



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT re
GILDAN DORTEX (DOMINICAN REPUBLIC)**

INTERIM REPORT

January 20, 2011

This report outlines the interim findings of the Worker Rights Consortium (“WRC”) with respect to allegations of labor rights violations by Gildan Activewear at its Gildan Dortex textile facility in Guerra, Dominican Republic. Gildan Activewear, a Canadian apparel company which is a provider of blank garments to a number of university licensees, owns and operates the Gildan Dortex plant. The plant currently employs about 1,000 workers.

The WRC commenced an inquiry into labor practices at Dortex in August 2009 in response to a complaint by the Dominican labor federation *Federacion Dominicana de Trabajadores de Zonas Francas, Industrias Diversas y de Servicios* (“FEDOTRAZONAS”) alleging violations of workers’ right to freedom of association. The WRC’s inquiry has entailed substantial fact gathering, including offsite interviews with forty-five Dortex employees, the review of a large volume of documentary evidence, meetings and other communications with Gildan management,¹ a union membership verification conducted by the Fundación Laboral Dominicana (“FLD”), a Dominican non-governmental organization, which the WRC commissioned jointly with the Fair Labor Association (“FLA”), and ongoing monitoring of events at the factory from the date of the original complaint to the present.

On the basis of this evidence, the WRC has identified serious and ongoing violations by Gildan of workers’ associational rights. These violations include, most significantly:

- Systematic threats of termination and blacklisting of workers by Gildan management that were designed to destroy efforts by workers to organize an independent union;
- When these actions failed to thwart the unionization drive, collusion by Gildan management with an unrepresentative labor organization to put in place an illegitimate collective bargaining agreement, as a means of avoiding having to bargain with workers’ freely chosen representatives;
- The retaliatory dismissal of seven union members, and the attempted retaliatory dismissal of a union leader, based on transparently pretextual grounds;

Evidence shows that these different transgressions were elements of a single, ongoing campaign by Gildan to deny workers the right to be represented by a union of their choice.

¹ These meetings and communications were with Gildan executives from the company’s headquarters in Montreal, not with management at Gildan Dortex. Gildan refused repeated requests from the WRC for the opportunity to interview the local managers.

Pursuant to these findings, the WRC has engaged in extensive dialogue with Gildan's corporate management, with the goal of bringing the company into compliance with Dominican law, international labor standards and applicable codes of conduct. Unfortunately, Gildan has failed to take the steps necessary to remedy its serious violations of workers' associational rights and, despite promised remedial action, has instead committed further violations.

The WRC's key findings are as follows.

Gildan Coerced Workers to Resign from the FEDOTRAZONAS-affiliated Union

On Wednesday August 5, 2009, a group of Gildan Dortex workers notified factory management that the workers had established a labor union at the factory. The union, which is affiliated with FEDOTRAZONAS, the country's leading labor federation in its free trade zones, is named *Sindicato de Trabajadores del Empresa Gildan* (hereinafter, "FEDOTRAZONAS/SITRAGILDAN").

Beginning on the same day, the company called the union's founding members, one-by-one, into meetings with managers and outside consultants and proceeded to interrogate and threaten them. Managers and their hired consultants told these workers that their decision to organize meant they were trying to hurt the company and/or made them "an enemy" of the company, that Gildan would not tolerate a union at the plant, and that they would be fired if they persisted in their union activities. Gildan told workers that they must resign from the union.

In some cases, managers threatened not only to terminate the workers, but also to ensure that they would be unable to find other employment – i.e., that they would be blacklisted and therefore unable to support their families. In the meetings, Gildan managers also interrogated workers at length, demanding to know which other workers were involved in the union. At the close of each meeting, management demanded that the worker sign a letter resigning from the union and/or a blank sheet of paper on which such a letter would be written. All, or nearly all, of the twenty founding union members were forced to participate in such meetings, with some workers required to attend two or three of these sessions.

As a result of this pressure, within one week of the workers notifying Gildan of the union's establishment, fifteen of its twenty founding members had signed letters of resignation from the union, all at the direct instruction of Gildan managers.

These actions constitute systematic and grievous violations of workers' right to join a union free of management interference or reprisal, as protected by Dominican law,²

² Article 333 of the Dominican Labor Code bars employers from engaging in a range of practices that impede workers' efforts to join together in trade unions. Such conduct includes, *inter alia*, prohibiting workers from joining unions as a matter of company policy; engaging in retaliation against workers because of their participation in a trade union; and using force, violence, intimidation, threats or other

international law,³ university codes of conduct, and Gildan's own corporate code of conduct. The WRC's central findings were subsequently confirmed by Accordia Global Compliance Group, a firm hired by Gildan executives in Canada to investigate the alleged violations. In meetings with the WRC, senior Gildan executives admitted that the company's Dominican managers had committed these abuses.

Based on these findings, the WRC recommended to Gildan that the company take the following remedial actions:

- require its factory managers to immediately cease their campaign of threats and pressure against the workers who had formed the union;
- identify and discipline the managers responsible for this misconduct;
- issue a statement to the factory's workers pledging to respect their right to unionize going forward;
- cooperate with a process of training for both workers and management on workers' rights of association;
- recognize the union;
- enter into an agreement with the union ensuring reasonable access to the facility for union representatives to speak with employees and represent union members.

Gildan agreed to take several of these corrective actions. However, the only one whose implementation the WRC has been able to verify was the company's issuance of a statement pledging to respect workers' associational rights going forward.

Gildan also agreed in principle to institute training for workers and management on freedom of association, to be conducted by a credible, outside organization. But despite the WRC's repeated attempts to follow up with the company on this commitment, Gildan never implemented such a program. Nor did Gildan meaningfully discipline the managers responsible for the antiunion campaign – who included, the company acknowledged, senior country-level managers – or engage in meaningful dialogue with FEDOTRAZONAS regarding access to the factory.

Most importantly, while exposure of the company's campaign of threats and intimidation led to the cessation of systematic and explicit threats of termination and blacklisting by Gildan managers, the WRC continued to gather evidence of other forms of interference by the company with workers' efforts to organize.

As Gildan employees persevered in their unionization efforts, and FEDOTRAZONAS/SITRAGILDAN recruited new leadership to replace the employees Gildan had coerced into resigning, the company continued to subject employee union leaders to harassment

forms of coercion against workers with the aim of obstructing the exercise of worker rights protected by the Labor Code.

³ Convention 87 (Freedom of Association and Protections of the Right to Organize) and 98 (Right to Organize and Collective Bargaining) of the International Labor Organization ("ILO"), both of which have been ratified by the Dominican Republic, require that employers respect the rights of workers to associate freely in trade unions and bargain collectively on terms and conditions of employment.

and surveillance of their activities. As discussed in a later section of this document, Gildan also terminated union members, citing justifications that the WRC found to be baseless.

However, as outlined below, Gildan's most egregious act in suppression of its workers' exercise of associational rights was its conclusion of a collective bargaining agreement with an unrepresentative labor union which had no legal authority to enter into such a contract. Gildan signed this agreement with *Sindicato Autonomo de Trabajadores y Empleados de la Empresa Gildan Activewear Dominican Republic Textile Company Inc.* ("SITRAGIL"), a union affiliated to the *Central Institucional de Trabajadores Autonomos* ("CITA"), a small labor federation of dubious reputation. Gildan signed the agreement based on SITRAGIL's assertion that it represented a majority of the factory's workers – a claim that was patently fraudulent and which Gildan failed to make a serious attempt to verify.

Gildan Signed a Labor Agreement with an Unrepresentative Union in Order to Block Workers' Efforts to Bargain Collectively through Their Chosen Representatives

In early September 2009, within a month after Gildan's campaign of intimidation against FEDOTRAZONAS/SITRAGILDAN was exposed, and after it was clear that the union had survived this onslaught, another labor organization suddenly appeared at the factory. This body was affiliated with CITA, which has been charged by the country's mainstream labor federations with acting as a management-supported spoiler of independent worker organizing,⁴ a practice known as "yellow" or "parallel" unionism. The U.S. State Department reported on this practice in its most recent human rights report on the Dominican Republic, which cites domestic NGO sources as stating that "companies routinely attempted to create 'yellow' or company backed unions in an effort to dilute the worker union's power."⁵

CITA's track record is instructive. In 2007, workers sought to form a FEDOTRAZONAS-affiliated union at a bottling facility for "Kola Real" soft drinks, located in Santiago Rodriguez, and owned by San Miguel Industries of the Caribbean. Workers' efforts were met with intense resistance and unlawful retaliation by the company's management. Less than a month after FEDOTRAZONAS moved to initiate collective bargaining with Kola Real, a CITA-affiliated union suddenly appeared, claiming to represent workers at the factory. Kola Real's management and CITA quickly signed a collective bargaining agreement. Management then claimed that this agreement preempted any negotiations with FEDOTRAZONAS, effectively thwarting its workers' organizing efforts. CITA's actions at Dortex bear a striking similarity to its actions at Kola Real.

⁴ *Confederación Autónoma de Sindicatos Cristianos*, *Consejo Nacional de Unidad Sindical*, and *Confederación Nacional de Trabajadores Dominicanos*, "Year in Review: 2009."

⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Report: Dominican Republic*, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136110.htm>

Gildan executives were warned repeatedly, by multiple parties, about CITA's history and about the company's obligation to ensure that any claim, by either union, to represent a majority of workers had to be independently verified. FEDOTRAZONAS/SITRAGILDAN wrote to Gildan cautioning the company against negotiating a collective bargaining agreement with the CITA-affiliated union (hereinafter, "CITA/SITRAGIL") on the grounds that the latter did not represent a majority of the factory's workforce. The WRC, along with the AFL-CIO Solidarity Center, FLA, the International Textile, Garment, and Leather Workers Federation (ITGLWF), and Maquila Solidarity Network (MSN), subsequently expressed concerns to the company about the legitimacy of the CITA union. The WRC told a Gildan executive, in a face-to-face meeting, that factory management was likely involved in CITA/SITRAGIL's emergence at the factory and that Gildan had an obligation to treat any majority claim by CITA/SITRAGIL with appropriate skepticism.

Nevertheless, without informing its workforce or any outside stakeholders, including the WRC and FLA, Gildan management officially accepted CITA/SITRAGIL's claim, made in late January 2010, that it represented a majority of Gildan workers. Gildan failed to pursue any independent verification of this claim. Gildan then proceeded to negotiate a collective bargaining agreement with CITA/SITRAGIL between February 11 and 26, 2010.⁶ The agreement was signed on March 1, 2010.

Despite the fact that Gildan was in regular communication with the WRC and the FLA throughout January and February 2010, the company did not inform either organization of the decision to recognize CITA/ SITRAGIL as the sole bargaining representative of the workers and to commence negotiations – even though this decision had enormous implications for the associational rights of workers at the factory. Instead, Gildan waited until the night of Saturday, February 27, after negotiations had concluded, and less than forty-eight hours before the collective bargaining agreement was signed, at which point the company sent an email message⁷ to the WRC and FLA. By concealing its actions until that point, Gildan ensured that the objections the monitoring organizations were certain to make could not be lodged until the collective contract was a *fait accompli*.

A crucial implication of the collective bargaining agreement between CITA/SITRAGIL and Gildan is that it has allowed Gildan to claim that the company cannot now recognize FEDOTRAZONAS/SITRAGILDAN as the workers' bargaining representative, so long as the contract is in effect. Gildan has repeated this claim for the past ten months. Notably, the contract itself, while it does include some meaningful increases in compensation, is weaker than the agreement achieved by a FEDOTRAZONAS-affiliated union at Hanesbrands' T.O.S. Dominicana plant in Bonao – the only unionized textile plant in the Dominican Republic and the obvious precedent for any legitimate negotiation

⁶ As reported by Fundación Laboral Dominicana, based on their review of minutes of the negotiation process (see footnote 9).

⁷ Electronic mail message from Corinne Adam of Gildan to Scott Nova of the WRC and other recipients, sent February 27, 2010, 6:29 p.m.

at Gildan Dortex.⁸ The contract also includes a highly incriminating provision, discussed below, concerning payments by Gildan to CITA and SITRAGIL.

Following Gildan's announcement that it had signed an agreement with CITA/SITRAGIL, the WRC and FLA strongly criticized Gildan's actions and commissioned an independent review of CITA/SITRAGIL's claim of majority representation, which was carried out by FLD. FLD conducted its research from March 22 to 27, 2010 and issued its final report on April 8.⁹

Based on a review of relevant documentation and interviews with workers, union leaders, and management, FLD determined that CITA/SITRAGIL's majority claim was a fraud. FLD's inquiry revealed that a large majority of the CITA/SITRAGIL membership cards purportedly signed by workers had actually been forged by the union. FLD found that of a randomly selected sample of fifty workers that CITA/SITRAGIL claimed were its members, thirty-one (more than 62% of the total) stated that they had never joined CITA/SITRAGIL or signed a membership card and that their signatures must have been forged. Five of these stated that they were, in fact, members of the other union, FEDOTRAZONAS/SITRAGILDAN. These findings were consistent with substantial worker testimony gathered by the WRC, which also indicated that many of the membership cards submitted by CITA/SITRAGIL, purportedly on workers' behalf, contained forged signatures.

In the face of this report, Gildan admitted that CITA/SITRAGIL's majority claim was invalid and that the company therefore should never have signed a contract with CITA/SITRAGIL.

Gildan's sole defense of its actions is the company's contention that it accepted the union's majority claim in good faith, based on what it thought was an adequate review, and that it was therefore an unwitting victim of the union's fraudulent actions. While the damage to workers would be no less, this assertion, if true, would lessen Gildan's culpability.

⁸ For example, the Hanesbrands-FEDOTRAZONAS agreement provides for production-related bonuses above those previously in place at T.O.S., a sizable employer contribution to a no-interest worker credit cooperative, open to all workers, and substantial maternity and education benefits beyond those stipulated by law. By contrast, most of the benefits above legal minimums provided in the Gildan-CITA contract involve relatively rare occurrences such as the death of an employee or a family member, and therefore benefit relatively few workers, or accrue directly to CITA and SITRAGIL, such as employer funding for CITA officers' international travel. There are wage increases in both contracts, though the overall value of these increases for production workers is greater in the case of the Hanesbrands-FEDOTRAZONAS agreement.

⁹ See "Report on Review of the Negotiation of a Collective Agreement between Gildan Activewear Dominican Republic Textile Company Inc (Dortex) and SITRAGIL in the Dominican Republic," prepared by Fundación Laboral Dominicana Inc., April 8, 2010, <http://www.workersrights.org/Freports/Gildan4-8-10.pdf>

The evidence, however, points to precisely the contrary conclusion: that Gildan engaged in an intentional act of collusion with a non-representative worker organization, with the aim of thwarting workers' exercise of their right to organize and bargain collectively.

The evidence in support of this conclusion is overwhelming:

First, Gildan displayed, through its systematic threats of termination and blacklisting directed against the leaders of FEDOTRAZONAS/SITRAGILDAN, intense animus towards its employees' efforts to unionize, and a willingness to go to great lengths, including violating the law, to thwart unionization.

Second, CITA has an established history of colluding with other employers in the same circumstances, for the same ends, and using the same means. Exactly as in the Kola Real case, CITA appeared at Gildan during a worker organizing effort that was supported by FEDOTRAZONAS and fiercely resisted by the employer; was soon recognized by the employer as the workers' exclusive representative; and then swiftly signed a collective bargaining agreement – allowing the employer to claim that it is now legally prohibited from bargaining with the FEDOTRAZONAS-affiliated union. Evidence that Gildan's bargaining partner, CITA, has a practice of colluding with employers to obstruct worker organizing supports the conclusion that CITA and Gildan have engaged in a similar form of collaboration in the present case.

Third, the timing of CITA's current appearance at Gildan Dortex suggests that factory management played a role in bringing CITA into the factory. CITA appeared at Gildan Dortex after factory management learned of the FEDOTRAZONAS/ SITRAGILDAN organizing effort and, more specifically, shortly after it became clear that management's campaign to destroy the union had failed. CITA had no prior history at the factory and there is no evidence that CITA has engaged in any worker organizing prior to late August 2009. Moreover, workers testified that the CITA organizers appeared to have access to surprisingly large financial resources. It defies credulity to believe that CITA's emergence at this juncture is mere coincidence. This sequence of events is, in actuality, common in the global apparel industry, where employers routinely respond to worker union organizing by facilitating the emergence of alternative, management-influenced union bodies, with the goal of preempting authentic worker self-organization and collective bargaining.¹⁰

Fourth, as discussed above, Gildan accepted CITA's assertion that it represented a majority of Gildan Dortex workers without any independent assessment of this claim – something the company had been advised was essential. The contrast between Gildan's credulity vis-à-vis the CITA/SITRAGIL majority claim and its reaction to the organizing efforts of FEDOTRAZONAS/SITRAGILDAN is instructive. Gildan was so hostile to the

¹⁰ A recent example in Honduras is the practice by major apparel manufacturers, of signing "collective pacts" with employees at their factories in the aftermath of efforts by workers to organize a labor union at the company's Honduran operations. *See, e.g., WRC, Assessment re Rights of Association of Russell Athletic and Fruit of the Loom Employees in Honduras: Analysis of "Collective Pacts"* (Jun. 19, 2009), <http://www.workersrights.org/university/memo/Russell.pdf>.

latter union that it launched a systematic campaign of threats and intimidation as soon as it learned of the union's presence in the factory – not only availing itself of legal means to discourage unionization, but repeatedly breaking the law in its zeal to eliminate the union presence.

Gildan adopted a radically different posture, however, towards CITA/SITRAGIL. Although the company knew it had the legal right to insist that CITA/SITRAGIL prove the majority claim through an independent review, Gildan, by its own admission, did no more than look at the list of members claimed by CITA/SITRAGIL and simply confirm that the workers on this list were actually employees of the factory.¹¹ Gildan, a company which had less than six months earlier demonstrated intense animus toward legitimate unionization, thus accepted, without serious contest, a union majority claim which imposed the very obligation to bargain that Gildan had sought to nip in the bud when it involved a legitimate union.

Fifth, Gildan's failure to inform either its own employees or the monitoring organizations of its acceptance of the majority claim and the commencement of bargaining, until hours before a contract was signed, further supports the conclusion that Gildan's dealings with CITA were expressly calculated to preempt genuine collective bargaining. As noted, these organizations had explicitly warned Gildan that any majority claim had to be independently verified and had expressed deep concern about the legitimacy of CITA. Gildan executives were well aware that the WRC and FLA would object strenuously to the company's decision to accept the CITA/SITRAGIL majority claim without independent review and would insist that such a review be conducted before any contract was negotiated or signed. Gildan had never had any difficulty conveying information to the WRC and FLA in a timely fashion when it wished to do so. The only plausible explanation for Gildan's decision to conceal its acceptance of CITA/SITRAGIL's majority claim and to reach a contract agreement in secret is that the company wanted to get the contract signed before intervention by monitoring organizations could stay its hand.

Sixth, the speed with which Gildan and CITA/SITRAGIL negotiated the collective bargaining agreement points to collusion. As noted above, the negotiation took fifteen days. This is in sharp contrast with the norm in the Dominican Republic apparel sector (and in the global apparel industry generally), where negotiations on a first union contract

¹¹ By its own acknowledgement, Gildan took no measures to test the veracity of CITA/SITRAGIL's majority claim beyond counting the number of names the union claimed as members and confirming that these were names of actual employees. Since it is easy for an unscrupulous organization to find out the names of workers and place their names on such a list without their consent (indeed, CITA/SITRAGIL's actions demonstrate the viability of this means of fraud), a mere review of names is obviously a grossly inadequate verification process. Gildan does assert that CITA/SITRAGIL had, in the weeks prior to the late January majority claim, submitted two earlier claims, which Gildan says it rejected on the grounds that the lists submitted did not encompass the names of a majority of Gildan employees. This information, however, is not strongly exculpatory. It would not have made sense for Gildan to accept a list of workers that, on its face, falsified the majority claim it was supposed to document, since the company would have recognized the impossibility of mounting a remotely credible defense of such a decision.

are normally protracted and contentious. For example, the first collective bargaining agreement at Hanesbrands' T.O.S. Dominicana factory took five months to negotiate.

Seventh, the contract includes an illegal clause concerning union dues that provides valuable insight into the nature of the relationship between Gildan and CITA/SITRAGIL. Under this provision, instead of union dues being paid by CITA/SITRAGIL's members, Gildan agreed to pay money to the union out of its own pocket. This practice violates ILO Convention 98,¹² as it defines CITA/SITRAGIL's relationship to the company in terms of patronage, rather than worker representation.¹³ The interests of workers and employers are sometimes in conflict. The job of a legitimate union is to represent the former, not the latter. For this reason, legitimate unions seek financial support from their members, not from their members' employer. In addition, this represents a violation of the Dominican labor code, which specifically prohibits an employer sustaining a union through financial means.¹⁴

The available evidence thus strongly supports the conclusion that Gildan was not a naïve and unwitting victim of CITA/SITRAGIL's fraudulent representations, but rather an active partner with the latter in intentionally depriving workers of their right to freely choose their union representatives.

By signing a collective contract with a union that did not represent a majority of workers and therefore had no legal authority to act, and by doing so for the express purpose of preempting legitimate collective bargaining, Gildan violated the associational rights of all Dortex employees who were not members of CITA/SITRAGIL (i.e., most of the workforce). Under international labor standards, an employer's interference with workers' ability to freely choose their own representatives for purposes of collective bargaining constitutes a clear violation of freedom of association.¹⁵

The violations are twofold:

¹² ILO Convention 98 ILO Convention 98, 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.”).

¹³ The ILO Committee on Freedom of Association has noted the conflict of interest posed by direct financial subsidies from employers to organizations that purport to represent the interests of their employees. *Cf.* ILO Committee on Freedom of Association *Digest of Decisions* (2006) ¶ 874. (noting, in the context of employer contributions to so-called “solidarist associations,” that “measures [by employers] designed to . . . support workers' organizations by financial and other means” may constitute acts of interference with freedom of association).

¹⁴ Dominican Labor Code, art. 333.

¹⁵ ILO Convention 87, art. 1 (guaranteeing workers “the right to establish and . . . join organizations of their own choosing.”). This right is violated when an employer or government discriminates in favor of one labor organization over another. *See*, ILO Committee on Freedom of Association, *Digest of Decisions* (2006) (“ILO CFA Digest”) ¶ 343 “[E]mployers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities.”).

- Workers' wages and conditions are now defined by a contract which was agreed, on workers' behalf, by an entity that did not represent workers or their interests;
- The existence of this contract is now a major and ongoing obstacle to workers' exercise of their associational rights, because Gildan has taken the position that it cannot recognize and bargain with another union, even if freely chosen by a majority of workers, during the three-year term of the contract. As a practical matter, it is unlikely that the ongoing organizing drive by FEDOTRAZONAS/SITRAGILDAN can survive until March 2013.

Because of both the severity of their impact (they have the potential to effectively destroy the associational rights of Gildan Dortex workers) and the breadth of that impact (affecting all members of the workforce who are not CITA/SITRAGIL members), Gildan's actions constitute an especially severe breach of the company's labor rights obligations under applicable law and codes of conduct.

Moreover, even if, contrary to the weight of the evidence, Gildan did not actively collude with CITA, the company nevertheless had a responsibility to seek an independent and objective verification of CITA/SITRAGIL's claim to represent a majority of the workforce, before recognizing the union as the exclusive representative of Dortex employees. Where majority status enables a union to bargain a labor agreement on behalf of the entire workforce, and especially where a contest between unions is taking place, a claim of majority status should be subjected to independent and objective verification by a neutral body. This principle is supported by international labor standards,¹⁶ best practices in the Dominican apparel export industry,¹⁷ and commitments Gildan itself made to the WRC and other stakeholders in late 2009 with respect to the present case.

Gildan Has Continued to Defend the Contract with the Fraudulent CITA Union Despite Pledges to Remedy Violations of Freedom of Association

The WRC has engaged in extensive dialogue with Gildan to press the company to remedy its violations of workers' associational rights. This engagement, which has frequently been carried out jointly with the FLA and MSN, has not led to Gildan taking necessary remedial action. The bulk of our engagement has centered on remediation of the violations of workers' freedom of association that resulted from Gildan's illegitimate agreement with CITA/SITRAGIL. Most centrally, the WRC has urged Gildan to disavow the fraudulent contract on the simple basis that, because CITA/SITRAGIL lacked the

¹⁶ See, e.g., ILO CFA Digest at ¶¶ 959 (recommending "objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible" (emphasis added)), 967 ("In order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity.").

¹⁷ See, e.g., WRC, *Update: Breakthrough at TOS Dominicana* (memorandum dated Aug. 19, 2008) (citing "verification of the union's majority status [that] ultimately led to . . . negotiations that culminated in the [initial union] contract"), <http://www.workersrights.org/university/memo/081908.html>.

legal authority to negotiate as the exclusive representative of the Gildan Dortex workers, the agreement is invalid on its face.¹⁸

Gildan has acknowledged to the WRC and FLA at various points that CITA/SITRAGIL did not truly possess majority support – the basic premise for a valid collective bargaining agreement – and accepts that the agreement should be terminated. The company has, however, refused to disavow the agreement unilaterally, insisting that it is legally prohibited from doing so. Instead, Gildan pledged to make a concerted effort to extract itself from the contract, either by obtaining the consent of CITA/SITRAGIL or through legal action, and also to minimize the impact of the contract on the workforce by not honoring those elements that involve treating CITA/SITRAGIL as the workers' representative.

The company has taken numerous actions that violate this pledge:

A key instance of Gildan's failure to act in good faith is the representations made by the company, in court, in the context of a lawsuit filed by FEDOTRAZONAS/SITRAGILDAN seeking to suspend the collective bargaining agreement. Although the company told the WRC and the FLA that it would not defend the contract in court, the company's lawyers did exactly that. Court records show that Gildan's legal counsel in the Dominican Republic, Jose Cruz Campillo and Marcos Pena, argued in a hearing on May 10, 2010 concerning the lawsuit, that the claim that the contract is invalid was "out of order, baseless and lacking any legal basis to sustain it." The Gildan representatives went on to defend the process by which it signed an agreement with CITA and claimed that the agreement should not be suspended because "the suspension of the collective pact would cause damage and disturbance to the 941 workers" of the Dortex plant and that "the labor climate in the company would be altered by accepting such a perverse petition."¹⁹

Most recently, in a lawsuit filed by CITA/SITRAGIL seeking to enforce the contract, Gildan's lawyers somehow failed to take the steps necessary for the court to consider the FLD report as relevant evidence, despite having ample opportunity and means to do so. Gildan also apparently made no effort to introduce other evidence of the manifest fraud underlying the CITA/SITRAGIL's majority claim. Although the WRC has not yet had an opportunity to review all of the relevant documents from this just-concluded case, a

¹⁸ Under Dominican labor law, a collective bargaining agreement that applies to all employees in a workplace can only be negotiated by a union that represents a majority of those employees. Dominican Labor Code, arts. 107 ("A union, whether of employers or workers, can only conclude collective agreements on working conditions if it is the authorized representative of employers or workers whose professional interests are affected by the collective agreement, in accordance with Articles 108, 109, 110 and 111"), and 109 ("The workers' union is authorized to represent the professional interests of all workers in an enterprise, provided the union counts among its members the absolute majority of these workers."). Similar principles are applied under U.S. labor law, *See, e.g., Int'l Ladies Garment Workers Union v. NLRB (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731, 735 (1961) (upholding, in a case where a collective bargaining agreement was obtained via a false claim of majority status, a Labor Board "order[] [to] the employer to withhold all recognition from the union and to cease giving effect to agreements entered into with the union").

¹⁹ *Sitragildan v. Gildan Active Wear and Sitragil*, 655-10-00051, Labor Court of the Judicial District of Santo Domingo, (May 31, 2010).

review of the judge's ruling, and consultation with local labor law experts, leave little doubt that Gildan's actions reflect bad faith.

Gildan's actions have also been inconsistent with respect to its pledge not to honor certain elements of the contract. On the one hand, Gildan did refrain from making cash payments to CITA/SITRAGIL and has, in some other ways, refrained from validating CITA/SITRAGIL's representational pretensions. On the other hand, at various junctures, Gildan has treated CITA/SITRAGIL as if it were indeed workers' chosen representative. For example, on August 12, 2010, CITA/SITRAGIL was given the opportunity to distribute school supplies to workers on factory premises and to publicize this distribution through the use of a company bulletin board only accessible with management's permission. The use of factory resources indicates that CITA/SITRAGIL was supported in this activity by management. In another instance, factory management, in an attempt to justify a unilateral reallocation of legally required holiday vacation days in December 2010, cited a discussion with CITA/SITRAGIL as evidence that it gave proper notice of this decision to workers, thus treating CITA/SITRAGIL as the legitimate representative of Dortex employees.

Most recently, the company has used the illegitimate contract as a justification for refusing to cooperate with a joint WRC-FLA effort to verify the recent claim by FEDOTRAZONAS/SITRAGILDAN that it represents a majority of the Dortex workforce. In November 2010, Gildan agreed to cooperate with this process,²⁰ but the company subsequently withdrew this commitment. Gildan claims that this reversal of position is warranted because the existence of the contract with CITA/SITRAGIL bars Gildan from bargaining with FEDOTRAZONAS/SITRAGILDAN. This claim is false on multiple levels. First, even if the contract with CITA/SITRAGIL were valid, there would be no legal impediment to Gildan's cooperation with an independent, private review of the claim of another union that it now represents a majority of workers – a reality Gildan implicitly acknowledged when it initially agreed to cooperate with the process. Second, such a determination has relevance apart from prospective collective bargaining. If the majority claim is valid, its public confirmation would to some extent ameliorate the corrosive psychological impact of the illegitimate CBA, by giving workers some hope that their union would ultimately be able to actively represent them.

Gildan's actions vis-à-vis the contract since its illegitimacy was exposed do not constitute a good faith effort to undo the harm the contract has caused.

Firing of FEDOTRAZONAS/SITRAGILDAN Union Members

Gildan has fired seven workers in retaliation for their union activities and, with the same motive, has sought the government's authorization to fire a union leader. One union activist was fired in November 2009 after placing a suggestion in the factory's anonymous suggestion box. More recently, the company fired six more union members

²⁰ As reported to the WRC by the FLA, which has been in direct communication with Gildan concerning the verification process.

and has initiated procedures to terminate a seventh, following a dispute regarding the company policy on the scheduling of Christmas vacation days.

On November 22, 2009, Nelson Concepción, an active FEDOTRAZONAS/SITRAGILDAN member, was fired under circumstances indicating an underlying anti-union motive. Mr. Concepción was previously a member of CITA/SITRAGIL, but resigned his membership and affiliated with FEDOTRAZONAS/SITRAGILDAN, because, he reports, he became convinced that CITA/SITRAGIL was receiving financial support from the company and using dishonest measures in order to affiliate workers. Shortly before his termination, Mr. Concepción had spoken out at a company presentation regarding Gildan's practices with respect to medical leave. He was also criticized by management for using a company computer to type out a brief complaint for deposit in an anonymous suggestion box maintained by the factory. On the day of his dismissal, according to his testimony, he received an anonymous phone call stating that he should "be careful" because the company was looking to fire him because of his union activities.

While management told Mr. Concepción at the time of his termination that his position had become unnecessary (i.e. he was being laid off due to redundancy), no other workers were fired that day and, according to testimony from workers still employed at the plant, he was quickly replaced. On February 3, 2010, Gildan, in response to an inquiry from the WRC, claimed that Mr. Concepción was fired based on his disciplinary record, which is not the rationale the company had provided him. Gildan subsequently failed to respond to WRC requests for access to personnel files needed to test the veracity of the company's claim. The WRC therefore concluded that the motive for the dismissal was retaliatory and recommended Mr. Concepción's reinstatement, with back pay to the date of dismissal. The company refused and Mr. Concepción has, to date, not been offered reinstatement.

In December of 2010, Gildan fired six members of FEDOTRAZONAS/SITRAGILDAN, in the midst of a dispute over the company's policy on Christmas vacation. According to Dominican law, workers are entitled to two consecutive weeks (fourteen days) of vacation over the Christmas holiday period.²¹ In late 2010, factory management announced that workers would only be given seven or eight days of this vacation (depending on the worker's shift) during the Christmas period, with the other week of vacation to be given at some unspecified later date. By law, modification of workers' vacation entitlement may only be made with workers' consent, expressed either individually or collectively.²² Gildan informed CITA/SITRAGIL on November 25, 2010, of the vacation schedule, as if CITA/SITRAGIL were the legitimate representative of the

²¹ Dominican Labor Code, Article 177. Workers are entitled to 14 paid vacation days if they have 1-5 years of work in the company and 18 days after 5 years of work. The vacation can be divided among two time periods if there is an agreement between the workers and the employer, but in no case can the vacations be less than a week.

²² Ibid.

entire workforce.²³ According to worker testimony, the company's actions led to widespread consternation among the workforce.

On November 28, 2010, a worker and FEDOTRAZONAS/SITRAGILDAN leader in the factory's knitting department, Julio Cesar Parra, approached supervisors and said he wanted to discuss the vacation issue with the human resources department. Although he was initially rebuffed, he persisted and a human resources official then came to speak with him. At that point, most of the other workers in the department gathered around to hear the discussion. After a few minutes, workers were ordered to return to their stations, which all of the workers proceeded to do. The length of this entire meeting, according to an internal management report, was twenty minutes.

Gildan deemed the incident an illegal work stoppage and fired seven of the workers who participated in the brief meeting, six of whom are members of FEDOTRAZONAS/SITRAGILDAN. Gildan has also sought permission from the Labor Court to terminate Mr. Parra (such permission is required in his case because, as a member of a union leadership committee, he cannot be dismissed without judicial approval).

Based on the evidence the WRC has reviewed, including testimony from many of the workers in the knitting department, internal company communications, and company productivity reports, the WRC concluded that the firings of the union members and the attempt to fire Mr. Parra were retaliatory in nature and that the justification the company has cited, the alleged work stoppage, is a pretext. This conclusion is based on the following:

- Leaders of FEDOTRAZONAS/SITRAGILDAN had, in the days prior to the dismissals, been vocal in their criticism of the company's actions concerning the vacation issue and had demanded that management rescind its unilateral decision and discuss the issue with worker representatives. Gildan was well aware of the role the union was playing in giving voice to worker opposition to management's actions.
- The same week as the dismissals, Gildan informed the FLA that it was withdrawing its commitment to cooperate with the joint WRC-FLA verification of the FEDOTRAZONAS/SITRAGILDAN majority claim, an indication that the company's position vis-à-vis FEDOTRAZONAS/SITRAGILDAN had hardened.
- There is no evidence that the meeting in the knitting department was an organized work stoppage; all of the credible evidence indicates that it was a spontaneous and brief gathering of workers to discuss their concerns about the vacation issue.
- All of the workers who were later fired had returned to their machines as soon as management so instructed.

²³ See "Minutes of SITRAGIL Meeting" (November 25, 2010) and SITRAGIL memorandum to Vileika Ramirez (November 26, 2010).

- The workers who participated in this brief meeting included a substantial number who were members of each union and a substantial number of unaffiliated workers; however, of the eight workers Gildan fired or has sought to fire, seven (88%) were affiliated with FEDOTRAZONAS/SITRAGILDAN.
- Gildan's disciplinary approach in this case reflected a glaring double standard: it contrasted very sharply with the company's lenient approach to violations of corporate policy, committed by senior managers, which were vastly more serious than the acts of which Mr. Parra and the fired workers were accused.
- Gildan made claims in defense of its actions toward Mr. Parra and the fired workers that were transparently false. For example, the company claimed to the Labor Court that the twenty minute "work stoppage" of November 28, which involved fewer than thirty workers, cost the company just shy of one million pesos (about \$26,000). Had the meeting initiated by Mr. Parra actually harmed productivity in the department, the potential losses, given the brevity of the meeting, would have been a tiny fraction of this amount (less than ten person hours of time were lost, in total). However, a review of productivity figures for the month, posted by management, show that the week the meeting took place was *more productive*, in the aggregate, than the month as a whole. Gildan's claim was not only outlandish, but demonstrably false, based on the company's own production records.

The WRC asked Gildan to reinstate the fired workers, with back pay, and cease its efforts to fire Mr. Parra. The company has refused to do so.

Conclusions and Additional Recommendations

The evidence demonstrates that Gildan has systematically and repeatedly violated the associational rights of its employees at the Dortex facility, by:

- Carrying out a campaign of threats and intimidation by which it sought to stop the FEDOTRAZONAS/SITRAGILDAN organizing drive and eliminate the union from the factory;
- Recognizing as the bargaining representative for the entire Dortex workforce a union that does not represent a majority of the workers, while avoiding the independent review that would have exposed the union's majority claim as fraudulent;
- Concealing – from the workforce, from FEDOTRAZONAS/SITRAGILDAN, and from the WRC and FLA – its decision to recognize CITA/SITRAGIL as a majority union and commence negotiations, in order to evade the pressure for an independent review that it knew would result if its actions were disclosed;

- Signing a collective bargaining agreement with CITA/SITRAGIL, which had no legal authority to sign such a contract, with the intention of preempting genuine collective bargaining and undermining the FEDOTRAZONAS/SITRAGILDAN organizing effort;
- Failing to make a good faith effort, after the illegitimacy of this contract was exposed, to extract itself from the contract and minimize the contract's impact on Dortex workers;
- Refusing to cooperate with an independent review of the FEDOTRAZONAS/SITRAGILDAN union's claim to represent a majority of workers, as a further measure to prevent worker's from obtaining freely chosen union representation;
- Firing employees in retaliation for exercising their associational rights;
- Refusing, at various junctures, to make good on pledges to undertake meaningful remediation of past violations of workers' associational rights;
- Through all of the above-listed actions, carrying out an eighteen-month campaign of anti-union reprisal and legal subterfuge designed to deny the employees of Gildan Dortex their right to choose their own union representation and engage in legitimate collective bargaining.

Gildan is thus in violation of university codes of conduct and will remain in violation until it restores the associational rights of its employees. This requires Gildan to cooperate with the verification of the FEDOTRAZONAS/SITRAGILDAN majority claim, make a commitment that it will bargain with FEDOTRAZONAS/SITRAGILDAN if that claim is verified, and follow through on this commitment. The first two of these actions can and should be taken immediately. Gildan should also swiftly implement the other remedial actions the WRC has previously recommended, as summarized in this document – most urgently, reinstatement of the union members the company has unlawfully fired.

It is crucial to emphasize that the existence of the fraudulent contract is not an acceptable excuse or justification for a continued failure to remediate. The contract is a problem of Gildan's own creation and if the existence of the contract proves to be an insurmountable obstacle to full remediation, then Gildan must rightly bear the consequences, including appropriate sanctions from its business partners in the collegiate apparel sector and from the FLA. In fact, the contract is very unlikely to be an insurmountable barrier. Gildan has various means at its disposal to free itself, including genuine efforts to persuade CITA/SITRAGIL to withdraw, the use of its ample legal resources to make an honest effort to suspend or annul the contract in the Dominican courts, or simply walking away from the contract and defending itself against any subsequent legal jeopardy.

At this point, the fundamental obstacle to effective remediation is that Gildan has no incentive to take the steps necessary to extract itself from the contract with

CITA/SITRAGIL. As long as the contract is in place, Gildan hopes it can use it – as it is presently doing – to justify its refusal to take steps toward recognition of FEDOTRAZONAS/SITRAGILDAN as the workers’ representative. At the same time, by insisting that its hands are legally tied, Gildan has, to date, evaded meaningful sanction by its business partners and by the FLA. We believe the only available means to correct this problem and provide Gildan with a meaningful incentive to take proper action is for the monitoring organizations, Gildan’s business partners, and stakeholders in the labor rights community to use the appropriate means available to them to impose penalties on Gildan – unless and until the company corrects the violations it has committed.