

To: WRC Affiliate Universities and Colleges

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Re: WRC Case Brief: Hoosier Manufacturing (Guatemala)

I. Introduction and Overview

This case brief summarizes the WRC's investigation of allegations of violations of freedom of association at the Guatemalan garment factory, Hoosier Manufacturing, which is owned by the Indiana Knitwear Corporation and is disclosed as a supplier of university licensed apparel by both Fanatics and Nike. The WRC investigated complaints by workers from Hoosier Manufacturing alleging that the factory had illegally dismissed (1) a group of approximately 25 workers in April 2021, in retaliation for their efforts to form a union, and (2) a second, smaller, group of workers in October 2021, in violation of a legal protective order prohibiting termination of employees without prior permission from government authorities.

The WRC investigated these two complaints by interviewing workers, reviewing documentary evidence supplied by the factory, and analyzing Guatemalan law and university codes of conduct. We also engaged with university licensees; the factory management, which fully cooperated with our investigation—in particular, by providing valuable evidence with regard to the termination of 25 workers in April 2021; and with the Fair Labor Association (FLA), which, at the request of Fanatics and Nike, commissioned an external investigation to conduct its own inquiry into these dismissals.

As outlined below, the WRC's conclusion, having weighed the totality of the evidence, was that the workers who were terminated in April had not actually intended to form a union. Instead, the WRC found, these workers had merely *pretended* to take steps to unionize, for the specific purpose of prompting the factory management to retaliatorily terminate them, which the management, in fact, did. The workers sought to be dismissed by the factory, because, under Guatemalan law, involuntary termination (unlike voluntary resignation) triggers a legal obligation on the part of the employer to pay workers substantial severance—the receipt of which was this group of employees' actual objective. The FLA, having examined the same or similar evidence, reached a similar conclusion.

The WRC concluded that, since these workers were not actually seeking to form a union, but, instead, seeking only to create the *appearance* of trying to form a union, their actions did not represent a legitimate exercise of the right to engage in union activity. Moreover, since these

employees' *primary objective* was for the company to terminate them and pay them severance, the 25 employees, themselves, had not suffered involuntary and adverse employment consequences when their employer did precisely that.

Nonetheless, the management's dismissal of these workers clearly was intended to prevent these employees from forming a union. As such, their dismissal communicated to the rest of the workforce that the company could and would terminate *other* workers who might *legitimately* seek to unionize. Therefore, the company's dismissal of these workers violated the requirement, under Guatemalan law and university codes, that employers respect the right to freedom of association of *all their employees*.

As discussed below, the mass termination of the 25 workers did, in fact, have such a chilling impact on other employees. Another, entirely separate group of workers at the factory, who launched a legitimate union organizing effort later in 2021, told the WRC that they feared retaliation by the company because they were aware of the mass dismissal of the group of 25 workers in April and believed it was related to union activity. In order to reverse and counteract the chilling effect of these terminations, therefore, the WRC recommended that factory management provide the workers who had been dismissed in April 2021 with offers of reemployment.

When workers who are actually seeking to organize a union are terminated by their employer in retaliation for doing so, the minimum acceptable remedy must include an offer of reinstatement, along with full back pay for any lost wages in the interim, because this is the very least that is required to make the fired workers whole for the harm caused by their job loss. In the case of the 25 workers fired in April 2021, however, the WRC determined that provision of backpay was not required.

The WRC determined this because the 25 workers dismissed in April 2021 had actually *achieved* their real objective in convincing their employer that they were seeking to form a union—which was to be terminated by the factory and, thereby, obtain severance payments. Therefore, these workers had not involuntarily suffered adverse employment consequences, themselves, by being terminated and losing future wages at the factory, as what they sought was termination. As a result, no back wages were needed to make these workers whole.

Nonetheless, as discussed above, in order to reverse the chilling effect of their termination on the authentic exercise of associational rights *by other employees*, it was necessary that these 25 workers be offered rehiring, and the WRC communicated this recommendation to the company, as did the FLA's external investigator. Consistent with this recommendation, the factory offered to rehire all 25 former employees, without backpay. In May 2022, 18 of the 25 workers accepted these offers and returned to the factory.

Moreover, with respect to the three workers who were terminated in October 2021 in violation of the judicial protective order (and concerning whom there was no allegation of fabricated associational activity), the WRC determined that their dismissals were unlawful, and recommended (as did the FLA's investigator) that the company provide these employees both reinstatement *and* back pay, in the amount of six months' wages. The company agreed, and all

three of these workers accepted the company's offer of reinstatement, along with this backpay, and returned to the factory, as well.

The company also agreed to additional corrective actions, including making an announcement to the factory's workforce that the company would respect freedom of association going forward, and retaining an ombudsperson to receive and resolve complaints of antiunion retaliation and mediate any labor-management disputes between the company and its workers, who, in the intervening period, had formed an authentic independent union. These remedial measures by the factory—which included the rehiring of 21 fired workers and payment of six months' back wages to three of these workers—represented appropriate corrective action consistent with the requirements of university codes of conduct.

II. Background to WRC Investigation

In August 2021, the WRC was contacted by a group of current employees of the factory who were seeking to form a union at the facility. (Note: these were *not* the same group of workers whom the factory terminated in April 2021.) These workers informed the WRC that they were fearful that the company would not respect their right to freedom of association and would retaliate against them for organizing. These employees further related that their fear stemmed from their awareness that a previous effort by workers at the factory to organize had resulted in retaliatory and/or unlawful dismissals of multiple employees by factory management.

Given the workers' concerns about retaliation, based on their beliefs about the company's response to previous organizing efforts, the WRC contacted the university licensees, Fanatics and Nike, to urge them to communicate to factory management the need to respect workers' rights to freedom of association. Both licensees confirmed to the WRC that they subsequently engaged with the factory management to this effect, and, to date, the WRC has not received any allegations of antiunion retaliation against workers involved in the later organizing effort, who contacted the WRC in August 2021.

However, the WRC also followed-up on workers' reports and investigated the allegation that a previous group of employees had been terminated by the company in April 2021, in retaliation for associational activities. The WRC also investigated the dismissal of three workers in October 2021, in reported violation of a protective legal writ preventing the factory from dismissing *any* of its workers without prior permission from government authorities.

III. Findings of Violations

A. Retaliatory Termination of 25 Workers in April 2021

The WRC interviewed workers in the group of 25 employees who were terminated *en masse* in April 2021. These workers told the WRC that they had launched an effort to organize a union at the factory, but soon after were terminated by the factory management for refusing to abandon their union activities.

The workers stated that, in late March 2021, they held meetings at a site away from the factory to discuss forming a union. Shortly thereafter, in early April, the workers reported that they were called to a mandatory meeting with the factory management in the plant's warehouse facility. The workers told the WRC that, during this meeting in the factory warehouse, which reportedly lasted an entire workday, company managers informed workers that the management knew of the workers' attempt to form a union and threatened negative consequences for the employees' union activities, including their dismissal. The workers stated that management told them that they should not form a union because factory buyers would oppose such efforts, and the presence of a union would, accordingly, have a negative impact on the factory and on the workers themselves. The workers told the WRC that they ultimately acceded to the company's demand that they discontinue their organizing efforts and agreed, instead, to be terminated by the factory and paid statutory severance benefits.

The factory management, however, presented convincing documentary evidence, including audio text messages that had been exchanged among the 25 workers who were terminated in April 2021, before their dismissal, indicating that these workers had, in fact, engaged in an effort to convince the factory management, falsely, that they were organizing a union and that they did this *so that* the factory would terminate them and pay them severance—thereby, ridding itself of these supposed union activists.

While the company had failed to respect freedom of association—since it had terminated the workers rather than simply informing them that they were free to form a union—the specific employees in this group had not suffered any involuntary harm, as they had attained their actual objective, which was to be terminated and paid severance. However, as reflected in the fears of retaliation for union activity that other employees later expressed to the WRC, the mass termination of these employees sent a chilling message to the rest of the plant's workforce that the factory could and would fire employees to ensure a union would not be formed at its facility. The WRC, therefore, found that the factory violated its obligation to respect workers' right to freedom of association under Guatemalan law¹ and university codes of conduct.²

B. Unlawful Termination of Three Workers in October 2021

The WRC also investigated the dismissal of three workers fired in October 2021 which, workers reported, was in violation of a protective writ issued by the Guatemalan courts. In August 2021, workers at Hoosier Manufacturing formed a body termed, under Guatemalan labor law, an “ad-hoc committee.”³ This is a legally recognized committee of workers that can negotiate with the employer over the specific workplace issues that workers establish the committee to address.

Under the labor law, formation of an ad-hoc committee by employees at a workplace triggers the issuance of a protective legal writ, titled an *emplazamiento* (literally, an “emplacement”), which

¹ Constitution of Guatemala, Articles 34, 102 (r).

² Collegiate Licensing Company (CLC), Special Agreement Regarding Labor Codes of Conduct Sched. I, §§ II (A) (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.) and (B)(9) (“Licensees shall recognize and respect the right of employees to freedom of association....”).

³ Guatemalan Labor Code, Article 374.

prohibits the employer from dismissing *any* company employee (regardless of whether or not the employee is a member of the ad-hoc committee) during the period that the writ is in effect, unless the company first obtains express permission to do so from government authorities.⁴ This protective order remains in effect until a court determines that the employer and the ad-hoc committee have completed negotiations concerning the issues the committee was formed by workers to address.

Workers told the WRC that, despite the issuance of such a protective writ, the company, in October 2021, dismissed three employees without obtaining prior government authorization. Given the clear prohibition under Guatemalan law against dismissing workers without prior permission from the authorities, during the period when the protective writ is in effect, the WRC found that Hoosier Manufacturing's termination of the three workers violated both Guatemalan labor law⁵ and, by extension, university codes of conduct.⁶

III. Remediation of Violations of Freedom

The WRC made a series of recommendations for actions to correct these violations to the factory management. The recommendations of the FLA's external investigator were consistent with these as well. To its credit, Hoosier Manufacturing has implemented or agreed to implement all of these recommendations.

A. Rehiring of 25 Workers Fired April 2021

First, the WRC recommended, and the company agreed to offer to rehire the 25 workers who were terminated in April 2021. The factory committed to rehire the workers to positions with wages and terms of employment equal to or better than those of the jobs they held at the factory during their previous periods of employment. By mid-May 2022, 18 of the dismissed employees had accepted the company's offer of rehiring and returned to work at the factory.

As noted, the WRC determined that the factory was not required to provide back-pay for these workers, and the FLA's external investigator concurred in this conclusion. Because the 25 workers dismissed in April 2021 had actually *sought* to be terminated (in order to receive severance payments), they did not, themselves, suffer any adverse employment consequence when they were dismissed. As a result, as explained above, no back wages were needed to make these workers whole.

B. Reinstatement with Backpay for Three Workers Fired in October 2021

With regard to the three workers who were dismissed in October 2021, in violation of the court-issued protective writ (*emplazamiento*), Hoosier Manufacturing agreed to offer these workers reinstatement and pay back wages from the dates of the workers' dismissals to the date of the

⁴ Guatemalan Labor Code, Article 380.

⁵ Guatemalan Labor Code, Article 380.

⁶ Collegiate Licensing Company (CLC), Special Agreement Regarding Labor Codes of Conduct Sched. I, §§ II (A) ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.)

reinstatement offer. All three of these workers accepted the offer of reinstatement and have returned to work at the factory.

C. Other Corrective Actions

The WRC also recommended that Hoosier Manufacturing issue a statement to all factory employees affirming the legal right of all its workers to exercise freedom of association and committing to refrain from discrimination or retaliation against workers on account of their union activities. The text of the statement, which was approved by the union that workers have subsequently established at the factory, was read aloud over the factory's public address system on April 7, 2022. In addition, the WRC requested, and Hoosier Manufacturing agreed, to meet with union representatives to discuss workplace concerns, both through regular labor-management meetings and on an ad-hoc basis, if requested by individual workers.

Finally, the WRC recommended that the factory retain an external labor rights ombudsperson to receive, assess, and report on worker complaints related to respect for freedom of association, recommend corrective actions for any violations, and attend labor-management meetings. Hoosier Manufacturing committed that it would comply with this recommendation, but has not, to date, retained anyone in this role.

IV. Conclusion

The WRC will continue to monitor respect for freedom of association at Hoosier Manufacturing. The WRC views the remedial measures that the factory management has implemented or committed to implement as substantively remedying the previous violations at the facility and producing a fair outcome for both workers and management.