



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re GILDAN ACTIVEWEAR EL PROGESO (HONDURAS)  
FINDINGS, RECOMMENDATIONS AND STATUS REPORT**

**July 29, 2004**

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5 Thomas Circle NW Fifth Floor Washington, DC 20005

(202) 387-4884 Fax: (202) 387-3292

[wrc@workersrights.org](mailto:wrc@workersrights.org) [www.workersrights.org](http://www.workersrights.org)

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Members of WRC Assessment Team for Gildan Activewear El Progreso

## Preface

This report outlines the WRC's findings and recommendations with respect to alleged violations of worker rights at Gildan Activewear El Progreso S.A. (also referred to in this report as "Gildan Activewear El Progreso" or "Gildan El Progreso"), a sewing facility fully owned and operated by Gildan Activewear (also referred to in this report as "Gildan"), a Canadian corporation that manufactures t-shirts, tank tops, golf shirts and other apparel. Gildan Activewear owns and operates factories in several countries in Central America and the Caribbean. The plant in question is located in the ZIP Porvenir industrial park on the outskirts of El Progreso, Honduras – a small town in Honduras' northeastern department of Yoro. Gildan Activewear El Progreso employs approximately 1,800 workers.

According to factory disclosure data supplied to the WRC by affiliate universities, shirts are assembled by Gildan El Progreso for the university licensees Jones and Mitchell, MV Sport, Ouray Sportswear, USA Player Sportswear Inc., and Bobby Edwards Enterprises. There are a significant number of additional licensees that report Gildan Activewear's Montreal headquarters as the source of their Gildan apparel. These licensees are also likely receiving product from Gildan Activewear El Progreso. These include Sports2School, 4004 Incorporated, New Agenda, Monogramming Specialties, Royal T Promotions, Perrin Souvenir, B&B Graphics, Continental Silk Screening, and Blue Dolphin. There may be additional collegiate licensees buying Gildan product indirectly through intermediaries without listing Gildan as a supplier. Overall, factory disclosure data and other information sources indicate that Gildan is one of the largest suppliers of blank t-shirts and other blank apparel to companies selling university logo merchandise.

In January 2004, the WRC received a complaint from the Maquila Solidarity Network (a Canadian non-governmental organization) supported by the Federación Independiente de Trabajadores Hondureños (FITH, Independent Federation of Honduran Workers) and Canadian Labour Congress, on behalf of a group of workers alleging labor rights violations at Gildan Activewear El Progreso. The complaint alleged the following violations:

- **WAGES AND HOURS OF WORK:** That mandatory work shifts are longer than the legal maximum and that overtime and work on rest days and holidays is not compensated in accordance with the law.
- **FREEDOM OF ASSOCIATION:** That a large number of workers have been illegally dismissed over the last two years as a result of a plant policy to eliminate all trade union activity at the factory and that at least one pregnant worker, who is also a trade unionist, has been fired despite legislation to protect pregnant women in the workplace. In addition, that workers who have been illegally fired have been harassed in their homes, post-dismissal, by Gildan staff and pressured to sign "voluntary" resignation letters.

- HARASSMENT AND ABUSE: That workers are verbally harassed by Gildan staff.

Initial research by WRC staff, and an analysis of Honduran labor legislation, indicated that there was sufficient evidence in support of these allegations to warrant an assessment by the WRC and also indicated possible worker rights violations at the factory in the area of women's rights and sexual abuse. Gildan Activewear was only minimally cooperative with the WRC's factory assessment and refused to allow the WRC Assessment Team access to its El Progreso facility. The Assessment Team did meet with the Country Director for Gildan Activewear in Honduras (this individual is no longer employed by the company) and with various executives from Gildan's Canadian headquarters. The WRC conducted extensive interviews and evidence gathering in Honduras during January and February and substantial follow up research in the ensuing two months.

Gildan Activewear joined the Fair Labor Association (FLA) in the fall of 2003, becoming the first supplier (as opposed to licensee) to do so. The FLA, also in response to a complaint, carried out its own audit of Gildan Activewear El Progreso. The FLA requested and received some assistance from the WRC with respect to worker interviews. Since both organizations concluded that remedial action was necessary, the WRC proposed joint remediation discussions with Gildan, a proposal to which Gildan and the FLA were amenable. The WRC and the FLA met jointly with Gildan executives in May 2004 to discuss remediation. At this meeting, Gildan expressed its intention to take meaningful action to resolve the issues at the factory and in-depth discussions of unresolved issues continued by e-mail and conference call during the following weeks. The two monitoring organizations scheduled a meeting with Gildan for July 12. Gildan indicated that it hoped to reach final agreement on a remediation plan at this meeting, though in discussions prior to the meeting Gildan expressed strong opposition to key remedial actions in the areas of freedom of association and mandatory overtime. The July 12 meeting took place, but there was no discussion of remediation. Instead, Gildan's CEO announced at this meeting that the company had decided to close the El Progreso factory and that it would do so eleven weeks hence. Gildan claims that the decision to close the factory is "absolutely unrelated" to the investigation of worker rights violations at the facility and to workers' efforts to unionize.

### **The Implications of Plant Closure**

Gildan Activewear's decision to close the El Progreso factory in the midst of the remediation process renders the discussion of many remedial actions pointless in terms of their potential value to the factory's employees. The purpose of code of conduct enforcement is to eliminate worker rights violations and improve respect for worker rights – and, in so doing, improve workers' lives. If Gildan proceeds with its plans to close the factory in September, then any remedial action taken between now and the date of closure will be of only marginal value to workers. (The primary exceptions are back pay and other compensation for dismissed workers and back pay for current workers; these issues are discussed later in this report.) To the extent that particular remedial

actions at this stage are of any value at all, Gildan is obligated to proceed with haste to implement them, and we have noted in this report those recommendations with which we believe the factory should go forward.

The decision to close the facility is itself of great concern from a code of conduct standpoint. Factory closures are common in the garment industry. Regrettable as closures may be, university codes of conduct do not inhibit the numerous closures that occur in the normal course of business. However, there are some circumstances where closure is not appropriate and does violate university codes – specifically, where the decision to close is motivated by anti-union animus, or some other form of discrimination, or where the decision is motivated by a desire to avoid code compliance. A company may also be acting in conflict with code obligations when a decision to close a factory comes subsequent to the identification of serious code violations and before those violations have been addressed – unless the company has no viable alternatives to closure.

Both categories of concerns arise in the case of Gildan El Progreso.

#### *Evaluating Gildan's Claim that Closure is Unrelated to Workers' Efforts to Organize a Union*

Given the timing of the decision, and given the serious and repeated violations of workers' associational rights that the factory has committed in its efforts to prevent unionization, the WRC has an obligation to address the question of whether Gildan's decision to close the El Progreso factory was motivated, in part or in whole, by a anti-union animus – which Gildan strenuously denies. Proving such motive is notoriously difficult in the context of labor law and code of conduct enforcement. Since Gildan did not announce the closure until July 12, two weeks prior to the release of this report, there has been very little time to review this issue. At this stage, a definitive conclusion is not possible. However, the WRC has reviewed the evidence immediately available. This evidence, and its implications, are outlined below.

Both the immediate circumstances of the closure decision, and Gildan's prior actions, suggest that anti-union animus was a motivating factor for the decision to close the facility.

As discussed in detail later in this report, the WRC found in its assessment of the El Progreso factory that management systematically fired workers over the last two years in order to prevent the formation of a union. The evidence underlying this conclusion is overwhelming and the WRC's findings in this regard are matched by those of the FLA.

Allegations of illegitimate firings in late 2002 were brought to Gildan Activewear's attention in early 2003 by one of Gildan's major shareholders. Evidence shows that an illegitimate mass firing of union members, in response to workers' lawful efforts to form a union, did take place in late 2002 – in violation of applicable codes of conduct and Honduran law. Gildan executives would have had no difficulty determining at that time

that the allegations were valid, assuming they made a serious attempt to evaluate the situation at the El Progreso factory. Nonetheless, Gildan Activewear took no corrective action and denied, repeatedly, that anything illegitimate had happened in El Progreso. In late 2003, evidence shows that Gildan El Progreso again fired trade unionists en masse. Again, Gildan Activewear denied any wrongdoing and failed to take corrective action. The El Progreso factory's repeated mass firing of trade unionists, and Gildan Activewear's tolerance of this illegal activity, is proof of intense anti-union animus, at both the factory and corporate levels.

The central point of contention in the remediation discussions prior to the July 12 closure announcement was the WRC's recommendation – standard in such circumstances – that reinstatement be offered to the trade unionists who were unlawfully dismissed. Gildan Activewear strongly resisted this recommendation. In the weeks prior to July 12, the WRC made it clear to Gildan that no monitoring body could view remediation as adequate unless Gildan was willing to reinstate the workers in question. This point was conveyed repeatedly and it is reasonable to conclude that Gildan understood that it would not be able to achieve its goal of laying the labor rights issue to rest unless it offered reinstatement to the dismissed trade unionists. There is a strong chance that if full reinstatement were to be offered, if the plant were to remain open, and if Gildan El Progreso refrained from any further coercive action to discourage unionization, that a union would be formed. Gildan was thus aware that reinstatement might well lead to unionization of the El Progreso factory. Gildan's decision to close the factory came in the midst of ongoing efforts by the monitoring groups to secure a commitment from Gildan to offer reinstatement.<sup>1</sup>

It is also important to take into account the fact that Gildan has a record of making public statements concerning the El Progreso facility that have proven to be inaccurate – specifically, the company's repeated insistence that the factory had not fired workers in retaliation for union organizing. Gildan's past practice of denying that anti-union animus was a factor in management decisions at El Progreso, when, in fact, such animus was the primary basis of those decisions, bears on the credibility of Gildan's current claim that the decision to close the El Progreso facility has nothing to do with the desire to avoid unionization or with the investigation of the factory's labor practices.

The facts outlined above, and the timing of Gildan's closure decision, constitute a strong circumstantial case that a desire to avoid unionization was a significant factor in Gildan Activewear's decision to close the El Progreso facility.

Gildan offers some evidence to the contrary.

Gildan provides an alternative explanation for the decision to close. Gildan states that the factory is being closed because it is uncompetitive, for reasons having to do with the multiplicity of product lines it produces, a logistical problem related to a bridge that

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<sup>1</sup> Subsequent to its decision to close the factory, Gildan has proposed to offer reinstatement to some of the dismissed workers – who would, of course, only be in the factory's employ until the factory closes in September.

provides access to the factory, and labor costs. Gildan states that the timing of the closure decision is coincidental and that economic and operational factors, exclusively, underlie its decision. Some of the claims that Gildan makes concerning the performance of the El Progreso facility can be partially confirmed; others cannot. Those that can be confirmed lend some weight to Gildan's assertion that there are aspects of the El Progreso operation that are flawed. However, Gildan does not provide persuasive evidence of a causal link between these flaws and the decision to close the factory.

The labor cost issues are real: the base wage for garment workers in Honduras is roughly 65 cents an hour; wages are lower in some other countries in the region. Gildan states that the work currently being done in El Progreso will be moved to production facilities in Haiti and Nicaragua. In both of these countries, wages are significantly lower than in Honduras. Thus, Gildan does establish that there are labor cost advantages to shifting production to other locales. Gildan does not, however, establish that El Progreso is inefficient relative to other Gildan facilities once *all* cost factors are taken into consideration, or that any relative weakness in efficiency is substantial enough to warrant closure. It is noteworthy that Gildan has previously cited its Honduran operation as the key to its low-cost advantage in the apparel marketplace.<sup>2</sup> This seems inconsistent with the assertion Gildan now makes that production costs in Honduras render the El Progreso facility uncompetitive.

Labor cost differentials between countries could account for the decision to close a Honduran facility, but it is important to note that they are irrelevant to the question of why Gildan has chosen to close the El Progreso facility as opposed to one of its other Honduran apparel plants.

The logistical issue raised by Gildan is a genuine problem, but it appears that Gildan has exaggerated its magnitude. The problem involves a bridge, used by workers and trucks to gain access to the factory, which is sometimes blocked by protests unrelated to Gildan. The company claims that, on average, one to two days of production are lost to this problem every month. However, the WRC asked a radio station in El Progreso which regularly reports on blockages of the bridge to review their records and tabulate the number of blockages reported in the last year. According to the station, there were five blockages. Credible worker testimony corroborates this conclusion: workers can recall a total of three occasions in 2003 on which the factory was closed for the day due to blockage of the bridge. It is difficult to see how the handful of blockages reported by the radio station and by workers could account for the twelve to twenty-four lost days of production per year that Gildan cites as a major reason for its decision to close the facility. Even if these sources are underestimating the number of days of closure by half, the figures still do not square with Gildan's claims.

Even if Gildan has exaggerated the impact, the bridge problem is real and constitutes an inefficiency specific to the El Progreso facility. It is reasonable to conclude that this could be a contributing factor in the decision to close the factory, though it is not a significant enough problem to warrant closure in and of itself. At the same time, the

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<sup>2</sup> "Story of Factory Closing Unravels" *Toronto Star* July 24, 2004

WRC has no basis for comparing the El Progreso facility's overall mix of strengths and weaknesses to that of any of the company's numerous other facilities, in Honduras and elsewhere. It is possible that one or more of Gildan's other Honduran facilities also face logistical or other problems that reduce efficiency. Thus, while the bridge issue lends some weight to Gildan's argument, it appears to be a smaller problem than the company claims and is, in any case, of limited relevance in the absence of information on other Gildan facilities.

Gildan states that the El Progreso factory is less efficient than other facilities because it produces three products (t-shirts, tank tops and polo shirts) instead of a single product. The WRC has no means to evaluate the validity of this information, since this would require access to comprehensive data on Gildan's overall manufacturing operation. It is not immediately clear why a factory's ability to produce multiple products, as opposed to one, is a weakness as opposed to a strength. It is also not clear why, if it is a weakness, the solution is to close the factory rather than modify it to produce one item. The specificity of this claim, however, does lend it some credence as a potential factor in the closure decision.

The WRC also has no basis for assessing the validity of Gildan's more general claim that that the closure of this particular factory simply makes sense in the context of Gildan's overall manufacturing strategy, which, according to the company, involves the development of production hubs in a number of countries.

Gildan's assertions concerning the competitiveness of the El Progreso facility could be examined fully, and confirmed or disconfirmed, if Gildan would provide the monitoring organizations with access to relevant company records, including production data for Gildan's different manufacturing facilities and financial information. The WRC requested this access and expressed its willingness to sign a confidentiality agreement with respect to any proprietary information. Gildan refused this request. The company has offered instead to make a presentation to the WRC and the FLA concerning the reasons for closure; however, such a session would be of limited value because, absent access to relevant records, it would not be possible for either monitoring organization to confirm the veracity of the information provided.

Considering the evidence available at this juncture, it is clear that Gildan Activewear had a strong incentive, based on its intense anti-union animus and the absence of any alternative means of preventing unionization, to close the El Progreso factory. The past actions of Gildan and Gildan El Progreso have shown that Gildan is willing to use illegitimate means to avoid unionization. At the same time, Gildan cites some flaws of the El Progreso facility which could constitute at least a partial economic rationale for closure. Gildan's evidence is weakened by the company's failure to establish a clear causal link between the issues it cites and the actual closure decision, by Gildan's overstatement of the significance of the bridge problem, and by the company's unwillingness to provide the access to company records necessary to confirm or disconfirm several of Gildan's economic claims. The degree of credence due Gildan's

explanations about closure is further reduced by Gildan's record of making erroneous statements about violations of associational rights at El Progreso.

It is also important to recognize that the presence of economic reasons in the decision-making process does not prove the absence of reasons related to the company's anti-union animus. It is a violation of university codes to close a factory because of a desire to avoid unionization, even if economic factors were also considered and even if these factors represent an additional motivation for the closure decision. Indeed, if Gildan did wish to close the factory because of unionization, the company would nonetheless have had to weigh economic factors and would have been less likely to proceed if there were a strong economic argument against closure.

As stated above, there is insufficient direct evidence to warrant a firm finding as to the question of Gildan's motivation for closing the El Progreso factory. On balance, however, the weight of the evidence argues in favor of the view that anti-union animus played at least some significant role in the decision to close this factory at this time, possibly accompanied by a determination on Gildan's part that closure was also a viable option from a purely economic standpoint. If this view is correct, then Gildan's action can be seen, in context, as a final and definitive retaliatory measure against workers at Gildan El Progreso for seeking to organize a union and for bringing their concerns about labor practices to the attention of monitoring organizations.

This conclusion does not carry the weight of a definitive investigative finding, but universities may wish to consider this evaluation, and the evidence underlying it, in assessing Gildan's actions in light of university codes of conduct.

#### *The Significance of Gildan's Decision to Close the Factory During Remediation Discussions and Prior to Adequate Remediation*

Regardless of the motivation behind the decision to close the factory, the timing of the decision is destructive – both because it eliminates the prospect for meaningful remediation on most issues and because it will inevitably have a chilling effect on the free exercise of associational rights by workers throughout Gildan's Honduran operations. However Gildan's decision is viewed by outside observers, most workers will view it as an object lesson in what happens to Gildan employees when they try to organize or when they lodge a complaint about working conditions with an external body.

There can of course be no blanket prohibition on closing a factory during remediation. There are cases where a company, due to financial, economic or other contingencies, must take the drastic action of closing a factory, without delay and regardless of any other considerations. However, it is widely agreed that meaningful code compliance depends on the commitment of licensees and suppliers, where violations are uncovered, to enter into remediation and see that remediation through.

The question is whether a commitment to see remediation through carries with it the obligation to make a good faith effort to avoid closing a factory in the midst of the

remediation process. In situations where a financial or economic crisis forces closure, it is clear that there can be no such expectation. It is also clear, as discussed above, that if a desire to avoid code compliance or to prevent workers from exercising their rights is a motivating factor in a closure decision, that this decision *is* in conflict with code obligations.

This leaves the question of what should happen where there is no economic or financial emergency necessitating closure, but where, in the midst of remediation, the company decides that it wishes to close the factory for reasons of business strategy. This is an unsettled issue of code enforcement. However, a strong case can be made that where viable alternatives exist, a choice to close a factory where violations have occurred and where remediation has not yet been substantially completed, is inconsistent with code obligations.

The case is identical to that which has led to a consensus that licensees must not cut and run from a factory where code of conduct violations have been identified, but instead must stay and work to fix the problem. There is debate as to whether a licensee has any obligation to stay at a factory after substantial remediation has occurred. There is also debate about whether a buyer that leaves a factory just before long-standing violations are identified retains any obligation to act. However, there is broad agreement that when a buyer is using a factory, and serious code violations are exposed, the buyer has an obligation to remain involved until substantial remediation has occurred – even if, for wholly unrelated reasons, the licensee would prefer to leave at that point and switch to a different supplier. There are exceptions, of course: unavoidable financial contingencies that force a cancellation of orders or a factory that refuses to remediate, despite the buyer's best efforts. However, the basic principle that licensees should not cut and run during the heart of the remediation process is one that has been embraced by the great majority of stakeholders involved in code of conduct work – including many in the apparel industry itself.

If everyday business reasons cannot be used by a buyer to justify dumping a factory where rights violations have just been exposed, then logic and consistency would dictate that this same standard should apply to factory owners.

By this standard, Gildan is clearly acting in an inappropriate manner – entirely apart from the question of whether anti-union animus motivated the closure decision. Gildan has made no claim to the effect that its closure decision is one of economic necessity. Indeed, Gildan has presented its decision as the kind of choice it makes on a regular basis, consistent with its stated practice of constantly re-evaluating its operations. If an everyday business preference is not a legitimate reason for cutting and running from a factory where violations have been uncovered but have not been remediated, then Gildan's decision to close its El Progreso factory can rightly be viewed as a violation of the company's code of conduct obligations.

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The remainder of this report reviews the WRC's findings and recommendations with respect to labor rights violations alleged to have taken place at the El Progreso facility.

## Sources of Evidence

During the course of this investigation, the WRC Assessment Team gathered evidence from the following sources:

- In-depth interviews with 37 former and current Gildan Activewear El Progreso workers, conducted primarily in workers' homes. These included:
  - ⇒ Individual interviews with 27 past and present Gildan Activewear El Progreso workers, conducted in workers' homes. The interviews lasted on average one hour.
  - ⇒ One group interview with 14 current and 1 former worker from Gildan Activewear El Progreso, lasting four hours.<sup>3</sup>
  - ⇒ Individual interviews with 7 former and current Gildan Activewear El Progreso workers focusing specifically on the issue of sexual harassment and women's rights. These interviews were carried out by a Honduran specialist in women's sexual and reproductive rights.
- A meeting with the Country Director of Gildan Activewear, Honduras.
- A meeting with the Operations Manager of the Honduran Maquila Association (AHM).
- Interviews with the Director of the Regional Delegation of the Honduran Labor Ministry for the Sula Valley and a Labor Ministry employee from the region's Program for Women Workers.
- Meetings with several local human rights organizations with expertise in labor issues.
- Consultation with a local independent monitoring organization for the Maquila sector.
- Consultation with three Honduran lawyers with expertise in labor and human rights law.
- Analysis and review of individual work contracts, pay-slips, Ministry of Labor records, and corporate records of Gildan Activewear and Gildan Activewear El Progreso.
- Analysis and review of domestic law, including the Honduran Constitution, Labor Code, Criminal Code, Constitutive Law for Industrial Processing Zones for Exports and Free Tourist Zones, and the Law for Equal Opportunities for Women (LEOW).

Gildan declined to grant the Assessment Team access to the Gildan Activewear El Progreso facility. Due to the nature of the rights issues under review, and the types of evidence relevant to these issues, this denial of access was ultimately only a modest

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<sup>3</sup> Some workers who were interviewed individually also participated in the group interview.

hindrance to the Team's work. It did not prevent the team from reaching definitive conclusions – corroborated by multiple sources of credible evidence, including internal company documents.

## **Findings and Recommendations**

The investigation focused on allegations of labor rights abuse in five areas: Freedom of Association, Sexual Abuse, Wages and Working Hours, Women's Rights, and Verbal Harassment and Abuse. The WRC's findings in each of these areas, the recommendations made to Gildan, and Gildan's response are outlined below.

### **I. Freedom of Association**

#### **Allegation**

The WRC investigated allegations that a large number of employees have been illegally dismissed as part of an effort to discourage or prevent trade union activity at the factory.

#### **Findings**

The allegations of violations of workers' associational rights pertain primarily to two separate episodes which occurred in November and December of 2002 and October and November of 2003, involving the alleged mass firing of workers who supported the creation of a union in the factory. The WRC identified overwhelming evidence supporting the conclusion that Gildan Activewear El Progreso management deliberately targeted union supporters for dismissal in violation of Honduran laws protecting workers' rights to associate freely and to form unions (Article 128 #14 of Honduran Constitution and Article 469 of Honduran Labor Code). In addition, in the course of these dismissals, factory management violated legally mandated procedures for the termination of employees.

#### *Illegal Firings in November and December of 2002*

The WRC identified the following facts, based upon extensive credible testimony from workers and union representatives, and documentary evidence provided by the Honduran government and Honduran union officials, regarding the alleged illegal firing of workers in November and December of 2002:

- On July 15, 2002, 44 Gildan El Progreso workers signed documents stating their intention to establish a factory-level union affiliated with the FITH (Independent Federation of Honduran Workers). The participation of 30 workers is required for the creation of a labor union under Honduran law (Article 475 of the Honduran Labor Code).
- On November 14, 2002, the union filed a request for certification with the Ministry of Labor of Honduras.

- On November 24, 2002, Gildan El Progreso dismissed 42 workers – 39 of these workers were among the 44 who had signed documents in support of the union. Fifteen of the 39 workers subsequently provided written testimony that they believed the reason they were dismissed was their support for the union.

These basic facts alone constitute overwhelming proof that the factory illegally discriminated against union supporters in terminations carried-out on November 24, 2002. Given that 39 of the 42 workers terminated on this day were avowed union supporters, that the firings occurred less than two weeks after these workers filed papers seeking official certification as a union, and that through these firings the factory eliminated virtually every worker who had stated his or her support for the union in writing, the conclusion that the dismissals were motivated by anti-union animus is unavoidable. The WRC Assessment Team concluded that the firings constituted illegal anti-union discrimination, in violation of Article 128 #14 of the Honduran Constitution which protects the rights of workers to associate freely by forming trade unions; Conventions 87 and 98 of the International Labor Organization, both ratified by Honduras, which prohibit non-union discrimination, including, in particular, acts calculated to “cause the dismissal” of workers by reason of union membership; and provisions of college and university codes of conduct that specifically prohibit employers from retaliating against workers in the exercise of their associational rights.<sup>4</sup>

Additional evidence suggests the means by which factory managers may have gained knowledge about which workers among the workforce were union members. According to substantial credible testimony from workers and community members, prior to the mass firings described above, three of the 44 workers who had previously signed documents in support of the union resigned from the factory. Two of these three workers were union officers, including the president and secretary of the union. Numerous individuals testified that they believe the factory paid these workers upon their resignation a substantial amount of money (beyond that which was owed to them in accordance with the law concerning severance) in exchange for the names of individuals who supported the union. While it may never be possible to know with certainty whether or not these individuals identified union supporters to management, this evidence suggests one means through which factory managers could have acquired precise knowledge about which workers supported the union.

### *Illegal Firings in October and November of 2003*

The second major episode of alleged illegal firings concerns the dismissal of approximately 39 workers in late October and early November of 2003. As in the case of the firings that took place in November and December of 2002, the evidence available from worker interviews and documents provided by union officials and the Labor Ministry constitute an overwhelming case that the firings were related to the exercise of associational rights.

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<sup>4</sup> For example, the WRC Model Code of Conduct states: “No employee shall be subject to harassment, intimidation or retaliation in their efforts to freely associate or bargain collectively” Section III. C. 9.

The Assessment Team identified the following basic facts concerning this episode of firings.

- On October 30, 2003, Gildan Activewear El Progreso dismissed two employees who were leaders of an effort to establish a union in the factory. The factory cited low production as the cause for these dismissals.
- On November 4, 2003, Gildan Activewear dismissed 37 additional employees. Each of these employees was a supporter of the union, according to documents provided by FITH. One of the workers dismissed on this day was six-months pregnant. In an interview with a Labor Ministry subsequent to the terminations, a factory official cited low production as the cause for the majority these dismissals.

The WRC is aware that the level of employment in this facility fluctuates throughout the year and that reduced production in the winter season may cause the factory to seek to lower personnel levels. However, even accepting the premise that the factory desired to lay-off workers at this juncture for reasons pertaining to the production cycle, the evidence shows that in choosing *whom* among the workforce to lay-off, the factory selectively targeted union supporters. As in the episode that occurred the previous year, there is not another plausible explanation for why each of the workers laid off at this time was a union supporter. The firings therefore constituted illegal anti-union discrimination in violation of Honduran and international law and college and university codes of conduct.

The conclusion that the firings were discriminatory is further bolstered by credible testimony from numerous workers that factory managers made explicit statements – prior to and during the November and December dismissals – conveying a clear factory policy that unionization would not be permitted in the factory and that union supporters would be removed. These statements were made both in group meetings which workers were required to attend and to individual workers. This testimony was consistent across a range of workers with varying viewpoints regarding unionization. The testimony was also highly specific as to the detail of language used and the identity of the individual managers and supervisors making the statements. Several workers, for example, testified independently that one manager in particular, a director of production, called a team of workers into an office and explained to the workers that “there could not be a union” and threatened that “if there was [a union] we wouldn’t get a job elsewhere.” Other workers testified that, prior to the large-scale terminations, supervisors called them into their office and made both threats and offers of bribes to workers to reveal information about which workers were supporters of the union. According to testimony from one worker, a manager explained that, “if you do not give me the names of all in the union, you will live with the consequences.” This individual was fired shortly after refusing to provide the manager with the names of union supporters. Numerous workers testified that at the

time of their dismissal, supervisors told them explicitly that the reason they were fired was that they had been identified as having taken part in union meetings.

It is important to note that many of the workers who were dismissed from the factory at this juncture, and in the episode which occurred the previous year, signed documents of resignation. These were signed under threat of termination, rather than voluntarily, as the law requires. Numerous workers testified that they were told that if they did not resign, they would be fired anyway, but would receive no severance and would not be able find work in other factories in the region (i.e. that they would be blacklisted). Workers also testified that managers required them to sign blank forms and told the workers that specific reasons for the resignations, such as a need for study or child care, would be added to the documents later. According to testimony, in some cases workers were told that if they signed the documents, their file would not be “spoiled” and they could return to the factory at a later date. Because the signing of resignation forms was forced, these documents lend no legitimacy to the firings and do not constitute a legitimate basis for denying workers reinstatement or back pay.

In addition to violations of workers’ associational rights, the terminations in October and November of 2003 also violated Honduran law concerning proper procedures for carrying-out worker dismissals. Article 113 of the Honduran Labor Code stipulates that in cases in which employers wish to cite a just cause for dismissal having to do with a worker’s performance or behavior, the employer must provide the employee with advanced notice and explanation of the dismissal so that the worker is able to challenge the claim of just cause before the Ministry of Labor prior to the dismissal. In the case of the terminations in question, the factory provided workers with no notice and instead demanded at the moment workers were notified of their dismissal that they hand in their identification cards and leave the premises immediately. Additionally, Article 125 of the Honduran Labor Code requires that, regardless of the cause of a dismissal, the employer is obligated to provide the dismissed worker with a written document which states the date of the start and end of employment, type of work done, and salary for the last pay period. Upon the worker’s request, the employer must also provide the worker written information regarding the worker’s efficiency and behavior and the cause or causes of the termination of employment. Despite these legal obligations, the factory did not provide workers with written statements of any kind. In at least one case, a worker testified that she returned to the factory on several occasions in order to acquire this paperwork and collect her severance check, but was rebuffed each time and questioned about the membership of the union. Because the factory failed to adhere to these basic requirements of Honduran law, the dismissals, in addition to violating workers’ associational rights, were illegal on purely procedural grounds.

**Recommendations** (Please note that all recommendations listed in this report were crafted and conveyed to Gildan prior to the announcement of the factory’s closure. In some cases, the recommendations are no longer applicable):

The WRC recommends that the factory take the following remedial steps:

- Offer to reinstate with full back pay from the date of dismissal each worker who was dismissed during the episodes of illegal firings in both November and December of 2002 and October and November of 2003. The WRC understands the logistical challenges of reaching workers who left the factory long ago and is prepared to assist in this process.
- Make a statement to all of the current employees of the factory, both verbally and in writing, that the factory will respect the rights of workers to associate freely, including the right to join a union of their choosing, and that no worker will be dismissed or otherwise punished for choosing to form, join or support a union. This recommendation also applies to Gildan's other production facilities in Honduras and Mexico.
- Conduct training for all supervisors and administrative staff on freedom of association and the obligation of all management, supervisory and administrative employees to refrain from any coercive action with respect to workers' choices about union representation. The WRC is prepared to assist Gildan Activewear in the design of this training. This recommendation also applies to Gildan's other production facilities in Honduras and Mexico.
- Implement mechanisms to ensure that any association, lending program, or joint management-worker organization, in place at the plant does not carry out any labor relations function (see the response section below). This recommendation applies specifically to 'solidarista' style associations<sup>5</sup>, and is made in the light of the following statement from the ILO's Committee on Freedom of Association in 1990.

since solidarista associations are financed partly by employers, are comprised of workers but also of senior staff and personnel having the employers' confidence and are often started up by employers, they cannot play the role of independent organizations in the collective bargaining process...(this) gives rise to problems in the application of Article 2 of Convention N°98 which sets out the full independence of workers' organizations in carrying out their activities.

### **Gildan Activewear Response**

Despite findings to the contrary by FLA, WRC and Gildan shareholder investigations into the matter, Gildan persists in denying that any violations of worker rights have occurred and in referring to a Honduran Labor Ministry investigation into anti-union discrimination and unfair dismissal at Gildan Activewear El Progreso which concluded that all was well at the facility.<sup>6</sup> The Honduran government has a dismal track record of labor law enforcement, which is why codes of conduct are necessary in Honduras. Exculpation of employers by the Labor Ministry is standard practice, regardless of the

<sup>5</sup> Solidarista associations are a paternalistic alternative to independent worker organizations and are commonly in some Central American countries as a means to prevent workers from forming a legitimate union.

<sup>6</sup> The WRC Assessment Team collected evidence that on three separate occasions, Labor Ministry inspectors were denied access to payroll records at the facility, thus raising the question of Gildan's unwillingness to cooperate with the local authorities.

facts of a case. The unreliability of the Labor Ministry's conclusions has been brought to Gildan's attention on multiple occasions. The tenor of Gildan's response to the WRC's findings demonstrates an unwillingness to assume responsibility for the illegal firings and for management's anti-union animus at Gildan Activewear El Progreso.

### *Reinstatement and Back Pay for Unlawfully Fired Trade Unionists*

While unwilling, as of the date of this report, to acknowledge that any violations occurred at the El Progreso facility, Gildan had agreed, prior to its closure announcement, to accept the WRC's recommendation that factory management conduct a freedom of association training for all supervisors. Through the July 12 meeting, however, Gildan was unwilling to agree to offer reinstatement or back pay to the dismissed workers. The company expressed strong opposition to this step.

Subsequent to the July 12 meeting, and after its decision to close the factory in September, Gildan proposed several plans for offering reinstatement and back pay to some of the dismissed workers. Leaving aside the limited value to workers of being reinstated to a job that will disappear in two months, these proposals fell well short of the WRC's recommendation for full reinstatement and back pay. The best proposal made by Gildan, conveyed to the WRC on July 23, calls for offers of reinstatement only to those workers dismissed after October 2003 (thus excluding all of the workers dismissed the prior year – 39 workers in total); does not offer full back pay but instead offered back pay only for periods during which a given worker can prove that she or he was unemployed; provides no back pay to any worker who at this late date is unwilling or unable to return to the factory (because she or he is otherwise employed, has moved away, etc.); and excludes from reinstatement any worker with any prior disciplinary record, regardless of whether the disciplinary infraction in question was serious enough to have warranted dismissal. Gildan, in response to the recommendation of the WRC and the FLA, also proposed to provide to the reinstated workers, upon the factory's closure, the same severance package as the rest of the workforce. However, Gildan stated that for the purpose of calculating severance (the amount of severance is a function of the length of a worker's employment) length of employment would be based on the reinstatement date rather than the date of hire. The financial penalty for each worker would be significant.

It is unclear how many workers would be in a position to accept employment at Gildan for two months. Since failing to do so would make workers ineligible for any of the proposed benefits, and since the majority of the workers are rendered ineligible a priori by Gildan's arbitrary cut-off date, this proposal would likely be of only modest value to a small number of workers. The WRC has outlined its objections to Gildan. Gildan has indicated an interest in discussing the issue further but has not, to date, improved its proposal.

Although reinstatement to a factory that is about to close is not a meaningful benefit for the dismissed workers, full back pay, and severance based on the true date of hire, would constitute a significant sum of money from the workers' perspective. Thus, despite its

decision to close the factory, it is important for Gildan to agree to provide full back pay and severance to all of the dismissed workers and to implement this plan expeditiously.

Gildan's refusal to date to offer the dismissed workers a fair package of back pay and severance, even after the announcement of the closure of the factory, is a strong indication of a lack of commitment to code of conduct compliance.

#### *Freedom of Association Statement to Workers*

In a statement posted on its corporate website on July 26, Gildan states that it will

create and distribute to 100% of the workforce, in partnership with a local NGO, Centro de Derechos de Mujeres (CDM), an educational brochure that explains worker rights and freedom of association, with the primary purpose of educating the workforce on the concept of a union: what is a union: what is not, what it does, what it is for, how much it costs, etc.

This is a proposal made by Gildan in remediation discussions with the WRC and the FLA prior to the decision to close the factory. While a potentially useful tool for popular education, a brochure produced by Gildan and a local NGO, detailing the functions and costs of a union, does not replace the need for factory managers and supervisors to announce to workers that they will not incur any retaliatory measures as a result of their choosing to form or join a union in the future. This issue is now irrelevant at Gildan El Progreso – indeed, statements to workers at El Progreso that management will not retaliate against any *future* efforts by workers at the factory to exercise their associational rights would, under the present circumstances, only add insult to injury. However, Gildan has stated that it will undertake this effort at its other Honduran facilities. It is important that this be done properly, particularly because the closure of the El Progreso facility will send the opposite message to workers at these other factories: that support for unionization results in job loss.

Also, it is important that Gildan play no role in the writing of the proposed pamphlet on the nature and purpose of unions. The NGO mentioned by Gildan is competent to prepare such material and it is not appropriate for factory management, or Gildan Activewear executives, to determine what their employees will be taught on the subject of unions and unionization, given the inherent conflict of interest.

#### *Freedom of Association Training for Managers and Supervisors*

In its July 26 statement, Gildan states that

An external group will be selected to provide full training on freedom of association and labor rights under Honduran law to all sewing facilities' regional executives, supervisors, and a select group of workers. Another training will be held in Montreal at the corporate head office.

Such training will have no impact on workers at El Progreso, but will be constructive at Gildan's other Honduran facilities. The use of an external group, assuming it is a group that is qualified, is the proper way to proceed. The trainings given to management and supervisory staff should cover obligations as well as definitions of coercive tactics and the consequences that will be faced by management personnel who coerce workers. The WRC does not, however, recommend that Gildan workers participate in these trainings, for the same reason cited with respect to the proposed pamphlet.

### *Solidarista Associations*

An "Employee Association" was created by management at Gildan Activewear El Progreso in April 2004, ostensibly to replace an unpopular scheme (Plan 100) by which workers paid an earnings-related fee in order to receive advance payments on their eventual severance package. Gildan executives describe the association as being based on the Solidarista model, and state that the association, administered by both workers and salaried management personnel, would serve as a vehicle for labor issues to be addressed and for workers' grievances to be resolved. By incorporating some of the functions of a union into an association partly controlled by management, Gildan El Progreso has created an organization which will serve to discourage unionization and in so doing is violating workers' associational rights and university codes of conduct. The issue is no longer relevant at Gildan El Progreso, but the WRC is concerned about Gildan's potential use of this mechanism at other production facilities. The WRC recommends the immediate dismantling of all Employee Associations at Gildan facilities in Honduras. Any economic benefits of the savings plan incorporated into the association should be maintained, but should be administered by management. Gildan has not responded to this recommendation.

## **II. Sexual Abuse**

### **Allegations**

The Assessment Team investigated allegations that the factory doctor has sexually abused female employees.

### **Findings**

The WRC recognizes that allegations of sexual abuse are exceptionally serious in terms of their potential impact on the parties involved. Mistreatment of a sexual nature is among the most psychologically painful rights abuses employees can experience; some victims of such mistreatment would, understandably, rather see the abuse go unpunished than have their own experience become publicly known. And the actions alleged, in addition to constituting code of conduct and labor law violations, may also be punishable under Honduran criminal law. The WRC is aware of these implications. For this reason, the Assessment Team's on-the-ground evidence gathering was extended beyond the timeframe initially planned, to allow for additional interviews prior to the formation of conclusions, and exceptional care has been taken to assure the confidentiality of

witnesses. It is important to note that the Team's work was hindered by Gildan's denial of access to the factory, medical records of workers, and to the facility's medical personnel. However, in spite of these limitations, the Assessment Team gathered evidence that constitutes a sufficient basis to conclude that serious code of conduct and labor law violations have occurred.

On the basis of highly credible and mutually corroborative testimony from female workers, the Assessment Team concluded that the factory doctor has on repeated occasions subjected women workers to inappropriate and sexually intrusive contact in the course of medical examinations. The Assessment Team heard testimony from six female employees who testified credibly that they had been victims of such treatment. Each female worker cited other female workers who had reported similar experiences during examinations by the doctor. Additional women declined to be interviewed, after arriving for an appointment with a female researcher, citing fear of reprisal, shame, and humiliation.

Workers' testimony was detailed and consistent across interviews. The female workers' testimony demonstrated a pattern of behavior in which the doctor, despite explicit and repeated objections from the women he examined, requested that they disrobe and then proceeded to touch the women's genitals, pubic hair, or in one case, the upper thighs. In each case, the women had come to the clinic for reasons having nothing to do with gynecological issues, but rather had sought consultation for such problems as burns, stomach pain, kidney infections and generalized head and body aches. The women testified that, while examining them, the doctor made lewd facial gestures and comments of a sexual nature that the women considered offensive. In one case, a woman was told how she reminded the doctor of a former girlfriend. The examinations that are at issue were conducted by the doctor without the presence of a female nurse, although the factory clinic employs such personnel.

With the possible exception of one case in which antibiotics were prescribed, the doctor did not prescribe any medication or other treatment having to do with gynecological issues in any of these instances.<sup>7</sup> A male employee interviewed by the Assessment Team with regard to this issue reported that he had never been examined genitally despite having consulted with the doctor for a genital complaint.

All but one of the women testified that they have actively avoided the doctor since their experience with him and approach the clinic only to request painkillers.

Because the WRC was not granted access to the factory or to interviews with factory personnel, it was not possible for the Assessment Team to interview the doctor. Nevertheless, according to credible testimony from multiple witnesses, the doctor has repeatedly insisted upon lower-body nudity and physical contact with women's genitals and/or pubic area despite their objections, and has done so during examinations conducted without the presence of a female nurse.

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<sup>7</sup> Nor, to our knowledge, does the doctor have any specialized gynecological training.

This constitutes a sufficient basis to conclude that the doctor has engaged in inappropriate behavior and has placed the factory in violation of university code of conduct provisions regarding sexual harassment and abuse. The behavior also violates Honduran law: Article 60 of the Honduran Law for Equal Opportunities for Women explicitly mandates the immediate dismissal of any employee of a company found to have perpetrated an act of sexual abuse against another employee. The same law allows workers who are victims of such abuse by employers to immediately leave the place of work and incur no responsibility for doing so (i.e. with full entitlement to severance).

The fact that such acts have been carried out toward female but not male employees means that, in addition to being inappropriate and abusive, the acts were discriminatory as well. The Law of Equal Opportunities for Women establishes as illegal a wide range of forms of discrimination against women, including, in particular, issues related to the protection of women's health (Articles 14 through 21). The doctor's behavior has not only caused injury to the women who have been impacted directly, through both trauma resulting from the experience and the resulting avoidance of medical attention, but the behavior has also led to a broader mistrust toward the doctor and the factory's clinic among women workers in the plant. The behavior has thereby placed at risk the health of female employees in Gildan Activewear El Progreso generally.

### **Recommendations**

The WRC recommends the following remedial actions:

- Immediately terminate the factory's relationship with the current doctor. Ensure that female workers are attended by female medical staff, whenever requested, and that all female workers are made aware of this option. The most efficient way to ensure this would be to hire a permanent and full-time female doctor.
- Conduct training for all supervisors and administrative staff on the nature and prevention of sexual harassment and abuse. The WRC is prepared to assist Gildan Activewear in the design of this training.

### **Gildan Activewear Response**

Gildan Activewear took allegations of sexual abuse by the doctor at Gildan Activewear El Progreso facility seriously from the outset. Upon hearing of the findings, Gildan took steps to ensure that a female nurse would henceforth be present during all examinations. They also reprimanded the doctor. Upon further discussion, Gildan agreed to suspend the doctor (with pay), pending further investigation into the allegations. The WRC recommended that Gildan secure the assistance of a local NGO and conduct its own discussions with female employees. Gildan did so, conducting a training on workplace sexual harassment and abuse that served as a vehicle for women to bring forth information about their own experiences with the doctor. A number of women, including women not interviewed by the WRC, testified at the training to experiencing inappropriate contact while being examined. The information gathered through this

process led Gildan to accept the WRC's recommendation that the doctor be terminated. Gildan Activewear's contract with the doctor was terminated on June 30, 2004.

Gildan has stated that it will revise the examination form used by the factory clinic and require that on each form involving a female patient, a nurse sign indicating her presence during the examination. The company states that it will also communicate the nurse-present policy to employees by posting a sign at the clinic.

It is not clear if the replacement doctor hired by Gildan is male or female.

The sexual harassment seminar of June 22 incorporated women workers as participants. While this was a useful activity, it is also necessary that supervisory and management personnel are trained separately from workers on the recognition and prevention of workplace sexual harassment and abuse. These trainings should take place immediately at Gildan El Progreso, despite the planned closure of the facility, and should also be conducted at all other Gildan production facilities.

The WRC supports Gildan's offer of counseling for all women affected by the actions of the terminated doctor, and will appreciate the opportunity to verify implementation.

Despite the progress made in this area, the WRC remains concerned that Gildan continues to refer to the sexual abuse, inaccurately, as having consisted of 'an isolated incident'. It is also regrettable that access to improved in-factory medical care for female employees will be terminated when the factory closes in September.

### **III. Wages and Working Hours**

#### **Allegations**

The WRC investigated allegations that workers in this facility are not compensated in accordance with the law for breaks; that overtime and work on rest days and holidays is not compensated in accordance with the law; and that mandatory work shifts are longer than the legal maximum and that overtime hours worked during these shifts are improperly compensated as straight time.

#### **Findings**

The WRC found that Gildan Activewear El Progreso has violated Honduran law through the following illegal scheduling and compensation practices.

- *Uncompensated Break Time:* Article 323 of the Honduran Labor Code defines effective (e.g. compensatable) work time as that in which workers are either at the disposal of their employers or when they cannot leave the worksite during rest and meal times. Article 326 of the Labor Code specifies that in all cases in which workers work a continuous normal work schedule, workers are entitled to a break of 30 minutes during their shift, and that this 30-minute period is to be calculated as

effective work time. Numerous workers testified and the WRC observed directly that workers generally do not leave the factory compound during their lunch break, due to a variety of factors including lack of transportation and distance to their homes. As the WRC has confirmed through a review of workers' pay slips, workers are not paid for their lunch breaks. Because workers cannot reasonably leave the worksite for this lunch break period and because workers' shifts are continuous as defined in Article 326 of the Labor Code, the facility's failure to pay workers for lunch breaks is a violation of Honduran law.

- *Forced and Improperly Compensated Work on Official Holidays:* Article 339 of the Honduran Labor Code and Article 128 #9 of the Honduran Constitution stipulate that all employees have a right to certain paid statutory holidays, including January 1, April 14, May 1, September 15, October 3, October 12, October 21, December 25, and the Thursday, Friday and Saturday of Easter week. Honduran law also requires that, if an employee accepts an offer to work on a statutory holiday, the employee is to be compensated at a rate of double that which he or she would typically be paid and the employee is to be provided with an additional day of rest. Numerous workers testified and the WRC verified through a review of workers' pay slips that workers are routinely required to work on statutory holidays and that they are compensated for this work at a normal wage rate, rather than at the legally mandated holiday wage. The requirement of employees to work on official holidays and the non-payment of holiday wages are violations of Honduran law.
- *Forced and Improperly Compensated Work on Official Rest Days:* Article 344 of the Honduran Labor Code stipulates that commercial and industrial establishments are to remain closed on Sundays. This requirement is consistent with the Honduran government's official designation of Sunday as a rest day and the Labor Code's requirement that employees be provided with at least one day of rest per week, "preferably Sunday" (Article 338). The law does provide for certain exceptions relating specifically to businesses for which there is a particular need to remain open on Sundays. Manufacturing industries, such as apparel production, do not fall within the specific areas of exception set forth in the law. Gildan Activewear El Progreso, through its practice of the 4x4 shift system, remains in production each Sunday. Because work on Sundays is mandatory, rather than voluntary as the law requires, and because workers are compensated for this work at the standard wage, rather than the double salary rate required by law, the factory's shift policy violates the Honduran Labor Code.
- *Forced and Improperly Compensated Overtime as Part of Standard Daily Shifts* Articles 322 and 300 of the Honduran Labor Code and Article 128 No. 1 of the Honduran Constitution stipulate that the normal working day cannot exceed eight hours and that all work carried out beyond this limit must be compensated at an overtime rate. The 4x4 system employed by the factory requires workers to work daily shifts of 11 hours, from 7:00 a.m. until 6:30 p.m. (including a 30 minute break). The shift thus lasts three hours longer than the standard workday of eight hours. As the factory has acknowledged, workers are paid at the same wage rate for all 11 hours

of work. This shift structure is uniformly required of all employees as a condition of employment. Numerous workers testified that managers have responded to their requests to not work evening hours (for such purposes as attending school) by stating that these hours are required of all employees, without exception, and that if workers do not like the arrangement they “can find work elsewhere.” By requiring employees to work shifts that exceed the legally established normal workday and by compensating each hour of overtime at a normal wage rate rather than at the legally required overtime rate, the factory is violating Honduran law.

Gildan Activewear has stated that the factory has an agreement with the Honduran Ministry of Labor that constitutes official government sanction of the use of the 4x4 scheduling system (i.e. inclusion of a 44 hour workweek in a four day period) and, therefore, provides an exemption from those labor laws that this scheduling system violates. The WRC Assessment Team concluded, however, that any such agreement is invalid under Honduran law. Honduran law is unmistakably clear that the nation’s foundational legal documents in the area of labor rights – the Constitution and the Labor Code of Honduras – supercede any other laws or agreements, and that no law or agreement will be considered legitimate if it diminishes in any way the rights afforded to workers by these foundational documents. Article 3 of the Labor Code reads in full<sup>8</sup>:

All acts or stipulations that imply the renouncing, diminishment, or distortion of the rights of the Constitution, the present Labor Code, their regulations or other labor laws or provision of social benefits to workers, even if they are expressed in a labor contract or any other contract, are to be considered null and void (WRC translation from the original Spanish).

Notwithstanding the Honduran government’s authority to enforce labor law, it is the monitoring organization’s obligation to identify any instances in which a failure by the government to enforce a provision of the law results in the denial of the protections of that law to workers at a factory. Under Honduran law, the Ministry of Labor does not have the power to grant individual employers permanent exemptions from the laws governing hours of work and overtime. The fact that the Ministry may have ignored the law and made such a grant, does not remove Gildan’s obligation, under college and university codes, to obey the law. Indeed, it is precisely because governments often do not effectively enforce their own labor laws and regulations that colleges and universities, and many brands and retailers, have adopted codes of conduct. Under university codes, collegiate licensees such as Gildan must comply with the domestic laws of the countries in which they operate in whether or not those laws are being enforced meaningfully by domestic enforcement bodies.

## **Recommendations**

The WRC recommends that the factory take the following remedial actions:

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<sup>8</sup> The same principle is set forth in Article 128 of the Honduran Constitution.

- Immediately begin compensating workers for lunch breaks. Provide workers with back wages owed for at least the past twelve months or since each worker's start of employment, whichever is the shorter time-frame.
- Immediately begin compensating workers at the appropriate overtime rate for *all* hours worked that qualify legally as overtime. This includes all hours worked in excess of eight on a given day, in excess of 44 in a given week, and on any Sunday or official holiday. Provide workers with back wages owed for at least the past twelve months or since each worker's start of employment, whichever is the shorter time-frame.
- Immediately begin offering workers the option of declining to work on official holidays and, for those who choose to work, an additional day of rest in accordance with law.
- Immediately begin offering workers the option of declining work on Sundays.
- With respect to the 4x4 shift system, provide workers with the option of working a traditional workweek (i.e. eight hour days, Monday through Friday, and a half day on Saturday) as an alternative. The WRC recognizes that some workers may prefer the 4x4 arrangement or, regardless of their preference, have already organized their lives around it and are not in a position to switch to a new schedule. At the same time, some workers do not wish to work the 4x4 shift, particularly workers who want to go to school at night. The factory cannot legally require the 4x4 shift because it constitutes forced overtime on a daily basis. Therefore, it must give workers a choice between the 4x4 shift and a traditional workweek. Such arrangements have reportedly been made in other facilities in Honduras.

### **Gildan Activewear Response**

Gildan remains intransigent on the issue of 4x4 shift arrangements and the worker rights that this schedule violates – citing the above-mentioned authorization granted to Gildan El Progreso by the Honduran Ministry of Labor. Gildan Activewear recently provided the WRC with a facsimile of the authorizing document, signed in August of 2003. In the agreement, Gildan Activewear El Progreso's Human Resource Manager states that she and 40 named workers are requesting that the 4x4 system be authorized and made legal, on the grounds that all workers in the factory prefer it.

As a justification for the 4x4 work schedule, the document has three conclusive defects: 1) Gildan has not provided evidence of any democratic or widespread consultation with workers on 4x4 prior to the August 2003 request for legalization and there was no representative body at the time the document was created that could have given consent on behalf of the workforce as a whole. The WRC is aware of a substantial number of workers who, contrary to the claim in the document, do not support this system and would prefer a standard workweek. The inclusion of this false claim concerning worker consent renders the documents invalid. 2) The 4x4 system had been in place for several

years prior to the granting of this authorization. Since Gildan believes this document is the basis of its right to maintain work shifts that are in conflict with Honduran law, the company, even by its own standards, was operating unlawfully for several years prior to the authorization's issuance. 3) As noted above, the Labor Ministry does not have the authority to issue such a document and cannot unilaterally exempt Gildan El Progreso from the labor law.

On the WRC's specific findings and recommendations, Gildan responded as follows:

#### *Compensation and Back Pay for Lunch Breaks*

After some negotiation, Gildan agreed that the factory would begin paying workers for their lunch break, as the law requires. Gildan has not agreed, to date, to provide any back pay. Given that the factory will close in September, the issue of back pay is much more important for workers than the issue of the factory's practices going forward. The WRC urges Gildan to provide back pay in this area as originally recommended. The WRC also recommends that Gildan determine whether similar violations are occurring at its other Honduran facilities and that it take corrective action as needed.

#### *All Other Overtime Issues*

Gildan rejects the WRC's findings with respect to all other overtime issues and has stated that it will not alter the 4x4 system nor make an alternative system available to those workers who object to it. Gildan has offered no back pay for past overtime work that was improperly compensated. For the remaining weeks of the factory's life, Gildan intends to operate the factory on a schedule that violates worker rights enshrined in Honduran law and denies workers income they are legally due. Gildan states that the August 2003 document gives it the right to do so. Of greater importance, it is the WRC's understanding that Gildan uses the 4x4 system in the same manner at its other Honduran sewing facilities and that it intends to continue this practice.

### **IV. Women's Rights and Discrimination**

#### **Allegations**

The WRC investigated a range of allegations that primarily affect women and pregnant workers, including: that pregnant workers have been unlawfully terminated, that pregnant workers have been denied leave during instances of pregnancy-related medical emergency, that female workers are subject to pregnancy testing upon hiring and thereafter, and that the factory illegally conducts mandatory blood tests for HIV-AIDS.

#### **Findings**

The WRC found that code of conduct and labor law violations have occurred with respect to the firing of, and denial of sick leave to, pregnant employees. The WRC also found, on a related issue that arose in the course of the investigation, that the factory is violating

laws concerning factory accommodations for workers with children. The WRC has not been able to verify claims that testing for pregnancy and HIV-AIDS is conducted.

### *Denial of Sick Leave*

The Assessment Team heard credible testimony reporting instances in which pregnant workers have been refused permission to leave their work stations to seek medical attention, including during instances of medical emergency. Among the incidents to which workers testified are the following:

- A six-months pregnant worker was denied medical treatment at the factory's onsite clinic after she began vaginal bleeding, following an accident in which a heavy object above her workstation fell on her. Because the accident occurred on a Sunday, the factory's doctor was not present at this time. The worker requested to seek alternative treatment off-site, but the worker's supervisor refused her request on the grounds a doctor was needed to confirm that a medical emergency was taking place. Several hours later, she was allowed to leave the factory.
- A pregnant worker with a serious medical condition was denied attention at the factory clinic because, according to management, there was no worker available to cover her absence.

Denial of leave to pregnant employees suffering a medical emergency violates provisions of college and university codes of conduct requiring that reasonable services and accommodation be provided to pregnant workers.

### *Illegal Firings of Pregnant Workers*

The Assessment Team identified two cases in which pregnant workers have been fired by the factory in an unlawful manner. In both cases, the evidence indicates that the workers' pregnancies were known to factory managers prior to their dismissal. In one of the cases, the factory personnel pressured the pregnant worker – in her home, post-dismissal – to sign resignation papers.

- The first case involves the firing of a woman three-months into her pregnancy. The worker was summarily dismissed on her first day back at work following three days of sick-leave, during which she was incapacitated by the factory doctor due to a pregnancy-related infection. Article 128 of the Honduran Constitution, Articles 124, 135, 144, 145 of the Labor Code, and Article 51 of the Law for Equal Employment of Women explicitly require that any employer seeking to terminate an employment relationship with a pregnant employee must obtain prior authorization from a competent judge, or municipal mayor, and must provide the worker with prior notice of her dismissal. In this case, the factory neither sought nor obtained authorization for the termination and failed to provide the worker with prior notice of her dismissal. The firing was therefore illegal. Moreover, the worker was not told upon her dismissal that she had committed any infraction of factory policy, but rather that she

was being dismissed in order to relieve her of the strain of performing her job assignment, which entailed moving from team to team within the factory. Considering this fact and the timing of her termination, the Assessment Team concluded that this worker was dismissed as a direct result of her pregnancy.

- The second case involved a female employee who was fired six months into her pregnancy. As is typical in the factory, the worker had informed factory management of her pregnancy months prior to her dismissal in order to access medical care. In this case, the worker was involved in an effort to organize a union in the factory and was dismissed in the same week that the massive illegal firing of trade unionists was occurring (see section concerning freedom of association). As with the other workers dismissed on and around the same day, this worker was told that she was being dismissed as a result of a general reduction in personnel, and she was pressured to sign a pre-prepared letter of resignation. When the worker refused to sign the resignation form, she was told by management that she was being fired and was given a severance package that included maternity pay. As in the previous case, the factory had not sought prior authorization by competent authorities for her termination and thereby violated Honduran law. Several weeks after her dismissal, a woman who claimed to be from the Labor Ministry visited the worker in her home and offered to pay the worker money in exchange for a formal resignation. In the last trimester of her pregnancy and unemployed, the fired worker conceded to the repeated and considerable pressures to “resign” from the factory. Upon investigation, the Assessment Team concluded that the woman who brought the resignation forms was not in fact an employee of the Labor Ministry. The evidence available thus indicates that not only did the factory illegally terminate the worker, but sought subsequently to conceal the firing’s illegality by obtaining the worker’s resignation through deceitful and coercive means.

### *Mandatory Blood Testing*

The Assessment Team heard worker testimony that blood tests are taken and are used to test for pregnancy and for HIV-AIDS infection. Mandatory testing for pregnancy is forbidden by Honduran law (Article 46 of the Law for Equal Opportunity for Women), as is testing for HIV-AIDS (Special Law for HIV-AIDS, Decree 147-99). The Assessment Team was not been able to confirm these allegations during the investigation and Gildan denies that the factory conducts systematic testing of blood or urine. However, the WRC has determined that there is a widespread perception among workers in the factory that the blood tests are being used for pregnancy and HIV-AIDS screening. This perception, even if it is erroneous, may lead potential job applicants who are pregnant or HIV-positive to refrain from applying for work due to fear of discrimination.

### *No Childcare or Nursing Facilities*

To ensure that workers are not discriminated against on the basis of their gender roles and care-giving responsibilities, Honduran law obligates employers with more than 20 workers to make safe and secure space available for mothers to feed their children of 3

years or under (Labor Code, Article 142). The same law also obliges employers to designate an area where children of the same age can be left during working hours under the care of a designated person. In addition, LEOW Article 59 calls for employers of 30 or more women to provide parentally supported childcare centers for children under 7 years of age; and Article 140 of the Labor Code requires that a room be designated for the nursing of infants.

The Assessment Team found that there is no room set-aside for nursing, and no childcare facility at the factory. Breast-feeding workers are able to leave work one hour earlier than the normally scheduled end of production, which partially fulfills the factory's obligation under Article 140 to provide two 30-minute breaks for nursing. The factory is in violation of Article 140's requirement that there be a room designated for nursing and is in violation of LEOW Article 59 and Article 142. Due to the factory's failure to fulfill its legal obligations in these areas, nursing female workers at the factory tend to leave breast-milk at home and parents tend to rely upon female family members or neighbors for child-care.

### **Recommendations**

The WRC recommends that the factory take the following remedial actions:

- Instruct all relevant management personnel that pregnant workers reporting serious medical problems must be treated in the factory clinic or granted leave to seek outside medical attention – without delay.
- Announce to all employees, and include in any worker recruitment materials, a statement from factory management that there will be no discrimination against pregnant women in the hiring process and no unjustified dismissals or other discrimination against pregnant employees. Instruct all relevant personnel to comply with this policy. The worker mentioned who was fired while six months pregnant is entitled to reinstatement to her original position with back pay
- Provide for on-site nursing and childcare facilities, as well as two 30-minute breaks, placed at reasonable intervals during the work day, for nursing mothers.

### **Gildan Activewear Response**

#### *Instruction of Management Personnel in the Need for Rapid Medical Attention for Pregnant Workers*

While denying that the incidents occurred, Gildan agreed that “all relevant management personnel will be reminded of the company policy that pregnant workers reporting serious medical problems must be treated in the factory clinic or granted leave to seek outside medical attention without delay” (Gildan statement of 26 July). This is a positive step, but of minimal significance in light of the imminent closure of the factory.

### *Discrimination Against Pregnant Workers*

Gildan denies that there has been any discrimination against pregnant workers in either the hiring or dismissal processes. Gildan refuses to reinstate the affected workers. Gildan has not agreed to have the factory issue a statement to workers as recommended.

### *On-Site Nursing and Child Care Facilities*

In Gildan's statement of July 26, the company states that "three options are currently under study for a childcare facility: either Gildan to subsidize a community group in neighboring areas of facilities; Gildan to build a room for childcare in existing facilities or Gildan to negotiate the possibility to work in collaboration with the free-trade parks." Given imminent factory closure, however, it seems highly unlikely that any of these options will be implemented.

### *Testing for Pregnancy and HIV-AIDS*

Although no violation was identified, the WRC suggested to Gildan, during remediation discussions, the factory management could avoid any misperceptions on the part of potential job applicants by posting a statement at relevant locations outside the factory and/or the free trade zone stating that the factory does not discriminate in hiring based on pregnancy or HIV status.

## **V. Verbal Harassment and Abuse**

### **Allegation**

The WRC examined allegations that some supervisors at Gildan El Progreso regularly insult and shout epithets at workers.

### **Finding**

Although the WRC heard some credible testimony of abusive behavior by individual supervisors, the Assessment Team concluded, based on the balance of worker interviews and other data, that this is neither a significant nor systematic problem at Gildan El Progreso.

## **Appendix:**

### **Members of WRC Assessment Team for Gildan Activewear El Progreso**

**Licenciada Jessica Mariela Sánchez.** Independent consultant in women's rights. Lcda. Sánchez has implemented investigative work on domestic child labor for the International Labor Organization (ILO) in Honduras; contributed to publications on women maquila workers in Honduras for the Centro de Estudios de la Mujer – Honduras (CEM-H, Women's Studies Center – Honduras); and holds a post-graduate diploma in Gender Studies from the Universidad Rafael Landívar, Guatemala.

**Licenciada María Isabel Escobar.** Regional Coordinator of the Consultorio Jurídico Popular (Popular Legal Clinic), San Pedro Sula, Honduras. Lcda. Escobar is a practicing attorney and member of the Colegio de Abogados de Honduras (Honduran Guild of Lawyers).

**Licenciado Salvador Espinoza.** Independent labor attorney, San Pedro Sula, Honduras. Member of the Colegio de Abogados de Honduras (Honduran Guild of Lawyers).

**Lorraine Clewer.** Field Director for Latin America and the Caribbean, Worker Rights Consortium.