
To: Primary Contacts at WRC Affiliate Colleges and Universities
From: Scott Nova
Date: February 17, 2009
Re: FLA Acknowledges Depth of Evidence Against Russell; But Russell Still Refuses Adequate Remediation

As you probably know, the FLA on Friday sent to universities a resolution adopted by its board concerning the Russell case. We are encouraged that, with this Board Resolution, the FLA has more fully acknowledged the depth and severity of the labor rights violations committed by Russell at the Jerzees de Honduras factory.

By giving greater recognition to the importance of the report produced for the FLA by ILO expert Dr. Adrian Goldin, the FLA has partially resolved the contradiction between Dr. Goldin's findings of grave violations by Russell and the summary report the FLA sent to universities last month, which downplayed those findings. As we have noted previously, the strong degree of consistency between the findings of the FLA-Goldin report and the findings of the WRC's own report on this case make the evidence against Russell very strong, and the FLA's recent statement has made this substantially clearer.

Most importantly, while the FLA maintains that it "cannot determine" whether "anti-union sentiments and actions were the *primary* reasons for the closure..." the FLA now gives clear emphasis to Dr. Goldin's conclusion that "the closure of the factory has been determined, *at least to a significant extent*, by the existence and activity of the union." (emphasis added). It is important to note again that Dr. Goldin's finding of an anti-union motive for the closure does not contradict the finding of an economic rationale by FLA-investigator and former Reebok executive Doug Cahn – since more than one motive may exist for a factory closure. As we have previously noted, under both ILO core labor standards and well-established legal doctrine in the United States, freedom of association is violated when anti-union animus is a significant factor in a company's decision to close a plant. In this case, both the WRC and the FLA-Goldin reports reached this conclusion with regard to Russell's decision to close Jerzees de Honduras.

Unfortunately, the FLA Board Resolution includes some confusing and contradictory language, including references to some of Dr. Goldin's conclusions regarding Russell's conduct as "allegations," when Dr. Goldin clearly arrived at these conclusions as findings of *fact*. The FLA Resolution also contains a statement suggesting that business reasons were the primary motive for the closure, which contradicts the FLA's statement, in the same document, that it cannot determine whether anti-union sentiments and actions were the "primary reasons." If the FLA can't rule out anti-union sentiments and actions as the primary factor, how can the FLA determine that business reasons were the primary factor?

In actuality, the issue is not so complicated. As both the FLA-Goldin and WRC reports found, and as the FLA now more fully acknowledges, there is convincing evidence that anti-union motives played a role in the plant closure decision. Under the relevant labor standards and legal doctrine, the burden is therefore on the company to prove that retaliation against workers' associational activities was *not* a factor. Nothing in the FLA reports (including Doug Cahn's

report, which simply found that a business justification *existed* for the closure) indicates that Russell has met this burden. Instead, taken as a whole, the reports released by the FLA corroborate the WRC's conclusion that anti-union motive was, at least, a significant factor in the closure. As the FLA Board Resolution makes clear, Russell also engaged in other severe violations of workers' associational rights at the factory, a conclusion also reached by the WRC.

The FLA's clarification of its findings in its Board Resolution is helpful, because it significantly narrows the gap between the conclusions of the FLA and those of the WRC.

However, despite the FLA's greater acknowledgement of Russell's violations of freedom of association in this case, the additional remedies it is recommending are not commensurate with the severity of the harm these violations have caused to workers. The remedial action steps proposed yesterday by Russell, in response to the FLA statement, are plainly inadequate to correct the very serious nature of the violations in this case and bring Russell into compliance with university codes.

Because there is no longer any doubt that Russell has, once again, severely violated university codes, the central issue in this case going forward is the appropriate remedy. For workers, what matters is not whether the WRC, the FLA, or even Russell, agree and acknowledge that these violations were committed. What matters is whether the action taken is sufficient to correct these violations and undo the harm the Jerzees de Honduras workers have suffered. As the WRC has previously pointed out, under international labor standards and basic labor law, the core elements of an appropriate remedy are clear: reversal of the closure decision; reinstatement and back-pay for the affected employees; and steps to ensure respect for associational rights at the plant going forward. These elements are not present in Russell's plan

It is worth remembering that this is the second time in less than two years that universities have had to address serious violations of their codes of conduct by Russell. The pattern of Russell's behavior is, by now, all too familiar: As it did when the company illegally fired 145 workers for joining a union in 2007, Russell has, for months now, denied any wrongdoing, despite powerful evidence to the contrary. Indeed, it has only begun to acknowledge that problems exist after a number of universities have taken steps to end their relationship with the company. Russell's recent proposals come very late in the day – indeed, they come *after* Russell went ahead and closed the factory – and remain woefully short of the kind of meaningful remediation that is needed. Indeed, the strong likelihood that the FLA's conclusions would confirm, at least in part, the WRC's earlier findings is exactly why the WRC implored Russell to delay the closure of the factory until both organizations' reports had been fully evaluated by universities. As you know, Russell ignored this request, thus creating significant new obstacles to meaningful remediation of the violations the company has committed.

One other piece of information: As we reported to you last week, Russell posted on a new website an article containing false and inflammatory attacks on Moises Montoya and Norma Mejia, two workers who are elected leaders of the union at Jerzees de Honduras and who have faced multiple death threats. The WRC, out of concern that this highly irresponsible posting would further endanger these workers, asked Russell to immediately remove the article from the website. Russell has now done so – and has finally stated to us a willingness to cooperate in efforts to address the risks these workers face as a result of being blamed for the closure. We hope this means that Russell will engage in no further acts that increase the already serious risks to these workers' physical safety.

We will continue to keep you posted on developments in this case. We appreciate the time, attention and careful consideration that the university community has devoted to this important matter.

Scott Nova
Worker Rights Consortium
5 Thomas Circle NW
Washington DC 20005
ph 202 387 4884
fax 202 387 3292
nova@workersrights.org
www.workersrights.org