



## HOOSIER MANUFACTURING (GUATEMALA) REPORT ON THE STATUS OF REMEDIATION/CORRECTIVE ACTION PLAN July 18, 2023

On March 7, 2022, the Fair Labor Association (FLA) posted the Hoosier Manufacturing Brand-Commissioned Independent Investigation report. The investigation was undertaken by FLA at the request of FLA-affiliated companies Fanatics Brands and Nike Inc. (the “Brands”). The Brands were investigating a complaint filed by a group of former employees of *Hoosier Manufacturing Compañía Limitada* (hereinafter, “the Factory” or “Hoosier”) in Guatemala. The complainants alleged that 27 workers were illegally terminated by Hoosier in early April 2021 after the Factory became aware of their efforts to form an independent trade union at this workplace.

The workers filed their complaint regarding the alleged violations of local regulations and international standards governing Freedom of Association against not only the Brands but also against other external stakeholders, including FLA.

While the Brands and FLA were determining the admissibility of the Brand-Commissioned Independent Investigation, another group of workers, separate from those 27 workers terminated in April 2021, were in the process of forming a trade union at Hoosier, under the name of *Sindicato de Trabajadores de la Empresa Hoosier Manufacturing, Compañía Limitada y demás Empresas Anexas y Conexas* (hereinafter, “SITRAHOOSIER”). SITRAHOOSIER was registered and authorized by the Ministry of Labor in November 2021 and constituted the first official union at the Factory.

Prior to the investigation, SITRAHOOSIER and the Factory were engaged in direct negotiations as part of the Socio-economic Collective Conflict process, which resulted in the signature of a settlement that ended the conflict.<sup>1</sup> Despite the parties’ settlement, the union confederation *Central General de Trabajadores de Guatemala* (hereinafter, “CGTG”) and other local stakeholders had concerns about how industrial relations would be managed by the Factory now that there was an official union at the workplace.

In January 2022, FLA initiated the Brand-Commissioned Independent Investigation and engaged an independent investigator, Francisco Chicas<sup>2</sup>, to examine the allegations of

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<sup>1</sup> For more information on this Socio-economic Collective Conflict process, please see the Section 1 of the Independent Investigator’s report [here](#).

<sup>2</sup> Francisco Chicas is currently employed by FLA but at the time of the investigation he was an independent consultant.

violations to Freedom of Association. The scope of the investigation included three core issues:

1. The dismissal of the 27 workers in April 2021, allegedly due to their union organizing activities;
2. The Factory's current industrial relations situation between management and SITRAHOOSIER union; and
3. Any additional termination of workers since the workers sued the Factory at the labor court and the Socio-economic Collective Conflict process was taking place (August 2021) alleged to have violated those workers' Freedom of Association and Collective Bargaining rights.

Between January 29 and February 16, 2022, the investigator gathered information concerning the allegations filed by the complainants. Information was collected primarily through: a) the onsite visit to the Factory which included interviews with union leaders, management, and current Factory workers, records review, and a physical inspection, and b) off-site interviews with former Factory workers (both some of the workers terminated in April 2021, and some of those terminated between August 2021 and January 2022), and other relevant stakeholders related to this case. A detailed list of the onsite and offsite interviews conducted and a list of all the documentation reviewed by the investigator are included under the section "Methodology" of the investigation report.

The final report was published on FLA's website on March 7, 2022.<sup>3</sup> FLA highlighted the "challenging set of circumstances" around the investigation on its report cover note. In fact, the investigator concluded that "the group of [...] workers alleging anti-union terminations in April 2021 in reality simulated the union formation process with the purpose of obtaining enhanced severance payments; this means they were not legitimately exercising their right to Freedom of Association" and that the "plan for such simulation was implemented with the support and guidance of a former worker at Hoosier and at least one representative of the CGTG". Hoosier was not cleared of responsibility, the investigator flagged that the Factory "management agreed on those terminations under the assumption that [these workers] might be engaging in a union activity indicated an [...] antiunion activity" and violated FLA Benchmarks Nondiscrimination DN2.1 and Freedom of Association FOA.5.1.

The investigation process and its outcomes were a turning point for all the parties involved – Brands, complainants, worker representatives and the Factory – as they realized the importance of implementing immediate changes at the Factory level to build strong compliance systems that will ensure a full respect of workers' Freedom of Association and Collective Bargaining rights. The parties also moved forward to ensure the establishment of a constructive industrial relations system among workers

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<sup>3</sup> See the full report [here](#).

representatives and management. The changes also recognized the need to review and adapt a number of Factory policies and procedures to safeguard compliance with Brands’ and FLA’s Codes of Conduct at the workplace.

FLA recognized the impact this Brand-Commissioned Independent Investigation had on the parties involved and strongly encouraged the Brands to work jointly with Hoosier to develop a consistent, comprehensive, and detailed Corrective Action Plan (CAP) for all eleven recommendations for immediate and sustainable remediation suggested by the investigator and supported by FLA.

For each remedial recommendation, the CAP includes a list of corrective actions categorized as a) policies, b) procedures, c) communication and training, d) worker integration, and e) review process. The Factory’s and Brands’ staff were assigned to monitor implementation of the CAP, as well as immediate action due dates and an expected time for completion of each remedial action. The Factory reported regularly on the progress made and shared all pertinent evidence.

Over the course of a year, the Brands have provided periodic updates to FLA on the status of the CAP implementation. The Brands and FLA also held several follow-up calls to track remediation and verify the progress reported by Hoosier. As part of the Brands’ regular monitoring of working conditions in their supply chain, they conducted audits and onsite visits to the Factory to verify progress of the remediation and compliance with their social compliance standards. FLA acknowledges the leadership and commitment showed by the Brands’ social compliance teams directly involved in this case in working jointly with Hoosier toward the implementation of the CAP.

In March 2023, FLA received the final version of the CAP from the Brands covering from April 2022 to March 2023, and after reviewing the robust and comprehensive evidence presented by the Factory, FLA is ready to report on its assessment of the current implementation status of the CAP.

The table below describes the actions taken by the Factory on each of the eleven recommendations.

No	RECOMMENDATIONS	ACTIONS TAKEN	STATUS
1	Provide a verbal and written statement that includes: i) top management’s commitment to respect the exercise of all workers’ rights to Freedom of Association and Collective Bargaining; ii) top management’s commitment to not retaliate against workers involved in union activities, and to protect them in case they suffer any form of retaliation;	On March 31, 2022, Hoosier and SITRAHOOSIER signed the recommended joint statement on Freedom of Association. This document includes: a) the acknowledgement of workers’ right to Freedom of Association as an human right recognized by the Guatemalan Constitution, the international treaties and conventions Guatemala has ratified, and Guatemalan legal labor framework; b) Hoosier recognizes SITRAHOOSIER as a legal and legitimate union and its role in the defense of workers’ interest, c) the Factory announces the dialogue process set up with workers representatives, through “ <i>mesas de diálogo</i> ”, d) Hoosier expresses its commitment to not take any form of retaliation against workers based on their union affiliation or	Completed

	<p>iii) recognition of SITRAHOOSIER as a legitimate and legal union with presence at the Factory; iv) top management's commitment to not offer or agree with paying full severance, enhanced severance, or any other cash or in-kind benefit, to workers simulating their participation in union activities or Socio-economic Collective Conflicts before the labor courts (and that involved "Emplazamientos"). This statement should be elaborated and distributed in Spanish, and its content should be agreed to with SITRAHOOSIER, as well as the different channels to disseminate the statement. The Brands and FLA should also be able to review and provide feedback on the statement content.</p>	<p>union activity and finally, e) the Factory will not offer or agree to pay full severance, enhanced severance or any other cash or in-kind benefits to workers simulating their participation in any union activity and the obligation to conduct an investigation on those instances.</p> <p>The Factory disseminated this statement to the workforce and additional efforts were made to properly communicate to workers (for more details refer to the actions taken in Recommendation 2).</p>	
2	<p>Refrain from paying full severance, enhanced severance, or any other form of monetary or in-cash benefit to workers who simulate their participation in union activities, or the initiation of Socio-economic Collective Conflicts before the labor courts (and that involved "Emplazamientos").</p>	<p>Hoosier reviewed and updated its Freedom of Association policy in July 2022 and included a specific statement of its commitment to refrain from offering, negotiating or agreeing to pay full severance, enhanced severance, or any other form of monetary or in-cash benefit to workers who simulate their participation in union activities, or the initiation of Socio-economic Collective Conflicts before the labor courts. Hoosier also states that the participation of any employee in this kind of simulation will be subject to disciplinary procedures which could lead to termination with cause. The July version of this policy was also approved by SITRAHOOSIER on a meeting held on August 9, 2022.</p> <p>In parallel, Hoosier put in place a comprehensive training program on Freedom of Association at its three buildings (2 in Villa Nueva and 1 in Guatemala City). The training program was led by Ena Nuñez and was implemented in four phases. Phase 1 involved the training to Management and supervisors (November 2022) and Phases 2, 3 and 4 were fully dedicated to train workers (June, July, and August 2022). In total, 3932 persons were trained (100% of Hoosier's workforce). Management and supervisors received a 2.5-hour training and each worker a 1-hour training. SITRAHOOSIER representatives were granted a space during the workers' training to present themselves as union officials in compliance with Recommendation 1. The trainer delivered a final report with</p>	Completed

		<p>recommendations for Factory's sustainable improvement on its practices concerning Freedom of Association and Industrial Relations.</p> <p>Afterwards, in December 2022, the Factory developed a procedure to verify compliance with the training program on workplace standards. It was established that all workplace policies will be reviewed and updated on an annual basis, an evaluation system was put in place, as well as a system to keep record of the training provided to workers.</p>	
3	<p>Rehire the 25 workers terminated on April 12, 2021 (those terminated under a mutual termination agreement). They should be rehired to positions with similar terms and conditions as those they had prior to their terminations unless the workers accept different available work positions. This recommendation is based on the fact that Hoosier agreed to their terminations with an anti-union animus and they experienced manipulation by other parties, as indicated in the investigator's report.</p>	<p>A total of 17 workers were rehired by Hoosier on May 2, 2022 with similar job positions, respecting their previous seniority and with same salary and benefits. The remaining eight workers either refused to be rehired or couldn't be reached by the Factory after multiple attempts. The hiring process for these workers was properly managed and recorded by the Factory. They were also part of the Freedom of Association training conducted by the Factory in June-August 2022. One worker from this group voluntary resigned in August 2022 and received full severance.</p>	<b>Completed</b>
4	<p>Continue to engage with SITRAHOOSIER on a permanent and regular basis. Dialogue should be moderated, at least during the first quarter after the implementation of these corrective actions, by an external independent mediator jointly approved by the union, Factory, and Brands. Applicable rules on meeting frequency and protocols applicable to the dialogue sessions should be agreed to by the union and the Factory with the mediator's participation.</p>	<p>Since late January 2022, SITRAHOOSIER and Hoosier have engaged on a regular basis, with the exception of the Socio-economic Collective Conflict process. For example, during a meeting held on February 17, 2022, they discussed the plan for drafting and approving a joint statement on Freedom of Association - the one that was finally approved in March 2023, and they agreed on some union facilities like a union bulletin board and union's suggestion boxes on the Factory floor. Later in the process, the union requested the presence of representatives from the Solidarity Center in Guatemala as union advisors; the request that was approved by the Factory. Since then, the Solidarity Center continued to support the union throughout the implementation of the CAP.</p> <p>Since June 2022, the Factory also engaged with an independent mediator to facilitate the dialogue process among the parties. To establish clear terms of the engagement/dialogue process among the parties, a protocol for the functionality of the "mesas de diálogo" was developed.</p> <p>The minutes of the meetings have been posted by the Factory on the bulletin boards, so workers are aware of the progress of the dialogue set up between Hoosier and SITRAHOOSIER and</p>	<b>Completed</b>

		<p>can keep track of the implementation of the agreements. Both parties agreed on a procedure of how this information will be circulated among the workforce to ensure no personal data or confidential information is disclosed.</p> <p>Hoosier and SITRAHOOSIER continue having periodic meetings, at least one or two meetings per month.</p>	
5	<p>Regularly consult with the union on matters that concern the union, the workers, or that have any impact on working conditions, including rules applicable to the provision of facilities for union leaders.</p>	<p>The engagement between Hoosier and SITRAHOOSIER has been periodic and consistent over the course of more than a year since the Brand- Commissioned Independent Investigation report was posted. This relationship was enhanced by the CAP, and it has also been the mechanism to address other concerns and petitions raised by the union.</p> <p>As part of this engagement, Hoosier has consulted with SITRAHOOSIER on a regular basis on decisions and the adoption of practices that could impact workers and union activities. On August 9, 2022, the union was consulted over the review process of 31 Factory policies including for example, Freedom of Association, Compensation, Nondiscrimination, Termination, Discipline System, among others. After the approval from the union, the Factory proceeded to communicate and train workers on those reviewed policies. The Factory used its own magazine to deliver a written copy of the Factory’s updated policies to workers in September 2022.</p> <p>Hoosier has provided SITRAHOOSIER union officials facilities for the proper exercise of its functions and union activities.</p>	<b>Completed</b>
6	<p>Review current policies and procedures on Freedom of Association and Discipline to include a prohibition for workers to simulate their participation in union activities; and define applicable disciplinary actions for workers participating in such activities.</p>	<p>In addition to what has been reported in Recommendation 2 concerning the review process of the Freedom of Association policy, the Factory revised its disciplinary system and made the corresponding changes in alignment with FLA’s Workplace Code of Conduct and Compliance Benchmarks. The updated version of the disciplinary policy (reviewed in February 2023) includes a third-party witness during questioning (a union representative, upon the request of the worker), and an appeal process. As well as the same provisions and disciplinary actions as the ones included in updated Freedom of Association policy concerning any instance where the workers simulate their participation in union activities. The changes incorporated were also approved by SITRAHOOSIER.</p> <p>Workers have been informed of and trained on the changes in the disciplinary system. They also have a written copy of the current version of the policy.</p>	<b>Completed</b>
7	<p>Update the current nondiscrimination policy to include participation in union activities, as an area for protection.</p>	<p>In July 2022, Hoosier reviewed the nondiscrimination policy, and in August 2022 SITRAHOOSIER approved the updated version. Currently, this policy recognizes that no worker should be subject to any discrimination based on their decision to participate in the formation of a union, their affiliation to an existing union at the workplace, or for being part of a union</p>	<b>Completed</b>

		<p>board or for having a representative position within any workers' organization. The protection is extended to the request for or participation in a Socio-economic Collective Conflict before the labor courts. Workers' freedom to establish and join organizations of their preference is also recognized.</p> <p>Workers were informed of and trained on the current nondiscrimination policy.</p>	
8	<p>Develop policies and procedures on Industrial Relations that outline the framework for:</p> <p>i) a healthy relationship between management and any workers' organization with presence at the Factory; ii) steps for addressing relevant industrial actions, such as work stoppages, demonstrations, and strikes, by ensuring full compliance with workers' rights.</p>	<p>A totally new policy governing Industrial Relations was developed by Hoosier in consultation with SITRAHOOSIER. The policy defines steps and assigns responsibility for the management of the engagement with workers' organizations and to follow-up on the agreements. The Factory hired an Industrial Relations Director and defined his functions and responsibilities. This new position has strengthened Hoosier's social compliance team and has facilitated the daily interactions between the union and Hoosier management and the resolution of conflicts. There is also a commitment from Hoosier to collect SITRAHOOSIER's feedback of Factory activity around the dialogue with workers' representatives through an evaluation system and update the policy based on those results.</p> <p>It is important to highlight that Hoosier has designated that upper management will be part of the dialogue process with SITRAHOOSIER, with capacity to take decisions on behalf the Factory, something that could be seen as a sign of commitment to establish healthy relationships with SITRAHOOSIER.</p> <p>The policy established "dialogue" as the mechanism to address any potential conflict -it does not specifically mention relevant union actions such as strikes, demonstrations and stoppages- but it does state that disciplinary sanctions will be imposed to workers that refuse to engage in dialogue and infringe local regulations and Factory's bylaws. Moreover, workers that "illegally" interfere or sabotage Factory's operations will be subject to termination.</p> <p>Workers have been also informed and trained on this new policy.</p>	<b>Completed</b>
9	<p>Update the current policies and procedures on Discipline and Termination and develop a system of worker performance review; this should be an integrated management system aiming to ensure fair and objective employment decisions, especially on termination. With respect to performance reviews, a grading</p>	<p>Concerning Factory's Disciplinary System please refer to FLA's comments on Recommendation 6. This section will provide information regarding the changes to Hoosier's Termination policy and the development of a system for worker performance reviews.</p> <p>In February 2023 the Factory reviewed and updated the Norms and Proceedings manual for workers' job performance evaluation. The Factory has committed to conduct worker performance evaluations once a year or after six months of the worker being assigned to his/her job position. Hoosier also developed new evaluation tools which define the evaluation</p>	<b>Completed</b>

	<p>system of evaluation with objective criteria should be implemented, and workers should have the opportunity to review and provide feedback on evaluation results. HR staff should review how immediate supervisors implement this system.</p>	<p>criteria and establish a rate system. The Factory will use 90-, 180-, 270- or 360-degree performance appraisal for evaluating workers. The Human Resources department will oversee and monitor the implementation of this system. In June 2023, the Factory will start training workers on the new performance evaluation system.</p> <p>Hoosier also reviewed its Termination policy. It includes the Factory’s commitment to pay severance and all legal benefits to workers terminated without cause, even in case of a mass layoff due to production or business constraints. The voluntary resignation and the mutual consent termination are also addressed in the policy. The reviewed version was also approved by SITRAHOOSIER.</p> <p>There is no mention of any special regulation concerning workers with a legally protected status such as union official or pregnant workers when subject to termination.</p>	
10	<p>Reinstate the three workers illegally terminated in October 2021 during the course of the “<i>Emplazamiento</i>”, and retroactively pay them lost wages from the dates of their terminations to the dates of their reinstatement, consistent with local labor law. Workers should keep their accumulated seniority and should be assigned to positions with similar terms and conditions as those prior to their terminations.</p>	<p>The three workers were reinstated on March 1, 2022. Their contracts were registered at the Ministry of Labor and their initial date of hiring was respected (seniority). The Factory retroactively paid workers their lost wages and legal benefits the same day they were effectively reinstated. The Factory calculated their retroactive payouts from the date of their termination up to February 28, 2022, such compensation included a proportional payment of the Fourteen Bonus, Christmas Bonus, Annual Leave, and severance. They were also enrolled in the social security system in the timeframe established by law.</p>	<b>Completed</b>
11	<p>If the forging of workers’ signatures is corroborated per the discussion in Section 3.2 of the investigator’s report, follow the corresponding internal disciplinary actions, inform affected workers about the issue, and assess whether the workers have the right to any additional compensation to restore possible damages.</p>	<p>Hoosier recognized the administrative error that led to the illegal termination of three workers during the time the Socio-economic Collective Conflicts was ongoing (and that involved “<i>Emplazamientos</i>”) in October 2022. The Factory admitted all responsibility in the incorrect proceedings followed around their termination and documented the engagement Human Resources had with these workers to remediate the situation. For details around the remedial activities please refer to comments in Recommendation 10.</p>	<b>Completed</b>

As noted above, FLA verified the remediation process implemented by the Factory with the guidance and support of the Brands. These remediation efforts resulted in the following core outcomes for workers and worker representatives:



1. The reinstatement and full back pay for three workers terminated in October 2021. These workers were reinstated into similar job positions, with similar wages and benefits and respecting previous seniority.
2. Rehiring 17 of the 25 workers terminated in April 2021 after the investigation corroborated the Factory's antiunion practices around their terminations.
3. The strengthened Freedom of Association and Industrial Relations systems, that have included communication and training to management, supervisors, and workers.
4. The recognition of SITRAHOOSIER as a legal and legitimate entity to promote and defend workers' interests and the subsequent frequent dialogue between Hoosier management and the worker representatives.
5. The review and alignment of Hoosier's policies governing Freedom of Association, Industrial Relations, Terminations, Nondiscrimination and, Discipline System with FLA's Workplace Code of Conduct and Compliance Benchmarks.

The group of workers rehired on May 1, 2022, decided to organize and the union *Sindicato de Empleados de Hoosier Manufacturing, Compañía Limitada y demás Empresas Anexas y Conexas* (SIEMHOOSIER) was legally recognized by the Ministry of Labor in October 2022. SIEMHOOSIER has been affiliated with the CGTG since its formation. Hoosier has also recognized this second union and has entered into dialogue with these worker representatives through "*mesas de diálogo*". Recently, there have been allegations of antiunion discrimination filed by this union with FLA that are being managed separately from this remediation phase and are being investigated through the Brands' internal grievance mechanisms.

With FLA's monitoring of the CAP implementation, FLA has frequently engaged with SITRAHOOSIER representatives to verify the union involvement in the implementation of the CAP and to ensure FLA receives feedback from this worker organization. SITRAHOOSIER has expressed its agreement with the actions taken by the Factory regarding the CAP and has recognized the open and regular engagement the union board representatives have had with Hoosier management.

SITRAHOOSIER informed FLA that since November 2022 the union has concentrated its efforts on commencing negotiations for a Collective Bargaining Agreement (CBA) with Hoosier. The Factory initially rejected the efforts to start CBA negotiations via a direct bargaining. The Labor Code establishes that a certain percentage of the workforce must be unionized for the employer to be legally required to engage in a CBA negotiation with a union at the workplace. In this case, SITRAHOOSIER intends to avoid any legal conflict with the Factory and is asking for a CBA negotiation based on the principle of good faith recognized by FLA's Benchmarks concerning Freedom of Association.<sup>4</sup>

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<sup>4</sup> Compliance Benchmarks concerning Freedom of Association FOA 16.1 and FOA 16.2

## Conclusions and Next Steps

It is clear the Brands and Factory have put in significant effort to fulfill all remedial actions recommended by FLA after completing the Brand-Commissioned Independent Investigation at Hoosier Manufacturing. A year after the publication of the investigation report, steady progress has been made to comply with FLA's Workplace Code of Conduct and Compliance Benchmarks

The outcomes of this investigation have encouraged Hoosier to review and redefine its perceptions and actions around workers' right to organize and bargain collectively.

The Hoosier case is a good example of how brands, using FLA's grievance mechanism, can improve working conditions and ensure respect for workers' rights across their supply chain. In the context of Guatemala, this case has attracted the attention of multiple local and international stakeholders. The case exposed the anti-union practices of some employers, while at the same time it has been a turning point that led to combined efforts of the Factory, worker representatives and workers to avoid these practices that jeopardize and limit workers' legitimate right to organize.

FLA will now consider this investigation as closed because all the components of the CAP have been verified as completed. FLA does note that the Brands should continue monitoring and engaging with Hoosier Manufacturing to support the continuation of the improvements already made and to assure the unions SITRAHOOSIER and SIEMHOOSIER can freely exercise their role in defense of workers' economic interests, including the right to Collective Bargaining in good faith.