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**WORKER RIGHTS CONSORTIUM ASSESSMENT
PT KAHOINDAH CITRAGARMENT TAMBUN-BEKASI
(INDONESIA)**

FINDINGS, RECOMMENDATIONS, AND STATUS

APRIL 9, 2019

Table of Contents

I.	Introduction	3
II.	Sources of Evidence.	4
III.	Background.	5
IV.	Findings	7
	A. Coerced Resignation through Unlawful Threats of Denial of Severance Benefits	8
	B. Use of False Representations to Secure Workers' Resignations	9
	C. Coerced Resignation through Workplace Retaliation	10
	D. Elimination of Relocated Bekasi Workers from PT Kahoindah Cakung	11
	E. Hojeon's Motives and its Preference for Temporary Workers	13
	F. Conclusion	14
V.	Recommendations	15
VI.	Factory Response	15
	A. The Response of the Factory Unions to PT Kahoindah Bekasi's Actions	15
	B. Workers' Decision not to Pursue Redress through Governmental Mechanisms.	17
	C. Hojeon's Theories as to Why Every Worker Would Voluntarily Resign	18
	D. Management-Organized Statement Presented as "Letters from Workers"	20
	E. Conclusion	21
VII.	Licensee Response	21
	A. Background and the WRC's Engagement with Nike	21
	B. Issues Raised by Nike	21
	C. Nike's Response to the WRC's Request for Remedial Action	23

I. Introduction

This report presents the WRC’s findings regarding alleged violations of Indonesian law and university codes of conduct related to the closure of PT Kahoindah Citragarment Tambun-Bekasi (hereafter, “PT Kahoindah Bekasi” or “the Bekasi factory”), a supplier of university logo apparel to Nike. PT Kahoindah Bekasi was located in Bekasi, West Java, Indonesia and owned by the Korean multinational garment manufacturer, Hojeon Ltd. (“Hojeon”) which still operates several garment factories in Indonesia.

Nike and its collegiate business partner, Branded Custom Sportswear (BCS), disclosed PT Kahoindah Bekasi as a supplier of university logo apparel from 2009 until the factory’s closure last fall.¹ adidas also sourced collegiate goods from the factory, but disclosure records show that it stopped doing so in 2014. According to U.S. Customs data, PT Kahoindah Bekasi also shipped non-collegiate garments last year to Fanatics, Stance, Paramount Apparel, and Design Resources. PT Kahoindah Bekasi’s sister plant, also called PT Kahoindah Citragarment and located near Bekasi, in the Cakung area of Jakarta, has recently shipped non-collegiate garments to Fanatics, Stance, Athleta, Under Armour, and Oakley. Another Hojeon-owned factory, PT Yongjin Javasuka, supplies university logo apparel to adidas.

At the peak of its operations, PT Kahoindah Bekasi employed close to 3,400 workers; at the time the process of closing the factory began in July of 2018, the number of employees was roughly 2,000.

Workers at the factory had formed unions affiliated with two labor confederations, Serikat Pekerja Nasional (the National Workers Union – “SPN”) and Kongres Aliansi Serikat Buruh Indonesia (the Congress of Indonesia Unions Alliance – “KASBI”). Terms of employment for workers at the Bekasi factory were covered by a collective bargaining agreement between PT Kahoindah Bekasi and the SPN union,² which represented a significant majority of the plant’s workers.

On July 2, 2018, Hojeon publicly announced its intention to close the Bekasi factory and relocate it to Cakung, in the same location as the sister plant. The Bekasi factory completed production of its final orders on October 12, 2018.

An investigation by the WRC, in response to a complaint from PT Kahoindah Bekasi workers, has found that PT Kahoindah Bekasi violated Indonesian law, and by extension university labor standards,³ by failing to pay workers a substantial portion of their legally

¹ In addition, according to disclosure data, as of January 2019, Nike was sourcing collegiate apparel from PT Yongjin Javasuka and non-collegiate apparel Daehwa Leather Lestari PT, both also owned by Hojeon. Nike reports that it has now ended its sourcing relationship with all Hojeon facilities.

² Collective Labor Agreement 2017-2019 between PT Kahoindah Citragarment and the National Workers' Union (“SPN”) of PT Kahoindah Citragarment (“hereinafter the employer company”), both located at Jalan: Inspeksi Kalimalang RT 003 RW 004 Dusun III Kelurahan Setiadarma, Kecamatan Tambun Selatan, Bekasi 17510 (“CBA”) (on file with WRC).

³ See, IMG College Licensing and Nike, “Agreement regarding Labor Standards and Corporate

mandated terminal compensation. Specifically, in the months leading up to its cessation of operations, PT Kahoindah Bekasi unlawfully used coercion and false representations to convince workers to resign from the factory. As a result workers received only half of the severance to which they would have been legally entitled had they remained in the factory's employ and been terminated upon its closure. The WRC estimates that the average financial loss to each worker, as a result of being compelled or misled to resign, was \$1,500 to \$2,000 (21,239,700 to 28,319,600 IDR).

The WRC recommends that Nike ask Hojeon to provide workers with the money they are legally owed and that Nike use its available leverage over Hojeon toward this end. Nike's response to our recommendation – which, as of this writing, is inadequate – is discussed in the final section of this report.

While Nike was the only firm producing collegiate apparel at PT Kahoindah Bekasi, the WRC will also be sharing this report with other brands that currently source from the parent company, Hojeon, to urge them to press Hojeon to pay workers their legally due compensation.

Note to readers: There are several corporate entities that are part of Hojeon Ltd. that figure in this report, including PT Kahoindah Citragarment Bekasi, PT Kahoindah Citragarment Cakung, and Hojeon itself. Hojeon, the parent company, owns and controls the other entities, is responsible for their actions, and will be the ultimate decision-maker as to whether the company provides an adequate remedy to the affected workers. We refer in the report to PT Kahoindah Bekasi and PT Kahoindah Cakung where doing so is necessary to place events at a particular location, when referring to a document that bears the name of one of those entities, or where precision requires the distinction be made. Otherwise, we refer to Hojeon, the parent of both and the responsible party.

II. Sources of Evidence

The findings discussed in this report are based on the following sources:

- Offsite interviews with 71 current and former PT Kahoindah Bekasi workers, 70 non-managerial workers and one supervisor, conducted from May 2018 through the time of writing;
- Interviews with representatives of the two unions present in the factory;
- Correspondence with factory management;
- Review of documents provided by workers and by management, including: written announcements from factory management, form letters of resignation which the management requested workers sign, the factory's collective bargaining agreement with the SPN union, correspondence between factory management and the SPN and KASBI unions, Labor Ministry documents, and other relevant materials; and
- Review of relevant Indonesian laws and jurisprudence.

Responsibility, Schedule I ("IMGCL Labor Code Standards") ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.").

III. Background

On June 28, 2018, PT Kahoindah Bekasi submitted official notice of its intention to close the factory to the Indonesian Ministry of Manpower and Transmigration (“the Labor Ministry”).⁴ The company referenced the impending withdrawal of orders from Nike, a longtime buyer from the plant, as the primary cause of the closure and stated that the business, and its remaining production, would be moved to the location of another operation owned by Hojeon, PT Kahoindah Citragarment Cakung (“PT Kahoindah Cakung” or “the Cakung operation”),⁵ which is located approximately 14 miles from the Bekasi factory, in the Cakung area of Jakarta, and comprises multiple facilities.

Indonesian law obligates companies to pay significant severance and related terminal compensation to employees if workers are dismissed when a factory permanently ceases operations.⁶ The legally required severance payment is doubled when, as in this case, the cessation of operations is not the result of bankruptcy.⁷ The law establishes comparable severance obligations for employers when workers are terminated due to “a change in status” of the employer’s business, including “merger” or “fusion” of the enterprise or its relocation,⁸ which is how Hojeon characterized the closure of the Bekasi factory.

The only exception to the employer’s obligation to pay two-times severance is if the employer offers a worker the opportunity to continue employment, under the same terms,

⁴ See, “Notification of Company’s Intention to Move” (June 28, 2018) (June 28 Notification) (on file with the WRC).

⁵ See, *id.*

⁶ See, Law No. 13/2003, Articles 165 (“[T]he entrepreneur may terminate the employment of the enterprise’s workers/labourers because the enterprise goes bankrupt. The workers/labourers shall be entitled to severance pay amounting to 1 (one) time the amount of severance pay stipulated under subsection (2) of Article 156, reward pay for period of employment amounting to 1 (one) time the amount stipulated under subsection (3) of Article 156 and compensation pay for entitlements according to subsection (4) of Article 156.”) and 156(1) (stipulating severance pay according to the following calculation: “a. Amounting to wage for one month, in the case of the working period being less than one year; b. Amounting to wage for 2 (two) months, in the case of the working period being one year or more than 2 (two) years; c. Amounting to wage for 3 (three) months, in the case of the working period being 2 (two) years but less than 3 (three) years; d. Amounting to wage for 4 (four) months, in the case of the working period 3 (three) years but less than 4 (four) years; e. Amounting to wage for 5 (five) months, in the case of the working period being 4 (four) years but less than 5 (five) years; f. Amounting to wage for 6 (six) months, in the case of the working period being 5 (five) years but less than 6 (six) years; g. Amounting to wage for 7 (seven) months, in the case of the working period being 6 (six) years but less than 7 (seven) years; h. Amounting to wage for 8 (eight) months, in the case of the working period being 7 (seven) years but less than 8 (eight) years; i. Amounting to wage for 9 (nine) months, in the case of the working period being 8 (eight) years but less than 9 (nine) years.”).

⁷ See, *id.*, Article 164 (3) (“The entrepreneur may terminate the employment of its workers/labourers because the enterprise has to be closed down and the closing down of the enterprise is caused neither by continual losses for 2 (two) years consecutively nor force majeure but because of rationalization. The workers/labourers shall be entitled to severance pay [in] *twice the amount of severance pay stipulated under subsection (2) of Article 156*, reward for period of employment pay amounting to 1 (one) time the amount stipulated under subsection (3) of Article 156 and compensation pay for entitlements according to subsection (4) of Article 156.” (emphasis added)).

⁸ See, *id.*, Article 163 (“The entrepreneur may terminate the employment of his or her workers/labourers in the event of change in [the] status [of the enterprise], merger, fusion, or change in the ownership of the enterprise....”).

at the business's new location and the worker *declines* the offer.⁹ Under those circumstances, the worker loses the right to be paid two-times severance and must only be paid one-times severance, along with related terminal compensation.

The distinction between whether it is the employer or the worker who decides to end the employment relationship when a factory relocates thus carries great financial significance, for both parties. For example, when an employer terminates a worker with eight years of seniority because the employer is relocating its factory and does *not* want to keep its existing workforce, the employer must pay the worker severance equivalent to 18 months' wages, about \$4,000 (56,639,200 IDR).¹⁰ If, however, the employer gives the worker the option to continue employment and the worker *declines*, the legal severance obligation is cut in half, and the employer is only required to pay the worker nine months' wages, about \$2,000 (28,319,600 IDR).¹¹

The employer is legally permitted to pay this lower amount of severance *only* if the offer of continued employment was truly genuine – i.e., the worker must actually have been free to accept the offer of relocation, and the employer must actually have been willing to continue employing the worker at the new location, with no change in employment status.

At PT Kahoiindah Bekasi, the workers were legally classified as permanent employees, a status that affords workers job security (including protection from arbitrary dismissal), regular wage increases, severance benefits and other rights and protections – none of which are available to temporary contract workers.¹² A genuine offer of “continued employment,” under the law, requires maintenance of this permanent employment status.

⁹ See, id. Article 163(1) (“The entrepreneur may terminate the employment of his or her workers/ labourers in the event of change in [the] status [of the enterprise], merger, fusion, or change in the ownership of the enterprise and the workers/ labourers are not willing to continue their employment. If this happens, the worker/labourer shall be entitled to severance pay 1 (one) time the amount of severance pay stipulated under subsection (2) of Article 156, reward pay for period of employment 1 (one) time the amount stipulated under subsection (3) of Article 156, and compensation pay for entitlements that have not been used according to what is stipulated under subsection (4) of Article 156.”).

¹⁰ See, id., Article 163(2) (“The entrepreneur may terminate the employment of his or her workers/ labourers in the event of change in [the] status [of the enterprise], merger, fusion, or change in the ownership of the enterprise and the entrepreneur is not willing to accept the workers/ labourers to work in the [new] enterprise 45 [resulting from the change of status, merger, fusion, or ownership change]. If this happens, the worker/ labourer shall be entitled to severance pay [in] *twice the amount of severance pay stipulated under subsection (2) of Article 156*, reward pay for period of employment 1 (one) time the amount stipulated under subsection (3) of Article 156, and compensation pay for entitlements that have not been used according to what is stipulated under subsection (4) of Article 156.” (emphasis added)).

¹¹ See, id., Article 163(1), *supra*, n. 9.

¹² See, e.g., Allen, Emma, “Analysis of Trends and Challenges in the Indonesian Labor Market,” March 2016, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1513&context=intl>, p 35.

IV. Findings

On July 2, 2018, the management of PT Kahoindah Bekasi announced to workers its intention to close the Bekasi factory and relocate its operations to Cakung and told employees that they would have the option to “continue employment” at PT Kahoindah Cakung or resign.¹³ To workers who would agree to resign, the factory proposed to pay the reduced severance benefits workers would be due if they chose voluntarily not to relocate to PT Kahoindah Cakung.¹⁴ As discussed above, this was only half the amount workers would be legally due if the company did not allow them to relocate and instead terminated their employment.¹⁵

Between the July 2018 announcement of the factory’s impending closure and the actual shutdown of the plant in October 2018, 97% of the plant’s workers officially signed form letters provided to them by the factory management, which stated that they were resigning “because I do not wish to continue employment” at PT Kahoindah Cakung.¹⁶ As a consequence, these workers gave up their jobs and half of the severance benefits they would have been due if involuntarily terminated.

The only workers who did not resign before, or just after, the Bekasi factory’s closure in October were 67 employees who were members of the KASBI union. This small group insisted on continuing their employment at the PT Kahoindah Cakung and began work there after the Bekasi factory closed in October. However, by March 2019, 49 of them had resigned or been fired by PT Kahoindah Cakung, and the company is now in the process of firing the remaining 18.¹⁷

When those last dismissals are complete, all of the workers formerly employed at the Bekasi factory will have been terminated. Out of roughly 2,000 Bekasi workers, the number continuing their employment at PT Kahoindah Citragarment Cakung will be zero. The only former Bekasi workers doing work in Hojeon’s Cakung operation will be 175 workers on temporary contracts, working without severance benefits and with no expectation of continued employment.

Hojeon claims that the termination of 100% of the employees of the Bekasi factory is the result of workers’ free and uncoerced choice to give up their employment rights in exchange for management’s severance offer. The management-prepared form letter that was signed by each worker who resigned states that their resignation was “made in truth without any element of coercion.”

The WRC’s investigation found, however, that the employees at the Bekasi factory ‘resigned’ only after factory management carried out a campaign of coercion and

¹³ See, “Announcement” (July 2, 2018) (“July 2 Announcement”) (on file with the WRC).

¹⁴ See, Law No. 13/2003, Articles 163(1) and 165.

¹⁵ Compare, *id.* to Law No. 13/2003, Articles 163(2) and 164(3).

¹⁶ “Resignation Letter,” (on file with the WRC).

¹⁷ The WRC has received a report, which we have not been able to confirm, that *one* non-KASBI member initially continued his employment at PT Kahoindah Cakung. The report indicates that the worker resigned shortly thereafter and is no longer employed by Hojeon.

deception designed to intimidate, pressure, and trick them into doing so. Managers told workers that if they did not resign and accept one-times severance, they would be fired and get nothing. Management threatened and carried out retaliation against employees who resisted the pressure to resign. Management directed supervisors to lie to workers and claim that the supervisors themselves had resigned, to make it seem that doing so was the wise choice.

Hojeon made the Bekasi workers a fictitious offer of continued employment and then set about ensuring that no worker would accept this offer. This allowed Hojeon to claim that the Bekasi employees were “not willing to continue their employment,”¹⁸ thus enabling the company to deny workers 50% of the severance they were otherwise legally due. Through this illegal subterfuge and its subsequent termination of the 67 KASBI members referenced above, Hojeon succeeded in eliminating the permanent employment contracts of *every worker*¹⁹ at PT Kahoindah Bekasi, while paying only half of the severance²⁰ it would have been required to provide had it laid them off in a lawful manner. The WRC estimates that the collective cost to workers – and the benefit to Hojeon – of the company’s avoidance of its full severance obligations was between \$3,000,000 and \$4,000,000 (42,479,400,000 IDR – 56,639,200,000 IDR).

By failing to pay workers the severance legally due to them, Hojeon violated Indonesian law and the labor standards in Nike’s licensing agreements, which require factories from which Nike sources collegiate product to pay all legally mandated benefits.²¹

A. Coerced Resignation through Unlawful Threats of Denial of Severance Benefits

PT Kahoindah Bekasi workers provided consistent and mutually corroborative testimony that the factory’s management threatened employees that the company would deny them *all* of their severance benefits if they did not resign from their jobs. A female worker in the sewing section testified that her supervisor yelled at her, “You have to submit [your resignation] now! If you don’t submit it, you will get nothing!” Another female sewing operator, who had worked at the factory for six years at the time of closure, reported hearing the same threat from the factory management. She stated that her supervisor told her to “take the [resignation offer], [since] later you can’t get anything if you don’t take it now.” Another female sewing operator, who had worked in the factory for twelve years, quoted a supervisor telling her, “If you don’t take [the resignation offer], you will not get anything.” The supervisor added that the worker should “be careful,” or she would end up like workers, “in other companies” that closed and the workers “got nothing.”

In Indonesia, such threats are highly credible and convincing to workers. Though clearly illegal, it is common in Indonesia for factory owners to deprive workers of most or all of

¹⁸ Law No. 13/2003, Article 163(1).

¹⁹ As noted above, 18 of the KASBI members are technically still employed but are in the process of termination.

²⁰ Compare Law No. 13/2003, Article 163(1). to Law No. 13/2003, Article 163(2).

²¹ IMGCL Labor Code Standards (“Licensee shall require Manufacturers ... to provide legally mandated benefits.”).

their legally due severance benefits when plants shut down.²² Awareness of such lawbreaking by factory owners is widespread among workers.

The threat issued by company supervisors that workers would “get nothing” in severance benefits unless they resigned immediately was blatantly unlawful. As discussed above, when a factory is shut down²³ or relocates²⁴ and workers are involuntarily terminated, Indonesian law requires that workers receive severance benefits – which are doubled if the closure is not due to bankruptcy. The threat that PT Kahoindah Bekasi’s management issued to its employees – that workers who did not resign would “get nothing” – was a threat to break the law and rob workers of benefits they were legally owed.

B. Use of False Representations to Secure Workers’ Resignations

The WRC found that PT Kahoindah Bekasi management required its supervisors to mislead workers as part of an effort to get them to resign. The WRC interviewed a PT Kahoindah Bekasi supervisor, who testified that, starting in late June 2018, he was pressured by the factory’s upper management, under threat of his own dismissal, to try to convince the workers under his supervision to resign from their jobs at the Bekasi plant – specifically, by lying to them about his own employment status. The supervisor told the WRC that, shortly before the company’s announcement of the Bekasi factory’s impending closure, he was called to a meeting with factory managers, where he was given “instructions on how we could get workers to resign.” At this meeting, a PT Kahoindah Bekasi manager instructed the supervisor to “say to your children [i.e., the factory workers] that you have submitted a resignation” even though this was not the case. If the supervisor did not do this, the factory manager told him, the supervisor would be fired. According to the supervisor, the production manager of the factory echoed this sentiment, adding, “if you still want to work here,” you need to pretend that you have submitted your resignation. The supervisor testified that in early August he was told again by the production manager to mislead workers.

The supervisor also testified that after he expressed to the factory management his reluctance to mislead employees in order to get them to resign, he suffered retaliation from the company in the form of a demotion and the threat of transfer to another factory, with an assignment known to involve substantial safety risks. He said that, after refusing to lie, “I was then moved to [another production] line ... [but] as an assistant supervisor, not as a supervisor [i.e., his previous position].” The production manager then threatened to transfer him to the boiler section at the factory in Cakung, a job assignment that, he said, is well-known to be dangerous.

²² See, e.g., WRC, “Report on PT Kizone (Indonesia)” (May 15, 2012) (citing nonpayment of severance benefits following the closures of several garment factories in Indonesia), <https://www.workersrights.org/wp-content/uploads/2016/09/WRC-Update-re-PT-Kizone-Indonesia-5-15-12.pdf>, p 6 – 9.

²³ See, Law No. 13/2003, Articles 164(3) and 165.

²⁴ See, id., Articles 163(1) and (2).

Instructing and coercing supervisors to misrepresent to workers that the supervisors, themselves, had already resigned from their positions at the factory can only have been intended by the factory management to convince employees, by force of example, that complying with the company's request that they resign from their jobs was reasonable and advantageous to the workers.

The testimony of the supervisor represents especially powerful corroboration of the testimony of non-managerial workers that PT Kahoiindah Bekasi was intent on procuring workers' resignations via illegal means, and it indicates that the plan to do so was authored at the highest levels of factory management.

C. Coerced Resignation through Workplace Retaliation

PT Kahoiindah Bekasi workers also testified that the factory management carried out acts of retaliation against employees who resisted the company's pressure to quit. Several workers testified that after they personally refused the management's initial requests that they resign, they suffered forms of adverse treatment, including being transferred among production lines (which makes it difficult for employees to meet production quotas) and being denied the opportunity to work overtime (which employees rely on to supplement their incomes).

A male employee who had worked in the factory's sewing section for eleven years reported, "As a permanent worker who remain[ed] on the original contract [i.e. refused to resign], I ... [was] discriminated against by being ... not given overtime." He added, "[W]orkers who remain on their original contracts in this sewing section ... are [also] moved from one part [of the factory] to another."

According to worker testimony, PT Kahoiindah Bekasi supervisors explicitly told workers that those employees who refused to resign were being targeted for adverse consequences, in the form of frequent job transfers and denial of opportunities to earn income. Workers also heard statements from the factory management stressing workers' vulnerability to such retaliation, emphasizing that the factory unions would be unable to protect employees.

A female sewing operator with eight years of experience testified that a factory supervisor told a group of employees, of which she was a part, that, "Workers who have not resigned, [will have] their names ... recorded, and they will not be given work." Similarly, another female worker, after refusing repeated requests from her supervisor to resign, was told by this same supervisor, "If you do not submit [your resignation] now, you will not be taken care of by the union. See ... the many times you've been transferred to another section, but the union cannot do anything."

Retaliation by PT Kahoiindah management against employees who resisted the company's pressure on them to resign represented another form of unlawful coercion of workers to give up their employment with the company. As a result, although PT Kahoiindah Bekasi claimed in its communications to both workers and to the Labor Ministry when

announcing the factory's closure that workers would have the option to "continue their employment" at PT Kahoindah Cakung,²⁵ no such choice was actually allowed. Instead, through its treatment of workers between the initial announcement of the factory's impending closure and the actual date when the plant ceased operations, and through the threats issued to workers by its supervisors, PT Kahoindah's management clearly communicated to workers that they had only one option: "You have to submit [your resignation] now!"

This constant pressure on employees to resign before the factory closed belied the company's previous claims that it would allow the Bekasi workers to choose to continue their employment by relocating to the Cakung plant.²⁶ In fact, PT Kahoindah's management, through threats, lies, and retaliation, conveyed to workers precisely the opposite message – that the company was requiring them to quit their jobs now, and would *not* permit them to continue their permanent employment with the company by moving to Cakung.

D. Elimination of Relocated Bekasi Workers from PT Kahoindah Cakung

Hojeon, in a communication to the WRC, confirmed that only 67 of the roughly 2,000 workers who were employed at the Bekasi factory when its closure was announced maintained their prior employment status by relocating to the Cakung facility rather than resign their positions.²⁷ These 67 workers were represented by the factory union affiliated to the KASBI union confederation, which negotiated an agreement under which the workers' right to "continue employment" in Cakung was guaranteed.²⁸ Their treatment by the company after they relocated to the Cakung factory constitutes powerful, additional evidence that it was never Hojeon's intent to allow any of the Bekasi workers to keep their permanent jobs.

While these workers had worked in a number of departments in the Bekasi plant (including sewing, embroidery, and printing), when they came to the Cakung factory they were all assigned to a warehouse denoted as "PT Kahoindah 7," and were told that there were no open positions in the Cakung operation in any department in which they had previously worked. The 67 Bekasi workers were the only people employed in this warehouse. While some of these workers received brief temporary assignments in other buildings in the PT Kahoindah Cakung complex in early February, they were soon sent back to the warehouse.

According to credible testimony from a number of these workers, PT Kahoindah Cakung supervisors made it painfully clear to the workers, immediately after their arrival, that they wanted them to quit. One worker reported that two supervisors asked workers why they

²⁵ June 28 Notification, *supra*, n. 4, and July 2 Announcement, *supra*, n. 13.

²⁶ *See, id.*

²⁷ *See*, "Hojeon Ltd Facts and Responses to WRC," document sent by PT Kahoindah Citragarment to WRC, April 2, 2019 (on file with WRC).

²⁸ Letter of Agreement between PT Kahoindah Citragarment PTP FSBB KASBI PT Kahoindah Citragarment Tambun, June 26, 2018 (on file with WRC).

had not just resigned and then returned to work as contract workers, rather than permanent workers, saying, “if you want to be comfortable, follow my steps and take the severance pay.” Another worker reported that a manager said, “4000 people²⁹ accepted the severance – how come you 67 don’t want to take it?! Come on already, we should just issue you the final warning letters and transfer your [severance] money. You people are crazy.” In other words, this manager was suggesting that management should just fire them and send them their severance money, rendering the termination of their employment a *fait accompli*, if they were not willing to resign.

In face of this harassment, 12 of the workers had resigned by February 1, 2019. Management also fired one worker, a union leader, alleging disciplinary infractions that the worker and the union say were fabricated. On February 20, management gathered the remaining workers who had come over as permanent employees from Bekasi and informed them that the warehouse was being closed and that there would be no work for them after March 1. The workers were given the choice between resigning and receiving one-times severance or being terminated by management. Over the ensuing weeks, 36 of the workers gave up and finally submitted to management’s demand that they resign. Hojeon then initiated termination proceedings against the remaining 18.

These 18 are contesting their termination via the Labor Ministry.³⁰ Workers report that in a mediation session called by the Ministry, they pressed their demand to maintain employment and to be assigned to other buildings at PT Kahoindah Cakung, where their skills could be appropriately utilized. The company insists that they must be terminated and that there is no work for them in Cakung.³¹

When the WRC asked Hojeon how many of the 67 workers were still employed in Cakung, the company confirmed, in a communication to the WRC on April 5, 2019, that only 18 workers remain. They stated that the others “decided to leave the company after they agreed on terms between them and KAHU.” According to Hojeon, the 18 “are negotiating whether they leave the company like others under agreement or move to other facilities to work.” Hojeon omitted the information that it is in the process of firing them and that they remain employed, for now, only because they are trying to challenge Hojeon’s actions through the Labor Ministry.

²⁹ The manager was referring to the 2,000 workers employed at the Bekasi factory as of the time of the closure announcement and, in addition, another roughly 1,400 workers who resigned during the months prior to the decision to close, in response to a “buyout” offer. The figure of 4,000 was an exaggeration, by the manager, presumably for rhetorical effect.

³⁰ In Indonesia, the employer “may only terminate the employment of the worker/labourer after receiving a decision from the institution for the settlement of industrial relations disputes” (Law No. 13/2003, Article 151(3)).

³¹ The WRC has only recently received information and testimony regarding these recent resignations and terminations. They are included in this report, because they constitute important evidence concerning Hojeon’s motives and actions at the Bekasi factory, and its severance obligations relating to the closure and relocation of that facility. They may also constitute labor rights violations in and of themselves, including, potentially, unlawful termination and anti-union discrimination. The WRC is examining this question and gathering additional evidence; if we determine that violations occurred in the Cakung operation, related to the termination of these 67 workers, we will report on this in a subsequent report.

Sixty-seven Bekasi workers were able to avail themselves of the official offer, supposedly extended to all 2,000 workers, to continue their employment and move to Hojeon's Cakung operation. This was thanks to the KASBI union's aggressive advocacy on their behalf. Within four months of the closure of the Bekasi facility, 49 of these workers had resigned or been fired, after facing continuous pressure and harassment from management. Hojeon is now firing the last 18.

Hojeon has thus acted to rid itself of the only Bekasi workers who actually exercised the option of relocating to Cakung, further demonstrating that the company had no intention of allowing workers to continue their permanent employment.

E. Hojeon's Motives and its Preference for Temporary Workers

Hojeon has reported to the WRC that there are currently 240 former employees of the Bekasi factory who the company has brought on as temporary contract workers in the Cakung operation. A review of the documents sent by the company indicate that roughly 175 of these are production workers; the rest are supervisors, managers, and administrative personnel. As workers were resigning in the summer and fall of 2018 at the Bekasi factory, a substantial number were also used as temporary contract workers there, after their resignations, before the final closure of the factory.

The fact that some Bekasi employees are now temporary contract workers in the Cakung operation suggests that Hojeon was not completely averse to having Bekasi workers present at Cakung. The fact that not a single one of these workers is a permanent employee, however, shows that Hojeon *was* completely averse to any Bekasi workers *retaining their status as permanent employees*, with the rights and benefits that this status confers.

Hojeon acknowledged, in response to a question from the WRC, that *none* of the workers in question are permanent employees. And, as discussed above, Hojeon has acted to eliminate from employment the only Bekasi workers – the 67 KASBI members – who did relocate with their permanent employment status intact.

The exact reasons why Hojeon was so committed to ridding itself of permanent employees are known only to the company. It is, however, important to note the following:

- Under Indonesian law, permanent employees have job security and, in the absence of an economic justification, can only be fired for cause. Temporary contract workers, as in other countries, have no such protection and can be dismissed without cost or hindrance.
- The severance and related benefits provided to permanent employees under Indonesian law are the most generous to workers, and the most burdensome for employers, of any major apparel exporting country. By contrast, temporary contract employees in Indonesia get no severance.³²

³² See, e.g., Allen, Emma, "Analysis of Trends and Challenges in the Indonesian Labor Market," March 2016, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1513&context=intl>, p 35.

- Under Indonesian law, permanent employees are entitled to wage increases³³ which, over time, entitle them to substantially higher wages than temporary contract employees.
- Accrued severance (and other terminal compensation) is a financial liability that firms like Hojeon must carry on their books; by securing the termination of the entire workforce of the Bekasi factory, Hojeon cleared roughly \$14 million (198,237,000,000 IDR) in liability, despite paying only part of the cost.³⁴ To the extent that it employs temporary contract workers going forward, like the 175 discussed above, it will accrue no further severance liability.

F. Conclusion

PT Kahoardah Bekasi formally offered workers a choice between continuing their jobs, as permanent employees, at the Cakung operation and resigning in exchange for reduced severance. In reality, no such choice was provided. This is evidenced by:

- Credible testimony, from 70 workers, that they and their fellow employees were forced, via coercion and deception, to decline the option of continued employment and instead resign;
- Credible testimony from a factory *supervisor* that senior management told him it was his responsibility to get workers to resign and directed him to lie to workers to achieve this end;
- The fact that none of the handful of workers who succeeded, initially, in continuing their employment at Cakung have been allowed to maintain that employment; and
- That fact that out of roughly 2,000 workers, all of whom were supposedly given the option of keeping their permanent jobs, the number still employed is zero.

Since no genuine offer of continued employment was provided, and since the workers' employment was instead involuntarily discontinued, they are entitled to two-times severance, which Hojeon failed to pay them. Hojeon thereby violated the rights of its workers, as established under Indonesian law and protected by university codes of conduct.

Indonesia's severance law is highly favorable to workers in cases where they are terminated by an employer that has not declared bankruptcy;³⁵ as a result, employers have a strong incentive – often millions of dollars in savings – to find a way to evade compliance with the law. This is what happened in the case of PT Kahoardah Bekasi.

³³ See, Government Regulation Number 78/2015 on Wages, Article 14(2).

³⁴ According to Hojeon's communication to the WRC of April 2, 2019, the company claims to have paid \$10.7 million in severance in 2017, 2018, and 2019, related to the reduction and eventual elimination of the workforce of PT Kahoardah Bekasi. If this figure is correct, then the company has paid roughly \$6 million related to the factory's relocation (the remainder having been paid in the form of buyouts to workers provided prior to the relocation announcement). The WRC estimates that Hojeon, had it terminated the workers lawfully, would have had to pay an additional \$3 million to \$4 million, meaning that Hojeon cleared between \$9 million and \$10 million in liability at a discount of between 33 and 40%.

³⁵ See, Law No. 13/2003, Article 164(3).

V. Recommendations

Hojeon has violated both Indonesian law and university labor rights requirements by paying the Bekasi workers less than the severance they are legally due. The proper remedy is the payment, to each of the workers employed at the Bekasi factory as of the beginning of July 2018, the difference between the amount of terminal compensation paid to that worker and the amount legally owed.

For most workers, this would constitute an additional payment of the severance calculation stipulated in Article 156(2) of the Indonesian Labor Code. A small number of workers received an additional month of severance as per an agreement between factory management and SPN; in the case of these 128 workers, that additional month would be subtracted from the calculation stipulated in Article 156(2).

In many cases of unpaid or underpaid severance, the factor owner has disappeared and no longer has resources to make the workers whole. In this case, Hojeon is still an ongoing concern and Nike is obligated, under the terms of its agreements with its university licensors, to use the means at its disposal to press Hojeon to pay the workers.

VI. Factory Response

On April 2, 2019, PT Kahoindah provided a response to the WRC's preliminary conclusions in this case. The company provided written responses to additional questions from the WRC on April 5. In its responses, the company denied any violation of Indonesian law and made a number of claims in support of its denial:

- A. That it carried out the closure and relocation "with the agreement of the unions;"
- B. That if the severance payments had been below the legal minimum, workers and the unions would have advanced a legal claim with the government, and, since they did not do so, there could not have been any violation;
- C. That workers had chosen freely to resign because (1) those with more than eight years of seniority would no longer accrue severance and (2) workers preferred to collect less severance immediately, rather than more severance later; and
- D. That former Bekasi employees currently doing temporary contract work at Cakung had written letters stating that they had not been coerced to resign.

In this section, we address each of these claims in turn.

A. The Response of the Factory Unions to PT Kahoindah Bekasi's Actions

Hojeon states in its communication to the WRC that "the process of closing and relocation was carried out with the agreement of the two unions." While it is true that both unions negotiated concessions from management intended to mitigate harm to workers, and signed agreements on behalf of some of their members that memorialized these concessions, the suggestion that the unions supported management's handling of the process of closure and its treatment of the workers is false.

SPN, the union that represented the bulk of the workforce, actively opposed management's actions from the time of the closure announcement until after the closure was completed, insisting throughout that workers were entitled to two-times severance. SPN sent a series of letters to factory management opposing its actions, including letters sent on July 2, July 12, July 17, and July 27 of 2018. In the July 27 letter, SPN announced its plan to hold a strike in protest of management's handling of severance. SPN workers struck at the factory from August 1 to August 3. As noted below, SPN also initiated a dispute with the Labor Ministry.

By the time of the closure in October, the vast majority of SPN's roughly 1,900 members had succumbed to management's pressure and threats, accepted one-times severance and resigned from their jobs. With only about 150 members left, SPN decided that the situation was hopeless and signed an agreement under which those members received one additional month of severance in exchange for their resignations.

KASBI, for its part, focused on trying to ensure that the workers it represented would be able to continue their employment with Hojeon in Cakung. KASBI leadership informed the WRC that their overarching goal was to preserve their members' status as permanent employees. As discussed above, permanent employment provides Indonesian workers with far more stability, rights, and benefits than temporary contract work and such jobs are increasingly difficult to find. As the leadership of the union explained, "by having permanent employment status, at least we have certainty about our future." Fearful that Hojeon would not make good on its offer to keep the workers employed, KASBI sought additional commitments from management to ensure this outcome, which it secured in a contract signed with management, signed the week before the July closure announcement.³⁶ The contract called for 67 workers to continue as permanent employees in Cakung. Unfortunately, as discussed above, Hojeon violated this agreement as soon as these workers transferred to Cakung, pressuring them to resign and later firing all those who refused.

Hojeon's claim that these events reflect "a process of closing and relocation...carried out with the agreement of the two unions" is preposterous. It is an indication of the company's disingenuousness that it misrepresented the one document it sent the WRC that ostensibly demonstrates the unions' support for its actions. The document is PT Kahoindah Bekasi's written announcement³⁷ to workers of the closure and relocation. It is dated July 2, 2018, and it bears the signatures of the leaders of both unions. According to Hojeon, this shows that the unions agreed with management's approach. However, this is not the meaning of the signatures. Under the collective bargaining agreement with SPN, both unions were entitled to be informed of announcements made by the company to the workers. The unions' signatures on the document acknowledge their *awareness* of the announcement and the plan. The signatures in no way constitute an endorsement or agreement. Indeed, on the same date the announcement was issued, SPN sent a letter to management *opposing*

³⁶ Letter of Agreement between PT Kahoindah Citragarment PTP FSBB KASBI PT Kahoindah Citragarment Tambun, June 26, 2018 (on file with WRC).

³⁷ See, "Announcement" (July 2, 2018) ("July 2 Announcement") (on file with the WRC).

the company's actions and presenting a series of demands, including the demand that workers receive two-times severance.³⁸

B. Workers' Decision not to Pursue Redress through Governmental Mechanisms

Hojeon asserts that, if it had violated workers' rights to severance, workers and the unions would have filed claims with the government seeking redress – and that the absence of such claims *proves* management complied with the law. This is a specious argument that rests on a premise management surely knows to be false.

Management made it clear to the Bekasi workers that, if they did not resign and accept one-times severance, they would receive *no compensation* from the company. Thus, if workers, or the unions on their behalf, had chosen to pursue claims through the government and the courts, workers would have gotten no severance benefits for an indefinite period – until and unless they prevailed in court and the government enforced the courts' decision.

Workers had compelling reason to believe, based on the experiences of Indonesian garment workers at other factories over many years, that seeking redress through the courts would be a prohibitively long process, with little chance of success, even if they eventually received a favorable court judgment. The SPN leaders told the WRC that they and their fellow workers could not risk waiting years to receive any money. These men and women had lost their source of income and, given garment workers' low wages and minimal savings, would not be able to feed their families, pay children's school fees, and meet other basic needs if they did not receive prompt payment. Indeed, SPN did initiate a dispute with the Labor Ministry, which led to negotiations with management, but gave up on this process at the end of October 2018, unwilling to take the risk workers would be left with nothing.

The workers' belief that pursuing their claims through the legal process would be a protracted, and probably fruitless, ordeal was well-founded. The WRC is familiar with cases of unpaid compensation in which Indonesian workers have waited for years³⁹ without recovering any money – with employers dragging out the judicial process through appeals or simply refusing to comply with court decisions ordering payment. In one recent case, a worker waited in vain for five years for his employer to comply with a Supreme Court verdict in his favor. The government took no action to compel the employer to pay. Finally, the worker sought the intervention of buyers and, in response to buyer pressure,

³⁸ Letter from Pimpinan Serikat Pekerja SPN PT Kahoindah Citragarment, July 2, 2018 (on file with WRC). PT Kahoindah also claimed in its April 2 communication that the factory-level union had agreed to the plan while the national-level union had denounced it; this letter, however, is on the stationary of the factory-level union and signed by the factory-level leader.

³⁹ See, among many examples, the cases of PT Jaba Garmino <https://cleanclothes.org/jaba-garmino>, and PT Liebra Permana (documents on file with WRC).

the employer settled with the worker –for a sum considerably less than the court had ordered.⁴⁰

The significant delays and other challenges experienced by workers seeking redress for wage theft in the Indonesian courts have been noted by other observers as well. The Legal Aid Institute of Jakarta, a respected non-profit research and legal support organization, reports research showing that the Industrial Relations Court “is not effective for reasons including that it takes a long time, that it is difficult to execute judges’ decisions, [and] that workers do not receive their wages during the process.”⁴¹ Advocate Surya Tjandra of the Trade Union Rights Centre, a policy and advocacy organization serving the Indonesian labor movement, writes that the court system “has failed to fulfill its own commitment to reach decisions in a manner that is prompt, correct, and affordable,” and that, “in practice, the process...drag[s] on, without any clear time limit.”⁴²

Given these circumstances, it is understandable for Indonesian garment workers who are denied their full severance to accept whatever sum management offers, rather than pursue claims with the government and the courts – no matter how strongly they believe in the validity of their claims. Hojeon is a major employer in Indonesia and is well aware of how the legal system works and the means employers routinely use to game the system and evade enforcement of their legal obligations. Hojeon threatened workers that if they rejected management’s financial offer, a necessary step to pursue any legal claim, they would get nothing – and now characterizes workers’ decision not to impoverish themselves in pursuit of chimerical legal remedies as an endorsement of management’s actions.

It is important to bear in mind that the lack of effective and timely labor law enforcement in countries like Indonesia, and the frequent need, instead, for buyer intervention to protect worker rights, is the primary reason why apparel brands adopted voluntary codes of conduct and the reason universities have put binding labor standards into their licensing agreements.

C. Hojeon’s Theories as to Why Every Worker Would Voluntarily Resign

As noted above, accepting Hojeon’s claim that there was no coercion requires accepting that approximately 97% of the Bekasi workers resigned voluntarily, giving up permanent employment, an increasingly rare and valuable commodity for Indonesian garment workers, in exchange for a partial payment of severance.

⁴⁰ Letter from Dewan Pengurus Pusat Federasi Sektor Umum Indonesia (DPP FSUI) to Lululemon, December 16, 2017 (on file with WRC), and verbal communications with representatives of DPP FSUI (2017-2018).

⁴¹ See, Lembaga Bantuan Hukum (LBH) Jakarta, *Membaca Pengadilan Hubungan Industrial di Indonesia: Penelitian Putusan Putusan Mahkamah Agung pada Lingkup Pengadilan Hubungan Industrial 2006-2013*, 2014.

⁴² Tjandra, Surya “Pendahuluan,” in, Surya Tjandra and Marina Pangaribuan, *Kompilasi Putusan Pengadilan Hubungan Industrial Terseleksi, 2006-2007*, Trade Union Rights Centre, 2008. Translations by WRC.

PT Kahಿಂದah writes that this surprising and near universal choice by workers can be explained by two factors:

1) The majority of workers have worked more than eight years. Indonesian Labor Law stipulate that there is no additional severance allowance for above 8 year-service so the majority decided to take severance package since there won't be any increase further.

2) They have a common thought that if they do not take the severance packages now, they have to wait until the closure or relocation of new PT. Kaho at Cakung. (According to Indonesia Labor Law, there is no severance package for the workers who submit resignation while the factory is still running production which means after relocation).[sic]

The company's first argument is misleading and unpersuasive. First a sizable portion of the workforce at the Bekasi factory had fewer than eight years of service. Second, even workers with more than eight years' seniority continue to accrue another form of terminal compensation that accompanies severance: reward pay, as per Article 156(3) of the labor code. Finally, it is very hard to see how a slowing in the accrual of terminal compensation would motivate large numbers of workers to relinquish permanent employment and the rights and benefits it confers, particularly in light of the difficulty of finding another permanent job and the likelihood of ending up in temporary contract employment.

Of particular note: among the benefits denied to temporary contract employees is severance pay and other terminal compensation. As a result, the likely outcome for a worker who gives up their permanent job out of concern about slowing accrual of terminal compensation, is a temporary job in which they do not accrue any terminal compensation at all.⁴³

The company's second argument is that workers who resigned got money right away, whereas a worker who remained employed would have to wait for a future closure or lay-off. This could explain why *some* workers would choose to resign, despite the resulting loss of permanent employment and of half of their severance entitlement – for example, workers who had a particularly urgent need for funds; workers who did not want to stay in the garment industry; or older workers nearing retirement. What it cannot explain is why virtually *every* worker would give up their permanent job and half of their severance entitlement. Indeed, before management announced the closure and relocation and began pressuring workers to resign, it had *already offered* the Bekasi workforce partial severance in exchange for resignation and a sizable number of workers had accepted the offer. That is the primary means through which the workforce was reduced from roughly 3,400 in 2017 to roughly 2,000 at the time of the 2018 closure announcement. The, 2,000 who remained were all workers who had thus already *rejected* the option of resigning instead of continuing their employment (when it was offered to them as a choice, not a mandate). These workers had instead indicated a strong preference for retaining permanent employment and full severance rights over receiving short-term cash. What Hojeon is

⁴³ See, e.g., Allen, Emma, "Analysis of Trends and Challenges in the Indonesian Labor Market," March 2016, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1513&context=intl>, p 35.

arguing is that, a few months later, when all of these workers were presented with an offer substantively similar to the one they had already rejected, they all voluntarily took it. Even in the absence of direct evidence of coercion by management, this would not be remotely plausible.

D. Management-Organized Statement Presented as “Letters from Workers”

Finally, PT Kahoindah management presented what it described as “letters” from workers who had worked at Kahoindah Bekasi, resigned, and come to work at Kahoindah Cakung as temporary contract workers. According to PT Kahoindah, the “letters” represent employees’ freely expressed testimony, written by the workers themselves, to the effect that management had not coerced them into resigning.

In fact, the company did not present any letters that were written by workers. What PT Kahoindah sent the WRC is simply a six-page list of workers’ names, prepared by management, with each page bearing a one-sentence statement, written by management. The document is dated April 1, 2019. It contains a space for each worker to sign, with a signature in most of the spaces.⁴⁴

The WRC contacted a number of workers who signed this document to inquire as to its provenance. Worker testimony confirms what the format of the document suggests: it is not a communication initiated or supported by workers but one management created and pressed people to sign. Some workers the WRC contacted indicated that they were afraid of losing their temporary jobs and were unwilling to talk with the WRC’s investigator. Several *were* willing to discuss the document and the circumstances under which they signed it. One worker reported that, on April 1, the former Bekasi workers in her work area were called to the human resources office. Once there, they were told by management to read the document and sign it. She tells the WRC, “I didn’t know what it was for... if you talk about the intimidation at that time [at the Bekasi factory], of course, all of the workers were intimidated, the supervisors pushed the workers to resign. I thought that the case had been closed in October, so I just signed it.” Another worker provided a similar description, saying, “We were just told to sign. We were not given the opportunity to refuse or to ask questions at all.... Honestly, [I signed it] because I now work [on a temporary contract] at Kahoindah, and I was worried it could impact my job.” This worker also reported that he and the other workers in his unit at the Bekasi factory had, in the fall of 2018, been pressured to resign and punished when they initially demurred. He told the WRC that, as part of the Bekasi management’s effort to coerce the workers to resign, management had suddenly removed all of his unit’s equipment, so that the workers could no longer perform their jobs.

In addition to being grimly ironic, Hojeon’s decision to coerce workers into falsely stating that Hojeon did not coerce them is a valuable illustration of how the company operates. The “letters” from workers thus serve to lend weight to the other evidence of Hojeon’s coercion, rather than contradicting it.

⁴⁴ “Statement,” April 1, 2019 (on file with WRC).

E. Conclusion

The four claims made by Hojeon are unpersuasive and lack credibility. Hojeon:

- A) Offered an inaccurate description of the unions' response to the severance offer and supported its claim by misrepresenting the meaning of union leaders' signatures on a document;
- B) Insisted that, had the company done anything wrong, workers and the unions would have brought legal claims, ignoring the fact that one union did initiate a claim and, more importantly, that workers had good reason to forego local legal mechanisms, which would have likely left them with no compensation for a period of years;
- C) Offered explanations for the virtually unanimous decision of workers to resign that cannot logically explain workers' actions; and
- D) Prepared a statement denying workers were coerced, told workers to sign it, and then presented it as the fruit of workers' independent initiative.

VII. Licensee Response

A. Background and the WRC's Engagement with Nike

In August 2017, the WRC and Nike agreed on a protocol⁴⁵ regarding WRC investigations of Nike's collegiate supplier factories. In the protocol, Nike agreed to facilitate access to supplier factories for the WRC upon request, and the parties memorialized important aspects of the WRC's procedures for engaging with licensees and factories in our assessment and remediation work.⁴⁶

Consistent with the terms of the protocol, the WRC contacted Nike, the sole licensee that had sourced university logo apparel from PT Kahoindah Bekasi, well in advance of the publication of this report: on February 26, 2019. The WRC presented Nike with a summary of our initial findings and the underlying evidence and provided Nike with an opportunity to present any additional evidence or information to inform the WRC's conclusion. We advised Nike that, unless Nike or Hojeon had evidence that contradicted the worker testimony and other evidence shared by the WRC, we were seeking Nike's intervention to press Hojeon to correct the violation by paying the affected workers the remaining severance they are owed.

B. Issues Raised by Nike

The WRC and Nike discussed the case via phone several times during March and April of 2019. The WRC considered a number of points raised by Nike, including the argument,

⁴⁵ See, WRC, "Protocol for WRC Investigations of Nike Supplier Factories," <https://www.workersrights.org/wp-content/uploads/2017/12/Protocol-for-WRC-Investigations-of-Nike-Supplier-Factories-final.pdf>.

⁴⁶ See, WRC, "Update Concerning Nike and Factory Access," August 30, 2017, <https://www.workersrights.org/communication-to-affiliates/083017-2/>.

also made by Hojeon as described above, that the absence of legal claims from workers is evidence of Hojeon's compliance.

Nike also referenced the monitoring of PT Kahoindah Bekasi by the Better Work Indonesia program (BWI), the Indonesia office of a factory auditing scheme operated by the International Labor Organization (ILO) and the International Finance Corporation. Nike said that BWI's auditors had "been in and out of the factory" during the relevant period and did not identify any problems with the closure process.

However, there are no public reports from BWI concerning the Bekasi factory during the relevant time-frame. The WRC also asked Hojeon to share any reports it privately possesses from BWI, and the only report it sent is from a BWI visit to the factory at the beginning of May of 2018, two months before the closure announcement, and therefore irrelevant to the events that began in July. That report does discuss an "early retirement" program under which workers were offered one-times severance if they resigned, as the WRC also discussed above. Better Work reports that this program operated from June 2017 through April 2018, and that approximately 1100 workers resigned during this period.⁴⁷ This does not, of course, have any bearing on the company's conduct after the closure announcement; the Better Work report is explicit that, during this period, the company was still assessing whether it would continue operating the Bekasi factory.

The factory unions do report that BWI made several visits to the factory in the period leading up to the closure. However, there is no evidence that BWI investigated the issue at hand – coercion of workers by management – and there are no reports detailing any findings, concerning any issue involving the Bekasi factory, by BWI during this period.

Even if BWI did investigate the coercion of workers by management and did give the factory a clean bill of health, this would not be the first time that another organization identified severe violations of workers' rights that were missed by one of Better Work's country programs. To provide one example from the collegiate sphere, Better Work's Vietnam office regularly assessed Hansae Vietnam, the Nike collegiate supplier that was a subject of substantial university discussion in 2017. Despite supposedly extensive annual audits, Better Work Vietnam never identified the grave labor rights abuses at Hansae Vietnam that the WRC exposed when we investigated the factory in 2016 (and that the FLA confirmed the following year).⁴⁸ Better Work's investigative methodology has a number of weaknesses, particularly with regards to violations that cannot be identified through document review. Foremost among these is reliance on interviewing workers inside a factory, rather than an offsite setting where workers feel secure and comfortable speaking freely. For example, BWI reports that that it interviewed PT Kahoindah Bekasi workers in the factory's "[m]eeting room, utility room, on-site clinic, prayer room and

⁴⁷ Better Work, "Compliance Report: PT Kahoindah Citragarment," May 30, 2018, p 5 (on file with WRC).

⁴⁸ See, WRC, "Factory Assessment Hansae Vietnam Co., Ltd. (Vietnam): Findings, Recommendations, Status Update, December 6, 2016, <http://workersrights.org/freports/WRC%20Assessment%20re%20Hansae%20Vietnam%2012.6.16.pdf>, p 2.

work stations.”⁴⁹ This method is all but useless as a means of eliciting candid testimony from workers who are facing threats and coercion from management.

In light of the track record of the Better Work program, and the methods specifically employed by Better Work Indonesia, even if Better Work Indonesia had looked at the issue of coercion and found none, this would have had little evidentiary value.

The WRC gave consideration to Nike’s input and also reviewed additional information supplied by Hojeon – which Nike, to its credit and consistent with its obligations under the WRC-Nike protocol, encouraged Hojeon to provide. As discussed above, the information provided by Hojeon, including its confirmation of the unfortunate fate of the 67 Bekasi workers who transferred from Bekasi to Cakung, served, on balance, to corroborate the evidence the WRC gathered from workers and documentary sources.

On this basis the WRC confirmed its findings that Hojeon violated the law and university standards by failing to pay workers their full severance, and we reiterated to Nike our request that Nike press Hojeon to remedy the violation by paying the workers.

C. Nike’s Response to the WRC’s Request for Remedial Action

While Nike has acknowledged the seriousness of the issue at hand, and has encouraged Hojeon to engage with the WRC, Nike has not, so far, agreed to ask Hojeon to remedy the violation. In a written statement of its position, sent to the WRC, Nike states: “[W]e have engaged with Hojeon and asked them to review the claims and, if legally owed, pay the impacted workers any additional funds necessary to meet their legal obligations.” The WRC has conveyed to Nike that asking Hojeon merely to “review” the WRC’s “claims” and to pay funds if Hojeon itself decides they are legally owed is inadequate – that this position will not generate any meaningful pressure on Hojeon to pay the workers. Hojeon is not going to agree that it owes money to the workers, regardless of the evidence. Hojeon will only pay the workers if its business partners insist that it do so.

Under the language of its licensing agreements with its licensor universities, Nike is obligated to “use its best efforts... to cause Manufacturers (i.e., suppliers) to remediate any violations identified by the WRC and/or FLA.” The language obligates Nike to ask suppliers to act on the findings and recommendations of universities’ chosen labor rights monitors – not merely to ask suppliers to “review” them. We will continue to request that Nike use its best efforts to cause Hojeon to remedy the violations we have identified at PT Kahoiindah Bekasi.

Nike has noted, and the WRC has readily acknowledged, that Nike has limited leverage over Hojeon as a former buyer. The WRC is not asking Nike to use any leverage it does not possess (though, for obvious reasons, even the remote prospect of future business with a buyer of Nike’s size and prestige is a motivator). Our request is that Nike honor its licensing obligations by using the leverage it does possess – its “best efforts” – to press Hojeon to pay the workers.

⁴⁹ Compliance Report, p 5.

As we have conveyed to Nike, it is the WRC's intent to engage other, current, Hojeon buyers in the effort to convince Hojeon to remedy the violation. At the beginning of this report we identified a list of prominent buyers, some of whom are collegiate licensees (though they do not source collegiate apparel from Hojeon⁵⁰). It is our expectation that, with the support of Nike – the sole collegiate licensee that sourced from the Bekasi factory – we will be able to secure commitments from some of these other buyers to use their greater leverage over Hojeon. If Nike is unwilling to use its own best efforts to persuade Hojeon to remedy its violation of university codes, the prospect of success with other buyers, particularly non-collegiate buyers, will be considerably dimmer.

We will therefore continue to engage with Nike and urge the company to make the necessary commitment, and we will keep affiliate universities and colleges advised of Nike's response.

⁵⁰ With the exception of adidas, which sources from PT Yongjin Javasuka.