

To: WRC Affiliate Universities and Colleges
From: Tara Mathur and Scott Nova
Date: September 16, 2024
Re: WRC Case Brief: Successful remediation of illegal termination at supplier to Gear for Sports and Outerstuff

Retaliatory Dismissal of Workers Organizing for Change

There is a long history of retaliation against trade unionists in Latin America—including, and especially, the illegal dismissal of workers who choose to join or lead a union. The propensity of factory owners to unfairly dismiss unionists is so well recognized in the political culture of the region that many Latin American countries have written an explicit protection into their labor law designed to prevent discriminatory dismissals.

What is “Fuero Sindical” and Why Does It Matter?

This protection, known in Spanish as “*fuero sindical*”, requires employers to demonstrate to regulatory authorities, *prior* to dismissing a union leader, that there are legitimate grounds for dismissal. Factory owners cannot lawfully fire the worker until they have made that demonstration. Fuero sindical is a lifeline for workers trying to exercise their right to organize—a right protected in university labor codes and in the voluntary code of conduct of virtually every significant apparel brand.

Without this protection, it is, in many cases, a practical impossibility to organize a union in countries in the region like El Salvador and Guatemala, which export a great deal of apparel to the US, including university logo goods. Even where workers strongly desire to unionize to try to end abusive working conditions or raise their wages above the poverty line, if worker-leaders are not protected from retaliatory firings, their efforts can often be easily thwarted.

The WRC’s Role in Protecting Fuero Sindical

You won’t be surprised to know that some employers don’t always respect fuero sindical and still try to fire union leaders without obtaining authorization from regulators. When they do, workers can often get a relatively quick court order directing reinstatement, because the worker only has to show that the firing occurred without prior approval. But sometimes these orders are not enforced, and the employer simply refuses to reinstate the worker.

The WRC has worked on many cases, at collegiate and non-collegiate factories, where worker-leaders who enjoy fuero sindical protection have been fired and where a government reinstatement order is defied by the employer. We have had a great deal of success securing reinstatement in these cases, even though employers may, at first, be strongly resistant. There are

also cases where workers are reluctant to return to work and are owed financial compensation instead, which the WRC is able to secure.

Sometimes these cases involve numerous union leaders, sometimes a few, in some cases only one. Regardless, vindicating this vital protection is integral to hope for labor rights progress in the region.

The following update reports on a case where fuero sindical was violated at a factory in El Salvador making university logo goods. Remediation was recently completed by the WRC.

The Case of Grupo Merlet

This case brief summarizes the WRC's investigation and the subsequent remediation of the illegal termination of a worker union leader at the garment manufacturer known as Industrias Merlet or Grupo Merlet in El Salvador. Industrias Merlet is disclosed for the production of university licensed apparel by Gear for Sports Inc (a subsidiary of Hanesbrands) and Outerstuff.¹ Workers interviewed by the WRC further reported that the factory group was, at the time that the violation occurred, a supplier of non-collegiate apparel for Levi Strauss & Co.²

The WRC documented the illegal dismissal of a plant-level leader of the union known as the Sindicato General de Costureras ("SGC"). The worker, who was an employee of the Grupo Merlet's operation known as "Lenceria Export,"³ was an elected member of the union's Executive Committee at the time of her dismissal. She was fired from the factory's employment on October 19, 2023, as part of a larger layoff of factory employees.

Salvadoran labor law provides protections for elected union leaders by prohibiting employers from firing these workers for the period of their term of office and for a period of one year after the expiration of their terms, without first obtaining permission from government authorities to do so.⁴ This protection holds true whether or not the employer has knowledge of the worker's position as a union leader and irrespective of the motive for the worker's dismissal.

The worker who was illegally fired from her position at Grupo Merlet (Lenceria Export) filed a complaint with the Salvadoran Ministry of Labor. This labor authority issued a finding on November 7, 2023, requiring the factory to reinstate the worker. However, the factory refused to comply with the Ministry of Labor's findings, and, as a result, the fired union leader filed a lawsuit against her employer with regard to the factory's illegal dismissal. On February 26, 2024,

¹ Licensing companies provided disclosure data to the WRC and stated that this factory was also disclosed for the National Football League Players Association ("NFLPA") by Fanatics and for Mitchell & Ness (owned by Fanatics). However, Fanatics informed the WRC that Industrias Merlet was deactivated for Fanatics in 2020 and for Mitchell & Ness in July 2023 and that the factory is, therefore, no longer a supplier of university licensed apparel for these companies.

² While workers reported to the WRC that they had, as recently as 2024, been producing garments for Levi Strauss & Co., this factory is no longer included in Levi's factory disclosure data, available on the company's website.

³ According to disclosure provided by Levi Strauss & Co., "Lenceria Export" was previously known as "Industrias Merlet". *Levi Strauss & Co. Factory List*, published March 2015. <http://levistrauss.com/wp-content/uploads/2015/03/Levi-Strauss-Co-Factory-List-March-2015.pdf>.

⁴ Labor Code of El Salvador, Article 248.

the Santa Tecla Labor Court in El Salvador issued orders citing Grupo Merlet for the illegal dismissal of the worker and ordering the factory to make payment of back wages. The worker reported to the WRC that, rather than remedying the violation that occurred, the factory appealed the labor court's decision.

Given that workers in El Salvador frequently experience delays of months or even years in receiving a decision from the Salvadoran appeals courts, and to seek swifter recourse, the worker and her union decided to file a complaint with the WRC in May 2024 alleging a violation of university codes of conduct. The WRC reviewed the facts of the case, including the findings issued by the Salvadoran Ministry of Labor and Labor Court, and found that Grupo Merlet's action to dismiss the elected union official was in violation of Salvadoran labor law⁵ and, by extension, of university codes of conduct, which provide protections for workers' right to freedom of association.⁶

In June 2024, the WRC recommended to Grupo Merlet that the factory reinstate the worker to her former position, or an equivalent position, and make full payment of back wages. The company agreed to make payments of back wages to the worker, which were delivered to the worker through the courts on July 5, but the company did not agree to reinstate the worker, informing the WRC that it would be closing its operation of its Lenceria Export facility. The WRC informed the factory that full remediation of the violation included reinstatement of the worker and recommended that the factory reinstate this worker to another similar position within Grupo Merlet's operations. However, the worker ultimately informed the WRC and the factory that she did not wish to return to work at Grupo Merlet, and the company agreed to pay the worker, in addition to the back wages, the severance she was owed under Salvadoran law from the time of her initial hiring to the date of her dismissal.⁷

Given that the worker did not wish to return to work at Grupo Merlet, the company's payment of back wages and severance to the elected union leader who was illegally dismissed from Grupo Merlet (Lenceria Export) represents full remediation of the violation of Salvadoran labor law and university codes of conduct.

⁵ Workers' right to freedom of association is protected by the Salvadoran Constitution, Article 47. The prohibition of employers to fire elected union officials is codified in the Salvadoran Labor Code, Article 248.

⁶ Collegiate Licensing Company, Standard Retail Product License Agreement, 2023, Code of Conduct ("CLC Code of Conduct"), (a).(ii).(I.) "Freedom of Association and Collective Bargaining: Licensee shall recognize and respect the right of employees to freedom of association and collective bargaining."

⁷ The Salvadoran Labor Code following a no-fault termination, employees are owed the equivalent of 30 days of a worker's base wage for each year of service as well as compensation for unused vacation days and a pro-rated portion of the legally required year-end bonus. Salvadoran Labor Code, Articles 58, 187, and 202.