



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
PINEHURST MANUFACTURING (HONDURAS)  
FINDINGS, RECOMMENDATIONS, AND STATUS**

**July 13, 2012**

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## **I. Introduction**

This report details prior labor rights violations and corrective actions, and recent developments, at Pinehurst Manufacturing (“Pinehurst”), a garment factory owned by Pinehurst Manufacturing, Inc., and located in San Pedro Sula, Honduras. Pinehurst produces collegiate licensed apparel for adidas as well as non-collegiate garments for other U.S. apparel companies, including Nike, Club 21 USA – a firm which markets apparel under licenses from several leading clothing brands, including A/X Armani Exchange and DKNY – Kenneth Cole, Phillips-Van Heusen (Calvin Klein), Margaritaville, and Quiksilver. The company is privately owned by a U.S. citizen named Jeff Brischke, who also owns an apparel factory in Nicaragua and a small distribution center in Albemarle, North Carolina.

Pinehurst is a vertically-integrated manufacturing plant that weaves cotton fabric which is cut and sewn into t-shirts which the company then embellishes, using screen-printing and embroidery. The company reports that as of July 2011, there were approximately 960 workers employed at the Pinehurst factory. Most workers at Pinehurst are directly employed by the company; some are employed by MAPSA, a screen printing company that was acquired by Pinehurst Manufacturing.

In August 2010, workers at Pinehurst formed Sitrapinehurst (Sindicato de Trabajadores de la Compania Pinehurst), a union affiliated with the Central General de Trabajadores (CGT) union federation. In response, Pinehurst management retaliated against its employees through firings and other means, established a rival management-dominated union at the plant, and committed other violations of workers’ associational rights. These violations, which occurred in 2010, and their ultimate remediation in January 2011, after engagement by the WRC and several buyers, are reviewed in detail in Section II of this report. Section III addresses subsequent violations of freedom of association committed by the company which have yet to be remedied, including refusal to engage in good faith in an effective collective bargaining process. The report concludes with recommendations to both Pinehurst and to the key buyers. Action by both Pinehurst and these buyers will be essential to achieve adequate remediation.

## **II. Background: Previous Findings, Recommendations and Remediation -- August 2010 – July 2011**

In August 2010, the WRC, responding to a complaint received from the union representing the Pinehurst workers, initiated an investigation of labor rights violations at Pinehurst. Over the following four months, the WRC conducted extensive fact-finding in San Pedro Sula, where Pinehurst is located, including in-depth interviews with sixteen current and former factory employees, several members of the company’s upper management and frontline supervisory staff, leaders of both the Sitrapinehurst and Sitraincosi unions, and representatives of the

Honduran Center for Women's Rights (Centro de Derechos de Mujeres or "CDM"), a nongovernmental organization that has conducted extensive research into Pinehurst's labor practices.

The WRC also reviewed a broad range of documentary evidence, including employment contracts, payroll records, time cards, personnel files, letters of dismissal, correspondence between the unions and Pinehurst's management, documents showing proof of employment (*constancias*), Ministry of Labor reports and other Ministry records, and internal records of the two unions. In addition, the WRC communicated extensively regarding this matter with representatives of the company's major buyers, including Nike, adidas and Phillips-Van Heusen. Finally, the WRC reviewed the relevant provisions of Honduran and international labor law and consulted with legal experts on these issues.

The WRC's investigation of August-December 2010 concluded that Pinehurst had committed multiple serious violations of its employees' associational rights. Specifically, the WRC found that:

- When, on multiple occasions, representatives of the Honduran Labor Ministry sought to investigate labor rights violations at the factory in response to worker complaints, Pinehurst managers responded by illegally denying government inspectors access to the facility;
- Pinehurst terminated five employees in retaliation for their engagement in protected associational activities, including forming the Sitrapinehurst union and collectively submitting the complaint to government authorities regarding labor rights violations at the company;
- Pinehurst further interfered with employees' freedom of association by initiating the establishment of, and directing the development of, the Sitraincosi union as a management-dominated rival body to Sitrapinehurst – including by falsifying official documents to aid the formation of this "company union";<sup>1</sup>
- Pinehurst's managers repeatedly attempted to coerce employees to resign from the Sitrapinehurst union; and

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<sup>1</sup> Sitraincosi is referred to here as a "company union" not only because of Pinehurst management's role in its establishment, but also because this term was used by the company's own managerial staff in referring to Sitraincosi.

- When queried about these incidents by external fact-finders – including the WRC – as well as the company’s own buyers, Pinehurst’s managers willfully provided false information about their violations of their employees’ rights.

This conduct by the company’s management constituted blatant violations of Honduran law, international labor standards and buyer and university codes of conduct. These findings are discussed in more detail below.

## **A. Findings**

### **1. Pinehurst Illegally and Repeatedly Denied Government Labor Inspectors Access to its Factory**

On six separate occasions, Pinehurst managers illegally denied the Honduran Ministry of Labor access to the factory to investigate worker complaints of illegal labor practices by the company. On these occasions, company managers repeatedly used dishonest means to achieve this unlawful objective.

On August 6, 2010, Pinehurst workers submitted a written complaint to the San Pedro Sula office of the Honduran Ministry of Labor concerning charges that certain practices by the factory’s management violated Honduran labor law.

In response, on August 14, the Labor Ministry sent an inspector to Pinehurst to investigate the workers’ allegations. Pinehurst management refused entry to the inspector, telling him that the human resources staff was “in a meeting” and that the inspector should return on a later date. On August 17, the Ministry again sent an inspector to the plant, to whom Pinehurst management again denied entry.

On August 25, the Ministry again sent an inspector to the factory, to investigate both the August 6 complaint and the subsequent charge that the company had illegally fired one of the complaint’s signers. The company representative who greeted the inspector willfully lied to the government official in order to avoid dealing with the workers’ complaint to the Ministry. Following this third incident, the inspector requested that Pinehurst be fined for obstructing the Ministry’s efforts to enforce the law.

On September 8, a Honduran NGO, CDM, citing not only the charges in the workers’ original complaint, but also four additional allegations of illegal conduct by the factory, including serious violations of fire safety regulations, reiterated the request that the Ministry inspect the factory. Ministry officials made two additional attempts in September to gain access to the plant, but on

both occasions, Pinehurst management refused to allow the Ministry's representatives into the factory.

Pinehurst's repeated obstruction of the Labor Ministry's investigation of employees' complaints against the company violated Honduran law, as well as buyer and university codes of conduct, which require compliance with applicable domestic laws. The actions of the company's management in this instance demonstrated a fundamental lack of respect for labor law and concern for the rights and welfare of its employees.

## **2. Pinehurst Illegally Fired and Threatened Workers in Retaliation for their Exercise of Associational Rights**

The WRC's investigation found that Pinehurst management illegally fired, and otherwise attempted to coerce, five company employees in retaliation for these workers exercising their associational rights by organizing a union at the factory and/or filing a complaint about the factory's labor practices with the Honduran Ministry of Labor.

### *a. Pinehurst Discriminatorily Terminated Five Employees for their Associational Activities*

On August 14, 2010, forty-five Pinehurst employees met with officials of the Honduran labor confederation, the Central General de Trabajadores ("CGT"), to officially form the Sitrapinehurst union. Early the following week, Pinehurst General Manager Don Allen interrogated employee Williams Lanza, who had attended the union meeting, demanding that Lanza explain why he had become involved with the union. Fearing retribution, Lanza denied any involvement with the union.

Allen told Lanza that the union was "bad for business," and offered to promote him, and to pay him money, if he would cease his involvement with the union and encourage other workers to do the same. While Lanza did not acquiesce to these entreaties, Allen's interrogation and attempted bribery of Lanza constituted violations of Lanza and his co-workers' associational rights. The incident also indicates that the company was aware of, and hostile to, the exercise of associational rights by its employees.

During the same week, Pinehurst Production Manager Edgardo Blanco also asked Lanza why he had joined the union, and Lanza again denied having done so. Lanza's supervisor, Samuel Andino, told Lanza that Andino had heard that Lanza was going to be fired. Blanco's and Andino's statements confirm that the company was aware of Lanza's union activities and was planning to retaliate against him.

On August 31, 2010, Lanza was terminated by the company without any reason being given for his dismissal. When subsequently interviewed by the WRC, Lanza's supervisor, Andino, stated that Lanza: "was an excellent worker," and that Andino "d[id]n't know why . . . [Lanza] was fired. Andino said that he had "asked [senior management] . . . why [Lanza was terminated] but didn't get any response."

Also on August 31, three other employees who were involved in the organizing efforts also were terminated: Alejandrina Deras, who had organized the filing of the complaint with the Ministry of Labor, Idolina Hernandez, and Milton Carcamo. These workers also were not given any reasons for their dismissal.

Although company officials subsequently claimed that the terminations were part of an economic layoff, the WRC found overwhelming evidence that the firings of all four employees represented retaliation for their involvement in the formation of the union and/or the filing of the complaint with the Ministry of Labor. The WRC based this finding on multiple factors. First, the statements of Managers Allen and Blanco made clear that the company was aware of and hostile to its workers' associational activities. Subsequent statements by other company managers also confirmed this hostility.<sup>2</sup> Second, the timing of all four firings on the same day indicated a common course of action by the company. Third, the company's failure to provide any justification for its actions at the time of the discharges suggests that any non-retaliatory explanation was invented after the fact. Fourth, four employee union activists, out of a small core union leadership group were dismissed as part of a layoff that involved roughly 52 workers, only 5% of the factory's total workforce. The overrepresentation of union activists in the group of dismissed workers is strong evidence that their union activities were the primary basis for the company's selection of the four for dismissal. Fifth, the credibility of the factory's claim that the dismissals of the four employee union leaders were unrelated to their union activities and were motivated exclusively by economic considerations was severely undermined by the fact that management did not provide any persuasive rationale, even after the fact, for why these four individuals had been included in the group of workers who were to be dismissed. Indeed, the company acknowledged that it used no objective criteria for deciding which workers to lay-off.

In light of the evidence reviewed above, and in the absence of any convincing alternate rationale for why these four workers were included in the lay-off, the WRC concluded that Pinehurst management had used a modestly-sized production-based lay-off as an excuse to dismiss workers whom management had identified as union leaders.

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<sup>2</sup> For example, on November 16, supervisor Marta Amaya stated to one of the Sitrapinehurst leaders who was still employed at the company that the union leaders were "a bunch of vultures" and told the employee "you are the Devil."

In addition to these four workers, a fifth worker was fired days prior, on August 19, after the company alleged that it had recorded a video of him stealing garments. The worker, who had been participating in the union organizing meetings, gave credible testimony to the WRC stating that he had not taken any company property out of the plant and that the company managers had refused to produce the video that they claimed to have. In fact, at no point was the company willing or able to produce the alleged video despite several requests from the union and the WRC for it to do so. Given the company's refusal to provide evidence regarding the alleged reason for his termination, the WRC could identify no plausible basis for this firing save anti-union animus.

Retaliatory termination of union leaders represents a violation of both university codes of conduct protecting freedom of association and Honduran law, which prohibits discriminating against workers on the basis of union activity.<sup>3</sup>

*b. Pinehurst Threatened Other Employees with Retaliation for Associational Activities*

Following the terminations of the four Sitrapinehurst activists, company managers continued to threaten and intimidate other union members and activists who remained employed at the factory. On November 1, 2010, Pinehurst Managers Allen and Zavala threatened one of the members of the Sitrapinehurst leadership committee with a lawsuit for having distributed a leaflet outside the factory gates criticizing the Sitraincosi company union.

**3. Pinehurst Instigated the Establishment of a Company-Controlled Union at its Factory**

The WRC found that Pinehurst management initiated the establishment of Sitraincosi, a company union, at the factory in order to prevent the Sitrapinehurst union, which was established independently of the company's management, from becoming its employees' collective bargaining representative. In sponsoring this company-controlled labor body, Pinehurst engaged in conduct which severely violated its employees' associational rights.

*a. Pinehurst Management Organized the "Reactivation" of a Moribund Labor Body to Serve as a Vehicle for a Company Union*

The establishment of Sitraincosi as a rival company-controlled labor body was initiated, according to documentation presented to the Honduran Ministry of Labor, on September 25, barely a month after the founding of the Sitrapinehurst union. The WRC reconstructed the chronology of management involvement in the founding of Sitraincosi based on interviews and documentary review and this chronology was not challenged by any party during the investigation. Pinehurst management selected a number of employees, granted them leave from

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<sup>3</sup> Article 96(3) of the Honduran Labor code states that, "Employers are prohibited from firing workers or taking any other adverse action against them due to their membership in a union or their participation in union activities."

work, and paid for their transportation, so that these workers could attend a meeting on October 18 at the offices of the Honduran union federation Fesitranh (Federación Sindical de Trabajadores Nacionales de Honduras, an affiliate of the Central de Trabajadores de Honduras, CTH). The purpose of the meeting was to “reactivate” an industrial union for garment workers named Sitracostura, which once had been a genuine Fesitranh affiliate but was at that time defunct.<sup>4</sup> According to the leadership of Fesitranh, the participants at this meeting elected a new governing board (*junta directiva*) for Sitracostura made up entirely of Pinehurst employees.

On October 26, the “revived” Sitracostura company union wrote to the Ministry of Labor asking the Ministry to (1) notify Pinehurst of Sitracostura’s “reactivation,” (2) approve the change of membership in Sitracostura’s leadership body; and (3) change the name of the organization to “Sitraincosi” (Sindicato de Trabajadores de la Industria de la Costura y Similares). On October 28, just one day after Sitrapinehurst had submitted to the Ministry of Labor its request for legal recognition as a union, the Ministry sent notification to Pinehurst of the reactivation of Sitracostura (henceforth, referred to as Sitraincosi). Unlike the repeated refusal to allow Ministry visits described above, Pinehurst management placed no barrier to the Ministry’s entering the factory to deliver this notification.

From the start, Pinehurst managers clearly and repeatedly indicated that they favored Sitraincosi over Sitrapinehurst and acknowledged its role as a company union intended to supplant Sitrapinehurst. On October 28, Supervisor Andino told a number of employees that “the union [Sitrapinehurst] is really screwed because *the company’s union* [Sitraincosi] was registered first.” (“Hoy si se van a dar en la madre porque entró el *sindicato de la empresa* primero.”) Similarly, Supervisor Carlos Argueta informed workers that “they [the company managers] got *their union* [and] [s]tarting on Monday they are going to have trainings.” Line supervisor Marta Lilian Amaya stated, “I don’t know much about the unions, only that there is a good one and a bad one. The good one is the *company union* . . . The bad union is the [sewing] operators’ union” (emphases added).

Leaders of the Sitraincosi company union also openly acknowledged to their co-workers the company’s role in its establishment. Sitraincosi president Jose Lainez told his co-workers that “These old guys [the company managers] are creating a union. They came and got me from my work station so that I would join the leadership committee. The paperwork is already in Tegucigalpa [the capital].”

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<sup>4</sup> Sitracostura had been moribund because it had no actual union members. Under Article 471 of the Honduran Labor Code, an industrial union must have members in multiple factories in order to legally operate.

*b. Pinehurst Falsified Official Documents to Assist the Company Union*

The WRC's review of *constancias*, letters confirming workers' employment status, issued by the company to the Sitraincosi leadership revealed strong evidence that Pinehurst's management was aware of the purpose and facilitated the issuance of these documents – in part, by falsifying their contents – in order to assist the installation of the Sitraincosi. According to records obtained by the WRC, Pinehurst management provided a false document to one of the employees it selected to lead the company union, Isoldy Vanessa Hilton, misstating her date of hire so as to make her appear legally eligible to serve as a leader of Sitraincosi – when in fact she was legally ineligible for such office. Under Honduran law, to be eligible to serve on the leadership committee of a union representing workers at a particular company, a worker must be currently employed by that company and must have worked for that employer for at least six of the previous twelve months.

Honduran law requires that a union seeking to establish itself as the representative of employees of a particular firm provide the Ministry of Labor with a list of the members of its leadership committee and, for each committee member, an official document from the employer certifying his or her length of employment. Such a document, which is also used to provide proof of employment for more quotidian purposes, is termed a “*constancia*.” A *constancia* typically takes the form of a statement on company letterhead signed by an authorized manager, indicating the worker's employment status and date of hire.

Workers generally obtain *constancias* from their factory's human resources department. In Honduras, as in many other countries, employees seeking to exercise associational rights typically attempt to keep these efforts secret from management in order to avoid retaliation until the union has obtained legal protection for the union's leadership. Therefore, employees seeking *constancias* in order to establish their eligibility for union office rarely, if ever, admit the actual purpose to their employers when requesting these documents, but instead offer other, unrelated, justifications, such as the need to apply for a loan.

Both Sitraincosi's leadership and Pinehurst management claimed that the *constancias* were issued to the members of Sitraincosi's leadership committee without company managers being made aware of their purpose.

On October 28, Sitraincosi submitted a request for certification of its new leadership committee, along with *constancias* for its members, to the offices of the Honduran Ministry of Labor in the capital city of Tegucigalpa. The *constancia* submitted for Hilton stated that she had been employed by Pinehurst since August 20, 2010. This *constancia* bears a stamp identifying it as an official Pinehurst company document.

Notably, the *constancia* issued to Hilton did not state for what purpose Hilton had requested the document. As noted above, union leaders requesting *constancias* at Honduran factories, including the Sitrapinehurst leaders at this factory, generally give unrelated justifications for their requests to avoid anti-union reprisals from the factory. Hilton, however, appears not to have been concerned about a negative response from factory management; her *constancia*, unlike that of the Sitrapinehurst leaders, does not denote how the *constancia* will be used. This indicates that the factory managers either were willing to take the unusual step of issuing the *constancia* without being given a reason, or they were fully aware that it was being used to register a union.

The Ministry of Labor responded to Sitraincosi's request by indicating that it could not certify the union's leadership committee because, according to the *constancia*, Hilton had not been working at Pinehurst for the legal minimum duration of six out of the prior twelve months. Sitraincosi then submitted a second *constancia* for Hilton, also bearing an official company stamp, which states that Hilton had worked at Pinehurst since August 20, 2009 – one year earlier than had been written on the original *constancia*. On November 17, 2010, the Labor Ministry acknowledged receipt of the second *constancia* and certified the new Sitraincosi leadership committee. This second *constancia* was dated October 20, 2010, the same date as the first *constancia*. However, it is implausible that it was issued prior to October 29, 2010, the date on which the Ministry identified that the first *constancia* made Hilton ineligible for union leadership.

According to both personnel records later provided by Pinehurst management and Hilton herself, however, both *constancias* were false. In fact, Hilton gave testimony to the WRC that she was hired in April 2007, granted a leave of absence in August 2009, and returned to work in September 20, 2010. Based on these dates of active employment, Hilton was not eligible to serve as a member of the Sitraincosi leadership committee, since, at the time the union submitted its request to the Ministry, she had only worked at Pinehurst for one of the previous twelve months, not the six months that are the legal minimum requirement.

This evidence strongly suggests that Pinehurst management created the second *constancia* for Hilton knowing that this false document was necessary to secure her eligibility to serve on the Sitraincosi leadership committee. There is no other remotely plausible explanation for why Pinehurst management would issue a second *constancia* grossly misstating Hilton's employment record, unless the company had a strong motive to assist Sitraincosi's establishment and ensure the ability of Hilton to participate in its leadership.

Hilton had been hired at the factory as a secretary in the company's human resources department and then transferred to the position of Quality Auditor, a job slightly below that of a supervisor in the plant's organizational hierarchy. She was, therefore, an employee who had been held in confidence and rewarded by the company's management, and, thus, precisely the type of

employee through whom the company could exercise control over Sitraincosi. In addition, Hilton appears to have been earning a wage well above the standard for that position. Her personnel file states that her salary was raised to 7,000 lempiras per month on September 20, 2010. In separate interviews, four line supervisors repeated that auditors generally earn approximately 4,500 lempiras per month.

*c. Pinehurst Favored and Facilitated the Activities of the Company Union*

Following the establishment of the Sitraincosi company union, the members of its leadership committee were given extensive privileges by Pinehurst in order to assist Sitraincosi in supplanting and undermining employee support for Sitrapinehurst. This favored treatment contrasts sharply with the threats and retaliation directed at the employees on the Sitrapinehurst leadership committee.

Sitraincosi was permitted to hang banners inside the factory, to hold general meetings for employees inside the plant's cafeteria, and to hold leadership meetings in the company owner's office. Moreover, Pinehurst human resources personnel reported that they had been instructed to "help the union with whatever they need because the union is good for the company" and that they "ma[de] photocopies for them [the Sitraincosi leaders] and other things like that."

The members of the Sitraincosi leadership committee also were allowed to approach other workers during work time throughout the factory to solicit their membership in Sitraincosi and their disaffiliation from Sitrapinehurst. Much of this solicitation was conducted by Vanessa Hilton, the former company human resources secretary whom Pinehurst management had enabled to serve on the Sitraincosi leadership committee by falsifying company documents.

By contrast, as previously noted, employee leaders of Sitrapinehurst were terminated in retaliation for their union activity and were threatened by management with lawsuit for merely distributing leaflets *outside* the factory on *non-work* time. This blatant discrimination in the company's treatment of the two organizations is powerful evidence that Sitraincosi was a management-dominated union.

**B. Prior Recommendations**

Based on the findings detailed above, the WRC urged that the company take immediate steps to cease and remedy its violations of freedom of association by reinstating and otherwise restoring the rights of those workers who had been victimized for their support of the Sitrapinehurst union, and withdrawing and taking meaningful steps to counteract the support it had provided to the Sitraincosi company union. Specifically, in communications to the company and its customers in November and December 2010, the WRC urged that Pinehurst:

1. Cease all forms of support for the company union and acknowledge that it has no standing as a legitimate representative of Pinehurst's workers;
2. Refrain from recognizing the Sitraincosi company union for purposes of collective bargaining or other worker representation;
3. Withdraw all privileges it has granted to the Sitraincosi company union;
4. Recognize Sitrapinehurst, whose registration as a union representing workers at the company was certified by the Ministry of Labor on November 26, 2010, as the sole legitimate union currently present at the factory and commence good faith collective bargaining with Sitrapinehurst upon the latter's request;
5. Communicate to all Pinehurst workers, verbally and in writing that: (a) Pinehurst management violated workers' associational rights by creating and supporting the company union; (b) Pinehurst management should not have engaged in such conduct and will no longer support the company union; (c) Pinehurst management recognizes Sitrapinehurst as the only legitimately established labor body representing the factory's employees, (d) Pinehurst management will bargain in good faith with Sitrapinehurst; and (e) Pinehurst management will no longer retaliate in any way against its workers based on their decision to support, join and/or participate in the activities of Sitrapinehurst; and
6. Reinstate the five discharged Sitrapinehurst employee activists to their original positions, with no loss of seniority, and with full back pay to the date of dismissal, calculated in the manner most favorable to each worker.

## **1. Buyer and Company Response**

After Pinehurst's management failed to respond substantively to the WRC's recommendations, the WRC contacted company customers Nike, adidas and Phillips-Van Heusen, and shared with these firms the WRC's findings and recommendations. Nike and adidas contracted with the Guatemala-based NGO, Coverco, to conduct an investigation into the issues identified by the WRC with regard to Pinehurst's violations of its employees' associational rights. In late November 2010, both the WRC and Coverco conducted interviews with Pinehurst management

and factory employees in San Pedro Sula. Coverco's investigation reached the same essential findings as the WRC's.<sup>5</sup>

Nike and adidas initially refused to endorse the WRC's recommendation that Pinehurst must withdraw recognition of the Sitraincosi company union and refrain from any further dealings with the latter, while recognizing and bargaining with Sitrapinehurst. Nike and adidas instead adopted the position that the matter was chiefly a conflict between two legitimate labor organizations, which should be encouraged to resolve the dispute through either a legal process involving the Honduran Ministry of Labor – whose ineffectiveness in addressing issues of freedom of association in the export apparel sector is well known – or by coming to an arrangement for joint or shared representation of the factory's workers.

Most disturbingly, the brand representatives either ignored or failed to grasp the significance of the fact that the Sitraincosi union was a company-dominated labor organization, and that any resolution that did not eliminate its presence from the factory would perpetuate Pinehurst's violation of its employees' associational rights. In particular, brand representatives appeared to place more importance on the formal legality of Sitraincosi's existence as a labor union than on the practical reality that its presence at the factory was entirely due to Pinehurst management's intent to undermine Pinehurst employees' efforts to form a union of their own choosing.

The consequence of the approach promoted by the brands would have been to shift the burden of responsibility for resolving the conflict caused by Sitraincosi's presence from Pinehurst's management – which was violating freedom of association by sponsoring the company union – to the employee members of Sitrapinehurst, the very parties whose associational rights were being violated. For example, in a December 16 email to the WRC, Gregg Nebel, adidas' Head of Social and Environmental Affairs - Americas Region, asserted, "Two unions exist at the factory and both have invited Pinehurst to collectively bargain. Only one union can collectively bargain so a process is needed to determine who that union is. We believe two solutions were possible; the first is the usual recourse with the Ministry of Labor and legal jurisdiction, and the second an exploration whether the two unions were willing to sit down, discuss solutions, and act legally but without the direct participation of the regulatory agency." Similarly, in a December 18, 2010 email, Nebel, while acknowledging that "Pinehurst did improperly influence the SITRAINCOSI campaign to organize," stated, "Pinehurst did not create a union. The SITRAINCOSI union's

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<sup>5</sup> "Final Report: Independent Assessment on Freedom of Association at Pinehurst Manufacturing," December 2010, available at [http://portal.fairlabor.org/fla/Public/pub/Images\\_XFile/R427/COVERCO\\_pinehurst.pdf](http://portal.fairlabor.org/fla/Public/pub/Images_XFile/R427/COVERCO_pinehurst.pdf).

‘DNA’ goes back to 1958.<sup>6</sup>” Nebel added, “I sincerely hope both unions-confederations choose freely to sit down and discuss a solution.”

The approach promoted by the brands was, both with regard to international labor standards and as a matter of common sense, inconsistent with respect for freedom of association. A labor organization that owes its presence at a workplace to the employer, whether because it was originally created by the employer (as is typically the case with the “*solidarista*” associations that function as company unions in some Honduran garment factories) or because the employer “improperly influence[d]” its organizing campaign, cannot legitimately seek to bargain with that employer on behalf of workers. To permit this would be to allow the employer to play a substantial role in choosing who will represent workers, which is antithetical to the principle of freedom of association.

International labor law is clear that, in cases where a management-influenced union body has been created, the proper remedy is to exclude that entity from workplace labor relations – not to force a legitimate trade union to compete, coexist or cooperate with it. The basis for this remedy is international labor law’s emphasis on workers’ free choice of representatives and the need to protect that choice from interference, influence or domination by employers.<sup>7</sup> The ILO’s Committee on Freedom of Association, the preeminent authority on this issue, has stated that “[c]ollective bargaining...should be carried out between an employer . . . [and] workers’ organisations [that are] *totally independent* of each other” and “should *not* be conducted on behalf of employees . . . by bargaining representatives appointed by or under the domination of employers” (emphases added). The approach promoted by the brands at Pinehurst – to treat Sitrapinehurst and Sitraincosi as equally legitimate worker organizations that should work out an arrangement for representing the company’s employees – was detrimental to the goal of restoring workers’ associational rights and inconsistent with accepted practice in such cases.

## 2. Prior Remedial Measures

For the reasons stated above, the WRC argued that any outcome which permitted Sitraincosi to maintain a role in the factory would constitute a failure to fully remediate the violations of workers’ associational rights which had been committed by the company. Fortunately, after

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<sup>6</sup> It should be noted that this claim concerning the founding date of Sitraincosi’s precursor, Sitracostura, is entirely irrelevant to the question of management’s role in the re-activation of that union as an ersatz representative of workers at Pinehurst.

<sup>7</sup> See, ILO Convention 87 (“Freedom of Association and Protection of the Right to Organise”), which states that workers “shall have the right to establish and . . . join organisations of *their own choosing*” (emphasis added). ILO Convention 98 (“Right to Organise and Collective Bargaining”) guarantees that “Workers’ . . . organisations shall enjoy adequate protection against any acts of interference” by employers, including, explicitly, “[a]cts which are designed to promote the establishment of workers’ organisations under the domination of employers . . . or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers.”

considerable dialogue between these brands and the WRC, it appears that adidas and Nike eventually accepted the WRC's position and adopted a similar position in their dealings with Pinehurst.<sup>8</sup> As a result of brand intervention, Pinehurst eventually took the following actions:

- On January 10, 2011, Pinehurst agreed to reinstate the five discharged employees who were fired as a result of their organizational activities, along with a sixth union activist who had also been terminated.
- On January 14, 2011, Pinehurst management held a meeting with the Sitrapinehurst union, the outcome of which was that the company agreed to recognize and bargain with that union.
- On January 17, 2011, Pinehurst's management distributed a letter to the factory's employees stating that: "The company recognizes the Pinehurst Workers Union, Sitrapinehurst, as the union with which it will negotiate a collective bargaining agreement with all of its rights and responsibilities and for all of the individual and collective grievances between workers and Pinehurst Manufacturing."

During the same time period, the Sitraincosi company union, due to the withdrawal of the backing of Pinehurst's management, returned to its former moribund state. On January 12, 2011, the president of Sitraincosi told the president of Sitrapinehurst that he was resigning from the union and that Sitrapinehurst "didn't have anything else to worry about." After this point, Sitraincosi effectively disappeared as a force inside the factory.

This outcome – the decision by factory management to bargain with Sitrapinehurst as the sole legitimate union present at the factory and the elimination of Sitraincosi as a rival labor body in the workplace – would not have been achieved if the brands had persisted in allowing Pinehurst to treat the union that was independently formed by its workers, and the union that was sponsored by management itself, as if they were equally legitimate entities. Quite likely, that approach would have led to a permanent denial of the associational rights of Pinehurst employees, with workers prevented from exercising these rights free from the illegal interference of their employer.

As the events at Pinehurst demonstrate, in cases where an employer-influenced or sponsored labor organization is present, it is crucial for monitors and buyers to communicate the following to employers:

1. University codes of conduct protections for freedom of association and collective bargaining strictly prohibit employers from influencing, sponsoring, or creating

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<sup>8</sup> Adidas and Nike did not convey this change of heart to the WRC, but it is evident from the subsequent actions of Pinehurst management that the brands ultimately decided to press for immediate recognition of Sitrapinehurst and a cessation of relations with Sitraincosi.

organizations that purport to represent their employees with regard to workplace issues.

2. As a result, employers are likewise prohibited from using the presence of such an illegitimate entity to avoid recognizing and bargaining with a legitimately established worker organization.
3. Because the interference of such illegitimate entities with workers' associational and collective bargaining rights is the direct result of the employer's influence over or sponsorship of them, it is the *employer's responsibility* to achieve their *elimination* from the workplace in order to remedy this interference.

If employers can create or sponsor their own labor organizations and, even after their subterfuge is exposed, use these entities' presence (or even their formal legal status) to delay or avoid recognition of a legitimate union, then employers have a very strong incentive to pursue this strategy in response to any exercise by workers of associational rights. If employers understand that such machinations will not be tolerated by buyers and university licensors, this incentive disappears.

The outcome of this case has important implications, as it clearly establishes best practice for the remediation of this type of labor rights violation under university codes of conduct. As discussed below, the significance of this precedent makes it all the more important that the progress made thus far towards respect for associational rights at Pinehurst not be reversed by subsequent recidivism on the part of the company's management.

### **III. New Findings (August 2011 – Present)**

Since August 2011, the WRC has received a number of new complaints from Pinehurst workers concerning allegations of renewed violations of freedom of association by Pinehurst management. First, workers alleged that Pinehurst management singled out employee union delegates<sup>9</sup> and other members of Sitrapinehurst for discharge in the context of a broader layoff at the factory in August 2011. More recently, workers have alleged that the company is refusing to engage in good-faith negotiation over the first collective bargaining agreement at Pinehurst, that management has made repeated anti-union statements, and that management refuses to allow the union to fulfill its representational functions at the factory. As detailed below, the WRC has investigated these allegations through the review of official documents issued by the Ministry of Labor, interviews with Pinehurst workers, communications with Pinehurst's owner, Jeff Brischke, and communications with representatives of adidas and Nike. The findings and recommendations reached by the WRC are below.

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<sup>9</sup> Delegates, similar to shop stewards in the U.S. context, are workers chosen to represent their fellow union members in the workplace. There is often one delegate per production line.

## **A. Findings**

### **1. Inconclusive Findings Re Allegations of Targeted Terminations of Union Members**

According to reports to the WRC from workers and statements by factory management, the level of orders placed at Pinehurst by adidas and Nike has significantly fluctuated over the past year. In early 2011, following the recognition of Sitrapinehurst, orders appear to have declined.

On August 2, 2011, Pinehurst management announced that due to a substantial decrease in orders from major buyers, the factory would reduce its operations from 25 production lines to 19 production lines, and that a proportional number of workers would be terminated. Workers testified that approximately 160 employees were dismissed in the following month. Brischke, the factory owner, asserts that the number of workers who were discharged was significantly higher, but has refused to provide any evidence to support this claim. Workers were laid off in many of the plant's operations, including knitting, sewing, cleaning, sample production, and packing.

As reported to universities on October 5, 2011,<sup>10</sup> workers contacted the WRC at the time of these layoffs to allege that union delegates and union members had been targeted in the layoffs. They reported that seven out of sixteen union delegates were terminated, along with 91 union affiliates.

As part of the investigation into these claims, in September 2011, the WRC requested a number of documents from Brischke regarding the terminations, including a breakdown of layoffs by department. Brischke refused to provide this information. This refusal to provide relevant documents in the course of an investigation is itself a violation of university codes of conduct. The WRC subsequently requested that adidas compel Pinehurst to provide this information, but adidas declined to do so.

Pinehurst management did acknowledge to the WRC that it did not consult with Sitrapinehurst, which is the sole legally-certified representative of the factory's workers, concerning the process by which workers would be selected for layoff. Sitrapinehurst requested such consultation, but this request was denied. Since the union and the factory were still negotiating a collective bargaining agreement, there was not a contractual obligation to engage in such consultation. However, refusal to consult the workers' chosen representative indicates an unwillingness to allow the union to carry out its representative role, and contributed to workers' belief that the layoffs were not being carried out in an impartial way. In addition, Pinehurst management could not point to objective criteria used to decide which workers were laid off, instead stating that a range of factors, including seniority, attendance, and skills were used, but providing no specifics. It appears that the application of these criteria included a substantial degree of subjectivity, which may have been used to target workers based on their exercise of associational rights. In

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<sup>10</sup> Available at <http://www.workersrights.org/university/memo/100511.html>.

short, while Pinehurst management denied targeting union members, they were unable or unwilling to provide information that would have conclusively indicated that they had not done so.

Due in part to this refusal to provide requested documents, and in the absence of a clear statistical imbalance between union members and leaders and workers in general among those laid off, the WRC was not able to draw definitive conclusions as to whether the terminations were discriminatory or not. The WRC was informed that adidas had commissioned Coverco to investigate the same question; however, these findings were never publicly announced.

While the WRC cannot draw a definitive conclusion as to whether these layoffs were discriminatory, it appears that workers' fear of retaliation was grounded in a series of anti-union statements by management, described below.

## **2. Pinehurst Management Displays Continuing Hostility to Freedom of Association (August 2011 – Present)**

Beginning at the time of the August 2011 layoffs, the workers have credibly reported repeated incidents of Pinehurst owner Jeff Brischke and several other company managers' ongoing hostility to exercise of freedom of association by the factory's workers. Workers have also credibly reported that factory management has repeatedly interfered in worker-leaders' ability to carry out their representational activities. Both the anti-union statements and the refusal to recognize the workers' chosen representatives in everyday interactions within the plant indicate continuing anti-union animus on the part of Pinehurst's management. In the context of the layoffs described above and during a stalled collective bargaining process (described below), they have created a chilling effect in the factory, in which many workers fear that expressing support for the union exposes them to risk of retaliation, up to and including termination. Employee union leaders report that some workers have told them that they are afraid that the factory will close due to the formation of the union, and that they are afraid to join the union because of retaliation, despite having a desire to do so.

Among the anti-union statements made by management are the following:

In July 2011, one line supervisor told workers that he was told by management that he was being transferred to another area of the factory because he permitted union delegates to leave their station to respond to the problems of union members – in other words, because he respected their associational rights. This line supervisor was then terminated as part of the layoffs.

On August 15, 2011, workers were called by groups into meetings with company managers where they were told that Pinehurst was trying to find more customers and that the workers should "be careful" because there were "outsiders" who wanted to create problems for the company. Multiple workers who were called in at different times have provided mutually

corroborating evidence regarding the content of these meetings. If company managers were referring to the Sitrapinehurst union, the statement is not only inaccurate and illogical – the union is governed by a committee made-up entirely of the company’s own employees – but a clear indication of continuing hostility. If the statement refers to factory monitoring organizations, such as the WRC and Coverco, it is equally disturbing as the “trouble” such bodies have created for the company is to require it to comply with its legal obligations to its buyers and its own employees.

On or around this date, managers also specifically mentioned Saida Reyes, the Recording Secretary of Sitrapinehurst, and implied that she and the union were responsible for the factory’s economic challenges. In a worker meeting, Alejandra Flores, the factory’s Operations Manager, was discussing the layoffs. Reyes stated that the union believed that union members had been targeted in the layoffs, and that the union had placed a complaint with the WRC and other parties. Reyes reports that Flores grew angry and abruptly ended the meeting after saying, “because of your complaints, this factory could close.” Reyes reports that in subsequent meetings the same day, Flores told groups of workers, in the context of discussing the layoffs, that “The Recording Secretary of the union, Saida, has told us that we are being embargoed.” The workers understood this to mean that the union had filed a formal legal challenge with an official body, and that for this reason, Pinehurst’s production would be frozen while the challenge was resolved. As a result, Reyes reports that workers left these meetings saying angrily, “Who is this Saida?!” and “Where is she?!”

On August 30, 2011, the owner of Pinehurst, Jeff Brischke, came to the factory and held meetings with the workers of each production line along with the top managers of the factory. Brischke told workers that he was reaching out to new clients and that he wanted to counter rumors that the factory was in danger of shutting down and to address the reason for the layoffs. While some workers had been originally told that the layoffs were due to a reduction in orders by Nike, now Brischke offered several explanations in the course of these meetings. He mentioned that buyers were overstocked, and claimed that poor quality was an issue.

Disturbingly, however, Brischke also laid the blame for the factory’s economic challenges on workers who had spoken out about problems at the factory. Brischke told workers that, as one worker recalled, “There are workers who want to make the company look bad. Instead of helping the company to succeed, they don’t help. The clients are hearing stories that there are actions against the company.” Brischke claimed that buyers were choosing to place their orders in other factories because of the workers’ complaints. While Brischke did not mention the Sitrapinehurst leaders specifically, multiple workers reported that it was clear that he was referring to them.

Blaming union leaders for the factory’s economic problems and potential job loss, particularly in the context of management’s past retaliation, contributes to the chilling effect mentioned above. This restricts the ability of union leaders and members to express their legitimate concerns about

the factory's labor practices, a proper and critical union function. Such statements are potentially reckless in the Honduran context, where this kind of scapegoating has led to employees being threatened at the workplace and in their communities.<sup>11</sup> These statements thus represent, in and of themselves, a suppression of associational rights.<sup>12</sup>

In recent months, factory managers have repeatedly refused to allow the union to carry out the basic representative functions of accompanying workers to meet with management. In April of this year, a worker requested that Reyes accompany her to meet with Human Resources to discuss a dispute over a medical appointment. When Reyes arrived at the office, the Human Resources staff refused to meet with them, saying that she would postpone the meeting. She said to the worker, "You do not work for the union, you work for the company," adding, "Why would you go ask help from the union if I have an open-door policy?"

The following month, another worker requested that Reyes accompany her to a meeting over another workplace dispute. The same Human Resources official again refused to meet with the union official, postponing the meeting and telling the worker that bringing a union representative was unnecessary. Other workers report that supervisors have referred to the elected union leaders as "confrontational," "gossips," and "spoiled brats."

In a third case where Reyes supported a worker in addressing a dispute over her paycheck, the worker informed Reyes that, after the dispute was resolved, a Human Resources official called the worker into her office and told her that when she had problems in the future, she did not need to go to the union, that the Human Resources Staff were the "representatives of the workers."

Under Honduran law, unions have a right to accompany workers in meetings with management and disciplinary procedures.<sup>13</sup> In this case, not only has the company failed to contact the union regarding disciplinary procedures and terminations, but managers have also repeatedly refused workers their legal right to union representation in these procedures.

This refusal to allow union leaders and delegates to carry out its legally mandated representative function indicates that management remains unwilling to allow the union to carry out its representational activities, which are its right under Honduran and international law. Paired with the anti-union comments listed above, this behavior indicates that Pinehurst managers continue

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<sup>11</sup> See "Worker Rights Consortium Assessment –Jerzees de Honduras," November 7, 2008, pgs. 34 and 35, available at <http://www.workersrights.org/Freports/Jerzees%20de%20Honduras%2011-07-08.pdf>.

<sup>12</sup> Moreover, unless employees' statements about company labor practices are defamatory or commercially disparaging, it is the employer's responsibility to correct the problem, and not the worker's responsibility to remain silent. For factory management to tell workers otherwise is, in itself, a violation of associational rights. Under university codes of conduct, workers have the right to engage in associational activities and to report code violations to buyers or to monitoring bodies without fear of management-instigated repercussions.

<sup>13</sup> Honduran Labor Code, Article 92, Paragraph 9.

to possess deep-seated hostility to the union and its leadership, even following the remedial measures taken by the company in January 2011.

Management has also continued to refuse to consult with the union in the context of layoffs. On June 8, 2012, another five workers were laid off. Again, management did not consult or notify the union. On July 5 and 6, 2012, management again failed to consult with or notify the union when an additional 60 workers were terminated. Three active union members, who the union believes were known to management due to their involvement in disputes over workplace issues, were terminated as part of these layoffs. Reyes questioned Human Resources about the layoffs on July 10, and reports that she was told, “We just receive orders. The orders are that there won't be any dismissals but everything depends on our customers. You know that, Saida, everything depends on the customers.”

The WRC has not fully investigated the circumstances of these firings. However, regardless of the intent of the terminations, again the failure of the company to consult with the union has added to workers' fears that exercising their associational rights could result in retaliation including termination.

### **3. Failure to Bargain in Good Faith**

Sitrapinehurst and Pinehurst management have been engaged in the process of negotiating an initial collective bargaining agreement for more than sixteen months. However, the two initial phases of negotiation have ended in stalemate. To assess the situation, the WRC examined official government records summarizing the mediation stage and correspondence among the parties, and interviewed members of the union bargaining committee.

Based on this inquiry, the WRC concludes that Pinehurst management has not negotiated in good faith. Factory management has engaged in a series of delaying tactics and refused for more than a year to put forward its own proposal on the central economic issues.

Sitrapinehurst submitted a request for bargaining to the Ministry of Labor on December 13, 2010, of which the company was subsequently notified as per Honduran law. The union and Pinehurst management formally initiated the collective bargaining process on February 11, 2011. Honduran labor law requires that an employer and a union seeking to bargain a contract covering its workers engage in two rounds of “direct negotiation” and then, if agreement is not reached, participate in a mediation process facilitated by the Ministry of Labor. In this case, the union and management were able to agree upon 5 of a total of 39 proposed bargaining clauses through direct negotiations before the bargaining ended in a stalemate on June 17, 2011.

The parties then moved to the next stage of the process dictated by Honduran law, mediation by the Ministry of Labor. However, after a year of mediation, this too has ended in stalemate. The mediation process began on July 4, 2011, when the union requested that the Ministry assign a

mediator for this purpose. The first mediation session was held on October 25, 2011, and sessions continued through June 12, 2012.<sup>14</sup>

The third stage required by the Honduran system is conciliation, in which each party assigns a single representative who has not formally participated in the negotiations to participate in negotiations which are, again, moderated by a government official. The two parties are now moving to this stage.

In many negotiation sessions, Pinehurst has been represented by Flores and other local staff, rather than by Brischke directly. However, Flores and the other Pinehurst representatives have not been fully empowered to negotiate in these sessions. For example, the official minutes of the mediation session from June 5, 2012 state that Flores and Gladys Zavala, the company representatives, reported that they had already received the union's counter-proposal on bonuses but "that they did not have instructions or authority to decide on these proposals or on the other clauses that remained pending." The mediators proposed that they meet separately with each party and then all parties meet again on June 12, 2012.<sup>15</sup>

The clearest indicator of Pinehurst's unwillingness to move forward in good faith with the bargaining process is that, until more than fifteen months after the beginning of bargaining, the company refused to put forward any counter-proposals on wages and other key topics of bargaining, both economic and non-economic. On June 8, the mediator wrote in an email that Brischke had stated that he would finally make a proposal: a raise of 1 Lempira (five U.S. cents) *per day* – an increase of less than \$15 in the course of a year. When the union refused to accept this low number, he refused to negotiate the sum further. On June 12, Brischke wrote to the mediator, "I will not give any salary increase, once they agree, we can move forward, but that is it" [sic]. On the same day, the mediation stage was declared "unsuccessful" and the phase was closed by the mediators and the parties.

Pinehurst has also shown a lack of respect and good faith in the process in less formal ways. On at least one occasion, Pinehurst representatives failed to appear without giving the union prior notice. On March 5, 2012, according to official minutes issued by the Ministry of Labor, the union representatives arrived at the mediation site and were told by the mediators that the company representative had sent a letter dated the same day stating that the company could not participate due to the repercussions of a fire that had occurred more than a week earlier, on February 25. Particularly given that the union representatives work at the same site as the factory representatives, management's failure to provide prior notice that they could not attend this session, allowing the union members to travel fruitlessly to the site of the mediation, was understandably interpreted by the union leadership as an intentional demonstration of disrespect. Repeatedly, Flores has come to the negotiation sessions unprepared and with no paperwork, and

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<sup>14</sup> *Acta de Cierre de la Etapa de Mediación* June 12, 2012.

<sup>15</sup> *Acta de Mediación* (March 5, 2012).

has immediately assumed a relaxed, casual posture and then spent the bulk of the meeting sending and receiving text messages on her phone.

Failure to reach agreement on a contract is not, in itself, proof of bad faith or a violation of workers' right to bargain. However, when there is a failure to reach an agreement because management has refused to make any proposals on central issues for an extended period of time, and has in other ways indicated a lack of respect for and commitment to the bargaining process, that behavior does constitute bad faith and is a violation of workers' rights.

The success or failure of this collective bargaining process will be a key indicator of success for the remediation of the company's prior violations of freedom of association – which had as their evident purpose enabling the employer to avoid collective bargaining with its employees. To date, the results are not encouraging.

#### **4. Reduction in Orders by Major Buyers Has Undermined Remediation**

Throughout the bargaining process, Brischke has stated that he is constrained by the financial problems presented by fluctuations in orders from his buyers. In 2011, he referred to the factory as “broke” and repeatedly said he could not negotiate on economic issues because of a drop in orders. On April 18, he stated that he could not negotiate economic clauses because adidas had removed certain orders from Pinehurst and moved them to a different factory in Honduras. Pinehurst negotiators have also told union representatives that “what you are asking for is a death sentence for the factory,” apparently meaning that, in light of the volatility of orders, any increase in labor costs would precipitate a loss of business from key customers. As noted above, most recently, Human Resources staff stated on July 10, when questioned about layoffs, that “everything depends on the customers.”

Specific claims by Brischke and his staff with regards to drops in orders from specific brands may or may not be genuine. However, his statements point to a dynamic which is fundamental to workers' rights compliance in the global garment supply chain: the powerful role of large buyers such as adidas and Nike in encouraging or constraining labor rights compliance through their sourcing decisions.

As is described in more detail below, the WRC has repeatedly expressed concern to adidas and Nike regarding the impact of drops in orders at Pinehurst on the factory's capacity to sustain its improvements in compliance. While the factory was operating 25 production lines in early 2011, workers report that only 17 lines are now operating. While there have been some technological upgrades in the factory, this still strongly indicates that the factory has not returned to the volume of orders that buyers were placing prior to the factory recognizing the union.

According to Brischke, orders for adidas are also being transferred to his new plant in Nicaragua. In May 2012, factory management allegedly told supervisors that certain adidas product would

be produced at Brischke's Augusta factory in Nicaragua, because (they were told) labor is cheaper and profits are higher.

The drop in orders from adidas and Nike at Pinehurst following the recognition of Sitrapinehurst in 2011 appears served to undermine the progress that had been achieved in remedying freedom of association violations to that point. Such cutbacks are not a violation of university codes in and of themselves. However, as a practical matter, if licensees do not reward major remedial action on labor rights by at least maintaining existing levels of business, they are providing a negative incentive to employers in terms of continued compliance and are exacerbating the economic pressures that are the primary driver of labor rights abuses – at exactly the time when reforms are fresh and still need to take root.

By failing to reward the progress achieved at Pinehurst in 2011 – and, in fact, doing the opposite – buyers reduced Pinehurst's incentive to continue to respect workers' associational rights. Regardless of the reason for the decision to decrease sourcing from Pinehurst, the impact is the same. The failure of buyers to support the factory after the successful remediation effectively penalized Pinehurst for complying with applicable labor standards, rather than rewarding the factory, and generated tensions and fears that undermined the process of building healthy and constructive industrial relations.

Brands should not take steps that are otherwise economically avoidable that severely undermine labor rights progress during the sensitive period right after a breakthrough has been achieved on labor rights. Adidas and Nike both possess ample economic flexibility and could have maintained economic support for the factory, at least at the levels previously anticipated by management, without incurring a substantial burden. Their choice not to do so was a precipitating factor in the latest violations of workers' associational rights.

## **B. Response of Buyers**

The WRC has engaged with Nike and adidas several times in the course of the past year regarding developments at Pinehurst and fluctuations in the two companies' volume of orders at the factory.

In summer 2011, we contacted adidas and Nike regarding production levels in the factory and concerns regarding layoffs. At that time, both companies stated that they were committed to Pinehurst. Adidas stated on August 3, 2011 that its reduction in its orders from Pinehurst was a result of a temporary decline in demand for relevant products. Nike said that any drop in orders was due to seasonal fluctuations or to market downturns.

When contacted again in May 2012 regarding the obstacles to collective bargaining and, specifically, Brischke's claim that adidas had switched orders to a different Honduran factory, the brands gave similar answers. An adidas representative denied that production had been

decreased and referred again to annual “peaks and valleys,” saying that Pinehurst is a “strategic partner” in the region. The representative also denied that adidas product was being shifted from Pinehurst to Brischke’s factory in Nicaragua, saying that that factory produced an entirely different product. When asked repeatedly to provide additional information on adidas’ plan to engage with Pinehurst to address Brischke’s failure to bargain in good faith, along with more detailed information on adidas’ future sourcing plans for Pinehurst, adidas failed to reply.

In the same month, Nike reiterated its earlier position that it intends to continue sourcing from Pinehurst, and that any drops in production are due to seasonal fluctuations. Nike stated that Pinehurst management had informed them that negotiations were “progressing in good faith” but that they were not aware whether proposals had been exchanged on specific issues and did not intend to “insert themselves” further into the collective bargaining process.

It is clear that neither brand made a concerted effort to reward Pinehurst for the progress achieved in early 2011 by maintaining consistent orders, with the predictable result that this progress was not fully sustained.

#### **IV. Recommendations**

Immediate action by both Pinehurst and its primary buyers is necessary to recapture and reinforce the gains for compliance with university and buyer codes previously achieved and to address the troubling reemergence of violations of freedom of association at the factory.

##### **A. Recommendations to Pinehurst**

In order to counteract the chilling effect created by management’s actions and to ensure that workers are fully able to exercise their right to freedom of association, Pinehurst must take the following steps:

1. Pinehurst owner Jeff Brischke must refrain from *ad hominem* attacks on the union and its leadership and from any statements implying that union activity will result in the plant closing, and must instruct Pinehurst managers and supervisors to do the same.
2. Pinehurst must allow the union to fulfill its representational responsibilities. When workers request that a union delegate or leader accompany them in discussing disciplinary or other issues with management, management must honor this request. If any future layoffs become economically necessary, Pinehurst management must work with the union to establish and abide by objective, transparent criteria in order to ensure that there is no retaliation against union members or delegates.
3. Pinehurst must engage in good faith negotiations and promptly move forward through the conciliation process, in good faith, to conclude a collective bargaining agreement.

4. As a corollary to the recommendations to buyers below regarding production volume, Pinehurst should commit that no work that can be performed competently at Pinehurst will be outsourced to any other facility.

## **B. Recommendations to Buyers**

We urge adidas and Nike to return at least to the level of orders that prevailed at Pinehurst in late 2010 and early 2011, and to maintain this level of production for at least the next three years. Such action, as noted above, is not required by university codes; however, if these licensees wish to achieve sustainable compliance with university codes at Pinehurst, they must support the factory economically, on a consistent basis.

Adidas and Nike must also play a more active role in ensuring that Pinehurst negotiates in good faith to complete the current collective bargaining process with Sitrapinehurst. The brands must make clear to Pinehurst both their expectation that Pinehurst will bargain in good faith with the union and their commitment that the factory will not be penalized for the modest increases in labor costs that are the likely outcome of a good-faith contract negotiation.

Finally, we recommend that adidas and Nike require that Pinehurst permit access to the facility by a designated ombudsperson for freedom of association issues, who would be commissioned for one year to monitor and seek resolution of such issues at the factory. The ombudsperson should be a qualified person acceptable to adidas, Nike and the WRC, who will report to these parties. The cost of the ombudsperson should be borne by adidas and Nike.

## **V. Conclusion**

Pinehurst is an example of a factory where two major university licensees represent a large percentage of overall factory production and have done so for several years – a circumstance in which the licensees have not only the obligation, but, clearly, the ability to compel improvements in the factory's labor practices. Indeed, the swift and sweeping remedial action implemented by Pinehurst in early 2011, immediately after the brands began to apply genuine pressure, is an indication of their level of influence. However, maintaining compliance over time requires not just pressure on the factory vis-à-vis its labor practices, but also consistent economic support for the factory in recognition of the progress it achieves. For reasons cited above, adidas and Nike have the wherewithal to provide that support. If adidas and Nike (or either of the two) had provided strong and ongoing economic support for Pinehurst, while continuing to police compliance rigorously, the labor rights reforms implemented by the factory in early 2011 would very likely have been sustained far more effectively than has proven to be the case. It is still within the power of these brands to write a success story at Pinehurst. The WRC urges them to do so.