

# WORKER RIGHTS CONSORTIUM

***Winners (Guatemala), SAE-A Trading Company Ltd.***

*Findings, Recommendations for Corrective Action, and Status of Remediation of Violations of Freedom of Association*



*February 4, 2022*



WORKER RIGHTS  
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## I. Introduction and Executive Summary

### *Background Information*

The following is a report on the findings of the WRC's investigation concerning very severe violations of workers' rights at the factory, Winners, SA in Mixco, Guatemala ("Winners"), as well as the WRC's recommendations for corrective action and the remedial actions taken by the factory management as a response. The factory, which is owned by the Korean-based multinational, SAE-A Trading Co., Ltd, was, at the time of the WRC's investigation, a supplier to Gap and Walmart and had previously also supplied Target and PVH.

The WRC's investigation reached findings based on detailed and mutually corroborative testimony from workers at the Winners factory, as well as credible information from other sources concerning mob violence, physical beatings, death threats, and other abuses that were perpetrated in March and September 2020 against workers who included the general secretary and other members of the independent union, Sindicato Representativo de la Rama Textil Winners ("Sitrawinners") ("the independent union"). These violent mob attacks, threats of murder, and other criminal acts were carried out by other employees who were leaders of a union that, at the time, was sponsored and supported by the factory's management, called SITRAWINSA ("Sitrawinsa") ("the company union").

The WRC found that the factory's management failed to stop and protect the workers in the independent union from these violent mob attacks and death threats and, in some cases, incited and/or approved of these violent assaults and threats that were carried out by the leaders of the company union.

Through the acts and threats of mob violence described herein, the factory management sought to prevent implementation of (and to retaliate against worker union leaders for seeking the enforcement by the Guatemalan courts of) a legal protective order that restricted the factory's termination of employees and a related court decision that mandated the reinstatement of workers whom the factory had previously fired.

### *Findings*

As discussed in this report, the violence and death threats that occurred at the Winners factory in September 2020 were the culmination of a series of attacks on workers' right to freedom of association that escalated over a period of six months and included:

- In March 2020, a violent attack approved of by the factory's then-Human Resources Manager, which included a physical assault by the leaders of the company union that injured a pregnant worker, and an attack in which the worker who is the general secretary of the independent union was hit, kicked, scratched, and slapped by the company union leaders that was organized by this same manager.

- In June 2020, an incident where the same Human Resources Manager threatened that the factory would be closed because of the associational activities of workers who are members and leaders of the Sitrawinners union.
- On September 3, 2020, an incident where the same Human Resources Manager organized a mob of employees to prevent the return to the factory of two workers whom the factory was ordered by a Guatemalan court to reinstate.
- On September 7, 2020, a series of violent mob attacks, death threats, forced resignations, and other abuses at the factory led by the employees who were the officers of the company union, with the knowledge, permission, and approval of company managers, including specifically:
  - Extensive and severe acts of mob violence and criminal conduct by the leaders of the company union against the worker who is the general secretary of the Sitrawinners union, including beating her to near unconsciousness and robbing her of her personal valuables;
  - Explicit death threats by the leaders of the company union against not only this worker but also three other employees;
  - An offer of a substantial bribe from the company for the explicit purpose of subverting the court order and interfering with the exercise of associational rights;
  - Threatened and actual forced resignation from employment of four workers; and
  - Causing two other workers to fear return to the factory due to risk of violence.

As this memorandum outlines, the WRC found that all these abuses constituted severe violations of workers' rights under Guatemalan law, international labor standards, and the codes of conduct of the brands that are SAE-A's business partners.<sup>1</sup>

### *Corrective Action and Remediation*

Following the WRC's completion of its investigation of these abuses, the WRC communicated to SAE-A the corrective actions necessary to remedy these abuses. They included: (1) offers of reinstatement with back pay and safe return to work for all employees who were forced to resign their employment as a result of these attacks; (2) apology and substantial compensation for the employees most severely impacted by the violent assaults and threats; (3) full compliance with and

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<sup>1</sup> See, Labor Code of Guatemala, Articles 10, 61, 62(h) and 197; ILO Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Organize and the Collective Bargaining); and e.g., Gap Vendor Code of Conduct, (revised June 2016), [https://www.gapinc.com/CMSPages/GetAzureFile.aspx?path=~\gapcorporatesite\media\images\investors\compliance\codeofvendorconduct\\_final.pdf&hash=555011f82acb4253acb5aeb9cebc704807058bcc8e37040d62a23e67f92cfb4b](https://www.gapinc.com/CMSPages/GetAzureFile.aspx?path=~\gapcorporatesite\media\images\investors\compliance\codeofvendorconduct_final.pdf&hash=555011f82acb4253acb5aeb9cebc704807058bcc8e37040d62a23e67f92cfb4b). The Gap Vendor Code of Conduct is cited in this document as an example of brand labor rights requirements for suppliers that the abuses discussed here violate. However, the abuses discussed in this document generally violate the code of conduct requirements of every major brand with which SAE-A does business.

implementation of all outstanding court orders and of the factory's collective bargaining agreement (CBA); (4) discipline, up to and including termination, for both the managers and employees most directly responsible for the attacks, specifically, the factory Human Resources Manager and the leaders of the company union; (5) an end to the factory management's sponsorship of the company union and its violent leaders; and (6) ongoing measures to independently monitor and ensure a safe environment in the factory for exercise of associational rights going forward. All these measures are detailed further in Section IV of this report.

After several months of engagement by the WRC with SAE-A corporate management, Gap and Walmart, as the largest buyers from the factory, and other brands that are customers of SAE-A at its other factories—as well as negotiations between SAE-A and the independent union representing the workers most affected by the violence—SAE-A agreed to implement all of the remedial measures listed above. These included, notably, terminating the factory Human Resources Manager who colluded with the employees in the company union in the violent incidents, demoting at least one other senior company manager, and terminating 12 of the employees in the company union who actually committed the violence and issued the death threats to other workers.

SAE-A paid an estimated \$200,000 in back pay and other compensation, the equivalent of approximately seven and a half years of wages for each employee, to the six workers who were directly affected by the violence and death threats and offered them reinstatement to their jobs at the factory, although ultimately (and, understandably, given the trauma to which they had been subjected), none of these workers elected to return. The factory also paid a total of approximately \$30,000 in back pay to three other workers whom the Guatemalan courts had previously determined had been unlawfully fired. Among these three workers, one elected to return to his job, and the two others chose not to return but received severance pay in addition to this compensation.

SAE-A issued a statement to all workers at the factory, that was reviewed and approved in advance by the WRC, committing not to violate freedom of association going forward. On the WRC's recommendation, SAE-A also retained an ombudsman to help mediate and resolve labor relations disputes at the factory.

In addition, SAE-A extended the benefits provided under the factory's existing CBA to all workers and union leaders at Winners, regardless of union affiliation (previously these were only provided to member of the then-company-sponsored union). The company also agreed to discontinue forms of favoritism previously extended to the company-sponsored union, including ending its prior practices of paying salaries to officers of the company union who did not perform a productive job at the factory and allowing that union and its leaders to sell food or other items to employees inside the factory.

Finally, SAE-A agreed that its factory management would hold regular meetings with leaders of the independent Sitrawinners union and permit any factory employee to have a Sitrawinners union leader be present for meetings concerning disciplinary matters or other workplace issues if requested.



## *The Significance of This Case*

Apart from the violations that were documented and the specific corrective measures that were secured, this case is a significant one for several reasons. First, the abuses documented here reflect the ugly reality that, despite the fact that major brands (including both Gap and Walmart, the main buyers from this factory) uniformly include both respect for workers' right of freedom of association and prohibition of any form of workplace violence in their standards for supplier factories, factory managers employed by some of the world's largest garment manufacturers still appear to believe that it is acceptable to inflict death threats and actual violence on workers who actually seek to exercise this right and to drive them out of their workplace.

Second, the remedial measures achieved here affirm the crucial principle that when violence, death threats, and other retaliation are perpetrated, it is not enough to compensate the affected workers monetarily and offer them the opportunity to return to the workplace. Those responsible for either inciting or carrying out this violence—whether they are managers or other employees—must also be *removed* from the workplace, through termination of their employment, so that there is accountability for their conduct and safety for the affected workers to return.

Finally, the unfortunate, but understandable, outcome of this case—that the workers most affected by these violent acts and death threats, the leaders of the independent union, ultimately elected not to return to the factory, even after the perpetrators had been terminated and removed—reflects the fact that, in such instances, the potential to actually restore workers' associational rights, rather than simply secure compensation for their denial, requires that such corrective measures be applied on an urgent basis. Moreover, such corrective action must be taken upon the first appearance of such violent behavior, rather than be tolerated until such abuses are repeated and escalate in severity.

In this case, seven months elapsed between when the independent union leaders were violently expelled from the factory on threat of death in September 2020 and when the inciters and perpetrators of this violence were removed in March 2021. Moreover, the violence that was committed in the factory in September 2020 was at least the *third* reported instance of such an attack by the same group of perpetrators against the same group of workers in the factory. Both brand representatives and SAE-A's corporate management should have been aware of both these past incidents of violence, and the complicity of the local factory management in them, and required the perpetrators to be held accountable, long before the mob attack that occurred in September 2020.

While it is important that Gap and SAE-A, after being pressed repeatedly to do so by the WRC over a period of several months, ultimately required the perpetrators of the violence and death threats to be removed from the factory, this should have been done immediately and without brooking any reluctance or resistance from the local management. Had Walmart, in particular—which responded much less collaboratively than Gap to the WRC's initial findings of management-incited violence and death threats at the factory and our call for swift corrective action—taken a stronger position with SAE-A than it appears to have done here, a more complete degree of remediation of workers' rights may well have been achieved.

## II. Methodology

The WRC initiated an investigation of the acts of violence and other violations of workers' rights at SAE-A's Winners factory on September 16, 2020. The WRC's investigation included interviews with factory workers, electronic communications with SAE-A corporate officials, and a review of other relevant evidence, including video footage and written documents.

During this investigation, the WRC gathered eyewitness testimony from workers employed by the factory. This testimony was detailed, credible, and mutually corroborative. The WRC's investigation encountered a high level of fear among the Winners' workers who were interviewed. This repressive environment was clearly a result of the violence that already had been committed against employees and the explicit threats of additional violence, including death threats, that had been made against these workers.

The WRC conducted this investigation of the violence and other acts and threats of retaliation against employees at the Winners factory in reference to the protections for the fundamental right of freedom of association incorporated in brand codes of conduct, Guatemalan labor law, and international labor standards. These protections uniformly prohibit any conduct that retaliates or discriminates against workers, or threatens to do so, on account of their membership or activities in a union.<sup>2</sup> The WRC's investigation also assessed the violence, threats, and other retaliation against the factory workers in reference to the prohibitions in brand codes of conduct and Guatemalan law on threatened or actual physical violence against and verbal abuse of workers.<sup>3</sup>

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<sup>2</sup> See, e.g., International Labor Organization (ILO) Convention 98 (Right to Organize and Collective Bargaining) (“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Article 10; Gap Code of Vendor Conduct (stating that supplier facilities “shall not threaten, penalize, restrict, or interfere with workers lawful efforts to join associations of their choosing, [or] carry out their union activities....”).

<sup>3</sup> Labor Code of Guatemala, Articles 61 and 197; Gap Code of Vendor Conduct (“The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. ... The facility shall not ... permit psychological coercion or any other form of non-physical abuse, including threats of violence ... or other verbal abuse.”).



### **III. Findings of Workplace Violence and Severe Violations of Freedom of Association**

#### **A. Factual Background: Formation of the Sitrawinners Independent Union, SAE-A's Sponsorship of Sitrawinsa Company Union, and Previous Management-Sponsored Violence by Company Union against Workers in Independent Union**

The WRC's investigation gathered the following information concerning the prior labor-management relations history at the Winners factory, which included the formation of the independent Sitrawinners union, as well as information regarding prior incidents of management-sponsored violence and other retaliation against workers who were leaders of the independent union and the unlawful terminations of factory workers.

##### **1. 2016: Workers Formed Independent Union as Alternative to Company Union**

In 2016, workers at the Winners factory formed the Sitrawinners union and registered the union with the Guatemalan Ministry of Labor. The Sitrawinners union was the second labor organization to be formed at the factory; its founding followed the earlier establishment of another union at the factory, called Sitrawinsa, which is party to a collective bargaining agreement (CBA) with and, as detailed below, received sponsorship and patronage from the factory management.

Workers explained that the Sitrawinners union at the factory was formed because the leaders of the Sitrawinsa union were not advocating for the workforce's interests with the factory management, particularly with respect to employees' ability to take medical and family leave and the company's imposition of unfair and discriminatory production quotas.

Although the company provided the Sitrawinners union with an office in the factory when the union was registered in 2016 (as the company also had provided to the Sitrawinsa company union), workers interviewed by the WRC reported that, since 2017, SAE-A's management consistently had displayed hostility toward the Sitrawinners independent union. As discussed further below, this hostility was apparently related to the Sitrawinners union having successfully petitioned the Guatemalan courts in 2017 for a protective order which restricted the factory's ability to terminate employees—an order that remained in legal effect until early 2020.

Employees who were officers of the Sitrawinners union informed the WRC that, on more than one occasion, workers who sought to be represented by the Sitrawinners union in meetings with factory managers subsequently experienced retaliation by the factory management up to, in some cases, termination of employment. The WRC also learned that workers in the independent union had, between 2017 and 2019, complained on multiple occasions to brand auditors and the Guatemalan Ministry of Labor concerning collusion between the leaders of the company union and SAE-A's Human Resources Manager in retaliating against workers who were leaders of the independent union, which included both prior acts of violence against union leaders as well the management's imposition of discriminatory discipline, up to and including dismissal.

Although these allegations of past retaliation were beyond the scope of the findings of this report, the WRC notes that the hostility that the factory's management reportedly had historically shown

toward the Sitrawinners union and its worker leaders, and management's longstanding collusion with and sponsorship of the Sitrawinsa company union, were informative as to the likelihood and motive of the factory management orchestrating and permitting the multiple violent assaults on these workers that were subsequently carried out in the factory.

## **2. Management Violated Freedom of Association through Patronage of Violent Leaders of Company Union and through Discrimination against Members of Independent Union**

Workers interviewed by the WRC also stated that the factory management consistently provided financial patronage to the earlier-established Sitrawinsa union and its officers. The WRC found that SAE-A paid the company union's officers their full salaries, including overtime pay, to sit in the Sitrawinsa office without performing any production tasks.

The WRC also found that SAE-A gave the company union's officers exclusive license to engage in financially lucrative activities in the factory. For example, even though ordinary workers are not permitted to bring food inside the factory, the company union's no-work employee leaders were permitted to bring large quantities of food and drink into the factory, which they then sold to other workers inside the plant from their union office.

As discussed below, these company union officers were the same employees that carried out the violent attacks in the factory on the workers who were members of the independent Sitrawinners union. Workers also expressed suspicion that the leaders of the Sitrawinsa union were receiving other financial and/or in-kind perquisites from factory management, noting that, at that time, they were the only non-management employees at the factory who drove an automobile to work, owned multiple dwellings, and also owned their own store outside the factory (in addition to the "store" they were permitted to operate from their union office inside the factory).

The WRC noted that an employer providing economic advantage of any kind (including not only cash payments but also "feather-bedding" (provision of no-work jobs) or use of an automobile) to workers who are officers of a union, by reason of their positions, in order to influence the union and its officers constituted interference that violated freedom of association under international labor standards and, by extension, brand codes of conduct.<sup>4</sup>

The WRC also observed that there were indications of such improper influence being exercised in this case by SAE-A's Human Resources Manager, as the employees she organized to lead the violent physical attacks on the worker leaders of the Sitrawinners union were, as already noted, the same leaders of the Sitrawinsa company union to whom SAE-A was paying fulltime salaries (including overtime) for no-work jobs.

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<sup>4</sup> ILO Convention 98 (Right to Organize and Collective Bargaining), Article 2 ("Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.... In particular, acts which are designed ... to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers ... shall be deemed to constitute acts of interference within the meaning of this Article."); Gap Code of Vendor Conduct (stating that suppliers "shall not interfere where more than one union exists within a facility and shall not favor one union over another").

During its investigation, the WRC learned that a previous investigation by brand auditors also found that SAE-A's patronage of and collusion with the Sitrawinsa company union constituted a violation of freedom of association. This investigation noted as evidence of this violation not only SAE-A's payments to the leaders of the company union for no-work jobs but also the fact that SAE-A's Human Resources Manager improperly allowed leaders of the company union to act as an arm of the management in carrying out company human resources functions.

Finally, the WRC found that the company was only providing many of the non-statutory benefits conferred on workers by the factory's CBA to members of the company union, Sitrawinsa. SAE-A was discriminatorily denying these benefits to worker members of the Sitrawinners union or other workers who were not affiliated to either labor organization. Such discrimination violates the requirement under brand codes of conduct that, where multiple unions are present in a supplier's factory, the supplier refrain from discriminating in favor of the members of one union or against the members of the other union(s).<sup>5</sup>

### **3. 2017–2018: Factory Unlawfully Terminated Workers in Violation of Court Order**

After the formation of the independent Sitrawinners union in 2016, the workers who were its leaders petitioned the Guatemalan courts for a protective writ (*emplazamiento*) prohibiting factory management from dismissing any of its workers unless the company first obtained express permission to do so from the courts. This protective order, which was issued by the courts in February 2017, reportedly remained in effect until early 2020.

Between 2017 and 2018, the management of the Winners factory, however, violated the protective order on multiple occasions by terminating employees without prior approval of the court. At least seven workers who were terminated by the factory during this period in violation of the protective order filed claims against the company with the court for reinstatement. Prior to the WRC's investigation, at least three of these claims were decided in the workers' favor and other claims were awaiting adjudication by the Guatemalan courts.

As discussed below in this memorandum, on September 1, 2020, the Guatemalan courts issued an order mandating that the company implement its ruling in the workers' favor in three of these cases by reinstating these unlawfully fired workers with back pay from the date of their dismissals. As detailed further below, the mob violence, death threats, bribery attempt, and forced resignations committed by the leaders of the Sitrawinsa company union and orchestrated by SAE-A's Human Resources Manager on September 7, 2020, had as their explicit purpose, in significant part, to compel the worker leaders of the Sitrawinners independent union to abandon seeking the company's compliance with this order by the Guatemalan courts for reinstatement of the three unlawfully fired employees.

As the court's reinstatement order established, SAE-A violated Guatemalan law in terminating these employees. The company's violent resistance to implementing the court's order constituted a further refusal to comply with legal requirements. Such willful lawbreaking represented a clear violation of brand codes of conduct, which require suppliers to adhere to local laws in their labor and

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<sup>5</sup> Gap Code of Vendor Conduct (stating that suppliers "shall not interfere where more than one union exists within a facility and shall not favor one union over another").

employment practices,<sup>6</sup> and Guatemalan labor law, which requires that employers refrain from taking actions that restrict or deny workers' legal rights.<sup>7</sup>

#### **4. 2017: SAE-A Managers Permitted Company Union's Violent Assault on Workers in Independent Union inside Factory**

Worker leaders of the Sitrawinners independent union reported multiple incidents, not only to the WRC but also to brand auditors and the Guatemalan labor ministry, of the factory's human resources management permitting acts of violence and abuse inside and outside the factory by employees in the Sitrawinsa company union against workers who were, at the time of the WRC's investigation, leaders of the independent Sitrawinners union. For example, in 2017, workers provided detailed testimony to the WRC that, in an incident in June of that year, the leaders of the company union, including employees Margarita Luc Sisimit, Magnolia Alonso Herrera, Victoria Pretzantin, Nidia Gutierrez, and Ingrid Cardona, physically assaulted the worker who was the general secretary of the Sitrawinners independent union, kicking her in the stomach and yelled obscenities at her and other workers who were members of Sitrawinners. All the leaders of the company union were employed by SAE-A in no-work jobs for which they were paid their full salaries without doing any production work.

Workers interviewed in 2017 testified that this violence and verbal abuse against company employees was committed on the factory premises in the presence of the company's Senior Manager of Import/Export, Human Resources, and General Affairs, Bosco Hong, and the factory's legal representative, Ricardo Chinchilla. These company representatives took no action to prevent or stop this violence and verbal abuse against company employees from occurring or to seek discipline for the perpetrators.

Although the incident in 2017 was beyond the scope of the findings of the WRC's current report, the WRC noted that the employees who reportedly assaulted their coworker in 2017 were leaders and members of the Sitrawinsa company union, who were paid by SAE-A for no-work jobs, and that they were able to engage in this violence on the company premises and in the presence of company managers, including senior SAE-A manager Bosco Hong, without the latter intervening or disciplining them. The incident, therefore, was informative as to both the management's tolerance of violence by leaders of the company union and its hostility toward and lack of concern for the safety of the Sitrawinners union general secretary, who was the victim not only of this attack, but also, as detailed below, the further violent attacks against her by the same company union leaders in March and September 2020, culminating in her forced resignation under threat of death.

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<sup>6</sup> Gap Code of Vendor Conduct ("The facilities that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations as a condition of doing business with Gap Inc.").

<sup>7</sup> Guatemalan Labor Code, Article 62(h).

The (non)response of SAE-A's management to all these prior violent assaults were all serious violations by the company of brand codes of conduct,<sup>8</sup> as well as international labor standards<sup>9</sup> and Guatemalan law.<sup>10</sup>

## **B. Findings of Violence and Freedom of Association Violations in 2020**

### **1. March 2020: SAE-A Human Resources Manager Threatened Plant-Closing and Approved, Incited Violent Assault by Company Union on Workers Inside Factory—Pregnant Employee Injured in Attack; Company Union Took Over Independent Union's Office**

On the afternoon of March 10, 2020, four worker-members of the Sitrawinners independent union were speaking with the factory's then-Human Resources Manager, Alicia Sajche, in the union's office located inside the plant, when there was a knock at the door. When the Sitrawinners union member employees opened the door, they saw a group of approximately 17 other employees standing outside, nearly all of whom were members of the Sitrawinsa company union.

The group outside the door included many of the same employees who had attacked the general secretary of the Sitrawinners independent union in the presence of factory managers in 2017, including the leaders of the Sitrawinsa company union, Margarita Luc Sisimit, Magnolia Alonso Herrera, Nidia Gutierrez, and Ingrid Cardona. All of those named were persons whom, at the time of the WRC's investigation, SAE-A was employing in no-work jobs. Other employees in the group who had arrived to confront and attack the workers who were inside the office included three members of the Sitrawinsa company union's "Advisory Council" named Marta Lorenzo, Merlin Licet, and Marta Choc; the employees Maria Rivera, Cesar Quique, Elena Laz; three other workers named Gloria, Domingo, and Maria Elena (last names unknown); as well as two Sitrawinners union member employees, Jose Ronaldo Ruiz and Juan Antonio Hernandez.

When the group of 17 no-work company union leaders and other employees confronted the worker-leaders of the Sitrawinners independent union, the Human Resources Manager, Alicia Sajche, quickly excused herself and left the union office. The larger group shoved open the door causing it to hit one of the Sitrawinners union worker leaders, who was pregnant at the time, forcefully in the stomach.

The force of the employees slamming the door against the pregnant worker's stomach caused her to fall against a table. As a result of the injury sustained from these blows, the pregnant worker was required to visit a health clinic, where she was advised to take two days of medical leave, as the attending personnel at the clinic stated that the assault had placed her at risk of miscarriage.<sup>11</sup>

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<sup>8</sup> Gap Code of Vendor Conduct ("The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. ... The facility shall not ... permit psychological coercion or any other form of non-physical abuse, including threats of violence ... or other verbal abuse.").

<sup>9</sup> ILO Conventions 87 and 98.

<sup>10</sup> Guatemalan Labor Code Articles 61 and 197.

<sup>11</sup> As the pregnant employee ended-up visiting the health clinic during the night after the attack, she was unable to obtain a medical leave form from the clinic and instead took the next two days' leave for "union activity"—a valid response given that her injury was inflicted on her for involvement in the independent union. SAE-A acknowledged that the pregnant employee took leave on these dates but denied being aware of the cause being her injury during the attack.

The group of Sitrawinsa union member employees then stated they were acting on behalf of the two Sitrawinners union member employees who had accompanied them (employees Ruiz and Hernandez), and the group then accused the worker who was, at the time, the Sitrawinners union's general secretary of falsifying documents and providing sexual favors to leaders of the labor federation to which the Sitrawinners union is affiliated and to government officials at the Guatemalan Ministry of Labor and the labor courts. After subjecting her to this demeaning and gender-targeted verbal abuse, the group of Sitrawinsa company union leaders and members then proceeded to physically assault this worker by hitting, kicking, slapping, and scratching her.

The pregnant worker who had also been assaulted by the group then attempted to go to the factory's administrative offices to ask the management to intervene and stop the attack but was physically prevented from doing so by the Sitrawinsa company union leaders, Ingrid Cardona and Magnolia Alonso Herrera.

Members of the group of employees who were attacking the Sitrawinners union general secretary then called for the Human Resources Manager, Sajche, to return to the scene of the assault. When the manager, Sajche, returned, members of the group, including the company union leader, Magnolia Alonso Herrera, continued the violent attack on the worker in the manager's presence.

The employee members of the Sitrawinsa company union who were involved in the assault asked the manager, Sajche, to take the locks off the door to the Sitrawinners union office because, they claimed, the Sitrawinners union members whom they were purportedly supporting by way of their assault had not been given keys to the office.<sup>12</sup> While the manager, Sajche, took no action to end the violent assault on the Sitrawinners union general secretary or to assist the pregnant worker who also had been attacked, Sajche did summon a factory mechanic to remove the lock from the Sitrawinners union office's door, which he did.

Instead of intervening to end the attack and disciplining the Sitrawinsa company union members for physically assaulting their coworkers, Human Resources Manager Sajche then told the workers who were Sitrawinners union leaders that it was their own fault that the members of the management-favored Sitrawinsa union were verbally abusing them and physically attacking them, because the workers in the Sitrawinners union had filed complaints against the management that were harming the company.

The Human Resources Manager Sajche said, "These girls [the attacking company union leaders] are right [to be abusing and assaulting you] because you are the reason that the brands are leaving [ending production orders], and the factory is going to close."<sup>13</sup> Sajche specifically referenced the fact that the apparel brand PVH was no longer placing orders for Calvin Klein products at the factory and said that this was the result of the Sitrawinners independent union's activities.

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<sup>12</sup> The leaders of the Sitrawinners independent union reported that they had previously changed the locks on the office because employees Ruiz and Hernandez had removed the union's computer from the office without permission, raising concerns as to whether these employees were colluding with the company union—concerns which this incident showed were more than valid.

<sup>13</sup> As discussed, the manager, Sajche, made this statement approving and inciting violence against the workers who were leaders of the Sitrawinners union in the presence of many of the same employees who subsequently carried out the violent attack on these workers on September 7, 2020.



After this attack by the company union leaders and other employees, Human Resources Manager Sajche, who had approved the assault, had the locks to the Sitrawinners independent union's office changed and gave a key to the new locks to two of the employees who had participated in the attack, Ruiz and Hernandez, as well as the independent union's actual leaders. However, the workers who were leaders and members of the Sitrawinners independent union no longer felt safe at the office after this attack and, subsequently, the Sitrawinsa company union leaders used the Sitrawinners office space for the company union's business and gatherings. Photographs supplied to the WRC show the Sitrawinsa company union holding a birthday party in the independent union's former office for the company union's leader, no-work employee, Margarita Luc Sisimit, who participated in the March 2020 attack and the subsequent violence in September 2020.

With these statements blaming the workers who were targeted for assault on account of their union activities for the company's loss of orders and the possible closure of the factory and by allowing the perpetrators to carry out this attack on company premises and on paid company time, the SAE-A Human Resources Manager, Alicia Sajche, both approved this attack and effectively incited the future acts of violence that were carried out in September by the same company union leaders to punish the Sitrawinners independent union worker leaders and remove them from the factory. This conduct by the SAE-A manager constituted a severe violation by the company of the prohibitions under brand codes of conduct, international labor standards, and Guatemalan law against retaliation for union activities, physical violence, and, given the injury to the pregnant worker, unsafe conditions in the workplace.<sup>14</sup>

Also, by effectively aiding and abetting the expulsion of the Sitrawinners independent union from its own office and the office's invasion and takeover by the Sitrawinsa union, SAE-A's then-manager,



*Company union's no-work employee leaders hold a party in the office of Sitrawinners independent union after violently occupying the office with assistance from then SAE-A Human Resources Manager, Alicia Sajche, in March 2020. Pictured: Margarita Luc Sisimit, Gloria Osorio, Ronaldo Noriega Ruiz, Ursula Hilaria Echeverria, Juan Antonio Hernandez, Ingrid Cardona, and Marta Lorenzo (all implicated in the further violence in September 2020).*

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<sup>14</sup> Gap Code of Vendor Conduct, "Harassment" ("The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. ... The facility shall not ... permit psychological coercion or any other form of non-physical abuse, including threats of violence ... or other verbal abuse.") and "Freedom of Association" ("The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities."); ILO Conventions 87 and 98; and Guatemalan Labor Code, Articles 61 and 197.

Sajche, committed a further serious violation of freedom of association and brand codes of conduct.<sup>15</sup>

When initially questioned about this incident by the WRC, SAE-A's corporate representatives falsely depicted the March 2020 one-sided attack by the company union leaders and no-work employees on the worker leaders of the independent union as "a conflict between the General Secretary of Sitrawinners ... and some members of Sitrawinners and Sitrawinsa union leaders." Yet SAE-A admitted that it was the leaders of the company union who "confront[ed]" the workers in the independent union.

Moreover, in its initial response to the WRC, SAE-A also repeated the accusation that the independent union worker leader was "preventing normal operations in the factory" by "continuously reporting the company to authorities", thereby displaying the same animus toward the independent union leader as did its Human Resources Manager, Alicia Sajche.

Finally, SAE-A claimed that the Sitrawinners independent union failed to raise the March 2020 assault at a subsequent meeting with the company. The Sitrawinners independent union disputed this and stated that it did attempt to raise the issue, but the meeting was interrupted by one of the employees who had participated in the attack, Jose Ronaldo Ruiz, who baselessly accused the independent union leader of having "hired an assassin" to kill the company union leader and no-work employee, Margarita Luc Sisimit. In any case, however, there is no reason the workers in the Sitrawinners independent union should have been expected to complain about the incident to the factory management when Human Resources Manager Sajche had already stated to them that she approved of the attack.

## **2. June 2020: SAE-A Human Resources Manager Conducted Retaliatory Interrogation and Issued Threats of Plant-Closing against Workers for Union Activities**

In June 2020, factory Human Resources Manager Alicia Sajche, who had approved of and failed to stop the March 2020 physical assault on the worker leaders of the Sitrawinners independent union, called the same worker leaders who had been the victims of this attack to a meeting in the factory. At this meeting, the manager, Sajche, accused the worker leaders of denouncing the company to the factory's buyer brands.

The worker leaders replied to Sajche that they had not had any contact with any of the factory's buyers. The manager, Sajche, stated to the workers, "Because of your denunciations, the brands are demanding that Winners shut down .... We are tired of all of your denunciations and there are workers who need their jobs." Sajche added that the workers should stop causing problems and that she did not know why they had formed a union because there were no violations at the factory. Manager Sajche's statement clearly conveyed a threat to the workers that the factory would close, and they would lose their jobs unless they ceased their independent union's activities. As such, it

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<sup>15</sup> ILO Convention 98 (Right to Organize and Collective Bargaining), Article 2 ("Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration."); Gap Code of Vendor Conduct (stating that suppliers "shall not interfere where more than one union exists within a facility and shall not favor one union over another").

constituted a serious violation by the company of the prohibitions under brand codes of conduct, international labor standards, and Guatemalan law against threats of retaliation for union activities.<sup>16</sup>

### **3. September 3, 2020: SAE-A Management and Company Union Organized Paid Crowd of Employees to Intimidate Workers and Prevent Reinstatement of Unlawfully Terminated Employees in Violation of Court Order**

On September 3, 2020, Guatemalan court officials notified Winners management that the court was requiring the company to reinstate three of the dismissed workers who had brought claims against the company for terminating them in violation of the court's protective order and to make payments of back wages from the date of their dismissals to their date of reinstatement.

Later the same day (September 3, 2020), SAE-A Human Resources Manager Alicia Sajche met with court officials and the worker leaders of the Sitrawinners independent union and stated that the factory would comply with the Guatemalan court's reinstatement order with respect to two of the three unlawfully terminated workers. The factory management stated that it was refusing to reinstate the third worker because, it claimed, a complaint of sexual harassment had previously been lodged against this worker by a former employee.

The manager, Sajche, asked the Sitrawinners union leader workers and two of the three unlawfully fired workers to remain at the factory in the plant's breakroom until 1:00 p.m. when the company's lawyer would arrive to discuss the reinstatements. As the leaders of the company union would be coming to the breakroom at noon for the factory's lunch period, the independent union worker leaders feared that, if they remained in the breakroom, Sajche would collude with company union leaders to organize another attack on them. Accordingly, the independent union worker leaders and the two dismissed workers left the factory to avoid the risk of such an assault.

That afternoon, the Human Resources Manager Sajche phoned one of the independent union worker leaders and asked that the group return to the factory at 2:00 p.m. that same afternoon to complete paperwork needed for the two workers' reinstatements. The Sitrawinners union leaders were on leave that day but agreed to come to the factory at the time the Human Resources Manager Sajche requested.

When the Sitrawinners union leader workers and the two unlawfully dismissed workers arrived at the factory's entrance at the time requested by the Human Resources Manager Sajche they saw that Sajche had arranged to meet them in the company of a group of roughly 100 hostile employees, including the leaders of the company union who had previously physically attacked them with management's approval and permission. Given that the 2:00 p.m. time that Sajche set for the meeting was during the factory's working hours, everyone in the group of hostile employees accompanying the manager, Sajche, were on paid company time and, therefore, could only have gathered there with the factory management's permission.

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<sup>16</sup> Gap Code of Vendor Conduct, "Freedom of Association" ("The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities."); ILO Conventions 87 and 98; Guatemalan Labor Code, Articles 61 and 197; Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Article 10.



*A mob organized by SAE-A Human Resources Manager Alicia Sajche and no-work company union leaders assembled outside the Winners factory on September 6 to threaten independent union leaders and prevent reinstatement of workers illegally fired by SAE-A. Text of the accompanying social media post from company union: "A pair of cowards [names of union leaders blacked out by the WRC]. You should just resign ... the Winners workers have declared you not welcome. Get out ..."*

WRC, SAE-A acknowledged that a group of workers gathered in front of the factory for nearly an hour—from roughly 1:50 p.m. to 2:45 p.m.—thereby confirming the implausibility of Manager Kim’s denial. SAE-A claimed, however, that these employees gathered on their own initiative to protest that the third worker, who allegedly had been accused of sexual harassment, would also be reinstated.

SAE-A’s account did not explain why the company would permit so many employees to abandon their jobs for such a length of time for a purpose that, by the company’s own account, had no reasonable basis, since the company was refusing to reinstate the third employee anyway. In any case, workers who were present in the factory during that afternoon testified that the mob was deliberately organized by the Human Resources Manager Sajche and by the company union’s no-work employee leaders, who told other workers that the company was being required to pay the

Recalling these previous assaults and remembering that the manager, Sajche, had previously incited some of the same employees to violently retaliate against them and, more recently, had blamed them for the factory’s business difficulties, the worker leaders of the Sitrawinners independent union were fearful of another violent attack. Therefore, they and the two unlawfully fired workers decided not to enter the factory.

After leaving the area, the Sitrawinners union leader workers telephoned SAE-A Administrative Manager Daniel Kim to ask him why a large group of hostile workers had been permitted to gather outside the factory during working hours. Kim claimed he had no knowledge of such an incident.

Manager Kim’s denial of knowledge of the incident was an obvious falsehood. As the factory’s Administrative Manager, it is not possible that he would not be aware that 100 production employees had left the factory, during its operating hours, on company time, particularly as these employees were in the company of the Human Resources Manager Alicia Sajche, who reported to Kim. After Kim falsely denied knowing that his Human Resources Manager had used company employees to intimidate workers and prevent the reinstatement of unlawfully fired employees, the Sitrawinners worker leaders filed a complaint with the Guatemalan courts reporting that the company was defying the court’s order to reinstate the workers.

Upon being questioned about the incident by the



terminated employee one million Guatemalan quetzales and that, as a result, the company would eliminate the workforce's transportation and production bonuses and eliminate overtime.

The factory management's orchestration, through its company union, of a mob of employees to gather outside the plant during paid working hours to prevent, through intimidation, the implementation of a court order constituted yet another severe violation of brand code of conduct requirements that suppliers respect national laws and refrain from physical coercion or intimidation of employees.<sup>17</sup> Moreover, both Human Resources Manager Sajche's calling the workers to come to the factory to implement the reinstatement of the unlawfully fired employees and then organizing a mob to prevent the workers' safe entrance to the plant and Administrative Manager Kim's blatantly false denial of knowledge of this incident represented significant evidence of bad faith and dishonesty on the part of both these managers.

#### **4. September 7, 2020: SAE-A Management Orchestrated Violent Attack on, Death Threats against, and Robbery, Attempted Bribery, and Forced Resignation of Factory Workers**

On the following Monday, September 7, 2020, shortly before 7:00 a.m. near the factory's entrance, SAE-A's Human Resources Manager Alicia Sajche was heard by several employees to give instructions over a handheld radio, presumably to a factory mechanic, to cut the factory's power supply. After Sajche gave this instruction, the factory's machinery immediately powered down.

Only a few minutes later, a group of approximately 10 employees, including the company union leaders Margarita Luc Sisimit, Magnolia Alonso Herrera, and Ingrid Cardona, as well as company union "Advisory Council" members, Marta Choc and Gloria Araceli Osorio, and the employees Maria Rivera, Jose Ronaldo Ruiz, and Juan Antonio Hernandez (all of whom had participated in the earlier violent attack on the Sitrawinners general secretary in March 2020 and many of whom had also participated in the violent attack on the same worker in 2017), as well as another company union leader, Lidia Gutierrez Ramos, and the employee, Ursula Echeverria, confronted the Sitrawinners independent union worker leader and initiated a brutal assault on her that included multiple death threats, severe physical violence, and robbery of personal valuables. This incident only ended when the independent union worker leader was forced to sign a letter of resignation. In communications to the WRC, SAE-A management initially referred to these incidents as a "scuffle ... between the union members", which was an outrageous attempt to falsely downplay the brutality of this attack, which is detailed below. Extensive testimony and other evidence gathered by the WRC revealed that what occurred was, in fact, a mob attack organized and carried out by the company union with the permission of the factory's Human Resources Manager Alicia Sajche and the explicit approval of SAE-A's Senior Manager of Import/Export, Human Resources, and General Affairs, Bosco Hong, who was present in the factory during the assault.

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<sup>17</sup> Gap Code of Vendor Conduct, "Harassment" ("The facility shall not use ... force ... to ... coerce workers ... The facility shall not ... permit psychological coercion or any other form of non-physical abuse, including threats of violence ..."); "Compliance with Laws" ("The facilities that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations as a condition of doing business with Gap Inc.

## 5. Death Threat against Worker and Offer of a Bribe from the Company to Subvert Court Order and Deny Associational Rights

After the group of 10 company union leaders and other employees approached the Sitrawinners independent union worker leader, a member of this group, the employee, Jose Ronaldo Ruiz, issued the following death threat and offer of a company bribe to the worker leader:

*Resign or you (the worker) won't be alive when you leave here. Leave now on good terms, drop the union, resign from the company, drop the reinstatement order, and accept an offer from the company for 40,000 quetzales [US\$5,135] and a vehicle. If you don't accept, you will leave here dead.*

The only source of knowledge the employee Ruiz could have had concerning availability of such a substantial bribe from the factory management was the factory management, itself. Therefore, the WRC concluded that the factory management originated the bribery offer. Moreover, Ruiz presumably would have never made an open threat inside the factory to kill another employee unless he believed that the management would not terminate him for this. Therefore, the WRC considered not only Ruiz but also the factory management to have been complicit in both the bribe and the death threat.

The death threat against the worker and the offer to her of a bribe from the company in return for ceasing her union activity and abandoning the implementation of a legal court order were further severe violations of the prohibitions under brand codes of conduct and Guatemalan law on threats of physical violence and interference with union activity, as well as their requirements of compliance with national law.<sup>18</sup>

## 6. Threat of Mass Retaliation to Subvert Court Order and Deny Associational Rights

Another employee in the group, Ursula Echeverria, then told the Sitrawinners independent union worker leader that the company would retaliate economically against the entire workforce if management was required to comply with the court order to reinstate the workers it had unlawfully fired. Echeverria stated,

*Don't be such a wretch. Resign and go to hell. Think about the people here [the factory employees]. It is your fault that the clients [i.e., buyers] are leaving. Because of the [court] reinstatement order, none of the workers are being allowed to work overtime hours or earn production bonuses and there are no transportation bonuses for the workers who live far away. It is because of you that the company will have to reduce all these benefits in order to pay the [reinstated] workers the back wages they are owed.*

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<sup>18</sup> Gap Code of Vendor Conduct, “Harassment” (“The facility shall not ... permit psychological coercion or ... threats of violence ...”), “Freedom of Association” (“The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to join associations of their choosing, [and] carry out their union activities...”), “Compliance with Laws” (“The facilities that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations as a condition of doing business with Gap Inc.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, 62(h) and 197.



Since the only source of knowledge employee Echeverria could have had of the factory management's planned course of action if the illegally fired workers were reinstated was the management itself, the WRC concluded that factory management also authored this threat of mass retaliation against factory workers to subvert the court's lawful order.

The threat of mass retaliation by the company against the factory's workforce in the form of loss of overtime pay and bonuses, unless the union leader resigned from her job and ceased seeking implementation of the court order for reinstatement of the unlawfully fired workers, was a further severe violation of the prohibition under brand codes of conduct and Guatemalan law on retaliation for or interference with union activity, as well as their requirements for compliance with national law.<sup>19</sup>

## **7. Physical Assault on Three Workers Carried Out by a Violent Mob Organized by the Company Union and the Factory's Human Resources Manager**

After having threatened the Sitrawinners union worker leader with death, offered her a company bribe, and relayed management threats of retaliation against the entire workforce, the group of 10 employees then began to physically attack this worker, while, as described below, the factory's Human Resources Manager Alicia Sajche stood by and failed to intervene.

First, the employee Echeverria, who had relayed the management's threat of denial of bonuses and overtime, began to shove the worker leader. Emboldened, other employees in the group also began to assault the worker leader. Company union leader (and no-work employee) Ingrid Cardona punched the independent union's worker leader in the chest. Other employees in the group also hit her. The worker leader then fell to the floor. Employee and Sitrawinsa company union leader (and no-work employee) Margarita Luc Sisimit, who was participating in the attack, also fell, and then bit the Sitrawinners independent union leader on the latter's right thumb.

While the violent attack was taking place, SAE-A Human Resources Manager Sajche arrived on the scene but made no attempt to stop it. Instead, Sajche observed and filmed the assault with her cell phone's camera. One worker, who was an eyewitness to the incident but was not a member of the group who committed the assault, showed the WRC a video she recorded on her own phone in which Sajche is standing in a crowd of employees filming on her (Sajche's) phone the attack on the Sitrawinners worker leader and not intervening.

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<sup>19</sup> Gap Code of Vendor Conduct, "Harassment" ("The facility shall not ... permit psychological coercion ..."), "Freedom of Association" ("The facility shall not threaten, penalize ... or interfere with workers lawful efforts to join associations of their choosing, carry out their union activities."), "Compliance with Laws" ("The facilities that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations as a condition of doing business with Gap Inc."); Political Constitution of Guatemala, Articles 34 and 102(f); Labor Code of Guatemala, Articles 10, 61, 62(h) and 197.

Indeed, neither the manager, Sajche, nor any other factory manager took any action to stop the violent attack on the worker leader of the Sitrawinners union. Moreover, at least 100 other factory employees reportedly were present in the area while the attack took place. As the incident took place during working hours, both the attacking employees and those who observed the attack were all on company time and being paid by SAE-A to assault their coworkers or watch this violence.



*SAE-A Human Resources Manager Alicia Sajche (in peach-colored jacket with light hair) filmed the mob attack on the independent union worker leader on her phone but did not attempt to stop it.*

Two other worker-members of the Sitrawinners independent union tried to help the worker leader of their union escape her attackers by fleeing into the factory’s administrative offices. However, the attacking mob of employees followed the worker leader into the offices and continued to attack her there. The group of employees that were attacking the worker leader also began assaulting the two workers who were trying to protect her, scratching one of these workers on the face.

Several factory managers, including SAE-A Human Resources Manager Sajche and Administrative Manager Kim, were present in the office as the violent attack by

the group of employees that Sajche had organized continued. The manager Kim reportedly told the employees to cease attacking the worker leader, saying “Stop! This isn’t allowed here!” and “Not like this!” and “Leave her alone!”

From these statements—and as Kim had permitted Sajche to have the factory’s machinery powered down at the start of the assault—it can be reasonably inferred that Administrative Manager Kim knew in advance from his Human Resources Manager Alicia Sajche that such an attack by the company-paid leaders of the company’s union on the independent union’s worker leader would take place at the factory that day and had given his assent. It can also be inferred from his statements, however, that Kim did not expect that the attack would be so violent (hence his saying, “Not like *this!*”) or that the assailants would beat the worker leader *inside* his factory office (hence his statement, “Stop! This isn’t allowed *here!*”) (emphases added).

However, Kim’s belated misgivings about the attack on this employee and his verbal request to the assailants that it end—or, at least, not be carried out in his offices—were not accompanied by any threat of discipline for the perpetrators. As such, his intervention was entirely meaningless and ineffectual. The attacking employees simply told Kim that he should not get involved and then pushed him out of the way as they continued their assault on their three coworkers.

This physical assault on three employees, which was carried out in the management’s own offices, on paid company time, in the presence of top factory managers who likely had foreknowledge of the attack and either orchestrated it or, at the very least, failed to take any meaningful action to intervene, constituted yet another very severe violation of the prohibitions in brand codes of

conduct and Guatemalan law on physical violence in the workplace and retaliation for associational activities.<sup>20</sup>

## 8. Death Threats and Forcible Resignation by Human Resources Manager-Organized Mob against Two Additional Workers

The Sitrawinners independent union worker leader and the other two Sitrawinners union members attempted to flee the mob in the administrative offices toward the factory exit. The mob of attacking employees chased these three workers, however, and the employee Maria Rivera grabbed the independent union worker leader by her hair and shirt.

Video footage filmed by an employee on a cell phone showed Rivera and other company union leaders, including the no-work employees Margarita Luc Sisimit and Magnolia Carolina Alonso Herrera, company union “Advisory Council” members Gloria Araceli Osorio and Merlin Aguilar, as well as the employee Jose Ronaldo Ruiz, dragging the independent Sitrawinners union worker leader back to the administrative offices. In the same video, these employees can be heard shouting repeatedly as they drag her,

*“They want to cut three [production] lines! [i.e., repeating the management’s threat of job loss which it blamed on the independent union worker leader.] Come on, let’s get her [the independent union worker leader] out of here! Get her out of here, she causes too many problems! Get her out, get her out, let’s go, let’s go!”*

The independent union worker leader who is being dragged can also be heard on the video crying out repeatedly, “You are hurting me! Let me go!”

SAE-A Administrative Manager Daniel Kim was present during the assault and failed to stop it or to communicate that there would be any consequences for the perpetrators if it continued. On the same video, one of the assailants, Jose Ronaldo Ruiz, can be heard saying to the



*In images from video footage taken by an employee, company “no work” union leaders Margarita Luc Sisimit (black clothing and red shoes), Magnolia Carolina Alonso Herrera (striped jacket), Merlin Aguilar (black clothing with red mask), and company union member Maria Rivera (jeans and blue apron) are seen just outside the factory entrance, violently assaulting the worker leader of the independent union.*

<sup>20</sup> Gap Code of Vendor Conduct, “Harassment” (“The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers.”) and “Freedom of Association” (“The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, 62(h) and 197.

Manager Kim, “Mr. Daniel, don’t get involved. This is a problem between the women. ... Let them be.” No response at all from Manager Kim is audible on the video—much less a clear order to the attackers to cease the violence immediately on pain of termination.

The same employees then also yelled at the other two Sitrawinners member workers who were trying to help the union leader escape that they (the two workers) should not get involved, telling them that, if they did, they would be forced to resign or would end up dead. Upon hearing this death threat, the two workers fled the factory premises and went to a nearby police station to report the incident.

The threats made to these workers that, because they attempted to protect their coworker from a mob attack, they would be killed or forced to resign if they returned to the factory represented yet more severe violations of the prohibitions in brand codes of conduct, Guatemalan law, and international labor standards on threats of physical violence and retaliation for associational activity.<sup>21</sup>

## **9. Further Violent Assault on the Sitrawinners Worker Leader, Robbery of Her Personal Valuables, Death Threat, and Forced Resignation in the Presence of the SAE-A Human Resources Manager**

As they dragged the Sitrawinners independent union worker leader back to the factory’s administrative offices, the mob of company union leaders and other employees continued to beat the Sitrawinners worker union leader, causing her to fall to the ground. Margarita Luc Sisimit, the leader of the Sitrawinsa company union (and no-work employee), who had participated in two previous attacks on Sitrawinners independent union worker leaders in 2017 and March 2020, then told the other employees to search the worker leader for any valuables.

At company union leader Sisimit’s direction, the other employees in the group then forcibly took from the independent union worker leader her cell phone, house keys, and the money she had in her possession (GTQ 1,573). Sisimit then was heard to tell the other employees that they could do whatever they liked to the independent union worker leader because there were no witnesses.

The employees in the mob then continued to beat the independent union worker leader, who later testified to the WRC,

*They were beating me so forcefully on my neck that I thought I was going to pass out. I felt like I was going to vomit. ... I felt so weak from all the blows, especially because I had been hit on the head.*

The employee, Irma Luc Sisimit (the sister of Sitrawinsa company union leader, no-work employee, and violent assailant Margarita Luc Sisimit), was heard telling the other employees that they did not

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<sup>21</sup> Gap Code of Vendor Conduct, “Harassment” (“The facility shall not ... permit psychological coercion or ... threats of violence ...”), and “Freedom of Association” (“The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, and 197; ILO Conventions 87 and 98.



have to worry if the independent union worker leader fainted because she [Irma] had water to use to revive her.

After continuing to beat the worker leader and robbing her of her personal property, the mob of employees finished dragging her back to the administrative offices. Human Resources Manager Sajche was waiting for them and, instead of immediately terminating the perpetrators of this violence, she gave the victim (the worker who was the Sitrawinners independent union's general secretary) a completed resignation form with her personal information recorded and instructed the independent union leader to copy the same information onto a blank resignation form. Employees in the group that had robbed, beaten, and dragged the independent union leader to the office, then, following employee Irma Luc Sisimit's suggestion, threw cups of water in the face of the worker leader, while the manager Sajche again stood by with the prepared resignation letter.

When the worker leader tried to resist signing the resignation letter, the employees again began to verbally abuse her and physically assault her and told her that, if she did not resign, she would be lynched. Again, the Human Resources Manager Sajche and the Administrative Manager Kim were present during these continued physical attacks and while this further death threat was made. However, neither one of the managers intervened nor stated that they would not permit such a threat to be carried out, much less indicated that any of the employees involved would be disciplined for assaulting a company employee and threatening her with murder. The Sitrawinners independent union worker leader testified that, under these continued assaults and the repeated threat of murder, between 9:30 a.m. to 10:00 a.m., she agreed to and did sign a resignation form.

The continued physical assault on the worker leader, the related robbery by force of her personal valuables, the subsequent death threat against her, and, finally, her forced resignation from her job, all of which were carried out on company premises, on paid company time, and much of which were carried out in the presence of top factory management (who either orchestrated it or, at the very least, failed to take any meaningful action to intervene) constituted yet more severe violations of the prohibitions in brand codes of conduct on actual or threatened physical violence in the workplace and retaliation for associational activities.<sup>22</sup>

## **10. Additional Death Threats against and Threatened and Actual Forced Resignation of Five Other Workers in Retaliation for Associational Activities**

While the worker union leader from the Sitrawinners independent union—who had been the target of the assault and death threats described above that were organized by the leaders of SAE-A's company union—was being forced to resign inside the factory office, a number of employees from the mob that attacked her went outside the factory to bring in another Sitrawinners independent union worker leader and forced him to resign as well. The second Sitrawinners worker leader was inside the factory earlier that morning, at 7:00 a.m., when the company union launched the mob

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<sup>22</sup> Gap Code of Vendor Conduct, "Harassment" ("The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. The facility shall not ... permit psychological coercion or ... threats of violence ..."), and "Freedom of Association" ("The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities."); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, and 197; ILO Conventions 87 and 98.

attack on the Sitrawinners union's general secretary but had been warned by a company supervisor to leave the factory to avoid being assaulted as well.

When the second union leader left the factory, he took refuge in one of the police cars that had, by this time, arrived at the facility and was parked outside. At approximately 8:30 a.m., two employees who participated in the violent attacks, Jose Ronaldo Ruiz (who had also issued death threats to the independent union's general secretary) and Juan Antonio Hernandez, found the second Sitrawinners independent union leader sitting in the police car and told him that the Sitrawinners general secretary was in the process of signing a resignation form and that he should do the same.

Ruiz and Hernandez threatened the second Sitrawinners independent union worker leader that, if the latter did not go immediately into the factory's administrative office and sign the resignation form, Ruiz and Hernandez would bring the mob of workers who had attacked the Sitrawinners independent union general secretary outside to the police car, presumably to attack him. The police officer who was also sitting in the patrol car told the independent union's leader that the police would not be able to protect him from a mob of employees.

The second Sitrawinners independent union leader then returned to the factory. Inside the factory's administrative office, he encountered employees and Sitrawinsa company union leaders Magnolia Alonso and Nidia Gutierrez, both of whom participated in the attacks on the general secretary of the Sitrawinners union.

Alonso and Gutierrez told the second Sitrawinners independent union worker leader that, if he did not agree to resign from his job at the factory, he would not leave the factory alive. Having heard Alonso and Gutierrez issue this death threat, the worker became frightened and agreed to sign the resignation document.

Members of the mob of company union leaders and other employees who were present in the administrative office then told the two Sitrawinners independent union worker leaders whom they had just forced to resign to also inform the two workers who had fled the factory after attempting to help the Sitrawinners independent union general secretary to escape from the mob that, if they returned to the factory, those two workers would also be forced to resign, and, if they refused, they would be lynched.

Moreover, two other worker leaders of the Sitrawinners independent union who were not at the factory on the day of the mob attack were too afraid to return to work following these violent incidents. One of these workers was the other leader of the independent union, who came to the factory on September 3 with the Sitrawinners independent union general secretary and the two other workers whom the Guatemalan court had ordered reinstated when they were prevented from entering the plant by the mob of hostile workers organized that day by SAE-A Human Resources Manager Alicia Sajche and the no-work employee leaders of the company union.

The other worker who did not return to work after the mob attack on September 7 was the pregnant worker who was injured in the attack carried out in the factory by some of the same no-work employees in the company union, accompanied by Human Resources Manager Sajche, in March 2020. This worker, having since given birth, was home on parental leave and was due to return to



the factory on September 15, but she was afraid to go back to work following her leave for fear of facing further violence.

The issuing of death threats against these three workers—of whom one, the second Sitrawinners independent union leader, was actually forced to resign from his job, and the other two of whom were threatened with death if they returned to factory and did not resign—which was communicated on company premises by employees on paid company time, constituted yet another very severe violation of the prohibitions in brand codes of conduct, Guatemalan law, and international labor standards on threats of physical violence and retaliation for associational activities.<sup>23</sup>

## **11. SAE-A Senior Manager Approved of, Incited, and Blamed Victims for Violent Attack against Workers, Said Mob Violence was Justified by Company’s Need to Defy Court Order**

While the two Sitrawinners independent union worker leaders were in the factory’s administrative offices and being forced to resign by the violent mob with the approval of SAE-A Human Resources Manager Sajche, the SAE-A’s Senior Manager of Import/Export, Human Resources, and General Affairs, Bosco Hong, entered the office and began speaking with them and with the company union leaders and other employees in the mob that carried out the violent attacks and death threats.

In SAE-A’s response to the WRC about this incident, SAE-A asserted that Hong attempted to deescalate the situation. However, evidence gathered by the WRC indicated that Hong actually expressed approval of the mob attack. Hong told the two workers whom the mob had threatened with death (and, in the case of the Sitrawinners independent union general secretary, had beaten nearly unconscious) that the attack on these two workers was “their [own] fault”. Hong added, “The court’s writ against the company means that there isn’t enough work for us. Your denunciations are hurting our business.”

Hong then told the mob of company union leaders and other employees that carried out the violence and death threats that they were right in taking action to hurt the independent union workers because, he said, the Sitrawinners union’s actions were harming the company. Hong’s statement thus not only blamed the victims of the violence and death threats for the attack they had just suffered but also communicated to the perpetrators of this violence that the company approved of their actions and believed they were necessary and proper to support the company’s business.

Notably, the independent union’s worker leaders that Hong specifically pointed to as justifying the violent assault against them were the same worker leaders seeking implementation of a judicial order issued by a court of law. The statement of the senior SAE-A official present, then, was that it was appropriate to incite and approve mob violence against company employees in order for the company to defy a legal order of the courts.

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<sup>23</sup> Gap Code of Vendor Conduct, “Harassment” (“The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. The facility shall not ... permit psychological coercion or ... threats of violence ...”), and “Freedom of Association” (“The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, and 197; ILO Conventions 87 and 98.

With these statements to the workers who were subjected to a violent mob attack, blaming the victims of this management-orchestrated assault for having brought such violence on themselves (by having the temerity to seek enforcement of a legal order of the courts), and by his statement to the perpetrators commending them for their violence against other company employees, SAE-A Senior Manager Hong both approved this attack and effectively incited future acts of violence against other workers who are Sitrawinners independent union members. These statements by the SAE-A senior manager constituted, in themselves, a very severe violation by the company of the prohibitions under brand codes of conduct, international labor standards, and Guatemalan law against threat of physical violence and retaliation for union activities, as well as the requirement of compliance with national laws.<sup>24</sup>

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<sup>24</sup> Gap Code of Vendor Conduct, “Harassment” (“The facility shall not use ... force that causes bodily harm or pain, or other forms of physical contact to punish or coerce workers. ... The facility shall not ... permit psychological coercion or any other form of non-physical abuse, including threats of violence ... or other verbal abuse.”) and “Freedom of Association” (“The facility shall not threaten, penalize, restrict, or interfere with workers lawful efforts to ... carry out their union activities.”); “Compliance with Laws” (“The facilities that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations as a condition of doing business with Gap Inc.”); Political Constitution of Guatemala, Articles 34 and 102(r); Labor Code of Guatemala, Articles 10, 61, 62(h) and 197; ILO Conventions 87 and 98.

## IV. WRC Recommendations for Corrective Action

The violent and lawless misconduct described above—which was committed on SAE-A company property, on company time, by SAE-A managers and employees under these managers' direct supervision, a mob whose leaders were no-work employees and officers of a company-sponsored union—represented the most severe violations of workers' associational rights that the WRC has encountered in the garment industry in Central America in recent years.

To correct these violations, the WRC recommended that SAE-A Trading Co., Ltd. implement the following remedial measures at its Winners factory:

**A. Reinstatement, Backpay, and Apology for Affected Workers.** Winners should make offers of reinstatement and statements of apology to the six workers who were forced to resign or abandon their positions at the workplace because of the violence that occurred on September 7. The offers should include a formal written apology from the company, opportunity for reinstatement to the workers' original positions with no loss of seniority, and payment of all back wages from the date that the workers ended employment until the date of their offers of reinstatement.

**B. Additional Compensation for Physical Assault and Death Threats.** The company should provide additional compensation to the worker who was most directly affected by these violations, the Sitrawinners independent union's general secretary, as well as the other workers who were assaulted and subjected to death threats.

**C. Severance Benefits in Case of Voluntary Non-reinstatement.** Should any of the six workers choose, of their own volition, not to be reinstated, the company should provide them with payment of severance benefits due under Guatemalan law.

**D. Presentation of Reinstatement Offer.** Given the traumatic events of September 7 and the threats and violence that they have experienced, the company should convey the communications of apology, offers of reinstatement, and the corresponding payment of back wages and additional compensation noted above at a private meeting at a neutral location outside the Winners facility. The workers should be allowed to have present representatives of the labor federation to which the Sitrawinners union is affiliated and/or other civil society representatives designated by the WRC if they so choose.

**E. Announcement of Company Policies.** The company should issue a verbal and written statement to all employees at Winners, to be delivered during working hours and posted permanently in a public location in the factory, stating that:

- The factory management respects the right of workers to join or form a union of their choosing, including the Sitrawinners independent union, and workers will not be monitored, disciplined, or discriminated against in any way for exercising this right;
- The company does not favor, nor will it permit its managers or supervisors to favor, any union over any other union;

- Going forward, the company will enforce a zero-tolerance policy toward all physical and verbal harassment or violence toward any employee, violation of which, by any manager or employee, will result in discipline, up to and including termination;
- The company expresses regret and apologizes for the violence that occurred at the factory on September 7 and disowns and condemns all violence and threats committed against the workers who were forced to resign or stay away from the factory that day; and
- SAE-A will welcome back to the Winners factory the workers who were forced to resign or stay away because of the violence on September 7 and affirms that these workers have not engaged in any improper conduct against the company.

**F. Consequences for Perpetrators.** The company should meaningfully discipline all managers, supervisors, and workers involved in the violations detailed in this report. Those who actually directed or perpetrated physical violence or death threats against workers, as identified in this report, must be terminated, as follows:

- The manager, Alicia Sajche, should be immediately dismissed from her employment and should not be transferred to the company's employ at another factory in Guatemala or elsewhere.
- Senior Manager Bosco Hong should, at minimum, be demoted to a less responsible position at the company. If the senior manager Hong and SAE-A Administrative Manager Daniel Kim are to continue in the employment of SAE-A, they should be transferred to other locations and allowed to have no further contact with the workforce or operations at Winners.
- All employees identified by name in this report as having threatened or committed acts of physical violence against other employees should be immediately dismissed from their employment and should not be transferred to the company's employ at another factory in Guatemala.<sup>25</sup>

**G. Independent Ombudsperson.** The company should arrange for an outside, independent labor rights ombudsperson, to be approved in advance by the WRC and the Sitrawinners union, to be present at the factory for at least two to three days per week, at the company's expense, for a period of six months, to receive, assess, report on, and recommend remedies for any future complaints from workers of further violations of freedom of association.

**H. Non-discriminatory Implementation of CBA.** The company should immediately extend all benefits provided to employees who are members of the Sitrawinsa company union, under the factory's CBA, to all other employees, regardless of union membership or non-membership.

**I. End to Management Sponsorship of Sitrawinsa Company Union.** The company should cease the practice of paying the officers of the Sitrawinsa company union any wages for which these employees do not perform production work, except as strictly required by Guatemalan law. It should cease any involvement of the Sitrawinsa union officers in any human relations

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<sup>25</sup> The employees who must be dismissed include, at minimum, in addition to Alicia Sajche, Margarita Luc Sisimit, Irma Luc Sisimit, Magnolia Alonso Herrera, Ingrid Cardona, Marta Choc, Maria Rivera, Jose Ronaldo Ruiz, Juan Antonio Hernandez, Ursula Echeverria, and Lidia Gutierrez Ramos.

functions of the company except with respect to representing that union's members in grievances, discipline, and collective bargaining. It should transfer permission to sell food and drinks to employees inside the factory from the company union to a local charity or have the company provide such refreshments to employees at cost.

**J. Labor-Management Meetings.** Should the Sitrawinners union request it, the company should establish a calendar for monthly meetings between representatives of Winners management and union leaders to discuss workplace concerns and respect the right of the union to have external representation at these meetings.

**K. Respect for Representational Rights.** In recognition of the representational rights of the union, as set forth in Guatemalan law and international standards, the company should allow for any factory employee who so requests to have present a Sitrawinners union leader when communicating with management on any disciplinary matter or issue of concern in the workplace. It should replace the locks on the Sitrawinners union office in the factory with locks whose keys are provided only to the officers of the Sitrawinners union and inform the officers of the Sitrawinsa union, in writing, that they will face discipline, up to and including termination, if they enter this office without the express permission of the officers of the Sitrawinners union.

**L. Resolution of Legal Complaints.** Winners should promptly reinstate the three workers named in the September 3, 2020, judicial reinstatement order and reinstate any other workers who have filed for reinstatement with the Guatemalan courts because of the company's dismissals of these workers in violation of the court's prior protective order, including cases still awaiting adjudication. These workers should be reinstated to their former positions, with seniority, and receive full payment of back wages from the dates of their dismissals to the date of the offers of reinstatement.

The only exception to such reinstatements should be in such cases where the company is able to provide convincing evidence to the WRC that the worker's dismissal did not, in fact, violate the terms of the protective order, or that the company has some other legally valid basis for refusing reinstatement.



## V. Company Response, Brand Engagement, and Remediation of Violations

The WRC first contacted SAE-A concerning the violations detailed in this report on September 23, 2020, and presented the company with a complete set of findings and recommendations of our investigation on October 8, 2020. Given the severity of the violations, the WRC also immediately shared a copy of the October 8 report with the factory's buyers, Gap and Walmart.

As mentioned in this report, initial responses from SAE-A to the WRC stated that it was the company's understanding that the violence that had occurred was related to an internal union conflict and that the only role that was played by factory management was an unsuccessful attempt to intervene and deescalate the conflict. SAE-A expressed willingness in these initial communications to comply with some of the WRC's recommendations, including an offer to reinstate the workers who had been forced to resign. However, in these initial communications, the company expressed no willingness to implement the fundamental remediation steps that would have made it possible for the workers who were victims of the violence to safely return to work, namely, a commitment by Winners to take disciplinary action, up to and including termination, against the managers and employees who had incited and/or personally committed the violence that occurred and who were named in the WRC's report.

Given this inadequate, initial response from SAE-A, the WRC engaged with the factory's buyers. Walmart sent a cursory response which stated that it took violations of freedom of association seriously and that it would hold the supplier accountable for any violations of Walmart's Standards for Suppliers. However, Walmart did not respond to any of the WRC's subsequent communications or inform about any specific steps that the brand was taking with its supplier factory to ensure compliance with Guatemalan law and the Walmart Standards for Suppliers.

Gap was much more forthcoming with its acknowledgement that violations had occurred and expressed willingness to engage with its business partner, SAE-A, to press for the necessary remedial measures to be implemented. Even though SAE-A resisted committing to key remedial measures for a period of several months, following extensive engagement by the WRC with both Gap and SAE-A, SAE-A ultimately did agree to implement all the corrective actions recommended by the WRC in this report.

To implement these measures, the factory management held a series of meetings with the six workers who were most affected by the September 7, 2020, mob violence. Through this process, the company offered to reinstate all six workers with payment of back wages from the date of their forced resignations until the date of the offers of reinstatement.

The workers reported to the WRC that, given the significant trauma that they had experienced on September 7 (and in the events leading up to this date) and the lengthy delay between when they were driven out of the factory and when their attackers were ultimately terminated and removed, the affected workers all preferred not to return to work at the Winners factory. Therefore, consistent with the WRC's recommendations, the company agreed to pay each of the workers her or his back wages plus the full severance to which she or he was entitled by law. In addition, the workers reported that the company paid additional compensation for the psychological trauma that had been

inflicted upon them. The total amount paid by the company, roughly US\$200,000 was equivalent to approximately seven and a half years of wages for each of the six workers.

In its remedial commitments to the WRC, the company agreed to issue a statement to all workers on Winners' policy regarding freedom of association. The WRC reviewed and approved the language for this statement, which was read to the workers over the factory's public address system on April 29 during working hours and posted this same day around the factory. A WRC representative was present as an observer at the factory during the reading of the statement.

Regarding consequences for the perpetrators of the violence that occurred on September 7, 2020, and for those managers who implicitly or explicitly supported this violence, SAE-A informed the WRC that it had demoted Senior Manager Bosco Hong and, effective January 15, 2021, also dismissed the Winners' Human Resources Manager Alicia Sajche. Factory workers confirmed that Sajche left her position at Winners on this date.

With respect to the factory employees who perpetrated the violence against the independent Sitrawinners worker leader and issued death threats to this worker and other leaders of Sitrawinners, SAE-A sent documentary evidence to the WRC demonstrating that it dismissed these 12 employees on March 11, 2021, and that the company had notified the Guatemalan labor authorities of their dismissals. SAE-A committed that, should any of these employees file a claim with the Guatemalan courts alleging that the dismissal was a violation of law, Winners will vigorously pursue confirmation from the Guatemalan courts of its right to permanently terminate all the employees who were implicated in violence at the factory, including, if necessary, exhausting all appeals necessary to achieve this outcome.

In keeping with the WRC's recommendations, SAE-A also agreed to the participation of an ombudsman to help resolve labor relations disputes at the factory going forward. The Sitrawinners union leaders and Winners management mutually agreed that the person who should play this role was the mediator who had participated in the meetings between the independent union leaders and factory management concerning implementation of the remedial measures for the September 2020 violence. The company and the ombudsman agreed that the ombudsman would mediate between the company and the Sitrawinners union members, advise the parties concerning implementation of all the agreed-on corrective measures, and work to resolve conflicts between the parties for a period of six months, starting April 30, 2021.

SAE-A also agreed to extend all the benefits provided under the factory's existing collective bargaining agreement to all workers and union leaders at Winners, regardless of union affiliation. The company also agreed to discontinue sponsorship by the company of any union at the factory, except as may be required by Guatemalan law or the collective bargaining agreement. Specifically, unless required it to do so by law, the company agreed that it would not pay a salary to a union leader or worker unless he or she performs a productive job at the factory, or allow a union or its leaders or members to sell food or other items to employees inside the factory, both of which were forms of favoritism previously extended to the company-sponsored Sitrawinsa union and its officers, who were the employees directly responsible for the violence and death threats in September 2020.

Regarding the WRC's recommendation on labor-management meetings, SAE-A agreed that Winners management would hold regular meetings with leaders of the Sitrawinners union should the union's elected leaders make a request for such a meeting or meetings. The company also affirmed that it would permit any factory employee who requests it to be accompanied by a Sitrawinners union leader in any meeting concerning disciplinary matters or other workplace issues.

Concerning the resolution of legal complaints, SAE-A ultimately agreed to offer reinstatement with back wages to all three workers whose reinstatements were ordered by the Guatemalan labor courts on September 3, 2020. Two of these workers were offered reinstatement with payment of back wages in March 2021; one of the two chose to return to the factory, and the other worker received payment of back wages and severance benefits. The third worker was reinstated with payment of back wages in November 2021.