



WORKER RIGHTS CONSORTIUM

To: WRC Affiliate Colleges and Universities
From: Scott Nova, Worker Rights Consortium
Re: Response to FLA report on BJ&B
Date: April 5, 2006

On April 2, the Fair Labor Association posted on its website a [report](#) concerning the labor rights situation at BJ&B. Nike sent this report to universities early yesterday. The FLA circulated the document to universities late yesterday afternoon. Because the report contradicts the WRC's findings with regard to the current situation at BJ&B, several universities have asked the WRC to provide our thoughts on the document.

It is difficult to know how to interpret the FLA report — because the FLA's description of the report's purpose is at odds with the contents of the document, because it is not clear what type of inquiry was conducted by the consultant who prepared the report, and because the report does not appear to consider any of the evidence of labor rights violations that has been brought to light by other organizations. The sources of confusion are as follows:

- 1) The FLA website prefaces the report with a disclaimer stating that the report "makes no judgments nor reaches any conclusions." However, the report itself makes a series of sweeping statements that can only be described as judgments and conclusions. These statements directly contradict findings of the WRC, including our finding that BJ&B's parent company has acted in bad faith and has violated the associational rights of workers. For example, the report states: "Good faith prevailed in the negotiating process between BJ&B and its union." The final sentence of the report states: "Our opinion is that the process of definitive closure of the enterprise BJ&B, S.A., complies with Dominican laws...and that...the rights of workers and of the union have been respected." It is difficult to see how a reader should interpret such statements, other than as conclusions. To complicate matters further, Nike is now circulating the report to universities, and other stakeholders, **without the disclaimer**. Thus, whether or not it was the FLA's intention, the report will likely be read by people on Nike's distribution list as a statement of official findings by the FLA. If the FLA is not prepared to stand behind the statements in the report as credible conclusions based on the evidence, it should retract or otherwise clarify them so as to avoid creating public confusion on the issues.

- 2) The report does not say anything about what research went into its preparation. There are no references in the report to any interviews or discussions with union leaders, union members or individual workers. The General Secretary of the BJ&B union's national federation informed us on April 4 that he was not even aware that the FLA had conducted an inquiry. The only documents specifically cited in the report are a letter from the head of the local union to the government and a resolution issued by the Dominican State Secretariat of Labor. The report makes no reference to any of the communications that have been issued by union leaders that allege malfeasance on the part of BJ&B nor to other crucial documents (for example: agreements relinquishing the right to negotiate that the company required workers to sign in order to obtain legally mandated severance that should have been paid without condition). In fact, the report does not even acknowledge that there is a dispute at the factory, although the dispute is very much in evidence. All of this, combined with the FLA's unusual disclaimer that the report draws no conclusions, suggests that the FLA's consultant was not asked to conduct a comprehensive inquiry. Instead, he appears to have limited his research to conversations with government officials and to a review of government documents and of one letter from the local union head to the government. Nonetheless, conclusions are drawn as if a comprehensive inquiry had been carried out.
- 3) The FLA, in describing the consultant who prepared the report, failed to note that this individual, Milton Ray Guevara, is an attorney representing a major Dominican employer. As recently as two months ago, Mr. Ray Guevara was acting as a representative of Grupo M, the country's largest private employer and one of the largest apparel producers in the region. We respect Mr. Ray Guevara as a former State Secretary of Labor with obvious expertise on Dominican labor law and we have been able to work with him constructively in his capacity as an advocate for Grupo M. However, his employment at Grupo M creates a potential conflict with his role as a labor rights investigator and the FLA should have disclosed Mr. Ray Guevara's industry affiliations — rather than describing him solely as an academic, former government official and "independent consultant."
- 4) The report cites the State Secretariat of Labor's conclusion that the factory has met its obligations under the Dominican Labor Code, but it seems that no effort was made to confirm independently that this conclusion was valid. Labor rights monitoring organizations like the FLA and the WRC exist because governments often fail to faithfully enforce their labor laws. A government seal of approval is not proof of a factory's compliance, until and unless the underlying facts have been shown to corroborate the government's conclusions.
- 5) The report does not address any of the evidence of labor rights violations that has been brought to light over the last several weeks ([here, for reference, is the WRC's analysis of the severance dispute, sent to universities on March 28](#)). It is not clear whether this evidence was for some reason placed outside the scope of the FLA's

inquiry or was simply dismissed without comment by the FLA's consultant. In either case, what appear to be firm conclusions stated in the report cannot be viewed as credible in the absence of any explanation for why a large volume of contrary evidence was ignored.

- 6) The report places great emphasis on a letter from the local union General Secretary to the government, but fails to mention that statements in this letter were contradicted by another letter issued by the same individual, and by numerous communications from other union leaders.
- 7) The disconnect between the situation on the ground and the narrow perspective of the FLA report can be effectively illustrated by juxtaposing the following two facts:
 - A. The FLA report concludes that the union has no objection to the factory's closure and no objection to the manner in which the closure process has been handled.
 - B. Two-thirds of the union leadership committee, virtually every rank-and-file union member, and 60% of the workforce have signed a petition decrying the company's handling of the closure process and demanding that the factory be re-opened.

This petition is not mentioned in the FLA report, nor are any of the numerous other examples of communications from union leaders objecting to the closure and the closure process.

We have proposed a meeting with the FLA in the hope of clarifying these issues. Please let me know if you have any questions or would like to discuss this information.