



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re JERZEES CHOLOMA (HONDURAS)**

REPORT of FINDINGS and RECOMMENDATIONS

October 3, 2007

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Introduction

This report summarizes the WRC's findings regarding alleged labor rights violations at Jerzees Choloma, an apparel factory owned and operated by Russell Athletic in the city of Choloma, Honduras, a major center of apparel production. The facility employs 700 to 800 workers. The licensee listed in factory disclosure information as sourcing from this facility is T-Shirt International; however, because the factory is owned and operated by Russell Athletic, primary responsibility for labor practices at the factory lies with Russell.

The findings and recommendations presented here concern violations of workers' associational rights, including the systematic, targeted firing of workers who have sought to unionize. The WRC has gathered evidence concerning other significant violations at the factory; the targeted firings are, however, the most urgent issue, due in part to a recent mass firing, which was carried out on September 14, 2007. The WRC has limited the present report to the targeted firings, and related issues, in order to expedite its release and thereby expedite the remedial action that is urgently needed. A second report, which will cover findings of violations in several other areas, including occupational health and safety, overtime, and discrimination on the basis of pregnancy, will be released shortly. This second report will also address the recent announcement by Russell that the company plans to close the factory at the end of this year.

The WRC's investigation was undertaken in response to a complaint from the Honduran union confederation *Central General de Trabajadores* (CGT) on behalf of workers at the factory, alleging that the Jerzees Choloma facility had dismissed workers in retaliation for protesting working conditions and exercising their right to join a union. In response to this complaint, the WRC carried out on-the-ground fact gathering in Choloma, San Pedro Sula, and Tegucigalpa, Honduras during the period September 11-20, 2007. Sources of evidence included interviews with current and former workers, government officials, and apparel industry representatives, as well as a review of substantial documentary evidence.

The WRC's investigation identified incontrovertible evidence that the factory has engaged in a series of retaliatory firings of workers who joined a trade union at the factory. These firings began in March 2007, shortly after the union was formed, and reached a crescendo in June, resulting in the elimination from the factory of virtually all of the 72 workers who officially founded the union. A new group of workers at the factory re-constituted the union in the subsequent months, and prepared to file founding documents in mid-September. This was pre-empted by another mass firing, targeting members of this new group of union supporters, which was carried out on September 14, 2007. These firings violate Honduran law and university codes of conduct, both of which protect workers' right to unionize and prohibit any retaliation against workers for the exercise of this right.

Recommendations for remedial action are listed in the final section of this report. It is imperative that Russell implement these recommendations without delay, beginning with offers of reinstatement, with back pay, to all workers that Jerzees Choloma has fired in retaliation for exercising rights of association protected by Honduran law and applicable codes of conduct.

Sources of Evidence

This report reviews extensive evidence gathered by the WRC, relative to the issue of associational rights. The sources of this evidence are as follows:

- In-depth, one-on-one interviews with 40 current and former employees of Jerzees Choloma, including both union members and non-members¹
- Meetings with representatives of the Honduran *Central General de Trabajadores* (CGT), the union confederation representing employees at Jerzees Choloma
- A meeting with a representative of the Honduran Apparel Manufacturers Association, an industry association representing factory owners in the apparel export sector
- A meeting with officials of the Honduran Ministry of Labor who are responsible for the Choloma region
- A meeting with the labor reporting officer of the U.S. Embassy in Honduras
- A review of relevant documents, including union registration documents, government administrative documents, factory letters of reference, factory compensation policies, pay stubs, and employee contracts, among other materials

In the course of our investigation, the WRC made numerous requests for cooperation from Russell Athletic, both at the factory and corporate levels. The WRC received no response from Russell to any of these requests. As a result, we were not able to interview management or visit the factory. It is regrettable that Russell has refused to cooperate with an investigation carried out under university codes of conduct; however, Russell's failure to grant interviews and access to the factory did not materially hinder the WRC's investigative efforts with respect to the issue of targeted firings. The evidence the WRC was able to gather provides an overwhelming basis for the conclusion that workers' rights were violated. There are some details, concerning some events at the factory, that we could not obtain, as a result of management's refusal to provide information; however, adding these details would have no material impact on our findings or on the overall picture of events at Jerzees Choloma that is outlined below.

Allegations

The WRC's investigation gathered evidence on the following alleged worker rights violations at Jerzees Choloma:

- That the factory has violated workers' rights to freedom of association by firing workers in retaliation for those workers having chosen to join a trade union
- That the factory has violated workers' rights to freedom of association by threatening to exact various forms of punishment on workers who choose to join a union

¹ All translations of direct worker testimony quoted in this report are WRC translations, from verbatim interview transcripts.

- That the factory has unlawfully forced workers to perform overtime
- That factory supervisory and management personnel have unlawfully subjected workers to demeaning verbal harassment and abuse
- That the factory does not adhere to basic standards for occupational health and hygiene
- That the factory has unlawfully forced workers to prematurely accept severance benefits
- That the factory has failed to recognize the right to maternity leave

As explained above, the present report covers the WRC's findings relative only to the first two of these allegations – those that pertain to workers' associational rights.

Findings

Targeted Dismissal of Union Members: March to June, 2007

Background

Workers initiated efforts to organize a union at Jerzees Choloma in March 2007. The workers established a plant-level affiliate of a federation known as FESITRATEMASH, which is in turn affiliated with a union confederation known as *Central General de Trabajadores* (CGT).

Before outlining findings relative to the dismissals of union members, it is important to review the process under the Honduran legal system by which workers may establish a trade union at a factory. In order for a union to gain full legal status, the following steps must be executed:

- 1) The union holds a founding assembly, wherein the founding members and leadership committee members are identified
- 2) The union submits a list of founding members to the Honduran Ministry of Labor
- 3) A union member, accompanied by an official of the Ministry of Labor, notifies the employer of the union's formation and provides the employer with a list of the founding members²
- 4) The union submits a request to the Ministry of Labor to gain full legal status as a registered trade union (a status known as *personería jurídica*)
- 5) The Ministry of Labor grants the union legal status

In the case of Jerzees Choloma, workers initiated, and sought to complete, the process outlined above, in order to obtain full legal status for the union they had chosen to form. The evidence shows that management used unlawful means to prevent them from doing so, including the illegal termination of union members through a series of targeted firings.

The following provides a chronological overview of key events at Jerzees Choloma, between March and June of this year:

- On Tuesday, March 13, the union held its founding assembly and 83 workers signed a document establishing themselves as the founding members of the union. The union planned to submit this document to the Ministry of Labor during the following week (per Step 2 above).

² It is important to note, as discussed in depth below, that the successful execution of Step 3 – the formal notification of the union's formation to factory management – is particularly important in the context of Honduran labor law. This is because, while Honduran laws prohibit employers in all cases from dismissing workers in retaliation for the workers' having joined a union, there is a special protection for founding union members, known as *protección del estado*, which is triggered upon this formal notification to management. From the date on which management is formally notified to the date on which the union receives full legal status, the factory is prohibited from dismissing any founding union member, for *any* reason, without obtaining prior approval from the government.

- During the several days immediately following the union's founding assembly, Jerzees Choloma fired nine of the founding members of the union. As with the vast majority of other workers dismissed during this and subsequent episodes, the official reason given to workers for the dismissals was the need for a "reduction of personnel" (i.e., a general layoff rather than dismissals for cause).
- On Friday, March 16, the union created new founding documents. The union did so out of concern that the dismissal of some of the founding members listed on the March 13 documents would render those documents invalid. Seventy-two workers decided to place their names on the new list of founding union members. The union submitted the list and other required documentation to the Ministry of Labor on March 21.
- On or shortly after March 21, a founding member of the union and an inspector of the Ministry of Labor attempted to visit Jerzees Choloma in order to present a representative of the company with notice of the union's founding. Doing so would have triggered a heightened level of protection from dismissal for union members, known as *protección del estado*, as discussed further below. The worker and the Labor Ministry official were unable to present this notification to Jerzees Choloma. At the behest of management, they were denied access to the facility by security guards employed by the Zip Choloma Industrial Park, in which the factory is located.
- Over the two days following this attempted notification, management fired five more of the founding members of the union, including the worker who had attempted to present notice to the company. Fearing further dismissals, the union decided to delay further attempts to notify management, while it considered how to proceed.
- In May, the union members decided to undertake a second attempt at formally notifying the factory of the union's formation. At some point in late May (the exact date could not be determined) two founding members of the union and an official of the Ministry of Labor went to the factory. The industrial zone's security personnel again denied the union and the Ministry representative access to the facility.
- On June 5, a union member and a representative of the Ministry of Labor sought, for a third time, to notify the company of the union's formation. Upon arriving at the industrial park, Eva Fuñez, the park-level human resources manager, informed them that no one at Jerzees Choloma could receive them; they were again denied access to the factory.
- The following day, June 6, the factory fired another founding member of the union.
- On June 7, a union member and a representative of the Ministry of Labor made a fourth attempt to formally notify the company of the union's formation. On this occasion, a representative of Jerzees Choloma finally agreed to meet them in an office outside of the factory. This individual, Loessy Barrera, identified herself as a legal representative of the company. Ms. Barrera signed the notification document,

acknowledging that the factory had been informed of the union's formation. The factory thus obtained a copy of the full list of founding union members.³

- Beginning that same day, June 7, the factory proceeded to fire all, or nearly all, of the remaining founding members of the union – approximately 60 firings over a seven day period. According to credible worker testimony, there was no large-scale dismissal of non-union workers at this time. In the case of most of the dismissed workers, management informed the workers that they were being terminated as part of a general “reduction of personnel”. However, almost all of those dismissed as part of this reduction were union members, in a factory where the union at that time represented less than 10% of the workforce.
- By June 14, all, or almost all, of the 72 founding members of the union established on March 16 were gone from Jerzees Choloma. The vast majority were fired; a small number had resigned.⁴

Unlawful Dismissal of Workers in Retaliation for Union Activities

Among other associational rights established in Honduran law, the Honduran Labor Code specifically provides that “Employers are prohibited from firing workers, or taking any other adverse action against them, due to their membership in a union or their participation in union activities” (Article 96.3). The right of Honduran workers to unionize free from management reprisal is also protected by Conventions 87 and 98 of the International Labor Organization, both of which have been ratified by Honduras. Workers' rights of association are also protected under university codes of conduct.

There are overwhelming grounds to conclude that the dismissals of founding union members at Jerzees Choloma were carried out in retaliation for workers' efforts to unionize. The basis for this conclusion is as follows:

- 1) Statistical evidence concerning the dismissals establishes beyond doubt that Jerzees Choloma targeted union members for dismissal.

During the period of June 7-13, the factory carried out a mass firing, dismissing approximately 60 of the founding unionists – all, or almost all, of the union members still employed at that time.⁵ The factory's official justification for these

³ It should be noted that the Ministry of Labor inspector who undertook three of the four visits to notify Jerzees Choloma of the union's formation was fired on June 7, the date on which he accompanied a union representative to successfully deliver formal notification to the company. The reason for his dismissal is not known.

⁴ As discussed in the text (and explained in detail in footnote 7), the WRC estimates that 80-95% of the founding union members were fired. The remainder resigned of their own volition, or gave notice of resignation, prior to the mass firing of June 7-13. We believe that none of the founding members are still actually working at the factory. The WRC was unable to locate any who are still employed. However, because we did not speak with every worker, and did not have access to the factory's personnel records, the WRC cannot rule out the possibility that a small number may remain. If this is the case, it is not more than a few workers.

⁵ It is important to note that, at the time of this mass firing, the union's founding members were its *only* members. The union did not accept any new members after filing its founding membership list with the

dismissals was “reduction of personnel” (i.e., a general layoff). However, according to credible worker testimony, no more than ten workers who were not members of the union were dismissed at this time.⁶ Thus, while management fired the overwhelming majority of the unionized workers, they fired less than 2% of non-union workers – during what management claimed was a general reduction of the workforce. The sole plausible explanation for the radical over-representation of union members among the group of workers fired is that union members were targeted.

Overall, during a three month period, Jerzees Choloma fired from 80% to 95%⁷ of the original founding members of the union. The sole official explanation given to these workers (who received nothing in writing concerning the reasons for dismissal) was “reduction in personnel.” The only relevant characteristic these fired workers have in common is their status as founding members of the union. They were not, for example, all newly hired workers, such that a “last hired, first fired” policy could explain why they were chosen for dismissal. Nor is there any evidence that the fired workers were somehow all unproductive or otherwise poor performers; nor did management make any claim to this effect to workers at the time of their dismissal. There is no objective factor that can explain why a group representing 10% of the workforce should lose 80% to 95% of its members to dismissal, when there was no remotely comparable reduction in the overall level of employment at the factory.

This statistical evidence alone would constitute definitive proof that union members were targeted for dismissal, even in the absence of other evidence. There is, however, substantial additional evidence to support this conclusion.

- 2) The timing of the dismissals of the workers in question constitutes additional powerful evidence that the dismissals were related to workers’ union activities. During each of the four firing episodes, as outlined in the above chronology, union members were fired immediately following efforts by workers to formally

government on March 16, since doing so, as the union understood the law, would have required revising the list of 72 and re-initiating the process of applying for legal status.

In addition to the approximately 60 firings, a small number of unionists who had given notice of resignation, but had not yet left the factory, had their resignation dates involuntarily accelerated, and were removed from the factory, between June 7 and 13, along with their fellow unionists.

⁶ Because Jerzees Choloma and Russell Corporation denied the WRC’s repeated requests for access to the factory to review records and discuss the issues in question with management, we have not been able to confirm the precise number of workers who were not union members who were dismissed during this period. However, even if the actual number is different from the estimates gathered through worker testimony, it is not possible that the number could change the implications of the statistics reviewed here. Indeed, given that the factory fired the overwhelming majority of the founding union members, the unionists would have been vastly over-represented among dismissed workers unless the factory had, in the same time frame, dismissed most of its workforce. No such massive reduction in employment took place.

⁷ The WRC’s estimate of the percentage of the union members who were fired is based on three sources of evidence: 1) the testimony of numerous current and former employees of Jerzees Choloma, including members of the union and non-union workers, concerning events at the factory; 2) a review of materials provided by workers and the union documenting workers’ separation from employment; 3) a random sample of 26 of the 72 founding union members, more than a third of the full group, whom the WRC was able to contact directly during our ten days on the ground – twenty-three of whom had been fired, three of whom had resigned, and none of whom were still working at Jerzees Choloma.

constitute the trade union or notify management of its formation: 1) the dismissal of at least nine union members immediately followed the union's first formal assembly on March 13; 2) the firing of five union members immediately followed the union's first attempt to notify the company of the union's formation on March 21; 3) the firing of one union member immediately followed the union's third notification attempt, on June 5; 4) the mass firing of June 7-13 immediately followed the union's fourth and successful notification attempt, on June 7.

- 3) The timing of the dismissals also clearly relates to management's increasing knowledge of the identities of the union members. Evidence shows that management was attempting, between March and June, to identify union members, with only partial success. For example, one worker testified that he was called into a meeting with management in April. According to the worker, the manager said to him "Look, we have come across a list of with your identification number, with your full name, with your signature, stating that you all are forming a union, that you all are going to meetings. And we do not allow this." Several other workers provided similar testimony. It also appears that at some point management obtained a list of union members that contained some inaccurate information. A worker who is not a union member testified to the WRC that in March he was called into a meeting with the factory's production manager, Waulkiria Rivera, who interrogated him about the union. The worker testified as follows: "[Ms. Rivera] said 'I didn't believe you were like this, that you were this way... You've betrayed me.' I said, 'What does that mean?' She said, 'You are in the union.'... I've never been a union member, so I said, 'I'm not in any union.' She responded, 'But there you are on the list. You are on the list.' She assured me that she had a seen a list." This worker was dismissed roughly one week after this interrogation. Finally, as noted above, most of the founding union members were dismissed in a mass firing that took place from June 7-13. This firing, which completed the virtual elimination of the union from the factory, commenced on the same day that management, for the first time, received an official list of all founding union members.
- 4) Statements by managers, as reported in credible worker testimony, demonstrate strong anti-union animus. According to worker testimony, these comments were made by four top managers, including the production manager, assistant human resources manager, legal advisor, and plant engineer. Workers provided detailed testimony as to the specific words used by management and the dates on which these statements were made. The comments communicated the message to workers that management will not accept workers' decision to join a union; that workers who choose to join a union can expect to be dismissed; that management will circulate a list of union members to other employers to ensure that these workers will never be able to obtain work in the maquiladora industry again; and that the factory would sooner close than accept a union. A number of specific examples of such comments are presented in the section below entitled "Threats Against Workers Engaged in the Exercise of Associational Rights." These comments lend further support to the conclusion that management deliberately targeted union members for dismissal.

As noted above, in the case of nearly all of the dismissals, the reason given by management to workers was a "reduction in personnel." This was conveyed to workers

verbally; no documents were provided to workers outlining the reasons for their dismissal.

It is, of course, a right of employers to carry out layoffs of employees when economic circumstances require such action. However, while employers have a right to dismiss workers when economic circumstances warrant, they are obligated to select workers for dismissal in a non-discriminatory fashion. Employers may not target union members when they decide whom to dismiss. Such targeting is illegal, and in violation of all applicable codes of conduct, whether or not there is an economic reason for an overall reduction in personnel.

In sum, there are overwhelming grounds to conclude that Jerzees Choloma fired workers in specific retaliation for workers' effort to join together in a trade union.

Dismissal of Workers in Violation of Key Worker Protections in the Honduran Labor Code

In carrying out retaliatory firings, management violated fundamental associational rights protected by Honduran law, ILO conventions and university codes. However, in firing these workers, the factory also violated two narrower requirements in Honduran law, pertaining to the dismissal of union members. These requirements are known as 1) *protección del estado* and 2) *fuero sindical*. They establish procedures that an employer *must* follow before a union member and/or union leader can be terminated. As outlined below, Jerzees Choloma failed to follow these procedures. Thus, in addition to firing workers for an unlawful *purpose* – to rid the factory of trade unionists – the factory also fired workers through an unlawful procedure.

1) Violations of Protección del Estado

With respect to *protección del estado*, Article 517 of the Labor Code provides a special protection against dismissal for founding members of a union from the moment they successfully notify the factory to the moment the union is granted legal status. The article states:

“Formal notification of [at least] thirty (30) workers, made in writing to their employer and communicated to the General Labor Administration or the Ministry of Labor of the jurisdiction, with regards to their intention to organize a union, places the signers of said notification under a special governmental protection. Therefore, from the date of notification until the receipt of proof of legal status, none of these workers can be fired, transferred or demoted in their working condition without just cause, qualified in advance by the respective authority.” (WRC Translation)

This provision protects workers from dismissal, without prior authorization by the government, for *any* reason. The only circumstance in which an employer may lawfully dismiss a founding union member while this protection is in effect is if the General Labor Administration or the Ministry of Labor grants the employer authorization to do so, based on an affirmative finding that there was “just cause” to

dismiss the worker (e.g. a disciplinary infraction warranting dismissal). Employers may not lay off protected workers under any circumstance.

The founding members of the union at Jerzees Choloma were protected by *protección del estado* at the time of the mass dismissals of June 7-13. This protection was confirmed in a document provided to the union by the Honduran Ministry of Labor shortly after management was formally notified of the union's founding on June 7. A copy of this document was obtained by the WRC. In carrying out the dismissals of approximately 60 founding union members at this time, factory management failed to seek or obtain prior approval from the Honduran authorities. For this reason, the firings, regardless of their underlying purpose, violated workers' rights under Article 517 of Labor Code.

Indeed, the sequence of events is stunning: After refusing to receive government/union delegations for eleven weeks, management finally accepted notice, on June 7, of the union's formation. Along with the formal notification, management received from the delegation a list of every founding member of the union. The reason the government provides this list is to make sure that management knows the names of the workers who it is now *prohibited* from firing. Management, beginning that same day, then systematically fired virtually every worker on the list who was still in its employ.

We do not know what the company's justification is for ignoring the clear prohibition on the firing of union members, since management refused to meet with the WRC. It is possible that the company will argue that *protección del estado* does not apply in this case, on the grounds that the representative of the company that accepted notification, on June 7, of the union's formation did not have the legal authority to do so. We do not know whether the company does in fact intend to make this argument; consultation with labor law experts in Honduras has merely led us to consider this possibility. It is not, however, a credible position. The Ministry of Labor and union representatives carried out their responsibilities in good faith, making four separate trips to the factory site to notify management of the union's formation. As a result, by the 7th of June, management had been aware for two-and-a-half months that the government and the union were attempting to provide notification. On the morning of June 7, management, of its own volition, dispatched a representative to receive the union/Labor Ministry delegation and acknowledge notification. If it is indeed management's position that it was never properly notified, this is clearly a pretext.

The Ministry of Labor issued an official order providing for *protección del estado*. This was done on the basis of the Ministry inspector's report that he had formally notified management of the union's formation. According to Honduran legal experts consulted by the WRC, once the protection is granted, it cannot be rendered invalid.

2) Violation of Fuero Sindical

In addition to violating the *protección del estado* requirement of the Labor Code, Jerzees Choloma violated a separate legal obligation when it dismissed members of the union's leadership. This requirement, known as *fuero sindical*, applies specifically to members of a union's leadership committee.

Article 516 of the Labor Code specifies the protection workers enjoy under this rule:

“Workers who are members of the Leadership Committee of a union organization, from the time of their election until six (6) months after they have completed their terms, cannot be fired from their jobs without prior proof before the respective Official Labor Judge or before the Civil Judge in his absence, that just cause exists to terminate the contract. The judge, making a summary judgment, will resolve the proceeding. This law is only applicable to the Central Leadership Committee, when the unions are organized in sections and subsections.” (WRC Translation)

As in the case of *protección del estado*, under the *fuero sindical* rule an employer may only lawfully dismiss a protected worker after obtaining prior authorization from the government (in this case the Labor Court or the Civil Court), based on a finding that the firings are warranted by just cause. However, unlike the case with *protección del estado*, union committee members gain protection from dismissal as soon as the union holds its assembly and chooses its leadership (as opposed to only after the successful union/government notification of management).

The membership of the committee was identified in a founding document dated March 16, 2007. The protection was thus in effect when the factory began to fire members of the union’s leadership committee, the first of whom was fired on March 23; the remaining six leadership committee members were fired in June. In the case of each of these firings, the factory neither sought nor received government authorization; instead, the factory dismissed the workers without even claiming just cause. In view of the facts, with respect to the leadership committee members, it is clear that the factory violated workers’ protection by *fuero sindical* under Article 516.

In summary, for the reasons described above, the WRC found that Jerzees Choloma violated Honduran law in multiple ways when it dismissed union members during March – June 2007. Of paramount importance, with respect to all of the dismissals discussed in this section, the factory violated provisions of the law which prohibit employers from dismissing workers in retaliation for their membership in a trade union. In addition, with respect to the largest wave of firings, which occurring during June 7-13, the factory also violated a requirement under Honduran law known as *protección del estado* which prohibits the company from dismissing founding members for any reason, once the company has been notified of the union’s formation (and until the union is granted full legal status). Finally, the factory violated another requirement of the law known as *fuero sindical*, which prohibits the firing of members of a union’s leadership committee and which goes into effect earlier in the union formation process than *protección del estado*.

Targeted Dismissal of Union Members: September 14, 2007

In the midst of the WRC’s investigation of Jerzees Choloma, the factory carried out another mass dismissal of employees. The WRC investigated the circumstances surrounding these dismissals and concluded that they were retaliatory and represented a continuation of the pattern of unlawful anti-union firings established earlier in the year. The WRC also examined the question of whether management’s resentment of the

WRC investigation constituted an additional basis for the dismissals, but could not reach a definitive conclusion on this point.

Background

The following summarizes key facts relative to this episode of firings:

- Following the dismissal of nearly all founding union members between March and mid-June, the union sought to reconstitute itself by assembling a new group of members. After several months of organizing, the union was re-constituted at the beginning of September. The new union, like its predecessor, is affiliated with the FESITRATEMASH union federation.
- On the evening of Wednesday, September 12, 2007, a meeting was held between the union and a WRC investigator. The meeting was arranged as part of the WRC's standard investigative methodology in a complaint-triggered investigation, which entails meeting formally with the complainant – in this case, the union. In attendance were roughly 50 current Jerzees Choloma workers who are members of the union and a lawyer representing the union from the CGT union confederation.
- The meeting took place in the backyard of the CGT office, which is partially visible from the street on which it is located. As discussed in greater detail below, members of factory management were observed, in a vehicle, driving slowly by the meeting location while the meeting was in progress.
- On Thursday, September 13, the union confederation's representative prepared documents to file with the government, including a list of the new union's 56 founding members. According to union members and the union's representative, the union had scheduled a meeting for the following day, Friday, September 14, at which the founding members would sign the formal union formation documents, which were to be filed the following Monday, September 17, with the government.
- On the morning of Friday, September 14, Jerzees Choloma fired approximately 22 of the founding members of the new union.⁸ The vast majority of the fired workers had attended the meeting with the WRC investigator on Wednesday evening, 36 hours before the firings.

Unlawful Dismissal of Workers in Retaliation for Union Activities

The WRC found overwhelming evidence to support the conclusion that the mass firing of union members on September 14, 2007 was carried out in retaliation for workers' union activities:

- 1) There is overwhelming statistical proof that union members were targeted for dismissal. As outlined above, according to documentation and credible worker

⁸ The WRC obtained factory documents confirming the dismissal of 18 of the workers and received a self-report from one worker; information concerning the dismissal of the remaining three workers is based on credible testimony from other workers.

testimony, on September 14, Jerzees Choloma fired approximately 22 members of the union. The reason given to workers for the dismissal was a “reduction of personnel.” However, according to credible worker testimony, only two workers who were not members of the union were dismissed on this day – one of these non-union workers had previously announced plans to resign from the factory. At this juncture, the union represented 56 workers in total of the factory’s 700-800 employees. In carrying out the dismissals, the company fired approximately 40% of all existing union members – and less than one half of one percent of the remainder of the factory’s workforce. Put another way, a given union member was more than 125 times more likely to be dismissed on this day than one of her non-union co-workers. There is no explanation, other than the deliberate targeting of unionists, that can explain the enormous over-representation of union members among the workers dismissed.

- 2) The conclusion that the dismissals were motivated by anti-union animus is further supported by the timing of the firings. As noted above, the new union was, at the time of the firings, ready to submit a list of its founding members to the government. The immediate next step would have been notification to the company, which, per the process discussed at length earlier in this report, would have conferred protection from unauthorized dismissal on every union member. The mass firing, however, halted the union’s efforts and no paperwork was ultimately filed on September 17. The factory’s actions were consistent with a pattern of behavior established earlier in the year: the firing of union members in close conjunction with their efforts to unionize and to gain legal protection from dismissal.
- 3) According to credible testimony from a number of workers, factory managers also made incriminating statements at the time of the mass firing. For example, the facility’s production manager, Waulkiria Rivera, told a female worker at approximately 8:00 am on the day of the dismissal: “This is happening to you for getting involved in things that aren’t good for the company.”
- 4) There is evidence that factory management learned the identities of some or all of the fired union members by spying on the meeting that took place between the union and the WRC investigator on September 12. As noted above, the meeting was held in the backyard of the union confederation’s office, which is partially visible from the street. Several individual workers reported to the WRC that they saw a clearly identifiable company vehicle pass slowly in front of the union office at approximately 5:30 p.m., while the meeting was in progress, and that Jerzees Choloma employees were visible riding in this vehicle. These witnesses reported that the vehicle was a gray, late model Nissan pick-up truck, with a double cabin. Numerous workers testified that this type of vehicle is used frequently by Jerzees Choloma management. Several workers testified that they recognized two individuals in the vehicle as Jerzees Choloma managers. One worker testified that he recognized the driver of the vehicle as a Jerzees Choloma chauffeur.

As in the case of the earlier episodes of dismissal, the official reason given by management to workers for these dismissals was a general reduction in personnel. As in the case of the June firings, whether there was an economic justification for some reduction in the level of employment is unknown; regardless of this, management may

not target workers for inclusion in such a retrenchment on the basis of their union membership or activities, as clearly occurred in this case.

On the basis of this evidence, there are overwhelming grounds to conclude that the dismissals carried out on September 14 were retaliatory and were part of a broader pattern of anti-union firings carried out by Jerzees Choloma. As such, the firings violate Article 96 of the Honduran Labor Code, which prohibits employers from carrying out retaliatory firings of this kind, as do university codes of conduct.

Retaliation for Workers' Decision to File a Labor Rights Complaint

There is some significant evidence to suggest that an additional motivation for management's mass firing of union members on September 14 was the decision of these workers, and their union, to seek the protection of university codes of conduct. However, while we are very concerned about management's attitude toward workers' decision to file a labor rights complaint, there is not adequate evidence to make a definitive determination as to whether this was actually a contributing factor in management's decision to fire workers.

At the time of the firings, Russell had been aware, for more than a month, that workers had filed labor rights complaints against the factory with monitoring groups in the US. On September 6, the WRC informed Russell that we had initiated an investigation and would shortly have a representative on the ground in Choloma. On September 11, a WRC representative contacted factory management from Choloma to seek a meeting; he did so repeatedly over the following several days. On September 12, the WRC held its meeting with the union.

According to credible worker testimony, Ms. Rivera, the human resources manager, made the following statement on the morning of September 14 as she led workers to the factory's personnel office to be dismissed: "You can bring any *gringos* here that you like, but it is not going to force us to accept a union." Given that the WRC's investigator had been in Choloma for three days and had contacted management seeking a meeting on each of those days, and given that this investigator is indeed a "gringo" (to use Ms. Rivera's word) and clearly identifiable as such, the meaning of her statement is clear: management was aware of, and resented, the presence of a US labor rights investigator and held the union responsible for "bringing" this investigator to Choloma. It is also clear that management knew that the WRC was meeting with workers outside the factory (which is the WRC's standard interview methodology), and with the union, and was angered by this.

Because management had a clear motivation – anti-union animus – to fire the new union members, regardless of the WRC's investigation, it is difficult to make a clear determination as to whether workers' decision to file a complaint figured into the ultimate decision to undertake the mass dismissal on September 14. Ms. Rivera's statement is incriminating, and it is proof that management resented the investigation. The surveillance of the meeting between the WRC and the union is also incriminating, as is the fact that the firings came in close proximity to this gathering. The evidence is not adequate, however, to enable us to make a clear determination, one way or the other, as to whether workers' decision to access the protection of university codes was a contributing factor in their subsequent dismissals.

We did conclude that management evinced a strong hostility toward workers' decision to file a complaint and that management sought to discourage workers from continuing to exercise their right to seek outside intervention – by telling workers that doing so was futile and would not change management's practices. This is not an acceptable posture for the management of a factory covered by university codes of conduct. Moreover, workers at the factory are well aware of the WRC's investigation, the recent firings, and the timing of both – and many will inevitably conclude that workers were fired in part because they filed a complaint and caused the factory to be investigated, whether or not this was indeed a significant motivation behind management's actions. We are also concerned that this perception will spread to other facilities in the area operated by Russell and its parent company, Fruit of the Loom. For these reasons, we have included in our recommendations for corrective action a specific remedial step designed to ensure that workers can exercise their right to file a complaint under university codes (or any other code) without fear of reprisal.

Threats Against Workers Engaged in the Exercise of Associational Rights

Article 469 of the Honduran Labor Code prohibits employers from violating the right of workers to freely join trade unions, including, specifically, threats of punishment against workers who choose to exercise associational rights. University codes of conduct prohibit employers from interfering with workers' exercise of rights of association by means of threats, intimidation, or other forms of harassment.

Evidence demonstrates that Jerzees Choloma management violated the law, and university codes, by repeatedly threatening workers who were engaged in or were suspected to be engaged in union activities with various forms of retaliation.

Among the most common type of threat made by Jerzees Choloma management is that workers who joined the union would be subjected to "blacklisting." Specifically managers threatened that union members would be placed on a "list," which the factory would circulate to other employers to ensure that these workers would not be able to obtain work in the apparel sector again. The worker testimony concerning these threats was of a highly detailed nature, including reference to specific phrases used by managers. The following are several examples.

One worker testified that, during late April 2007, he was called into a meeting with factory management; the meeting was one of a series of one-one-one meetings with union members initiated by management over a two week period. According to the worker, the manager said, "So, we are letting you know that if you are involved in the union, you are going to have problems with the company and you are not going to find work. Those that are in the union are not going to be able to find work because we will put them on a list." According to this worker's testimony, the manager went on to explain that the company would create a list of all of the people who were in the union and send the list of the human resources office of the industrial park, with the directive that those workers should not be hired.

Another worker testified that the factory's production manager repeatedly threatened that the records of all union members would be "marked." Specifically, the production

manager stated that, “I will cut off my ears if you all are able to find work.” On a later occasion she stated, “I will not allow any of those who have been fired to find work in another garment factory.” The latter statement was made in mid-June. Another worker corroborated the worker’s account of the threat. Another worker testified that, during early March, around the time when workers initiated the unionization effort, the workers’ supervisor (now the plant engineer) frequently told workers in his team, “One day I am going to see you banging around outside the factory gates because you will not be able to find work.”

The belief that Jerzees Choloma management is orchestrating the blacklisting of union members is widespread in the factory. In some instances, workers reported that they have declined to join the union specifically because of this threat. One non-union worker testified as follows, “Some of the people in my team were fired in June for being unionists. Many of those people haven’t been able to find work. I know some of them. Some of them are single mothers. They’ve been flagged by Jerzees Choloma. They are on a list. Their records are stained. That’s why I’m not in a union. They would fire me and I wouldn’t find a job anywhere. I’m a single mother with two babies. That’s why I’m not in the union.”

The issuance of threats by factory management to the effect that union members would be blacklisted represents a serious violation of workers’ associational rights. Such threats represent a violation of worker rights even if management does not act on the threats. In this case, there is evidence to indicate that management followed through on its threats, with respect to at least some fired workers.

In at least one instance, a worker who applied for work at a nearby factory was denied a job after having successfully passed the trial period. According to this worker’s testimony, when he asked a manager why he was being rejected, the manager replied, “You had problems in Jerzees. You left because of the union.” In other instances, workers had successfully passed entrance tests, and had either been offered jobs or had been told that they would be offered jobs, but then were informed at the last minute that the factory’s computer system found a problem with their national identification numbers. Workers reported that former Jerzees Choloma workers who were not members of the union have been able to obtain jobs at the factories in question. As discussed earlier in this report, it is clear that Jerzees Choloma management was in a position to circulate a list of union members to other factories, having received a list of the names of all founding union members in June 2007. It also bears noting that representatives of the Honduran Ministry of Labor reported to the WRC that, while the blacklisting of workers is specifically prohibited under the Labor Code,⁹ it is nevertheless common practice in region. The same observation was conveyed to the WRC by the labor reporting officer of the U.S. Embassy in Honduras. Blacklisting was not a focus of this phase of the WRC’s investigation. Our inquiry in this area was therefore limited and thus, despite the evidence outlined in this paragraph, we are not prepared at this point to issue definitive findings with respect to the question of whether and to what extent actual blacklisting has occurred. We may address this issue further in a subsequent report. We *can* state definitively that management *threatened* workers

⁹Article 96.6 of the Honduran Labor Code specifically prohibits employers from “establishing black lists or indexes that may restrict the possibility of work opportunities of workers or affect their reputation.”

with blacklisting, in numerous instances, as part of its effort to prevent workers from exercising their associational rights.

Aside from threats of blacklisting, the most common type of threat made by management to workers was that if workers persisted in the unionization attempt, the factory would shut down. According to credible worker testimony, the factory called a series of meetings in March 2007 with small groups of workers, most of them union members. During these meetings, the factory's production manager and assistant human resources manager stated to workers that "because of the union the factory is going to have to close." The managers stated, according to worker testimony, that the company would have to move to another location and that workers "would be left with nothing." In another episode, about which the WRC heard separate and mutually corroborative worker testimony, a major meeting was held in the factory's cafeteria, during which workers were asked to sign documents relating to the factory's transfer of ownership from Russell to Fruit of the Loom. During this meeting, a worker complained about working conditions at the factory and stated that she was glad that a union was forming. According to testimony from multiple sources, the factory's production manager replied, "I would sooner close this factory than permit a union."

In addition to the threats described, workers also testified that managers have made a range of other, less specific threats to workers to the effect that if workers join the union, "they will not do well" in the factory. Managers have also insulted workers over their membership in the union. For example, according to worker testimony, during a meeting among several managers and a group of union members (all of them male) which took place on June 7, the day on which the union gave formal notice to the company of its formation, the factory's legal representative, Loessy Barrera, told the group of workers, "You're worse than women for getting involved in a union, because only women get themselves involved in unions." This comment was one of several insults (insulting, at least, in the view of Ms. Barrera) directed at the union members during this meeting.

Factory managers also threatened, on multiple occasions, that workers would be fired if they persisted in their efforts to unionize. As has been documented at length in this report, management made good on these threats, in an overwhelming fashion.

Recommendations

The WRC asks Russell Athletic to undertake the following remedial action, without delay:

- 1) Offer immediate reinstatement to all members of the union fired between March 13 and September 14, inclusive. This offer should be extended first to the workers fired on September 14; these workers should be contacted no later than October 10, preferably sooner. All remaining workers should be contacted no later than October 17. Workers who accept reinstatement must be reinstated immediately to their original positions, with no loss of seniority, and with full back pay to the date of dismissal. Back pay should be calculated based on each worker's average weekly earnings over the twelve weeks prior to his or her dismissal (exclusive of any days of unpaid vacation), including all bonuses,

- incentives and overtime pay. Workers who do not accept reinstatement must nonetheless be paid back pay, based on the same formula, for all days between the date of dismissal and the date when the reinstatement offer is made. Workers must not be required to return any severance or other terminal compensation they have received. The WRC is ready to work with NGOs active in the Choloma area to assist factory management in locating as many of the fired workers as possible.
- 2) Immediately recognize the union formed by workers on March 13 (and reconstituted on later dates). Commence negotiations with the union for a collective bargaining agreement. If closure of the factory proceeds, negotiate terms of the closure with the union.
 - 3) Direct Jerzees Choloma management to issue a written statement, to be crafted in consultation with, and subject to the approval of, the WRC and the Fair Labor Association, stating the following: i) workers at Jerzees Choloma have the right to join a union of their choosing; ii) management will in no way interfere with this choice nor take any adverse action of any kind against any worker who makes this choice; iii) any manager or supervisor who attempts in any way to coerce or threaten any worker because of his choice to unionize will be fired and will not be employed in the future by Russell Athletic or Fruit of the Loom. Require every line and/or department supervisor to read this statement aloud to the employees under his or her direct supervision. Provide a typed copy of this statement, on factory letterhead, to every employee. The public announcement and distribution procedures should be carried out twice: once before October 18, once after most or all workers who accept reinstatement have returned the factory. Allow WRC and FLA monitors into the factory to observe these proceedings. Undertake this same procedure in all factories owned and operated by Russell Athletic and Fruit of the Loom in the Choloma area.
 - 4) Dismiss from employment, without delay, Waulkiria Rivera and Nora Lee. Both individuals are senior managers repeatedly identified by workers as the direct source of threats and retaliatory actions against workers. The primary purpose in doing so is not to punish these individuals for past actions, but because these managers cannot be trusted to faithfully respect workers' associational rights and because it is critical that an unmistakable message be sent to workers that the company's practices have changed. As long as these managers continue to serve with impunity, workers will not believe that there is genuine accountability for factory managers who fail to respect workers' rights. Do not re-employ these individuals at Russell Athletic or Fruit of the Loom. If contractual or legal obligations, in Russell's view, prevent immediate dismissal, then suspend these individuals with pay and initiate immediate disciplinary proceedings.
 - 5) Issue a written statement from the President of Russell Athletic, on Russell Athletic letterhead, in Spanish and in English, stating that Russell Athletic and Fruit of the Loom respect workers' right to unionize; that no worker in these companies' employ will ever suffer retaliation or discrimination as a result of his or her decision to unionize; that these companies will negotiate, in good

faith, and without delay, with any union duly constituted under Honduran law; and that a decision by workers to unionize will not cause any factory to close or have any impact on any decision concerning factory closures. Direct the management of every factory operated by Russell or Fruit of the Loom in the Choloma area to provide a copy of this statement to every employee and to read this statement over the factory's public address system. Provide written certification to the WRC and the FLA that these actions, and the procedures described in item three above, have been carried out in every relevant factory.

- 6) Issue a statement, subject to the same terms and distribution procedures, stating that workers who believe their rights have been violated in the workplace have a right to complain to the Worker Rights Consortium, the Fair Labor Association, and any other labor rights group, in the U.S., Honduras or elsewhere and that no worker will suffer any retaliation as a result of a decision to lodge such a complaint, to join other workers or a union or other organization in doing so, or to participate in an investigative process arising from such a complaint.
- 7) Cease any efforts to blacklist any former employee of Jerzees Choloma.
- 8) Revise Russell's corporate code of conduct, which, unlike almost all other apparel company codes of conduct, makes no reference to workers' associational rights.

The WRC may make additional recommendations in this case.