

**UNC's Participation in the
Fair Labor Association and/or the Workers Rights Consortium**

Report and Recommendations to the Chancellor

and

Background Document

Licensing Labor Code Advisory Committee

March 22, 2000

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Report and Recommendations to the Chancellor

by the Licensing Labor Code Advisory Committee¹
March 22, 2000

Summary and Recommendations

This report addresses the question of whether UNC-Chapel Hill (UNC) should participate in either or both—or neither—of two national organizations that seek to serve as multi-university coordinating organizations for the implementation and monitoring of labor codes for manufacturers producing university-licensed products.

The first is the Fair Labor Association, which was created in 1998 by a White House-sponsored coalition of manufacturers and human rights groups and which since 1999 also includes universities in its governance structure. By June 1999 over 100 colleges and universities had affiliated themselves with FLA, including UNC with the understanding that it would review its decision on a year by year basis; the number is now approximately 134.

The second is the Workers Rights Consortium, which was announced in Fall 1999 by a coalition of student and worker-rights organizations—so far joined by approximately 18-20 colleges and universities—and is to hold a founding conference on April 7, 2000.

This report presents the options and key issues for University consideration in making the decision as to whether to participate in one or the other of these organizations, or both; or neither, in which case some third option might have to be developed. It then presents the committee's views as to which of these options UNC should pursue. We append to this Report and Recommendations a more detailed Background Document which includes a more detailed summary of the essential features of each of these organizations, the issues associated with participation in each, and a brief history of UNC's relationship with the FLA to date. The Committee was asked to make recommendations in sufficient time for the Chancellor to act on the possibility of the university's affiliation with either or both of these organizations no later than April 3.²

¹ The Licensing Labor Code Advisory Committee (LLCAC) was created by the Chancellor in February 1999, succeeding a similarly named task force, to advise him on issues related to the implementation of a labor code for manufacturers producing UNC-licensed products.

² In the case of WRC, this would permit UNC participation in its founding conference should UNC decide to join. In the case of FLA, it would assure that the University's decision is made before the end of the academic year while its students and faculty are present on campus.

The committee also notes that the steps UNC has taken so far with its own licensees have been initiated through its contractual agreement with the Collegiate Licensing Company. This agreement has allowed UNC so far to act more rapidly than the FLA and in concert with a significant number of other universities in mandating a common labor code and full disclosure of manufacturing sites for all its collegiate licensees. UNC's contract with CLC is itself up for renewal as of 1 July 2000, with a 90-day prior notification requirement if UNC were to decide to terminate it. This decision must also be made by the Chancellor by April 1, therefore, on the basis not only of labor code issues but also of the University's overall satisfaction with this arrangement for protecting use of its logos and managing its licensing relationships.

UNC's objectives: What UNC seeks as an outcome of this process is an organization that provides

- (1) an effective and credible capacity to monitor compliance with the labor standards UNC endorses, to investigate and verify any complaints, and to assure correction of any deficiencies;
- (2) to the extent feasible, the influence to promote continuous improvement of labor practices by all licensees (and ideally, more generally);
- (3) a mechanism for sharing the costs of maintaining this capacity as widely as possible; and
- (4) accountability to the participating universities, including ideally a university-based governance structure that could act together more generally on labor practices and other aspects of collegiate licensing.

Assessment: Neither of these organizations is ideal from the perspective of the university's objectives. Each has certain desirable features that the other does not, which are in each case attractive to a plurality of the committee and compelling to some. Each also has features that are concerning, in varying degrees, to a significant number of the Committee and are even unacceptable to some members without significant change.

In the case of Fair Labor Association, as desirable characteristics it offers a large forum of participating colleges and universities (approximately 134 at present) in a self-governing University Advisory Council. These universities have agreed to a common set of standards and to requirements for monitoring of their facilities; and a subset of them, including UNC, are using the FLA as an organizational framework in which to implement "FLA Plus" requirements, including a somewhat more stringent code of labor practices and a requirement for public disclosure of the names and locations of all collegiate manufacturing sites. They also are participating in the development of accreditation standards for independent monitoring organizations; in developing protocols and guidelines for site monitoring; in a pilot process for training indigenous non-government organizations to serve as accredited monitors; and in developing a proposed procedure for using university-selected monitoring organizations paid for by

pooled funds (rather than directly by the firms) to monitor smaller licensees—a procedure that could if successful be proposed for larger licensees as well. FLA also offers a forum in which universities and labor-rights organizations can negotiate directly with businesses over steps to improve labor practices not only by licensees but more generally by brand-name apparel manufacturers and (hopefully) others.

At the same time, FLA has features that concern a significant number of the Committee. Its monitoring procedures, even with accreditation of the independence and competence of the monitors themselves, do not include FLA-instigated spot-check inspections independent of the participating companies' influence; and its criteria for independence of monitors may still allow more potential for related business activities with the company than many Committee members would wish. FLA proposes in the future to create a certification mark for "FLA-compliant companies," an imprimatur which could be unduly approving and is in any case not necessarily an objective of university members. Its governance structure includes only one seat out of 14 for universities (compared to 4-6 seats each for companies and NGOs), even though universities now represent the overwhelming majority of its members. Its corporate participants include only 11 firms in any case, all major brand-name apparel manufacturers (vs. a significant fraction of university licensees are non-apparel manufacturers). And its requirements for university members, not yet implemented, include a mandate that they require their licensees to join FLA (or at least adopt its code and accept its monitoring requirements): once implemented, this mandate will create strong expectations that both UNC and its licensees continue in that organization, and it will also give licensees representation in its governance in ways that could over time be opposed to, or less than, university goals.

If UNC does renew its membership in FLA, it should be with a clear agenda not only of building broader commitment to the current FLA minimum standards—both by corporations and by other schools—but also of continuing to influence that organization and its other members to move farther in the direction of UNC's ideals for fair labor practices. Examples could include broader adoption of current "FLA Plus" code commitments as the FLA standard (e.g. the Collegiate Labor Standards and full public disclosure of manufacturing sites, which UNC and other leading universities have already adopted); "pooling" of resources for and selection of external monitoring organizations, which would create a more arms' length relationship between manufacturers and external monitors; broader disclosure of monitoring information; adding the possibility of more frequent random spot-check inspections by external monitors chosen by the universities rather than by companies themselves; careful scrutiny of both concept and criteria before adoption of any policy to allow member corporations to market themselves or their products as FLA-compliant; continued development of viable approaches to a living wage; and increasing the presence of highly-committed universities and NGOs in the organization.

In addition, it would be worth considering the question of whether university representation on the FLA Governing Board should be increased, since universities now make up the majority of its members and dues revenues, and will also be the principal

source of new corporate members through their licensing requirements, yet have only one seat on the board.

In the case of the Workers Rights Consortium, as desirable characteristics it offers the opportunity to participate in an organization specifically focused on the achievement of good labor practices at university-licensed manufacturing sites, in concert with a smaller consortium of colleges and universities—but nonetheless including some of our major public peer licensees, such as Michigan, Indiana, and Wisconsin-Madison—that share with UNC a more active commitment to leadership on promoting good labor practices by collegiate licensees than do many collegiate members of the FLA. Its proposed governance structure envisions more university seats on its governing board than FLA. WRC also includes a greater commitment to independence from company influence on the selection and payment of monitors and the timing of monitoring, and does not intend to create certification marks separate from the significance of the universities’ own marks and logos, the protection of which is universities’ principal concern.

The WRC also has features that are as concerning to some members of the Committee as FLA’s issues are to others. It proposes to focus entirely on complaint-driven and proactive investigations, without any comparable emphasis on university cooperative initiatives with licensees to introduce better practices. It proposes to rely on indigenous local worker-allied NGOs to take the lead in all investigations, but has not yet proposed any accreditation procedure for assuring the competence and objectivity of monitoring organizations, or their independence from non-corporate advocacy interests. It envisions no participation role for companies that would create a common forum for resolving issues that may arise in trying to implement effective and credible monitoring. Despite more university seats on its Governing Board, that board itself would be permanently steered by a majority chosen by a pre-selected and self-perpetuating Advisory Council composed primarily of representatives of labor-rights organizations. It could evolve in directions that would be adversarial to the university members themselves, or that would significantly reduce the participation of manufacturers in university licensing (and resulting revenues to support scholarships and other university purposes), or that would emphasize worker advocacy in ways that would differ from or go beyond the principal goals and needs of university members.³ Finally, it is not yet clear whether WRC will attain the size and diversity of organizational membership and the financial resources necessary for its viability.

In short, if UNC were to join WRC, it would have to be with a significant commitment at the outset to working with other university members to refine some elements of its proposed governance, assure its organizational viability, and modify some elements of its proposed operating practices to reflect the universities’ legitimate expectations for an impartial monitoring organization with appropriate accountability to its university

³ WRC’s outline for instance states that “the Consortium will engage in efforts to educate workers about their own rights and consistently partner with local worker-allied groups for investigations.” These are legitimate and important activities for worker-rights groups, but not necessarily consistent with the role of neutral third-party monitoring and complaint-verification organizations.

members. Since universities' financial support would be essential to the organization's viability, there is legitimate ground for hope that such changes could be achieved.

Other universities' positions on joining WRC: Throughout the Committee's deliberations over the past year, it has been a key goal of the University that we seek to lead in concert with other universities, particularly with our peers among leading public universities and major licensing universities. In both FLA and the CLC, we have acted in concert with significant numbers of other universities, and that continues to be an important element of the University's position.

In the case of the Workers Rights Consortium, an estimated 18-20 colleges and universities have announced intentions to join WRC so far, including three which we would recognize as peer universities with significant licensing programs: Michigan, Indiana, and Wisconsin-Madison. These three universities have temporarily suspended their participation in FLA, and announced their intent to join WRC "conditionally." Brown University has announced its intent to participate in both; Yale has announced its intent to continue participating in FLA, but also to be willing to join WRC as well in the future if the organizers of WRC were to accept the legitimacy of participation in FLA as well as WRC and to develop policies that complement rather than seek to undermine FLA.

The Universities of Indiana, Michigan and Wisconsin-Madison recently released a joint statement on their intended participation in WRC as follows:

"We today announce that we will conditionally join with the Workers Rights Consortium in order to try to work toward a fair and just monitoring system and governance structure that will address our principles and will show sensitivity towards licensee concerns.

"We take this step without endorsing all of the provisions stated in the preliminary charter of the WRC, which will meet in April in New York City. As part of the WRC process, we will work actively to address the concerns articulated by the Advisory Committee, such as the fairness and credibility of the monitoring system as well as governance structure and organizational viability.

"We will participate in the process so long as we are making progress towards achieving these goals and we commit to using our best efforts to advance the process.

"We will rely on our respective Advisory Committees or successor groups composed of faculty, staff and students, to inform our judgment about whether participation in the process continues to be warranted in our universities' best interest.

"We also will commit resources to support appropriate pilot projects

or other efforts to create effective education or enforcement mechanisms.”

Committee Assessment

A clear majority of the committee believes that to participate in neither FLA nor WRC at this point would be unacceptable, or at best a very distant fallback position. There is a need for joint action by universities on this matter, and to join neither would necessitate creating some third alternative on our own. This is not unthinkable—based on the current pilot monitoring projects which we are now conducting in consortium with four other universities, five licensees, and a nonprofit monitoring organization (Verité)—but it is not viewed as a strong option at this point by most members of the Committee.

Differing majorities of the committee would support joining either FLA or WRC alone, but in each case a significant fraction of the committee would view that outcome by itself as unacceptable.

Recommendations

It is the unanimous consensus of the Committee, though with continuing concerns on the part of some members about each organization, that we recommend that UNC both continue its membership in FLA—with continuing year-to-year review—and join WRC on the same conditional basis stated by the Universities of Indiana, Michigan and Wisconsin-Madison. The principal implications of this choice would be the costs involved (both dues and staff time commitment), and the potential for unintended or unclear signals to UNC’s licensees during this process. Accordingly, we would recommend that during this initial period UNC’s participation in both organizations also include the following conditions:

- UNC will not impose the proposed requirements of either FLA or WRC membership on its licensees (e.g. membership dues in FLA, or disclosure requirements in WRC) until it has reviewed the results of this initial period’s participation and reached its own decision about the viability of the process that is developed.
- UNC expects to retain the right of final decision on monitors to be used at its licensees’ facilities.
- UNC’s financial exposure in either case would be limited to its membership dues as currently defined.
- UNC’s participation at this point does not represent agreement with future positions of the organizations, such as certification for FLA member companies or a defined “living wage” on the part of WRC.
- UNC’s participation in each organization does represent a commitment to work within each, in cooperation with other colleges and universities, to achieve common goals of good labor practices in collegiate licensing manufacturing facilities and more generally; and specifically to achieve the refinements in each organization that were noted above as desirable from UNC’s perspective.

The rationale for this position is the belief, shared by some members of the Committee who prefer the FLA approach, that even though some proposed features of the WRC are presently unacceptable to the university, WRC is still sufficiently early in its development that participation in its formative stages could produce sufficient changes to make it a viable venue for university cooperation in licensing labor code monitoring, and/or a constructive complement to those features of FLA that members of the Committee value. We are better off participating in that discussion, therefore, so long as it proves constructive, than not. Also, since we share licensees with some prospective university members of the WRC, if the WRC does become viable UNC may have to respond to its investigations in any event; again, we may be better off participating in creating its approach—and ideally, developing appropriate convergence or complementarity between its approach and that of the FLA’s University Advisory Council—than not. Notwithstanding the problems in WRC’s initial proposal, its viability will clearly depend on the supportive participation of major licensing universities; universities may be expected therefore to have significant influence in refining these initial documents at the April conference and thereafter.

If the University decides not to participate in both organizations at this time, it might be desirable to defer decisionmaking on either organization until April, after the initial WRC conference but still before the end of the semester, to see whether or not the WRC founding conference produces sufficient refinements to resolve the university’s concerns and permit a clear decision at that time. This would leave UNC out of the WRC founding conference, and out of the selection of the initial university members of its Governing Board; but in the consensus of the Committee that outcome would be preferable to joining one or the other alone over the strong concerns of a significant number of the Committee members about joining either organization alone.

Licensing Labor Code Advisory Committee:

Richard N. Andrews, Faculty, Co-Chair	Eric Johnson, Student
Richard Baddour, Athletics	Catherine Lutz, Faculty
Nicholas Didow, Faculty	Shirley Ort, Financial Aid
Simone Eppich, Student	Todd Pugatch, Student
John P. Evans, Finance	Rutledge Tufts, Auxiliary Services,
Donald Hornstein, Faculty	Co-Chair

Appendix: Background Document

**UNC's Participation in the
Fair Labor Association and/or the Workers Rights Consortium**

Background Document

by the Licensing Labor Code Advisory Committee⁴
March 22, 2000

Introduction

This Background Document, written to accompany the Report and Recommendations of the Licensing Labor Code Advisory Committee to the Chancellor dated March 22, 2000, provides detailed background information on each of two national organizations that seek to serve as multi-university coordinating organizations for the implementation and monitoring of labor codes for manufacturers producing university-licensed products; and on the issues associated with participation in each. It also includes a brief historical summary of UNC's prior decisions concerning participation in one of these organizations (FLA).

The first is the Fair Labor Association, which was created in 1998 by a White House-sponsored coalition of manufacturers and human rights groups and which since 1999 also includes universities in its governance structure. By June 1999 over 100 colleges and universities had affiliated themselves with FLA, including UNC with the understanding that it would review its decision on a year by year basis; the number is now approximately 134.

The second is the Workers Rights Consortium, which was announced in Fall 1999 by a coalition of student and worker-rights organizations—so far joined by approximately 18 colleges and universities—and is to hold a founding conference on April 7, 2000.

Background: Labor Standards and University Licensing

The advocacy for the manufacturing of a university's merchandise under fair working conditions takes place within the context of that university's licensing program. The purpose of the program is usually twofold: one, to ensure appropriate use of the university's name and marks; and two, to produce revenues for university programs, which typically include scholarships, athletics, and administration of the licensing program itself. At UNC-Chapel Hill, for instance, licensing generates some \$2.8 million

⁴ The Licensing Labor Code Advisory Committee (LLCAC) was created by the Chancellor in February 1999, succeeding a similarly named task force, to advise him on issues related to the implementation of a labor code for manufacturers producing UNC-licensed products.

per year in revenues, 75% of which (after costs) goes to the support of academic scholarships and financial aid and 25% to the support of the athletics program.

Because licensing per se is not part of their missions, some universities choose to implement their licensing programs through an agent such as the Collegiate Licensing Company (CLC) or Licensing Resource Group (LRG). This decision is a factor because it often means that the licensing agreement is actually between the agent and the licensee.

In or around early 1999 a significant number of colleges and universities took the position that all licensed goods must be manufactured under fair working conditions. As a description of “fair working conditions,” the majority of those schools adopted the labor standards found either in the draft CLC Code (“Collegiate Labor Code”) or in the Fair Labor Association’s Workplace Code of Conduct. The two vary only slightly (details discussed below).

The question then arose of how to go about implementing those standards in manufacturing sites around the world. It would be one thing for licensees to improve conditions in their own plants, but quite often they used components manufactured by a number of subcontractors, and a larger school with five or six hundred licensees (UNC, for instance) might find their goods made at sites numbering in the thousands.

There is wide agreement that implementation of the standards would not, by itself, be enough: there would need to be checks made from time to time, to verify that sites were conforming. Some of the standards—such as those related to health and payroll systems—require technical expertise, both for implementation and for verification. And if even the best verification programs can only be spot checks; what happens at the sites the other days of the year? There are also more fundamental political, economic and social realities: can the standards ever be implemented in a world of trade quotas, political and economic upheaval, and intense competition for prices and profits amid an almost unlimited supply of cheap labor in countries struggling to move up in the world economy?

As a starting point, many schools committed to working, whenever possible, in unison with other schools in order to increase the impact of the commitments being made, and to create economic efficiencies. In Summer 1999 the most available mechanism for doing this was the newly-created Fair Labor Association. In Fall 1999, student groups opposed to the FLA approach announced an alternative proposal, the Workers Rights Consortium, and have actively pressured colleges and universities both to leave the FLA and to affiliate with WRC instead. It is these two organizations that we now compare.

Among other colleges and universities, approximately 134 are presently members of the FLA, although the number actively involved is far smaller. Eighteen colleges and universities have so far expressed intentions to join the WRC, including Brown University which also belongs to the FLA and three major public universities (Indiana, Michigan and Wisconsin) which intend to do so “conditionally.” According to their joint statement, conditional membership means that they are joining without endorsing all the

provisions stated in the preliminary charter of the WRC, and with the intent of working actively to address identified concerns such as the fairness and credibility of the proposed monitoring system, governance structure, and organizational viability; they intend to participate in the process so long as they are making progress towards achieving these goals, and to commit their best efforts to advancing the process.

UNC's Objectives and Principles

The starting point for decision about affiliating with either organization should be UNC's own institutional objectives:

- UNC seeks to continue to maintain control over the uses of its name and symbols, and therefore to continue to operate a self-supporting licensing program, either directly or through an agent (such as CLC).
- UNC seeks to continue to derive significant additional revenues from its licensing program to support its scholarships and athletics programs.
- UNC seeks to assure insofar as possible that good labor practices are followed in the manufacturing of goods that bear its mark, and to use its influence insofar as possible to improve labor practices more generally.
- UNC seeks to work in concert with as many other colleges and universities as share its goals, in order both to maximize the constructive influence of their actions and to minimize conflicting expectations of licensees.
- Specifically, UNC seeks to work with as many other colleges and universities as possible to create an effective and credible capacity to monitor compliance with the labor standards it endorses, to investigate and verify any complaints, and to assure correction of any deficiencies; and to share as broadly as possible the costs of maintaining this capacity.
- UNC seeks to maintain its own ultimate autonomy for decisions about its relationships with licensees.

UNC has already adopted and begun to implement a number of specific principles and recommendations over the past fourteen months with all licensees of its own merchandise, through its contract with the Collegiate Licensing Company (CLC) which administers licensing agreements on behalf of UNC and many other colleges and universities. These principles include

- (1) that UNC should not license its name to businesses whose practices violate the University's own fundamental principles;
- (2) that UNC should both participate and lead in bringing as many licensees and other universities as possible into agreement on an effective labor code of conduct, in order to have the greatest effect over the long run;
- (3) that all manufacturing sites for UNC merchandise should be subject to full public disclosure;

(4) that UNC should endeavor to participate in identifying the elements of a ‘living wage’ in areas where products bearing its name are manufactured, and the impacts of paying such a wage, and that once such a wage and its implications have been determined to the satisfaction of the University, it should take appropriate steps to achieve its implementation; and

(5) that UNC should commit to the principle of independent monitoring of UNC licensee production sites, including independence of manufacturer control of the timing or selection of monitoring sites and the procedures of monitoring and including also off-site worker interviews and cooperation with local labor- and human-rights organizations.

OPTIONS

As of 1 January 2000 all UNC license agreements now include requirements that the licensee comply with the CLC labor code of conduct, and disclose all manufacturing sites of UNC merchandise to UNC with the understanding that they will be made public. A key issue now is how and through what organizations monitoring of these requirements will occur, and verification of steps taken to assure compliance and to correct any deficiencies. CLC does not at this point have a monitoring and verification process in place, though UNC and four other universities are sponsoring a pilot process in cooperation with five licensees and an independent non-profit auditing organization. The FLA and WRC represent two organizational approaches to this task, similar or overlapping in some respects but in others distinctly different.

UNC now has four options available for consideration:

- (1) to continue its membership in the Fair Labor Association for a second year;
- (2) to join the Workers Rights Consortium;
- (3) to continue FLA membership and join WRC; or
- (4) to decline further membership in both FLA and WRC at this time, and instead deal only with its own licensees or seek to develop a different mechanism for multi-university cooperation.

What UNC would seek as an ideal would be an organization that provides

- (1) an effective and credible capacity to monitor compliance with the labor standards UNC endorses, to investigate and verify any complaints, and to assure correction of any deficiencies;
- (2) to the extent feasible, the influence to promote continuous improvement of labor practices by all licensees (and ideally, more generally);
- (3) a mechanism for sharing the costs of maintaining this capacity as widely as possible; and

(4) accountability to the participating universities, including ideally a university-based governance structure that could act together more generally on labor practices and other aspects of collegiate licensing.

THE FAIR LABOR ASSOCIATION

Origin. The Fair Labor Association was provisionally chartered in November 1998 by a consortium of corporations and human-rights groups. FLA grew out of the Apparel Industry Partnership, which was initiated by the White House in August 1996 to use the collective efforts of labor and human rights organizations, human rights groups, apparel and footwear manufacturers, consumer advocates, and at least one university to bring needed change to global workplace conditions. The AIP introduced an agreed set of monitoring principles and a workplace code of conduct in April 1997. In November 1998 two union participants in this initiative and two human-rights participants chose to disaffiliate, and have not taken part in the FLA, though they have been invited to do so (Nagy et al., Wisconsin comparison 11/23/99).⁵

Mission. The stated mission of the FLA is to bring together human rights groups, labor rights groups, consumer groups, companies, universities, and support from federal agencies in a cooperative effort to achieve significant change in factory conditions and the lives of workers. Its premise is not unlike that which led to working agreements between needle trade unions and some manufacturers in this country: by raising the standards in the plants of some leading companies, those companies become allies with labor-rights organizations in insisting that others also raise their standards. It also is premised on the belief that it is not possible even to gain access to factories and necessary information, let alone to insure remediation of problems, without the cooperation of the companies; and that adherence to an industry-wide code of conduct and ongoing monitoring system that promotes reform and remediation provides the best framework for improving factory conditions.

The FLA therefore believes that lasting change is more likely if companies make an affirmative commitment to the FLA's code of conduct and its monitoring principles and if their factories are inspected regularly. It also believes that consumers should know which companies have made this commitment and complied with the FLA's requirements, to differentiate them from companies that have not. (FLA Q&A, 3/7/2000)

Membership. The FLA seeks to encompass as broad a coalition as possible in support of its goals. Its membership is open to businesses, labor- and human-rights groups, universities, unions, and other organizations that seek to work together to improve working conditions. To date it includes 11 apparel manufacturers, 5 human rights and consumer groups, and approximately 134 universities.⁶ Human rights and consumer

⁵ These included the AFL-CIO, UNITE (needle trades union), the Interfaith Committee on Corporate Responsibility, and Global Exchange.

⁶ Several colleges and universities have announced intentions to withdraw from FLA, in some cases in favor of WRC, but exact numbers and status of these intentions are not definitively known. Brown University has announced its intent to affiliate with both.

group members include the Lawyers' Committee for Human Rights, International Labor Rights Fund, Yale University Human Rights Center, Business for Social Responsibility, and the National Consumers League.⁷ As a condition of membership, universities are also expected to require their licensee manufacturers either to become members of FLA, or alternatively to comply with the FLA labor standards and open their manufacturing sites to FLA-accredited monitoring. This requirement has not yet been implemented, but could substantially expand FLA's membership in the future if universities continue to participate in it.

Organizational status. The FLA has a formally adopted code of conduct, a charter, a board of directors, and an internally self-governing University Advisory Council which has established bylaws. The Chair of FLA's Board, Charles Ruff, and its executive director, Sam Brown, are both widely respected and effective human rights advocates; Sam Brown is also well known as a leading student activist of the 1960s, as former director of the parent agency of the Peace Corps and VISTA, and as U.S. ambassador to the organization responsible for implementing the Helsinki human rights accords. FLA anticipates a staff of approximately 20 professionals, including experts in labor issues and monitoring; its scope encompasses all the factories of its participating companies and all the licensees of its colleges and universities; and it has announced criteria for accrediting independent external monitors.

Governance. The FLA's governing board consists of equal numbers of business and human-rights representatives (currently four of each, intended to increase to six), plus the chair and a university representative selected by the University Advisory Council. Representation on the governing board has also been offered to labor unions and to United Students Against Sweatshops, but so far they have declined to participate. Universities are also represented on key committees such as the Monitoring Committee.

Most decisions can be made by a simple majority of the Board, including suspending a member company for noncompliance with the code. Several more fundamental types of decisions, such as charter amendment or a change in the labor standards or ejection of a member, would require a "supermajority" (two-thirds of Board members). This requirement has been interpreted by some as evidence of industry control of the organization, but in fact it was adopted with the support of both industry and NGO constituencies for the protection of both.⁸ In its first significant vote, the Board unanimously adopted women's rights provisions proposed by the University Advisory Council, which will be added to its monitoring protocols.

Financial resources. FLA's financial base includes assessments levied on participating companies and annual dues charged to university members, as well as government grants.

⁷ The National Consumers League initiated the first public campaign against sweatshops in the United States, in 1899.

⁸ From the NGO perspective, for instance, it would allow them to veto any proposal to weaken the labor standards. There is no reason to assume, moreover, that corporate members would vote as a bloc to veto ejection of a non-compliant member, since corporate members themselves have a stake in the perception of fair labor practices that membership confers. Some trade associations, for instance, have successfully imposed codes of conduct on their members and ejected non-compliant members (environmental practices by forest-products companies, for instance).

Its current budget is approximately \$1.3 million, of which university dues are about \$300,000, industry assessments about \$270,000, and \$739,000 is from a grant from the U.S. Agency for International Development.⁹

Labor Standards: The actual labor standards advocated by both FLA and WRC are essentially similar at present, but with a number of possibly important exceptions. FLA uses the Apparel Industry Partnership Labor Standards, based on International Labor Organization (ILO) norms. Most schools have endorsed these standards. A significant number of schools (including UNC and the WRC) have committed to the Collegiate Labor Standards (drafted by the CLC with university input), which are based on the AIP standards but go further in two particular areas: piece work and treatment of children who suffer a negative impact (such as being laid off) due to implementation of the standards. UNC and a growing number of other schools also require public disclosure of the names and locations of all manufacturing sites for their merchandise. FLA accommodates these additions to its standards by allowing any of its members to have higher standards, as long as they at least meet the FLA requirement. In addition, the monitoring standards that are being developed by FLA in conjunction with the University Advisory Council include a number of piecework tests and benchmarks, as well as women’s rights and freedom of association/collective bargaining language based on ILO norms.

WRC uses the Collegiate Labor Standards and site disclosure as its minimum requirements, and adds a number of small changes concerning working-hours concepts (e.g. overtime restrictions) and union organizing and recognition rights.

Workers’ Rights to Organize: All FLA participating companies are expected to ensure that employees may exercise their rights to organize and bargain collectively without fear of discrimination or punishment, including contracting with factory owners that understand and recognize these rights and who “shall not affirmatively seek the assistance of state authorities to prevent workers from exercising these rights.” FLA’s charter notes that the labor rights represented by its Code are not fully recognized or enforced in some countries, but states as a specific goal that FLA seeks to promote and encourage positive change in those countries toward acceptance of the Code standards, presumably by continuing to operate in such countries to the extent possible. FLA anticipates providing “special country guidelines” when necessary, as well as reports on country practices, to all participating companies.

WRC’s code adds a sentence directing that “licensees shall not cooperate with governmental agencies and other organizations that use the power of the State to prevent workers from organizing a union of their choice.”

“Living Wage:” FLA’s Code “recognizes that wages are essential to meeting employees’ basic needs,” and requires that as a minimum, member firms pay at least the minimum required by local law or the prevailing industry wage, whichever is higher, as well as all legally mandated benefits; plus overtime at whatever premium rate is legally

⁹ For the future, company assessments could turn out to exceed university dues as membership grows, since annual assessments for participating companies range from \$5,000 minimum to \$100,000 maximum (the latter for a company with annual consolidated revenues greater than \$10 billion). University annual dues are 1% of annual licensing revenues (minimum \$100, to a maximum of \$50,000).

required in the country of manufacture (or if none is required, at at least their regular hourly compensation rate).

FLA's Charter also requests a six-month study by the U.S. Department of Labor to compare country-by-country data on the purchasing power of wages needed to meet basic needs of employees in the apparel and footwear industries. This study (completed March 2000) was to be based on comparisons among minimum and prevailing wages and market baskets of goods used to define poverty levels, and to review existing research on methodologies as well. In the view of the FLA's Executive Director, FLA's position is essentially convergent with WRC's in its attempt to identify what is necessary to provide a "decent standard of living" to all employees (Brown to Saukar email, 3/9/00).

WRC's Code also recognizes that wages are essential to meeting employees' basic needs, and requires that licensees pay employees, at a minimum, wages and benefits which comply with all applicable laws and regulations, "and which provide for essential needs and establish a dignified living wage for workers and their families." It goes on to define a "living wage" parenthetically as "a 'take-home' or 'net' wage, earned during a country's legal maximum work week, but not more than 48 hours... [which] provides for the basic needs [housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation and savings] of an average family unit of employees in the garment manufacturing sector of the country divided by the average number of adult wage earners in the family unit of employees in the garment manufacturing employment sector of the country." Language in the WRC documents implies that in the future WRC might specify a particular living-wage calculation which would then become a mandatory minimum standard to be required by its collegiate members of their licensees.¹⁰

Monitoring: One of the most important differences between the two organizations involves monitoring. Under the FLA Charter, member companies must themselves establish and communicate clear standards to all their facilities and suppliers, receive written certification that they are being carried out, create an informed workplace, provide opportunities for employees to safely report non-compliance, and establish relationships with local labor and human-rights institutions. They must monitor every factory every year in accordance with FLA monitoring principles, which require the involvement of local non-government organizations (NGOs), and must also participate in external monitoring of selected factories by FLA-accredited monitors every year.¹¹

All monitors' reports are to be provided in full to the FLA staff, but are not subject to detailed public disclosure, though such disclosure can be required as an additional contractual provision by the licensing university. After initially monitoring 30% of a company's factories in the first two or three years, FLA-accredited external

¹⁰ It is relevant to note that the International Labor Organization has never established a formula for wage-fixing,, and that labor-rights groups themselves take differing positions on the question of whether a "living wage" should be defined and mandated by any U.S.-based organization. Advocates argue that such a wage should at least be mandated as a minimum; opponents argue that it should be left to the right of indigenous unions and other worker-allied groups to negotiate for themselves (Open letter to the university community from LCHR, ILRF, NCL, and Yale Center, 2/28/00; Athreya [ILRF] to Rodin, 2/18/00).

¹¹ Companies are allowed to exclude "de minimis" facilities, defined as facilities with which they contract for less than 6 months in a 24-month period or with which their contracts represent 10% or less of that facility's annual production; but this provision may not be used to exclude more than 15% of the company's facilities

monitors will then monitor between 5-15% each year. Factories are to be selected by FLA staff with a focus on the largest and those with the greatest risk of noncompliance. There also will be monitoring in response to complaints through a Third Party Complaint procedure (see below).

The WRC, in contrast, would leave any internal monitoring to the discretion of the companies themselves, and would itself rely entirely on surprise spot-check and complaint-driven inspections by local NGOs; WRC's role would be to transmit this information to the universities and publicize it.

Accreditation of monitors. One element of FLA's program that is not now present in WRC is the development of standards for accreditation of monitors and of protocols and detailed guidelines for monitoring of facilities. The companies must select from a list of FLA-accredited independent monitors, which could include both local NGO organizations and international nonprofit or commercial monitoring organizations. In either case, they must demonstrate both the competence and the independence to perform their job credibly. A consortium of 22 FLA-affiliated colleges and universities is currently conducting a pilot training program to prepare indigenous NGOs for accreditation.

FLA accredited monitors must meet detailed standards of knowledge of the relevant laws and production systems; of competence in assessing the accuracy of workplace information, both economic and health and safety; of objectivity; and of ability to interview and communicate effectively with workers in the countries where monitoring is taking place. They also must be re-accredited every two years.

If colleges and universities wish to require their licensees to use certain monitors, they can include provisions to this effect in their contracts, as long as FLA-accredited monitors are used. A central staff responsibility is to be sure that all monitoring is done in accordance with FLA principles and requirements. If a monitor is not meeting the FLA's standards, its accreditation can be removed by a simple majority vote of the FLA Board.

Independence of monitors. One criticism of the FLA monitoring procedure has been that monitors used both for internal and external monitoring would be hired and paid by the companies being monitored, thus risking a conflict of interest on the part of the supposedly independent monitoring organization. FLA's response is that such monitors may only be selected from the list of FLA-accredited monitors, and its accreditation standards specifically prohibit any significant related business, securities ownership, or contingent-fee relationship by the monitor with the company or any of its suppliers.¹² These standards also require a certification of neutrality and specific documentation of mechanisms to prevent any significant risk to the independence of monitoring. Accredited external monitors are accountable to the FLA for any professional misconduct

¹² The FLA Charter defines a significant business interest as \$100,000 worth of services, or greater than 25% of the monitor's annual revenue, during the previous year. It also excludes financial auditing services from this limit, and allows a case-by-case waiver by the FLA based on mechanisms to eliminate risk to the independence of monitoring (such as internal "ethical walls" between employees doing the monitoring and employees providing other services).

or gross negligence, and accreditation can be terminated by a simple majority vote of the FLA Board for any breach of objectivity.¹³

FLA's University Advisory Council is also developing a proposal for "pooled monitoring" of smaller licensees, under which monitoring would be paid for from a pool of financial resources supported by company and university dues, rather than directly by the company, and the monitors would then be selected by the universities and paid from this pool rather than by the companies. If effective, this approach could be proposed for extension to larger FLA companies as well.

Frequency of inspections. As noted above, FLA requires each participating company to implement annual internal inspection of all its facilities. In addition, FLA requires that participating companies implement external monitoring of 30% of their facilities per year during the initial implementation period, and then an estimated 5-15% each year thereafter, with priorities on large facilities and those where there appears to be a high risk of noncompliance. Some WRC advocates have criticized this as too low a percentage, but it is also not yet clear how many facilities per year WRC itself could inspect, especially given the more limited levels of resources WRC itself presently anticipates.

Selection of priority facilities for monitoring is to be based on risk factors such as a prior record of uncorrected violations, risk of noncompliance in a particular country or region, and size of the facility (number of employees, volume of production, and percentages of the company's production at that facility). The company is to suggest such priorities; the FLA Executive Director may modify the priority list if it does not appear to reflect the risk factors, but otherwise is to operate on a presumption in favor of the company's suggested list.

Third-party complaints. The FLA Charter details a third-party complaint procedure which will allow individuals or groups to report labor standards violations. In doing so the complainants may remain anonymous, to protect workers who may prefer confidentiality, but must provide "reliable, specific and verifiable evidence or information." The charter requires the Executive Director to promptly investigate all credible third party complaints. If, after a preliminary investigation, the Executive Director determines that the complaint has credibility and is not in the process of being addressed, he first is to have the company investigate it, and then, if necessary, he and the company are to call in a mutually agreed-upon accredited external monitor to investigate, and the monitor must report back in writing to the Executive Director. The company must then correct any violation. The Executive Director is required to report back to the complainant on the outcome of the complaint. Universities can seek notification about complaints from their licensees or the FLA, or both.

"Spot checks." The FLA Charter does not provide any procedure for random or targeted "spot checks," or other unannounced or unilateral investigations, at the instigation of the

¹³ There is a reciprocal question of independence for WRC monitoring organizations, which at this point are envisaged as "worker-allied groups—local NGOs, unions, and other organizations with knowledge of working conditions and established relationships with workers." WRC has not yet proposed setting standards for the independence of such monitoring groups from local political, advocacy, or other interests.

FLA itself. In contrast, WRC would use third-party complaints and targeted “proactive investigations,” to be carried out by local NGOs, as its sole approach to monitoring.¹⁴

Relationships with indigenous NGOs. Even unannounced inspections cannot reliably determine day-to-day working conditions at other times, and may miss abuses that can be covered up quickly even while such inspections are occurring. Active and regular contact with local organizations that are familiar with day-to-day conditions is therefore an essential element of effective monitoring, and is a requirement both of FLA and WRC. The FLA anticipates accrediting local NGOs (though not only local NGOs) as monitoring organizations, and requires all monitors to consult regularly with local NGOs. It also requires monitors to conduct periodic confidential interviews with employees in their own language, and to utilize local NGOs to facilitate communication with employees in the conduct of employee interviews and in the reporting of noncompliance.

FLA-affiliated colleges and universities are already sponsoring several pilot programs to gain experience with NGO participation in monitoring and to develop training programs that prepare NGOs to qualify as accredited monitors. One pilot, sponsored by 22 colleges and universities under the auspices of the International Labor Rights Fund (ILRF), is currently under way in three Latin American countries (El Salvador, Guatemala, and Honduras), where the training is being coordinated by COVERCO (Commission for the Verification of Corporate Codes of Conduct), and in Taiwan. The ILRF is conducting other training programs in Guatemala, Indonesia, and other countries as well. The Collegiate Licensing Company, in cooperation with Verité, is conducting pilot monitoring in Mexico, Costa Rica, Korea, and India. Other colleges and universities are also sponsoring pilot programs, and there have been several company-sponsored projects, including a Reebok project at two factories in Indonesia in cooperation with a Jakarta-based consulting firm known as HIS and a Liz Claiborne project in Guatemala in cooperation with COVERCO.

The FLA also has an NGO/trade union advisory group to the NGO members of its Board, which includes 15 members including representatives of worker advocacy groups in developing countries.¹⁵

Disclosure of information. FLA requires that all factory names, locations and monitoring reports be fully disclosed to FLA staff, but not that they be made public. If schools wish to receive the actual monitoring reports, they are free to request or require them from their licensees, as WRC also would require. The FLA will issue an annual public report on each company, much of which will be drawn from the reports of the external monitors. The FLA Charter enumerates ten items these reports must contain,

¹⁴ WRC’s procedure assumes, of course, that its monitors would be able to gain access to the facilities for spot-check inspections without the company cooperation assumed by the FLA model.

¹⁵ Membership of this advisory council as of March 2000 include the Asia-Pacific Center for Justice and Peace; Cambodian Labour Organization; Cambodian Defenders Project; Consumer Federation of America; COVERCO (Commission for the Verification of Corporate Codes of Conduct, based in Guatemala; also a member of WRC’s Advisory Council); International Human Rights Law Group; International Labor Rights Fund; Lawyers Committee for Human Rights; Made by the Bay; Lenore Miller; National Consumers League; Jim Silk (of the Orville Schell Center for Human Rights, Yale University); Pakistan Institute of Labour Education and Research; Robert F. Kennedy Memorial Center for Human Rights; and United Methodist General Board of Church and Society.

including the countries and regions where external monitoring has occurred and information about noncompliance and remediation. After the annual report on each company has been approved by the FLA Board, it is sent to the company for its information, and five days later it is publicly released.

Correction of deficiencies. FLA requires that companies correct conditions that are out of compliance with the labor standards. If they have done a good job of implementation and internal monitoring, they will have done this by themselves. If the problem is caught by external monitors, the company is required to make the changes and report them to FLA. Companies have 60 days maximum to correct non-compliance problems before they are reported to FLA. Universities have the option of allowing the FLA remediation process to take its course, or they may, through their contracts, choose to accelerate the process.

Certification of compliant companies. The FLA approach includes the principle that consumers should know which companies have committed to FLA's labor code and complied with its requirements, to differentiate them from companies that have not. It would therefore consider the development of an FLA label indicating that the company's products "have been produced in compliance with the Fair Labor Association standards," and allow complying companies to make similar claims about compliance with the Labor Standards on merchandise, in advertising and in other public communications.

This certification would mean that the company has adopted the FLA code; has met the FLA's monitoring requirements (which require timely remediation when noncompliance is found); and has participated in the FLA's third-party complaint procedure. The company could not be certified until 30% of its factories had been inspected, and its certification would have to be reviewed annually on the basis of each year's monitoring. In addition, this designation would be available only to companies that were fully participating in the FLA—that is, those that were committed to compliance and monitoring at all their sites—not to firms that were implementing compliance and monitoring only at their university-licensed manufacturing sites. Universities would also be limited as to what claims they could make about their other licensees.

This proposal has not yet been implemented, and is to be further defined at a later date.

Sanctions: FLA can suspend or terminate the membership of companies that do not comply with its code. A company can be placed on probation by a simple majority vote of the FLA Board, and can be terminated by a two-thirds majority. University members also can act independently of FLA to terminate the licensing agreement of a company which does not meet their standards and expectations. Under WRC, since there is no membership or compliance designation for licensees to lose in the first place, the only recourse is termination of the licensee or other sanctions by the licensing university.

Progress to date. FLA has adopted a charter; established a Board of Directors; appointed a Board Chair; hired an Executive Director and other core staff; and established an NGO advisory group including participation by worker advocacy groups from developing

countries. Searches are now underway for monitoring and accreditation directors. It also has amended its charter to provide for university representation on its Board and on key committees; to create a self-governing University Advisory Council with its own bylaws; to allow for more stringent requirements than the FLA Code on the part of university members that wish to add such requirements (such as full disclosure of sites and additional labor code requirements on the part of UNC and some other universities), and to expand FLA's scope to include collegiate licensed merchandise categories other than apparel and footwear. By unanimous vote of its Board, it also adopted women's rights provisions proposed by the University Advisory Council, which will be added to its monitoring protocols.

FLA has since developed accreditation standards for monitors (approved February 2000, with strong university input in their design), and expects to approve monitoring protocols in April 2000 and a detailed monitoring guide in summer 2000. It anticipates beginning to pilot-test the monitoring protocols during spring-summer 2000, to certify monitors by late summer, to begin both formal monitoring and third-party complaint response beginning in the fall, and to begin public reporting in 2001.

FLA's University Advisory Council has established co-chairs, an executive committee, a university representative to the FLA Board, and a working committee on the issues associated with smaller licensees. A draft policy on smaller licensees is to be circulated in March and approved in June 2000. The issues associated with smaller licensees are particularly important ones to colleges and universities, which have not been addressed by WRC and would not have been addressed by FLA but for the presence and influence of the university members (UNC's representative, Rut Tufts, serves as a member of the UAC executive committee and of the Smaller Licensee Committee). As noted above, twenty-two university members are also sponsoring a pilot training program for indigenous NGOs to prepare them to become accredited monitors.

THE WORKERS RIGHTS CONSORTIUM

Origin. The Workers Rights Consortium was developed by United Students Against Sweatshops in cooperation with labor and human rights activists from the United States and other countries, and was publicly announced in October 1999. It was created in significant intent as an alternative to the FLA for monitoring of university licensing, by student, union, and other activist organizations that had chosen to withdraw from or not to join the FLA.

Mission. The mission of the WRC is limited to monitoring and publicizing the labor-code performance of college and university licensees. It does not aspire to be a broader-based organization including businesses as members, and it specifically does not seek to certify factories or companies as in compliance with any specified code of conduct, as its founders believe that the apparel industry (and potentially other licensed-merchandise sectors) is too pervasively subject to abuses to warrant such differentiation among its firms and products.

The WRC approach is based on the philosophy that "enforcement should be based on citing companies for violations—and using the licensing agreement to hold the

licensee accountable for such violations. The university should never be in the role of certifying ‘good’ companies.” WRC’s primary objective is to try to open up conditions in the apparel industry to greater public scrutiny, using those companies that produce licensed products for colleges and universities as test cases. “By joining WRC, universities and colleges commit to the implementation of broad public disclosure and a mechanism to verify information received through disclosure and worker complaints.” (WRC Outline, 2/2000)

Membership. WRC membership is open to colleges and universities, student activist groups, and by the design of its governance structure to representatives of labor unions and labor- and human-rights organizations. It deliberately excludes membership by businesses, and has proposed no mechanisms for cooperation or joint action with them.

Those who have announced intentions to join WRC so far include an estimated 18-20 colleges and universities (though some of them have described this as “conditional”), plus USAS and the 14 members of the Advisory Council (see below). Major universities so far include Wisconsin (Madison), Michigan, Indiana, and Brown (which also belongs to FLA).¹⁶

Organizational status. The WRC does not yet have a charter or governing board, nor prescribed mechanisms for making decisions or resolving disputes. Most details are intended to be worked out at a founding conference on April 7, and a proposed charter is to be distributed in advance of that date.¹⁷ However, some fundamental elements of its intended organizational structure and operating philosophy appear to have been predetermined by its originators.

Governance. WRC’s proposed governance structure consists of an Advisory Council, a Governing Board, and a staff “agency.”

The Governing Board is proposed to consist of six members of the Advisory Council, three representatives of United Students Against Sweatshops, and three representatives of member universities (assumed to be “administrators”). The Board would “take direction” from the Advisory Council on a system for discovering and disseminating information about licensee compliance. Notes of the initial Advisory Council meeting with USAS students (3/3-4/00) also suggest that it is the Advisory Council, rather than the Board itself, that would be responsible for “broad steering of the organization.”

The Advisory Council consists of 13 individuals who have already been selected, apparently by USAS as the originator of the WRC concept. They include three university

¹⁶ WRC has no category for “conditional” membership. According to statements from the universities of Wisconsin, Michigan and Indiana, conditional membership means that they are joining without endorsing all the provisions stated in the preliminary charter of the WRC, and with the intent of working actively to address identified concerns such as the fairness and credibility of the proposed monitoring system, governance structure, and organizational viability; they intend to participate in the process so long as they are making progress towards achieving these goals, and to commit their best efforts to advancing the process.

¹⁷ In contrast, Universities considering membership in FLA last year were presented with a fully articulated governance structure to consider, and UNC itself did not join until some significant changes were made to reflect legitimate university interests.

faculty members identified as experts on labor issues, one U.S. Congressman, three representatives of unions, and six members of U.S.- and developing-country-based labor-rights NGOs. No information is available as to how these individuals were selected, although their designees would represent a majority of the Board (and with the USAS members, who presumably selected them in the first place, a three-quarters majority).

At the initial Advisory Council meeting with USAS (3/3-4/00), it was decided that the Advisory Council would meet annually and be responsible for “broad steering of the organization.” It would also choose its own replacements, including presumably any additional members. No terms of office have been specified.

The WRC “investigatory agency” would comprise its full-time staff, and would be accountable to the Governing Board. This staff is envisioned as subject to “influence by constituencies within the college and university community—administration, faculty, and students”, but schools’ licensing offices themselves “will have an arm’s length relationship” with it.¹⁸

Other details of the relationships among the staff, the Board, and the Advisory Council have not yet been spelled out; nor has any substructure for interaction and governance among member universities comparable to FLA’s University Advisory Council. These will undoubtedly be questions for consideration at the founding conference.

Financial resources. WRC expects to be financed by university dues (at similar rates as FLA, 1% of licensing revenues) and foundation grants. If all colleges and universities now participating in FLA were to join WRC, this would presumably generate a potential budget of up to \$300,000, though perhaps considerably less; it now has a \$20,000 grant from the New World Foundation.¹⁹ It would not have access to funding by businesses; it is not clear whether it would also accept funding from other organizations, such as unions. The WRC explicitly assumes that by reliance entirely on complaint response and spot checks rather than comprehensive monitoring, and on local NGOs as monitors, the costs of implementing this approach would be comparatively small.

Labor Standards, Workers’ Rights, “Living Wage”: The actual labor standards advocated by both FLA and WRC are mostly similar, with a few possibly important exceptions; see discussion of this comparison in the FLA section above. WRC uses the Collegiate Labor Standards—similar to FLA’s but with additional language on piecework and treatment of adverse effects of Standards implementation on children—and site disclosure as its minimum requirements, and adds a number of small changes concerning working-hours concepts (e.g. overtime restrictions) and union organizing and recognition rights. It also directs that licensees “shall not cooperate with” governmental agencies and other organizations that use the power of the State to prevent workers from organizing a union of their choice,” whereas FLA requires that they “shall not affirmatively seek the assistance of” state authorities to prevent workers from exercising their rights. Neither FLA nor WRC at this point requires a “living wage,” but WRC

¹⁸ It is not clear why one would not expect licensing administrators to serve as some universities’ representatives to WRC, and thus potentially members of its Board and influences on its staff.

¹⁹ \$10,000 of this is identified as donated by United Students Against Sweatshops; the ultimate source of this contribution is not stated.

defines one and suggests an intent to require one in the future; FLA requires at least the legal minimum wage or the prevailing industry wage, whichever is higher, and expresses a commitment to achieving a “decent standard of living” for all employees. Both organizations are committed to studying and developing the concept further.

WRC also states that colleges and universities may adopt their own codes of conduct, but that all WRC factory monitoring will be based on the WRC code. This distinction and its effects are not clearly explained.²⁰

Monitoring: Unlike the FLA, WRC intends to rely on local NGO groups to lead all monitoring and investigations, and to conduct these entirely on a complaint-driven and unannounced spot-check basis. It would not attempt to take any role in promoting internal monitoring practices in the companies, other than to increase the risk that they would be held publicly accountable for any complaints or violations. Licensed manufacturers would be required to sign an “affidavit of compliance” covering all their sites; how they defined and achieved this would be left up to them, subject to inspections by WRC’s lead NGOs.

In WRC’s view, “companies must develop their own internal process to comply with contract provisions. The universities’ role should be limited to requiring outcomes.... As the verifier of compliance, the university should not have a stake in company-controlled monitoring, through its participation or endorsement.” This position would appear to discourage or preclude university participation in initiatives to influence the raising of standards, or the wider implementation of them, or assistance to smaller licensees to achieve compliance, through broader cooperative organizations such as the FLA.

Accreditation of monitors. WRC would select all monitors, but it has not announced standards for doing so, and it has no proposal at present for training and accrediting them. Its proponents have stated that it would rely solely on indigenous worker-allied NGO organizations for this purpose, but it is not yet clear how they would select those they would rely on, nor how the competence and objectivity of these organizations would be assured.

Independence of monitors. WRC would operate through a “WRC Agency,” which “will operate independently of both garment industry interests and university licensing offices.” This staff agency would receive and verify worker complaints of abuses and violations of the WRC Code of Conduct, and work with worker-allied groups in manufacturing areas to establish a system for receiving and verifying complaints.

Whether these worker-allied partner organizations would be equally independent of other interests affecting their responsibilities as monitors, such as labor-organizing campaigns and local political factions, is not clear, and indeed does not yet appear to be considered as a significant issue by WRC. For university participants in WRC, the question of whether the organizations monitoring its licensees are objective fact-finders or advocacy organizations is an important issue, just as it is in the well-established use of

²⁰ Under the FLA approach, additional or more stringent university standards can be monitored by FLA’s accredited monitors. Under WRC’s approach, universities may set any standards they wish but that WRC states that it will only monitor to its own.

objective third-party fact-finding organizations in union/management negotiations. See also discussion of relationships with indigenous NGOs, below.

Frequency of inspections. WRC does not propose to develop any regular periodic inspection program for all licensed facilities, but would rely on complaint-driven inspections and surprise “spot checks”. WRC proposes to conduct staff-selected “proactive investigations” to “shine the spotlight on workplaces in countries that suppress worker organization, and to do further fact-finding about the workplaces of licensees that have demonstrated patterns of violations.”

Third-party complaints. As noted above, WRC would rely exclusively on third-party complaints and spot checks, driven primarily by complaints reported to them by workers through indigenous NGOs.

“Spot checks”. As noted above, WRC would rely exclusively on third-party complaints and spot checks.

Relationships with indigenous NGOs. Both FLA and WRC would work with local NGOs in developing countries, including the potential use of local NGOs as monitoring organizations. WRC’s approach however would be to work exclusively through such organizations as monitors, lead investigators, and partners. This could potentially preclude not only international consulting firms but also international nonprofit organizations such as the International Labor Rights Fund and Verité from serving as monitoring organizations.²¹

WRC also seeks “to work in partnership with indigenous worker-allied groups when carrying out investigations and research initiatives, and to help build their capacity to participate in and direct the process... to build capacity and to open up the space for workers and their allies to advocate on their own behalf. The Consortium will engage in efforts to educate workers about their own rights and consistently partner with local worker-allied groups for investigations.” This is a distinctly different and more advocacy-based role than the FLA approach, which would accredit monitoring organizations—including but not limited to local NGOs—based on competence and objectivity.²²

Disclosure of information. Public disclosure of all information on manufacturers’ workplace conditions is WRC’s core principle: that information is critical to discovering problems, and that maximal public transparency of all information about each manufacturer and its labor economics and working conditions is a core requirement for effective verification of Code compliance.

WRC’s core component is said to be “information forcing.” Specifically, WRC mandates that its university members require all their licensees to report publicly (1) an

²¹ According to Todd Pugatch, UNC student and USAS member, WRC would rely on local NGOs to lead all monitoring, but this would not preclude the possibility of employing non-indigenous or for-profit monitors—such as ILRF or Verité—to serve as intermediaries hiring local NGO monitors or to perform other monitoring functions in conjunction with the indigenous groups. The potential role of such transnational intermediaries is not clear in the WRC outline, however.

²² Though note that the FLA approach would allow some other business linkages between monitoring organizations and monitored companies, within specified limits but with the possibility of waivers.

affidavit of compliance covering all facilities producing licensed merchandise; (2) site locations of all facilities, including those run by contractors and subcontractors; and (3) “all objective measures of working conditions covered by the Code at these facilities, such as wage levels, benefits provided, scheduled and average work hours, policies, citations, etc.” Licensees also would be required to provide access to relevant company records and to the worksite when requested for the purpose of a focused investigation on a worksite or sites.

WRC would then sort and tabulate this information, make it available to local worker-allied groups, evaluate it itself for any compliance deficiencies, and publicize it to the general public. In its view, “the broad public disclosure of information allows stakeholders to compare firms and specifically utilizes public awareness of company practices to create incentives for improvements.”

A key issue for consideration with both FLA and WRC, but especially with the WRC approach, is whether university licensing relationships would have sufficient market value to licensees that licensees would agree to such disclosure, or whether they would instead discontinue participation in the collegiate-licensing market. WRC proponents assume that colleges and universities would have sufficient market leverage to impose these requirements on their licensees, and that the licensees would disclose this information while continuing to employ workers in developing countries rather than simply cease collegiate licensing relationships or produce university merchandise only in a few specialty locations in the United States.

WRC includes a provision that would declare “cutting and running” from non-compliant sites (rather than correcting the conditions) as a serious violation in itself, but it is unclear how universities could prevent companies simply from shifting university-licensed production to specialty locations in the U.S. in advance of exposure to any such requirements or allegations—if indeed they continued to produce college-licensed merchandise at all. It is not yet clear how many companies will continue to participate in licensing even under the fully-implemented FLA requirements; the WRC disclosure and monitoring requirements require significantly greater change in existing business assumptions concerning the confidentiality of wage and hour information and the openness of their facilities to surprise inspection by local worker-rights groups.

Correction of deficiencies. Any verified complaints would be transmitted to the licensing university and made public, apparently with no grace period for corrective actions. WRC would also continue to “keep the spotlight on the licensee’s response” once abusive conditions have been exposed, to pressure the licensee to improve conditions and to evaluate whether the company has adequately corrected identified violations.

There is a potential concern with this approach in some cases from the perspective of human rights. There are many countries in which the public revelation of problems with sufficient specificity that they can be corrected could itself be dangerous either to workers themselves, or even to local NGOs publicizing them. In some such cases private leverage by licensees on their suppliers, and by universities on the licensees, might result in more effective progress than the “spotlight” of public disclosure. In others, of course, such pressures might still be ineffective, or the company itself might be unwilling to apply them; these are the situations of abuse which universities and both WRC and FLA seek to avoid.

Certification of compliant companies. The WRC specifically opposes any attempt to certify factories or companies as in compliance with any specified code of conduct, as its founders believe that the apparel industry (and potentially other licensed-merchandise sectors) is too pervasively subject to abuses to warrant such differentiation among its firms and products. WRC’s approach is based on the philosophy that “enforcement should be based on citing companies for violations—and using the licensing agreement to hold the licensee accountable for such violations. The university should never be in the role of certifying ‘good’ companies.”

Instead, WRC proposes that by requiring licensees to publicly disclose information not only on each facility’s location but also on wage and hour data and monitoring reports, it will provide consumers with equivalent or better information on the company’s labor-rights performance.

Sanctions. The sanctions available to WRC would be limited to public disclosure of complaints and violations; each university would retain autonomy over all sanctions against non-compliant licensees, up to and including termination of the license. WRC envisions developing guidelines for recommended penalties to be levied by member universities on non-compliant licensees. Since companies would be excluded from membership in WRC, or from any public certification that they were committed to compliance with its standards and monitoring procedures, there would be no options for using withdrawal of such certification or suspension or termination of membership as sanctions.

The other implicit sanctions in the WRC framework would potentially be directed toward member colleges and universities themselves rather than toward licensees. On a day-to-day basis, WRC’s public disclosure approach would in effect be as much directed at publicizing complaints against the licensees of particular universities as against the licensees themselves. In addition, unless the objectivity of WRC’s local “worker-allied” monitoring partners was assured, each university that experienced such disclosure would presumably have to invest additional resources of its own to follow up and assure remediation, or even to determine to its own satisfaction whether it agreed with the WRC staff or NGO judgments, unless it were to limit its options solely to terminating licensing agreements on the basis of their statements. Similar university follow-up could also be necessary if the objectivity of FLA monitors was not assured. The FLA accreditation standards might mitigate this concern to a degree that the WRC approach does not, but direct university follow-up might well be necessary in at least some cases under either model.

More fundamentally, WRC would mandate that its college and university members’ licensees be monitored under the provisions of the WRC Code—including the potential for future and more controversial additions, such as a living wage defined by WRC—and that they require detailed public disclosure of workplace information on the part of their licensees. They would also be required to pay dues as determined, and potentially increased in the future, by the Governing Board. If a member university did not fully comply with any of these requirements, as determined by the WRC Board, presumably the university itself would be at risk of suspension or termination of its WRC

membership.²³ Both these circumstances would quite possibly make member universities as much the potential targets of WRC sanctions as the licensees. At face value this is no different than in the case of the FLA, but it could in fact be a more serious concern for universities in WRC given the unresolved issues noted above concerning its governance structure.

Progress to date. Since its announcement in October 1999, WRC has obtained a \$20,000 grant, created its Advisory Council, hired legal counsel and a staff member, and attracted statements of intent to join by about 18-20 colleges and universities. The Advisory Council met for the first time on March 3-4, and a founding conference is scheduled for April 7.

At its March 3-4 meeting, the Advisory Council met with four representatives of USAS also present, and discussed selection of representatives of each constituency to the Governing Board. Guidelines were drawn up as to whom Advisory Council members might want to consider, and Advisory Council members made suggestions to how the students might want to handle their choices. Universities will be expected to select their representatives at the April 7 founding conference.

The founding conference is intended to be a six-hour event including introduction of the WRC vision, ideas and concerns from universities, official voting on Governing Board members, formal proposals (details not specified), an “information hub” proposal, brief “thumb-nail sketches” of models for WRC’s early work, a framework for a charter, and a networking and outreach plan.

Those present also envisioned that during its first year, the Governing Board will meet three times; its priorities will be to hire an executive director, adopt bylaws, possibly choose a chair, incorporate as a 501(c)(3) organization, develop a policy and work plan, approve a budget, and initiate fund-raising. The executive director and staff would develop a budget, hire staff, propose and develop programs based on Board policies, manage communications with constituencies, and facilitate meetings and information resources for the Advisory Council. A part of its operational plan would also be to create opportunities for students to work on WRC projects.

ISSUES

Should UNC renew its membership in the Fair Labor Association?

Continued membership in the FLA offers both the potential benefits and the potential risks of committing to a broadly based partnership with both businesses and labor-rights NGOs as well as a large number of colleges and universities. Any such partnership risks cooptation and compromise, but also offers the potential for broader impact if the

²³ Note that universities by design would have only limited representation on the Governing Board compared to the founding coalition of student and other labor-rights activist organizations, and that WRC staff would be explicitly independent of the university members. Under FLA, universities also have only limited representation on the Governing Board (one seat), but that seat is in effect a swing vote between business and labor-rights NGO designees; and university membership, dues, and other university-related matters are decided within a self-governing University Advisory Council.

influence of participation can be used effectively. FLA was not originally designed with university licensees in mind, but universities have already had significant influence on its initiatives in the past year and now comprise by far the largest constituency of its members, and the majority of its dues revenues.

The FLA provides a mechanism for bringing manufacturing sites into compliance with the labor standards that have been adopted by the largest number of schools. The external check on that process is partially fleshed out, and with university and NGO involvement will continue to evolve. In the meantime any school has the ability, either by itself or in conjunction with other universities, to reinforce the existing external monitoring process (and the standards themselves) as it sees fit.

FLA has a self-governing University Advisory Council with its own bylaws, control over dues, operating committees, and an elected seat on FLA's Governing Board (which is potentially a swing vote between larger but equally represented constituencies of businesses and NGOs, with 4-6 seats each). However, it has only one seat out of 14 assigned (10 so far filled), in an organization whose corporate and NGO members initially came together to work on issues of the apparel industry rather than of university licensees.²⁴ Changing the charter—for instance to increase university representation, or to alter monitoring requirements to address university concerns—would require a two-thirds majority vote of the Board.

The FLA also has a clear commitment to accreditation of monitors based on strong and explicit standards of knowledge, assessment competence, and objectivity, potentially including local NGOs as well as international non-profit and commercial accrediting organizations. Its provisions in this respect include some exceptions that universities might wish to strengthen, however, and so far it includes no provision for unannounced random or spot-check inspections instigated by the FLA itself.

FLA membership also offers a vehicle for cooperative initiatives with licensees and other businesses which WRC, by intent, does not. University members are already demonstrating this influence: examples include adding additional considerations to the FLA's expectations of its participating companies (e.g. women's rights), defining monitor accreditation standards and monitoring protocols, designing approaches to help bring smaller and non-apparel licensees into compliance, and developing further innovations such as the idea of "pooling" the resources and decisionmaking associated with monitoring of smaller licensees. Such joint initiatives, particularly in a forum which allows their adoption by business/NGO/university coalitions, simply are not viewed as appropriate for universities by WRC, and therefore probably would not be possible within the WRC model as it has been proposed.

FLA proposes that universities be actively and cooperatively engaged with businesses as well as with labor-rights groups, in an organization that seeks to promote wider

²⁴ All 11 of FLA's participating companies to date are major brand-name apparel companies, but only 3 appear to be university licensees; conversely, as much as 1/3 of revenues from university licensed merchandise comes from non-apparel manufacturers.

dissemination of good labor-rights practices among companies that wish to be publicly identified with such practices. “The principal aim of the WRC seems to be to demonstrate that abusive conditions exist in factories producing collegiate merchandise. The FLA takes this as its point of departure; knowing that this is true, it sets out to get companies to commit to the FLA standards and requires monitoring, and where necessary remediation, in an ongoing effort not just to demonstrate that problems exist, but to address them. At the same time, the FLA seeks to increase awareness both through its Third Party Complaint procedure and through its public reporting mechanisms.” (Durkee, 2/11/2000).

This model has potential strengths for promoting better practices by those companies that have significant stakes in their public commitment to good labor practices, and the resources and market leverage to require them of their suppliers. However, it also risks underestimating the difficulties of achieving meaningful progress in firms with a lesser commitment or more limited market leverage.

The proposal for certification of “FLA-compliant” firms is a particularly two-edged challenge. On the one hand, critics are clearly correct about the pervasiveness of labor abuses and temptations for abuse, in the apparel industry in particular, and about the risks that any such certification may fail to reflect some problems. On the other hand, it is not true that all firms and all sites are equally bad, and demonstrating that better conditions can be enforced by committed firms—and giving them some positive public-image and market benefits for doing so—could be one way to create higher expectations and norms for the rest of the industry.

Continued FLA membership carries potential risks. One risk is that it could fall apart, such as by a departure of its labor rights/NGO Board members that would leave its universities without the intended breadth and balance of coalition partners. Another is that it could evolve into a less credible or stalemated organization: if for instance a large influx of licensee manufacturer members were to join only because required to do so, with an interest only in paper certification rather than real progress, and were to become dominant in its business constituency. A third is that it might simply fail to provide the benefits that universities hope to achieve from it—credible monitoring and reasonable assurance of good labor practices on the part of their licensees—or that even if it did so initially, it might become less effective over time as the energy and commitment of initial members and staff evolved into routine operation.

One additional risk lies in the relatively limited commitment of many of the college and university members themselves. FLA now has over 130 college and university members, but UNC is one of a relatively small number that have committed significant staff effort to this initiative or that have committed to such principles as full disclosure of licensee manufacturing sites. The “strength in numbers” argument has merit, but its risk is that in order to maximize the number of schools participating in FLA, leading universities could

be held back to the lowest common denominator of less-committed schools.²⁵ This issue was illustrated by the responses of the Executive Committee of FLA’s University Advisory Council to a series of eight proposals made by student groups to the Committee in September 1999, including such proposals as public disclosure of manufacturing sites (which UNC has already adopted), university rather than manufacturer selection of external monitoring organizations, and others. The Executive Committee rejected several of these proposals on the grounds that they did not believe that membership in the UAC should be limited to schools that have imposed this additional requirement.

All these are real risks of any such broadly-based partnership. At this point, however, there is no clear evidence that FLA has failed or stalemated, or that it has become dominated by corporate interests. University influence in it so far is constructive and increasing, and a number of further improvements seem well within the potential of leading universities’ influence to seek to achieve. The question is simply whether on balance the hopes for continuing effective influence and improvements are worth the risks.

Continued membership in the FLA is a significant commitment, particularly because it requires implementation at some point in the near future of the requirement that member universities require their licensees either to join FLA themselves or at least to open their sites and records to FLA-accredited monitors. This has the potential to bring a significantly larger group of manufacturers into the FLA than has so far joined it, with the potential benefit of promoting more widespread commitment to better labor practices. However, it also could lead to dilution of the original corporate constituency by firms that were less committed to labor-rights leadership, and were joining only as a requirement of continued participation in college merchandise licensing. It also will implicitly increase the expectation of continuing UNC membership in that organization, unless FLA were to experience some clear crisis of legitimacy such as the departure of the human rights NGO members of its Board.

If UNC does renew its membership in FLA, it should be with a clear agenda not only of building broader commitment to the current FLA minimum standards—both by corporations and by other schools—but also of continuing to influence that organization and its other members to move farther in the direction of its own ideals for fair labor practices. Examples could include broader adoption of current “FLA Plus” code commitments as the FLA standard (e.g. the Collegiate Labor Standards and full public disclosure of manufacturing sites, which UNC and other leading universities have already adopted); “pooling” of resources for and selection of external monitoring organizations, which would create a more arms’ length relationship between manufacturers and external monitors; broader disclosure of monitoring information; adding the possibility of more frequent random spot-check inspections by external monitors; careful scrutiny of both concept and criteria before adoption of any policy to allow member corporations to market themselves or their products as FLA-compliant; continued development of viable

²⁵ Conversely, WRC risks the opposite result, that its requirements are so idealistic—public disclosure of all wage and hour data, for instance, and surprise inspections by local worker-allied advocacy groups—that few schools or licensees might be willing to participate.

approaches to a living wage; and increasing the presence of highly-committed universities and NGOs in the organization.

In addition, it would be worth considering the question of whether university representation on the FLA Governing Board should be increased, since universities now make up the majority of its members and dues revenues, and will also be the principal source of new corporate members through their licensing requirements, yet have only one seat on the board.

The apparel industry and some others have been problematic for wages and working conditions since the industrial revolution, and will not easily be fully corrected. The reasons are structural: it combines equipment that is easily moveable and products that are relatively cheap to manufacture and transport with an almost unlimited supply of low-skill labor. Colleges and universities have only marginal market power in this industry, even as a group and even toward most high-revenue licensees.²⁶ But they do have some market influence, especially collectively and on a few firms that gain most from the college market; and they also have somewhat greater moral influence, especially toward highly visible brand-name firms that have particular stakes in their public reputations. If used effectively, this influence may promote real improvements, at least in those segments of the market.

The best argument for continued membership in the FLA is that universities can most effectively use that influence to promote improvements through broad-based alliances including many universities, committed labor-rights organizations, and businesses that seek to credibly differentiate their labor-rights commitment—demonstrably better, even if less than perfect—from less-committed competitors. The results will not and cannot be perfect, but they can potentially achieve more broadly based improvements than the status quo, or than approaches that might instead simply marginalize the collegiate-merchandise market as a far smaller and/or exclusively U.S.-based specialty.

Should UNC join the Workers Rights Consortium?

Joining the WRC offers both the potential benefits and the potential risks of participating in a more narrowly defined organization, focused exclusively on monitoring of collegiate-licensed merchandise, with a membership limited to universities and labor-rights groups, and focused more specifically on publicizing information on workplace conditions and complaints than on cooperative initiatives with licensees and other businesses to create systematic processes for monitoring and complaint response by the companies themselves.

Joining the WRC also is a significant commitment, particularly because it would require implementation at some point of the WRC requirements that member universities require their licensees to publicly disclose detailed workplace economic information and to open

²⁶ Collegiate licensed goods are still a relatively small fraction of total sales even for most of the largest-volume producers of collegiate merchandise.

their sites and records to WRC's partner monitoring organizations, which are proposed at this point to be local worker-allied NGOs. These might well be more problematic for many licensees than FLA's requirements, or even unacceptable to the point that they would cease participating in collegiate-licensed production rather than agree to them.

The potential benefits of joining WRC are association with the ideals of worker empowerment and public dissemination of information, and support for an initiative that has been developed by some of our own students. The vision is that it would "unite schools around high standards," since all WRC schools must require public disclosure, commitment to research and eventually implement living wage, and other requirements more stringent than FLA's." Clearly it would go much farther than FLA in public disclosure of information, and to the extent that this is effective it would likely make a useful contribution to increasing awareness and pressure to remedy abuses. Both FLA and WRC recognize the necessity of external monitoring, of direct communication with workers and local human-rights organizations, and of trustworthy opportunities for complaint-driven investigations as essential elements of any effective approach. UNC and other leading universities have themselves already adopted "FLA Plus" approaches and site-disclosure requirements that go beyond FLA's current requirements.

By the same token, however, unlike FLA, WRC might unite only a smaller number of the most committed schools; and it might not therefore prove to be organizationally viable. Unlike FLA, which seeks broadly inclusive membership among both universities and manufacturers that are willing to commit to a code of conduct and monitoring, WRC would in effect restrict membership to universities that were willing to commit to requiring public disclosure of detailed workplace information and of all complaints, and potentially to other future requirements such as a living wage defined by WRC.

The risks of joining WRC, therefore, also are real and substantial. One is the very real risk that it simply may not achieve the critical mass of membership and resources necessary to be effective. WRC at this point is highly dependent on universities for the resources necessary to its viability, but particularly given the issues associated with its proposed governance and approach, it may well not achieve the critical mass of resources it hopes for. Given its exclusion of business membership, even with far greater university membership than can now be predicted, it might have a dues-based budget of at most \$100,000-\$300,000, and quite possibly significantly less, unless it were to receive significant and ongoing support from foundations—or from other sources such as unions, which could compromise its credibility just as could the industry dominance its proponents fear in FLA.

Even with extensive reliance on indigenous NGOs, this scale of resources would support only a small amount of monitoring and follow-up. Universities might therefore have to expend significant additional unbudgeted resources of their own both to follow up on WRC allegations, to follow up on complaints and allegations that might exceed WRC's resources to verify, and to keep routine track of other sites and licensees.²⁷

²⁷ At least some such additional resources may be necessary in the FLA case as well.

A second and related risk is that the WRC approach might never even reach the activities of the many smaller licensees UNC deals with, and that its philosophy—that universities should only enforce outcomes, not cooperate in internal compliance design—would discourage or preclude such cooperation.

A third risk is that WRC would develop in ways that are not sufficiently accountable to its university members. This issue was also raised when UNC considered joining FLA, and UNC joined only after key changes were made in its charter to incorporate university representation in its Governing Board and key committees. In the case of WRC, university representation on its Governing Board is already proposed, but that Board itself appears designed to be permanently steered by a pre-selected and self-perpetuating Advisory Council, most of whose members appear to represent unions or other labor-rights organizations. Participating universities would elect 3 of the 12 members of the Board; 3 would be chosen by United Students Against Sweatshops, and the other 6 by the Advisory Council.²⁸

One specific version of this risk is that WRC could develop as an organization primarily devoted to advocacy rather than impartial monitoring, and/or to staff-selected crusades against licensee production in entire countries or regions of the world. Advocacy for workers' rights is a legitimate and important cause, but it is not a substitute for the universities' legitimate need for impartial monitoring organizations to examine and verify claims of inappropriate working conditions in its licensees' facilities. So far the WRC appears to commingle these functions, both in its own staff model and in its intention to rely heavily on "partnership investigations" with "worker-allied organizations" in developing countries.

A fourth risk is that the WRC approach will place UNC and other licensing universities in a position of purely adversarial relationships with their licensees, and indeed with WRC itself, owing to the primary reliance on worker-advocacy organizations and public disclosure of abuses as the primary rather than backup mechanisms of implementation. The WRC approach relies on "information forcing"—that is, the disclosure of significant amounts of potentially harmful information—and then proposes to use such disclosures to pressure companies (and by implication, the universities that license them) into making changes. The framework for evaluating allegations and taking action is the public arena; there is not an objective process either by use of disinterested parties, or a balancing of opposing interests (as in FLA). Nor is there any process for promoting constructive working relationships and standards, or even regular interaction and negotiation, between the labor-rights activists who will dominate WRC's proposed governance structure and the corporations and their supply chains which they seek to influence. There will be a

²⁸ FLA's charter has no "super-governance" structure such as WRC's Advisory Council, which would be permanently dominant over the organization. The Advisory Council is probably intended as a mechanism to safeguard the organization's long-term fidelity to its workers-rights goals against cooptation by any other factions that might otherwise come to dominate its Governing Board. By the same token, however, it makes the organization in effect more accountable to the Advisory Committee than to the Governing Board per se, and correspondingly diminishes the influence of its university members in its governance. Offsetting this concern, though not resolving it, is the likelihood that WRC will be highly dependent on universities' participation and financing for its continued existence.

multitude of challenges, arising where there is discontent for whatever reasons, and insufficient structure and resources to process them.

Finally, therefore, a fifth risk is that some of the proposed WRC requirements could prove so unacceptable to licensees—public disclosure of all wage and hour information, for instance, or surprise inspections by local advocacy organizations rather than accredited and neutral monitors, or some possible versions of a “living wage” requirement—that they would simply stop producing licensed merchandise for WRC member universities.

While the loss of licensing revenues to universities may not trouble some, the original need for licensing—protection of the university’s name—remains, but without a source of funding to sustain that need. What could also be lost at UNC is a very significant source of revenues for scholarship and financial aid funds, and support of the athletics program, amounting currently to approximately \$2.8 million per year. These might be relatively minor risks for many smaller colleges and universities, but for a leading licensor such as UNC they are significant.

Alternatively, some firms might shift production for WRC universities to a few U.S.-based sites. Despite WRC language to the contrary, the strategy of publicizing and penalizing complaints without any corresponding reward or recognition for good performance would create significant incentives simply to “cut and run” from locations in developing countries rather than invest in improving conditions (Athreya, 2/18/2000). This might allow the universities to assert better labor practices in the production of their goods, but would marginalize the effort to influence the mainstream of the firms’ production activities.

In short, if UNC were to join WRC, it would have to be with a significant commitment at the outset to working with other university members to refine some elements of its proposed governance, assure its organizational viability, and refine its proposed operating practices to reflect the universities’ legitimate expectations for an impartial monitoring organization with appropriate accountability to its university members.

According to statements from the Universities of Michigan, Indiana, and Wisconsin-Madison, they are joining WRC without endorsing all the provisions stated in its preliminary charter, and with the intent of working actively to address identified concerns such as the fairness and credibility of the proposed monitoring system, governance structure, and organizational viability; they intend to participate in the process so long as they are making progress towards achieving these goals, and to commit their best efforts to advancing the process.

Should UNC Join Both?

Some have proposed that UNC join both FLA and WRC, in order to participate actively in the development of each. One might consider this a form of “portfolio approach”,

hedging the University's bets so as to be in a position to benefit from whichever proves ultimately more effective. There are resource implications to this choice—approximately \$30,000 per year to participate in each, not including at least double the cost of associated staff effort as well as any unbudgeted costs associated with each (for the university's own follow-up verification and remediation processes with its licensees, for instance)—but these need not necessarily be the sole or primary basis for a decision.

The more significant issues relate to whether UNC would envision participation in both as a long-term or merely short-term option. For the short term, it would give UNC a continuing place at the table in both organizations, particularly as its initial initiatives in FLA continue to mature and as founding WRC members negotiate its basic governance structure and program directions. Conceivably, a group of such universities could even seek to bring these two organizations together, or at least into a mutually supportive set of relationships. Even short-term dual membership, however, would have some risks: it would generate continuing uncertainty among all parties as to which organization would be viable in the long term, and might thus potentially weaken rather than strengthen both.

Membership in each organization will also produce, relatively soon, differing requirements that member universities will be obligated to impose on their licensees, as noted above. It may be difficult for universities to impose both these sets of requirements on their licensees. Licensees, for instance, might not reasonably be required to open their plants to separate external inspections both by FLA-accredited monitors and by local worker-allied NGOs chosen by WRC, using potentially different criteria even if similar standards.

For the longer term, without significant refinements the operating philosophies of the two organizations might be so different as to be potentially incompatible. Universities themselves, for instance, would find it difficult to participate simultaneously in organizations one of which was predicated on cooperation with licensees and other businesses in development of model approaches and the other of which was philosophically opposed to such cooperation—even if both agreed on similar standards, monitoring protocols and criteria, and even monitoring organizations, which does not so far appear likely.

Should UNC Join Neither?

A final possibility is that UNC could decline to participate in both organizations, and devote its resources simply to working with its own licensees either directly or through CLC. CLC has not at this point developed a procedure for monitoring and complaint response, and may not even wish to do so. However, it does have a significant number of university participants that have adopted its labor standards and a smaller but still significant number that have adopted site-disclosure requirements; and it has almost completed a set of pilot monitoring experiments in cooperation with a nonprofit monitoring organization, Verité. If a significant group of these schools were sufficiently dissatisfied with both the FLA and WRC options, they might conceivably be willing to

work together to create their own procedure. This possibility would require considerable further effort to create, but could be a fallback option if neither FLA nor WRC appears acceptable.

Implementation Issues

Depending on the University's decision, further attention will also be required to a number of implementation issues. Some of these can easily be envisioned, such as communication of the University's expectations and intentions to its licensees, and development of its own procedures for response to any complaints about its licensees' facilities. In addition, continuing commitment of administrative effort will be necessary to represent the University in either or both organizations, in addition to the duties of running UNC's own licensing program. If the University does join both organizations, the Committee recommends that one person represent UNC in both organizations—with relief of other duties as necessary—in order to assure consistency in representing the University's goals and avoid misunderstandings or contradictory policies in its licensing program.

Licensing Labor Code Advisory Committee:

Richard N. Andrews, Faculty, Co-Chair	Eric Johnson, Student
Richard Baddour, Athletics	Catherine Lutz, Faculty
Nicholas Didow, Faculty	Shirley Ort, Financial Aid
Simone Eppich, Student	Todd Pugatch, Student
John P. Evans, Finance	Rutledge Tufts, Auxiliary Services,
Donald Hornstein, Faculty	Co-Chair

Addendum: UNC's Affiliation with the FLA

In its initial recommendations to the Chancellor in April 1999, this Advisory Committee recommended that UNC not join the FLA at that time, but continue to negotiate actively with the FLA and its member institutions and with other universities and stakeholders to create an effective shared monitoring mechanism, noting that the FLA at that time did not provide independent monitoring according to UNC's standards and had unresolved issues as to the role of universities in its governance as well.

In May 1999, however, several further developments at FLA led the committee to reconsider, and to recommend that UNC affiliate with the FLA at least for an initial year while moving ahead to implement a labor code, full disclosure, and a pilot implementation and verification program for its own licensees:

- FLA modified its governance structure to include a seat for a university representative on its governing board;
- FLA announced position descriptions for Chair of its Board and Executive Director, both of which appeared to require individuals who were explicitly committed to UNC's labor-practice goals;
- These position descriptions also included specific commitments to independent monitoring and to meaningful involvement with local NGOs within one year.
- A significant number of our peer universities indicated their intent to affiliate with the FLA, and to form a self-governing University Advisory Council within it to address the particular concerns of university licensing (in fact, by June 1999 over 100 colleges and universities had joined);
- A group of FLA-affiliated universities announced their intent to implement a pilot training initiative for NGO-based, in-country monitoring under the auspices of the FLA University Advisory Council;
- Participation in these initiatives would only be open to universities that chose to affiliate with FLA in time for its initial decisionmaking meeting in July 1999.
- FLA added to its Charter a provision that affiliated universities may add additional or more stringent standards for their licensees than the minimum FLA requirements, to be monitored and enforced through the organizational structures being created by the FLA (an "FLA Plus" approach).

All these actions provided preliminary but clear steps toward resolving the concerns that had led the Committee to hold off on affiliation in its April 1999 recommendations. In addition, if UNC was to achieve its goal of participating and leading in building a broader coalition of universities on this issue, FLA appeared to be emerging as an immediate and important forum in which to do so.

Notwithstanding some continuing reservations, therefore, the committee by general consensus recommended that UNC pursue a "two-track" strategy: move actively ahead with implementing principles and standards of good labor practice for its own licensees, and with a pilot monitoring program in cooperation with several other universities; and at the same time, join the FLA for an initial year, particularly in order to participate in its formative stages and in the NGO training pilot program being developed by FLA-affiliated universities. Both these tracks were to be reviewed after an initial year.

These recommendations were adopted by the Chancellor in June 1999, and in August 1999 all UNC licensees were notified by CLC that beginning 15 November all licensees would be subject to the CLC Labor Code and full disclosure of their sites from the time of their next license renewal (later amended to go into effect 1 January 2000 for all licensees, for consistency with the emerging requirements of other universities). They also were informed that consistent with the terms of university affiliation with the FLA, they would be required either to join the FLA as a participating company, or at least to have agreed to have all its (or its subcontractors') sites that manufacture UNC-logoed goods conform to FLA standards and certified monitoring. This requirement has not yet been implemented.