



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
JERZEES DE HONDURAS (RUSSELL CORPORATION)**

**FINDINGS AND RECOMMENDATIONS  
November 7, 2008**

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## **Introduction**

This report details the WRC's findings and recommendations concerning serious allegations of noncompliance with international labor standards, national law, and codes of conduct related to the recent announcement by Russell Corporation that it intends to close its Jerzees de Honduras plant in Choloma, Honduras, for what it claims are business reasons unrelated to its workers' exercise of their right to freedom of association. Russell's announcement, which comes after a nearly yearlong process, during which the WRC has worked with the company to remediate particularly severe violations of associational rights, represents one of the most serious challenges yet faced to the enforcement of university codes of conduct.

Prior to the closure announcement, the WRC, as part of an ongoing inquiry into code compliance at Jerzees de Honduras, had identified persistent violations of workers' associational rights, including multiple threats from management personnel that the factory would close because of the decision of workers to exercise their right to unionize. The WRC brought these violations to the attention of Russell's senior management in the United States on multiple occasions, but the problems continued. Thus, at the time of the closure announcement, on October 8, 2008, the WRC already possessed substantial credible evidence that the decision to close the facility was, at least in significant part, a product of ongoing animus by the company toward workers' exercise of their associational rights. The WRC reported this to universities on October 10, 2008.

After learning of the closure decision, the WRC undertook a rigorous process of additional fact gathering concerning events at the factory, in order to incorporate the most recent evidence into our analysis and ensure that our report to universities and colleges would reflect a thorough consideration of new as well as previously gathered data. As part of our inquiry, the WRC conducted detailed interviews with 59 current production workers at the factory and with three factory supervisors and reviewed dozens of relevant documents. The present report is based on evidence derived from these sources, as well as evidence gathered prior to the closure announcement, including numerous phone conferences and written communications with senior executives of Russell Corporation.

As documented in this report, there is substantial credible evidence that animus against workers' exercise of their associational rights was a significant factor in Russell's decision to close Jerzees de Honduras. This is a violation of university codes of conduct – one that is particularly severe, since it has the effect of depriving workers of their livelihood in retaliation for exercising the very rights the codes are designed to protect. The evidence includes the timing of the closure announcement in the context of negotiations with the plant's union, threats by management prior to the closure that the facility would close because of workers' exercise of associational rights, admissions by management after the closure announcement that the decision was related to workers' associational activities, and other conduct by management demonstrating continued hostility to workers' exercise of their associational rights. Finally, the WRC considered Russell's assertion that such animus was not a significant factor in the closure decision; in doing so, we took into account the company's prior record of using such justification

to cloak retaliatory firings of its employees. Each of these evidentiary considerations is discussed at length in this report.

In order to correct its breach of university codes of conduct, it is essential that Russell Corporation reverse its decision to close the Jerzees de Honduras facility. It is also essential that factory management cease threats and other acts of interference with workers' exercise of associational rights and proceed to mediation in collective bargaining with its workers' lawfully constituted union. The WRC's recommendations for corrective actions are further articulated in the final section of this report.

### *Background Information*

Because of the importance of this case, and in order to have a context for considering Russell's recent announcement, it is useful to review the background to our ongoing focus on Russell's labor rights practices at this plant.

Jerzees de Honduras is an apparel assembly plant, located in Honduras' Indhelva free trade zone, employing roughly 1,800 workers. The plant has been identified by Russell as a manufacturing site for university logo apparel. Unlike most other factories that manufacture collegiate licensed apparel, Jerzees de Honduras is directly owned and operated by the licensee itself, in this case, Russell Corporation, which is a U.S. company based in Atlanta, Georgia. Russell is a subsidiary of Fruit of the Loom, Inc.

In September 2007, the WRC initiated investigations of reported labor rights violations at Jerzees de Honduras and a sister plant, Jerzees Choloma, also owned and operated by Russell and located in the same city. The investigations were launched in response to worker complaints that, earlier that year, Russell had responded to workers' attempts to exercise the right of freedom of association, as protected under Honduran and international law and university codes of conduct, with mass firings aimed at destroying employees' attempts to establish in-plant unions.

The investigations, whose findings can be found in a WRC report published on October 2, 2007, and in a memorandum sent to Russell on October 22, 2007, concluded that there was substantial credible evidence that Russell had violated workers' right to freedom of association in both facilities through targeted firings of the unions' founding members.<sup>1</sup> In all, the WRC found that Russell had unlawfully terminated 145 workers at the two plants in retaliation for their associational activities.

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<sup>1</sup> See WRC Assessment Regarding Jerzees Choloma ("Jerzees Choloma Report"), available at: [http://www.workersrights.org/Freports/Jerzees\\_Choloma\\_Report\\_10-03-07.pdf](http://www.workersrights.org/Freports/Jerzees_Choloma_Report_10-03-07.pdf); Memorandum from Scott Nova to Chris Champion Regarding Jerzees de Honduras ("Jerzees de Honduras Memo") (Oct. 22, 2007), available at: [http://www.workersrights.org/Freports/WRC\\_Memo\\_re\\_Jerzees%20de%20Honduras\\_10-22-07.pdf](http://www.workersrights.org/Freports/WRC_Memo_re_Jerzees%20de%20Honduras_10-22-07.pdf).

Russell's campaign of repression of freedom of association at these two plants was among the most brazen and systematic that the WRC has ever encountered. In terminating the targeted employees, Russell claimed that these mass firings were merely economic layoffs – a general “reduction of personnel” necessitated by business considerations, unrelated to workers' efforts to organize unions. The WRC's investigation, however, determined that statistical evidence, the timing of the terminations, and the reported statements of Russell management to the fired employees – including threats of plant closure – all pointed to company animus against the exercise of freedom of association as the true motivating factor.

Russell initially denied the WRC's findings and refused to cooperate with the investigation, accusing the WRC of reaching biased and premature conclusions. In response to heavy pressure from universities, Russell commissioned its own investigation through the FLA, which was conducted by the global compliance firm ALGI. ALGI corroborated the WRC's finding that Russell responded to workers' exercise of freedom of association with mass firings of workers who had attempted to form a union.<sup>2</sup>

Russell, which by this point had received notices of suspension or termination of its license from a number of WRC affiliate universities, now decided to collaborate with the WRC and FLA on a remediation plan, in which the company committed to provide back pay and offers of reinstatement to the 145 workers whom it had dismissed unlawfully. Of this number, 142 workers received back pay to the date of their termination and 62 accepted the company's reinstatement offer. Importantly, the company also agreed to recognize the unions organized by workers at the two facilities as legitimate worker representatives.

In April 2008, Russell closed the Jerzees Choloma plant; however, at the insistence of the WRC, the company agreed to allow all of the Jerzees Choloma workers to transfer to Jerzees de Honduras. Significantly, Russell, in that case, provided evidence that the closure, which was announced in September 2007, had been decided upon in 2006 – *prior* to any effort by the factory's workers to exercise their associational rights. In light of this evidence concerning the timing of the closure decision relative to the formation of the union, and because of the agreement that no workers would be terminated involuntarily as part of the closure, the WRC decided not to pursue a full inquiry concerning the closure of Jerzees Choloma.

The WRC continued to monitor conditions at Jerzees de Honduras, where the workers' recently-recognized union, the Sindicato de Trabajadores de la Empresa Jerzees de Honduras, S.A. (“SITRAJERZEESH”), and the labor federation to which it had affiliated, the Central General de Trabajadores (“CGT”), prepared for the initiation of collective bargaining with the company. Although Russell entered negotiations with the workers' union in July 2008, the WRC continued to receive testimony from workers and union representatives concerning the company's ongoing hostility toward its employees'

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<sup>2</sup> See ALGI, Final Report – Fact Finding Investigation (“ALGI Report”)(Oct. 1, 2007) at 6-10, available at: [http://fairlabor.org/news/press\\_statements#oct12](http://fairlabor.org/news/press_statements#oct12).

exercise of associational rights. Russell's conduct included threats of retaliatory closure of the plant made by local management, circulation of an anti-union petition by a factory supervisor, and interference with the representational activities of the workers' union.

### *The Plant Closure Announcement*

On October 8, 2008, only days after the company reached an impasse with its workers' union in bargaining for a first-ever collective agreement at the plant, Russell announced its intention to close the Jerzees de Honduras facility, ostensibly for unrelated economic reasons. This announcement – which followed Russell's assurances to the WRC less than two months before that the company had *no* plans to close the factory – immediately raised the concern that the decision was motivated by hostility towards workers' exercise of their associational rights.

### *Scope of Investigation and Report*

The purpose of the WRC's investigation was to examine in depth whether, in light of all available and credible information concerning Russell's labor rights practices, there is substantial evidence that animus toward the exercise of associational rights was a significant factor in the closure decision. In the sections below, we present and evaluate this evidence, state findings, and present recommendations to WRC university and college affiliates based on these findings.

The findings made here, however, concern solely Russell's *labor rights practices*. University codes of conduct, which it is the WRC's responsibility to monitor, are violated whenever a company's decision to close a facility is motivated, wholly or in significant part, by a purpose inconsistent with the fundamental labor rights these codes protect – even if other unrelated factors also play a role. Freedom of association is one such fundamental right. A finding that there is substantial credible evidence that anti-union animus was a significant motivating factor in the decision to close a factory demonstrates that a code violation has occurred, regardless of whether unrelated economic factors were also taken into account.

Russell claims that unrelated economic reasons for reducing manufacture of Jerzees de Honduras' principal product, fleece apparel, make its closure. However, it is virtually impossible for any external labor rights monitoring organization to conclusively determine the validity of a company's claim that a closure decision lacks hostile animus, when, as in this case, that decision comes *after* the company has repeatedly committed code violations that reveal such animus *and* has repeatedly attempted to conceal this animus by making false claims of a business-related justification.

In this situation, it would be methodologically unsound for a labor rights monitoring organization to simply take that company's claim, and evidence it selectively presents in support of it, at face value. Absent unfettered access to relevant corporate records and decision-makers, and some means of ensuring the credibility of both, the WRC cannot determine whether the company's current claims are valid or merely further dissembling.

Since Russell has not indicated its willingness to provide such access, and has not provided any basis for the conclusion that the company's current claims are more credible than those it has proffered in the past, the WRC cannot credit Russell's justification for its decision to close the Jerzees de Honduras plant. We discuss this issue at length later in this document.

### **Sources of Evidence**

The WRC's findings are based on the following sources of evidence:

- Recent interviews with 59 current Jerzees de Honduras employees, including workers from a wide range of plant departments and both union members and workers who are not union members. The interviews were conducted off-site, in locations chosen by the employees.
- Interviews with three "confidential," i.e. management, employees, including two senior supervisors.
- Extensive phone calls and written communications with top management of Russell Corporation and Fruit of the Loom.
- A review of relevant documents, including Ministry of Labor reports, proposals and meeting notes from the collective bargaining sessions, and internal union records.
- A review of relevant Honduran labor and employment law.
- A review of prior WRC findings concerning labor rights practices at Russell facilities in Choloma.

### **Allegations Assessed in this Report**

Because of the urgency of the situation concerning Russell's announcement that it plans to close Jerzees de Honduras, this report focuses exclusively on one question:

**Was animus toward workers' exercise of freedom<sup>3</sup> a significant factor in Russell's decision to close the Jerzees de Honduras factory?**

For this reason, this report examines other violations that were identified only as these form a basis for concluding whether or not such animus was significant factor in the company's closure decision. We would note that these other allegations, if proven, would independently constitute violations of university codes of conduct. In such a case, Russell would have the responsibility to redress these violations, regardless of what remedial actions were required in relation to its decision to close the plant.

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<sup>3</sup> Freedom of association in trade unions is a fundamental labor right protected under university codes of conduct, Article 469 of the Honduran Labor Code of 1959, and Conventions 87 and 98 of the ILO.

## **Findings**

Having extensively examined the recent developments at Jerzees de Honduras and thoroughly reviewed previous findings regarding Russell's labor practices in Choloma, the WRC has concluded that there is substantial credible evidence that animus toward the exercise of associational rights was a significant motivating factor in Russell's decision to close Jerzees de Honduras. As outlined in detail below, this conclusion is based on the following considerations:

- The timing of the closure announcement, in the context of a state of impasse in collective bargaining with the facility's labor union.
- Threats and predictions by management prior to the closure announcement that the factory would shut down because of workers' exercise of associational rights.
- Admissions by management after the closure announcement that the decision was motivated by animus against these associational activities.
- Other conduct and statements by local management indicating continued hostility to workers' exercise of associational rights.
- The extensive prior record of false statements by management claiming that retaliatory terminations of workers were the result of unrelated economic factors.

### I. Timing of the Closure Announcement

#### *a. The Closure Announcement and the Collective Bargaining Process*

A crucial contextual element in considering Russell's decision to close Jerzees de Honduras is that Russell announced its decision in the midst of negotiations with its workers' union for an initial collective bargaining agreement at the plant. In particular, one key event in the bargaining process – the union's declaration of impasse in negotiations on October 3, 2008<sup>4</sup> – has particular significance in evaluating management's statements and conduct related to the announcement of the plant's closure less than a week later on October 8.

From July 11, 2008, when the parties commenced contract talks, to October 3, 2008, when the workers' union declared an impasse, the parties had held a series of approximately nine negotiating sessions. During these meetings, they completed the main stages of collective bargaining under the Honduran labor relations system: the establishment of ground-rules for negotiations and the presentation and discussion of contract proposals. These sessions had produced consensus on twenty-four of forty-eight

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<sup>4</sup> The fact that the parties had reached impasse on October 3, 2008 is documented by a statement signed on that date by representatives of both the union and management, stating that the parties had reached the end of the stage of direct negotiation in the collective bargaining process. A copy of this document is on file with the WRC.

provisions in a proposed collective agreement, but no agreement had been reached on any key economic issues. With respect to the central issue of workers' base salary, the company's final offer was a raise of four cents per day (0.31%) in 2009, five cents per day in 2010 (0.42%), and seven cents per day in 2011 (0.52%) – a sixteen cent per day pay raise over three years.<sup>5</sup>

Under Honduran labor law, once these stages of the negotiating process have been completed, if a tentative agreement on the contract as a whole has not been achieved, either party may request the Ministry of Labor to assign a mediator, who is empowered to direct the course of additional negotiations with the aim of helping the parties reach an agreement. If the ensuing process of mediation does not produce an agreement, the ministry can order the parties to enter into a process known as “conciliation,” in which each must appoint a person who was not previously involved in the negotiations to meet and attempt to come to an agreement. If the conciliation does not result in a collective bargaining agreement, workers have the legal right to declare a strike, during which the employer may not replace them.

*b. Conclusion*

The October 3, 2008 declaration of impasse by the workers' union necessarily meant three things: First, the union had indicated unwillingness to accept Russell's existing contract proposals, and, thus, a settlement might mean larger wage increases – and higher labor costs. Second, going forward, the Ministry of Labor would be involved in any further contractual negotiations with the union. Third, Jerzees de Honduras workers would be one step closer to gaining legal sanction and protection for a strike at the plant if a collective agreement was not reached. Avoiding these developments represented a strong motive in favor of closing Jerzees de Honduras rather than entering into mediation with the workers and their union. Indeed, as discussed below, the company's senior negotiator indicated he would prefer to close the plant than go to mediation, a statement overheard by workers during a break in the final negotiating session.

The timing of the company's decision to close the Jerzees de Honduras plant is consistent with the timing of its previous retaliatory terminations of workers in Choloma. At both Jerzees Choloma and Jerzees de Honduras, earlier acts of retaliation followed close on the heels of actions taken by the workers and their union that had particular significance under Honduran labor law. Previous episodes of mass terminations in March, June, July and September 2007 were all immediately preceded by workers attempting to take the

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<sup>5</sup> The company's offer is outlined in a document provided to the union during the October 3, 2008 negotiating session, a copy of which the WRC has on file. The October 31, 2008 interbank exchange rate was used to produce the listed figures in U.S. dollars. The company's proposal states in its entirety (WRC Translation): “Each time the government of Honduras authorizes an increase in the minimum wage, the company agrees to adjust the fixed part of workers' salaries above what was approved by the government, as follows: 2009, Lps. 0.75 per day; 2010, Lps. 1.00 per day; 2011, Lps. 1.25 per day.”

legally-required steps to establish an in-plant union, namely holding a founding union assembly and attempting to put the company on legal notice of the union's formation.<sup>6</sup>

Russell's announcement of the factory's closure, if carried out, will result in yet another mass termination of employees engaged in associational activities. Once again, the timing of the company's actions closely follows a legally significant step taken by its workers in exercising their associational rights: in this case, the October 3, 2007 declaration that negotiations with the company had reached an impasse. This consistent pattern of important legal steps by workers and their union being followed by mass terminations is simply too blatant to dismiss or ignore.

## II. Threats and Predictions of Plant Closure as a Result of Workers' Exercise of Associational Rights

The WRC has gathered evidence that at least nineteen members of Russell management, from floor-level supervisors to top corporate officials, made statements, some explicit and some implied, to the effect that workers' exercise of associational rights was increasing the likelihood that their plant would be closed. It is important to note that this figure does not include numerous additional persons identified as managers, who were heard by workers making such threats, but whom workers could not identify by name. The WRC recorded *seventy* separate instances of such threats being made to Russell workers at Jerzees de Honduras, continuing from the workers' commencement of associational activities in March 2007 up until the date the closure of the Jerzees de Honduras facility was announced in October 2008.

### *a. Statements by Managers to Workers*

The vast majority of these threats and predictions were statements that managers made to workers indicating that the company would rather close the plant than reach a collective agreement with the workers' union. For example:<sup>7</sup>

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<sup>6</sup> Just as completing the steps of mediation and conciliation are required to establish a legally-protected right to strike under Honduran law, a union's founding assembly and its notification of the employer are required to secure legally-protected status for a union's officers and founding members. *See Jerzees Choloma Report* at 4-7, 10-13; *Jerzees de Honduras Memo* at 1-3.

<sup>7</sup> In providing examples of statements by managerial personnel in this report, we do not in all cases include the name of the manager or supervisor who has been identified to us as the author of the statement. Where we do not provide a name, it is in order to protect the confidentiality and security of witnesses.

- Around March 2008, a supervisor made the following statement<sup>8</sup> during a lunch period in the factory cafeteria in the presence of many workers: “This factory is going to close because of the union...The workers will starve because they got involved with a union.” The supervisor also stated that “The owners will never accept a union,” and that “these people from the union are going to be left eating shit.”
- During the same month, a management employee stated in a meeting in the plant to a worker, “Look, if we . . .do not accept the will of the company, what we see coming is that the plant will close in a very short time.”
- During mid-June 2008, a supervisor told a group of six workers in the production department that the factory would close because of the union. The supervisor stated, “We are all going to be on our knees begging the Koreans [for work]” when the factory closes. (The comment is a reference to Korean-owned apparel factories in Honduras.)
- On October 3, 2008, during a break in the final negotiation session between the company and the union prior to the announcement of the closure, several workers overheard Russell’s chief negotiator, who is the company’s regional head of human resources, Ricardo Trujillo, speaking with Jerzees de Honduras’ human resources administrator, Nadia Morales. As previously noted, this was the last session before the parties would be required to enter mediation by the Ministry of Labor. Trujillo was heard stating to Morales that “We are not going to go to mediation.” After stating this, he passed his hand by his neck as if slitting his throat.

It bears repeating that the incidents cited above are merely a few examples of the literally dozens of such instances documented through the WRC’s inquiry.

*b. Statements by Managers to Supervisors*

Workers also reported that supervisors informed them of statements by higher-level managers that the company would close the plant in response to the workers’ associational activities:

- In February 2008, a supervisor informed a worker that the plant’s general manager, Jose Fernandez, had said that “the company is not going to work with a union.” The supervisor told the worker that it would be wise to leave the factory now because the plant was going to close.
- A supervisor told various production workers that he had attended meetings where higher-level managers told supervisors that the factory could be closed because of the union. At one such meeting around July 2008, the supervisor reported that the facility’s general manager stated, “The plant has high efficiency,

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<sup>8</sup> All statements by Jerzees de Honduras workers and managerial personnel referenced in this report are translations from the original Spanish.

but unfortunately, because of a union, the factory may close.” The general manager reportedly added, “We will not even finish out the year.”

- The same supervisor stated that during this series of meetings, Russell’s regional head of human resources, Ricardo Trujillo, said that “There is a group that is a group of anti-social people who are forming a union . . . but we are not going to accept this in the factory.” Several workers noted that Mr. Trujillo has overseen the closure of other unionized factories in Honduras in the past.
- An office employee informed a worker that in a meeting in August 2008, the factory’s general manager, Jose Fernandez, and Russell’s regional head of human resources, Ricardo Trujillo, said that the company wanted to get rid of the union and, during the same period, circulated a petition for supervisors to sign confirming they agreed with this position.

*c. Statements by Russell to the WRC*

- On March 19, 2008, Russell’s General Counsel, Chris Champion, wrote to the WRC complaining that the activities of the workers’ union were “consistent neither with the best interests of the workers nor the long-term successful operation of the plant.”<sup>9</sup> If the workers’ union “were legitimately interested in those goals,” Champion charged, it would “either commence bargaining on a collective agreement or move on to a company where real problems exist.” Champion added, “Suffice it to say that conditions today are not conducive to the long-term viability of the Jerzees de Honduras plant.”<sup>10</sup>

The statement is striking both for the lack of substance in its criticisms of the union<sup>11</sup> and for the simultaneous message that the union was harming the prospects for the plant staying open. First, at that time, the union was not yet legally authorized under Honduran law to bargain on behalf of the plant’s workers, so Champion’s complaint that it should “commence bargaining” was without any legitimate basis. The alternative Champion proposed was for the union to “move on,” i.e., for the workers to cease their associational activities – the very outcome Russell already had attempted to impose through illegal threats and firings. Apparently, then, it was the union’s presence at a plant belonging to Russell – rather than at “a company where real problems exist” – that was producing “conditions” that Champion considered harmful to the plant’s “long-term viability.” The statement betrays both the company’s continuing hostility toward workers’ associational activities and Champion’s understanding that these activities would be a factor in whether or not the plant would remain open.

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<sup>9</sup> Email from Chris Champion to Scott Nova (March 19, 2008)(on file with the WRC).

<sup>10</sup> Id.

<sup>11</sup> While earlier in Champion’s email he mentioned an “illegal work stoppage” by the union, id., Champion never offered any details concerning this allegation. The claim that the union was conducting such concerted actions is remarkable considering that elsewhere in the same message Champion states that only a “small percentage of workers . . . have signed with the union.” Id.

- Russell’s General Counsel did state to the WRC in August 2008 that unionization would not be a factor in whether or not Jerzees de Honduras would close, and earlier, in July 2008, local management assured the workers’ union that there were no current plans for a shut down.<sup>12</sup> These two statements of assurance carry limited weight, however, when stacked up against the dozens of threats of retaliatory closure that have been documented by the WRC. Isolated assurances given by Russell to parties whom Russell had an incentive to tell what they wanted to hear, are, on balance, a less reliable indicator of ongoing corporate policy and intent than seventy separate statements to the opposite effect, made by thirty-six different company managers, at various rungs of the corporate ladder. Russell’s failure to quell threats and predictions of retaliatory closure that, as the WRC had warned Champion, were being widely circulated in the plant,<sup>13</sup> says far more about Russell’s motives than the company’s willingness to make an occasional statement to the contrary in order to assuage the concerns of outside parties. Moreover, Champion’s statement was in conflict with other statements by him, noted above, directly linking Russell’s objections to the union’s presence and activities to the issue of the plant’s “viability.”

*d. Conclusions*

Statements made by Russell management indicating that workers’ continuing associational activities would lead to closure of the Jerzees de Honduras plant represent telling evidence of a retaliatory motive behind the company’s decision. To conclude otherwise is to presume that management’s prior threats to close a plant bear no relation to its motives for subsequently doing so. The company’s past practice in dealing with these workers indicates that, in Russell’s case, precisely the opposite is true.

In the WRC’s investigations of previous incidents of mass terminations of workers at Jerzees de Honduras and Jerzees Choloma, workers recounted in detail multiple occasions when management threatened and predicted job loss for those who participated in associational activities. To cite a single example, prior to Russell’s mass firing of workers in June 2007, a manager told workers, “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 be able to find work . . .”<sup>14</sup> Of course, as the report Russell itself commissioned corroborated, all of its managers’ predictions and threats were realized when Russell management soon after terminated these workers in retaliation for their exercise of their right to freedom of association.<sup>15</sup> Similarly, as this report details, Russell managers repeatedly threatened and predicted the closure of Jerzees de Honduras as an outcome of workers’ associational activities at the plant. Russell’s recent announcement that the plant

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<sup>12</sup> See email from Chris Champion to Scott Nova (July 25, 2008)(on file with the WRC).

<sup>13</sup> Email from Scott Nova to Chris Champion (July 15, 2008).

<sup>14</sup> Jerzees Choloma Report at 16.

<sup>15</sup> See ALGI Report at 6-10.

would, in fact, be closed is completely consistent with the company's prior practice of threats and predictions of retaliation, followed shortly after by the retaliatory action itself.

It is the case that some, though certainly not all, of the managers whom are reported to have made threats and predictions of retaliatory plant closure presumably lack much influence over Russell's decisions in this regard. Managers in the lower rungs of a corporate hierarchy, however, acquire their understanding of company policies based upon information received from higher-ups in the organization. In this case, Russell's top-level officials had ample opportunity to inform and instruct their regional and plant-level subordinates that workers' associational activities would *not* be a factor in corporate decision-making regarding the future of Jerzees de Honduras. Indeed, in August 2008, the WRC urged Russell's General Counsel to issue such a communication, precisely because the WRC had received reports of such predictions and threats by management from the factory's workers. The fact that the threats and predictions of retaliatory closure continued unabated shows that Russell did not undertake a meaningful effort to communicate that such conduct was contrary to its policies.

Rather than reining in the managers who issued such threats, Russell has simply denied they were ever made. In an October 16 memorandum to universities concerning the closure decision, Fruit of the Loom Executive Vice-President Rick Medlin stated that "no member of plant management ever made threatening remarks regarding the union."<sup>16</sup> But even if one *excludes* the threats documented by WRC in this report, Mr. Medlin's claim is patently false. Over a year ago, on October 22, 2007, the WRC communicated with Russell regarding mass retaliatory firings of at least twenty-five workers at Jerzees de Honduras<sup>17</sup> – firings that, under pressure from universities, Russell was forced to remediate through back pay and offers of reinstatement. As the WRC noted at the time, the retaliatory nature of these terminations was clearly evidenced by threatening statements from Russell management expressing hostility to workers' exercise of associational rights.<sup>18</sup>

What more recent statements by management documented in this report reveal is that rather than cease such retaliation, Russell management now has escalated it, raising the stakes to threaten job loss for not only individual workers who join a union, but, indeed, an entire plant's workforce. To claim, as Russell does, that its decision to close Jerzees de Honduras is unrelated to such animus is to ask the universities to believe that the animus toward the exercise of freedom of association that has been expressed both repeatedly and consistently by a broad array of Russell's management – from frontline supervisors to regional directors and corporate counsel<sup>19</sup> – does *not* reflect the motives behind the company's decisions affecting its Honduran workers. The events of the past year have shown, however, that the opposite is true. Russell's claim that no such threats have

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<sup>16</sup> Memorandum from Rick Medlin to College and University Licensing Representatives ("Medlin Memo") (Oct. 16, 2008) (on file with WRC).

<sup>17</sup> See Jerzees de Honduras Memo.

<sup>18</sup> See *id.* at 3.

<sup>19</sup> See *id.*; also, Jerzees Choloma Report at 9, 14, 16, 18.

“ever” been made by its managers is no more credible today than it was a year ago, and the company does not help its credibility by persisting in denials long since shown to be false.

### III. Admissions of Retaliatory Closure

Workers have testified credibly that after the closure of the plant was announced on October 8, 2008, various members of the plant’s management made statements that workers’ associational activities were the cause of the company’s decision. Such admissions are particularly relevant in considering the company’s motives in deciding to close the plant. Since the closure was announced, the WRC has gathered credible evidence of *thirty-one* separate instances, involving twenty-one members of Russell management, of statements to the effect that the cause for the closure was workers’ associational activities. A sample of these is presented below:

#### *a. Statements by Supervisors to Workers*

- On October 8, 2008 (the day of the closure announcement) a supervisor stated in the presence of a group of production workers that it was the fault of the union that the factory was closing.
- Later, during the same week, another supervisor responded to a question from a worker as to the reason for closure by stating the following: “If I have five corner stores, and one of them is giving me problems, which one do you think I am going to close?” The supervisor made clear that by “problems” she meant the workers’ associational activities.
- On October 20, 2008, the plant’s production manager, Juan Carlos Rodriguez, said to a group of five workers in the production department that, although the factory was closing, the company would be calling workers who are *not* members of the union to be hired in the company’s other factories.
- On October 21, 2008, the production manager informed a group of workers in the training department that the factory was closing because of the union. He stated that workers who are not members of the union can give their names and phone numbers to one of the supervisors and that they would be called for jobs in the company’s other factories.
- Also on October 21, a supervisor told a worker that “If the union didn’t exist, they wouldn’t be closing this factory.”
- On the same day, a company instructor told a production worker, in a discussion concerning the closure announcement, “If I have a business, and the workers are pressuring me, I have to fire them.”

*b. Statements by Managers to Supervisors*

A number of workers also reported statements by supervisors which indicated that higher-level managers had admitted to these supervisors that the closure decision was related to workers' associational activities:

- On October 8, 2008, the day the closure was announced, a supervisor informed a production worker that the regional director of human resources, Ricardo Trujillo, had stated earlier that day that the company would prefer to close the factory rather than accept the bargaining proposals of the workers' union. According to the supervisor, Trujillo cited as particularly objectionable a proposal that the plant provide childcare facilities for workers – a benefit that is, in fact, a requirement under Honduran law.<sup>20</sup>
- On October 14, a supervisor stated to a number of production workers that “The plant is going to close because the union causes too many problems.” The supervisor also stated the plant's human resources administrator, Nadia Morales, and general manager, Jose Fernandez, had made clear to the supervisors that they could not accept having a collective agreement with the workers' union.
- In a similar incident on October 20, 2008, a supervisor called a department meeting, at which he told workers that the factory was closing because of the union and specifically attributed this information to General Manager Jose Fernandez. The supervisor stated that Fernandez had stated in meetings with supervisors that the company would not accept a union in any of its factories.

*c. Statements to WRC Staff*

During their investigation in Honduras, WRC staff also spoke directly, on a confidential basis, with three managerial employees. All are longtime employees of the factory; two of them supervise significant portions of the plant's operations.

- Two of these managerial employees stated with total certainty that workers' decision to unionize was a significant factor in the company's decision to close the facility.

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<sup>20</sup> Article 142 of the Honduran Labor Code states: “All employers that have twenty (20) or more female employees are obligated to condition a space so that mothers can safely feed their children three (3) years and younger and so that they can leave them there during working hours under the care of a suitable person designated and paid for by the company. This conditioning should be simple, according to the economic capacity of the employer, and in accordance with the criteria and approval of the General Labor Inspectorate.” (WRC translation)

- The third managerial employee was more cautious in his assessment, but agreed that the closure decision may have been motivated by a desire to get rid of the union.

*d. Conclusions*

The numerous statements by Russell management that animus toward workers' associational activities was the cause of its decision to close the plant constitute significant evidence that such a motive was, in fact, involved. This is particularly true where these statements are credibly attributed to individuals, such as the plant's production manager and general manager, and the company's regional human resources manager, who may be assumed to have accurate information regarding company policies and decisions. Moreover, as these statements were made after the company's decision was publicly announced, they cannot plausibly have been attempts to bluff or intimidate workers. Indeed, several of the statements appear intended to reassure non-union employees that the plant closure is solely the result of the company's wish to eliminate the union and does *not* reflect the company's future business prospects as an employer.

Significantly, the statements reported here offer scant support for the claim articulated by Russell's Rick Medlin in a recent memorandum to universities that unrelated economic factors are solely responsible for its decision to close the plant.<sup>21</sup> The company did make an official announcement in the plant, when notifying the workers of the closure, that its cause was reduced demand for the plant's products. The overwhelming majority of statements reportedly made by managers to workers, however, indicated that workers' associational activities, and not solely economic factors, were the cause of the closure decision. Indeed, some reported statements by Russell's local supervisors and managers suggest that the decision to close the plant was made *in spite of* economic considerations that would otherwise favor its remaining open. For example, the plant's general manager reportedly stated that despite the plant's high efficiency, it would likely close because of workers' decision to unionize.

It should be noted that although many of the statements attributed to Russell management here represent varying degrees of hearsay, this does not mean that they lack evidentiary value. Admissions of improper conduct and motive are almost always found second-hand. Instead, the question to be considered in evaluating such an admissions is the credibility and knowledge of both the informant and the individual to whom the statement is attributed and the specificity of the testimony. The informants here are Jerzees de Honduras workers whose previous testimony regarding the statements and conduct of Russell management has been proven reliable over more than a year of monitoring labor practices at the company's plants in Choloma. These workers have direct and regular contact with Russell management through their employment in the plant. The statements quoted in this report have been attributed to specific company supervisors or managers. In each case, they were identified as having been made in a specific time period and in a specific location.

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<sup>21</sup> See Medlin Memo at 1.

Moreover, as previously noted, there is no reason to believe that the managers to whom these statements are attributed were attempting to mislead the employees or supervisors who heard them. Nor is there a basis for judging these managers to be misinformed themselves as to the reason for the closure. These managers presumably heard the company's official announcement that the closure decision was due to flagging sales of the plant's products. What the statements documented here reveal quite vividly is that this was not the only message they were receiving. Russell had the chance to convince its managers at the time the closing was announced that, as the company now claims, its decision was made *in spite of* the plant's unionized status, and not because of it.<sup>22</sup> It is telling that so many of its local and regional managers appear to have believed and communicated the opposite explanation.

It is reasonable to presume that the statements of company managers concerning a company's policies reflect, to some extent, what those policies actually are. To accept Russell's claim that animus played *no* role in its plant closure decision – even though many of its own managers in Honduras repeatedly have said otherwise – is to assume that the opposite is true. We would, in other words, have to believe that from Russell's regional human resources director down to its frontline supervisors, the company's managers are somehow completely *misinformed* regarding the company's real reasons for deciding to close the plant. Russell officials in the United States have provided no reasons why this should be so. To ask the university community to believe that the statements by management reviewed in this report do not reflect the company's attitude toward workers' associational activities is, in the face of so much prior evidence to the contrary, asking too much.

#### IV. Continued Hostility to Associational Rights

Evidence that Russell continues to be hostile to workers' exercise of their associational rights constitutes additional proof that such animus was a significant motive behind the decision to close the plant. Even after Russell completed the process of providing back-pay and offers of reinstatement to the 145 workers whom it had subjected to retaliatory termination last year, and after it formally recognized the workers' union, the company persisted in conduct which indicates that management had not reconciled itself to its workers' decision to unionize. Such incidents reveal that Russell continued to possess significant animus towards associational activities *and* that the company was willing to act upon this animus. Viewed against the backdrop of continued company hostility to freedom of association in the Jerzees de Honduras plant, Russell's decision to close the plant appears to be the ultimate step taken by the company to ensure that union representation will not achieve a sustained presence in its Honduran operations.

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<sup>22</sup> See *id.* at 2.

Incidents indicating that the company's hostile animus toward workers' exercise of associational rights continued even after the formal recognition of the union in July 2008 include the following:

- Statements by management to workers and to the WRC disparaging the workers' associational activities;
- Circulation by a supervisor of a petition attacking these associational activities;
- Interference with collective representation of the plant's workers;
- Restrictions on the workers' ability to associate, through their in-plant union, with other labor organizations.

A sample of the incidents documented by WRC staff is presented below:

*a. Disparagement of Associational Activities*

Statements to Workers:

Workers testified that supervisors made numerous statements deriding the workers' associational activities, of which the following are just a few examples:

- Around March 2008, a supervisor said to a worker, "I never expected that you would be a unionist," adding "You aren't going to be able to find a job anywhere."
- In June 2008, a company instructor stated in front of a group of workers that those who are union members are like "villains from a movie."
- In 2008, a supervisor told a worker that all of the plant's "problems" were the fault of the workers' union and, in particular, union representative Evangelina Argueta.
- On October 8, the day the plant's closure was announced, a supervisor told a worker that "the union is only there to bother us."
- On October 14, a supervisor was overheard saying to a worker that the union "just fucks things up."

Statements to the WRC and Universities:

Russell corporate officials in the United States also have repeatedly expressed their view that the workers' union is an unwelcome and superfluous presence at Jerzees de Honduras:

- In a March 19, 2008 email message to the WRC, Russell General Counsel Chris - Champion stated, concerning the decision of many workers from Jerzees

Choloma to take severance rather than accept positions at Jerzees de Honduras when the former closed, “The common reason cited for this desire is that they [the workers] don’t want to work in a unionized plant. I think that fact is clearly demonstrated by the small percentage of workers that have signed on with the union. Unfortunately, as you know, the laws of Honduras do not allow for an up or down vote on whether to unionize, so a very small minority of workers can unionize a facility. If such a vote were allowed, we believe it unlikely that the majority of our employees would choose to have a union given the environment we know to exist in the plants.”<sup>23</sup>

- In the same email, as previously discussed, Champion also stated that the activities of the workers’ union are “consistent neither with the best interests of the workers nor the long-term successful operation of the plant.” He added that. “If the [union] were legitimately interested in those goals, they would either commence bargaining on a collective agreement or move on to a company where real problems exist.”<sup>24</sup> As noted, the union was, in fact, waiting to receive legal authorization to commence bargaining with the company at the time.
- Most recently, Fruit of the Loom Executive Vice-President Rick Medlin stated in an October memorandum that “the union has never achieved anything close to the support of a majority of workers at the JDH [Jerzees de Honduras] factory, and many of the non-union workers were very unhappy about the presence of the union.”<sup>25</sup>

While the statements by Russell’s corporate officials are phrased more delicately than those of its factory-level supervisors, the message conveyed is remarkably consistent: the workers’ union is unwelcome and unnecessary at the plant and will only harm both the company and its employees.

Two elements of the opinions expressed by these officials are particularly telling. First is the company’s eagerness to blame the workers’ union for resentment toward it, which might exist among some workers, without acknowledging Russell’s well-documented role in engendering this hostility in the first place. For the greater part of a year, Russell’s local management made clear to its employees in Jerzees de Honduras and Jerzees Choloma – by both word and deed – that any worker who dared associate with co-workers in forming a union would be summarily fired.<sup>26</sup> At the same time as it pursued

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<sup>23</sup> Email from Chris Champion (March 19, 2008). Without opining on the exact percentage of employees at Jerzees de Honduras who support the workers’ union, the WRC would note that its staff has been repeatedly struck by the broad and consistent level of support the union enjoys among the plant’s workers. This support is remarkable given the severe and extensive repression of associational activities at the company’s plants. It is precisely these workers’ profound commitment to the exercise of associational rights, in spite of the disparagement, threats and retaliation to which they have been subjected, which makes this matter such a compelling challenge for the enforcement of university codes of conduct.

<sup>24</sup> *Id.*

<sup>25</sup> Medlin Memo at 2.

<sup>26</sup> *See, generally*, Jerzees de Honduras Memo; Jerzees Choloma Report.

this retaliation against individual workers, Russell management also issued well-documented threats that these associational activities would result in plant closure.<sup>27</sup> Given the company's campaign of coercion and intimidation, it is hardly surprising that some employees might view these associational activities with trepidation. For Russell officials to 'blame the victim' for this situation by suggesting that the workers' union is responsible for it is inappropriate, to say the least.

Also telling is the sentiment expressed by Mr. Champion that it is "unfortunate" that Honduran law even permits workers to organize without "an up or down vote" from the entire workforce since, he believes, "it [is] unlikely that the majority of our employees would choose to have a union given the environment we know to exist in the plants."<sup>28</sup> Leaving aside the fact that initial formation of an in-plant union by a minority group of workers is a common feature in many Latin American labor law regimes, the statement is disturbing in its disingenuousness. As Mr. Champion doubtless knows, under our own U.S. labor law system, where a majority vote is required to establish union representation, the notion that such a vote will fairly gauge workers' sentiments after an employer has engaged in mass terminations of union supporters and blatant threats of plant closure is firmly rejected.<sup>29</sup> In such circumstances, U.S. labor law recognizes that "laboratory conditions" for a fair vote have been effectively demolished, and serious remedial measures – beyond mere reinstatement of terminated employees – are often required before an accurate poll can be taken.<sup>30</sup> Again, Russell's willingness to accuse the workers' union of lacking support in the plant, after having done so much to eliminate the union altogether, is quite revealing.

*b. Petition Attacking Associational Activities*

In August 2008, a factory supervisor led an effort to gather worker signatures on a petition to eliminate the union from the factory. The supervisor in question, Hugo Antunez, works in the plant's shipping department. Numerous workers reported seeing Antunez organizing the petition drive inside the factory.

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<sup>27</sup> See Jerzees Choloma Report at 9, 18.

<sup>28</sup> Email from Chris Champion (March 19, 2008).

<sup>29</sup> See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 611 (1969).

<sup>30</sup> Id. at 612. Notably, such remedial measures can include requiring the employer to permit regular access to plant premises by union representatives, something Russell has been unwilling to grant at Jerzees de Honduras. See, e.g., *Fieldcrest Cannon, Inc. v. NLRB*, 97 F.3d 65, 74 (4th Cir. 1996)(upholding NLRB-ordered "special access" remedies for union representatives at plant where employer committed extensive unfair labor practices).

Mr. Antunez and certain employees acting under his direction approached workers during work hours and asked them to sign a blank piece of paper, which was described as the signature page of a petition to rid the factory of the union. According to the report of a Ministry of Labor inspector who visited the factory in response to a complaint from the union, Antunez freely admitted circulating the petition. According to this report, dated August 28, 2008, he stated that he “made the personal decision to make lists of persons who were not in agreement with the activities the union is engaging in.”<sup>31</sup>

Russell management has claimed (a) that Antunez is not a supervisor, but only a “clerk,” (b) that Antunez did not circulate the petition during work hours, and (c) that he acted completely independently. All three assertions are belied by evidence gathered by the WRC. According to multiple workers, Antunez is the second in command of the shipping department, which he directs himself when the department head is not present. Moreover, Mr. Antunez falls within management’s own classification system as a “confidential,” i.e., managerial, employee.<sup>32</sup>

Both the WRC and the Labor Ministry inspector recorded credible worker testimony indicating that Antunez circulated the petition during work time and not solely during his breaks, as the company claims. One worker interviewed by the Labor Ministry stated, “Last week there was a day when at 10:00 in the morning I went to get a drink of water, and I saw that Hugo Antunez was making a list. I asked him what it was for, and he told me that it was a list to remove the union and he asked me if I wanted to be added, because it was the fault of the union that the company was going to close.”<sup>33</sup> As numerous workers noted to the WRC, it would be inconsistent with the plant’s personnel practices for Mr. Antunez to be allowed to gather signatures on a petition during work time without the approval of those above him in management.

Finally, the Labor Ministry inspector’s report made clear that she considered Antunez’s activities a violation of freedom of association by the company, and not the independent actions of an ordinary employee. The inspector states in her report that she “warned the worker Hugo Efrain Antunez of the protection of the right of association contained in Article 469 of the Labor Code, and that they should abstain from engaging in acts that attack the union.”

*c. Interference with Collective Representation of Workers*

Management has made clear through its statements and conduct that it does not recognize the legitimacy of the decision by the workers’ union to be represented in collective bargaining by the CGT, one of the three largest labor confederations in Honduras, nor does it respect the authority of the Honduran Ministry of Labor to police its compliance

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<sup>31</sup> Labor Inspector's Report, Honduran Ministry of Labor (August 28, 2008).

<sup>32</sup> Under the company’s classification system, the plant has different pay periods for confidential and non-confidential employees, with the former paid every two weeks and the latter every week. Antunez, according to multiple reports, is paid every two weeks.

<sup>33</sup> Labor Inspector's Report, Honduran Ministry of Labor (August 28, 2008).

with Honduran labor law. On repeated occasions factory management has interfered with and denied access to both the confederation's regional representative, Evangelina Argueta, and inspectors from the Honduran Ministry of Labor, when they have attempted, respectively, to conduct ordinary representational activities and to investigate complaints of labor law violations. Ms. Argueta is the primary union staff person who has been assisting the workers. The Ministry of Labor is the main government agency dealing with labor law compliance.

The following are examples of the company's conduct in this regard:

- Around June 17, 2008, Argueta, along with a labor inspector, visited the industrial park where the factory is located to deliver the union's proposal to initiate collective bargaining. Upon attempting to leave the park, after delivering the proposal, Argueta was briefly detained, on an apparent pretext, by a zone security guard acting upon orders from Russell management.
- In late July and early August 2008, Russell placed two workers on unpaid suspension for eight days for alleged disciplinary infractions. The workers contended that the suspensions were, in fact, retaliation for their associational activities. On July 31, Argueta went to Jerzees de Honduras, along with a Labor Ministry inspector and one of these workers, Dany Castellanos, in order to meet with management concerning the suspension. Both Argueta and the labor inspector were denied entry to the factory.
- On August 6, Argueta sought to visit the factory again, along with Ms. Castellanos and another worker, Delmy Zelaya, who had been suspended during the intervening period, as well as with the union's attorney and the same labor inspector. While the inspector was allowed inside the plant, both Argueta and the union's attorney were denied access. In the ensuing meeting inside the plant, Russell management had several outside attorneys present to assist in defending their actions, while the suspended workers had no representation.
- In late August, Argueta and a labor inspector repeatedly sought access to the factory to meet with management concerning the circulation of the anti-union petition described above. On August 25, both were denied entry by security personnel employed by the industrial park where the plant is located, who informed the two that they were acting at the direction of Russell management. Argueta sought to visit the plant again on August 26 and on August 28 and both times was denied entry. As in the case described above, in the meetings that ensued inside the factory, the workers involved had no outside representation, while management had several legal representatives present.

- In addition to denying Argueta access to the factory to meet with them regarding specific worker grievances, Russell management also has refused to allow her to attend monthly labor-management meetings between the in-plant union and the company.

Russell's refusal to allow Argueta access to the factory is striking in that it represents a blatant attempt by management to deny workers one of the main benefits workers often seek to gain through collective representation: the assistance of a professional representative to assist them in dealing with management in matters of discipline and other workplace issues. This is a benefit that Russell clearly affords itself in its dealings with its workers. As one worker noted, "The company is always accompanied by their lawyers, but we are not provided the same . . ."

In both of the disciplinary matters described above, workers made specific requests to factory management to allow Argueta to participate in meetings with management. In each case, senior managers refused these requests. Indeed, the plant's general manager, Jose Fernandez, stated that Argueta would not be allowed to participate because "she is just an adviser to you all in your office" and "doesn't have any reason to be here" in the factory. Workers testified to numerous similar statements by other managers.

It is clear from a communication to the WRC from Russell General Counsel Chris Champion that the factory's actions in this regard are entirely consistent with corporate policy. Champion stated in this communication that it is Russell's view that the union's professional representatives should be excluded from assisting the plant's workers in grievances – even in those cases involving serious disciplinary action. In his message of July 25, 2008, Champion stated the following: "We think her [Argueta's] presence in the plant beyond what is required for the [contract] bargaining process is counterproductive and actually adds fuel to the resentment and rumors we are dealing with . . . [W]e do not believe that any other plant visits should generally be necessary at this time."<sup>34</sup> As noted, the company's position that workers' chosen representatives would only be allowed in the plant for contract negotiations, and for no other purpose, denies workers a key element of freedom of association in the workplace – the right to have the aid of the representative of one's choice when one's job is on the line.

#### *d. Restrictions on Union Affiliation*

Russell's ongoing refusal to accept its workers' full exercise of associational rights is also reflected in the positions taken by the company in collective bargaining with their union. Here, Russell has imposed on its workers its own veto power over if and when workers can be represented by the labor confederation to which they have chosen to affiliate their union.

In negotiations with the company, the workers' union proposed the recognition clause that is standard in Honduran collective bargaining agreements, in which a firm commits

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<sup>34</sup> Email from Chris Champion to Scott Nova (July 25, 2008).

to dealing with both the union's in-plant leadership and representatives of the labor confederation to which the union is affiliated.<sup>35</sup> Russell rejected this language, insisting instead that its workers agree that the confederation will only be allowed to act as a representative of workers, and to participate in dialogue and negotiations with management, when *Russell* agrees to that participation.<sup>36</sup>

The language that the company forced the union to accept violates basic principles of freedom of association and collective bargaining, as enshrined in Conventions 87 and 98 of the International Labour Organization. The language Russell demanded is contrary to the principles of collective bargaining which is premised on negotiation between two parties – labor and management – each of whom selects their own representatives. Here, instead, Russell has insisted that it must possess veto power over whom workers may choose to represent them and under what circumstances. The result is no more compatible with free bargaining between two parties than if the union were able to decide whether or not Russell should be allowed to avail itself of representation by outside attorneys.

By its very nature, such a rule also restricts freedom of association because it prevents a group of workers from being represented by and drawing on the representational skills of a larger labor organization to which they have chosen to affiliate. One of the key reasons why such federations are formed is so that individual unions and their members can have access to resources – such as full-time professional representation – that they cannot afford on their own.

Russell's position on this issue is revealing because it shows that the company was only willing to accept freedom of association and collective bargaining by its employees if it could restrict and control their exercise of these rights. Viewed in this light, the declaration of impasse in contract negotiations at the plant is particularly significant, because it signaled that there was a limit to how far workers would permit the company to dictate the terms of the collective bargaining relationship. As a result, the timing of the

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<sup>35</sup> The workers' union proposed the following language for the collective bargaining agreement with Jerzees de Honduras on July 14, 2008: "The company JERZEES DE HONDURAS S.A. de C.V. recognizes the JERZEES DE HONDURAS WORKERS' UNION 'SITRAJERZEESH' as the one and only legal representative of the workers affiliated to the union . . . and commits to dealing with the Leadership Committee, union delegates and representatives of the Federation or Central Organization to which the union is affiliated on all of the individual and collective conflicts that result from the application of this collective bargaining agreement of the working conditions, internal working regulations and other labor laws in the country, without prejudicing the right of all workers to negotiate directly with regards to the problems that individually affect them." (WRC Translation)

<sup>36</sup> The recognition language that Russell insisted upon is the following: "The company JERZEES DE HONDURAS S.A. de C.V. recognizes the JERZEES DE HONDURAS WORKERS' UNION "SITRAJERZEESH" as the one and only legal representative of the workers affiliated to the union . . . and commits to dealing with the Leadership Committee on all of the individual and collective conflicts that result from the application of this collective bargaining agreement of the working conditions, internal working regulations and other labor laws in the country, without prejudicing the right of all workers to negotiate directly with regards to the problems that individually affect them. *The representative(s) of the federation or confederation to which Sitrajerzees is affiliated will be invited to participate in the solution of complaints or internal conflicts when merited by the severity of the issue or when there is mutual agreement of the parties, company and union.*" (WRC Translation, italics added)

plant closure announcement, only a week after impasse was declared, appears even more significant as an indication of the company's motives.

*e. Conclusion*

In his memorandum to universities dated October 16, 2008, Fruit of the Loom's Rick Medlin asserts that in deciding whether to close the Jerzees de Honduras plant, the company considered the "presence of the union" as a factor in *favor* of keeping the plant open.<sup>37</sup> The acts and expressions of hostility that are detailed above flatly contradict any claim that Russell has adopted such an orientation towards associational activities by its employees. It is simply incredible to suppose that a company would, on the one hand, consider the presence of a union as a factor favoring keeping a plant open, while at the same time (1) its local management continues to undermine and heap abuse upon the union and its members; (2) its company policy is to refuse to permit the union's representatives to set foot on its premises to carry out legitimate union business; and (3) its general counsel implies that it is "unfortunate" that the laws of Honduras are such that it must deal with the union at all.

Mr. Medlin brushes such evidence away, describing any hostility toward the union in the plant as reflecting the fact that "the union has never achieved anything close to the support of the majority of the workers, and many of the non-union workers were very unhappy about the presence of the union."<sup>38</sup> None of the persons responsible for the hostile acts and statements detailed in this report, however, were simply "non-union workers" opposed to the presence of a union in the plant. The statements, policies, and bargaining positions detailed in this report are all those of Russell *management* – the same management that claims to have considered the presence of a union as a point "in favor" of a plant remaining open. Moreover, the determinative issue in this inquiry is not the feelings of "non-union workers" regarding the union, but the feelings – and conduct – of Russell *management* concerning workers' exercise of associational rights. Russell management's continued displays of hostility towards the workers' union supports the conclusion that the same animus is present in the company's other recent decision-making, including the decision to close the Jerzees de Honduras plant.

## V. The Credibility of Russell's Claims Concerning the Reasons for the Closure

As outlined in the preceding four sections of this document, there is voluminous credible evidence that Russell has continued to harbor strong animus against workers' exercise of their associational rights at Jerzees de Honduras and that this animus was a significant factor in the company's decision to close the factory and terminate the workers.

Russell, however, asserts that anti-union animus was not a factor and that the closure decision is related solely to economic considerations – namely, reduced demand for the

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<sup>37</sup> Medlin Memo at 2.

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

plant's current product, fleece apparel. In his memo to universities, Fruit of the Loom's Rick Medlin has indicated the company's willingness to make some internal information available to outside parties on a confidential basis to substantiate this assertion.<sup>39</sup>

The WRC has sought to determine what evidentiary weight it is appropriate to grant Russell's assertions, relative to the evidence summarized above. We have also considered the value of Russell's offer of evidence. We address these two related points in this section.

In order to determine the evidentiary value of Russell's claim that the closure decision was not retaliatory, but was instead motivated by economic considerations, it is necessary to evaluate Russell's credibility. Russell has an extensive track record in this regard and it is one with which the WRC and the university community are familiar. Specifically, Russell has 1) terminated workers on multiple occasions who were engaged in efforts to exercise their associational rights, and 2) advanced the claim at the time of these terminations that they were undertaken purely for business reasons wholly unrelated to workers' union activities. It is important to note that these terminations and the justifications for them involve many workers who currently are facing termination at Jerzees de Honduras. As outlined below, these claims of economic motives uniformly proved to be false.

Below, we briefly review these prior claims by Russell that terminations of employees involved in associational activities at Jerzees de Honduras and Jerzees Choloma<sup>40</sup> were actually motivated by unrelated economic considerations.

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<sup>39</sup> Id.

<sup>40</sup> Russell has charged that the WRC with imposing a double standard, because, supposedly, the WRC accepted the company's evidence supporting its claim of an economic justification for the earlier closure of Jerzees Choloma, but will not accept at face value the company's claimed economic basis for closing Jerzees de Honduras. The assertion Russell makes now, however, is fundamentally different in both substance and implications than the one it advanced in the earlier case.

The key distinction is one of timing. Russell asserted that its decision to close Jerzees Choloma was made in October 2006, months before associational activities commenced at the plant. Thus, unless one uncovered a basis to question the authenticity of document the company produced, the timing of the closure decision meant that anti-union animus could be *ruled out* as a motive.

By contrast, in the case of Jerzees de Honduras, the timing of the closure decision is a factor that weighs in *favor* of a finding of retaliatory animus. In this case, it is well-documented that the company made its decision to close Jerzees de Honduras *after* it had conducted an extensive and severe campaign of retaliation against workers' associational activities. *See* Jerzees de Honduras Memo; Jerzees Choloma Report.

In addition, the implications of closing Jerzees de Honduras are far different. In the closure of Jerzees Choloma, Russell, at the urging of the WRC, agreed to offer positions at Jerzees de Honduras to any and all of the employees who faced job loss as a result. In addition, Russell had already recognized an in-plant workers' union at Jerzees de Honduras. Therefore, the closure of Jerzees Choloma did not pose significant harm to either workers' livelihood or to their continuing ability to engage in associational activities. Russell has given no comparable assurances in regard to Jerzees de Honduras.

*a. Record of Claiming Business Justifications for Retaliatory Terminations*

- On March 19, 2007, Russell terminated nine workers who were founding members of the workers' union at Jerzees Choloma, claiming that the firings were merely a 'reduction of personnel,' i.e., an economic layoff. The WRC later determined that the economic justification tendered by the company was false.<sup>41</sup>
- On March 22 and 23, 2007, Russell terminated five more workers who were among those attempting to re-found the workers' union at Jerzees Choloma. Again, Russell claimed that the terminations were business-related layoffs. The WRC's subsequent investigation determined that the company's economic justification in this case was false as well, and that the terminations were retaliatory in nature.<sup>42</sup>
- On June 6, 2007, Russell fired yet another worker who was a founding member of the newly-formed union at Jerzees Choloma, again asserting that the terminations were business-related. Here again, the WRC later found that this economic justification was an attempt to cover-up retaliatory action.<sup>43</sup>
- Between June 7 to 14, 2007, Russell terminated approximately sixty more workers who were founding members of the in-plant union, claiming, in nearly all of these cases, that the company's action was part of a purely business-related layoff. As in the previous cases, the WRC's subsequent investigation determined that the terminations were, in fact, retaliatory.<sup>44</sup>
- On July 10, 2007, Russell terminated ten workers who were founding members of the union at Jerzees de Honduras. Here, as well, the company claimed that the terminations were part of a general layoff. The WRC's investigation, however, determined that the justification given by Russell was false, and that the terminations were retaliatory.<sup>45</sup>
- Around July 17, 2007, Russell terminated nine more workers at Jerzees de Honduras who were founding union members. The company's claim that the terminations were an economic layoff were shown to be false.<sup>46</sup>
- Around July 24, 2007, Russell terminated six more Jerzees de Honduras workers who were founding union members. Despite the company's claim at the time that

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<sup>41</sup> See Jerzees Choloma Report at 6.

<sup>42</sup> See id.

<sup>43</sup> See id. at 6, 8-9.

<sup>44</sup> See id. at 7.

<sup>45</sup> See Jerzees de Honduras Memo at 2.

<sup>46</sup> See id.

the terminations were business-related, the WRC determined that, in fact, the company's actions were retaliatory.<sup>47</sup>

- On September 14, 2007, Russell terminated twenty-two more workers from the Jerzees Choloma plant who were founding union members engaged in a third attempt by workers to form a union at the plant. Once again, Russell's justification for the terminations was that they were part of a business-related layoff. Here too, the company's claim was later determined by WRC to be an attempt to conceal the retaliatory nature of the terminations.<sup>48</sup>

In sum, in eight separate instances, involving well over one hundred terminations, the company fired workers with retaliatory motives and made claims of economic justification that proved to be false.

It is important to bear in mind that in the case of the mass terminations of workers at Jerzees Choloma, the company's conduct was also the subject of a separate investigation commissioned by Russell itself through the FLA and conducted by the firm ALGI. That investigation corroborated the WRC's finding that the terminations in question were retaliatory in nature, rather than due to other business considerations.<sup>49</sup> Moreover, in all of the incidents highlighted above, exposure of the retaliatory motive behind the terminations and the pretextual nature of the company's justifications ultimately resulted in the company agreeing to offer back-pay and reinstatement to the workers. Thus, Russell's record of retaliatory firings, and its record of using false claims to hide the true motive for those firings, has been confirmed not only by the WRC, but by ALGI and by the actions of the company itself. With its recent announcement that it intends to close Jerzees de Honduras, Russell once again has advanced the claim that business reasons unrelated to retaliatory animus justify a "reduction of personnel," one that, this time, will be achieved through the termination of all the plant's workers, not just union members.

In light of Russell's track record with respect to such claims, the company cannot be regarded as having any credibility on these matters. Therefore, Russell's verbal and written assurances that the closure of Jerzees de Honduras was motivated by economic factors cannot, in and of themselves, be granted any evidentiary weight.

*b. Russell's Offer of Limited Access to Internal Records Selected by the Company*

In addition to its verbal and written assertions, Russell offers to provide limited access to some internal company documents relevant to this issue – "certain information bearing on the closure decision," in Mr. Medlin's words.

As amply detailed in this report, substantial credible evidence supports the conclusion that company conduct motivated by anti-union animus continued up to, and included,

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<sup>47</sup> See *id.* at 3.

<sup>48</sup> See Jerzees Choloma Report at 14.

<sup>49</sup> See ALGI Report at 6-10.

Russell's decision to close the plant. This means that even if information Russell provides to outside parties concerning the closure shows that economic considerations were *a factor* involved in this decision, the evidence that retaliatory animus also was a significant factor would still constitute proof of a violation of university codes of conduct. As we have noted, workers' associational rights are violated if their decision to exercise those rights is a significant factor in a decision to terminate their employment, even if other factors are also involved.

The burden is therefore upon Russell to prove not merely that economic factors were considered, but that these were the *only* factors which played a significant role in its decision – that the company would have made the same decision even if animus toward workers' associational rights did not exist, in any portion of the company. In order to do this, Russell would, at a minimum, have to demonstrate that the closure of Jerzees de Honduras is by a clear margin the most economically advantageous course presently available to the company *relative to all other options* for effecting the reduction in manufacturing capacity that Russell claims it must undertake.

This is, appropriately, a high burden of proof and it is one that cannot possibly be met by the level of access to relevant evidence that Russell has offered. Conceivably, the company could meet the burden of proof if it agreed to an unrestricted and transparent inquiry, where all relevant information could be brought to light. However, Russell has not proposed such an inquiry. Instead it has offered to provide only limited access to documents selected by the company – in effect asking monitoring organizations and the university community to trust that the information provided represents a fair, accurate, and complete record of relevant economic issues and the decision-making process.

No reasonable fact-finder would ignore Russell's history of false statements in judging the likelihood that any information now provided by Russell is complete, accurate, and objective. Nor is there any viable means for a party given access to information selected at Russell's sole discretion to independently verify its accuracy, or to determine whether there is any information that is *not* being provided, or to ascertain what considerations may have been acted upon but not written down. Given Russell's amply demonstrated willingness to misrepresent facts in order to hide the actual reasons for terminating workers, a body of corporate documents chosen at Russell's discretion cannot reasonably be regarded as credible exculpatory evidence, much less can it be seen as having greater evidentiary weight than the extensive credible evidence of anti-union motivation reviewed in this report. The WRC therefore sees no probative value in pursuing an inquiry based on the limited information Russell has said it is willing to provide.

Proving that unrelated business considerations were the only factors in the decision to close Jerzees de Honduras would require Russell to permit a complete and unrestricted inquiry into company decision-making on this issue. This would necessarily involve unfettered access to both company records *and* testimony by company decision-makers, in a process that is transparent and open to review by all concerned parties. Russell may well have valid business reasons for not wanting to expose itself to such a wide-ranging and intensive inquiry. However, given the company's track record of retaliatory firings

cloaked in false claims of economic necessity, Russell should not be surprised if, absent such an inquiry, its claim of a business justification for the closure decision is greeted with skepticism.

It is important to understand in this regard that the high burden of proof the company faces is a product of its own actions. If Russell did not have a track record of repeatedly using claims of economic necessity as a pretext for carrying out unlawful retaliatory firings, its assertions of lawful motives in the present case would have some degree of credibility. If Russell had not continued to demonstrate hostility toward workers' exercise of their association rights throughout the period leading up to the closure, if Russell managers and supervisors had not during this same period repeatedly threatened that workers' union activities would lead to closure, and if managers and supervisors had not stated after the fact that the closure was motivated by the presence and actions of the union, then Russell would not be in the position of having to prove that all of this evidence of animus was unrelated to the closure decision.

*c. Conclusion*

As this report details, the WRC has gathered substantial credible evidence indicating that retaliatory animus toward workers associational activities was a significant factor in Russell's decision to close the Jerzees de Honduras. Now, Russell asks the university community to ignore this evidence and accept the company's claims that unrelated economic considerations were, in fact, solely responsible for its decision.

It is unreasonable for the company to proffer the same excuse that has been exposed as false in incident after incident, and to offer in support of its claims only incomplete evidence without meaningful transparency, and to then expect the university community to accept these measures as an adequate good faith response. We find, on the contrary, that the company's past false statements represent a reason to conclude that its current denial of retaliatory motives is similarly unreliable and that its claims of business justification should not be taken at face value. We further conclude that Russell has failed to offer anything approaching the degree of transparency that would be required for there to be a realistic prospect that the company's claims concerning economic justification could be verified.

## **Recommendations**

In light of the findings detailed above, the WRC offers the following recommendations:

### I. The Plant Closure Announcement and Decision

The WRC recommends that Russell Corporation to take the following remedial action, without delay:

- Reverse its decision to close the Jerzees de Honduras facility. For the reasons described in detail in this report, the closure of the facility and the consequent dismissal of its approximately 1,800 employees represent a severe violation of international labor standards, national law, and university codes of conduct. The only course of action that would correct this violation is the reversal of the closure decision and the continued operation of the facility.
- Provide offers of reinstatement to any workers who have been laid off as part of the phased dismissal of the plant's employees related to the closure. Provide back pay to these workers since the date of their departure from the facility.

### II. Other Conduct Interfering with Freedom of Association

Threats, harassment, and interference with collective representation, in addition to being strong evidence supporting the conclusion that anti-union animus played a role in the closure decision, are in and of themselves serious violations of workers' freedom of association. Assuming reversal of the closure decision and the continued operation of the plant, additional actions are necessary to address these violations.

Such corrective action, however is only meaningful if the closure is averted. Reversal of the closure decision is necessary to and facilitates remediation of other violations in the plant. Assuming the closure is reversed, necessary corrective actions by the company include:

- Cessation of management and supervisor harassment of workers concerning workers' associational activities. Discipline of managers and supervisory personnel who have engaged in threats and harassment of workers in relation to unionization.
- Cessation of acts of interference with workers' decisions concerning collective representation. Specifically, recognition of the affiliation of the workers' union to the labor confederation *Central General de Trabajadores*, engagement in good faith dialogue and negotiations with representatives of the latter, in any instances where the workers' union seeks its representation or counsel on workplace issues.

- Issuance of a statement to the workforce, both verbally and in writing, stating that Russell Athletic and Fruit of the Loom respect workers' right to engage in associational activities, including joining a union; that no worker in these companies' employ will ever suffer retaliation or discrimination as a result of his or her decision to engage in such activities; that a decision by workers to unionize will not cause any factory to close or have any impact on any decision concerning factory closures; and that these companies will negotiate a collective bargaining agreement, in good faith, and without delay, with SITRAJERZEESH, the union duly constituted under Honduran law to represent workers at Jerzees de Honduras. It bears noting that Jerzees Choloma issued such a statement in 2007; however, such actions are of little value if they are subsequently contradicted by the company's actions.
- Engage in mediation under the auspices of the Honduran Ministry of Labor, along with the workers' union and their selected representatives, including staff or officers of the CGT labor confederation. As noted above, given the current impasse in collective bargaining between the parties, mediation is the next step in the Honduran industrial dispute resolution system.

## **Conclusion**

As this report has discussed in depth, the WRC has gathered substantial credible evidence, which supports the conclusion that animus toward workers' associational activities was a significant factor in Russell's decision to announce the closure of Jerzees de Honduras. This conclusion is based on the following findings of fact, which emerged from extensive on-the-ground research, including more than sixty interviews with company employees:

- First, the closure announcement was made only days after the workers' union declared an impasse in negotiations with the company for a first ever collective agreement at the plant. As a result, the closure announcement had the effect of heading off several developments: (a) the requirement that the company enter government-led mediation of the contract dispute, (b) the prospect of an eventual legally-protected strike by its workers, and (c) continued negotiation with an in-plant union that had signaled it would not simply submit to the company's existing bargaining positions.
- Second, leading up to the closure announcement, according to credible worker testimony, company managers, from Russell's regional human resources director on down, on seventy separate occasions, made statements to the effect that the company was not willing to accept a permanent collective bargaining agreement with the workers' union and a permanent union presence, and would sooner close the plant than do so.

- Third, since the closure announcement, according to credible worker testimony, a number of the same managers made statements admitting that such animus was responsible for the company's decision to close the plant. Workers testified to thirty-one separate instances of such statements being made over the two week period following the closure announcement.
- Fourth, Russell management, from frontline supervisors to corporate officials have, in recent months, engaged in statements and conduct that clearly demonstrate ongoing hostile animus towards workers associational activities and rejection of the presence of the workers' union at the plant.
- Fifth, the company's track record of falsely advancing business justifications as an excuse for retaliatory terminations of workers makes it impossible to credit its claim that unrelated business factors were responsible for the closure decision

Our overall conclusion – that anti-union animus was a significant factor in the company's decision to close the plant – has important implications for universities and colleges that have a licensing relationship with this company. If Russell's current plan to close Jerzees de Honduras is carried out, it will do irreparable harm to the plant's employees – many of whom have already been targets of a particularly egregious campaign of retaliation by the company.

If the plant closes, many of these workers will very likely be blacklisted from finding new jobs in the apparel industry. The systematic blacklisting of workers who are union supporters in Honduras, and the Choloma region in particular, is well known.<sup>50</sup> When Russell conducted its mass firings of workers from Jerzees Choloma in 2007, many of these workers were threatened with blacklisting before the firings, and, indeed, the WRC found some evidence that Russell had followed through on these threats after they were terminated.<sup>51</sup> Other former Jerzees Choloma workers, who choose not to transfer to Jerzees de Honduras, also testified to the WRC that they have been unable to find work in the apparel industry, despite their skills and extensive experience.

One of the gravest potential consequences of the closure decision is violence against workers who have led efforts to exercise associational rights at the facility. Worker leaders have been subjected to repeated threats of violence in relation to the factory's closure. The in-plant union's president has twice returned to his machine after lunch break to find anonymous notes stating, "You're going to die because it is your fault, your fault that the factory is closing" ("*Te vas a morir, porque por culpa tuya, por culpa de vos está cerrando la empresa*"). Since the closure announcement, threatening graffiti has also been seen in the plant's restrooms. A message on the men's restroom wall stated, "We're going to put an AK-47 in the [union] president's chest." ("*Al presidente le vamos a poner una AK-47 en el pecho.*"). Another message directed to the union's president

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<sup>50</sup> See Jerzees Choloma Report at 17.

<sup>51</sup> See Jerzees Choloma Report at 9, 17.

stated, “By God, we're going to cut off your head.” (“*Por Dios que te vamos a volar la cabeza.*”)

To be clear, the WRC has seen no evidence to indicate that company management played any role in the issuance of these threats. According to worker testimony, however, Russell’s response to the threats has been to tell the workers who have received them that they are free to resign from the factory or take leave. The suggestion that it is the victims of these threats who should leave the plant, however, rather than the perpetrators, is inappropriate. Such a result would merely embolden the perpetrators to threaten other workers in the same manner. Instead, Russell must investigate such threats, discipline and assist in the prosecution of any issuer of such a threat who can be identified, and send a clear message that such conduct will not be tolerated.

While all employers have a responsibility to maintain security in the workplace, Russell should be particularly attentive to this issue now. The company’s repeated statements to workers that they will lose their jobs because of other workers’ associational activities have contributed to the creation of the climate in which the threats against the worker leaders occurred. Given management’s statements that the union would cause, and has caused, the factory to close and the workers to lose their jobs, such threats were predictable. It is also important to understand that in the Honduran context, such threats are credible.<sup>52</sup> Given the clear message conveyed by management for more than a year to the effect that blame for the plant’s closure will lie with the union’s leaders, the risk of violence that these workers now face may only be reversed with a reversal of the closure decision.

The closure decision, if carried out, will also have a severe chilling effect on the ability of workers throughout Russell's supply chain, and the university-licensed apparel sector in this region in general, to exercise their associational rights. If not reversed, the closure decision will demonstrate to workers that there is no point in filing complaints about violations of their rights, because even if labor rights monitors can compel a company to end violations temporarily, the company can simply wait a few months and then shut down the factory. It will, likewise, show employers, that they may act with impunity in repressing associational rights, so long as, at the end of the day, they are prepared to exercise the “scorched earth” option of retaliatory plant closure.

Finally, a factory that workers and worker organizations in Honduras have viewed as a harbinger of progress toward meaningful respect for basic labor rights in that country will instead be seen as convincing proof that codes of conduct and monitoring programs offer only false hope to workers. Future university code enforcement efforts in Honduras, and throughout the region, will be significantly undermined. Workers and worker advocates

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<sup>52</sup> On April 24, 2008, Rosa Altigracia Fuentes, the General Secretary of the Honduran trade union confederation, Confederación de Trabajadores de Honduras, trade union leader Virginia García de Sánchez and motorcyclist Juan Bautista Gálvez were murdered after returning from a meeting concerning a factory closure. The crime remains unsolved. Their murders represent only one incident in a recent rise of violence against trade union leaders in Central America.

in these countries will conclude that the commitment to labor rights articulated in university codes is merely theoretical, rather than real. This would be a tragic outcome to a case that was, thanks to universities' intervention last year, a bright spot in the landscape of code of conduct enforcement.