

MISSION REPORT

THE CLOSURE PROCESS AT JERZEES DE HONDURAS, PREVIOUS INVESTIGATIONS, AND THE RIGHT OF FREEDOM OF ASSOCIATION

I. Introduction

On October 8, the factory Jerzees de Honduras announced the end of its operations. In the face of allegations that the decision to close was motivated by violations of the rights and principles of freedom of association embodied in international conventions, national law and codes of conduct, the Fair Labor Association commissioned an independent consulting firm, ALGI, to investigate the behavior of the company with respect to the allegations.

ALGI prepared a report based on a mission that its investigators conducted in Honduras from the 10th to the 14th of November 2008. After the investigation was completed, international solidarity groups and the labor federation CGT leveled some procedural complaints against ALGI's investigation. As a consequence, the Fair Labor Association requested that this consultant conduct an additional investigation on the closing of the Jerzees de Honduras factory, pursuant to the following work plan:

- *Assess whether the methodology of the previous FOA investigation resulted in the exclusion of relevant evidence.*
- *Examine the procedural complaints leveled by international solidarity groups and the labor federation against the ALGI investigation and their relevance and potential to affect its conclusions.*
- *Conduct interviews with unionized workers and their leaders to (i) provide them with an opportunity to have their views heard on the FOA situation at the factory as well as on the manner in which ALGI collected information from them; and (ii) clarify issues that have been raised by the procedural complaints. The local union and federation officials would be notified of the visit by the expert as soon as the date is fixed in order to facilitate logistical arrangements. The expert may also conduct interviews with other stakeholders if appropriate.*
- *Prepare a report (i) highlighting any deficiencies in the methodology of the previous investigation that may have led to the exclusion of relevant evidence and (ii) relying on standard rules of evidence, setting out within the report evidence regarding freedom of association that may not have been properly addressed in the previous investigation.*

The Fair Labor Association provided this consultant with the following background materials:

- a. A document prepared by the Worker Rights Consortium dated November 7, 2008 titled Worker Rights Consortium Assessment, Jerzees de Honduras (Russell Corporation), Findings and Recommendations.
- b. The observations made by the American Center for International Labor Solidarity dated December 11, 2008.

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- c. The complaint presented by the leader Evangelina Argueta on behalf of the Central General de Trabajadores, dated December 11, 2008.
- d. The report prepared by ALGI, titled “Fact Finding Independent Investigation, Honduras, November 10th – 14th 2008.”

To conduct this assignment, the consultant traveled to San Pedro Sula, Republic of Honduras, in the evening of Tuesday, January 13, and remained in that city until early in the morning Sunday, January 18. During the four working days in that locality, the consultant traveled daily to the town of Choloma to gather declarations from unionized workers and their leaders and visit the factory Jerzees de Honduras.

During this period, the consultant interviewed 48 operators at the offices of the CGT (the majority of the operators were union members, although some workers not affiliated with the union also attended), a supervisor (interviewed, at his request, not at the CGT office), the CGT coordinator, Doña Evangelina Argueta, nine members of the board of directors of the union SITRAJERZEESH and two workers who although not part of the board of directors, were part of the negotiating team for the collective bargaining agreement. On January 15 at 7:30 a.m., at a time offered by the factory, the consultant 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 Secretaría de Estado en los Despachos de Trabajo y Seguridad Social, 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.

The meetings with workers were arranged by Evangelina Argueta and the members of the board of directors of the union, save for a meeting that the consultant had with a worker not affiliated with the union who came forward spontaneously on Saturday the 17th and asked for a confidential meeting with the consultant, which was granted and is discussed below. One of the interviewees – a mid-level employee at the factory – requested that the interview take place outside of the CGT office so that, he argued, the most strict confidentiality regarding his meeting would be maintained. This was done as he requested, with the interview with said supervisor being conducted at the cafeteria of a gas station located a few blocks away from the union office.

II. The previous FOA investigation

This part of the report evaluates whether the methodology of the previous FOA investigation resulted in the exclusion of relevant evidence.

After a careful reading of the ALGI report, confirmed by experiences gathered in my visit to Honduras, I understand that in fact the methodology used in ALGI’s investigation resulted in the exclusion of relevant evidence.

In what follows I will attempt to identify these methodological deficiencies.

1. ALGI’s report gives insufficient – almost nil – consideration to and evaluation of testimony by workers and their representatives.

Despite having conducted a very significant number of interviews (77), in the sections of the report dealing with hostile behavior by JDH management and Russell’s decision to shut down JDH understood as an attempt to interfere with employees’ associational

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rights, ALGI's report devotes only a few lines (see p. 7) to the principal allegations made by union representatives, 6-7 lines to interviews with "non-unionized workers," a few more lines to the interviews with Hugo Antúnez (p. 14) and a worker who had been suspended (p.15) and nothing with respect to the views of workers affiliated with the union. *It does not seem reasonable that such intense interviewing process would result in such sparse, almost non-existent, evidentiary material.*

ALGI's explanation for the limited consideration of testimonial information is the following: "...different groups interviewed had very different versions of the events...monitors focused the evaluation toward tangible records that would corroborate the events alleged by the union..."

Therefore, the report omits practically all references to information provided by the workers, avoids consideration – evaluation – of its intrinsic credibility and its correspondence (or contradiction) with other testimony, and holds the admissibility of any testimony regarding the underlying facts regarding hostile behavior and interference with associational rights to the test of "tangible records" that corroborate them. For this reason, the reader of the report will not have any information regarding the allegations except for those that were the subject of some administrative intervention.

By proceeding in this fashion, ALGI investigators failed to consider:

- a. That testimony is a decisive source of evidence in matters related to labor relations in general and particularly with regard to investigations dealing with violations of freedom of association. So much so that within the International Labour Organization (an organization of unchallenged leadership in the protection of freedom of association), the organs that are responsible for freedom of association investigations rely without reservation on this source of evidence. This is the case of the Commission for the Investigation and Conciliation Regarding Freedom of Association, created in 1950, whose "*... procedure which is set in motion is determined on a case-by-case basis by the Commission itself, and generally includes the hearing of witnesses and a visit to the country concerned*" (from Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO; fifth (revised) edition ILO/Geneva page 2), and of the *commissions of inquiry*, foreseen in Articles 27 y 28 of the Constitution of the named international organization that "... respect the classic procedural guarantees, including the *hearing of witnesses* and in general a visit to the reference country" (Derecho Sindical de la OIT, Normas y procedimientos, OIT/Geneva 1995, p. 143). With regard to the Committee on Freedom of Association, the need to incorporate evidentiary information generally is done through "direct contacts missions" that carry out their assignment listening to the parties and *to anyone else who is able to provide relevant information* (this consultant has conducted numerous missions of this nature).
- b. That it is highly improbable that certain types of conduct that could be deemed to violate freedom of association would be documented in "tangible records," and this fact does not make them any less injurious or unnecessary for them to be considered and evaluated.

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- c. That as the Committee on Freedom of Association expressed in Case 819, included in the “Digest...” cited above, it could be difficult, if not impossible, for a worker to offer proof of the anti-union nature of a certain measure. It should be taken into account that it is the employer who has, in fact as well as in law, *the power to document* (it is from that power that stems the employer’s charge and obligation to document), a power that normally workers lack.
 - d. That therefore the requirement of documentary corroboration placed on testimonial evidence that underlies the claims of one of the parties – in this instance, the one that alleges violations of freedom of association – results in *the virtual negation of that party’s ability to put forth its evidence*.
 - e. That the reluctance to consider testimony from parties that can provide relevant evidence to the investigation of the allegations made, results in the establishment of merely *formal truth* – that which could emerge from the facts (improbably) contained in *tangible records* – while omitting, as is the consensus of the scientific literature, that *in labor matters, the central objective is the search for the material truth*.
 - f. That such insufficiencies were confirmed by this consultant, who heard testimonies not properly considered by the ALGI report and was able to evaluate them, confirming that many of them were credible and properly cast and some of them even revealing and certainly important in making a judgment in this case.
2. In conducting interviews, the investigators did not observe properly the principles contained in the FLA Monitoring Guidelines concerning worker confidentiality and security, thereby giving rise to annoyances and lack of trust on the part of persons participating in the interviews. Thus:
- a. Many of the interviews were conducted in the factory with groups of workers, an approach which might have been intimidating to those being interviewed who might have feared that their views would be revealed to their employers – even by some of their co-workers – and this could result in retaliation. A revealing case is that of a supervisor (mid-management) who asked to meet with this consultant outside of the office of the CGT, where this consultant was conducting interviews. I agreed to meet him in the cafeteria of a gas station a few blocks away from the CGT office. This individual, considering his position, offered important testimony, which I will discuss later, as he attended meetings and had access to information not available to simple operators. The said supervisor indicated that he was not able to discuss these issues with ALGI’s investigators because he was interviewed *as part of a group* together with other supervisors inside the factory and he feared that his views might be revealed to management by one of his own peers. An instructor told this consultant that she had experienced unease when ALGI investigators attempted to interview her together with operators at the CGT offices; it was not easy for her to let the ALGI investigator know about what she felt, but she was finally able to do so and was interviewed individually. Others, however (including the supervisor mentioned above) did not feel able to do so.

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- b. Although unintentional, the presence of the Plant Manager at the door of the office of the CGT where interviews were being conducted was an incident that resulted in those who saw it or were told about it to fear that their testimony would not be held in confidence. One of the persons who thought she might have been seen by the Plant Manager as she was leaving – an instructor – told this consultant that while *she was not subject to reprisals by the factory*, it was often mentioned by her co-workers that she had been at the CGT office (which supports that her presence had been revealed by her superior) and that she and the two other persons seen by the Plant Manager – another instructor and an auditor – felt extremely uncomfortable and subsequently tried “not to cross paths” with the Plant Manager.
 - c. Some statements by the investigators eroded the trust that the interviewees who were offering testimony should have placed on them. In particular, several workers reported that one of the ALGI investigators made critical statements regarding the reasonableness and relevance of the union’s demands in its collective bargaining negotiations and the cost increases in which such demands would result (the investigator reportedly referred to some of them as “crazy”), which made the workers think that the investigator was predisposed against the union. The Regional Director of Labor heard the investigator make the same observations; observations that, it should be noted, the Regional Director of Labor also shared, particularly the union demand to establish a child care facility which, in her view, the workers would not utilize. The supervisor who asked to be interviewed outside of the CGT office said that he saw “... Lilitiana (from ALGI) in very close conversations with the management of the factory,” which made him feel distrustful (of course, this last point should be considered carefully, as it may be entirely subjective).
3. The report fails to follow up certain avenues that could lead to significant conclusions.
- a. The only statement that summarizes the views of workers *not affiliated with the union* – probably those interviewed “onsite” – in the report notes that “...many non unionized workers expressed displeasure with the union. They felt that there was no need to have a union and that too many negative changes were occurring as a result of the union presence. The belief that all private sector businesses would rather close than operate with a unionized facility is widely held in Honduras, leading most workers to feel the union presence in the factory was one of the reasons it was closed down (furthermore, workers are aware that the recession in the USA and its impact on Honduras economy also led to the closure).” Such perception about the reasons for the closure of the factory expressed by workers *who cannot be suspected as being in favor of the union*, a perception corroborated by this consultant and that is consistent with that of the unionized workers, their leaders, and with the government representatives interviewed, should not have been omitted in developing the conclusions; *at a minimum, it should have been properly considered and dismissed if it were shown not to be founded.*

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- b. The case of the activities of a worker (an employee of trust, according to the complaint) who collected signatures against the union (the Antúnez case), was not explored beyond the actions that the Ministry of Labor was able to carry out (although with lack of cooperation from the factory) and an interview with him. The worker (Hugo Antúnez) affirmed that he acted on his own initiative, which was corroborated by the factory, which denied having had any connection with his actions. The Ministry of Labor did not take the investigation any further and limited itself to calling to the attention of Mr. Antúnez the illegality of his actions.

This consultant gathered numerous testimonies to the effect that such anti-union activity (recognized expressly as such by Antúnez) was also carried out by a small group of workers under the supervisor Sara López (who, I was told, was friendly with Antúnez) and during working hours. Collection of signatures during work hours cannot be interpreted in any way other than with connivance or tolerance on the part of the factory. During the last day of his mission in Honduras (Saturday, January 17 in the morning), this consultant was surprised by a worker not previously contacted who asked to be interviewed confidentially and privately. This was done as requested and the worker, who identified herself appropriately (requesting confidentiality), stated that she was one of the workers “under Sara López” who had collaborated in the collection of signatures against the union. She affirmed that she did so because she understood that the union was impeding a vacation offered by the factory during the month of August, which she was assured would not be charged against vacations in December. As the vacations were charged, she felt cheated and decided to give testimony. *She stated that it was Plant Manager José Fernández and the person responsible for Human Resources, Nadia Morales, who asked her to collaborate with Antúnez in the collection of signatures to get rid of the union, a union that the witness did not support.* She added that the collection of signatures was done during work hours and the mentioned factory management personnel assured her that she would not run into problems for doing so.

This incident should have been properly investigated and accredited. Its significance – clear anti-union conduct by management – should not have been omitted in the evaluation of evidence.

- c. Assessment of communications from company headquarters. It is noteworthy that the sole basis for the evaluation of Allegation No. 2, Closure, Section A (Diminishing demand for fleece products...) is a set of 5 (five) emails supposedly sent to JDH management by executives at headquarters which were provided by the factory to ALGI. These communications are accepted without any critical discussion of their value as evidence. Is it certain that the documents are authentic? Even if they are authentic, how can we tell if there were or not chosen with a purpose in mind from within others that were not shared? Did the investigator have access to the full electronic archives of the factory? Are the documents fully credible? (for example, the communication that expresses full respect for freedom of association was issued after the adoption of well-documented anti-union measures at Jerzees de Choloma and JDH).

4. Distribution of the burden of proof.

It does not seem appropriate that the company that conducted the investigation did not take into consideration explicitly the norms directly related to this investigation. Such as the case with respect to the FLA Compliance Benchmarks, and in particular FOA.9 which literally states that “...employers shall not (threaten to) shift production or close a factory in an attempt to prevent the formation of a union, in reaction to the formation of a union, in reaction to any other 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.*”

This last clause, highlighted with italics, inverts the burden of proof standard that is generally embodied in comparative case law and in the scientific literature. The *suspicion* required by FOA.9 to produce such inversion of the burden of proof is matched by the exigency that whoever considers that one of his fundamental rights, such as the right of freedom of association, has been violated must provide reasonable indicia that such violation has resulted from management action.

Such indicia are present in this case, and the report being examined fails in not considering them. Among them – to mention first those that are “public and notorious” and emerge from actions themselves (others result from the production of proof discussed later on) – the following cannot be omitted:

- a. First, *the report cannot fail to consider the fact that the company was found earlier to be violating freedom of association at Jerzees de Choloma as well as at JDH, as workers attempted to form a union within the realm of the federation CUT.* It is true that the company subsequently implemented a corrective action plan, rehired dismissed workers and recognized the union, actions for which it should be given credit. However, it is also the case that the company took these actions after being the subject of complaints, investigation and some commercial sanctions.

For this reason, whoever investigates new complaints of this nature – violations of freedom of association – against the company in the future, *cannot avoid taking into consideration these antecedents, as one who in an earlier instance tried to impede the exercise of freedom of association and only ceased to do so in the face of pressures that could be considered irresistible, may not have set aside substantially its anti-union convictions and may attempt to carry out analogous actions later on.*

ALGI’s report considers the facts under examination as if the company had an unobjectionable trajectory and broad credibility regarding respect for freedom of association. Obviously this is not the case and it is remarkable that in adjudicating the burden of proof and in evaluating evidence, the report does not consider those antecedents and omits all references to the public and notorious anti-union conduct of the company in previous stages of its recent history (all of this happened between 2006 and 2007).

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- b. The closure of the factory is communicated barely 5 days after the conclusion of the second round of negotiations, which would have led to mediation and conciliation by the Ministry of Labor and, finally, to the legitimate exercise of the right to strike. *Such notable temporal coincidence did not merit consideration in the report, not even to justify why it was set aside as eloquent indicia of a relationship between the closure and collective action.*
- c. The view that all private sector businesses would rather close than operate with a unionized facility is widely held in Honduras and ALGI does not ignore it. So absolute and generalized is this perception that in addition to being expressed by the union representatives and the workers themselves (unionized and non-unionized), it was mentioned to this consultant by the Plant Manager, José Fernández, by the Regional Director of Employment and by several of the labor inspectors interviewed. This seems to be particularly true in the maquila industry in which, as is also public and notorious, workers have been dismissed and factories have closed as soon as steps toward the formation of a union have occurred (Jerzees de Choloma and Jerzees de Honduras 2007 are not exceptions in this regard). As a result, there are today in Honduras more than 200 maquiladora enterprises and barely a few active unions, in a number that does not exceed one digit (a larger number has unions that received legal status but later became inactive). *No rigorous investigation of freedom of association can ignore – at least as indicia – this “cultural” fact that has such manifest practical implications.*
- d. In open contradiction to FOA.25 of the FLA Compliance Benchmarks (“Workers representatives shall have the facilities necessary for the proper exercise of their functions, including access to workplaces”), the factory recognizes that it does not grant access to the work premises to external labor union representatives, and justifies this position invoking Article 545 of the Labor Code which states that “...a federation or confederation may advise its affiliated organizations before its respective employers in the handling of conflicts...” The company argues that the law recognizes the right to advise, not to enter the factory, and this excess of literal interpretation clashes with FOA.25, which explicitly provides the right to *access from the outside*, which the factory denies. *This shows a negative predisposition toward the exercise of freedom of association which, together with other indicia, should have been adequately considered.*
- e. When the incident of the gathering of signatures against the union occurred, the union filed a complaint before the Ministry of Labor. The inspector was not able to gain access to the factory until her fourth try, many days later. Either she was not granted access or she was only granted access as far as the Human Resources office of the industrial park (not of the factory) or she was not met by the person authorized to meet with her. The investigators had access to Ministry documents and draw from them that the factory was not directly sanctioned, but not the difficulties in gaining access to the factory that is also reflected in said documents.

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Indicia and additional evidence that this consultant will consider briefly later on emerge from the presentation of testimonial evidence that the report has not considered. In any event, the indicia noted in the previous paragraphs were not adequately considered in the document which is being analyzed, they were not taking into consideration in the light of the mentioned FOA.25, and therefore were not sufficiently tested.

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

III. Evidence gathered regarding freedom of association

This consultant has evaluated the testimony that he gathered. He has considered its assertiveness, consistency, and congruence with other statements and has concluded that it should be considered in the categories below:

- a. Before the announcement of the closure of the factory, numerous mid-level managers told workers under their supervision repeatedly that the factory would close as a result of the formation of the union, union activity and pursuit of the negotiation of a collective bargaining agreement.**

Numerous statements report an early meeting of supervisors convoked by management in which they were informed that the formation of the union presaged a conflictive future. Thus, those who wanted to remain as supervisors would have to meet the critical challenges that would ensue. Those who wished not to face such challenges were invited to resign. Some supervisors informed their operators about the substance of the meeting and announced that they were resigning for that reason, among them Anibal García, Guadalupe Molina, Jenny Mejía and Carla Juarez. Some of them, such as Carla Juarez, invited their operators to resign so that they would not be exposed to the conflicts that would occur. According to testimony received, out of the 100 operators under the supervision of Carla Juarez, about 60 resigned.

Some of the supervisors who resigned advised workers under their supervision that the factory would ultimately close as a result of the creation of the union. Others, in addition to the aforementioned ones, advised workers that the factory

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would ultimately close because of the formation of the union, among them Sara Lopez, Irene Espinoza, Felipe Borrayos (auditor), Oscar Martínez, Mainor Baki (mechanic), Mario Cárcamo, David Mejía, Damaris Cárcamo, Roberto Suazo, Oscar Perez, Javier Varela, Marlon Zuniga, Rosa Troche, Wilmer Ardón, Ana Maldonado and Ana Meléndez, cited repeatedly in several testimonies.

Several witnesses mentioned Luis Hércules, driver and employee of trust of the office and especially of Nadia Morales, who announced that the factory would close as a result of the formation of the union: in one instance, to a worker he was driving to request a debit card, in another when he was delivering drinks at the request of management to the office of the CGT for the 1st of May walk and he was accompanied by several operators. In the judgment of Luis Hércules, the factory would not remain in business more than one year as a result of the union. Similar views were expressed by the chief of maintenance, Juan Carlos Cruz, the mechanic Regino Hernández and the instructor Fredy Vargas. Some supervisors, moreover, judged very severely those who affiliated with the union (Guadalupe Molina described them as “rotten apples”; Javier Varela told a worker who spoke with the consultant that when she lost her job, “she can go to the union to ask for a job”; Mainor Baki said that the union members “had annoyed management”; Carla Juarez predicted that workers would wind up “outside the gates” as a result of the union).

a. **Also after the closure.**

Javier Varela and Sara López, both supervisors, expressed the view that the closure of the factory was attributable to the union. Lilian Hernández, supervisor, told a worker he would wind up “relegated to the gates” (workers come to the gate to look for employment). Supervisor Rosa Troche said that a maquila with a union could not exist and this explained the closure of the factory. A worker who at the time of the interview had not yet been dismissed reported that the previous day, supervisor Ana Maldonado had reproached her for her affiliation with the union; you are ignorant people, she said, all of us will be identified and we will not be able to find jobs. The same line – the closure is motivated by the union – was expressed by a mechanic named Alan Rivera and by Manuel Pineda, plant engineer.

b. **Although plant managers were particularly careful (given the proven anti-union activities they had to reverse in the past), numerous testimonies also related statements by such managers confirming that the closure of the factory had an anti-union motivation.**

Several workers heard Juan Carlos Rodríguez (production manager) say that he preferred to close the factory before the union continued to grow. A witness heard José Fernández say that he preferred to close rather than to work with a union.

A supervisor who met with this consultant (recall that he asked that the meeting be held outside of the CGT office) reported that he participated in the mentioned meeting convoked by José Fernández, at which meeting Fernández said that he preferred to close the factory rather than to have a union (at that meeting another supervisor, Wilmer Ardón, reported that Fernández said that sooner or later the factory would close as he would not work with a union). The supervisor

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interviewed by this consultant indicated that José Fernández, shortly after the mentioned meeting, let it be known that because of international pressures, they had to accept the union. From that point forward, the factory began to provide training to supervisors on how to interact with the union; they needed to be careful in how they treated the union because, they said, the union had international support, which required that the union members be well treated. The supervisor further stated that around September 2008, there was a training session at Productos San José at which a licenciado named Edward (Bardales?) said that it was better for the company to close and move to Nicaragua or El Salvador, where labor was cheaper, than to permit a union. The interviewed supervisor said that he asked the mentioned Edward if this meant that JDH was going to close, and Edward responded that this seemed to be the case given the prevailing winds. This supervisor also informed that Ricardo Trujillo, when he imparted training, said that he had worked in factories in Mexico and knew what it meant to work with unions. In Honduras, he said, Jerzees was the only one with a union and it could deal with union for a year but not for much longer. In contrast, according to this witness, J. Fernandez maintained that the factory was stable but there were moments in which he weakened and recognized that the factory with a union in it did not have a future. He also said that José Fernandez and Nadia Morales had worked together for other factories and had the reputation that “factory that they touch, factory that closes.” The managers warned that working with the FLA and the WRC was dangerous, and therefore they had to be very careful. They concluded that in Honduras no factory with a union survives and therefore they were not going to be employed for more than a year; the mentioned licenciado named Edward told the interviewee that just as the unions were advised from the United States, so was the company.

Later on, after the announcement of the closure, management of the factory told supervisors not to say that the closure was the result of the union and instead was caused by economic reasons, otherwise they would not be able to find jobs.

A worker opposed to the union (who requested a confidential interview with this consultant) said that together with her co-workers they asked José Fernández to be honest and to tell them the reason for the plant’s closure. He answered with a question: what do you think? We responded, said the worker, that it was because of the union. Then, why do you ask?, said Fernández.

A union leader recounts that, according to what an instructor told her, the trainers were brought together and informed that they would not be re-contracted because they were not doing a good job; they were closest to the workers and they had permitted the union to grow (that meeting was with the production manager, with Juan C. Rodríguez and with Ingrid Fernández). Another leader said that at a time when the union leadership was gathered to discuss the topic of the August vacations, which she opposed, Benigno Estrada, Chief of Engineering, had stormed in and said that the factory was going to close because the union was opposed to everything.

- c. **As expression of the generalized understanding that the closure was motivated by the existence of the union and union activities, the majority of the non-unionized workers blamed the union for the foreseen closure (this same view, in relation to the non-unionized workers, was set forth in ALGI’s**

report). Because of this conviction, leaders of the union were even the subject of threats.

Numerous testimonies – practically the majority of them – report that the non-unionized workers blamed the union for the well-diffused possibility that the factory would cease operations. When it was learned that a worker was affiliated with the union, the worker was the object of rejection by his peers; they would say that the union “was going to close the factory” or would bring about its bankruptcy. An instructor stated that although she was never told directly that the factory would close because of the union, “this was evident”; workers were opposed to the union, which they thought was the cause of the closure, she added. A worker interviewed said that “...from the time that it was known that there was a union, it was already known that the factory would wind up closing.” According to various testimonies, hand-written signs in the bathrooms blamed the union for the closure and used offensive language to refer to the union leaders. One of the interviewees recalled that one of the signs said that they would die of hunger because of the union. Numerous testimonies refer to operators saying that they would not be able to get employment elsewhere because of the union. Some workers would not affiliate with the union because of fear of losing their jobs and not being able to find another one.

The process of blaming and denouncing the union deepened from the moment (October 8, 2008) when the closure of the factory was announced. Various testimonies report that “the reaction was fatal,” it caused a great deal of uneasiness among the workers and the reproach and insults against the union, its leaders and even its affiliates increased. There were no physical attacks, but according to several testimonies, the majority of the workers rebelled against the union.

For this reason, there were numerous testimonies regarding threats against union leaders. One of the interviewees heard it said that they “deserved a bomb.” Another, who did not hear directly threats of that tenor, read signs in the bathroom that said something like “the day I am dismissed, I will kill you the next day” (referring to the principal union leaders). After the closure, there were operators who threatened the leaders of the union and said that they would collect money to pay an assassin (sicario) to kill them. Someone even said that “the heads of the leaders were going to wind up in the gutters” (this is where it is common to dispose of the bodies of crime victims).

The supervisor who gave testimony to this consultant says that he warned the leaders of the union to be careful and not to travel alone. The witness who spoke with the consultant the last day and once militated against the union, indicated that the threats were centered on the union president, Moisés Montoya, and also against another leader, Elsa Salmerón. A worker heard Hugo Antúnez say that “he was going to blow the brains out of M. Montoya” (union president). Antúnez’s threats began after a meeting convoked by Nadia Morales shortly after the union filed a complaint against Antúnez’s activities. Some testimonies of union leaders also report intimidation against the Confederation (vehicles with tinted glass driving in front of the office, taking of pictures, etc.) One of the union leaders referred to the frequent drive-bys in front of the union office of a vehicle belonging to the company that provides security services for JDH. This

incident was reported to JDH management, which claimed that it did not have anything to do with it.

These incidents of blame-fixing and threats arising as a result of the announcement of the decision to close the factory's operations gave rise to instances of desperation – and in some instances crying – by some members of the union. In these circumstances, according to some of the interviewees, Nadia Morales and Edward Bardales, of the Human Resources area, told the members of the union leadership that if they felt threatened, the factory could solve their problem immediately: it would either grant them a leave permit for 1 or 2 months or give them immediately a check with payment for all of their severance and benefit payments so that they would not have to return to the factory. None of the leaders of the union accepted the offers. An auditor, Anselmo Morales, scolded them later for not “grabbing” what was being offered and leaving the factory. This consultant asked Ricardo Trujillo about this incident and he denied it; he said that the union leaders have special rights (“fueros”) and the company strictly respects such rights.

- d. **Some testimonies indicate that in realms external to the factory it was also known that the factory would close because it had a union.**

Two workers who knew persons working at Protecsa (owned by the Kattan family) said that it was already known that the factory would close because of the union. This was also expressed by Glenda Fajardo, administrator of the cooperative. An instructor who was looking into a job that was being offered to her at another factory (and that finally she did not take because it would not have improved the wages she earned at JDH) was told by the chief of engineering at that plant that JDH would close because of the union.

- e. **After the events that led to the intervention of the FLA and WRC and induced JDH to rescind the dismissals and accept the union, the factory tried to maintain respect for the right of freedom of association. Despite these efforts, there were episodes that clashed with the exercise of those rights.**

According to statements by the Plant Manager to this consultant, the factory wants to maintain good relations with the union and is not required to maintain good relations with the federation: the union is free to affiliate with a confederation, but the factory is not required to have relations with the confederation (an interviewee stated that the factory management used to say that the relation with the union is a marriage, and a marriage is a relation only between two). In general, whenever there was a conflict or some other situation that called for the presence of the labor inspector and of the representative of the Confederation, Evangelina Argueta, access of the labor inspector was allowed (subject to the restrictions below) but not to the Confederation leader or her legal advisor. In one instance, E. Argueta was granted access but (reportedly at the direction of security engineer Carlos Castellano) they put a guard in her car who accompanied her permanently. The factory claimed its right to decide who entered the factory and who could not. In general, when there were conflicts, the factory was assisted by several lawyers but the workers lacked expert advice.

This reluctance to deal with representatives of the confederation is noticeable in the discussion of the first article of the collective bargaining agreement that was

being negotiated at the time of the closure. While the union's proposal called for the company would agree to "...deal with the Board of Directors, union delegates and *representatives of the Federation or Central to which the union is affiliated..*," the company would only agree to an article stating that "... the representative or representatives of the federation to which the union Sitrajerzeesh was affiliated would be invited to participate in the solution of disputes or internal conflicts *when the severity of such cases and the mutual consent of the parties, factory and union, so considered.*" In other words, such participation would not be allowed unless the factory agreed to it.

The labor inspectors interviewed stated that the individuals responsible for the Human Resources area never meet with them. Generally, the inspector is given access to the industrial park and ushered into the Human Resources office of the park (the inspector is not allowed to reach the factory) and there they are met by an adviser of the factory named Loezy Barrera. The coordinator of labor inspection stated that *the company had not given major problems to the inspection service until the notification of the union.* There are recurrent instances of not receiving the inspectors. The Antúnez case, discussed below, is an example of such reticence. The inspector involved in the case told this consultant that in the first two instances that she visited the factory, she was not admitted; in the third instance, she waited the whole morning and in the afternoon she met with the adviser at the Human Resources office of the park. It was only in the fourth instance that she had access to the factory and was able to conduct her official duties.

Until the arrival of the current Regional Director, such behavior by factories did not result in any reaction from the Ministry of Labor. Currently, according to the Regional Director, obstruction cases are remanded to Tegucigalpa for the assessment of a sanction (the sanction, in any case, would not be onerous). Normally, the labor inspectors do not request the help of the police although it has been done in exceptional circumstances. The factory does not permit the review of books or forms. It delays consideration and when it does allow access, the inspector is met by the mentioned adviser rather than the company officials responsible for Human Resources. They respond after long delays, and try to extend the legal processes. In a manner that is difficult to establish, according to an inspector, the factories get advance notice of the visit by an inspector. A former labor inspector – currently practicing law – stated that when the inspector was requested by the union or the workers, the factory hindered access; however, when the inspector was requested by the factory, they demanded immediate presence.

- f. **A significant episode involved an employee of trust (Hugo Antúnez), who assisted by a small group of workers, gathered signatures against the union. This episode, included in ALGI's report, gave rise to an intervention by the labor inspectorate, which issued a personal warning to said worker, who recognized his actions and stated that they were the result of his exclusive and personal initiative. The investigation conducted by this consultant gives account of the difficulties raised against administrative action, the involvement of other workers in the gathering of signatures, that the activities were conducted during work hours (which would not have been**

possible without the connivance or tolerance of management) and, finally, that the factory itself encouraged such anti-union activity.

Numerous witnesses state that the collection of signatures occurred during work hours and that it was not only Antúnez who did it, but they mention that workers in other areas of the factory also did the same (among them Roxana Blanco, Wendy Gómez and other workers named María and Glenda); all of them used to say that they were authorized by José Fernández and Nadia Morales. The majority of these workers were operators under the supervision of Sara López (who was supposedly friendly with Hugo Antúnez) who also collected signatures. Those who assisted Antúnez in this task did so because they considered that the union harmed the company. It is noteworthy, one of the workers stated, that the union was not allowed to conduct activities during work hours but “those people” were allowed.

Don José Fernández, Plant Manager, told this consultant that Antúnez is a warehouse clerk, that the company told him that he should not do it (collecting signatures), that the list gathered by Antúnez included 800 workers out of a total of 1400, and that in any case it is difficult to prove whether he was collecting the signatures during work hours or outside of them.

A supervisor who spoke with this consultant indicated that he had spoken with Antúnez, who told him that he was forming a union favoring management and described the benefits in which this would result. This supervisor asked Antúnez if he had authorization from the factory to conduct this activity, and *Antúnez responded that he was authorized by management.*

The last day this consultant was in Honduras (Saturday morning) a worker came spontaneously to the CGT office and requested a confidential interview with the consultant. The interview was held and she stated that she was one of the workers who assisted Antúnez in the collection of signatures against the union, that she had done it because she thought that the union harmed the factory and its workers, and in particular that she was upset by the fact that the union opposed 7 days of vacation in August 2008. The union affirmed that these days would be counted against vacation days in December, while the factory assured that this would not be the case. In the end, based on the opposition by the union, only two days of vacation were granted in that month [August]. When she received her pay for December, she noted that the two days had been deducted from her pay which meant that the factory had been deceiving her and she was criticized by her peers who reproached her for collaborating in the collection of signatures against the union. For these reasons, she had decided to offer testimony. And she added that as she was against the union, *José Fernández and Nadia Morales personally asked her to collaborate in the collection of signatures*; that this would be a good instrument for getting rid of the union, they said; that they could do it [collecting signatures] during work hours and would not face problems. She also said that Antúnez was coordinating this project and that he (Antúnez) spoke about forming a union against the existing one.

With regard to vacations granted by the factory in August, whose reduction at the behest of the union was one of the factors in the collection of signatures discussed above, Plant Manager José Fernández told this consultant the factory’s policy was to grant 3 days in April (to complete Holy Week), 7 in August and the

rest in December. The union, said Fernández, opposed vacations in August alleging that taking them in August would affect the remuneration averages of workers, while the factory demonstrated that this would not be the case. Finally, the August vacations were reduced to 2 days at the request of the union "...and a lot of people got very mad at the union." Workers who presented testimony – among them the worker who collaborated in the collection of signatures – say that the issue was whether or not those days would be deducted in December; the factory, they state, assured that the days would not be deducted. This same view, said a witness, was expressed among others by a supervisor, Javier Varela, who said that the union leaders were "fools" because, he said, "it was evident that the factory was not going to deduct those days." In December, however, the days were deducted and many workers felt that the factory had cheated them. Union leaders stated that management had told them that the vacations would not affect their income averages, but the factory did not deny that they would deduct the days in December. To the workers at large, however, factory management stated that the deduction would not occur.

The inspector who was involved in the case of the collection of signatures stated that, in a one-on-one interview, Antúnez assumed all responsibility and stated that he did not collect signatures during work hours. The labor inspectorate informed him that his actions were improper. The factory stated that it had followed internal review processes with regard to the case, but there is no record that sanctions were applied. Witnesses proposed by the union declared to the inspector that the collection of signatures had occurred during work hours. The inspector said that, in her judgment, there were indicia, not verified by her, of collusion between Antúnez and mentioned the great difficulties that she had had in gaining access to the factory to deal with this case.

g. Although management tried to avoid apparent anti-union acts, testimony gave account of anti-union discrimination actions by mid-level managers at the factory.

A worker declared that she was discriminated, together with a co-worker, by supervisor Zarina Ortíz. Another said she heard Nadia Morales say to a co-worker of hers named Juana, at the time she was being terminated and her severance pay and benefits being paid, "we give you quite a bit because you were not in the union," adding that union members "received little." A utility relief worker stated that supervisor Roberto Suazo one day removed two relief workers who composed a team with him because they had joined the union; when the interviewee joined the union, Suazo asked him if this was the case and upon his affirmative response, he was shifted from that job. In all cases, the shift was into jobs with significantly lower remuneration.

A worker whose union affiliation was not common knowledge was shifted to a less favorable position when her supervisor saw her talking with union members. When she asked the supervisor for an explanation for the action, the supervisor responded that she had the right, if she wanted to exercise it, "to send her to the park to collect stones." Supervisor Lilian Hernández said that union members were not welcome in her area. One day, during a meeting Hernández asked if any of the workers were affiliated with the union and a co-worker named Tania Girón revealed that the interviewee was indeed a union member. From that point

forward, he was mistreated and his remuneration averages reduced. An interviewee accused supervisor Marlon Súniga (who had already left the factory) of anti-union discrimination while another interviewee did the same with respect to a supervisor who replaced Carla Juárez, who removed her from her team because of her union affiliation. Instructor Heleberto Sánchez told a worker being interviewed that she was identified as a union member. In practice, one of the workers interviewed stated, the workers integrated into JDH from Jerzees de Choloma were formed into two cells (two teams) which were treated as if they were contaminated. The supervisor interviewed by this consultant stated that mid-level managers, knew full well who was on the leadership of the union but not necessarily who was affiliated with it. A worker said that in November they were giving a test to a new worker and she was told to move from where she was because she could not be near union members.

- h. **The collective bargaining process was extended until October 3, when the second round of negotiation was completed and direct talks on the union proposals ended. From this point forward, the parties were subject to the provisions of the law (mediation, conciliation, exercise of the right to strike). The negotiation process, it is affirmed, was tense and difficult and resulted in agreement on 24 of the 48 articles, although not on salary or on other economic clauses. Shortly after the impasse was reached (October 8), the factory communicated its decision to end its operations.**

Ricardo Trujillo, main management negotiator, recognizes the immediacy of the dates of the conclusion of direct negotiations and of announcement of the closure of the factory, but affirmed that there is no connection between them. He maintained that, in fact, the decision to close the factory had been made by headquarters earlier although it was communicated on October 8. José Fernández, after describing the negotiations as successful based on the approval of 24 of the 48 articles, admitted that it is true that the economic articles had not yet been discussed. He said, in addition, that the immediacy of both dates (end of negotiation and communication of the closure of the factory) was purely coincidental. Attorney-at-Law Agurcia, union advisor, says that throughout the negotiations the conduct of Ricardo Trujillo was consistently reticent and mocking. Each request by the union, she stated, was responded with a "... we are far away." The factory wanted to include articles that would worsen the current situation of workers at the factory – she mentioned insurance policies, Mother's Day prizes, the birth day of workers, etc. The process was very difficult, very tense. She added: "we were enemies."

A supervisor interviewed by this consultant indicated that mid-level managers thought that the union was asking too much and management representatives laughed and said that the factory would never agree to the demands. They referred as "craziness" the May Day request and the request for scholarships for the children of employees. When the closure was announced, supervisors were surprised because it happened in the middle of the negotiations and asked Trujillo if this was valid. Trujillo responded in the affirmative. While management representatives did not state that the negotiation was related to the closure of the factory, someone thought that the impasse provided an opportunity for the decision. Another witness said that the supervisors were irritated because the

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worker leaders left their work stations on Fridays, the day when the negotiations were held, an absence which was authorized.

When the article on salaries was brought up, management asked the union representatives to accept its proposal because they needed to remain competitive. The raises proposed by the union, they said, were unworkable and the company would be better off investing in Guatemala or El Salvador, which had lower labor costs (the salary offer by the factory was 0.75 lempiras (Lps) per day in 2009, 1 Lps per day for 2010 and 1.25 Lps per day for 2011 above what was approved by the government).

Throughout the process of negotiation, it was said at the factory that the plant was going to close and on Mondays (negotiations were held on Fridays), the workers renewed their reproach that the factory would close because of the union demands. An instructor, Ana Maldonado, said she was convinced that the fate of the factory was to close from the very moment that negotiation of a collective bargaining agreement was accepted.

On October 3, after the signing of the act that completed the direct negotiations, a union negotiator – who was not one of the leaders of the union – overheard a conversation among Ricardo Trujillo, Nadia Morales and Edward Bardales. Nadia Morales asked if they would be moving to mediation. Ricardo Trujillo responded that they would not be going to mediation at the same time that he ran his hand along his neck, making the traditional sign of beheading.

It should be noted that during the negotiation, factory management and advisors made contact with leaders and advisors of the confederation with the purpose – which was not successful – to gain their collaboration in controlling the demands of the union.

- i. **After the massive dismissals of workers in November and December 2008 it became apparent that workers faced difficulties in finding new employment, even in companies that were hiring. Several testimonies coincide in pointing out that this is because of the existence of implicit or explicit black lists.**

Numerous workers that have already been dismissed expressed the difficulties they face in obtaining new jobs in maquilas. At the factory Génesis, they say, workers are not hired because they come from JHD. The same is true in Colonia La Mora, where some 10 workers, including the interviewee, had been at the hiring gate on Monday the 5th and Tuesday the 6th. Dickies does not hire workers from JDH (they tell JDH workers not to keep insisting and not to waste their time). A witness says that in some of the factories, they even have photographs of the union leaders. In Gildan, a company that is adding personnel, they tell the JDH workers that they do not hire them because they have a fax from JDH saying that the factory is going to reopen (several witnesses were told the same); more recently, they tell workers seeking employment at Gildan that they are looking for “workers without experience.” They are not hired at Hanes either, where they told an applicant that they only accept persons who have been recommended. Several of the interviewees were tested at Hanes and ultimately they were not hired. Also at Hanes, a witness said that she, together with a large group of workers from JDH were asked for their identity cards and were made to wait from 7 to 1 p.m. at the gate to be told (without being given a test) that they

would not be hired. A witness affirmed that former JDH workers are not hired at Dickies, Gildan and Hanes. A worker found employment at Dragón Maya, where her son worked; she earns a lot less there than she earned at JDH.

Consulted about the above, plant management (José Fernández and Ricardo Trujillo) stated that they have done what they can to avoid the situations described, but admitted that this could happen given the broad anti-union consciousness among Honduran enterprises. It is a stigma, Fernández added. “We have explained to our competitors that the closure is not because of the union, but because of business reasons,” but the rejection phenomenon happens just the same. The consultant saw a placard at the entrance to the factory offices announcing that Gildan, Hanes and Delta are hiring and asked his interlocutors about this: J. Fernández states that he has placed the placards to facilitate the rehiring of the personnel dismissed from this factory; Ricardo Trujillo notes that in December, Gildan said that it was planning to hire 4000 workers, but now they are only recruiting about 1000.

- j. **Numerous testimonies report that the factory never lacked work, not even after the announcement of the closure, and the factory transferred its work to other factories. There is no precise information, however, on the factories that are doing work diverted from JDH. Other testimonies, also without precise information, indicate that JDH will reopen at another location.**

Some testimonies report that toward the end of the days of the factory, there was much work and some of it was being taken to other factories. Some of these interviewees indicate that sweatshirts were being made at Buena Vista and El Progreso, while others – several individuals – pointed to Dragón Maya and to Productos San José (a supervisor states that the closure of the latter factory is not real and instead it is a strategic ploy which will be reversed when the factory reopens). There is also recurrent reference to a factory named Elcatex (which ALGI mentions it was unable to follow up as it is permanently closed), which distributed contract work to several factories. An auditor named Franklin reportedly said that there is work, but that it was being diverted to El Progreso. An instructor said that at the time of the closure, the efficiency of the Jerzees factory was one of the highest (around 86%). A mechanic named Regino Hernández said that JDH’s machinery was ready to be removed and put into production elsewhere.

Some of the workers interviewed indicated that, in their judgment, the factory would close to reopen again with another name. One of the workers said that he heard this from a supervisor named Lilian López. Others indicated that the day of the massive dismissal, those not affiliated with the union were consulted on whether they would return to work if the plant reopened and were asked for their phone numbers.

IV. On the procedural complaints leveled against the ALGI investigation

Section II of this report presents detailed account of the methodological wants that this consultant believes are present in the ALGI report; among them are some of the ones raised by the international solidarity groups and the labor federation and therefore I refer the reader to that section. It should be noted, in particular, that certain events or circumstances of that nature may affect – not always to the same extent – the conditions

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of trust and credibility required in the conduct of these investigations and the valuation of their results, which can be the case even if it is assumed that the investigators might have incurred them accidentally, inadvertently, or inevitably. One is exposed to such regrettable situations when conducting investigations in cases where polar opposite interests are at play. It is good practice to do the outmost to avoid them and, if this is not possible, to provide explanations as fully as possible and timely.

Conclusions

This consultant's view is that the investigation report prepared by ALGI has deficiencies and methodological wants. Thus, its conclusions lack rigor, are not based on adequately-gathered evidence and lack aptness to convince.

Moreover, the evaluation of the evidence that this consultant gathered during his visit to Honduras *in his judgment highlights that, with respect to the case investigated, the closure of the factory has been determined, at least to a significant extent, by the existence and activity of the union.*

To be sure, the occurrence of economic and market circumstances that might have also made it advisable to reduce the size of operations or close JDH cannot be discounted. The work plan of this consultant did not include, it should be stated, investigation of such hypothetical circumstances. Nevertheless, it can be noted 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.

Adrián Goldin

Buenos Aires, January 26, 2009