

Independent Investigation Report

Hoosier Manufacturing, Compañía Limitada

Field Investigation & Report Prepared by:
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Villa Nueva, Guatemala

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Requested by:
Fair Labor Association

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I. Background

On November 27, 2021 the Fair Labor Association (hereinafter, the FLA) and the FLA's Participating Companies, Fanatics Brands and Nike Inc., (hereinafter, the Brands) received a communication from a group of former workers at Hoosier Manufacturing (hereinafter, Hoosier or the factory)¹ alleging their illegal termination by the factory in early April 2021. These workers alleged that they were attempting to form an independent trade union when the management identified them and abruptly terminated them. In total, 27 workers from different production areas were dismissed in alleged violation of their Freedom of Association rights.

Subsequently, the Guatemalan civil society organization *Comisión para la Verificación de los Códigos de Conducta* (hereinafter, COVERCO) made public an investigation report that describes systematic anti-union practices implemented by the factory and reports at least four instances where the factory took retaliation against workers who were trying to organize -- instances that in most of the cases ended up with the workers' termination.

By late November 2021, the FLA and the Brands had already been monitoring the efforts of a separate group of workers at the factory who were pursuing the registration and authorization of a trade union by the Ministry of Labor and Social Prevision (hereinafter, Ministry of Labor). This group of workers sued the factory in a labor court through a Socio-economic Collective Conflict². Moreover, this group was successful in its efforts to organize and obtained authorization by the Ministry of Labor, and now constitutes a legally-recognized union under the name of *Sindicato de Trabajadores de la Empresa Hoosier Manufacturing, Compañía Limitada y demás Empresas Anexas y Conexas* (hereinafter, SITRAHOOSIER).

Throughout the organizational efforts from this group of workers, the union confederation *Central General de Trabajadores de Guatemala* (hereinafter, CGTG) provided guidance to the workers. As part of the Socio-economic Collective Conflict process, this group of workers also entered into a direct negotiation with Hoosier that resulted in a signed settlement agreement.

Despite this progress, COVERCO reported its concerns to the FLA and the Brands around the ongoing management of industrial relations at the factory.

Fanatics also received an additional complaint from one worker who alleges that some workers were terminated in October 2021 at a time when the labor court had imposed a legal prohibition on the factory intended to prevent the dismissal of any worker while the Socio-economic Collective Conflict process was ongoing.

¹ The factory started operations in 2003 under the legal name of "Indiana Knitwear"; some years after, the factory changed its legal name to "Corporación Indyknit", following a procedure known as "Employer Substitution", in order to continue enjoying the tax benefits the Guatemalan Decree N° 29-89 (Law of Promotion and Development of Manufacturing Exporting Activity) grants to companies of the exporting apparel sector operating in the country. The Decree N° 29-89 grants tax benefits to eligible companies only for 10 years. For that reason, it is a common practice that garment exporting factories in Guatemala change their legal names before they reach 10 years of operations. Following the same "Employer Substitution" procedure, the factory became "Hoosier Manufacturing, Compañía Limitada" in March 2021 as confirmed through the Employer Substitution Agreement shared by the factory, dated March 01, 2021.

² Details on this legal procedure and applicable legal provisions are provided in the 'Assessment Results' section.

On January 18, 2022, the Brands requested the FLA to conduct a Brand-Commissioned independent investigation at the factory, consistent with FLA procedures. The Brands requested that the FLA engage an independent third party to investigate the allegations of violations of Freedom of Association, particularly with regards to three core issues:

1. The dismissal of the 27 workers in April 2021, allegedly due to their union organizing activities;
2. The current industrial relations situation at the factory 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) that is alleged to have violated those workers' Freedom of Association and Collective Bargaining rights.

On point number 3 above, Fanatics had previously identified seven workers terminated in October 2021, whose names were provided to the investigator.

In late January, the FLA commissioned the Independent Consultant Francisco Chicas (hereinafter, the Investigator) to conduct an investigation around the above-mentioned allegations.

At the time of the field investigation Hoosier employed around 3,754 workers distributed in 19 different production plants, all located within the same industrial park in Villa Nueva Municipality, Guatemala Department. The factory operates day and night shifts, and 92% of production is allocated to Fanatics and Nike. The production process includes: storing of fabric and raw material, cutting, screen printing, sublimation printing, heat transfer, embroidery, sampling, sewing, quality inspection, packing, and exporting.

II. Methodology

Between January 29 and February 16, the investigator gathered information pertinent to the investigation, through 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, as detailed in the table below. Moreover, the investigator conducted an onsite visit to the factory from February 2-4, which included interviews with union leaders, management, and current factory workers, records review, and a physical inspection through the facility.

It is important to note that, with the purpose of cross-checking and corroborating the facts related to this investigation, the Investigator conducted additional individual interviews with some of the former workers terminated in April 2021, and also with some union leaders of SITRAHOOSIER who had participated in the corresponding group interviews with both groups. These follow-up interviews were made through phone calls after the field visit to Guatemala was completed.

The table below shows a full list of the interviews that were conducted:

OFF-SITE INTERVIEWS WITH WORKERS AND OTHER STAKEHOLDERS		
Date	Interviewee(s)	Type of Interview
Jan 29	1 worker terminated in October 2021 (from the group previously identified by Fanatics)	Phone interview
Jan 31	Homero Fuentes & Augusto Aceytuno from Coverco	Group in-person interview
Feb 01	18 former Hoosier workers, all terminated in April 2021 ³	Group in-person interview
Feb 01	Claudio Batres (Under-Secretary-General of CGTG) & Adrián Cortez (Union Organizer of CGTG)	Group in-person interview
Feb 01	3 workers terminated in October 2021 (from the group previously identified by Fanatics) 2 workers terminated in April 2021 (who did not participate in the group in-person interview)	Individual phone interviews
Feb 02	Teresa Casertano (Central America Country Program Director, Solidarity Center, AFL-CIO Guatemala)	In-person interview
Feb 02	1 worker terminated in April 2021 (who did not participate in the group in-person interview)	Individual phone interview
Feb 02	1 worker terminated in October 2021 (from the group previously identified by Fanatics)	Individual phone interview
Feb 03	1 union leader of SITRAHOOSIER (who did participate in the onsite group interview with union leaders on February 02, indicated below)	Individual phone interview
Feb 06	1 union leader of SITRAHOOSIER (who did participate in the group interview with union leaders on February 02, indicated below)	Individual phone interview
Between Feb 02 - 15	12 former Hoosier workers terminated between August 2021 and January 2022 (including one male worker and one female worker from the group previously identified by Fanatics that were terminated in October)	Individual phone interviews
Feb 15	9 workers terminated in April 2021 (all had participated in the group in-person interview indicated before)	Individual phone interviews
Feb 15	1 worker terminated in April 2021 (who did not participate in the group in-person interview)	Individual phone interview

³ It is worth to note that among this group, there were 15 workers terminated on April 12, during a collective termination of 25 workers in total. Additionally, one worker terminated on April 14 and two workers terminated on April 21 participated in this group interview, alleging that their terminations were based on the fact that they were part of the group of 25 terminated on April 12 (the two workers terminated on April 21) or just for being friend of one of the members of this group (the worker terminated on April 14).

ONSITE INTERVIEWS		
Date	Interviewee(s)	Type of Interview
Between Feb 02 - 04	Hoosier General Manager & HR Manager	Opening meeting + Group interview after the opening meeting + Frequent interactions during the onsite visit + A conference call after the onsite visit
Feb 02	9 Union leaders of SITRAHOOSIER (6 members of the Executive Committee + 3 members of the Advisory Council)	Group in-person interview
Feb 03	Hoosier Head of Security	In-person individual interview
Feb 04	Hoosier Lawyer + Hoosier General Manager & HR Manager	Group in-person interview
Between Feb 02 - 04	25 current Hoosier workers ⁴	In-person individual interviews
TOTAL INTERVIEWS WITH CURRENT WORKERS (25 individual onsite interviews + 1 group interview with 9 Union leaders + 2 individual phone follow-up interviews with union leaders)		36
TOTAL INTERVIEWS WITH FORMER WORKERS (17 individual interviews with workers terminated between August 2021 and January 2022 -this count includes the 7 workers terminated in October 2021 identified by Fanatics- + 1 group interview with 18 former workers terminated in April 2021 + 4 individual phone interviews with former workers terminated in April and that did not participate in the group interview + 9 individual phone follow-up interviews with former workers terminated in April 2021 that participated in the group interview)		48
TOTAL INTERVIEWED WORKERS		84

The sample of current factory workers interviewed onsite included workers from the different departments and plants; all of them were randomly selected by the Investigator at the production floor. Workers that were attending the night shift during the onsite visit to the factory were not interviewed (except for two union leaders who attended the group interview); however, as the factory permanently rotates workers for the day and night shift, the majority of interviewed workers had already worked on the night shift before.

⁴ It is relevant to note that on the third day of the onsite visit to the factory, the investigator spent around 50 minutes waiting for the management to call more workers to be interviewed, from the sample previously selected by the investigator; and despite the investigator letting management promptly know that the workers were not arriving to the designated place for conducting the interviews, no more workers attended during that period of time, which reduced the size of the sample of interviewed workers.

Additionally, the investigator reviewed the following records pertaining to this investigation:

No	Document Description
1	COVERCO's internal preliminary report on Hoosier, dated November 2021
2	Constitutive Minute of SITRAHOOSIER foundation, dated July 31, 2021
3	SITRAHOOSIER letter submitted to the FLA, informing about the union formation, dated August 14, 2021
4	Union registration request submitted to Ministry of Labor by SITRAHOOSIER, dated August 06, 2021, received by the Ministry of Labor the same date
5	SITRAHOOSIER letter submitted to the FLA and Brands, reporting risk of anti-union actions by Hoosier management against union leaders, dated August 24, 2021
6	Letter submitted to Fanatics by former Hoosier workers terminated in April 2021, dated November 26, 2021
7	Hoosier workers request of Socio-economic Collective Conflict, dated August 06, 2021
8	Resolution from Third Official. Judge B. Labor and Social Prevision Court, initiating the Socio-economic Collective N° 01173-2021-07262, dated August 06, 2021
9	Labor Court notification to Hoosier, on the initiation of the Socio-economic Collective Conflict, dated August 19, 2021
10	Judicial file of developments of the Socio-economic Collective Conflict N° 01173-2021-07262 (judge resolutions, parties' responses and requests, request of direct negotiation, judicial notifications of resolutions)
11	Letter submitted to Hoosier's General Manager by SITRAHOOSIER to request initiation of a dialogue process, dated January 23, 2022
12	Eight minutes of meetings celebrated between workers committee (<i>Comité Ad Hoc</i>) and Hoosier management to reach a direct settlement. Minutes dated August 30, September 09, September 17, September 24, October 08, October 19, October 22 and November 15, 2021.
13	Authenticated Minute of Direct Settlement between Hoosier workers and Hoosier management, dated November 15, 2021
14	Notification of Direct Settlement by Hoosier to the 10° Pluripersonal Judge of Labor and Social Prevision, dated November 26, 2021
15	Notification of Direct Settlement by Hoosier to the Ministry of Labor, dated November 25, 2021
16	Resolution of 10° Pluripersonal Judge of Labor and Social Prevision, confirming receipt of the Direct Settlement, dated December 01, 2021
17	<i>Comité Ad Hoc</i> request to the 10° Pluripersonal Judge of Labor and Social Prevision, asking that a Conciliation Court reviews and approves the Direct Settlement, dated December 15, 2021
18	Resolution of 10° Pluripersonal Judge of Labor and Social Prevision, confirming receipt of the <i>Comité Ad Hoc</i> request for revision and approval of the Direct Settlement by a Conciliation Court, dated December 17, 2021
19	Ministry of Labor notification to Hoosier about SITRAHOOSIER formation, dated November 02, 2021
20	Resolution DGT-PJ-059-2021, from the Ministry of Labor and Social Prevision, dated November 23, 2021, providing legal status and registration of SITRAHOOSIER, and

	approval of the union's statutes, published at the Guatemalan Official Gazette Number 70, dated December 10, 2021
21	SITRAHOOSIER notification presented to the Ministry of Labor, informing about the last election of members of the union's Executive Committee and Advisory Council, dated December 28, 2021, and received at the Ministry of Labor Office on December 29, 2021
22	Worker Rights Consortium's (WRC) report submitted to Fanatics on Preliminary Findings and Recommendations on the case of Hoosier Manufacturing, dated December 10, 2021
23	List of workers terminated by Hoosier in March, April and May 2021
24	Sample of five verifications of employment issued by Hoosier, and delivered to workers terminated on April 12, 2021
25	Personnel files of 25 workers terminated on April 12, 2021, including calculation of termination payouts sheets, copies of checks paid, settlements, notarial certificates of terminations, and sworn declarations of terminations
26	Time records (punch-in) of 25 workers terminated on April 12, 2021
27	Personnel files of 3 workers terminated in April 2021 who alleged their terminations were motivated on anti-union discrimination
28	List of workers terminated by Hoosier between August 2021 and January 2022
29	Personnel files of 21 terminated between August 2021 and January 2022
30	Electronic registration of employment contracts at the Ministry of Labor database of two workers terminated in October 2021
31	Sample of employment contracts submitted by three workers terminated in October 2021
32	Social Security Payrolls (IGSS payrolls) of October and November 2021 and January 2022 to check list of terminations reported by the factory
33	Factory's Policies and Procedures on Non Discrimination, Freedom of Association, Industrial Relations, Termination and Retrenchment
34	Records of training and communication efforts done by Hoosier to disseminate policies and procedures among workers'
35	Denunciation N° MP015-2021-5836 presented by Hoosier's lawyer against Mr. M ⁵ , accused of blackmailing Hoosier, dated June 09, 2021
36	Hoosier's lawyers request to the Attorney's Local Office in Villa Nueva asking for the information obtained from Mr. M's personal cell phone related to the blackmailing, dated October 07, 2021
37	Resolutions of the Judge of First Instance of the Criminal, Drug Activity and Crimes against Environment of Villa Nueva, in the case of blackmailing against Mr. M, dated October 28 and 29, 2021. Case 02035-2021-00382 (VAPONCE)
38	Appeal Request from the Attorney to the resolution issued by the Judge of First Instance of the Criminal, Drug Activity and Crimes against Environment of Villa Nueva, on October 29, 2021 (Appeal dated November 03, 2021)

⁵ This investigation does not reveal individual names of workers or other parties involved in the facts subject to the investigation. The individual accused of blackmailing Hoosier (a case that is relevant to facts subject to this investigation) is identified throughout the report as "Mr. M".

39	Resolution of the Judge of First Instance of the Criminal, Drug Activity and Crimes against Environment of Villa Nueva, confirming appeal presented by the Attorney. Resolution dated November 05, 2021
40	Notarial Certificate issued by Hoosier's lawyer to certify the content of the pen drive provided by the Attorney, containing conversations of Mr. M with some former factory workers'
41	Mr. M Employment Contract (as former factory worker), dated May 29, 2014
42	Mutual Termination Agreement signed with Mr. M, dated, May 31, 2019
43	Hoosier Employer Substitution Agreement, dated March 01, 2021
44	Notarial Certificate through which Hoosier's Head of Security is appointed as responsible for communicating with Mr. M
45	Hoosier's report to respond to the allegations investigated, submitted to the Investigator on February 10, 2022
46	Villa Nueva Attorney's Report on Extraction of Information from Mr. M's cell phones, dated August 13, 2021. Report N° EIC015-015-2021-504
47	Sample of six calculations of termination payouts payments paid to the April 2021 group of workers (jointly review with HR Manager)
48	Constitutional Court, Appeal of Amparo Judgement, File 2468-2007 (November 09, 2007)
49	Constitutional Court, Appeal of Amparo Judgement, File 3081-2020 (February 08, 2021)
50	Constitutional Court, Appeal of Amparo Judgement, File 4936-2019, (March 09, 2020)

Finally, the factory provided the Investigator with: i) One video in which Mr. M was alleged to have been blackmailing the factory during a conversation with the factory's Head of Security; and ii) Fourteen audio recordings of voice messages shared between Mr. M and some former factory workers terminated in April 2021, as well as some voice messages shared between some of these workers, through the messaging App WhatsApp.

The voice messages were provided to the factory's lawyer by the District Attorney of Villa Nueva, and such pieces of evidence were collected by the attorney in the framework of the criminal investigation initiated by Hoosier against Mr. M, accused of blackmailing the factory. More details about the case of Mr. M are presented in the "Investigation Results" section below.

III. Investigation Results

1) Assessment of April 2021 Terminations

1.1) Summary of Former Workers Allegations

As indicated before, the Investigator met with a group of 18 former factory workers who claimed that on April 12, 2021 the factory fired 15 of them, along with seven more workers not present at this meeting (25 workers in total) simply for trying to form a union; and after that, three more workers were terminated (one on April 14 and two on April 21) for having some relation to/sympathy with some of the members of the April 12 group. Additionally, the Investigator was able to talk with four more workers from the group of 25 that did not attend this group interview⁶, and 9 of the 15 workers terminated on April 12, and that attended the group interview, were individually interviewed one more time, through phone calls, in order to corroborate some information.

The workers commented that the CGTG was supporting their organizational efforts, that they had held a couple of meetings over the previous weeks, and that they held a last meeting on Saturday, April 10, aiming to legally form the union. However, they were identified as “union promoters” by a former factory worker who was initially helping them in the organizational effort (which is Mr. M), and who afterwards provided the factory’s General Manager with their names.

CGTG representatives confirmed this information, and they also commented that at the April 10 meeting two workers were missing to reach the number of workers that the local regulations require to legally form a union; hence, they could never present any documentation to initiate the administrative process for registering the union and obtaining its legal status⁷.

Early in the morning on Monday, April 12, the 25 workers were at their workstations when they were called by management and taken to an empty plant (hereinafter, Warehouse #11). They were asked to leave their personal belongings outside; then, the General Manager showed up, joined by the factory’s HR Manager and Head of Security. The General Manager started to say that he would not allow intruders to get into the factory, and questioned them on the reasons that led them to try to form a union.

The workers said they mentioned to the General Manager some of the working conditions they would like to change in the factory. According to the workers, the General Manager offered the option of terminating their employment contracts with full payment of severance⁸, with the condition that they refrain from the intention of forming the union.

⁶ The Investigator called all other workers who did not attend the group interview, but only four of them answered the phone, or had an available phone line.

⁷ According to Art. 216 of Guatemalan Labor Code, it is required to have at least 20 workers to form a union.

⁸ Based on Guatemalan labor law, workers terminated without cause have the right to receive an indemnization (severance) equivalent to one monthly basic salary for every year of service. This severance, plus the proportional amount of legal benefits (known as “inalienable rights”) comprise the termination payouts workers should receive

The workers said that, due to the pressure exerted by management, they decided to accept the offer of leaving the factory with full payment of severance.

Management asked them to sign several sheets, but they did not have the chance to read their content, and management only provided general explanations about said content. Workers were asked to sign all sheets in exchange for not being affected by “blacklists”.

The workers claimed they were kept all workday at Warehouse #11 without eating or drinking water, and that they could finally leave only around 4:20 pm–4:30 pm, after everyone received the payment of termination payouts. Before leaving, workers told the Investigator that management asked them not to talk about this situation with anyone, and not to go back to the factory again.

The workers also complained that management assured them that their names would not be included on a “blacklist”; however, some of them commented that, when seeking new jobs, other employers in the garment sector have explicitly told them that they could not be hired because of their previous union activities.

The workers and the CGTG expressed their expectation of worker reinstatement, with back payment of lost salaries.

1.2) Understanding why the allegations of illegal terminations were raised several months after

During the group interview with the workers terminated in April 2021, the Investigator asked why they did not immediately comment on what had happened in regard to their terminations. One worker responded that after realizing that they did not find new jobs because they might have been put on a blacklist, some of them decided to go to the CGTG to ask for help, and that happened in October 2021. Furthermore, this worker said that the factory threatened them with retaliation if they followed any action in regard to their terminations; hence, they decided to say nothing because they were fearing retaliation. All other workers that were present seemed to agree with these explanations.

On the other hand, the CGTG representatives told the Investigator that after hearing no news from the April group of workers, they started to call them, but they did not answer their cell phones. The CGTG representatives also said that they went outside the factory during lunch breaks to try to find the workers with no success. They mentioned that it was not until around the end of May or early June when they heard the news that the workers had been terminated. By then, the CGTG team was only in contact with one of the members of the group, and in the following months they were able to contact the rest of the workers.

However, from the nine individual interviews with workers terminated on April 12 the Investigator found that it was the workers’ main contact at the CGTG who called them to say that *“the brands working with Hoosier might help them to get back to the factory with back payment of owed salaries”*, and that *“they should stay together”*. The interviewed

in cases of termination without cause. In cases of voluntary resignation, the workers lose the right to receive payment of severance, but still have the right to receive payment of inalienable rights.

workers confirmed they were contacted by the CGTG representative around October 2021. Prior to that, they said they had no intention to seek reinstatement at the factory until the CGTG representative raised their hopes at a moment in which they were struggling to find a job. After hearing that, the workers got in touch with other co-workers of the April group, until they were able to congregate the majority of the 25 workers dismissed. The only ones who did not meet with them were those who had returned to their Departments of origin, away from the capital.

Furthermore, some of the nine workers commented that the CGTG representative told them during the calls that he had lost their phone numbers, and for that reason he did not call them before.

Based on the consistent testimonies of these workers, the Investigator concludes that workers terminated on April 12, 2021 were influenced by a representative of the CGTG to have expectations of reinstatement at Hoosier, and therefore, they regrouped again after six months to allege the illegality of their terminations, at a point where they were not pursuing that.

1.3) Summary of Factory's Position

During the first day of the onsite visit to the factory, on February 2, the Investigator talked with the factory's General Manager and the HR Manager about the issues under the scope of the investigation. On the second day of the onsite visit to Hoosier, the Investigator interviewed the factory's Head of Security, and on the third and last day of the onsite visit the Investigator conducted a group interview with the factory's lawyer, the General Manager and the HR Manager. In the subsequent days, the factory team submitted new evidence to the Investigator, and a video-conference was held with them to clarify the last points around the investigation.

The first day of the onsite visit, management told the Investigator that on April 12, 2021, a group of workers did not enter the production site; they stayed outside of the administrative building, and asked to meet with the General Manager. The workers refused to resume work and continued asking to talk with the General Manager.

The HR Manager explained she was the first one to go out and approach the group of workers. They told her that they would not go back to work, and that they needed to meet with the General Manager. The HR Manager told them that the General Manager could not meet with them until midday and asked them to return to work. The workers responded that they would continue waiting there for the General Manager.

Back then, the Warehouse #11 was empty, and the management took some chairs and asked the workers to go to talk there. The General Manager showed up and listened to the workers (around 10:30 am), and he was joined by the HR Manager and the factory's lawyer. The General Manager said he asked them about their demands, and the workers responded that they wanted to terminate their employment relationship with the factory but with full payment of severance.

The workers expressed some dissatisfaction about working conditions, such as mistreatment by some supervisors and administrative personnel, and restrictions to go to the restrooms, but after that, they reasserted their wish to receive full severance.

After a couple of hours of negotiation both management and workers reached a mutual termination agreement⁹. The management explained they worked out the calculations of total severance to be paid to the 25 workers, and then asked for authorization to Hoosier representatives in the United States to proceed with such payments. Once the factory received said authorization, they prepared the checks and all related paperwork (settlements, checks, mutual termination agreements).

According to management the workers expressly claimed they did not want to form a union; instead, they only wanted to receive full payment of severance.

At midday, management ordered some pizzas and beverages (water and sodas) for the workers. At around 1:00 pm the management started to provide payments of termination payouts, by delivering checks to the workers.

The Head of Security – who was helping with the meeting logistics – explained the workers were asked to enter Warehouse #11 without personal belongings because, even when this was an empty space under remodeling, they followed the standardized security procedures applicable at all plants.

The first day of the onsite visit to the factory, the Investigator raised with management the workers' concerns around the potential existence of blacklists, and the management responded they do not keep or use such lists. The Investigator also asked whether the management would have any problem with rehiring the workers from the group of April 2021, and they responded “no”: that they could rehire them, but so far, none of the workers had asked for it.

However, the third day of the onsite visit to the factory, and in the meeting with the factory's lawyer, the factory representatives revealed a different position by mentioning the possibility of suing workers who could have been involved in alleged blackmailing against Hoosier in the past, in collaboration with Mr. M.

1.4) Criminal Process against Mr. M

Mr. M is a former Hoosier worker; he joined the factory in May 2011¹⁰, worked there for eight years, and terminated his employment relationship with the factory in May 2019 through a mutual termination agreement¹¹ after, according to the factory, initiating a Socio-economic Collective Conflict with other workers, with the intention of obtaining an enhanced severance payment.

According to the factory's version of events, in April 2021 Mr. M tried to contact the factory's General Manager on several occasions to convey certain information he said

⁹ The Investigator noted that this mode of termination is not mentioned in the factory's Termination Policy.

¹⁰ Based on Mr. M's employment contract provided by the factory.

¹¹ Mutual Termination Agreement signed by factory representative and Mr. M, on May 31, 2019.

would be of the interest of the management, and “to collaborate [with the factory] by giving information on a group of employees that was being organized with the intention to harm the Company¹².”

The Hoosier team explained that they designated the Head of Security, as the only one responsible for communicating with Mr. M, with the role of revealing his intentions and finding out whether he had exposed a threat to the factory.

During May 2021, Mr. M told Hoosier’s Head of Security he wanted to be paid 150,000 Quetzales (around USD \$20,000), and that in return he would make sure that the group of employees supposedly willing to provoke harm to the factory refrain from those intentions. At this point, Hoosier decided to ask for the relevant authorities’ intervention, in light of the alleged blackmailing; to that end, the factory’s lawyers filed a denunciation against Mr. M at the local office of the Villa Nueva District Attorney, on June 09, 2021¹³.


In the subsequent weeks, and in a joint collaboration between Hoosier team, the District Attorney and the National Civil Police, Mr. M was arrested, and his two cell phones were seized by the authorities. On October 7, 2021, the District Attorney provided Hoosier’s lawyers with a 64 GB pen drive with communications that Mr. M had apparently held with some of the workers who signed the mutual termination agreement on April 12, 2021¹⁴.

Hoosier provided the Investigator with 14 audio recordings from April 8-12, 2021 showing the relationship Mr. M had with some workers, apparently from the April 2021 group. Details on the content of the recordings are presented below.

The interviewed workers from the April 2021 group confirmed that Mr. M was providing some support to them during the alleged union formation process. They also told the Investigator that the CGTG representative introduced them to Mr. M, and that all of them participated in a WhatsApp group in which Mr. M and the CGTG representative provided them with information during the union formation process.

1.5) Investigator’s Assessment on the April 2021 terminations

The Investigator conducted the following assessment of the versions of events provided by both management and workers:


-  Management explained they received from nine to twelve daily requests from workers asking for termination with payment of full severance¹⁵. The Investigator asked whether it is the factory’s policy to concede such requests, and the management responded “no”, and that if they agreed to pay full severance to the April 2021 group, it was because these workers were exerting too much pressure to get their severance payouts, and they did not want to delay the factory’s operation.


¹² Hoosier’s report to respond to the allegations investigated, submitted to the Investigator on February 10, 2022.


¹³ Denunciation N° MP015-2021-5836, dated June 09, 2021.


¹⁴ Hoosier’s report to respond to the allegations investigated, submitted to the Investigator on February 10, 2022.


¹⁵ Management explained that workers make these demands because many of them are highly indebted.

-  The Investigator asked management whether they had ever heard earlier these workers' demands of receiving full payment of severance. Management responded "no", that the first time they heard about it was on April 12, 2021. The Investigator asked management why they considered that this group of workers brought this demand suddenly, without exhausting the chance of dialogue first. Management explained the reason behind that could have been the fact that they were highly indebted.

-  The Investigator questioned management on why they did not follow the disciplinary system in order to sanction workers for leaving their workstations and asking for something that is not legally required, and management responded they wanted to avoid more problems with the workers, as their main goal was to ensure the production flow.

-  The Investigator asked whether the factory had kept videos showing how the situation went on that day, and the management explained that the backup of the camera system only keeps recordings of the last five months. Also, they explained that there were no cameras at Warehouse #11, as it was empty by then¹⁶. The Investigator asked the Head of Security whether there were records of this incident (including videos), as a relevant issue that should have been recorded. This manager explained they did not keep any form of record or evidence of what happened on April 12, 2021, and he admitted it was a failure that demonstrates the need for improving their security management system.


-  The Investigator asked the General Manager to share the communications exchange with Hoosier management in the US on April 12, 2021, as it would be a crucial piece of evidence to support the management version of the facts; however, such evidence was not provided to the Investigator.

-  Since the management said that the 25 workers had not entered the production floor on April 12, 2021, and they stayed together outside of the administrative building since early in the morning, the Investigator checked the time records of that day, and found that 20 out of the 25 workers had registered their entry to the production floor (punch-in) at separate times between 6:12 am and 6:30 am¹⁷. The other five workers did not register their entry to the production floor, which indicates that they could have been working the night shift that week. After checking these time records with management, they explained they thought this group of workers had not entered the premises that day, but apparently they did, which means they went outside later.

When assessing the workers' version, the Investigator also found the following inconsistencies:

¹⁶ The Investigator visited the Warehouse #11, which is a screen-printing plant now. No evidence could be gathered at this area around the facts under the scope of this investigation.

¹⁷ 6:30 am was the established starting time in April 2021, and this is also the current starting time.

 During the group interview with the 18 workers terminated in April 2021, they assured (through their designated spokesperson) that they had the intention to form a union (except for the worker terminated on April 14). However, from the individual interviews with workers from the April 2021 group, three workers commented that everyone in the group was seeking the enhanced payment of severance, and one of these workers claimed that she does not understand why the workers are expecting the reinstatement now when everyone knew that the group only wanted the payment of the enhanced severance¹⁸. A fourth worker told the Investigator that the group did not want to form a union; instead, they were only seeking some improvements in working conditions¹⁹.

From the Investigator's experience, it is also unusual that a group of workers attempting to form a union, and that was then terminated by their employer, remained silent after being dismissed, as did the union confederation that was supposedly supporting that organizational effort.

Furthermore, the Investigator gathered and reviewed the following key evidence:

- 1) The audio recordings extracted from Mr. M's cell phones, and provided to the Investigator, include conversations between Mr. M and a group of factory workers in which they are talking about the plan for getting the payment of severance through the simulation of union formation. Although it is not possible to exactly determine how many people were participating in the WhatsApp group, or the identity of each of them, the audios revealed important information such as²⁰: 1) First names of some of the members of the group are mentioned; 2) The members of the group mentioned the factory name, and the General Manager's last name; 3) Payment that workers should provide to Mr. M and his accomplices, once they receive the severance (Mr. M was asking 50,000 Quetzales from the whole group, which is around USD \$6,623); 4) Mr. M mentioned the participation of the CGTG in this plan, and mentioned the first name of one CGTG representative; 5) The workers commented on the need for making the management believe that they are forming a union; to that effect, they planned to meet with management on the afternoon of Friday, April 9, 2021 to tell that they wanted to form a union; 6) Some workers reiterated throughout some of the audios the wish of being terminated with payment of severance; 7) On Friday, April 9, 2021 the group was getting together to call management's attention, and reporting to Mr. M how this activity was going; 8) The group was planning a meeting on Saturday, April 10 at midday to discuss details around the whole plan, and Mr. M highlighted that all of them need to collaborate to ensure the plan goes as expected; 9) On Sunday, April 11, Mr. M gave some final instructions to the group, and advised to enter the premises and to register the entrance (punch-in), and then to meet outside the premises; finally, Mr. M recommended the group to negotiate 5,000 Quetzales more than the amount they should receive by law, and suggested to say *"we want a union, but if you pay us 5,000 Quetzales more, we will leave the factory"*; 10)

¹⁸ All of these three workers did not participate in the group interview of February 01, 2022.

¹⁹ This worker did participate in the group interview of February 01, 2022.

²⁰ The Investigator also obtained some recordings from workers where Mr. M speaks, and the voice matches the voice on the recordings and video sent by Hoosier.

On Monday, April 12, one worker said to the rest of the group that those on the day shift are already at the Warehouse #11, and asked the workers from the night shift to go there; 11) On April 12, Mr. M reiterated the advice of negotiating a higher severance by saying that they will start the process to legally form the union; also Mr. M mentioned that the factory's General Manager is already aware of the existence of the group; 12) On April 12, after workers left the factory with payment of the enhanced severance, Mr. M reiterated to the group that each worker should pay 2,000 Quetzales (around USD \$265) to him and to the CGTG representative, although the previous agreement had been 2,500; Mr. M mentioned that some workers would pay through bank deposit, and that he could provide the bank account number to others who prefer that payment method.

- 2) The Investigator asked management to show all documentation related to the payment of termination payouts provided to this group of workers. The factory provided: 1) The sworn declarations and settlements mentioned before; and 2) Copies of the 25 checks provided to each of the 25 workers. The Investigator reviewed the documentation of all 25 workers, checked a sample of calculations, and noticed that payments were made according to the law. However, the workers' testimonies consistently indicated that the factory provided them with two checks. When asking the workers about the approximate amounts paid in each check, the Investigator found that the first set of checks provided correspond to the ones the factory showed to the Investigator (with amounts that followed the applicable legal provisions), while the second set of checks (which the factory did not show to the Investigator) were the result of a negotiation between the workers and the factory²¹. The settlements workers signed only describe the amounts paid in the first set of checks.
- 3) Notarial certificates of sworn declarations authenticated by the factory's lawyer, in which every single worker stated that *"despite he/she had verbally expressed at some point his/her intention of being part of a union at Hoosier Manufacturing, it was not his/her intention anymore"*. The sworn declarations also mentioned that each worker *"did not initiate any procedure before the General Inspection of Labor, or other Department of the Ministry of Labor and Social Prevision, or before a Labor Court, in regards to the formation of a union, Comité Ad Hoc, or any other form of workers' organization"*. The lawyer commented that these statements were included in all sworn declarations because the workers expressed them. On the other hand, the workers assured that the content of this sworn declaration was proposed by the factory, and they ended up accepting it and signing it. In addition to the sworn declarations, the workers also signed a settlement that describes the mutual termination agreement, which was also authenticated by the factory's lawyer. On this point, it is worth noting that the workers did not receive copies of the documents they signed (the sworn declarations and the settlement). The lawyer said that the workers did not ask for copies; hence, they were not provided to them.

²¹ The 25 checks provided to the workers on April 12 (the ones showed to the Investigator) added up to a total of 956,774.94 Quetzales (around USD \$126,725); the first day of the assessment management commented that the approximate amount paid to all these workers was around 1,300,000 Quetzales (USD \$172,185).

1.6) Investigator's Conclusions

After reviewing and assessing all the above-described information, the Investigator concluded that:

- The group of 25 workers terminated on April 12, 2021 did not have the genuine intention to constitute a union; instead, they planned to simulate the union formation process, as a means to obtain payment of enhanced severance by management.
- Mr. M and at least one CGTG representative advised the workers in the plan for creating a simulation of a union constitution process; and several months later, the workers were manipulated to present their allegations of anti-union terminations, with the expectation that the Brands would help them to achieve a reinstatement with back payment of lost wages.
- Management agreed to negotiate with the group of 25 workers knowing that they could be organizing a union, which posed a potential anti-union animus. The factory did not have access to the audio recordings probing the workers' planned simulation until October 2021, and all gathered evidence categorically indicated that workers made efforts to show themselves as actual union promoters.
- Another key aspect to consider is the fact that all these workers signed sworn declarations before the factory's lawyer stating that they will not continue their efforts to form a union, and that they did not initiate a legal procedure to constitute a union, or any other form of workers' organization.
- This evidence indicates that the likely participation of these workers in union activities was a topic of interest for both parties (management and workers). When it comes to issues around freedom of association, documentary evidence often can rarely be found, but in this case, the sworn declarations are an important element that demonstrates the relevance that it had for the parties: the fact of ensuring that "workers did not have more intentions to be involved in union activities".
- Moreover, consistent workers' testimonies indicate that factory paid severance higher than those amounts that legally corresponded to these workers, but evidence of that complementary payment was not provided or mentioned to the Investigator by management or included in the settlements signed by workers.
- The fact that Hoosier had agreed to terminate these workers sent a negative message to the rest of the factory workers, when it comes to the exercise of the rights to Freedom of Association and Collective Bargaining -- either by generating or promoting misconceptions around unions or freedom of association in general.
- From the onsite interviews with current workers the Investigator found that: i) From the 25 interviewed workers, 18 were working at the factory by April 2021, from among them, only eight workers heard about the group of April 2021, and all of them said that they were terminated for their participation in union activities.

1.7) Assessment of Terminations of Workers on April 14 and April 21, 2021

Under Guatemalan labor law, employers can terminate workers with no cause, with the only obligation of paying the workers the corresponding termination payouts (severance plus the proportion of inalienable rights). However, the FLA's Compliance Benchmarks

require that all employment decisions, including terminations, are duly documented to avoid the risk of arbitrariness or even of discrimination.

In the case of the three workers that alleged that their terminations were based on anti-union discrimination because of their relation/sympathy with members of the group of 25, such allegation could not be sustained, as it was corroborated that the group of 25 workers were not actually participating in union activities. Nonetheless, the Investigator reviewed the terminations of these three workers, and found that Hoosier has not properly recorded the reasons for their dismissals.

In two cases, the termination letters communicated to the workers only state that *“from the evaluation conducted, it is not possible that you continue working at the factory, we proceed to terminate you”*, but there are not documented performance reviews that support those decisions. The last disciplinary action imposed on one of these workers was dated September 29, 2020; in the case of the second worker, the last disciplinary action imposed was dated March 25, 2021, and both were verbal warnings, which are the less severe faults under the factory’s disciplinary system.

In the case of the third worker, her termination letter states that *“during the employment relationship you have had disciplinary procedures because of absence and indiscipline, for that reason we have decided to terminate you”*. In reviewing this worker personnel file, the Investigator found that all disciplinary actions imposed on her were from 2020, and the last one was dated October 2020.

Based on the above, the Investigator found that the factory is missing a system for ensuring that termination decisions are being objectively taken, based on a grading system for evaluating workers’ performance that indicates measurable information (e.g., a performance evaluation tool that incorporates a set of objective criteria generating a grading). If terminations are motivated by a reduction of production orders, the factory should also record such circumstances.

In the factory’s records of terminations, these three terminations have been categorized as “termination for reorganization”, but that concept (which does not exist in the law) does not provide information on what were the actual reasons for termination. As a result, it poses a risk of discretionary or arbitrary terminations. Moreover, the Investigator noted HR staff does not have any form of intervention on the termination decisions, when the HR team could play a key role in ensuring the objectiveness and fairness of termination practices.

2) Assessment of current Industrial Relations at the Factory

The process for constituting SITRAHOOSIER started in June 2021. On July 31, 2021, a group of 24 workers celebrated the constitutive assembly, and on August 6, 2021, the union presented the official request to the Ministry of Labor for obtaining the legal recognition and legal status. This effort was also supported by the CGTG.

According to Hoosier, the group of workers who constituted SITRAHOOSIER were motivated by the desire of getting enhanced severance payments, as the workers expressed it during some meetings held with management in July. Hoosier commented that these workers were demanding 10,000 Quetzales (USD \$1,324) per year of service for everyone as severance. The Hoosier team explained that, as the factory refused such a proposal, the workers moved forward with the union formation.

The union leaders stated they are a legitimate union formed with the purpose of promoting better working conditions at Hoosier²².

On November 23, 2021, the Ministry of Labor issued an administrative resolution recognizing SITRAHOOSIER's legal status, approving its statutes and ordering its inscription at the Ministry public register of legal unions²³; this resolution was published in the Guatemalan Official Gazette Number 70, on December 10, 2021. In this way, the union completed its legal registration.

On August 06, 2021, and parallel to the union formation process, the same workers also started a Socio-economic Collective Conflict before a labor court (Ref. number 01173-2021-0762). Under Guatemalan Labor Code,²⁴ workers have the ability to elaborate a list of negotiating points (known as "*pliego de posiciones*"), and submit it to a labor court; then, the court sends a legal notification to the employer about the initiation of the collective conflict, which could be resolved through a conciliation process, or through a direct negotiation. The law requires that the group of workers promoting the collective conflict also appoint three Delegates who will represent the workers during the entire process. This committee is known as "*Comité Ad Hoc*". The period from the initiation of the collective conflict (since the presentation of the "*pliego de posiciones*" before the labor court) to the issuing of the final resolution of the dispute by the labor court is known as "*Emplazamiento*".

On August 19, 2021, Hoosier was notified about the initiation of the Socio-economic Collective Conflict, and even when the factory complained that said notification was not duly presented, it decided to start a dialogue process with the workers.

²² In this respect, one current union leader assured to the Investigator that, initially, the majority of workers that formed SITRAHOOSIER were seeking payment of enhanced severance; but now, many of them are more focused on promoting better working conditions for the workers.

²³ Resolution DGT-PJ-059-2021.

²⁴ Arts. 374 and following.

On August 30, factory management and the three members of the *Comité Ad Hoc* (joined by the CGTG representatives) agreed to move forward with a direct negotiation, which is a legal alternative to follow and end a Socio-economic Collective Conflict, as previously explained. After this initial meeting, seven additional negotiation meetings were held by the parties. As a result, on November 15, 2021, the union and management agreed on the final content of a direct settlement²⁵.



The direct settlement includes some commitments for Hoosier in regards to: respecting labor rights of the workers who initiated the collective conflict, respecting the legal prohibition to terminate workers during the course of the “*Emplazamiento*” unless authorized by the labor court, payment of a percentage of severance to workers who resign due to *force majeure*, payment of a seniority bonus, payment of legal advisory expenses for the union’s legal advisors, and termination of supervisors and managers committing harassment or abuse.

The direct settlement was submitted to the Ministry of Labor and to the labor judge for its legal registration; however, on December 15, 2021, the *Comité Ad Hoc* requested to the labor court that such agreement be reviewed and approved by a Conciliation Court. This is the current status of the Socio-economic Collective Conflict.

On August 14, 2021, some days after the union presented the documentation before the Ministry of Labor to obtain the legal recognition, SITRAHOOSIER submitted a letter to the FLA (which was also shared with other stakeholders) alerting it to anti-union actions from Hoosier against the union promoters, and asking for intervention to ensure they could freely exercise their associational rights. A similar letter was sent to the Brands, on August 24, 2021.

During the first day of the onsite visit to the factory, the Investigator met with nine out of the ten union leaders of SITRAHOOSIER to talk about their concerns as a worker organization, and the general conditions of the current industrial relations at the factory.

The main concerns expressed by the union leaders were:

-  The factory’s General Manager does not recognize them as a workers’ organization.
-  They are not allowed to bring to management’s attention the day-to-day complaints that workers might have around working conditions.

One union leader claimed that another co-worker told him “*why are you with the union? Do you want to affect the factory?*” In this respect, the Investigator noted, from the onsite interviews with workers, that most of them are missing relevant information on freedom of association, or have misconceptions around unions, which might affect the conditions for the union leaders to properly exercise their functions. Specifically, 17 out of 25 workers do not know what “Freedom of Association” means or implies; 12 workers assured they have not been informed of their ability to form or join a union; eight workers commented

²⁵ The Investigator reviewed the meeting minutes provided by Hoosier, dated August 30, September 09, September 17, September 24, October 08, October 19, October 22, and November 15.

that the participation in unions lead to termination, and three other workers said a union is used to leave the factory with full payment of severance.

Through the revision of the factory's written policies and procedures, the Investigator noted that the Nondiscrimination Policy does not include the union affiliation or participation in union activities. In addition, the factory is missing general policies and procedures on Industrial Relations.

On a different note, the Investigator also heard about some messages disseminated by the General Manager through the factory speaker, in which he was saying something like *"there is an internal group of workers at the factory that are being influenced by external groups that want to affect the factory"*²⁶. The General Manager denied he had ever said a message like that, but the union leaders and workers consistently confirmed that this message was spread through the speaker at all plants for some consecutive days. Even when the message did not mention the word "union" or expressly oppose participation with unions, some workers related that message to unions; hence, there is an ongoing need for addressing that concern.

The Investigator noted that Hoosier has distributed among workers newsletters in which all of factory's policies are explained, including its Freedom of Association policy; also, written policies have been posted, and they are mentioned during worker training sessions. Nevertheless, the workers have not yet received a complete and detailed training, specifically on Freedom of Association, that provides them with comprehensive knowledge on this fundamental labor and human right, and that addresses bias and misconceptions around it.

Around two weeks prior to this field investigation, Hoosier completed a training program delivered by an external expert, specifically on Freedom of Association. The training program focused on managers and supervisors, and Hoosier is planning to deliver such training among workers. In the "Recommendations" section, the Investigator suggests some minimum messages that should be disseminated among workers during these training sessions.

On January 23, 2022, the union submitted a written request to Hoosier to start a dialogue process; and the Investigator corroborated that both parties met on January 28, and a second follow-up dialogue meeting was conducted on February 17. On this occasion, the union presented a request for the factory to allow it to have a union bulletin board, some suggestion boxes to be handled by the union, and to communicate to workers a statement to recognize the union; the union reported that the General Manager rejected the last two proposals, and that he would consider the first one.

According to the CGTG representatives currently, the factory has accepted the union's existence; however, other relevant stakeholders are fearing that a "subtle anti-union

²⁶ Workers could not specify the date or week in which this occurred, but most of them claimed it was around July-August 2021. Apparently, it was in the framework of Mr. M's arrest.

campaign” is in place²⁷, or that the anti-union actions will worsen once the Brands do not have their eyes on the factory²⁸.

Given the fact that this is the first time that Hoosier is dialoguing with a legally-formed union at its facilities, it is worth setting out some actions that can help during this process, with the goal of ensuring adequate industrial relations, as indicated in the “Recommendations” section.

3) Assessment of Terminations during the course of the Socio-economic Collective Conflict

3.1) Assessment of Legality of Terminations under the “Emplazamiento”

First, it is relevant to highlight some legal provisions applicable during the course of a Socio-economic Collective Conflict.

According to Article 379 of the Guatemalan Labor Code, once the list of negotiating points (“*pliego de posiciones*”) is presented to the labor court, the employer should not retaliate against workers participating in the collective conflict, and if the workers are terminated, they should be immediately reinstated with back pay of loss wages. Moreover, Article 380 mandates that any termination executed at a given workplace subjected to the “*Emplazamiento*” should be approved by the labor court hearing the case, even if the termination affects workers who are not directly participating in the collective conflict. Otherwise, the employer will be fined, and the court should order the immediate reinstatement of the terminated workers.

As indicated above, the Socio-economic Collective Conflict against Hoosier is still ongoing, meaning that the prohibition on the factory to conduct terminations without the labor court’s authorization is still applicable. Hoosier provided a detailed list of workers terminated from August 01, 2021 until January 31, 2022, although the “*Emplazamiento*” has been in force since August 06, 2021. According to this information, there were 327 terminations in total during that period.

Reasons for terminations and breakdown per month are presented in the following table.

Table 01: Terminations from August 2021 to January 2022*

Reason for Termination	M O N T H						TOTAL
	Jan	Aug	Sept	Oct	Nov	Dec	
2021							
Death			1		1		2
Job Abandonment		10	12	9	4	1	36
Under probation period		1		1	1		3
Resignation		50	44	42	42	23	201
Temporary contract				7		16	23

²⁷ Solidarity Center, AFLO-CIO Guatemala, interview with Central America Country Program Director, February 02, 2022.

²⁸ COVERCO, interview with Executive Director, February 01, 2022.

2022							
Death	1						1
Job Abandonment	4						4
Resignation	57						57
TOTAL	62	61	57	59	48	40	327

*Elaborated by the Investigator with information provided by Hoosier

During the field investigation, officials from the local NGO Coverco (interviewed on January 31, 2022) expressed that Article 380 of the Labor Code does not provide any exception, and that it should be understood that the prohibition of termination includes temporary contracts and workers under the probationary period.

The Investigator conducted some consultations with a local labor law expert, and found some court rulings on how the effects of the “*Emplazamiento*” should be understood.

As part of its jurisprudence, the Guatemalan Constitutional Court has established that terminations made by the employer when the worker is under the probationary period does not violate the preventions ordered in the framework of a Labor Collective Conflict²⁹.

In the case of the temporary contracts, the Constitutional Court has established that the terminations under an “*Emplazamiento*” are invalid only if the worker has been hired under the renewal of multiple and consecutive short-term contracts³⁰, which is not the case for the temporary workers hired by Hoosier.

The judicial resolutions cited above are legally binding; hence, the Investigator follows the criteria that terminations under probationary periods and terminations of workers hired under temporary contracts (when said contracts have been used once) do not violate the protection provided to the workers under the “*Emplazamiento*”.

As mentioned in the “Background” section, Fanatics received allegations of illegal terminations implemented by Hoosier in October 2021. Fanatics provided the Investigator with seven names of workers said to have been terminated that month. The Investigator interviewed all seven workers, plus other ten workers randomly selected from the list of workers terminated between August 2021 and January 2022. The Investigator tried to contact four other workers to include them in this sample, but their phone numbers were not available. The sample includes all different forms of terminations: abandonment, resignations, termination under probationary period, and termination of temporary workers.

The Investigator did not find evidence of any termination motivated by anti-union discrimination/retaliation. In general terms, the interviewed workers confirmed the reasons for termination documented in their personnel files; however, the Investigator found irregularities in three cases, as detailed below.

²⁹ Constitutional Court, Appeal of Amparo Judgement, File 2468-2007, from November 09, 2007, Recital I.

³⁰ Constitutional Court, Appeal of Amparo Judgement, File 3081-2020, from February 08, 2021, page 15. Constitutional Court, Appeal of Amparo Judgement, File 4936-2019, from March 09, 2020, page 17.

3.2) Review of 3 cases of Illegal Terminations from October 2021

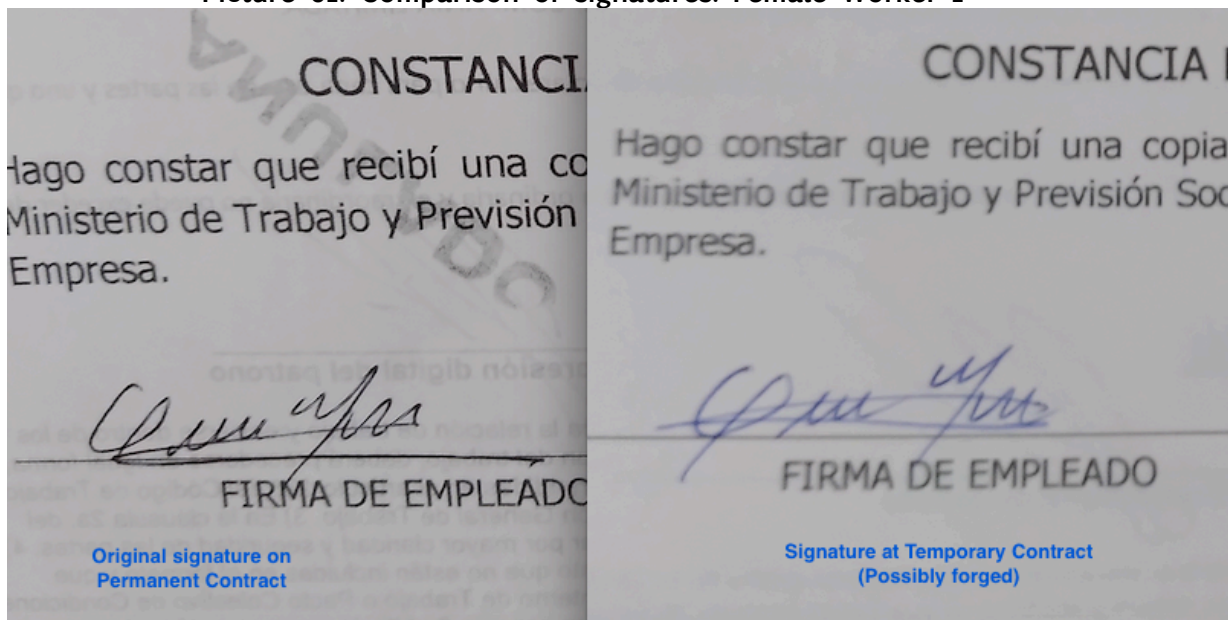
From the seven cases of October terminations identified by Fanatics, the Investigator found that three of them were illegally implemented by Hoosier, as all of them had been hired under permanent contracts (as proved through the review of the copies of the employment contracts these workers have), and they were terminated after completing the two months the law considered as the probationary period (Article 81 of the Labor Code).

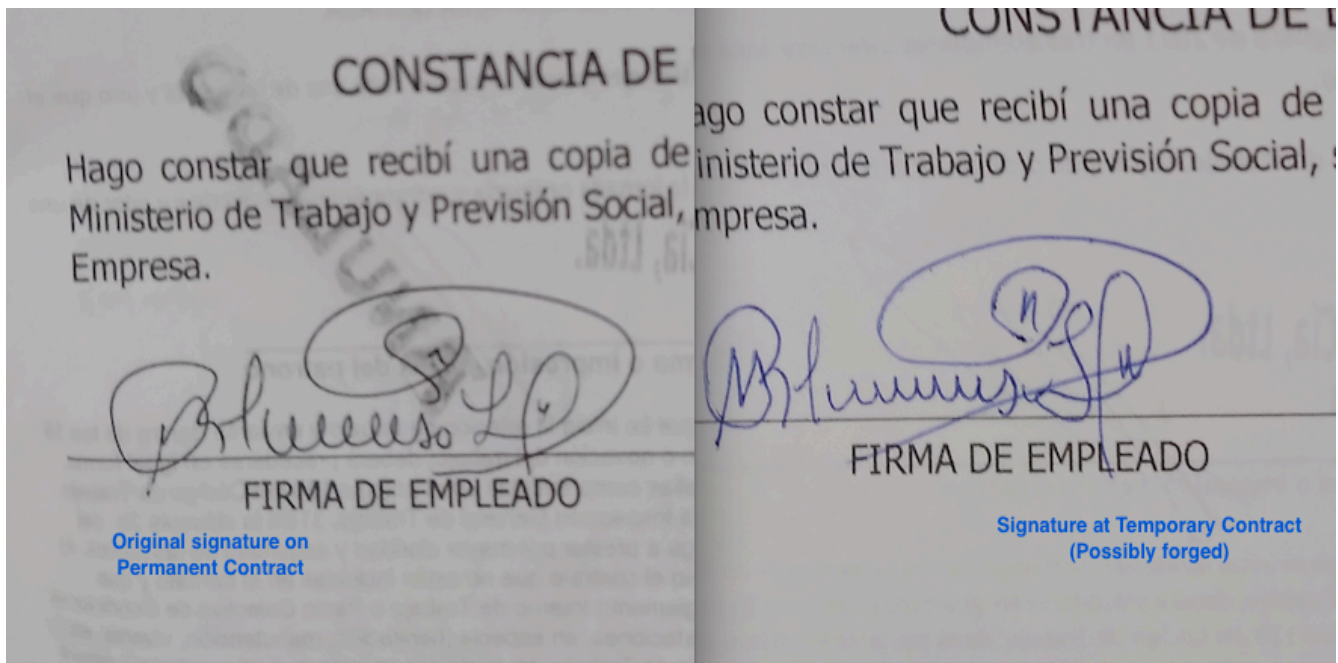
Furthermore, when reviewing the personnel files of these workers, the Investigator noticed that in two cases, management had invalidated the permanent contracts, and both files included temporary contracts. When the Investigator asked management for the legal registration of contracts before the Ministry of Labor (as required under Article 28 of the Labor Code), management only provided evidence of registrations of the permanent contracts. Hence, those will be considered to be the valid ones.

In these two cases, the Investigator compared the signatures on both contracts (the permanent ones versus the temporary ones) and noticed that signatures looked notably different (See Pictures 01 & 02 below). The Investigator asked these two workers whether they had signed a second employment contract, and the two of them responded “no”, they assured they had only signed one permanent contract, which corresponded to the copies they have. Also, through video-conferences, the Investigator displayed the signatures on the temporary contracts, and both workers categorically affirmed they were not their signatures.

In light of the above, the Investigator has reasonable grounds to think that someone at the factory could have forged the workers’ signatures.

Picture 01: Comparison of signatures. Female Worker 1





Picture 02: Comparison of signatures. Female Worker 2

The Investigator has a copy of the permanent contract of the third worker (who is a male worker) but does not have a picture of the signature on the temporary contract reviewed on his personnel file. However, considering that the patterns in all three cases are similar, the recommendations proposed below to handle this issue will be applicable to all three cases.

IV. Conclusions

The Investigator concludes that the group of 25 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. As a result, their expectations of reinstatement with retroactive payment of lost wages are not applicable to them.

The plan for such simulation was implemented with the support and guidance of Mr. M, and at least of one representative of the CGTG, in exchange for charging those workers certain amounts of money. Several months after the April 2021 terminations, the same CGTG representative contacted the workers to let them know that the Brands might be able to help them to achieve their reinstatement. As a result, the workers raised their allegations of illegal termination with external stakeholders, including the Brands.

Although the workers voluntarily decided to participate in this simulation plan, the Investigator noted that there was manipulation from Mr. M, as he took advantage of the workers' lack of full awareness of the implications of their actions. Subsequently, these workers were manipulated again to allege violations of associational rights, upon the expectation of obtaining more benefits: specifically, reinstatement with back pay of wages.

At the same time, the Investigator notes that Hoosier has agreed on at least two occasions to negotiate and pay severance to workers who have simulated the initiation of a Socio-economic Collective Conflict and/or a union constitution: first in May 2019, and then in April 2021.

In the specific case of the April 2021 workers, their terminations constitute a violation of FLA Benchmarks ND.2.1 and FOA.5.1, since the management agreed to those terminations under the assumption that they might be engaging in union activity, which in turn indicates a potential anti-union activity. This practice sends a negative message to these and other workers, in that the exercise of the rights to Freedom of Association and Collective Bargaining could either end up with a termination, or that the ultimate purpose of exercising such rights is to obtain an enhanced severance payment. Hence, there is a need for implementing some corrective actions.

In regard to the current state of industrial relations at the factory, the Investigator found positive developments in the ongoing dialogue in which management and union have engaged, including completing the negotiation of a direct settlement (from August to November 2021), and starting a mutual relationship (January and February 2022).

However, since this is the first experience for Hoosier and the union in dialoguing with each other, it is important to set a proper framework for healthy and sustainable industrial relations; to that end, specific recommendations are provided in the next section. In particular, the Investigator has identified the need for more effective communication and training for workers on Freedom of Association and Collective Bargaining, since the actual communication and efforts carried out by the factory to date has not been effective, and it contravenes FLA Compliance Benchmarks ER.1.2, ER.3.2, and ER.4.

In addition, the current factory practices on termination are not aligned with FLA Compliance Benchmarks -- in particular, Benchmark ER.16.1-- and a robust and objective performance review system is missing, in violation of Benchmark ER.7; such a system might help to prevent arbitrary employment decisions, especially on termination.

Finally, the illegal terminations of three workers during the course of the “Emplazamiento”, assessed in Section 3.2 of this report, violates Article 380 of the Guatemalan Labor Code.

V. Recommendations

Based on the investigation results, it is recommended that Hoosier:

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; 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 the FLA should also be able to review and provide feedback on the statement content.

2) 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”).

3) 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 provided to them 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 that they experienced manipulation by other parties, as indicated throughout the report.

4) 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 approved by the union, the factory, and the 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.

- 5) Regularly consult with the union on the 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.
- 6) 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.
- 7) Update the current Nondiscrimination policy to include participation in union activities, as a matter subject to protection.
- 8) Develop policies and procedures on Industrial Relations that outline the framework for:
 - 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.
- 9) 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 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.
- 10) Reinstate the three workers illegally terminated in October 2021 during the course of the "Emplazamiento", 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.
- 11) If the forging of workers' signatures is corroborated per the discussion in Section 3.2 above, 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.

Finally, the Investigator recommends the Brands to follow-up on the implementation by Hoosier of all corrective actions listed in the above recommendations.