



January 28, 2009

FLA REPORT ON THE CLOSURE OF JERZEES DE HONDURAS

I. Introduction

The Fair Labor Association (FLA) commissioned two independent investigators to determine the facts surrounding the Russell Corporation's announced closure of Jerzees de Honduras (JDH).

- An FLA-accredited independent monitor investigated potential violations of the FLA Workplace Code and benchmarks pertaining to freedom of association at the Jerzees de Honduras factory.
- An independent expert evaluated the business rationale for Russell's decision to close JDH at Fruit of the Loom's headquarters in Bowling Green, Kentucky.

These investigations were launched in response to allegations that the factory closing may be in violation of the FLA Workplace Code of Conduct standard on freedom of association and more specifically, that Russell's decision to close Jerzees de Honduras was motivated by its desire to shut down the union.

Russell Corporation, an FLA Participating Company, made assurances to the FLA that its decision to close the factory was business related, citing a dramatic drop in demand for fleece products and the significant cost savings of closing JDH over another factory.

The FLA Workplace Code of Conduct does not govern production shifts or factory closures by affiliated companies. The decision of an FLA-affiliated company to source from a particular factory or to stop sourcing from or close a factory is a business decision not subject to oversight by the FLA. The one exception to this rule is when production shifts/closures or threats thereof are used to prevent workers from exercising freedom of association. The FLA Freedom of Association Code, Benchmark Number 9, states:

Production Shift/Factory Closure to Prevent Exercise of Freedom of Association

Employers shall not (threaten to) shift production or close a factory in an attempt to prevent the formation of a union, in reaction to any legitimate exercise of the right to freedom of association and collective bargaining, including the right to strike, or in an effort to break up a union. If a factory is closing and is suspected of doing so to prevent or hamper the legitimate

exercise of the right to freedom of association, the employer shall provide proof that can be assessed by a third party to determine the validity of these reasons given for closure.

The FLA's decision to conduct two separate investigations, including a third-party analysis of the business case as governed by FOA Benchmark 9, took into account the following factors:

- Previous violations of freedom of association at Russell factories in Honduras;
- Corrective action taken by Russell, which involved recognizing unions at both the Jerzees de Choloma and the Jerzees de Honduras factories, and initiating collective bargaining negotiations at JDH;
- The very challenging environment for freedom of association in Honduras; and
- Recognition that economic conditions around the world are impacting the apparel industry and leading to an increased number of factory closings.

The FLA takes very seriously any allegations of violations to the Workplace Code of Conduct with regard to freedom of association. All FLA investigations are conducted in an objective manner by impartial monitors who have been checked for any potential conflict of interest. In order to ensure that all parties are treated fairly we follow our procedures strictly. Thorough investigation requires time and discretion and the confidentiality of our process has proven to be one of its strengths. We are often asked to take public positions on cases under investigation but generally refrain, even though it makes us unpopular with constituents. In this case we were obliged to conduct three separate investigations, including a review of the ALGI investigation's methodology and worker interviews. In the report below we have set out the key findings of each and concluded with our analysis of the overall situation. Each report stands on its own and is the responsibility of its author. The FLA conclusions are distinct from the reports and based on our assessment of all the sources of information available to us and our professional judgment.

In order to fully appreciate the complexities of the Jerzees de Honduras case, it is necessary to look at the overall country context and the previous case involving a Russell factory in Honduras, namely Jerzees de Choloma.

II. Worker Rights in Russell Factories in Honduras

Since early 2007, when the union confederation CGT began efforts to organize two Russell Corporation plants in the Choloma area, there has been a great deal of conflict and controversy.

In late September 2007, the FLA asked independent external monitor ALGI to conduct an investigation into charges of violations of workers rights at the Jerzees de Choloma factory. ALGI investigated allegations related to mandatory overtime, harassment by supervisors, discrimination against pregnant workers, unhygienic restrooms, dismissal of workers in retaliation for efforts to form a union, late payment of wages, and closure of

the factory as management reaction to the formation of a union. ALGI conducted the investigation in Honduras on October 1-2, 2007, gathering information from management and from the confederation CGT, and conducting extensive review of documentation and confidential worker interviews.

ALGI did not find corroboration for four of the allegations related to mandatory overtime, discrimination against a pregnant worker, closure of the facility because of attempts to form a union, and late payment of wages, but did corroborate the three allegations related to harassment by supervisors, unhygienic bathrooms, and unfair dismissal of workers involved in the formation of a union.

ALGI's finding of illegal termination of union sympathizers was based, to a significant extent, on a review of company records that showed that there were no objective grounds for termination and that there was a high degree of correlation between dismissals of union members/sympathizers and key moments in the organization of the union at the plant. The human resources office had used a template letter to dismiss workers and there were no written evaluations or objective information on why these workers were selected for dismissal. In addition, there was no retrenchment policy in place. This led ALGI to conclude that there had been discrimination against union members and supporters.

With respect to freedom of association, ALGI recommended a remediation plan that included rehiring of illegally dismissed workers to their original positions with back pay, developing and communicating a retrenchment policy, communicating to workers a policy on freedom of association, recognizing the union, and eliminating from the hiring questionnaire questions related to previous memberships in associations or social organizations (i.e., a union).¹

A. Russell's Corrective Action Plan at Jerzees de Choloma

The FLA and Russell developed a corrective action plan (CAP) to address the three areas where ALGI found corroborated noncompliances.² In addition, the Workers Rights Consortium (WRC), which brought some of the allegations against Russell, agreed to the remedial measures with Russell. The remediation began in October 2007. Russell agreed to implement the plan not only at Jerzees de Choloma, but also at its other factories, including Jerzees de Honduras. Russell also agreed to give hiring priority to Jerzees de Choloma workers at other Russell facilities in the Choloma area (including Jerzees de Honduras) and facilitate reemployment of retrenched workers at non-Russell factories in the Choloma region. Russell officials also met with the General Secretary of the CGT on October 11, 2007 to establish a dialogue and start collaboration with the union.

Russell reported periodically to the FLA on the implementation of the remediation plan. In February 2008, the FLA again engaged ALGI to conduct an independent evaluation of Russell's implementation of their remediation plan. This was an unannounced visit,

¹ http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/jerzees_de_choloma_revised_report_10-11-07.pdf

² http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/jerzees_de_choloma_revised_report_10-11-07.pdf

conducted during February 20-22, 2008. ALGI investigators met with representatives of Jerzees de Choloma and Jerzees de Honduras management, CGT representatives, and union delegates from the two factories, reviewed records and documentation, and conducted confidential worker and supervisor interviews. ALGI found that Russell had fulfilled its commitments in the areas of harassment, safety and health, and freedom of association.

With respect to freedom of association, ALGI found that Russell had distributed a letter to all workers pledging to respect freedom of association and the right to collective bargaining; included freedom of association as a topic in the workers' induction process; eliminated from hiring forms the question about prior participation in associations; offered workers who had been dismissed for union activities reinstatement at Jerzees de Choloma and Jerzees de Honduras; recognized the union at Jerzees de Choloma and at Jerzees de Honduras and indicated readiness to start collective bargaining negotiations at JDH; and put in place non-discriminatory policies and procedures regarding hiring and termination at all factories. Finally, ALGI found that Russell had adopted a written retrenchment policy based on objective criteria and was executing its commitments to give hiring priority to Jerzees de Choloma workers at other Russell facilities and to facilitate the reemployment of retrenched workers in non-Russell factories in the Choloma region.³

B. Freedom of Association in Honduras

Honduran law provides for the right of workers to form and join unions of their choice, as well as to bargain collectively. Enforcement by the Government of Honduras of these rights, however, is quite weak. According to the U.S. Department of State's human rights report for Honduras, the Ministry of Labor frequently failed to provide effective protection to labor organizers. Corruption and unethical behavior of inspectors included the selling of names of employee union organizers to company management before government recognition of the union. Moreover, the government did not allocate adequate resources for inspectors to perform their duties and the country's labor inspectorate offices did not have financial resources to cover travel for inspections.⁴

Lack of government protection of workers has resulted in an anti-union culture. Common anti-union behavior includes displacement of independent trade unions with company unions. Retribution by employers against workers engaging in trade union activity was a widespread practice and took the form of harassment, worker dismissal, discrimination or "blacklisting" of union activists, and threats to close unionized companies. Employers often failed to comply with court orders requiring them to reinstate workers fired for engaging in union activity.⁵ Many of these examples of anti-union behavior in Honduras

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http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/jerzees_de_choloma_and_honduras_independent_verification_report.pdf

⁴ Honduras Country Reports on Human Rights Practices, Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008. Available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100644.htm>

⁵ Ibid.

are echoed in the recently-released report of the International Trade Union Confederation (ITUC) *Annual Survey of violations of trade union rights 2008*.⁶

C. Economic Context

The global economic slowdown is having a substantial impact on employment levels everywhere. Particularly with regard to consumer goods like apparel, footwear and toys reduced demand and bulging inventories have resulted in cut backs in orders across the board and in reductions in employment. Depending on the severity of order cut backs, some factories are attempting to manage the crisis by reducing hours of work of all workers or laying-off personnel in areas hardest hit by the order reductions. Factories facing more severe cut backs and unable to adjust have shut down altogether. In either case, the impact on workers, who depend on their jobs for their subsistence and that of their families, is devastating.

The adverse impact on production and employment levels associated with the economic slowdown is affecting all regions of the world. Even China, which heretofore had enjoyed consistent economic growth, is experiencing significant numbers of plant shutdowns and a severe decline in exports, especially in the toy and apparel sectors.

The maquila sector in Central America and Mexico, already under severe pressure because of production shifts to China, Vietnam, Bangladesh, and other lower-cost countries, has been particularly hard-hit by the global economic slowdown. The apparel export sector of these economies is heavily dependent on the U.S. market and therefore severely affected by the contraction of U.S. demand. In Honduras, for example, nearly 30 factories/companies have closed during 2008, most of them in the apparel sector and nearly all serving the U.S. market. Fruit of the Loom and its subsidiary Russell Corporation have closed or have announced closure of four factories making fleece products and t-shirts in Honduras since 2006 (three in 2008), impacting over 6,000 workers. Of those, the most recent announcement came on November 17, 2008 that Fruit of the Loom will close the San Jose plant, which sews t-shirts, in the first quarter of 2009 displacing 2,800 workers because of lack of product demand.

III. Russell's Decision to Close Jerzees de Honduras

On October 8, 2008, Russell Corporation announced its decision to permanently close Jerzees de Honduras (JDH), located near San Pedro Sula, Honduras. The facility specializes in the production of fleece products, namely basic pants and tops. Russell Corporation is a subsidiary of Fruit of the Loom and production facilities of the two corporations are combined.

In a letter dated October 16 to College and University Licensing Representatives, Rick Medlin, Executive Vice-President, Fruit of the Loom, stated:

⁶ <http://survey08.ituc-csi.org/>

... the closing of the JDH factory was a direct result of the decrease in demand for fleece products and the need to eliminate excess fleece production capacity. Although we have seen decreases in demand for all of our products in the last twelve months that have necessitated capacity reductions across the board, fleece products have been hit especially hard.

... we tried very hard to keep the JDH factory open. At the beginning of 2008 we had two sewing plants that were fleece only plants, Jerzees Campeche in Mexico and the JDH factory in Honduras. When it became apparent earlier this year that we had an excess of fleece sewing capacity, it was determined that Jerzees Campeche should be the plant that was closed, which was finalized in April of this year.⁷ At the time the decision was made, the presence of the union and status of the situation at the JDH factory, among other factors, was weighed in favor of keeping the JDH factory operating. Unfortunately demand for our fleece products continued to erode, which required a further balancing of our manufacturing capacity to customer demand. In this situation, taking into account all factors (including the union situation at Jerzees de Honduras), it was determined that the needed additional capacity reduction could only be accomplished by closing the JDH facility.

In addition to the restructuring of our fleece production, we have also taken other actions this year to reduce our manufacturing capacity:

- Closed a fabric manufacturing facility in Alabama;⁸
- Eliminated all contracted t-shirt production; and
- Initiated attrition (i.e., stopped hiring) at most remaining sewing plants.⁹

With respect to the JDH plant closure, Mr. Medlin further stated in the same letter:

The Company is committed to work closely with the union board throughout the closure process, and we will abide by our Retrenchment Policy currently in place (which was drafted in collaboration with the FLA and the WRC) in ramping down production. We will also honor all indemnities owed to the employees under Honduran law. In addition, we are committed to assist displaced workers in securing replacement jobs. We plan to communicate with local factories with respect to available jobs and place information on job opportunities on plant bulletin boards. We will also allow employees a reasonable amount of time away from work to seek employment opportunities.¹⁰

⁷ FLA Note: 956 workers were affected by the closure.

⁸ FLA Note: The closure of the facility in Alabama, which manufactured primarily fleece fabric, affected 482 workers.

⁹ Letter to College and University Licensing Representatives from Rick Medlin, Executive Vice President, Manufacturing, Russell Corporation, October 16, 2008, p. 2.

¹⁰ Ibid, p. 3.

IV. Allegations of Violations of Worker Rights

On October 10, 2008, the Worker Rights Consortium (WRC) sent a letter to WRC Affiliate Colleges and Universities regarding the closure of JDH. The principal charge in the letter regarding the closure was the following:

There is substantial credible evidence that this action [the closure] was motivated, at least in part, by hostility toward workers' continuing efforts to exercise associational rights protected by university codes of conduct. A factory closure decision that is motivated by such animus is a serious violation of university codes of conduct.¹¹

On November 7, the WRC issued a report with findings and recommendations regarding the JDH closure. The report concluded "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."

V. FLA-Commissioned Investigations of Jerzees de Honduras

As mentioned above, the Fair Labor Association (FLA) commissioned two independent investigations to determine the facts of the case.

The FLA engaged The Cahn Group, LLC to evaluate the financial rationale that led the Russell Corporation to close the JDH factory. The investigation was conducted at the headquarters of Fruit of the Loom in Bowling Green, Kentucky, on October 27, 2008 by Doug Cahn, Principal of The Cahn Group, LLC. He was provided access by Fruit of the Loom to relevant personnel and confidential business records bearing on the decision to close the factory. The investigation was organized to pursue the following avenues of inquiry:

- Establish the organizational and governance structure at the company that was used to make the decision to close the factory;
- Obtain knowledge of the overarching manufacturing strategy of the company;
- Understand the internal and external factors that influenced the decision to close the factory;
- Understand the components of the decision itself.

The FLA also engaged ALGI, an independent external monitor accredited by the FLA to conduct audits in Honduras, to investigate allegations of violations of the FLA Workplace Code of Conduct with regard to freedom of association and to review the closure procedure to ensure that workers' rights were being respected. We carefully considered the choice of auditor and chose ALGI because of its strong record on freedom of association in previous investigations in the region. As per our normal procedures we

¹¹ Letter to Primary Contacts at WRC Affiliate Colleges and Universities from Scott Nova, Executive Director, Workers Rights Consortium, October 10, 2008, p. 1.

checked whether there was any potential conflict of interest between ALGI and Russell Corp. The 2008, 2007, 2006 and 2005 Conflict of Interest Disclosure forms submitted by ALGI showed that ALGI has not had any business or financial relationship with Russell since at least January 1, 2004.

The in-country investigation was conducted by ALGI auditors Angelo Valdevitt and Liliana Vidal over the period November 10-14, 2008. ALGI investigators gathered information from JDH management, the local union, Sindicato de Trabajadores de la Empresa Jerzees de Honduras, S.A. (SITRAJERZEESH), the union federation CGT, and officers of the Honduran Ministry of Labor; visited three other Fruit of the Loom facilities in Honduras that produced or warehoused fleece production; reviewed official JDH records and documents regarding the JDH closure; and interviewed 77 workers, both onsite (16.5 hours at the cafeteria of each facility) and offsite (11.5 hours at the offices of the CGT). In particular, ALGI was asked to:

- Evaluate whether hostile behavior by JDH management was directed toward the union, union members or representatives of the union federation to which the union is affiliated,
- Determine whether Russell's decision to close Jerzees de Honduras was an attempt to interfere with workers' associational rights and the collective bargaining process

The FLA also requested that ALGI review the process and status of the collective bargaining negotiations between the company and the union, as well as look at the facility closure process and communications to workers to make sure that Honduran law and the company's retrenchment policy were being implemented.

The FLA received The Cahn Group's report in early November and the ALGI report in early December and began to draft an FLA report based on the findings of both. At that point, the FLA received a procedural challenge to the conduct of the ALGI investigation at JDH. Given the seriousness of the allegations raised by the challenge and the controversial nature of the case, we decided not to release any reports until the challenge had been addressed. This necessitated an unfortunate delay in the process, but was deemed to be less harmful than the publication of partial findings that may have skewed the debate and prejudiced the existing and new reports.

A. Findings on Business Rationale for the Closure of JDH

The Cahn Group, LLC, which conducted the investigation at the headquarters of Fruit of the Loom, concluded in its report¹² regarding the financial rationale for the decision to close the JDH factory in Honduras:

¹² The Cahn Group, LLC, *Report to the Fair Labor Association: Financial Rationale for Decision to Close Jerzees de Honduras Factory by Russell Corporation—Headquarters Investigation*, conducted by Doug Cahn, Principal, The Cahn Group, LLC (October 31, 2008).

The company [Russell] took a prudent step to significantly reduce manufacturing capacity for fleece products. The downturn in demand together with above normal inventory levels made this step a business imperative.

Due to the size of the forecasted overcapacity, the company was justified in making the decision to close one of its factories, as opposed to incrementally reducing its workforce at one or more of its fleece sewing facilities.

There were two primary factors cited by the company in selecting to close Jerzees de Honduras:

- Rationalization of product mix, demand, and inventory; and
- Cost of exiting the factory.

The first factor is reasonable but due to the scope of the investigation it was not possible to determine if there were other countervailing considerations that could have resulted in a different company decision.

The second factor is compelling. The company demonstrated that it stands to avoid more than \$2 million in expenditures by closing Jerzees de Honduras as opposed to exiting the most probable alternative, Tela, a factory with a long-term lease. On this point, the company makes a sound business case.

Taking these two factors together, the company is justified on the basis of the financial business case to close the Jerzees de Honduras facility based on significant short-term cost savings. However, additional investigation in Honduras will be required to provide more complete conclusions concerning allegations made against the company.

ALGI also examined the business rationale for the decision by Russell to close the JDH factory. ALGI monitors requested JDH factory management to provide copies of emails and any other correspondence with the Executive Office of Fruit of the Loom regarding diminishing global demand for fleece products that formed the basis for the decision to close JDH. Management provided four such memoranda from August through October 2008 calling for reductions in fleece production due to reduced demand.

ALGI auditors visited two other facilities that produce fleece products for Russell in Honduras, Jerzees Buena Vista and Tela, as well as Roatan, the centralized warehouse and distribution center for all Fruit of the Loom/Russell manufacturing in Honduras, and made the following observations:¹³

¹³ ALGI, *Fact Finding Independent Investigation—Honduras, November 10th-14th 2008*.

Among the three facilities that produce fleece products, one of them (Buena Vista) is owned by the corporation, while the other two (Tela and JDH) are leased properties.

Of the two leased plants, Tela has a lock-contract that expires in 2012, while JDH has a lease that has already expired and presently is rented on a month-to-month basis.

Based on forecasts presented to monitors, the demand for fleece-basic pants is down. This affects the facility that engages in this type of production. Approximately 75% of the production at JDH is for basic pants.

After visiting the Roatan distribution and warehouse facility, monitors can confirm that there is an excess of inventory on site. This was corroborated by the temporary stoppages in October and November.

ALGI monitors also were informed by the CGT leader that JDH production was being carried out at Genesis Apparel. The CGT leader arranged for a meeting between ALGI monitors and two Genesis Apparel workers. In the course of the meeting, the workers stated that they worked on T-shirts and had seen fleece production at Genesis basically for Costco. They had not seen Russell or Fruit of the Loom labels at their factory. The workers were not able to produce Russell tags from Genesis Apparel. The CGT leader also presented documentation for a facility that sub-contracted with Elcatex, alleging that it showed contract production for JDH until the end of 2008. Follow-up could not be conducted as the facility is closed for business. JDH management stated to ALGI monitors, and presented documentation to show that, as of June 2008 all fleece outsourcing had stopped due to diminishing market demand.

B. Findings Regarding Allegations of Freedom of Association Violations

Allegations of violations of freedom of association are among the most difficult to investigate because they are often rooted in perceptions of the *motive* that moved an individual to take an action or behave in a particular way. Labor and management routinely misinterpret and suspect each other's actions and statements regarding freedom of association. This is particularly the case in the initial stages of union organization and in first contract collective bargaining negotiations when the labor-management relationship is still relatively undeveloped. In addition, the tensions that go with labor-management relations are heightened at times of economic difficulty and when the possibility of a major change at the factory (e.g., loss of jobs through retrenchment or closure) is at play. Both of these aggravating circumstances were present in the JDH case. Moreover, it would be reasonable to assume that some of the earlier conflicts at the Jerzees de Choloma factory carried over to JDH when union supporters were relocated there after the closure of the former plant in 2007-2008.

Given the history of labor-management conflict ALGI adopted the following approach in seeking to verify whether management had made threats of closure to avoid dealing with the union:

Understanding that accusations of threats will have opposite versions, monitors focused the evaluation towards any tangible records in an attempt to determine if these incidents actually occurred. The process involved searching and evaluating official and registered claims made against JDH at the Ministry of Labor regarding hostile behavior by JDH management. Additionally monitors also sought to evaluate any events that may have been recorded regarding these incidents in order to further interview/question the individuals involved in the incidents.

This is a high standard, but ALGI has used this method very effectively in previous investigations for the FLA in the region, including those at Primo in El Salvador, at the Gildan plant in El Progreso, Honduras, and at Jerzees de Choloma. Those investigations found clear documentary evidence of *inter alia*, blacklisting of union members and discrimination against them in the hiring and firing processes.

ALGI sought to corroborate allegations of hostile behavior by JDH management towards the union in the following ways:

- ALGI reviewed all (four) claims and complaints filed against JDH before the Ministry of Labor for the period during which the union was recognized and the negotiation of the collective bargaining agreement was taking place. One case had to do with proper payment of severance and the Ministry of Labor ruled that the factory had complied with Honduran law. Two other cases had to do with disciplinary measures taken against individuals identified as union sympathizers, who together had covered up the unauthorized absence of one of the employees, and again the Ministry of Labor ruled that the measures taken were in compliance with internal disciplinary policies and Honduran legal requirements.

The fourth case had to do with allegations that JDH management manipulated an exempt employee (*empleado de confianza*) to act against the union by collecting signatures to form a competing union. The Ministry of Labor closed the case on November 12, 2008, giving a warning to the worker that it was illegal to act against an established union and repeat of this behavior could result in financial penalties. ALGI interviewed the president of the local union, SITRAJERZEESH, who observed a worker collecting signatures during working hours and gathered/assumed that his actions were “acceptable and thereby approved” by JDH. The worker, who admitted collecting the signatures to ALGI, stated that his actions were not instigated by management. Rather they were motivated by his anger – and that of many of his colleagues -- at the union for having stopped a scheduled temporary closure of the factory in August in a manner that disrupted plans of many workers to travel to their hometowns. The worker’s supervisor

stated to ALGI that because of the physical layout of the plant and the work load, it was unlikely that the worker in question would have been able to engage in signature-collecting activities during work hours without being observed by a supervisor. If that happened, the supervisor stated to ALGI, disciplinary action would have been taken for performing personal activities during working hours.

- ALGI reviewed minutes of monthly meetings between management and union representatives for the period April-October 2008. Management and union delegates had agreed to hold monthly meetings to discuss developments and issues of concern to either side, as well as to provide a forum for resolution of issues. The minutes showed topics of concern, follow-ups, resolutions, and were signed by all parties. During the seven-month period, no issues were raised regarding JDH harassment of union members. Ninety issues of various kinds were raised, of which 22 pertained to safety and health, 67 with administrative/production issues, and one with harassment defined in the minutes for May 2008 as “mistreatment of some associates [plant employees].”¹⁴ ALGI asked if the local union president could provide documentation to support charges of union harassment by JDH management, but such evidence was not presented.
- ALGI attempted to investigate hostile activities by industrial park security guards toward union members or their representatives but were thwarted because the security guards are employed by the industrial park rather than by JDH and the guards refused to cooperate with the investigation. ALGI confirmed the occurrence of an incident at which a security guard had boarded the CGT leader’s car when she came to visit the industrial zone, that JDH management deemed such behavior to be intimidating, and that the plant manager had lodged a complaint with security guard management about such treatment.

Summing up its investigation of allegations of hostile behavior by JDH, ALGI makes the following statement: “Monitors performed intensive evaluation of Jerzees de Honduras policies and procedures, government records review, governmental official interviews, minutes taken by government, JDH and union and carried out on-site and off-site interviews of all parties involved. As presented above, monitors did not detect or gather any tangible evidence to show beyond a shadow of doubt that JDH has performed or encouraged actions that can be regarded as discriminatory or hostile against SITRAJERZEESH union delegates, the union federation (CGT) or any union or non-union employees.”

C. Closure Procedures

The FLA also asked ALGI to review closure procedures to ensure that Russell was following its retrenchment policies, as well as Honduran law. This is a stressful time for workers and we wanted to make sure their rights were being respected in that process. ALGI concluded that:

¹⁴ ALGI notes that the issue brought before the management-labor committee does not identify the mistreatment/harassment as being directed at union delegates or union sympathizers.

The reduction of personnel is structured to follow the company's retrenchment policy which states the following: "In the event that reductions in workforce become necessary (other than temporary reductions of 30 days or less), reductions will be done by job classification. Employees displaced shall occur on the basis of last in, first out among qualified employees who have demonstrated their ability and satisfactory performance to do their jobs. Seniority in the job classification (job seniority) is determined by the length of service in the company."

At least 35 personnel files that belonged to the already terminated workers were reviewed. Under the present procedure, employees are given the opportunity to verify and confirm if their severance payment is in compliance with the law. Calculations of severance payments were reviewed and the facility has so far made the right payment of compensation to all terminated employees. Two incidents of miscalculation were presented to the MoL. Both cases were reviewed by and were found to be correctly calculated. Additionally, employees interviewed at the facility confirmed that they have been informed of the closure and have been informed of the assistance available for displaced employees which consists of finding other alternatives for workers, such as employment at other facilities, availability at other Russell plants, etc.

D. The Goldin Report

Before the FLA had completed its report, we received a procedural challenge from ten labor rights organizations regarding ALGI's impartiality and investigative conduct. A representative of the CGT union federation in Honduras also filed a similar challenge. In good faith to all parties concerned, the FLA reviewed our internal process and determined that because of the importance of this case to all parties, it was imperative that the concerns raised by the labor rights community were addressed before we made public the results of the factory investigation.

To this end, the FLA engaged an expert consultant *inter alia* to assess the methodology used by ALGI in its investigation and to determine whether any relevant evidence was omitted; to examine the procedural complaints lodged against ALGI's investigation and their relevance and potential to affect its conclusion; and to conduct interviews with unionized workers and their leaders to have their views heard on the FOA situation at the factory, as well as on the manner that ALGI conducted its investigation.

Adrian Goldin, a frequent consultant to the ILO, traveled to San Pedro Sula on behalf of the FLA and prepared a report that was finalized on January 26, 2009. Goldin is a well-known international expert on labor law and labor relations, freedom of association and collective bargaining, and social security. In addition to having conducted missions and written reports for the ILO, Goldin led Direct Contact Missions as a personal representative of the Director General of the ILO to the governments of Guatemala

(2001), Venezuela (2002), Panama (2006) Costa Rica (2006 and 2007) and Nicaragua (2008). These missions are among the most sensitive and high-profile assignments for the ILO. Goldin also is a full professor at the University of San Andrés, as well as a full professor of Labour Law and Social Security at the Law Faculty, University of Buenos Aires.

Goldin traveled to San Pedro Sula, Republic of Honduras on Tuesday, January 13, 2009, and over a four-day period interviewed 48 operators at the offices of the CGT, the CGT coordinator, Doña Evangelina Argueta, nine members of the board of directors of the union SITRAJERZEESH and two workers who were part of the negotiating team for the collective bargaining agreement. He also visited JDH where he met with the General Manager of the factory, José Fernández, and the Director of Human Resources, Ricardo Trujillo. On the morning of the 16th, he visited the Minister of Labor's office, regional delegation of San Pedro Sula, where he interviewed the Regional Director, Attorney-at-Law Lucía Rosales; the coordinator of inspectors, Waleska Martínez; and inspectors Raúl Baraona and Bessi Rocío Lara Rosa.

Goldin's report¹⁵ revealed that the ALGI investigation suffered from methodological shortcomings in the manner in which it collected and evaluated worker testimony regarding threats of closure. He noted that in cases involving alleged violations of workers freedom of association, the Committee on Freedom of Association of the ILO Governing Body relies heavily on worker testimony and that such testimony can be assessed in different ways. He found that ALGI's reliance on documentary proof resulted in the exclusion of certain evidence. In addition, Goldin notes that there were numerous indications of hostility towards trade unions in Honduras in general and at JDH in particular. These should have been considered when assessing the credibility of worker testimony. Goldin summarized his findings as such:

At this point in the analysis, this consultant can affirm that the methodological deficiencies that in his judgment afflict the ALGI investigation resulted:

- a. In the exclusion of relevant evidence.
- b. In an approach aimed more at establishing the *formal truth* that might emerge from "tangible records" not necessarily available rather than the *material truth*, that should be the aim of investigations regarding labor matters.
- c. In the lack of observance (not necessarily intentional, but equally harmful) of the principles of confidentiality and trustworthiness in the behavior of the investigators.
- d. In the lack of consideration and adequate follow-up of certain evidentiary elements which were available to the investigators.

¹⁵ Goldin, Adrian. *Mission Report: The Closure Process, Previous Investigations and the Right of Freedom of Association* (January 26, 2009).

- e. In the incorrect assignment of the burdens of proof.
- f. In the omission of significant indicia that should have been the subject of adequate evaluation and assessment.

Goldin recorded numerous incidents where supervisors and other mid-level staff expressed views that suggested the factory would close because of the union (or could be inferred to suggest as much). Many of these views were reflective of prevailing attitudes and perceptions in Honduras, but they served nonetheless to create the presumption that the factory would close as a result of the formation of the union. This led him to conclude that:

...even if it had been established that economic or market circumstances justified the reduction in the size of operations or closure, it appears that they would not in any case weaken the evidence, inferences, and presumptions that the closure is the result also of the existence of the union and the activities it displayed.

It should be noted that Goldin did not have the economic analysis at his disposal when he reached this conclusion.

VI. Conclusion

We have reviewed all three reports and other information at our disposal and arrived at the following conclusions and recommendations. The question we set out to answer was whether closure of the factory was a deliberate action to disrupt the union, a clear violation of freedom of association per FOA Benchmark No. 9, or the result of economic factors? The Jerzees de Honduras case has proven to be a very challenging one. It took three independent investigations to triangulate the situation and provide a complete picture. Upon review of the three third-party reports and other information at our disposal, the FLA found the economic factors to be persuasive and accepts that the decision to close JDH was principally a business matter.

Russell Corporation's announcement of its intention to permanently close the JDH facility has understandably caused bad feelings among the workers at the factory and within the regional and global labor rights community. For the workers and JDH management, the closure of the factory translates into loss of income and a means to support their families. The closure comes at a particularly difficult time, as many other factories in Honduras are closing and job opportunities are scarce. For the regional and global rights community, the closure of the factory means the disappearance of a unionized factory, moreover one in which a collective bargaining agreement was being negotiated. The closure of JDH, labor rights activists argue, not only destroys an incipient union organization but also has the possibility of impacting unionization in the region. Unionized factories are the exception in the apparel industry in the region and globally. These concerns are compounded by past violations of freedom of association at Jerzees de Choloma and JDH. This lack of trust certainly makes it harder for some stakeholders to accept the rationale for the closure given by the company.

The reports by The Cahn Group, LLC and ALGI, however, support Russell's position that the closure of the factory was based on economic considerations. Evidence gathered in the different reports, including the Goldin report, also lead the FLA staff to conclude that labor-management conflict was present in Honduras and at the Jerzees de Choloma and Jerzees de Honduras facilities, but that it was a complicating factor rather than a motivating factor in the closure of JDH. As Goldin points out, there is a history in Honduras of anti-union animus by government officials and employers, and of some factories choosing to close rather than accept unionization. This led many workers (both pro- and anti-union), supervisors and managers to assume that the establishment of the union at JDH would inevitably result in its closure. The FLA believes this assumption became something of a self-fulfilling prophesy, especially as the economic situation worsened and Russell began shutting plants.

This perception that the union is the cause for the factory closure, however, should not obscure the economic facts, the overall global economic context and the wave of factory closures throughout the apparel export sector in Honduras, including plants owned or operated by Russell Corporation in order to adjust to declining orders. That process began in Mexico and followed an economic logic. In the last year, Russell has closed or announced the closure of the following factories in Honduras: (1) Jerzees de Choloma; (2) Jerzees de Honduras; (3) Productos San Jose. If the primary motive of the company had been to frustrate the union, it could have closed JDH earlier and even switched production from Honduras to Mexico.

The FLA fully appreciates why many observers and interested parties, and indeed Goldin, came to the conclusion that anti-union attitudes were a significant factor in the decision to close the JDH facility. Such attitudes permeate and poison labor relations in Honduras and they were undoubtedly present in this case, but the FLA was not able to establish a causal link between the labor-management conflict and Russell's decision to close JDH.

That having been said, the third-party reports do show some areas where Russell Corporation's implementation of freedom of association was weak and did not fully protect workers rights. The labor-management conflicts at JDH point to the need for Russell Corporation to take pro-active remedial steps to improve respect for freedom of association throughout their supply chain and to mitigate the negative impact the closure of JDH may have on union organizing in Honduras.

The FLA believes that Russell should take the following steps immediately to set out clearly its corporate position regarding freedom of association and improve the industrial relations climate in its factories in Honduras and elsewhere:

1. Issue a public statement, to be released to the Honduran media, stating that the closure of the JDH facility responded to economic considerations and was not caused by, or the result of, unionization at the plant or negotiation of a collective bargaining agreement.

2. Communicate directly and formally with other local factories about the closure and encourage other plant managers to hire JDH workers. If needed, offer compensation toward the retraining of JDH workers so that they can secure employment elsewhere.
3. Reissue to all facilities the November 2007 letter on freedom of association and ensure that all workers and managers are aware of its contents.
4. Develop or strengthen formal internal grievance procedures at its factories so that allegations of harassment or other forms of behavior by supervisors and managers that violate worker rights can be brought to upper management's attention on real time and will not contribute to tensions at the factory level.
5. Include in performance standards for supervisors and management a standard on freedom of association.
6. Discipline supervisors, managers and workers who use threats or harass workers because of the exercise of freedom of association.
7. Continue to work with the union board at JDH throughout the closure process and strictly follow the company's retrenchment policy as employment is reduced.
8. Compensate terminated JDH workers to the full extent provided by Honduran law.
9. Assist JDH workers in securing employment in other facilities in the general area by allowing workers a reasonable amount of time away from work to seek employment opportunities, communicating with local factories about job opportunities that may be available to JDH workers, accompanying individual or a group of workers as needed to potential factories to facilitate entry to certain manufacturing zones, and issuing whatever documentation workers need (in a timely manner) regarding proficiency records and service tenure at JDH to enhance their opportunities to find employment elsewhere.
10. Reach out to community leaders to explore ways in which the impact of the closure can be mitigated.