

Minutes of
WRC Governing Board
January 20, 2006

Attending: Katie Quan, Alejandra Domenzain, Marcella David, Mark Barenberg, Mark Iozzi, Jay Marano, Liana Dalton, Amy VanHeuverzwyn, Emil Totonchi, Doug Shaw, Jim Wilkerson, Jill Esbenshade, Saamir Rahman, Thea Lee and Scott Nova. Jim Brudney attended in part by phone. Also attending in part were Julie Bell-Elkins (University of Connecticut), Joe Ebaugh (University of Maryland), Donald Baker (Baker & Miller PLLC), Sara Wallace-Keeshen (Georgetown University student), Allie Robbins (USAS), Jessica Rutter (USAS), Anne O'Rourke, Nancy Steffan, Bethany Renner, Agatha Schmaedick and Jeremy Blasi.

Minutes and Ratification of a New Board Member: The meeting began with a unanimous vote to approve the minutes of the October 6, 2005 meeting. There was also a unanimous vote to ratify one new Board member: the new USAS representative Amy VanHeuverzwyn (University of Connecticut) who is succeeding Melanie Stratton (University of North Carolina, Chapel Hill) who is departing early due to being out of the country.

Executive Director's and Treasurer's Report: The report began with WRC Treasurer Emil Totonchi stating that the audit committee had reviewed and approved the most recent financial reports. Scott noted that this was his fifth anniversary at the WRC and extended his thanks to all including several original WRC board members who continue to serve including Mark Barenberg, Katie Quan, Jill Esbenshade and Marcella David. Scott reviewed WRC finances including, for the current fiscal year, total projected income of \$1,352,000, plus last year's carry-over surplus of \$25,000, and projected total expenditures of \$1,317,000. Through December, the organization had \$742,000 in income, in accrual terms, and total expenses of \$527,000. The WRC projects that total expenditures for the year will be \$1,055,000, plus \$210,000 in pass through funds for the Turkey project, roughly 5% below initial projections. The independent audit of the WRC's financial records for the 2005 fiscal year is underway and should be completed shortly. In response to a question about donations from individuals, Scott explained that such activities remain passive; it was discussed that board members could play a role and that a small number of major donors could have significant impact.

Scott listed the newest affiliates: the University of Portland, Ryerson University, the College of St. Catherine, and Penn State. He also reported two staff changes: the departure of Lorraine Clewer as Regional Director for Latin America and the Caribbean who did extraordinary work for the WRC; and new staff member, Apoorva Kaiwar as Regional Director for South Asia. Apoorva will be based in Bombay and will work to hire additional local field staff.

Scott also gave an update that, essentially, the Coca-Cola Company has informed the Independent Universities Commission that Coke and its bottlers will not cooperate with the proposed assessment, in the absence of an inadmissibility agreement with the plaintiffs in the litigation pending in U.S. courts. Coke has stated that it is exploring alternatives, and Coke is communicating with individual Commission members.

Scott then gave an update on activities related to government entities. The contract with the City of Los Angeles is in progress with negotiations currently focused on seeking a compromise on indemnification issues so that the WRC and the City would share the burden of any legal defense. San Francisco is working to identify a potential monitoring body and the WRC is a likely candidate; and a presentation was recently made in Toronto to advance discussions with the Canadian school boards. In response to questions, Scott indicated that the WRC would likely not hire any additional permanent staff unless such projects moved from a pilot phase to ongoing programs; that the proposed activities include both investigation and research; that there would be an emphasis on educating workers and worker organizations about the relevant ordinances and regulations and complaint procedures; that government entities may have currently limited knowledge about their production sites; that products such as police uniforms often have much stricter specifications which frequently relate to fewer violations, smaller volumes and a very small universe of manufacturers; that further study is needed to assess if government entity codes will emerge as comparable to university codes; and that ultimate effectiveness may require the development of a consortium of government entities.

Designated Suppliers Program: Scott introduced Donald Baker who, at the request of the University Caucus representatives on the WRC Board, was commissioned by the WRC to conduct a legal review of the proposed Designated Suppliers Program (DSP) and render his opinion as to whether the proposed program conflicts with U.S. antitrust law, and whether, if private parties were to challenge the program on antitrust grounds, such challenges would be likely to succeed. Don is a principal in the law firm of Baker and Miller PLLC, and former head of the Anti-Trust Division of the Department of Justice. Everyone joined in welcoming Don who further described his background, including more than 40 years of experience spanning positions in government, academia (Cornell University) and law practices large and small. Don observed that where the law is murky, facts are critical. Universities and NGOs have no antitrust immunity but their distinctive motives can affect outcomes. In considering the concept of boycotts and antitrust issues, he pointed out that he would consider government challenges very unlikely and private sector challenges the more significant risk, though still unlikely. He explained that licensees could be motivated to try to convert a contract dispute into an antitrust issue for several reasons, including the potential to move to federal court, the potential to involve more parties, the potential for treble damages, and Section 4 of the Clayton Act under which the successful plaintiff may recover “the cost of suit, including a reasonable attorney’s fee” which departs from the normal “American rule” under which each party pays its own costs and the “loser pays/English rule” under which the winning party can recover its attorney’s fees and litigation costs from the loser.

He discussed the definition of a boycott as being a collective refusal that could run the gamut from barefaced coercion (which is illegal) to political boycotts with economic effects (which may be upheld on first amendment grounds) and a middle area populated by self-regulatory organizations (such as the New York Stock Exchange) where issues tend to be decided by the facts and the motives.

Don presented three key facts: that universities' actions in adopting the DSP are based on well-documented humanitarian motives and not the prospect of economic gain; that licensees played no role in initiating the program; and that universities are not competitors as licensors. He stressed that each of these facts are important, but that not all are essential to his overall conclusion.

Don noted that process issues are important in that a regulator cannot be arbitrary. He recommended that the WRC seek to institutionalize some actions that may now be more informal and to prioritize strong record keeping, and offered his assistance in confirming the adequacy of these steps.

Overall, he stated his conclusions that the DSP is consistent with the Sherman Antitrust Act and therefore does not conflict with U.S. antitrust law; and that, while any multiparty program that imposes greater restrictions on licensees and factories will increase their incentives to bring antitrust claims in the event of a legal dispute, the possibility of a successful legal challenge is low.

The first question that followed Don's presentation focused on the differentiation among logo products where there is little crossover among alumni but that the facts may be different among consumers who have no institutional connection such as many foreign consumers. Don replied that it would be valuable to estimate that market because it may not matter much if it's very small, and it was generally agreed that foreign consumers are often less than 1% of sales. Additional facts were raised including the fact that the issue of competition may diminish in relevance given that universities have no profit motive for the voluntary actions contemplated in the DSP and may actually lose money; and the fact that university licensors do not compete with licensees that may be excluded under the DSP.

In the general discussion of the risks from disgruntled licensees or factories excluded by their failure to meet the standards of the DSP, it was reiterated that it is critical to keep good records and not appear arbitrary. Universities could also reduce their risks somewhat by using arbitration clauses and litigation cost clauses.

Don then replied to a series of questions starting with the advisability of getting a business review clearance. He stated that he saw this as potentially advantageous given that the risks of challenge here are from the private sector rather than government, that this would place WRC documents in the public file but that this should not be problematic, that the review could come from government entities other than the Department of Justice antitrust division, and that it would be beneficial to talk first with WRC's government allies and seek their support. He stressed that such a review is not necessary in order to initiate such a program. In response to a question about arbitration and litigation cost clauses, Don cited that ever since a Supreme Court 1985 decision, federal courts have held that an antitrust dispute between two parties that are subject to a general arbitration clause must be submitted to arbitration, if it arises out of or is related to the contract. He stated that arbitration and litigation cost clauses are valuable and permissible devices that could make litigation less attractive to a licensee or its

contingent fee counsel. In response to the question of clarifying that universities act independently on decisions of license termination, Don stressed the need for the parties involved to understand antitrust compliance including the purpose of any consultations, to document that decisions are individually made, and to keep proper records.

The next question discussed any qualitative differences that may exist between the DSP and current university Codes. It was generally observed that just because there has not been a challenge to date to any Code element, this does not guarantee that it cannot ever be challenged; that there is some protection for universities by having humanitarian rather than profit motives; that presenting the rationale behind the proposed 2/3 university logo production requirement could help defuse any appearance of the number being arbitrary; and that the 2 legal opinions sought by the WRC and USAS help advance the rationality of the proposal; and that arbitrariness is not illegal unless it's also anticompetitive.

It was also observed that the nature of factory termination decisions tends to involve much communication so it should be feasible and valuable for the WRC to further formalize its processes and record keeping. There was also general consensus on the value of the ex ante ("beforehand") perspective.

There was general discussion of the board's role to both advance WRC's mission and protect the organization's wellbeing. In response to a question about the risk of suit from foreign factories, Don cited a 1982 statute that, in order to get U.S. court jurisdiction, there must be direct and substantial and reasonably foreseeable risk of injury to competition on the U.S. market. He stressed that maintaining a fair and open process was one of the best protections; and suggested that the creation of the initial list of DSP factories demonstrate front-end openness including openness to licensee recommendations and a possible re-application process while acknowledging that it is rational to cite resource constraints in giving some priority to factories where WRC may have previous experience including inspections.

It was reiterated that USAS did not consult with licensees in the development of the DSP but that licensee input would be sought in its implementation. Don affirmed that the legislative issues (including the 2/3 production and employee representation requirements) had been decided without licensee input but it was valuable to include licensees in the implementation process. He explained antitrust law distinctions between horizontal and vertical agreements.

The next question concerned communication about competition and the importance of not transmitting specific licensee information. It was stressed that it is important for the WRC to avoid being a conduit and, instead, to be sure to talk with each factory about floor prices independently and based on the DSP criteria.

Scott then gave a brief update on activities around the DSP including a series of 4 University Caucus conference calls conducted in November and December that were well attended by representatives from more than 50 universities and colleges. The full minutes of these calls are available at www.workersrights.org, along with the public

statements of several universities concerning the adoption of the policy. Scott also briefly cited research on living wage estimates and other issues prepared by WRC staff and other parties, as well as the legal review conducted by Don Baker. Scott replied to a question about the tenor of the calls by describing them as informational and raising concerns involving legal issues, economic impact, whether universities would have to adopt the DSP, and possible coordination with the FLA. The calls also resulted in advancing the annual University Caucus meeting to February 17 rather than the usual April date.

Scott then introduced a discussion about the WRC's capacity to enforce the DSP. He explained that the WRC has extensive experience on most of the issues involved and, for any new issues, would continue its current practice of recruiting an expert team including local representatives for such assessment. He stated that increasing the incentives for compliance may actually help decrease Code violations, and that the gradual phase-in of the DSP should enhance feasibility. He explained that licensees would play a central role in enforcing the DSP criteria and that this role dovetails well with their demonstrated expertise in cultivating sourcing relationships. Scott estimated that increased field staff (probably doubling the field staff) and funding would be necessary, and that there were likely government and foundation sources for this funding. Scott also stated that it will be feasible to gather the necessary information for the DSP program. He stated that licensee feedback has been cautious and mostly, though not exclusively, negative – and that discussions with licensees have been mostly private and informal to date. It was discussed that Scott and the universities would need to devote time to licensee communications. He suggested that there are transitional issues and questions such as the FLA role, and there would likely be a need for steps similar to those taken at WRC's inception with a technical document circulated to licensees about their obligations and a process for responding to inquiries. It was generally agreed that the DSP criteria is consistent with the WRC's current priorities on issues of Freedom of Association and overtime.

The USAS resolution concerning the DSP was then introduced by USAS representatives. There was discussion of the most recent changes that had been made to the previous draft including adding more language for the introduction and for the text on implementation; and making it explicit that the decision to adopt the DSP will be made by individual universities. Feedback was expressed including some reservations about specific language in the resolution and overall support for the DSP as the most creative proposal to address current market forces. Issues raised included that the DSP had the potential for positive ripple effects beyond the limited number of factories directly involved – with the potential to create a demonstration effect by rewarding good factories rather than watching them close; that the DSP could help address mobility in the industry and be a stabilizing force; that it was critical to move compliance efforts up the supply chain; and that the DSP was needed in order to overcome existing obstacles and enforce university codes effectively. It was reiterated that the current model Code includes living wage language but does not mandate adoption by WRC affiliates.

There was discussion that it is appropriate for the WRC to offer guidance to universities and that guidance is most valuable prior to their decisions – and that making a recommendation to universities is different from a mandate. Issues raised included the proper role of University Caucus representatives as agents and trustees, not getting too far ahead of their constituencies and, at the same time, not failing to show leadership; the importance of having a critical mass of universities support the DSP if it is to go forward; and the fact that there may be no neutral Board position on the DSP because, by not endorsing the proposal, the Board would be sending a message.

This resolution was approved by the board with 14 votes in favor and one abstention (Jay Marano, of Carnegie-Mellon, representing the University Caucus).

The WRC's role is to assist universities and colleges in the enforcement of their Codes of Conduct. In fulfillment of this role, the WRC would like to offer its views to affiliate institutions about the proposed Designated Suppliers Program. The purpose of this statement is to offer guidance to affiliates as they consider the significant changes to existing Code of Conduct enforcement strategies that have been proposed by United Students Against Sweatshops (USAS).

The WRC believes the Designated Suppliers Program proposed by USAS represents the most effective way forward to achieve sustainable Code of Conduct enforcement. The WRC supports the Designated Suppliers Program and recommends its adoption by colleges and universities. Based on extensive legal consultation with experienced antitrust and labor counsel, we are confident that universities can adopt the proposed program and implement it in a manner consistent with applicable U.S. laws.

Based on an assessment provided by the organization's staff, we are confident that the WRC will have the resources and capacity necessary to assist universities with the enforcement of such a policy, as outlined in the USAS proposal, if directed to do so by affiliate institutions.

We recognize that, if universities and colleges decide to adopt the proposed program, an implementation plan will be required that will need to address a range of details. If schools make such a decision, we believe that input should be sought from all relevant parties, including licensees, factory managers, and workers and their representatives, in the development of such an implementation plan.

The WRC is committed to serving as a resource for colleges and universities as they consider the Designated Suppliers Program and its implementation. The WRC will provide information and conduct research on issues of interest to the university community related to the proposed policy. The WRC will also act as a clearinghouse for information on decisions made by universities on the Designated Suppliers Program by posting on the website any public statements provided by affiliate institutions concerning the adoption of the policy.

Scheduling the Next Board Meeting: The next Board meeting was scheduled for May 22, 2006 (Monday). A confirmation email will circulate soon.

Staff Structure and Hiring: Scott and the Board met in Executive Session to discuss these issues.

Updates from Field Staff on Factory Investigations: Updates were provided by Agatha Schmaedick, Field Director/Southeast Asia (updates on regions and countries including

Indonesia, Philippines, Cambodia and China); and Jeremy Blasi, Field Representative (updates on regions and countries including Africa and Latin America).

Adjournment: The meeting was adjourned with thanks to all for their participation.