



WORKER RIGHTS CONSORTIUM

**Worker Rights Consortium Assessment re Rights of Association of
Russell Athletic and Fruit of the Loom Employees in Honduras:
Analysis of “Collective Pacts”**

Findings and Recommendations

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“While complying with the local laws and regulations, we are committed to exceed the requirements codified in the local laws in many areas. . . . Many of these benefits are instituted in Honduras under what is called a “collective pact” (CP). Through the [collective pact], the Company is fostering involvement and engagement of our employees in voicing their ideas, concerns, and suggestions for change.”

Russell Athletic, *Employee Relations in Our Factories* (May 11, 2009)

“[I]t can be said, with almost complete certainty, that when a collective pact is originated or signed, the source of its inspiration or origin is the employer. In fact: in almost every case, a collective pact comes about as a means to annihilate the emergence of a union. . . .

[U]nder the pretense of executing a legitimate action by the employer, the actual goal that the pacts pursue is unfair and illicit: to threaten the right to freedom of association and the free exercise of the right to collective bargaining, both of which are guaranteed by international conventions and national legislation.”

Arnaldo Villanueva Chinchilla, *Derecho Laboral Hondureño* (“Honduran Labor Law,” 1985) (WRC translation)

Executive Summary

Despite the claim by Russell Athletic that it is committed to respecting freedom of association in its factories in Honduras, new research by the WRC has found that the company has committed additional, serious and ongoing violations of this right, even as it purports to be taking steps to remedy its past record of misconduct. Specifically, in communications to universities regarding measures it is taking in its remaining Honduran plants, Russell has touted its introduction of a system of employee representation through a “collective pact” between workers and management and through a company-instituted “delegate system,” with employee representatives elected by their co-workers.¹ Contrary to Russell’s claims, however, such management-sponsored representation programs in no way qualify as a *remedy* for the company’s violations of worker rights. Instead, under international labor standards, such employer-dominated representation schemes, known in the U.S. as “company unions” and in Central America as “solidarist associations” (*asociaciones solidaristas*) are recognized as undermining the genuine exercise of freedom of association.² Russell’s introduction of employer-dominated worker

¹ Russell Corporation, *Employee Relations in Our Factories* (May 11, 2009), http://www.russellsocialresponsibility.com/pdf/relations_model.pdf.

² See, e.g., U.S. State Department, 2008 Human Rights Report – Honduras (2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119164.htm>; ILO Committee on Freedom of Association (“ILO CFA”), Complaint against the Government of Honduras. Report No. 281, Case No. 1568 : (Vol.

organizations in its Honduran plants therefore constitutes, *in itself*, a significant violation of worker rights.

While Honduran labor law does not rule out negotiation of collective agreements between an employer and a group of non-union employees, both Honduran and international labor rights experts are clear that when the process is controlled by the employer and takes the place of authentic collective bargaining, such an agreement violates international labor standards on the right to organize.³ This is especially true when the employer involved has, like Russell, previously acted to destroy workers' independent efforts to secure collective representation. Indeed, the ILO's expert body on freedom of association has been on record since 1992 as recommending that Honduras revise its law in this area because of the misuse of such arrangements by employers to interfere with workers' free exercise of their associational rights.⁴

However, notwithstanding the weakness of the relevant Honduran statutes, Honduras has ratified, and thereby incorporated into its laws, ILO Convention 98, the core international labor standard on workers' right to organize and bargain collectively. Thus, collective pacts, which, like Russell's, are fomented by the employer and interfere with these rights, and are therefore in violation of ILO labor standards, are also in violation of Honduran law.⁵

Indeed, Honduras' leading labor law treatise, written by a former director general of its Labor Ministry, observes that "when a collective pact is originated or signed, the source of its inspiration or origin is the employer . . . as a means of annihilating the emergence of a union."⁶

Therefore, the treatise concludes, "the actual goal that the pacts pursue is unfair and illicit: to threaten the right of freedom of association."⁷ Similarly, the U.S. State Department's most recent human rights report on Honduras describes such arrangements

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<http://staging2.ilo.org/ilolex/cgi/lex/pdconv.pl?host=status01&textbase=iloeng&document=458&chapter=3&query=%23CASE%3D1568&highlight=on&querytype=bool&context=0>.

³ See, Honduran Labor Code, Art. 72 ("Pacts between employers and non-unionized workers are governed by the dispositions established by collective bargaining agreements[.]" (unofficial translation)); ILO CFA, *supra*, n. 2; Arnaldo Villanueva Chinchilla, *Derecho Laboral Hondureño* (Honduran Labor Law), 98 (1985).

⁴ See, ILO CFA, *supra*, n. 2; at ¶ 381.

⁵ See, ILO Convention 98 (Right to Organize and Collective Bargaining Convention) (1949), Art. 2 ("(1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other . . . in their establishment, functioning or administration. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers . . . shall be deemed to constitute acts of interference within the meaning of this Article."); Constitution of Honduras (1982), Ch. 3, Arts. 16, 18 (stating that international treaties ratified by Honduras become part of domestic law, and that in case of a conflict between Honduras' treaty or convention commitments and domestic law the former prevails).

⁶ Villanueva, *supra*, n. 3,

⁷ *Id.*

as akin to “company unions” – a form of workplace organization that was legally banned in the United States over seventy years ago, because it interferes with workers’ freedom to form their own independent labor organizations.⁸

Research recently conducted by the WRC in Honduras confirms that Russell’s introduction of both the “collective pacts” and the “delegate system” in its plants has been a completely company-controlled process. Interviews with over one hundred workers at several Russell plants indicate that the pacts were simply presented to employees by company management without any negotiation. A review and comparison of the provisions of the pacts introduced at two different Russell plants confirm this assessment, as the agreements are largely identical in their provisions.

Moreover, the benefits the company is providing in the “collective pact” are explicitly conditioned on workers not joining a union. While workers are not required to sign the pact, they are told that the pact confers benefits from the company that are only available to workers who do. Yet the pact contains specific language stating that workers will forfeit these benefits if they join any other labor organization.⁹ Employer-issued contracts that penalize workers for joining unions, known in U.S. labor law parlance as “yellow dog contracts,” have been illegal in this country since the 1930s, as they constitute employer discrimination against union membership.¹⁰ Similarly, any threat to penalize workers for joining a union is also illegal under Honduran labor law.¹¹

Russell’s introduction of the “collective pacts” in its Honduran plants represents a shift by the company from more direct methods of suppressing freedom of association – illegal mass firings, open threats of job loss, and retaliatory plant closure – to a more subtle, but still serious, form of coercion. Its timing is particularly revealing, as the introduction of the “pacts” and the “delegate system” in its non-union plants has coincided with Russell’s closure of Jerzees de Honduras, which was its only unionized factory in the country.

⁸ U.S. State Department, *supra*, n. 2; *see, e.g., NLRB v. Penn. Greyhound Lines, Inc.*, 303 U.S. 261, 266, 271 (1938) (upholding NLRB order that employer withdraw recognition of company-dominated “employees association,” and observing that “[m]aintenance of a ‘company union,’ dominated by the employer, may be a ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining”), <http://supreme.justia.com/us/303/261/case.html>.

⁹ Collective Pact, RLA Manufacturing, Art. 32 (Choloma, Honduras) (October 1, 2008) (“[A]s the Benefits [in this agreement] exceed what is demanded by law, and for their implementation demand reciprocal obligations from both parties, company and worker, the benefits contained in this agreement will cease to have effect . . . when the workers decide to join together and form another type of agreement or labor association distinct from the present Collective Pact.”).

¹⁰ The classic “yellow dog” contract, which conditioned employment on the worker’s agreement not to join a union, was made legally unenforceable by the Norris-LaGuardia Act of 1932, 29 U.S.C. § 101, *et seq.* The National Labor Relations Act of 1935 prohibits employers from making *any* benefit of employment contingent on union membership, so under current U.S. labor law the condition Russell attaches in the “collective pact” would be facially illegal. *See* 29 U.S.C. § 158(a) (“It shall be an unfair labor practice for an employer-- (3) by discrimination in regard to . . . any term or condition of employment to encourage or discourage membership in any labor organization[.]”).

¹¹ *See*, Honduran Labor Code, Art. 469 (making it illegal for “any person, by means of . . . threats, to restrict, in any form, freedom of association in unions) (1980).

Indeed, the involvement of high-level Russell managers in instituting the pacts is also quite apparent. Russell executive Ricardo Trujillo – who was directly implicated in violations of freedom of association in reports issued by both the WRC and the FLA – is widely recognized as the leading figure in introducing the Central American form of company unions, known as *asociaciones solidaristas* (“solidarist associations”), into Honduran labor relations.¹²

Russell’s active role in the introduction of a *solidarista* program into its Honduran factories belies the claim that the violations of freedom of association that have occurred are merely a reflection of a local anti-union culture in Honduras – that the company is, purportedly, attempting to counteract.¹³ The *solidarista* form of company unionism is widely recognized, both within Honduras and by international labor rights bodies, as a tool used by companies in the region to undermine freedom of association.¹⁴ It is unfortunate that, rather than taking the necessary steps to restore freedom of association in its Honduran operations, Russell has instead decided to use this discredited mechanism to further impede workers’ exercise of their rights.

It is of particular concern that Russell would introduce a company-dominated employee representation program and a coercive collective agreement at the same time that it is ostensibly making a concerted effort to implement respect for freedom of association in its Honduran factories. A company cannot claim to respect a right that it is taking active steps to undermine.

The WRC has issued a set of specific recommendations regarding the steps the company should take to genuinely remedy the effects of its previous violations of freedom of association in Honduras.¹⁵ Any such effort must now also include the removal of these company-installed devices which stand in the way of workers’ free exercise of their rights.

¹² See, e.g., - *Historia de Honduras*,

<http://www.historiadehonduras.org/Historia/Independiente/MovimientosSociales/solidarismo.htm>

(discussing Ricardo Trujillo’s role as promoter of solidarist associations while employed by Polymer Industrial, SA in 1980s). Mr. Trujillo was Russell’s regional head of human resources throughout 2007 and 2008, during the period in which grave violations of freedom of association at Jerzees de Honduras occurred. We understand he remains with Russell/Fruit of the Loom management, though he may now operate under a different title.

¹³ See, Russell Corporation, *supra*, n. 1 (“We recognize that a more proactive and positive approach toward trade union activities is needed in Honduras and that this will require a culture change in the nation, where there is a seemingly intractable hostility toward unions. This, no doubt, goes beyond the standards generally applied to licensees and companies operating in many places, including Honduras. We are, however, committed to taking a leadership role.”).

¹⁴ See, ILO CFA, *supra*, n. 2; Villanueva, *supra*, n. 3.

¹⁵ See, e.g., WRC, *Additional Remedial Recommendations re Russell/Jerzees de Honduras Case* (June 1, 2009), <http://www.workersrights.org/university/memo/Additional%20Remediation%20Recommendations%20re%20Russell%20Case%2006-01-09.pdf>.

I. Introduction

As the WRC has previously emphasized, a crucial objective in remedying the serious violations of freedom of association by Russell surrounding the closure of its Jerzees de Honduras plant must be to counteract the chilling effect of the company's conduct on workers at its other factories in Honduras.¹⁶ Russell's repeated violations of the rights of workers at Jerzees de Honduras and, earlier, its sister plant Jerzees Choloma, have sent a powerful message to workers that any effort to exercise freedom of association will be met with threats, intimidation, and, ultimately, denial of their very livelihood.

For this chilling effect to be remedied, an environment must be created where workers can *freely* choose whether or not to associate together in a union, to form and/or affiliate with such an organization, and to bargain collectively – all without employer interference or coercion of any kind. It is for this reason that the WRC has recommended a series of concrete and specific actions Russell should take at its remaining Honduran plants in order to assure workers' freedom of association and counteract the impact of Russell's prior violations of this right.

Russell has repeatedly claimed to the university community that, despite its prior conduct, it is now committed to respecting freedom of association and is taking measures to implement this policy in its other plants in Honduras.¹⁷ The WRC has explained why these measures are inadequate to address the severity and extent of violations of freedom of association that the company has committed in this case, and why stronger measures, of the type we have outlined, are needed.¹⁸

Unfortunately, at the same time Russell has ostensibly been implementing its corrective action plan, the company has engaged in a parallel course of conduct: introducing a *solidarista*-style company union program in its plants. This not only undermines any potential benefit from the company's limited remedial measures, but also represents a further serious violation of workers' right to freedom of association.

This report examines and evaluates the company's conduct in this area and issues additional recommendations to address these further violations of university codes.

On May 6, 2009, Russell posted on its corporate website a document entitled "Employee Relations at Our Factories."¹⁹ In this document, Russell, for the first time, publicly reported that the company had established in its Honduran plants a company-sponsored system of worker representation. According to Russell, this program has two main

¹⁶ See, e.g., WRC, *Additional Remedial Recommendations re Russell/Jerzees de Honduras Case* (June 1, 2009), <http://www.workersrights.org/university/memo/Additional%20Remediation%20Recommendations%20re%20Russell%20Case%2006-01-09.pdf>.

¹⁷ See, e.g., Russell Corporation, *supra*, n. 1.

¹⁸ See, e.g., WRC, *supra*, n. 14.

¹⁹ The document was amended and re-posted on May 11, 2009, see, Russell Corporation, *supra*, n. 1.

elements: (1) a “collective pact” through which benefits that “exceed legal requirements” are “instituted” for employees, and (2) a “delegate system” which Russell has “established” by which employees purportedly elect their own representatives who “communicat[e] to management worker concerns [and] grievances.” One of the subjects that Russell states is “discussed by delegates and management” is “improving the benefits of the collective pact.”²⁰

The employee representation system that Russell has set up both handles worker grievances and establishes employee benefits and compensation. In other words, it performs precisely the core functions that a union would carry out at Russell’s Honduran plants, if workers were free to form one.

Such employer-dominated systems of collective representation are known in the United States as “company unions,” and long have been illegal – precisely because their presence in a company effectively precludes workers’ free exercise of the right to organize.²¹ Likewise, in Central America, such employer-sponsored representation systems, known as “*asociaciones solidaristas*” (“solidarist associations”), are well-recognized to have as their primary objective and impact the supplanting and preemption of genuine trade union organizations and authentic collective bargaining.²²

In the document posted on its website, Russell states that “collective pacts are provided for under the Honduran Labor Code.” In Honduras, as in the United States, the labor law permits negotiations between non-union employees and employers, *where workers are independent actors in the process*.²³ Both Honduran and international labor rights authorities, however, have recognized that where the agreements are initiated and dictated *by the employer* – particularly an employer that has attempted to suppress genuine union representation and collective bargaining – “pacts” of this kind are inconsistent with respect for freedom of association.²⁴

Because Honduras has ratified and incorporated into its legal system ILO Convention 98, which explicitly prohibits employer interference in the formation of worker organizations, collective pacts of the kind Russell has instituted are contrary to Honduran national law.²⁵ In addition, the pacts explicitly state that Russell will take away any discretionary benefits provided under the pact if workers form a union. Such a provision

²⁰ Id.

²¹ See, National Labor Relations Act (“NLRA”), 29 U.S.C. Sec. 158(a)(2) (“It shall be an unfair labor practice for an employer-- . . . (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.”); *NLRB v. Newport News Shipbuilding and Dry Dock Co.*, 308 U.S. 241 (1939) (upholding the Labor Board’s determination that “the purpose of the law could not be attained without complete disestablishment of the existing organization which had been dominated and controlled to a greater or less extent by the respondent [employer]”), <http://supreme.justia.com/us/308/241/case.html>; *Penn. Greyhound Lines, Inc.*, 303 U.S. at 266.

²² See, e.g., ILO CFA, *supra*, n. 2.

²³ Honduran Labor Code, Art. 72; 29 U.S.C. § 157 (“Employees shall have the right to . . . engage in other concerted activities for the purpose of collective bargaining . . .”).

²⁴ See, ILO CFA, *supra*, n. 2; Villanueva, *supra*, n. 3.

²⁵ See, ILO, Convention 98; Honduran Constitution, Ch. 3, Arts. 16, 18.

clearly violates the prohibition, under Honduran law, on an employer punishing employees in retaliation for their exercise of freedom of association.²⁶ Contract clauses of this kind have, likewise, been illegal in the United States since 1930s.²⁷

This report considers in depth the implications of Russell's "collective pact" and "delegate system" for the company's compliance with university codes of conduct. First, we examine both elements of this employee representation program as they have been publicly characterized by Russell and as they have been actually implemented in its Honduran plants. Second, we evaluate this type of employee representation program under international labor standards and Honduran law. Third, we consider the company's introduction of this employee representation system in the context of the recent history of Russell's labor rights practices in its Honduran plants. Finally, we issue recommendations concerning the corrective action needed to remove the additional obstacles to workers' exercise of their associational rights that Russell has created through its recent introduction of these employer-dominated worker organizations.

II. Methodology

In researching this report, the WRC reviewed relevant company documents including Russell's own public communications on this subject and the actual text of two of the collective pacts, which were obtained from the Honduran Ministry of Labor. In addition, during May and June 2009, the WRC, along with researchers from the Independent Monitoring Team of Honduras (EMIH), interviewed more than 100 workers from four Russell and Fruit of the Loom plants in Honduras concerning multiple subjects related to freedom of association, including the introduction of the "collective pacts" and the establishment of the "delegate system."²⁸

III. Factual Background

A. Russell's Description of its "Collective Pact[s]" and "Delegate System"

In the document Russell posted on May 6, 2009, the company touts the many ways in which, it claims, the compensation and benefits the company provides employees in its Honduran plants "exceed the requirements codified in the local laws." Among the provisions cited by the company in this regard are such items as "wage rates[.]" "emergency loan programs[.]" "severance" benefits, "free lunch programs based on productivity," "life insurance," and "funeral aid[.]"²⁹

"Many of these benefits" Russell states, "are instituted . . . under what is called a 'collective pact.'" The company asserts that "[t]hrough the C[ollective] P[act], the Company is fostering involvement and engagement of our employees in voicing their

²⁶ See, Collective Pact, *supra*, n. 9; Honduran Labor Code, Art. 469.

²⁷ See, discussion, *supra*, n. 10.

²⁸ The findings of this research on other topics related to freedom of association in these plants, which are beyond the scope of this report, will be communicated separately by the WRC to the university community.

²⁹ See, Russell Corporation, *supra*, n. 1.

ideas, concerns, and suggestions for change.”³⁰ As part of this initiative, Russell adds, “we have established a ‘delegate system’ by which employee representatives (‘delegates’), who are elected by a majority vote of the employees who have agreed to the pact, participate in regular and ongoing dialogue with company management” The document then lists “responsibilities of the delegates” which include “communicating to management worker concerns [and] grievances,” and the “subject matters discussed by delegates and management,” which include “[i]mproving the benefits of the collective pact” and “[g]rievance procedure utilization.”³¹

Russell’s document clearly depicts a company-initiated process occupying a place in company labor relations which might otherwise be filled by an independent union and real collective bargaining. The “delegate system” supposedly establishes “employee representatives” who are chosen by “employees who have agreed to the pact.” These representatives then discuss with management “improv[ements] [to] the benefits of the collective pact” which include provisions that “exceed the requirements . . . [of] local laws.” Bluntly put, this is an *ersatz* version of collective bargaining, with, instead of an independent union, the “delegate system” that Russell itself created as the company’s bargaining partner.

As discussed later, Russell’s international human resources director at the time this program was set up is a well-known expert in the formation of such representation schemes,³² indicating that the company was aware of the implications of this course of action.

B. Implementation of the “Collective Pact[s]” and “Delegate System” in Russell’s Honduran Plants

According to the Honduran Ministry of Labor, Russell and its parent company, Fruit of the Loom, have registered collective pacts at six plants in the country: Manufacturas Villanueva, RLA Manufacturing, Jerzees Buena Vista, Confecciones Dos Caminos, El Porvenir Manufacturing, and De Soto. Interviews with workers at four of these plants, Dos Caminos, Desoto, El Porvenir, and Buena Vista, revealed that the “collective pacts” and the “delegate system” were instituted through a management-dominated process and presented to workers without negotiation.

In the Desoto, El Porvenir, and Buena Vista plants, workers reported being brought into a conference room, informed of the collective agreement by members of management, told what its contents were, and simply given the choice whether or not to sign it. In no case did any negotiation between workers and management take place. At the DeSoto factory, the pact was presented to workers by the plant’s general manager, Arnulfo Cardona, who stated that “those who signed the Pact would be entitled to [additional] . . . benefits and those who didn’t sign wouldn’t be eligible.” Workers at the El Porvenir plant indicated

³⁰ Id.

³¹ Id.

³² See, Historia de Honduras, *supra*, n. 12.

that they were told by a member of management that the pact was a “union” which was being formed by the company. None of the nearly thirty workers interviewed from the Confecciones Dos Caminos were even aware that such an agreement existed, even though a “collective pact” covering employees at the factory has been registered with the labor ministry.

Further indication that the “collective pacts” were promulgated unilaterally by the company, rather than being the product of negotiations, is provided by the text of the agreements themselves. A comparison of the pacts registered for the RLA and DeSoto plants reveals that the two agreements are absolutely identical in thirty of their thirty-five provisions, with the only exceptions of note being minor differences in employer-sponsored celebrations and benefits concerning life insurance.³³ Yet the two agreements were purportedly negotiated more than two months apart and by entirely separate groups of employees.

Moreover, the “collective pact” for RLA indicates that it was executed on October 1, 2008, even though it also states that the delegates who purportedly “negotiated” the agreement with management were “elected” on September 25 – less than a week before. In other words, this group of newly-elected employee representatives was able to negotiate an entire agreement with the company in only six days. By comparison, it took Russell and the legitimate union at Jerzees de Honduras over three months to negotiate half of the provisions in a proposed collective bargaining agreement. It seems clear that the “employee delegates” at RLA must have been negotiating either not very hard, or more likely, not at all.

Indeed, judging from their provisions, the purpose of the collective pact does not seem to be to secure expanded rights or compensation for employees. The benefits provided in the agreements reviewed by the WRC are almost entirely those already required under Honduran law or benefits that are standard in the country’s apparel export sector.

Moreover, the purported ability of the “delegates” to meaningfully discuss “[i]mproving the benefits of the collective pact”³⁴ is so circumscribed as to be meaningless. The pact states that **issues “related to salaries, benefits, [and] production targets” are off limits** for such discussions.³⁵ (emphasis added) Even where the “delegates” do convince management of the need for an amendment to the pact, such agreements only have the status of “*recommendations*” which must be then referred to “the management of the plant...for making the corresponding *decisions*.”³⁶ (emphasis added)

Indeed, what is more significant than the benefits that are provided under the pacts is that these agreements clearly attempt to convince employees that the continuing receipt of these benefits is contingent on workers not affiliating with a more independent form of

³³ (Choloma, Honduras) (October 1, 2008); Collective Pact, DeSoto (Choloma, Honduras) (December 10, 2008).

³⁴ See Russell Corporation, *supra*, n. 1.

³⁵ Collective Pact, RLA Manufacturing, Art. 30.

³⁶ *Id.*

worker organization. Clause Thirty-Two of the RLA and DeSoto pacts states that “. . . the benefits stated in this Pact will be rendered invalid and inapplicable when the worker or the company violate any of their obligations or when the workers decide to join another type of agreement or labor association different from the current Collective Pact.”³⁷ In other words, if employees exercise their right to form a union, they will automatically lose any benefits provided by the pact.

Finally, according to the employees surveyed – and contrary to the company’s public claims – Russell, thus far, apparently has not given workers the ability to select the “delegates” who supposedly represent them. On its company website Russell claims that under its “delegate system,” employee representatives “are elected by a majority vote of the employees who have agreed to the pact.”³⁸ Similarly, the text of the pacts themselves identifies the plant’s employee delegates whom, the agreement claims, have been elected by “an absolute majority of the non-unionized workers.”³⁹ While such management initiated “elections” would in any case not constitute a legitimate form of worker representation, it is revealing that the company appears not to have followed through on even this minimal exercise in workplace democracy. Of the more than 100 employees at the four factories recently surveyed by the WRC, many of whom had signed the pacts, not one was aware of any such election being held. The elections either did not occur or were carried out in a manner that excluded many workers from participation.

In short, the manner in which Russell has implemented its “collective pacts” and “delegate system” at these plants provides further confirmation that that this is a scheme controlled by the employer, which provides workers with, at most, the appearance of meaningful representation in their workplace, rather than the reality. As discussed below, the salient features of this process – including the fact that the pacts were introduced unilaterally by management and that the benefits conferred are contingent on employees not forming a union – mean that the program’s effect is to interfere with, rather than further, workers’ ability to exercise associational rights.

IV. Analysis: Russell’s “Collective Pacts” and “Delegate System” Under International and Domestic Labor Standards

Genuine respect for freedom of association and collective bargaining requires that workers be able to form representative organizations that are truly independent, through which they can assert their own interests in dealings with their employers.⁴⁰ Where an entity that is put forward as the representative of workers is, actually, a creature of the employer, freedom of association cannot said to be respected by that employer. Because this is clearly the case with Russell’s “collective pact” and “delegate system,” the

³⁷ Id. at 32.

³⁸ See Russell Corporation, *supra*, n. 1.

³⁹ See, Collective Pact, RLA Manufacturing.

⁴⁰ See, e.g., Bernard Gernigon, Alberto Odero and Horacio Guido, “ILO Principles Concerning Collective Bargaining,” 139 *International Labour Review* 34 (ILO, 2000) (“The framework within which collective bargaining must take place if it is to be viable and effective is based on the principle of the independence and autonomy of the parties.”)

company's introduction of this structure constitutes yet another violation of its workers' freedom of association.

There is little dispute that an employer's introduction into a workplace of a "company union," in itself, violates workers' freedom of association, even where that employer has not engaged in any other anti-union discrimination. This is true for very fundamental reasons: first, the employer-sponsored entity cannot be said to be freely chosen by employees because it is presented to workers by a company that has inherent power over their livelihood; second, by its nature, the creation of a "company union" is not a product of workers having "freely associated" – it is a product of their employer's own initiative; third, and perhaps most significant, the "company union," along with whatever agreement it makes with the employer, will unavoidably "crowd-out" genuine freedom of association, because it preempts and competes with the formation of independent worker organizations and authentic collective bargaining.⁴¹ All these concerns are present in this case, where Russell's employee representation scheme has been put forward publicly as a company-endorsed program, and, moreover, comes on the heels of the company committing very severe violations of freedom of association – making clear both the company's power over its workers' livelihood and where its own preferences regarding its workers' choice of representative lie.

A. Company-controlled Unions and Freedom of Association

International labor rights authorities consistently have equated employer-controlled worker organization with denial of freedom of association. The core international labor standard that prohibits employer discrimination against workers' exercise of freedom of association, ILO Convention 98 (Right to Organize and Collective Bargaining), also states explicitly that "[w]orkers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration" and, specifically, that "acts which are designed to promote the establishment of workers' organizations under the domination of employers . . . shall be deemed to constitute acts of interference."⁴² The premise of this rule is simple: attempts by an employer to set-up an organization to represent its own workers interfere with those workers' freedom to form such an organization on their own. There is no doubt that this is what Russell has done in its Honduran plants, both because the company publicly acknowledges this to be so – "we have established a 'delegate system' [emphasis added]"⁴³ — and because workers have indicated that the "collective pact" was presented to them unilaterally by factory management.

⁴¹ See, e.g., *Penn. Greyhound Lines, Inc.*, 303 U.S. at 267 (noting Congress' belief that "once an employer has conferred recognition on a particular organization, it has a marked advantage over any other in securing the adherence of employees, and hence in preventing the recognition of any other" and that "collective bargaining is 'a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals.'").

⁴² ILO Convention 98, Art. 2.

⁴³ Russell Corporation, *supra*, n. 1.

As discussed, it is plain that both Russell's "collective pact" and its worker "delegate system" would be held illegal had the company attempted to impose them on employees in the United States. Under the National Labor Relations Act (NLRA) such company-dominated employee representation schemes violate the legal prohibition against employers "dominat[ing] or interfer[ing] with the formation or administration of any labor organization," a position that has been upheld repeatedly by the U.S. Supreme Court.⁴⁴ Indeed, at the time Congress passed the NLRA in 1935, such company-backed "employee representation committees" or "company unions" were employed quite commonly in the United States as a means of preempting worker organizations. As the Supreme Court noted at the time, Congress recognized that the prohibition of such company-dominated bodies was essential if employees were to be free to choose their own collective bargaining representative – and it was this recognition that led to the inclusion of provisions banning such schemes in the newly-passed federal labor law.⁴⁵ Similarly, since that time, the NLRB has consistently held invalid any contract purporting to cover the working conditions of a group of employees that is agreed to by their employer prior to those workers being able to freely select their own bargaining representatives.⁴⁶

B. *Solidarismo* – Company-Controlled Unions in Central America

While it is clear that the type of "collective pact" that Russell has implemented in its plants would be illegal in the U.S., the company notes correctly that such agreements *are* provided for under the Honduran labor code.⁴⁷ The company's observation, however, leaves out several crucial facts. First, the company fails to mention that collective agreements of this kind are highly controversial, both in Honduras and elsewhere in Central America, and are widely viewed by labor rights experts as a tool used by employers to undermine freedom of association.⁴⁸ Second, since Honduras has ratified ILO Convention 98, which prohibits employer interference with the formation of worker organizations, such "collective pacts" are only legal to the extent that they do not conflict with this principle – as Russell's version of "collective pacts" clearly does.⁴⁹ Finally, insofar as such "collective pacts" have been tolerated by the Honduran government, international labor rights bodies have made clear that that the country's law should be changed – because, as applied in this manner, it is inconsistent with respect for freedom of association under widely recognized international standards.⁵⁰

⁴⁴ See, *supra*, n. 8.

⁴⁵ See *Penn. Greyhound Lines, Inc.*, 303 U.S. at 267

⁴⁶ See, e.g., *Ladies Garment Workers (Bernhard-Altmann Corp.) v. NLRB*, 366 U.S. 731 (1961)..

⁴⁷ See, Honduran Labor Code, Art. 72.

⁴⁸ See, ILO CFA, *Digest of Decisions* ¶ 869-79 (5th ed., 2006) (citing multiple complaints involving solidarist organizations) ("As regards allegations relating to 'solidarism', the C[FA] has recalled the importance it attaches, in conformity with Article 2 of Convention No. 98, to protection being ensured against any acts of interference by employers designed to promote the establishment of workers' organizations under the domination of an employer.").

⁴⁹ See, ILO Convention 98; Constitution of Honduras (1982), Ch. 3, Arts. 16, 18.

⁵⁰ See, ILO CFA, *supra*, n. 2 ¶ 381 ("In these circumstances, the C[FA] expresses the hope that the [Honduran] Government will urgently take the legislative and other measures necessary to prohibit solidarist associations from exercising trade union activities, particularly collective bargaining.").

The Central American form of company unionism known as *solidarismo* was first established in Costa Rica as a tool to undermine and destroy long-established independent unions in that country banana's plantations, and, from there, spread throughout other sectors of the economy and the rest of the region.⁵¹ The "asociaciones solidaristas" are "pro-management worker associations," where both regular workers and supervisory or administrative employees are able to participate as members of the "permanent worker committees" that are supposed to represent the workforce.⁵² In Costa Rica, these committees sign "*arreglos directos*" ("direct agreements") with employers which cover such things as "wages, piece-rates and . . . health and safety issues," and serve as a substitute for an actual collective bargaining agreement. Such arrangements are, of course, strikingly similar to the "collective agreement" and "delegate system" that Russell recently has introduced in its Honduran plants

In 1991, the ILO Committee on Freedom of Association, the leading international body on this issue, considered a complaint against Costa Rica concerning the proliferation of solidarist associations in that country. The Committee concluded that such entities interfered with workers' right to form their own organizations under ILO Convention 98 for several reasons: (1) their involvement in bargaining "direct settlements . . . between an employer and a group of non-unionized workers," (2) their inclusion of "senior staff and personnel having the employers' confidence," and (3) the fact that they were "often started up by employers" themselves.⁵³ In response, Costa Rica changed its labor laws to emphasize that solidarist associations must not "prevent the development of, or the substitution for, other forms of workers' organization, especially when it comes to negotiations on wages and conditions with employers."⁵⁴

C. Solidarist Associations in Honduras and "Collective Pacts"

In Honduras, the introduction of *solidarismo* is closely associated with Ricardo Trujillo, a Russell executive – who was personally implicated, by both the WRC and the FLA, in the company's violations of freedom of association at Jerzees de Honduras.⁵⁵ Trujillo has been described as one of the "principal promoters of *solidarismo* in Honduras," and, prior

⁵¹ "Solidarismo: Anti-Unionism in Sheep's Clothing," *Revista Envio* (Univ. Centroamericana), <http://www.envio.org.ni/articulo/2910>.

⁵² Bananalink UK, '*Solidarismo*' or *Union-busting Costa Rica-style* (2003), http://www.bananalink.org.uk/1.5/images/stories/resources/solidarismo_leaflet_final_english.pdf.

⁵³ ILO CFA, Report No. 278, Case No. 1483 ¶ 185 (Costa Rica) : (Vol. LXXIV, 1991, Series B, No. 2), <http://www.oit.org/ilolex/cgi-lex/single.pl?query=0319912781483@ref&chspec=03>

⁵⁴ See, Bananalink UK, *supra*, n. 52.

⁵⁵ Both the WRC investigation of the closure of Jerzees de Honduras and the report produced for the FLA by Adrian Goldin cite the following incident involving Mr. Trujillo: "[Plant human resources manager] Nadia Morales asked if they [Russell] would be moving to mediation [with the union]. 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." Adrian Goldin, *The Closure Process at Jerzees de Honduras* 18 (Jan. 26, 2009), http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/jerzees_de_honduras_second_jdh_investigation_jan_2009.pdf.

to being employed by Russell, worked for Polymer Industrial, S.A., the company which, in 1985, became the first firm in the country to sponsor an in-house solidarist association.⁵⁶

Like the solidarist associations, “collective pacts” – agreements signed by groups of non-union employees with their employers – are most often introduced by companies with the purpose of undermining freedom of association. Writing in 1985, in a work which is still the leading treatise on Honduran labor law, Arnaldo Villanueva Chinchilla, a former director general of the Honduran labor ministry, stated that “[I]t can be said, with almost complete certainty, that when a collective pact is originated or signed, the source of its inspiration or origin is the employer. In fact: in almost every case, a collective pact comes about as a means to annihilate the emergence of a union.”⁵⁷ Thus, Villanueva concluded, “under the pretense of executing a legitimate action by the employer, the actual goal is that the [collective] pacts pursue is unfair and illicit: to threaten the right of freedom of association and the free exercise of the right to collective bargaining, both of which are guaranteed by international conventions and by national legislation.”⁵⁸

International observers have reached similar conclusions about the role of solidarist associations in Honduran labor relations. In 1992, the ILO Committee of Experts considered a complaint against Honduras involving the establishment of solidarist associations at Ricardo Trujillo’s then-employer, Polymer Industrial, and a number of other companies in the country. The Committee noted that at Polymer Industrial the establishment of a solidarist association coincided with numerous incidents of anti-union discrimination, including suspensions of union leaders and firings of dozens workers for attempting to form unions at the company’s non-union plants.⁵⁹ Citing its previous findings in regard to *solidarismo* in Costa Rica, the Committee concluded that Honduran solidarist associations also interfered with workers’ right to organize, in part, because they are “authorized to conclude . . . collective agreements” and they include among their representatives administrators “appointed by the enterprise.”⁶⁰

Having reached this conclusion with the regard to the activities of solidarist associations, the Committee “expressed the hope that the [Honduran] [g]overnment will urgently take the legislative and other measures necessary to prohibit solidarist associations from exercising trade union activities, particularly collective bargaining.”⁶¹ So while the Honduran labor code may permit collective agreements of the type that Russell has adopted, it should be noted that this is a law that the ILO’s leading experts on freedom of association said – more than seventeen years ago – should be changed to comply with international labor standards. The assessment of international observers regarding the role of solidarist associations in Honduras has not changed since that time. In its most recent Human Rights Report on Honduras, the U.S. State Department, after discussing

⁵⁶ See, Historia de Honduras, *supra*, n. 12.

⁵⁷ Villanueva, *supra*, n. 3.

⁵⁸ Id.

⁵⁹ See, ILO CFA, *supra*, n. 2.

⁶⁰ Id.

⁶¹ Id.

the harsh retaliation of Russell, Fruit of the Loom, and other employers against workers who attempted to organize in the country's export processing zones (EPZs), noted that "[i]n the absence of unions and collective bargaining, several companies in the EPZs instituted solidarity associations that, to some extent, functioned as company unions for the purposes of setting wages and negotiating working conditions."⁶²

D. "Collective Pacts" Under Honduran Law

Moreover, even though the Honduran labor code provides for recognition of some "collective pacts" between employers and groups of non-union employees, this does not mean that all such agreements are necessarily legal. Honduras has ratified ILO Convention 98, and, under the country's constitution, such conventions attain the status of national law and prevail over the latter in any conflict.⁶³ Additionally, by its language, the specific directive in Convention 98 against employer interference with worker organization is plainly self-executing.⁶⁴ Therefore, Convention 98's prohibition on "acts...designed to promote the establishment of workers' organizations under the domination of employers," must prevail over any contrary statute.⁶⁵ "Collective pacts," then, are *not* lawful if they constitute such employer interference, which is clearly the case with the scheme Russell has implemented here.

Despite their apparent violation of international convention and, by extension, Honduran law, the willingness of the Honduran Labor Ministry to register these "collective pacts" is not surprising. The Labor Ministry's overall enforcement record with respect to worker rights protections is extremely poor. This has been evidenced throughout the Russell case, beginning with the failure of the Ministry to take any action in 2007 in response to the successive waves of illegal mass firings carried out at Jerzees de Honduras and Jerzees Choloma. Indeed, it is the failure of the Honduran government to faithfully enforce the national labor code and applicable international law that require the application of private codes of conduct to the Honduran apparel sector. The registering of the pacts with the Labor Ministry does not prove their legality any more than the Ministry's persistent tolerance of illegal firings of trade unionists by Russell and other employers confers legal or moral legitimacy on those actions. The registration by the Honduran government of management-imposed "collective pacts" whose benefits are withdrawn if workers exercise their right to unionize reflects the government's ongoing failure to protect the rights of Honduran workers and, in particular, its noticeable

⁶² U.S. State Department, *supra*, n. 2.

⁶³ See, Constitution of Honduras, Ch. 3, Arts. 16, 18.

⁶⁴ See, ILO Convention 98 Art. 2 ("In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organizations . . . shall be deemed to constitute acts of interference within the meaning of this Article."); Virginia Leary, *International Labor Conventions and National Law* 105 (1982) (noting that "provisions [of ILO Conventions] . . . easily classifiable as self-executing" are "precise and imperative").

⁶⁵ ILO Convention 98, Art. 2.

deference and solicitude toward Russell and Fruit of the Loom as the country's largest private sector employer.⁶⁶

V. Conclusion and Recommendations

Russell's "collective pact" and "delegate system" represent a form of employer interference in worker organizing that is clearly prohibited under international labor standards, standards the government of Honduras is obligated to uphold as a signatory to relevant ILO conventions.

That these mechanisms were introduced by Russell, itself, and not independently by its employees, has been both acknowledged by Russell and attested to by workers themselves. Russell states that it "established" the "delegate system," and that the company is "fostering involvement and engagement of . . . employees in voicing their ideas" through the "collective pact." According to workers, the pacts were simply presented to them by management for signature rather than being the product of any independent initiative taken by employees.

The company's sponsorship of this program in its remaining non-union plants directly follows the company's execution of an eighteen-month effort to destroy independent worker representation at two other facilities in the same country, culminating in the retaliatory closure of the Jerzees de Honduras plant, which was announced in same time-frame as the introduction of the "collective pacts." Under such circumstances, Russell's current efforts appear to represent an attempt to deliver a final *coup de grace* to workers' efforts to organize in its Honduran plants, by ensuring that the only collective agreement Russell will have to abide by is one that the company itself has imposed, and that the only worker body Russell will have to deal with is the "delegate system" the company itself has established.

Russell's creation of a company-dominated employee representation system in its remaining Honduran plants represents another serious instance of the company denying meaningful exercise of freedom of association to its workforce. The timing of Russell's introduction of this scheme, as the coda to its campaign to eliminate the only independent worker organization at any of its factories, clearly reveals that hostility toward exercise of associational rights continues to animate the company's conduct.

Addition remedial actions, beyond those the WRC has previously outlined, are necessary to reverse the further damage to workers associational rights resulting from Russell's efforts to introduce company unionism into its Honduran plants. The company should take the following steps:

⁶⁶ See, Manual Zelaya Rosales, Letter to John Holland (Mar. 11, 2009) (Letter from President of Honduras to CEO of Fruit of the Loom, citing company's "genuine commitment and social responsibility, [which are] examples worth imitating by other companies."), http://www.russellsocialresponsibility.com/pages/russell_opinions.html.

- Inform all employees that all “collective pact[s]” currently in place are void and were improperly instituted.
- Inform all employees that the company pledges, instead, to negotiate in good faith authentic collective bargaining agreements with any trade union duly formed by its employees, and to include in such agreements, if requested, any and all benefits formerly provided under the pacts.
- Inform the Honduran Ministry of Labor in writing of the termination of these “collective pacts” and post copies of the same within its plants.
- Inform all employees that all “delegate system[s]” currently in place are no longer recognized by the company, and that the company agrees to, instead, recognize and deal in good faith with any trade union formed by its employees and such union’s designated representatives.
- Agree to otherwise maintain a position of strict noninterference regarding its workers’ selection of any form of organization or representative, and to inform its employees and management of this policy.
- Inform all supervisory and other confidential employees that they may not be involved in any way in the formation or functions of any form of worker organization, and will be disciplined if they violate this rule.
- Agree to permit the WRC and/or its designees to conduct informational sessions for all employees, on company time, explaining the distinctions between solidarist associations and independent worker organizations and the legal status and protections for workers in the formation of the latter.

Despite our disappointment that Russell continues to actively violate its employees’ rights to freedom of association, we remain hopeful that the company will eventually decide to reevaluate and reform its practices in this area. When that time comes, the WRC stands ready to collaborate with Russell and other stakeholders to achieve a resolution that restores and protects the rights of the company’s workers in Honduras.