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**WORKER RIGHTS CONSORTIUM ASSESSMENT  
RKI HONDURAS  
(VILLANUEVA, HONDURAS)  
FINDINGS AND RECOMMENDATIONS**

**APRIL 4, 2019**

**DRAFT**



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## I. Introduction and Executive Summary

### A. Introduction

This report offers the findings and recommendations of the Worker Rights Consortium (“WRC”) inspection in July – October 2018 of labor practices at RKI, an apparel manufacturing facility located in the city of Villanueva in Honduras. At the time of the WRC’s inspection, the RKI factory, which is housed in four buildings, employed a total of 2,304 workers. Villanueva is a center of garment manufacturing in the Honduran department (the administrative equivalent of a state or province) of Cortés, the country’s main industrial region.

The WRC conducted this assessment pursuant its role as independent factory monitor for the City and County of San Francisco, California (“the City”) in keeping with the City’s Sweatfree Contracting Ordinance (“Ordinance”), which establishes labor rights standards for manufacturers of apparel supplied to the City by its vendors.<sup>1</sup> The City’s Ordinance requires that apparel manufacturing facilities supplying to the City comply with all applicable national labor and employment laws where manufacturing occurs and specific additional labor standards outlined in the Ordinance, including but not limited to the payment of non-poverty wages.<sup>2</sup>

RKI was identified in disclosure data provided to the WRC by the City as a subcontractor to the Utah-based company, AlSCO, Inc., for the manufacture of uniforms supplied to the City’s employees, and, therefore, is required to maintain labor practices that comply with the Ordinance. RKI is owned and operated by the U.S. North Carolina-based apparel company, VF Corporation (“VF”), and manufactures garments for VF’s Red Kap workwear division. These garments, which include dress, polo, and work shirts, as well as lab aprons and chef uniforms, are supplied to, in addition to AlSCO, other uniform companies such as Aramark and Unifirst, and auto manufacturers, such as Toyota, Nissan, Honda, and Mazda.

In one of its factory buildings, RKI also operates a facility that produces garments for VF’s The North Face brand of outdoor apparel. During the WRC’s inspection of the factory, VF restricted the WRC’s access to the building that produces The North Face apparel (“the TNF facility”), on the basis that this facility does not produce any goods covered by the City’s Ordinance.

VF informed the WRC that it maintains the same labor practices in the TNF facility as it does in the other production facilities at RKI and acknowledged that there is some interchange of employees among all these facilities. Therefore, the WRC’s findings in this report with respect to labor practices can be reasonably concluded to apply to the TNF facility.

However, the VF also told the WRC that the TNF facility has production processes and materials that are distinct from those used in the other facilities. Therefore, the WRC’s findings about

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<sup>1</sup> *Codified as*, San Francisco, Cal., Administrative Code, Ch.12.U (“Adm. Code”) (2005), *as amended*, Feb. 11, 2010, *available at*: [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_Chapter12U](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter12U).

<sup>2</sup> Adm. Code, Ch.12.U.3.

specific physical conditions at RKI may not apply to the TNF facility, except as they address conditions on the exterior of that building.

## **B. Summary of Findings**

The WRC's assessment of RKI found violations of Honduran law, which, by extension, represent violations of the City's Ordinance, in several areas of the factory's labor practices. These violations, which are outlined in detail in section III of this report, occurred in the following areas:

- **Wages and Hours of Work.** Despite the fact that RKI was found to comply with the City's non-poverty wage standard, a number of wage and hour violations in other areas were identified: (1) The WRC found that RKI fails to pay workers for a daily 30-minutes of break time period, which, because employees at RKI work what Honduran law considers a "continuous" schedule, the law requires the factory to include in their paid working hours; (2) Moreover, including their daily breaks, workers' regular weekly working hours exceed the maximum permitted regular schedule under Honduran law, and, as a result, this break time should be paid at the overtime rate; (3) In addition, some employees at the factory were found to be working during their break times without receiving additional compensation; and (4) Finally, the WRC determined during one recent pay period, the wages that the factory had paid to workers had failed to comply with the legally-required minimum wage, a minor violation that RKI has already corrected.
- **Freedom of Association.** The WRC found that RKI had failed to establish an atmosphere where workers' freedom of association rights were respected, and, moreover, had actively violated and interfered with this right as: (1) In November, the factory terminated a worker in retaliation for employees' efforts to organize a union; (2) Employees feared generally that they would be terminated should they decide to form or join a union at the plant; (3) RKI appeared to have established a "company union" ("solidarist") scheme at the factory; and (4) Starting in August, the company compelled workers to sign a "power-of-attorney" giving authority to a company-selected and paid lawyer to represent workers on an employment benefit issue before Honduran government authorities.
- **Rights of Women Workers.** The factory, in some cases, does not provide legally required light duty accommodations to women workers during pregnancy.
- **Statutory Benefits.** RKI fails to provide childcare facilities for workers who are the mothers of small children and does not provide employees with individual lockers to store their belongings during work, both of which are required under Honduran law.
- **Occupational Health and Safety.** Although the factory maintains a number of workplace health and safety conditions that are significantly superior to those commonly found in garment factories in developing conditions, the WRC found violations of Honduran health safety regulations in a number of areas: (1) the factory health and safety committee; (2) machine guarding; (3) chemical handling; (4) personal protective

equipment; (5) fire safety; (6) electrical hazards; (7) noise levels; (8) air quality; and (9) food quality in the factory canteen.

The violations identified above, as well as the methodology employed by the WRC to reach these findings, are discussed in further detail in the body of this report. For each finding, the WRC has provided recommendations for remedying the identified violation.

### **C. Factory Owner Response**

VF, as the owner of RKI, and AlSCO, as a vendor to the City, have an obligation to ensure that all violations of Honduran law, and, by extension, the Ordinance, that have been identified by the WRC are adequately remedied. The WRC shared a draft copy of this report with VF and requested VF to provide a response to the WRC's findings and proposed remedial measures.

VF responded in detail to each of the WRC's findings and proposed remedial measures. While, in a few cases, VF took action or committed to do so to address the WRC's findings, in most instances, VF contested the WRC's findings and, therefore, the need for remediation. These responses are discussed in the body of this report.

The WRC has requested that VF clarify a number of its responses and is seeking to verify through factory workers where remediation has been completed. Where the WRC confirms that further remediation by VF is, in fact, required under Honduran law and the City's Ordinance, the WRC will engage further with VF, and, if necessary, ALSCO, concerning the needed corrective actions.

## **II. Methodology**

The findings and recommendations detailed in this report are based on the following sources:

- Interviews with 33 current RKI production employees, all of which were conducted in location away from the factory worksite, beginning in July 2018;
- An inspection of the factory on October 16 – 18, 2018, which included the following:
  - Interviews with regional VF and local RKI management, including staff from the factory's human resources, engineering, and accounting departments as well as from the plant's onsite health clinic, and three production supervisors;
  - A physical inspection by occupational health and safety specialist David Moore, a certified industrial hygienist; and
  - A review of relevant company records, including factory payroll, worker paystubs, health and safety documents, and employment contracts.
- A review of relevant Honduran labor laws, international labor standards, and the City's Ordinance, and consultation with representatives of the Honduran Ministry of Labor.

### III. Findings and Recommendations

#### A. Wages and Hours of Work

The RKI factory employs workers on a dayshift and a nightshift. The daily work schedule for employees on the factory's dayshift work runs from 7 a.m. to 5:30 p.m. with a half-hour unpaid meal break from Monday to Thursday and from 7 a.m. to 11 a.m. on Friday. The work schedule also includes two paid 15-minute rest breaks, the first of which is in the morning and the second of which is in the afternoon. As a result, employees on the dayshift are at the factory for 46 hours per week, 44 of which are paid.

Employees on RKI's nightshift are divided into two groups, of which the first works Monday to Wednesday and the second works Friday to Sunday. The daily worker schedule for both groups runs from 5:45 p.m. to 6:15 a.m. with a half-hour unpaid meal break, and two paid 15-minute rest breaks. Nightshift workers are at the factory for 37.5 hours per week, 36 of which are paid.

The factory pays its production workers according to a wage scale in which each employee's daily earnings are calculated based on an hourly rate that is adjusted according to the number of pieces of apparel that the worker completes during her daily shift. Interviews with workers and a review of company payroll records both indicated that the actual wages paid to employees at RKI generally complied with Honduras' minimum wage for workers in the country's export processing zones, which is 7,085.61 Honduran lempiras (US \$290.70) per month or 1,653.12 (US \$67.82) lempiras per week. Since, based on the country's standard 44-hour week, the legal minimum wage rate is the equivalent of \$1.54 per hour, the factory is also complying with the City's non-poverty wage standard for Honduras, which is U.S. \$0.90 per hour.<sup>3</sup>

However, as discussed below, the WRC did identify violations of Honduran law and, by extension, the City's Ordinance at RKI in the areas of: (1) excessive working hours; (2) nonpayment of meal breaks; (3) work during break times; and an isolated instance of (4) nonpayment of minimum wage.

#### 1. Excessive Working Hours

##### a. Findings

The Honduran Labor Code establishes that employees' regular weekly working hours must be limited to 44 daytime hours or 36 hours if employees work at night.<sup>4</sup> The Honduran Labor Code states that the employer may establish a "continuous" or a "discontinuous" workday.<sup>5</sup> The law defines "standard working hours" ("*tiempo de trabajo efectivo*") as including any time period during the workday during which the worker may not leave the workplace (including during rest

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<sup>3</sup> City of San Francisco Office of Labor Standards Enforcement, *Sweatfree Contracting Ordinance (Administrative Code Chapter 12U) 2018 International Wage and Benefit Rates*, [https://sfgov.org/olse/sites/default/files/Document/2018\\_Wage%20Rates%20International\\_0.pdf](https://sfgov.org/olse/sites/default/files/Document/2018_Wage%20Rates%20International_0.pdf).

<sup>4</sup> *Código del Trabajo de Honduras*, Decreto No. 189 de 1959 (as amended) ("Honduran Labor Code"), Article 213.

<sup>5</sup> *Id.*, Art. 326.

breaks).<sup>6</sup> The law states that, when the workday is “continuous,” the worker has the right to a half-hour meal break, and that this time “should be counted as standard working hours.”<sup>7</sup>

In the process of assessing working conditions at RKI, the WRC met with representatives of the Honduran Ministry of Labor who affirmed that because employees do not have a practical opportunity to leave the factory and return home during the half-hour meal break, their workday must be considered “continuous” and, therefore, the meal break forms part of their “standard working hours.” As a result, since, as discussed above, the regular work week at RKI, including the 30-minute meal breaks, is 46 hours per week on the dayshift and 37.5 hours on the nightshift, the factory’s work schedule exceeds the maximum limit set under Honduran law. Because RKI’s work schedule fails to comply with Honduran law, it also violates, by extension, the Ordinance.

#### *b. Recommendations*

The WRC recommends that RKI comply with Honduran law by shortening employees’ regular work schedule so that the statutorily required half-hour meal break is included in employees’ regular 44 (dayshift) or 36 (nightshift) hour workweek. As discussed below, the law also required that this meal break time be included in workers’ paid hours.

#### *c. Factory Owner Response and Current Status*

VF’s response to the WRC’s findings concerning the factory’s working hours asserts that RKI complies with Honduran labor law because, VF states, the workers’ half-hour daily meal break is actually *paid*, and it is the workers’ two daily 15-minute breaks that are *unpaid*. VF claims on this basis that the employees’ weekly working hours, which VF does not consider to include either the two daily 15-minute breaks or the daily half-hour meal break, do not exceed the legal maximum.

The WRC notes, however, that the question of whether VF currently treats the two daily 15-minute breaks or the daily half-hour meal break as paid or unpaid does not have a legal bearing on whether these time periods should be considered part of the employees’ working hours. With respect to all three of these break periods, employees do not have a practical opportunity to leave the factory and return home during the break. Therefore, the employees’ workday must still be considered “continuous” and the three break times must still be treated as part of their “standard working hours.”

Finally, VF further asserts that the current working schedule has been agreed to by the factory’s workers in an “*acuerdo*” (“accord”) which has been filed with and approved by the Honduran labor ministry. The WRC has asked VF to provide a copy of the factory’s *acuerdo* with its employees concerning their working hours. The WRC will continue to engage with VF concerning the factory’s working hours after the WRC has had the opportunity to review that document.

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<sup>6</sup> Id., Art. 323.

<sup>7</sup> Id., Art. 326.

## 2. Nonpayment of Break Times

### *a. Findings*

As discussed above, since, under Honduran law, RKI is required to provide workers with a half-hour meal break which “should be counted as [among employees’] standard working hours,”<sup>8</sup> employees must be paid for this time. As also noted already, this conclusion was affirmed to the WRC by representatives of the Honduran Ministry of Labor.

RKI’s practice of adopting a work schedule that adds a daily half-hour meal break, that is unpaid, to a workweek that already includes the legal maximum 44 (for dayshift employees) or 36 (for nightshift employees) regular hours is one that is common in the Honduran garment industry. However, as explained above, failing to pay employees for this break time violates the country’s labor laws. In a recent assessment of another Honduran garment factory, Delta Apparel that had adopted the same practice, the WRC noted that the Honduran Ministry of Labor had formally ordered the management to pay back wages to the workers for their unpaid break time.<sup>9</sup>

Because workers’ weekly schedule, not including the meal breaks, already includes the legal maximum 44 (for dayshift employees) or 36 (for nightshift employees) regular hours, under Honduran law, the additional meal break time for which the factory has failed to compensate employees represents overtime. Therefore, under Honduran law, employees must be compensated for this unpaid meal break time at a premium overtime rate.<sup>10</sup>

### *b. Recommendations*

The WRC recommends that RKI take the following steps to comply with Honduran law:

- As discussed above, shorten employees’ work schedules so that the half-hour meal break is included in employees’ regular 44 (dayshift) or 36 (nightshift) hour workweek, *and* compensate workers for this time at their regular rate of pay; and
- Provide back-pay to workers for the daily half-hour break time for which the factory has previously failed to pay them, at the overtime premium rate, for a period of time equal to the worker’s length of service at the factory or the statutory limit,<sup>11</sup> whichever is less.

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<sup>8</sup> Id., Art. 326.

<sup>9</sup> WRC Assessment on Delta Apparel Honduras, June 19, 2018, <https://www.workersrights.org/wp-content/uploads/2018/06/WRC-Assessment-re-Delta-Apparel-Honduras-6.19.18.pdf>.

<sup>10</sup> Honduran Labor Code, Art. 330.

<sup>11</sup> Honduran Labor Code, Art. 43 (establishing the statute of limitations for claims by workers for unpaid wages at two years).



### *c. Factory Owner Response and Current Status*

As noted, in responding to the WRC's findings, VF asserts that the employees' half-hour daily meal break is actually paid, and it is the workers' two daily 15-minute breaks that are unpaid. Again, however, the question of whether it is the two daily 15-minute breaks or the daily half-hour meal break that is unpaid does not affect the WRC's basic finding that workers are not being compensated for 30 minutes during the workday that they spend at the factory. Since, as already pointed out, with respect to all three of these break periods, employees do not have a practical opportunity to leave the factory and return home, the workday must still be considered "continuous;" the break times must still be treated as part of their "standard working hours;" and, as a result, they must be compensated.

As also noted above, VF has asserted that the factory's current working schedule, including, presumably, the daily break periods, has been agreed to by employees in an *acuerdo* which has been filed with and approved by the Honduran labor ministry. Once the WRC has had the opportunity to review the *acuerdo*, the WRC will continue to engage with VF concerning the factory's nonpayment of workers for their break times.

## **3. Work during Meal Breaks and Rest Breaks**

### *a. Findings*

As noted above, the daily work schedules for employees at RKI include a half-hour meal break and two 15-minute rest breaks, the first of which is in the morning and a second of which is in the afternoon. As also mentioned, the factory pays each production worker based on the number of pieces of apparel that the worker completes during her daily shift. This compensation system gives workers a strong incentive to maximize their daily working time in order to increase their earnings.

Many of the employees interviewed by the WRC reported that, as a result, they use some portion of their break times, or both of these, to complete the production goals. One employee told the WRC, "I don't stay before or after [my] work [shift], but I do work during my breaks." Another employee told the WRC, "The workers really want to be able to increase [their] production, so there are [some] workers who don't take either break."

Employees told the WRC that, while the factory management does not require them to work during their break time, neither do managers prevent them from doing this. One worker stated, "I am allowed to work during my breaks[,] ... [as] [e]ach worker decides whether or not she wants to work during her break."

Many of the employees interviewed by the WRC reported that a large percentage of the factory's production employees work during some portion of their break time, with some indicating that 80% or more of the employees in their work areas do this. Those employees who told the WRC that they worked during their break times estimated that they spent roughly 45 to 60 minutes per week of their break times per week working.

RKI factory managers and supervisors acknowledged that many employees work during their paid rest breaks and their unpaid meal breaks. The factory's human resources director confirmed that employees work during the 30-minute meal break, telling the WRC:

There is [one] 15-minute break in the morning and another one [i.e., 15-minute break] in the afternoon, [along] with a 30-minute meal break. It is optional for each worker to go to eat [during the meal break]. We can't force the [workers] to go to take a meal. It's very complicated. We have encouraged them to go and eat... The supervisor in charge has told them that they are not required to keep working and that they can go to eat, but we can't corral them out [of the building] and say "You have to go [eat]. You have to go [eat]."

Supervisors interviewed by the WRC confirmed that employees also work during their morning and afternoon rest breaks. One supervisor estimated that 25% of production employees work through the morning break and that 50% of employees work during the afternoon break.

As discussed, Article 326 of the Honduran Labor Code mandates that employers provide workers with a 30-minute meal break, which, because RKI maintains what the labor code considers a "continuous" work schedule, is required to be paid. By permitting employees to work during this legally required meal break, RKI has violated its obligations under Honduran law and, by extension, the City's Ordinance.

While the law does not require the factory to provide workers with the morning and afternoon 15-minute rest breaks, as noted above, according to VF these break periods are *unpaid*. Therefore, any time that employees work *during* these unpaid break periods represents off-the-clock work, which also violates RKI's obligations under Honduran law and the City's Ordinance.

#### *b. Recommendations*

With respect to the half-hour meal breaks, as discussed, the WRC already has recommended that RKI, in order to remedy the violations of Honduran law which has occurred when employees worked during these breaks, provide back-pay to employees for any work they have performed during the daily half-hour break time.

WRC also recommends that RKI, to comply with the law, take other measures to ensure that employees actually take the legally required half-hour meal break. For example, RKI could turn off electrical power to the factory's production equipment during the designated break time.

With respect to the 15-minute rest breaks, as these are reportedly otherwise unpaid, the WRC recommends that RKI pay employees for any time they work during these breaks, and provide back-pay to employees for any work they previously have performed during these break times.

#### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF acknowledged that "employees may unilaterally decide to work during their lunch or rest breaks," and committed that "VF and our RKI facility will

investigate practices that discourage working during these rest periods, including following WRC's recommendation of disconnecting power to equipment.” However, since, as discussed, workers are legally required to receive the half-hour meal break, and as the two 15-minute breaks are currently treated by VF as unpaid time, it is VF's responsibility to ensure the employees do *not* work during any of these breaks, so as to avoid employees either: (i) not receiving a legally required paid break, or (ii) working off-the-clock during a unpaid break.

Furthermore, VF's response does not address the issue of compensation for employees for time they have previously spent working during their breaks. As noted, VF responded to the WRC's finding by informing the WRC that the employees' half-hour daily meal break is paid, and the workers' two daily 15-minute breaks are unpaid. Since, as discussed, RKI is legally required to provide workers with the half-hour daily meal break, the factory should compensate workers for all times that they did not receive this break because they were working during it. Similarly, because workers are not paid for the 15-minute breaks, RKI should compensate employees for any time they have worked during these breaks as well.

#### **4. Violation of the Legal Minimum Wage**

##### *a. Findings*

As noted, RKI generally complied with not only Honduras' minimum wage for workers in the country's export processing zones of 1,653.12 lempiras (US \$67.82) per week. However, in examining the factory's payroll records, the WRC noted that, in the week of January 1 – 7, 2018 a small number of workers at the factory had received wages of 821.10 lempiras (US \$33.69) to 1,611.04 lempiras (US \$66.10), which were below the legal minimum, during the first week of January 2018.

After reviewing the records in question with the factory's accounting department, the WRC informed RKI's management of the underpayment. Representatives of the factory's owner, VF, acknowledged the error, which they attributed to difficulties with timekeeping during the period in question due to political unrest in the local area. VF then reviewed payroll records for this pay period, and identified 29 workers, in all, who had been underpaid. The company subsequently informed the WRC that it had corrected the error by providing back wages to the affected employees.

##### *b. Recommendations*

The WRC recommends that RKI provide documentation that sufficient back-pay was provided to the affected workers to correct the violation of the legal minimum wage that occurred in January 2018.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF reiterated its explanation for why the January 2018 underpayment occurred. The WRC has repeated its request to VF for documentation that sufficient back-pay was provided to the affected workers to correct the violation.

## **B. Freedom of Association**

### **1. Findings**

#### *a. Climate of Fear of Retaliation for Exercise of Freedom of Association*

Honduran law establishes that workers have the right to freely join organizations of their choosing, including labor unions, and prohibits acts of interference by employers in workers' exercise of this right.<sup>12</sup> Moreover, under the City's Ordinance, RKI is required to "demonstrate commitment to best practices and continuous improvement in management practices to eliminate Sweatshop Labor, including the right to freedom of association and collective bargaining," and to refrain from "subject[ing] a[ny] Worker to harassment, intimidation or retaliation as a result of his or her efforts to freely associate or bargain collectively."<sup>13</sup>

During the WRC's inspection of the factory, RKI's management, while not expressing any overt hostility to the exercise of freedom of association, told the WRC that there has never been any attempt by workers to form a union at RKI. Workers interviewed by the WRC, however, reported that there had been previous efforts by employees to form a union at the factory, but that those involved had faced retaliation from the management.

One of these workers told the WRC, "There have been attempts to organize a union, but the workers [involved] have been fired, a[lthough] the managers sa[id] that it was part of a staff reduction." Another worker added, "[When] [t]he supervisors hear about efforts to organize [a union], they report this to [the] managers."

Many of the workers who were interviewed by the WRC expressed fear that they would be terminated if they formed or joined a union at the factory. One of the workers told the WRC, "If anyone decided to form a union [at the factory], th[at] person would be fired." Another worker said, "If the managers even hear the word union [spoken by a worker], they will fire you [i.e., that worker]."

Another worker told the WRC that factory managers actively discourage employees from exercising freedom of association. This worker told the WRC, "At the factory, the managers hold meetings [with the workforce] and tell us that having a union means you will have to pay money and that this isn't in the best interest of the company or the workers. They hold these meetings at the beginning or middle of every year and they tell us it isn't in anyone's interest [to form a union], because we would have to give financial support to the union."

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<sup>12</sup> Honduran Constitution, Art. 127; Honduran Labor Code, Art. 469.

<sup>13</sup> City Code, Ch. 12.U.3 (m).

The fact that workers believe that they would face retaliation from the factory management if they organized or joined a union indicates that RKI has not complied with its obligation under the City's Ordinance, to "demonstrate commitment to best practices and continuous improvement in management practices" with respect to freedom of association.<sup>14</sup>

*b. Retaliatory Threats and Retaliatory Dismissal for Exercise of Freedom of Association*

Subsequent to the WRC's October 2018 inspection of the RKI factory, the WRC received and initiated an investigation into a complaint from factory workers that in November 2018 the RKI management had made retaliatory threats towards employees who had begun attempting to form a union at the factory and had acted on these threats by terminating the employee who is the leader of this organizing effort.

According to the workers' complaint, in late September 2018, a group of employees at the factory began meeting regularly with representatives of a Honduran garment workers union to discuss the process of organizing a union at RKI. On November 15, 2018, a number of employees, including, but not limited to, those involved in the organizing effort met outside the factory.

*i. Threats of Retaliation for Associational Activities*

At the November 15, 2018 meeting, one of the employees present, who had not been involved in the union organizing effort, asked who the leader of the effort was and was informed that the leader of the union effort was an employee named Melvin Duarte. Immediately following this meeting, one of the employees who had been present at the meeting was observed by other employees talking with the RKI supervisor, Nereyda Rivera.

Later the same day, Rivera made retaliatory threats to employees concerning union organizing, reportedly telling workers, "All of you who are making noise about the union are going to be fired, and they [RKI management] won't pay you your severance when you go." Such retaliatory threats violate workers' right to freedom of association, as protected under both Honduran law<sup>15</sup> and the City's Ordinance.

*ii. Retaliatory Termination for Associational Activities*

On the following day, November 16, 2018, the worker who had been named the previous day as the leader of the union organizing effort, Melvin Duarte, was terminated by RKI. Duarte was one of a group of six workers terminated on November 16, 2018, however, the other five employees who were terminated were workers who previously had requested to be dismissed and had been awaiting approval of severance benefits from RKI management. Duarte reportedly made clear to factory managers that he did not wish to be dismissed but was still terminated, making him the only worker in this group to be terminated involuntarily.

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<sup>14</sup> Id.

<sup>15</sup> Honduran Constitution, Art.127; Honduran Labor Code, Art. 469.

Upon questioning factory managers as to the reason for his dismissal, Duarte reportedly was told that his position had been eliminated. However, workers reported to the WRC that, on the following workday, November 19, 2018, other employees were assigned to Duarte's former job duties.

Several key factors strongly point to Duarte's termination being the result of antiunion retaliation by RKI's management. First, the retaliatory threats issued the day before by the supervisor, Rivera, combined with previously reported statements by managers to workers expressing opposition to union organizing, as well as workers' widespread belief that exercise of associational rights would lead to their termination, and reports that other employees had been previously dismissed for this reason, all indicate hostile animus by RKI management to workers' involvement in union organizing.

Second, the timing of Supervisor Rivera's threats on November 15 show that she had been made aware of the union organizing effort by employees who had attended the meeting earlier the same day, and, therefore, also had been informed of the leading role of the employee, Duarte.

Third, the timing of the termination of employee Duarte on the following day, November 16, is strong evidence that his firing was retaliatory in nature. In this regard, the WRC notes the previous statements by workers, prior to this incident, that the company supervisors' general practice is to inform the factory management of any union organizing efforts by employees.

Fourth, Duarte's having been the only employee among the six workers dismissed that day whose termination was involuntary, indicates that he was singled out for firing in retaliation for union organizing.

Finally, the immediate reassignment of other workers to Duarte's former job duties following his termination indicates that the justification provided to Duarte for his dismissal, that his position had been eliminated, was purely pretextual.

In light of all of these factors indicating that Duarte was terminated in retaliation for union activity, the WRC finds that, absent strong evidence to the contrary, his firing violated protections for freedom of association under both Honduran law<sup>16</sup> and the City's Ordinance.

*c. Reference to "Company Union" Mechanisms in Employment Contract*

The WRC's review of the individual employment contracts that workers sign with RKI noted a reference to certain benefits having been established pursuant to "collective working pacts signed by the Company with the Association of non-unionized workers." As the WRC has previously documented with respect to other garment factories in Honduras, the establishment of non-union worker associations, and the signing of "collective pacts" with such organizations, are devices frequently used by Honduran employers in the garment sector to interfere with and undermine workers' rights to freedom of association.<sup>17</sup>

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<sup>16</sup> Id.

<sup>17</sup> WRC Assessment re Rights of Association of Russell Athletic and Fruit of the Loom Employees in Honduras: Analysis of "Collective Pacts", Findings and Recommendations, June 19, 2009, <https://www.workersrights.org/wp-content/uploads/2016/02/WRC-Assessment-re-Russell-Collective-Pacts-6-19-09.pdf>.

Such employee representation schemes, known in the U.S. as “company unions” and in Central America as “solidarist associations” (*asociaciones solidaristas*) have long been recognized by international labor rights experts as a means of undermining genuine exercise of freedom of association.<sup>18</sup> Honduras’ leading labor law treatise, written by a former director general of the Ministry of Labor, observes that “when a collective pact is originated or signed, the source of its inspiration or origin is the employer . . . as a means of annihilating the emergence of a union.”<sup>19</sup> Therefore, the treatise concludes, “the actual goal that the [collective] pacts pursue is unfair and illicit: to threaten the right of freedom of association.”<sup>20</sup>

While, unlike U.S. labor law, the Honduran Labor Code does not prohibit, in all instances, the negotiation of collective agreements between an employer and a group of non-union employees, both Honduran and international labor rights experts are clear that when this process is controlled by the employer and takes the place of authentic collective bargaining, such an agreement violates international labor standards on the right to organize.<sup>21</sup> The International Labor Organization’s expert body on freedom of association has been on record since 1992 as recommending that Honduras revise its law in this area because of the misuse of such arrangements by employers to interfere with workers’ free exercise of their associational rights.<sup>22</sup> Similarly, the U.S. State Department’s human rights report on Honduras has described such arrangements as akin to “company unions” – a form of workplace organization that was legally banned in the United States over 80 years ago, because it interferes with workers’ freedom to form their own independent labor unions.<sup>23</sup>

If the reference in RKI workers’ employment contracts to “collective working pacts signed by the Company with the Association of non-unionized workers,” indicates that a “solidarist association” *has* been established at the factory and has negotiated “collective pacts” between workers and the company, this would be further proof that the factory management, at the very least, has failed to fulfill its obligation, under the City’s Ordinance, to “demonstrate commitment to best practices and continuous improvement in management practices” with respect to freedom of association.<sup>24</sup> Moreover, depending on how the factory’s “Association of non-union employees” was established, how the “collective working pact” was “negotiated,” and what the actual terms of this agreement contain, the presence of these labor relations arrangements at RKI

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<sup>18</sup> See, e.g., U.S. State Department, 2008 Human Rights Report – Honduras (2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119164.htm>; ILO Committee on Freedom of Association (“ILO CFA”), Complaint against the Government of Honduras. Report No. 281, Case No. 1568 (Vol. LXXV, 1992, Series B, No. 2), [https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2902109](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902109).

<sup>19</sup> Arnaldo Villanueva Chinchilla, *Derecho Laboral Hondureño* (Honduran Labor Law), 98 (1985).

<sup>20</sup> *Id.*

<sup>21</sup> See, Honduran Labor Code, Art. 72 (“Pacts between employers and non-unionized workers are governed by the dispositions established by collective bargaining agreements[.]”); ILO CFA, *supra*, n. 19; Villanueva, *supra*, n. 20.

<sup>22</sup> See, ILO CFA, *supra*, n. 19; at ¶ 381.

<sup>23</sup> U.S. State Department, *supra*, n. 19; see, e.g., *NLRB v. Penn. Greyhound Lines, Inc.*, 303 U.S. 261, 266, 271 (1938) (upholding order that employer withdraw recognition of company-dominated “employees association,” and observing that “[m]aintenance of a ‘company union,’ dominated by the employer, may be a ready and effective means of obstructing self-organization of employees.”), <http://supreme.justia.com/us/303/261/case.html>.

<sup>24</sup> City Code, Ch. 12.U.3 (m).

may represent, in itself, a violation of Honduran law, international labor standards, and, by extension, the City's Ordinance.

*d. Coerced Representation of Workers by Company Lawyer*

Respect for the right of freedom of association requires that workers be afforded free choice of representation with respect to issues concerning their terms and conditions of employment before not only their employers, but also government authorities and other relevant entities.<sup>25</sup> This right is violated when an employer selects such representatives for workers or compels workers to accept such representation.<sup>26</sup>

Interviews with RKI workers revealed that the factory management recently violated this right when, starting in August 2018, RKI compelled and coerced employees to sign a power-of-attorney document giving a company-selected and paid lawyer authority to represent them before the Honduran government authorities with respect to issues involving their compensation for statutory annual leave. Such compelled representation by a party selected and paid by the employer represented a further serious violation by RKI of workers' associational rights.

In mid-August, all of the factory's workers were required to attend small group meetings where they were directed by the factory's production manager, plant manager, and the human resources manager, to sign sheets of paper indicating their agreement with the text of a letter that was projected on a screen, titled "Power of Attorney," that was addressed to an attorney at a law firm, Ulloa and Associates, in the country's capital, Tegucigalpa. According to the law firm's website, its practice involves representing corporations, including on labor matters – there is no indication that this law firm represents the interest of employees.

The letter granted this attorney the right to request on the employees' behalf authorization for the workers to receive compensatory pay for their December annual leave. Workers were told by management that signing their acceptance of the text of the letter would provide proof that the workers would receive payment for vacation days in December. However, factory workers were not provided with copies of the text of this letter, and the factory managers present explicitly prohibited them from photographing the text of the letter as it was projected on the screen in the meeting room.

Nevertheless, several workers surreptitiously photographed the projection with the text and shared these photographs with other employees and, subsequently, with the WRC. One employee, who had received from a coworker a photograph of the text of the letter prior to being called to one of the small group meetings, shared the text with a lawyer whom the worker had consulted, who advised the employee not to sign the company's document. When, subsequently, this worker, citing the lawyer's advice, refused to sign the letter, the factory's manager told the worker that the lawyer the employee had consulted must not be a "real lawyer."

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<sup>25</sup> ILO Conventions 87 and 98; *cf.*, *e.g.*, ILO, Digest of Decisions and Principles of the ILO Committee on Freedom of Association (2006), Ch. 9.

<sup>26</sup> *Id.*



A number of workers reportedly refused initially to sign the company's "power-of-attorney" document. These workers subsequently were called, on multiple occasions, to the factory's human resources office, where they were repeatedly pressured to sign the company's document.

The workers who persisted in refusing to sign the document were penalized by being required by the factory's management to take two to five days of statutory annual leave. These employees were also insulted by factory managers, who called them "ignorant," and made threats that if these workers did not sign the company's document, they would have unspecified "problems," would "have to take [their] vacation days [right] now," or would have to pay, themselves, to go Tegucigalpa, which is several hours away by bus, and hire a lawyer. Why any of this would be the case, or the reason why RKI was requiring workers to give their power-of-attorney to a lawyer that RKI had selected and the workers had never met, was never clearly explained to them.

As noted, respect for the right of freedom association, under international labor standards, and the City's Ordinance, requires that workers be able choose their own representation in dealing with issues of wage and benefits, including, in this case, use of and compensation for statutory annual leave days. International labor standards make clear that this right is violated when the employer compels workers to be represented by a party that is under the financial control of the employer, in this case, a lawyer who is hired and paid by RKI. Because RKI coerced employees to be represented by its own lawyers with respect the issue of compensation for their annual leave days, the factory violated workers' right to freedom of association, and, by extension, the requirements of the City's Ordinance.

## **2. Recommendations**

In order to remedy the violations of Honduran law with regard to freedom of association and to ensure full respect for this right, the WRC recommends that RKI take the following steps:

- With regard to the dismissal of employee Melvin Duarte, unless the factory management is able to provide convincing evidence that his termination was non-retaliatory, immediately offer reinstatement to this worker, to his former position, with no loss of seniority, and with back wages from November 16, 2018 to the date of his reinstatement.
- Issue a verbal and written statement to workers, to be delivered during working hours and posted permanently in a public location in the factory, stating that RKI respects and will not oppose workers joining or forming a union of their choosing and that workers will not be disciplined or discriminated against in any way for exercising this right. The contents of this statement should be approved in advance by the WRC before it is communicated to employees.
- Arrange for an independent labor rights organization, such as a nongovernmental organization or trade union, to provide separate onsite trainings on company time for workers and managers concerning workers' rights to join and form a union. The provider of these trainings should be approved in advance by the WRC.

- Confirm whether, as referenced in workers’ employment contracts, any “collective pacts” have been signed by the factory management with a so-called ‘solidarist association’ (i.e., the “Association of non-union employees”), and, if so, provide the WRC with copies of these agreements and information concerning their negotiation and the formation of this association. Unless RKI can convincingly demonstrate that its labor relations practices in this area actually are consistent with respect for freedom of association, any such agreements should be rescinded, and recognition of any such non-union employee association should be withdrawn, without penalty of any kind to the factory’s workers.
- Rescind the power-of-attorney granted by employees to the company’s lawyer, inform workers of this rescission, and permit a trade union, nongovernmental organization, or independent labor rights attorney, approved by the WRC to provide consultation to employees, on company time, concerning the issue of compensation for annual leave.

### **3. Factory Owner Response and Current Status**

#### *a. Retaliation for Exercise of Freedom of Association*

In its response to the WRC concerning the WRC’s findings of violations of freedom of association at RKI, VF stated that with respect to the termination of union activist, Melvin Duarte, this employee was terminated as part of an economic layoff during which six other employees were also dismissed. VF also states that its company policy of non-retaliation for exercise of freedom of association is already posted in the factory and communicated to both workers and managers.

However, VF does not address Duarte’s assertions that, among the seven employees who were terminated, he was the only one who had not *volunteered* to be laid-off, and that, immediately prior to his termination, Duarte was identified as a union activist to a supervisor who openly threatened that anyone organizing a union at the factory would be dismissed. VF does not address these unlawful threats by its supervisor anywhere in its response to the WRC.

The WRC understands that Duarte is no longer seeking reinstatement at the factory. However, because his termination and the supervisor’s associated threats have had a chilling effect on freedom of association at RKI, in the absence of his reinstatement, it is all the more important that VF communicate proactively to employees that their associational rights will be respected going forward and permit independent training on this issue.

#### *b. Reference to “Company Union” Mechanism in Employment Contracts*

In its response to the WRC, VF stated that the reference to “collective pacts” in its employment contracts was erroneous, that no such company union arrangements exist at RKI, and that the reference will be deleted. The WRC has asked VF to clarify whether it will actually reissue employment contracts to all employees with this reference deleted, or whether this provision will simply not be included in new employment contracts in the future.

### *c. Coerced Representation of Workers by Company Lawyer*

In its response to the WRC, VF denied that it coerced workers to grant the company lawyer power of attorney, and justified providing legal representation to workers as necessary to permit employees to communicate to the Honduran labor ministry their approval for VF to give them pay in lieu of taking annual leave – and as being optional for employees. The WRC has requested that VF explain in this regard why (i) employees were not provided with a copy of the power of attorney document; (ii) workers were explicitly forbidden by company managers from photographing this document; and (iii) such approval could not be communicated by workers directly to labor ministry officials on their own behalf, by the company requesting that the labor ministry send representatives to the factory for this purpose.

## **C. Women's Rights**

### **1. Failure to Consistently Provide Accommodations for Pregnant Workers**

#### *a. Findings*

Honduras' Labor Code prohibits employers from requiring women workers who are pregnant to perform strenuous work.<sup>27</sup> When interviewed by the WRC, the VF's human resources director stated that RKI complies with this legal requirement, in part, by transferring pregnant workers employed on the factory's night shift to jobs on the day shift for the duration of their pregnancies.

RKI workers interviewed by the WRC confirmed that the factory transfers pregnant workers employed on the factory's nightshift to jobs on its dayshift. However, while most workers whom the WRC interviewed reported that pregnant workers with strenuous jobs are transferred to light duty, some interviewees stated that in certain cases such accommodations are not provided, suggesting that the company is not consistently complying with the law's requirements. These statements received corroboration from one of the factory's supervisors, who told the WRC that some pregnant employees were not provided with light duty.

In the October inspection of the factory, the WRC observed that some pregnant workers appeared to have not received appropriate accommodations in their working conditions. Although, as discussed below, RKI generally provides production workers with ergonomically appropriate seating, one pregnant employee was working in a chair that lacked proper back support. Another pregnant employee, who had varicose veins, was working from a standing position. A third pregnant worker, who is small in stature, was assigned to duties that required her to regularly lift and move a large 23-pound box.

VF's Honduras human resources director also told the WRC that the company's policy is that in any case where a pregnant employee is given less strenuous job duties ("light duty"), the company will continue to pay her the same wage rate that she received in her original position. During the factory inspection, however, the WRC spoke to one pregnant employee who had been assigned light duties (because her regular job assignment required painful heavy lifting) and

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<sup>27</sup> Honduran Labor Code, Art. 147.

reported that she was no longer receiving her previous wages. This employee told the WRC that she was now being paid the significantly lower legal minimum wage.

RKI's failure to maintain the wages of this employee, and perhaps others, during pregnancy not only violates the company policy described by VF's Honduras human resources director but, in the WRC's experience, may discourage other pregnant workers from requesting similar necessary accommodations. Women workers at other Honduran garment factories have told the WRC that they often avoid requesting light duty when pregnant, even when they feel it is needed for their health and safety, out of fear for a loss of earnings, both during their pregnancy and after childbirth – because, under Honduran law, statutory maternity leave benefits are calculated based on the employee's average wage during the prior year.<sup>28</sup> Failing to ensure that all women workers are able to receive accommodations that permit them to avoid physically strenuous work during pregnancy is a violation of Honduran law and, by extension, the City's Ordinance.

#### *b. Recommendations*

RKI should ensure that:

- All women workers whose regular positions require physically strenuous activities are assigned to light duties during pregnancy, without any reduction in their wages.
- In the case of any pregnant workers assigned to light duties who are currently being paid only the legal minimum wage, the company should adjust their wages to provide their average earnings prior to assignment to light duties, as well as provide back-pay to compensate them for the reduction in their wages to date.

#### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF asserted that its practices with regard to payment of pregnant workers assigned to light duties comply with Honduran law, because such employees are paid the regular wages for the job to which they are transferred – even though these wages may be lower than those the worker receives in her regular position. The WRC finds that the company's practice is contrary to the intent of the law, as it creates a financial penalty for pregnant workers who seek light duty assignments, rather than continuing to perform physically strenuous work.

### **D. Statutory Benefits**

#### **1. Failure to Provide Legally Required Onsite Childcare**

##### *a. Findings*

Article 142 of the Honduran Labor Code establishes the requirement that any employer with more than 20 workers is required to provide a place for mothers to safely feed their children under three years of age and where they can leave the children during working hours under the

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<sup>28</sup> Id., Art. 135.

care of a suitable person who has been designated for this task and is paid for that purpose. This employer obligation is affirmed in Honduras' women's rights law and regulation, the 2000 Law of Equal Opportunities for Women and the 2008 Regulation of the Law of Equal Opportunities for Women.<sup>29</sup> Under the Law of Equal Opportunities for Women, employers with more than 30 female employees have the obligation to provide a facility for the care of the children of the employees who are under seven years old.<sup>30</sup> The facility provided by the employer must be located inside the factory or working place and must allow the employee to leave her or his children during working hours.<sup>31</sup>

RKI workers' testimony to the WRC, the WRC's physical inspection of the factory, and an interview with VF's human resources director for Honduras all confirmed that RKI does not provide any onsite childcare facility for employees' use. According to the factory's management, RKI has a total workforce of approximately 2,300 workers. Thus, the company is in violation of the country's Labor Code, its Law and Regulation of Equal Opportunities for Women, and, by extension, the City's Ordinance.

When questioned by the WRC regarding whether the company intended to address the absence of such a facility, VF's human resources director for Honduras informed the WRC that the company has no current plans to provide childcare assistance to the factory's workers. Although noncompliance with this legal requirement is common in the Honduran garment sector, VF's response is particularly concerning given that a number of industry stakeholders, including labor, employer, and government representatives, have established a Tripartite Commission to consider how the need for childcare for garment workers should be best addressed.<sup>32</sup> In particular, the Commission has actively explored alternatives for providing employer-supported childcare in the communities where workers live, including around Villanueva where RKI is located,<sup>33</sup> which may be a preferable option for many employees, given security concerns in the country related to transportation.

#### *b. Recommendations*

RKI should, consistent with the requirements of Honduran law, establish an onsite childcare facility for the use of employees with young children, and, to the extent such employees prefer that their children be cared for during the workday in facilities located in their own communities, collaborate with the industry's Tripartite Commission in supporting such alternatives.

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<sup>29</sup> *Ley de Igualdad de Oportunidades para la Mujer* ("Law of Equal Opportunity for Women") (2000), Article 59; *Reglamento de la Ley de Igualdad de Oportunidades para la Mujer* ("Regulation of Equal Opportunity for Women") (2008), Article 23.

<sup>30</sup> Law of Equal Opportunity for Women, Article 59.

<sup>31</sup> *Id.*

<sup>32</sup> Honduran Ministry of Labor, Document No. STSS-618-2014 ("The Honduran Maquila Association (AHM) and the Union Confederations (CGT, CUTH, and CTH) commit to continued development and execution of the pilot program for Community Childcare Centers that serve *maquila* sector workers. To this end, the Bipartite Commission will establish the relevant basis and conditions ... extending the program at the beginning of the second year that this agreement is in place to the cities of San Pedro Sula and Villanueva.").

<sup>33</sup> *Id.*

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF asserted that Honduran law no longer requires employers to provide onsite childcare to employees. The WRC has consulted with legal experts who have conducted an analysis of the relevant statutes and determined that the mandate to provide childcare is still legally binding. The WRC will share this analysis with VF.

## **2. Failure to Provide Workers with Individual Lockers**

### *a. Findings*

Honduran labor regulations require that employers provide each of their employees with an individual locker with a key, in which the worker can store her personal belongings.<sup>34</sup> However, many of the RKI workers interviewed by the WRC reported that they do not have their own locker at the factory.

One-third of the workers interviewed by the WRC reported that they did not have access to their own locker, either because they shared lockers with other workers, or because they had not been assigned any locker at all. One worker told the WRC, “I don’t have a locker because all the lockers are being used by workers on other shifts and are full. I would like to be assigned a locker.”

Interviews with workers indicated that some employees share lockers, because there are not a sufficient number of lockers located close enough to their work areas to permit these employees to store their belongings in an empty locker and clock-in on time for work. One worker told the WRC, “I don’t have [use of] a locker, [since] I lose [too much] time if I go to the lockers.” Another worker said, “I share a locker with a friend, because the other lockers are [too] far from my work area.”

Honduran law requires that RKI provide a locker to each worker in which she is able to store her personal belongings. By failing to comply with this requirement RKI is violating Honduran labor regulations and, by extension, the City’s Ordinance.

### *b. Recommendations*

The WRC recommends that RKI install additional lockers and/or relocate the existing lockers so that each worker at the factory has individual access to a locker in which to store her personal belongings that is located in reasonable proximity to the employee’s work area.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF committed to provide individual lockers to all employees at RKI. The WRC will seek to verify the implementation of this commitment.

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<sup>34</sup> Honduran Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness (“Preventative Measures of Workplace Accidents and Work-Related Illness Regulation”), Executive Agreement Number STSS-053-04 (October 19, 2004), Art. 69(2).

## **E. Health and Safety**

Although the RKI factory maintains safety and health conditions that, in notable respects, are superior to those typically found in garment factories in developing countries – most saliently, the installation and operation of air conditioning equipment to maintain healthy and comfortable temperatures in the workplace and the provision and maintenance of ergonomically appropriate seating for machine operators – the WRC’s inspection of RKI on October 16 – 17, 2018 identified a significant number of conditions in the factory that violate applicable Honduran law concerning occupational safety and health, and, by extension, the City’s Ordinance. We detail these findings below, in each case, citing the relevant regulation that is being violated and providing explicit recommendations for addressing the specific hazards noted.

### **1. Interference with Worker Representation on Health and Safety Committee**

#### *a. Findings*

Honduran law requires that any workplace with more than 10 employees must establish a health and safety committee, which includes an equal number of employer and worker representatives.<sup>35</sup> In a workplace with more than 1,000 employees, such as RKI, the committee is required to have five employer representatives and five worker representatives.<sup>36</sup> The management may choose the five employer representatives. Where, as at RKI, there is no workplace union at the factory, the worker representatives must be chosen by the workforce through secret-ballot elections, which must be held every two years.<sup>37</sup>

Under the law, the committee is responsible for “investigat[ing] causes of occupational hazards,” proposing measures to prevent them, and ensuring compliance with these measures,<sup>38</sup> as well as informing workers about safety risks that are present in the workplace, preventative measures that the company and committee are taking to counter these risks, and proper work methods.<sup>39</sup>

Although Honduran law requires that the worker representatives on the committee be chosen by the employees through a secret-ballot vote, RKI’s human resources manager informed the WRC that the entire committee was “formed by management.” While some workers who were interviewed by the WRC indicated that employees could volunteer for the committee, there was no indication at all, from either managers or workers, that a secret-ballot election had ever been held for the employee representatives.

Since documents provided by RKI indicated that the committee had been established in 2015, under the law and, by extension, the City’s Ordinance, to date, two such elections should have been held but have not. One apparent result of the lack of democratic process and participation in

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<sup>35</sup> Honduran Labor Code, Art. 412.

<sup>36</sup> Honduran Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness, Executive Agreement Number STSS-053-04 (“Preventative Measures of Workplace Accidents and Work-Related Illness Regulation”) (2004), Art 14.

<sup>37</sup> *Id.*, Art. 19.

<sup>38</sup> Honduran Labor Code, Art. 412.

<sup>39</sup> Preventative Measures of Workplace Accidents and Work-Related Illness Regulation, Art 37.

the selection of worker representatives on the committee is that, although the committee appears to be fairly active, there a low degree of awareness, among the larger workforce, of the committee's functions and activities.

At least half of the workers interviewed by the WRC were unaware of the committee's existence, or of the committee's activities. One employee told the WRC, "The committee meets once a month, but they don't tell the workers anything about the work they are doing." This lack of awareness among the workforce of the committee and its activities is likely exacerbated by the fact that, currently, all of committee's worker representatives are employed on the factory's nightshift.

### *b. Recommendations*

With regard to the factory health and safety committee, the WRC recommends that RKI take the following steps:

- Organize a process by which the workforce can democratically elect the employee representatives on the health and safety committee. In light of the company's failure to comply with the legal requirement that workers select their own committee representatives, the WRC further recommends that RKI permit an outside labor rights organization, such as a nongovernmental organization or trade union, to provide onsite trainings for workers during regular working hours in order to inform them about the role of the committee and the workers' participation in this committee, which could be held in conjunction with the previously recommended training on freedom of association. The provider of this training should be approved, in advance, by the WRC.
- Ensure that the health and safety committee maintains clear channels through which workers can communicate with their representatives on the committee and vice versa.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF reported that in December 2018 a new health and safety committee was democratically elected at the factory and has received training with respect to its role and responsibilities. Workers have told the WRC that they were unaware of such an election having taken place, but that the company had solicited volunteers for the committee. The WRC has requested that VF provide additional information as to how employees are being informed of the committee's activities, including the election for its members.

## **2. Punitive Approach to Workplace Accidents**

### *a. Findings*

From a review of factory documents, the WRC found that RKI takes a punitive approach to workplace accidents, which disciplines employees for their own injuries rather than seeking to analyze and address their root causes.



To cite a single example, an accident report from September 27, 2018, states,

The operator was at his work station carrying out the operation of attaching the tag to the sleeve on an automatic machine. When he was placing the tag on the first mold, he accidentally pressed the pedal with his foot, activating the second mold which put pressure on his index finger. He was immediately transferred to the clinic for medical attention.

The report of the company's investigation of the accident states that, "The machine is very fast and the young man activated it ahead of time and it smashed his index finger on the right hand as he was fixing the tag." The company's standard accident report gives the options of attributing the cause of the accident to "negligence, lack of training, lack of precaution, [or] other," with "lack of precaution" having been indicated.

The report states that the "action plan" for addressing the accident is "retraining [the worker] on the operation of attaching a tag to the sleeve" and "disciplinary measures." Other documents indicate that the employee, who missed two days of work due to his injury, received a recorded verbal warning for this incident, the first step in the company's progressive discipline policy, which ends in termination. The WRC's review of other company records confirmed that is the company's standard practice to record verbal disciplinary warnings when workers are injured in accidents that the company deems to be the worker's fault.

RKI's approach for addressing worker injuries from machinery in many, but not all, cases seemed to be to simply discipline employees and require them to undergo retraining, rather than remove the mechanical hazards which are the underlying cause of these injuries. Such a reactive and punitive approach violates Honduran workplace safety laws, which require that "[t]o protect the worker from aggressive mechanical action from the points on the machine that undertake the operation, necessary safety mechanisms will be adopted to limit the range of operational movements."<sup>40</sup>

VF clearly has the capacity to take the more proactive approach to preventing workplace injuries that the law requires. The WRC's health and safety specialist, who also noted a tendency of RKI management to attribute accidents to "worker mistake," did note and credit at least one instance where managers sought to modify machinery to prevent "pinch" injuries.

#### *b. Recommendations*

RKI should:

- Remove disciplinary notices from employees for workplace accidents, except those involving gross or willful negligence; and
- Modify its accident investigation policy to focus on improving workplace conditions and practices to identify and remove the hazards that are the root causes of accidents.

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<sup>40</sup> Id., Art. 91.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF denied that the factory management takes a punitive approach to addressing workplace accidents, but stated that the company does discipline workers for “willfully violat[ing] company policy.” The accident investigation discussed by the WRC above, however, which took a punitive approach, did not involve willful misconduct.

Also, multiple workers testified to the WRC that they avoided reporting accidents caused by unsafe conditions for fear of facing discipline. Finally, the WRC’s health and safety expert who reviewed the factory’s accident logs observed a strong tendency to simply attribute accidents to “worker mistakes” rather than to seek root causes that would permit such mistakes to result in accidents.

## **3. Electrical Hazards**

### *a. Findings*

The WRC’s health and safety specialist observed that the factory has appropriately installed and maintained electrical wiring and outlets, and that RKI has “lock-out / tag-out” devices to protect employees from electrical and mechanical hazards from machinery requiring maintenance or repair. The WRC’s health and safety specialist observed, however, that maintenance and adjustments were conducted on spreading equipment in RKI’s cutting facility without “lock-out / tag-out” procedures having been implemented, exposing employees to risk of injury, and violating legal standards.<sup>41</sup>

### *b. Recommendations*

RKI should implement and maintain “lock-out / tag-out” procedures on all maintenance and adjustment of electrically-powered machinery at the factory, including spreading machines in the cutting facility.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF stated that it disagreed with the WRC’s finding as “there was no equipment out of service during the WRC inspection” and the factory “maintains a robust Lock-out / Tag-out (LOTO) program.” As discussed above, however, the WRC’s finding concerned adjustments and maintenance performed on machinery *without* the equipment having been taken out of service.

The WRC’s health and safety expert personally observed a worker climb onto a spreading machine to perform adjustments and maintenance to this equipment while the machinery was still energized. The WRC maintains its recommendation that “lock-out / tag-out” procedures be required and followed in these instances.

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<sup>41</sup> Honduran Labor Code, Art. 45(i) (requiring employers to “take all necessary and legal measures to prevent accidents in the use of machinery, instruments”).

## 4. Machine Guarding

### a. Findings

While sewing, cutting, and spreading machinery at RKI generally had guarding installed to protect the workers who operated it, the WRC's health and safety specialist observed that the belt drives for the pulleys on some machinery in the factory's sewing section



Figure 1: Unguarded Belt Drive on Sewing Equipment

was missing or only partially equipped with guarding, thereby violating relevant legal standards (See Figure 1).<sup>42</sup>

### b. Recommendations

RKI should install complete guarding on belt drives of all machinery in the factory.

### c. Factory Owner Response and Current Status

In its response to the WRC, VF insisted that all machinery at the factory already has appropriate guarding. However, the inadequate guarding on the belt drive was photographically documented by the WRC.

## 5. Chemical Handling and Storage

The WRC's health and safety specialist found that the company is consistent in ensuring that chemicals are properly labeled and that material safety data sheets are posted with information concerning the chemicals in use in the facility. Moreover, chemicals are properly stored in dedicated areas, with secondary containment for spills. However, as discussed below, the specialist also observed that the company had failed to install adequate facilities in some areas for employees to wash their eyes in case of chemical exposure (See Figure 2).



Figure 2: Chemical Storage Facility without Eyewash Shower

<sup>42</sup> Id.

*a. Finding*

Protecting employees from eye injuries caused by exposure to chemicals requires that facilities be equipped with one or more eyewash stations that provides a 15-minute continuous flow of water or eye-rinse solution and are located within a 10-second unobstructed line of travel from where chemicals are stored. The chemical storage areas at RKI are equipped with 16-ounce bottles of eye-rinse solution; however, these do not provide 15-minutes of continuous flow, violating safety standards.<sup>43</sup>

*b. Recommendations*

RKI should install actual safety shower eyewash facilities within 10 seconds of unobstructed travel time of all chemical storage areas in the factory.

*c. Factory Owner Response and Current Status*

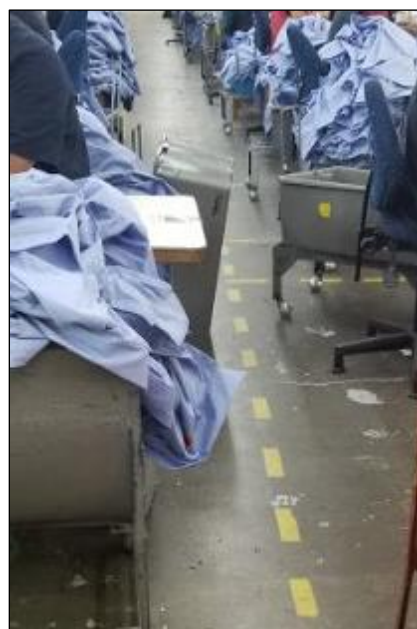
In its response to the WRC, VF committed to install “three eye-wash stations, one proximate to each chemical warehouse.” Workers interviewed recently by the WRC were unaware of the new eyewash stations. The WRC will request that VF provide photographic evidence of the new stations.

**6. Fire Safety**

**a. Emergency Exits**

*i. Finding*

The WRC’s health and safety specialist observed that while the factory has a well-developed evacuation plan, actual egress via aisles and from individual workstations on the factory floor was partially blocked by storage bins, chairs, or other objects (See Figure 3), in a manner that would hinder escape in case of fire or another emergency, thereby, violating legal standards.<sup>44</sup>



**Figure 3: Obstructed Aisle in Sewing Section**

*ii. Recommendation*

RKI should ensure that aisles and egress from individual workstations are free from obstacles that could hinder evacuation in case of fire or another emergency.

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<sup>43</sup> Preventative Measures of Workplace Accidents and Work-Related Illness Regulation, Art. 385 (“In cases that involve the use of corrosive, irritant, [or] toxic materials ... the firm will install emergency showers and/or eyewash stations in work areas so that workers can use them in case they experience unsafe contact with these products. The showers will be strategically installed in easily accessible sites and the water supply and water pressure will be guaranteed during the workday.”).

<sup>44</sup> Id., Art. 53 (1) (“Corridors, galleries and hallways must have an adequate width for the amount of people that move through them....”).

### *iii. Factory Owner Response and Current Status*

In its response to the WRC, VF committed to maintain clear egress in the factory aisles. The WRC will seek confirmation from workers of improvement in this area.

## **b. Fire Extinguishers**

### *i. Finding*

Although the factory's other fire extinguishers were in working order, the WRC's health and safety specialist observed that one of the fire extinguishers in RKI's sewing facility (Fire Extinguisher #61) was expired, in violation of safety standards. RKI management agreed to replace this fire extinguisher.

### *ii. Recommendation*

RKI should replace Fire Extinguisher #61, and regularly inspect all fire extinguishers in the factory to ensure that they have not expired.<sup>45</sup>

### *iii. Factory Owner Response and Current Status*

In its response to the WRC, VF reported that the expired fire extinguisher has been replaced.

## **c. Storage of Combustible Materials**

### *i. Findings*

The WRC's health and safety specialist observed that, in violation of legal standards,<sup>46</sup> large quantities of combustible materials, such as wooden pallets and cardboard boxes, were being stored in the mezzanine of the sewing facility (*See Figure 4*), and combustible fiber dust had been left to accumulate on some utility pipes.



**Figure 4: Combustible Cardboard Boxes and Wooden Pallets Stored in Sewing Facility Mezzanine**

<sup>45</sup> Id., Art. 220 (“All [fire safety] devices will undergo adequate periodical tests and inspections as frequently as is necessary to ensure their efficacy at all times.”).

<sup>46</sup> Id., Arts. 202 (“All work areas that produce or use flammable substances and are exposed to sudden fires or the quick spread of fire will be constructed at a convenient distance from each other and isolated from the rest of the work centers.”) and 204 (“The [workplace] zones at greatest risk from fires will be isolated from the rest of the facility, and will constitute a fire sector.”).

## *ii. Recommendations*

RKI should ensure that combustible materials are stored in bulk away from production areas and that utility pipes are kept free from significant accumulations of combustible dust.

## *iii. Factory Owner Response and Current Status*

In its response to the WRC, VF simply stated that combustible materials will be handled in accordance with fire safety standards. Unfortunately, workers report no reduction in the storage of such materials on the mezzanine of the sewing facility.

## **7. Personal Protective Equipment**

### *a. Findings*

Under Honduran law, employers are required to provide workers with personal protective equipment (PPE) and ensure that it is used properly to prevent workplace injuries.<sup>47</sup> Although RKI provides workers with PPE, the WRC’s health and safety specialist found inadequacies that failed to meet legal requirements with respect to the provision and use of respiratory protection equipment and certain safety eyewear in the factory.

In particular, although Honduran workplace health and safety regulations require that employees who are exposed to dust use face masks equipped with filters, the WRC found that some workers exposed to fiber dust had been equipped with surgical masks, which do not meet legal requirements, because they do not filter small particulate matter and do not prevent inhalation of such particles around the edge of the mask.<sup>48</sup>

Moreover, while some workers are provided with appropriate (i.e., NIOSH N95) respirators, contrary to the requirement that these respirators be stored away from airborne contaminants, some of these were being kept improperly near the stain removal work area. Finally, the safety eyewear provided to workers who use corrective eyeglasses failed to meet legal requirements, because they lacked properly fitting and fully protective side panels (*See Figure 5*).<sup>49</sup>



**Figure 5: Inadequate Side Eye Protection**

<sup>47</sup> Id., Arts. 260 (“The use of personal protection measures will be obligatory when it is not possible to employ collective protection measures, or if these measures do not guarantee a total protection of the work-related risks.”) and 272 (“The company’s owner is under the obligation to: (a) Provide all of the workers with the necessary accessories for personal protection...”).

<sup>48</sup> Id., Art. 298 (“Breathing masks with mechanical filters will be used in work involving particulate contaminants such as dust...”).

<sup>49</sup> Id., Arts. 284 (“Workers will use specialized eyewear or protective screens of varied sizes and kinds of glass to protect their eyes, which will be used accordingly depending on the risk to be avoided.”) and 285 (“Protective eyewear will meet the following minimum standards[:]. . . . be completely sealable and well-fitting, and must include perforations for ventilation.”).

### *b. Recommendations*

RKI should provide workers with:

- Appropriate respirators for employees who are exposed to fiber dust and should store these masks properly, away from contaminants; and
- Protective eyewear that provides adequate, well-fitting side protection.

### *c. Factory Owner Response and Current Status*

In its response to the WRC concerning provision of protective equipment, VF simply stated that that would require workers to wear only NIOSH N95 respirators. However, workers report that these respirators are only issued to workers who are exposed to smoke from machinery, and are not issued to workers who are exposed to fiber dust. The WRC also has requested that VF reply to the recommendation concerning provision of protective eyewear.

## **8. Excessive Noise Levels**

### *a. Findings*

Honduran health and safety regulations state that the maximum acceptable noise level exposure for a worker over a period of eight or more hours is 85 decibels.<sup>50</sup> The WRC's health and safety specialist, however, measured noise levels of up to 89 decibels in the vacuum pump room in the cutting facility, above this maximum level. While RKI makes hearing protection equipment available to workers, it does not require its use in this work area or post a notice of this requirement in the work area, both of which the law mandates in such cases.<sup>51</sup>

### *b. Recommendations*

RKI should take those measures required by Honduran law to reduce noise exposure levels in the vacuum pump room,<sup>52</sup> and, in the interim, require use of noise protection equipment and post notice of this requirement in that work area.

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<sup>50</sup> Id., Art. 353 (“The maximum admissible level for continuous noise in workplaces will be 85 decibels as measured by the A scale (dBA) of a sound level meter at head height.”).

<sup>51</sup> Id., Arts. 352 (“When ... workers are exposed to impermissibly loud noises, the firm must provide appropriate safety gear.”) and 357 (“Workers are obligated to use auditory safety equipment provided by the firm when they are exposed to decibel levels above 85dB(A) for eight hours.... The firm will also place signs that alert workers in zones in which these levels are exceeded and will establish a set of technical and organizational measures to reduce workers' exposure.”).

<sup>52</sup> Id., Arts. 351 (“In all worksites in which noise is produced beyond permissible decibel levels, technical studies must be undertaken to apply systems or methods that can most reduce or minimize sound levels. Old or defective machinery, or machinery in state of disrepair, will be examined first and will be adjusted or removed as needed.”) and 352 (“When sound pressure rises beyond the maximum permissible levels, worker exposure to noise will be reduced according to the following systems and in the applicable order: 1. Responding to the source of the noise in the following ways: a. Isolating the source of the noise through the removal of machinery ... b. Placing the machinery within an noise-reducing enclosure. c. Maintaining an adequate maintenance regime that guarantees the

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF disputed whether noise protection equipment is mandatory in the vacuum pump room as no employee is stationed there and exposed to its high sound levels for an entire shift. However, VF agreed to require workers to make use of such protective equipment during any time that they are inside that room.

## **9. Workplace Air Quality**

### *a. Findings*

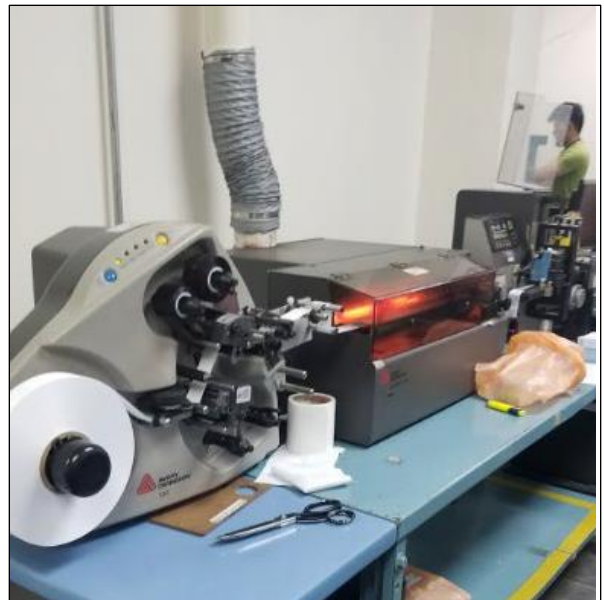
Honduran law requires the employer to take steps necessary to ensure that the factory's air quality does not have any negative effects on workers' respiratory health.<sup>53</sup> The WRC's health and safety specialist observed that while the factory's label oven was equipped with an exhaust duct, this duct did not appear to be equipped with mechanical ventilation, and chemical odors indicated that some vapors were escaping into the work area, in violation of these legal standards.

### *b. Recommendations*

RKI should install a mechanical ventilation device and improve the sealing on the exhaust duct for the factory's label oven.

### *iii. Factory Owner Response and Current Status*

In its response to the WRC, VF claimed that the label oven has an exhaust fan. The WRC photographically documented, however, that the label oven's exhaust fan is internal to the machinery and, therefore, does not capture vapors that escape outside the oven (*See Figure 6*).



**Figure 6: Label Oven without External Exhaust Ventilation**

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conservation and functioning of moving parts. d. Substituting machinery or work processes for less noisy alternatives. ... 2. Responding to the noise in the following ways: a. Isolating work posts in noisy environments. b. Placing sound-cancelling material on floors, walls and ceilings as needed. 3. When in spite of these measures, workers are exposed to impermissibly loud noises, the firm must provide appropriate safety gear.”).

<sup>53</sup> Id., Art. 301 (“Respiratory protection [i.e., PPR] does not absolve the firm from the obligation to maintain a safe work environment through collective safety measures and ventilation. Individual respiratory protective measures are meant solely for cases in which exposure to contaminants cannot be completely controlled or during short-term operations.”).



## 10. Factory Cafeteria

### *a. Findings*

RKI provides a cafeteria for workers to take their meals. Given that, as discussed, the workers' meal break is only a half-hour long, employees are unable to return home to eat and, instead, either bring their own food or eat the meals served at the factory cafeteria.

Workers interviewed by the WRC had numerous complaints about the quality of the food they are served in the cafeteria. Employees told the WRC:

- “The food is horrible. Many people get sick.”
- “Many of the workers choose not to eat the cafeteria food, because they feel it makes them sick ... [and] [t]he food is served cold. I bring my own food.”
- “The food that they serve at the cafeteria is undercooked.”
- “[About] [t]he food at the cafeteria[,] .... [t]here have been worms on the lettuce. There have been cockroaches in the rice.”

Honduran law prohibits the distribution of foods that are contaminated, or unsuitable for human consumption<sup>54</sup>. Given the testimony received by workers with regard to the quality of food that is served in the factory cafeteria, it is clear that, on some occasions, RKI fails to comply with this requirement.

### *b. Recommendations*

In order to remedy the violation, the WRC recommends that RKI take the necessary steps to ensure that all food served at the factory cafeteria is hygienic and safe for consumption.

### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF stated that RKI's new health and safety committee would conduct monthly monitoring of the cafeteria food supply. However, workers reported to the WRC that they have not seen any improvement with respect to the sanitary conditions in the cafeteria.

## 11. Safety Training

### *a. Finding*

The WRC health and safety specialist found that while workers at the factory who operate forklifts receive appropriate safety training, employees who operate other lifting equipment, such

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<sup>54</sup> Honduran Health Code, Article 85.

as cranes and hoists, had not received training specific on the use of this equipment – which poses distinct safety risks to these and other employees – thereby failing to comply with legal requirements.<sup>55</sup>

#### *b. Recommendations*

RKI should provide specific training for workers who operate cranes and hoists on the safety hazards associated with and the safe operation of this equipment.



**Figure 7: Stationary Crane/Hoist in Cutting Department**

#### *c. Factory Owner Response and Current Status*

In its response to the WRC, VF stated that its training for operation of powered industrial trucks included training on safe operation of powered cranes. However, the machinery that is of concern in this case is stationary crane equipment (*See Figure 7*), whose use poses different risks than those posed by use of powered vehicles, and requires separate safety training.

## **12. Trip Hazards**

#### *a. Findings*

The WRC’s health and safety specialist observed tripping hazards, including broken surfaces and coverings for utility access, around the exterior of RKI’s facilities, which violated Honduran workplace safety standards (*See Figure 8*).<sup>56</sup> RKI’s management informed the WRC that the



**Figure 8: Trip Hazard outside Sewing Facility**

maintenance of these surfaces is the responsibility of the management of the industrial zone where the factory is located. Under Honduran law, however, employers are responsible for ensuring safe surfaces at their workplaces.

#### *b. Recommendations*

RKI should repair, itself, or ensure that the authorities of the industrial zone where the factory is located repair any broken and uneven surfaces around the RKI facilities.

#### *c. Factory Owner Response and Current Status*

<sup>55</sup> Preventative Measures of Workplace Accidents and Work-Related Illness Regulation, Art. 9(b)(ñ) (“[A]ll employers are obligated to: ... carry out trainings on the risks that workers are exposed to in the firm, emphasizing the measures put in place to control and prevent workplace accidents...”).

<sup>56</sup> *Id.*, Art. 52 (1) (“[S]urfaces will be plain and smooth, without cracks or holes. They will be made of homogenous and non-slippery material that can be easily cleaned.”).

In its response to the WRC, VF reported that the industrial zone authority had completed the repair in question. The WRC has requested photographic confirmation of this repair.

#### **IV. Conclusion**

Although the violations that remain outstanding at RKI are significant, they are highly amenable to remediation and correction by VF, with the assistance and involvement of its customer, AlSCO. This process must have as its goal the substantial remediation of all outstanding violations. The WRC will continue to engage with VF and AlSCO in this regard.