed workers a total of approximately US\$868,000 in severance and other terminal benefits, only US\$565,000 of which had been paid by Elim. Therefore, the workers were still owed approximately US\$303,000 in severance and other terminal benefits. This amount, however, did not include the back pay that was owed to Elim workers who had been terminated by the factory, prior to the closure, in retaliation for their exercise of freedom of association.

²¹ Constitution of Guatemala, Article 102 (p), Guatemalan Labor Code of Guatemala, Article 82.

²² Constitution of Guatemala, Article 102 (j), Guatemalan Decrees 42–92, 76–78, and 37–2001.

²³ Constitution of Guatemala, Article 102 (i); Guatemalan Labor Code, Article 130.

IV. WRC Recommendations for Corrective Actions

Prior to the announcement by Elim's management that they would close the factory, the WRC had issued recommendations to Elim concerning the measures that were necessary to remedy the violations of freedom of association that had been committed at the factory. These remedial measures included, but were not limited to, that the factory management should:

- Offer reinstatement with back pay from the date of their dismissal to the date of the offer of reinstatement to the 29 workers whom the factory had unlawfully terminated. The WRC recommended that these workers be reinstated to their former positions at the factory with no loss of seniority;
- Issue a verbal and written statement to all factory employees, to be delivered during working hours by top company management and posted permanently in a public location in the factory, stating that the company respects the right of workers to join or form a union of their choosing and that workers will not be monitored, disciplined, discriminated, or retaliated against in any way for exercising this right;
- Arrange for an independent labor rights organization to provide onsite training on company time concerning workers' rights to join and form a union;
- Take disciplinary action against all factory managers involved in the violations detailed in this report, up to and including dismissal. In the case of the managers, Edgar Ayala and Rudy Camey, given the serious nature of the multiple death threats they delivered to an employee union leader, the WRC recommended that these managers be discharged;
- Affirmatively offer and provide to any and all factory employees, on any occasion when they are meeting with a supervisor or manager concerning any disciplinary matter or issue of concern regarding their working conditions, the choice to have a union representative present, on paid work time;
- Allow the members of the Sitrelimsac union, and any other employees whom they may invite, the opportunity to meet during non-work time in any non-work area of the factory, including the factory cafeteria, without interference or monitoring by any manager, supervisor, or any other employee; and
- Retain, at the company's expense, for no less than two days per week, for a period of no less than six months, the services of an ombudsperson approved by the WRC and the Sitrelimsac union to monitor, receive, and be empowered to require the company to resolve any complaints from workers concerning the company's implementation of the preceding measures and respect, generally, for workers' exercise of associational rights.

Following Elim's announcement that the factory would shut down operations effective December 19, 2020, the WRC recommended that unless Elim rescinded the closure notice and implemented the aforementioned corrective actions, factory buyers should take the following actions:

- Commit, in writing, to doing no further business with Elim, its owners or agents, currently or in the future;
- Withhold pending payments owed to Elim and/or its agents for production orders until all legally owed severance payments, terminal benefits, and back pay have been provided to the workers;
- Should the brands and the WRC determine that the workers did not receive full payment of such compensation from the factory, ensure that funds owed by buyers to the factory would be held in escrow to make sufficient payments to workers as to provide them the outstanding portion of this compensation.

V. Factory and Brand Responses

After Elim management announced on December 4, 2020, that it would be closing the factory on December 19, brands committed, with the WRC's approval, to hire the Guatemalan independent monitoring organization, COVERCO, to document the terminal payments made to the factory's workers by Elim and provide a report on the outstanding amount of compensation still owed to each worker.

The brands further agreed that the back wages owed to those workers who had been illegally dismissed by the factory for associational activities should be included by COVERCO in its individual assessments of the outstanding amounts of compensation payable to each worker. Finally, the buyers also committed that they would not do any further business in the future with Elim's owners or agents at any other facility in Guatemala or elsewhere.

After conducting this assessment, COVERCO reported to the apparel brands that, outside of the severance paid directly by the factory to the workers at the time of its closure, employees were still owed approximately US\$303,000 in terminal benefits. The COVERCO report also provided documentation that the workers terminated by the factory for exercise of freedom of association were owed roughly US\$28,000 in back pay. Therefore, the full amount of funds owed to workers that was still outstanding, after the factory's closure was approximately US\$332,000.

Following COVERCO's determination of the specific amounts still owed to each worker, the university licensee, Outerstuff, and the factory's other buyers contracted with COVERCO to receive funds that they had set aside to provide this outstanding compensation to the employees in an escrow account in Guatemala, to contact all 377 of these workers, and to distribute the required individual payments. COVERCO began distributing these funds to the workers in Guatemala starting on March 27, 2021.

The total additional amount being paid to these workers of US\$331,000 is equal to more than two months of wages per employee. Together with the US\$565,000 in severance payments and other terminal benefits paid to workers at the time of the factory's closure, the total sum of US\$896,000 amounts to more than six months' wages per employee. This money provides an important safety net for the workers as they begin the challenging task of finding new employment during what is an extremely uncertain time for garment workers around the world.

In this case, due to Elim's owners' willingness to forgo any future business with these buyers as a consequence of their decision to close the factory, it was not possible to fully remedy the very serious violations of associational rights that the factory management had committed. However, the fact that the university licensee, Outerstuff, and the factory's other buyers worked responsibly with the WRC to ensure that the factory's workers received the full legal compensation they were due is a significant outcome, particularly given the many other factory closures in the global apparel industry, especially during the Covid-19 pandemic, where garment workers have been unlawfully denied such funds.