

# PUBLIC REPORT OF REVIEW OF NAO SUBMISSION NO. 9901

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U.S. National Administrative Office  
Bureau of International Labor Affairs  
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## TABLE OF CONTENTS

[Executive Summary](#)

[Introduction](#)

[Summary of Submission 9901](#)

[Case Summary](#)

[Issues](#)

[Freedom of Association](#)

[Minimum Employment Standards](#)

[Occupational Safety and Health](#)

[Action Requested](#)

[NAO Review](#)

[Information from Submitters](#)

[Information from Mexican NAO](#)

[Information from Public Hearing](#)

[Information from the FAA](#)

[Information from Expert Consultants](#)

[Freedom of Association](#)

[NAALC Obligations](#)

[Mexican Law](#)

[Mexican Constitution](#)

[Mexican Federal Labor Law](#)

[Freedom of Association & the Right to Bargain Collectively](#)

[Dismissal of Employees](#)

[Federal Conciliation and Arbitration Board](#)

[ILO Conventions](#)

[Analysis](#)

[Legal Process](#)

[Representation Election](#)

[Impartiality and Independence of the CAB](#)

[Dismissal of Flight Attendants](#)

[Minimum Employment Standards](#)

[NAALC Obligations](#)

[Mexican Law](#)

[Mexican Constitution](#)

[Mexican Federal Labor Law](#)

[Social Security Act](#)

[Law of the National Workers' Housing Fund Institute \(INFONAVIT\)](#)

[Retirement Saving Systems Law](#)

[Federal Tax Code](#)

[Analysis](#)

[Occupational Safety and Health](#)

[NAALC Obligations](#)

[Mexican Law](#)

[Mexican Constitution](#)

[Civil Aviation Law](#)

[Regulations of the Civil Aviation Law](#)

[ICAO Standards](#)

[Analysis](#)

[Flight Attendant Training](#)

[Flight Safety](#)

[Findings](#)

[Recommendations](#)

[End Notes](#)

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## **EXECUTIVE SUMMARY**

### **PURPOSE OF THE REPORT**

Submission No. 9901 was filed pursuant to the North American Agreement on Labor Cooperation (NAALC) on November 10, 1999, by the Association of Flight Attendants (AFA) and the Association of Flight Attendants of Mexico (ASSA).

The submission was accepted for review on January 7, 2000, as it raised issues related to labor law matters in Mexico and because a review would further the objectives of the NAALC. In accordance with its procedural guidelines, the U.S. NAO completed its review of the case, which included a public hearing on March 23, 2000.

## **SUMMARY OF SUBMISSION**

Submission No. 9901 raises issues of freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, and occupational safety and health at Executive Air Transport (TAESA). TAESA is a privately-owned airline carrier in Mexico with service to the United States and Canada.

According to the submitters, the flight attendants at TAESA wanted a craft union to represent them to address issues concerning safety and health hazards aboard TAESA aircraft, inadequate training, low wages, and the non-payment of overtime or payroll tax contributions for social security, pensions, and housing. A company-wide collective bargaining agreement was already in existence between TAESA and the National Union of Air Transport Workers of Mexico (SNTETA).

In July 1997, ASSA filed a petition for title of the collective bargaining agreement for TAESA flight attendants before the Conciliation and Arbitration Board (CAB). These representation proceedings resulted in numerous decisions by the CAB and subsequent appeals by ASSA over a two and one-half year period. The submitters assert that the CAB's rulings were not fair, equitable, nor transparent and that the CAB aided TAESA in blocking the rights of the flight attendants.

A company-wide representation election was held on March 22, 1999. The submitters allege that the established union, in alliance with TAESA management, initiated threats and intimidation against ASSA supporters during the representation election. The submitters claim that ASSA supporters were impeded in their attempts to enter the voting station in Mexico City, with armed guards and attack dogs being placed on the premises. Furthermore, the submitters maintain that the workers were required to vote orally in the presence of the contending unions and management representatives. Despite repeated objections by the ASSA representatives, the election was allowed to proceed by government authorities. ASSA lost the company-wide election, and, afterwards, those who supported ASSA were dismissed from their jobs at TAESA.

According to the submitters, the CAB conducted a hearing on ASSA's objections to the election and determined that the title to the collective contract remained with SNTETA. However, ASSA successfully appealed the decision on procedural grounds, and the case is pending once again before the CAB.

## **ANALYSIS & FINDINGS**

The substantive decisions made by the CAB appear to be consistent with Mexican legal precedent. While Mexican Federal Labor Law (FLL) recognizes the right to form craft unions and to bargain on behalf of such crafts in the workplace, Mexican precedent does not permit the fragmentation of an existing contract. This raises concerns as to whether the FLL provisions

recognizing craft unions can be applied in such circumstances.

The review indicates that there is sufficient information to question whether the representation election process conducted at TAESA was in conformity with Mexico's labor laws and its obligations under the NAALC. Testimony presented at the public hearing suggests that TAESA flight attendants were subjected to threats and intimidation by their employer and the established union while attempting to exercise their right to freedom of association. Consultations at the ministerial level would contribute to a better understanding as to how Mexican law assures the integrity of the union election process so that workers are able to freely choose their bargaining representatives, including the authority and responsibility under Mexican law of CAB officials during a representation election.

TAESA flight attendants who supported ASSA were dismissed soon after the representation election. The dismissals have the appearance of being related to their union representation votes. Many of these workers have filed complaints of wrongful dismissal, and their cases are pending before the CAB.

Concerning minimum employment standards, the information gathered by the U.S. NAO indicates that TAESA did not make its required payroll contributions to its employees' social security, pensions, and housing funds. For its part, the Mexican Government did take legal action, placing financial attachments against TAESA and indicting the owner for tax fraud. The information also suggests that TAESA flight attendants were not paid for overtime. However, Mexico has not furnished the U.S. NAO with the enforcement history regarding compliance of overtime regulations at TAESA. The U.S. NAO will continue to seek updated information on this matter.

With regard to the health and safety issues raised, the available information shows that TAESA aircraft may have had serious deficiencies, possibly hazardous to the flight crew and passengers. Flight attendants also may have lacked proper training for emergency situations. The evidence also indicates that Mexican civil aviation authorities undertook a comprehensive inspection of TAESA aircraft and suspended the operating authority of the airline after a fatal crash on November 9, 1999. The U.S. NAO will continue to seek relevant information related to the Mexican Government's enforcement at TAESA of occupational safety and health laws.

## **RECOMMENDATION**

Pursuant to Article 22 of the NAALC, the U.S. NAO recommends ministerial consultations regarding NAO Submission 9901.

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## **PUBLIC REPORT OF REVIEW OF U.S. NAO SUBMISSION NO. 9901**

### **1. Introduction**

The U.S. National Administrative Office (U.S. NAO) was established pursuant to the North

American Agreement on Labor Cooperation (NAALC), the supplemental labor agreement to the North American Free Trade Agreement (NAFTA). The NAALC provides for the review of submissions concerning labor law matters arising in Canada or Mexico by the U.S. NAO. Article 16(3) of the NAALC states:

[e]ach NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with its domestic procedures.

Labor law is defined in Article 49 of the NAALC as follows:

laws and regulations, or provisions thereof, that are directly related to (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young persons; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; and (k) protection of migrant workers.

Procedural guidelines governing the receipt, acceptance for review, and conduct of review of submissions filed with the U.S. NAO were issued pursuant to Article 16(3) of the NAALC. The U.S. NAO's procedural guidelines were published and became effective on April 7, 1994, in a Revised Notice of Establishment of the U.S. National Administrative Office and Procedural Guidelines.<sup>1</sup> Pursuant to these guidelines, once a determination is made to accept a submission for review, the U.S. NAO shall conduct such further examination of the submission as may be appropriate to assist the U.S. NAO to better understand and publicly report on the issues raised therein. The Secretary of the U.S. NAO shall issue a public report that includes a summary of the review proceedings and findings and recommendations. The review must be completed and the public report issued within 120 days of acceptance of a submission for review, unless circumstances require an extension of time up to 60 additional days.

Submission No. 9901 was filed with the U.S. NAO on November 10, 1999, by the Association of Flight Attendants (AFA) and the Association of Flight Attendants of Mexico (ASSA).<sup>2</sup> The submission raises issues of freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, and occupational safety and health at Executive Air Transport (TAESA).<sup>3</sup> It was accepted for review by the U.S. NAO on January 7, 2000, and a notice of acceptance of review was published in the Federal Register on January 13, 2000.<sup>4</sup>

The submitters argue that Mexico has failed to fulfill its obligations under Part Two of the NAALC regarding levels of protection, government enforcement action, private action, and procedural guarantees. Specifically, the submitters maintain that Mexico is in violation of NAALC Articles 1, 2, 3(1), 3(1)(b), 3(1)(c), 4(1), 5(1), 5(1)(d), 5(4), and 5(5). They also assert Mexico's failure to comply with the Political Constitution of the United Mexican States

(hereinafter the Mexican Constitution),<sup>5</sup> the Federal Labor Law (hereinafter FLL),<sup>6</sup> and the Civil Aviation Law and its regulations. Furthermore, the submitters argue that Mexico is in violation of Conventions 87 and 98 of the International Labor Organization (ILO).

## 2. Summary of Submission 9901

### 2.1 Case Summary

TAESA is a privately-owned airline carrier with service to twenty-one cities in Mexico, as well as to the United States. The company also maintains an executive air charter service, which was founded in 1988. Approximately 1500 workers are employed at TAESA. Of these, roughly ten percent are flight attendants.

According to the submitters, TAESA forced its flight attendants to work overtime, up to 130 hours per month, resulting in fatigue, loss of mental acuity, and judgement. They maintain that the forced overtime impairs alertness and could cause inadequate responses by TAESA flight attendants in emergency situations. The submitters further claim that the company did not compensate the flight attendants for this overtime, nor for work on Sundays and holidays, and that the flight attendants also were denied vacation leave. Moreover, the submitters assert that TAESA management failed to keep current its payroll tax contributions that cover pensions, health insurance, and housing.

The submitters also claim that flight attendants worked in unsafe cabin areas aboard TAESA aircraft. Flight attendants documented numerous safety and health hazards, including defective smoke alarms, inoperable fire extinguishers, and inoperative oxygen masks. They also reported non-functioning emergency tracking lights, broken seat belts, and inadequate first aid kits.

According to the submitters, TAESA did not provide sufficient emergency training and retraining for its flight attendants in each type of aircraft to which they might have been assigned. The submitters further allege that training simulations of emergencies were not provided, such as simulations of an evacuation with fire and smoke in the cabin and simulations of water landings.

Due to the aforementioned conditions, certain flight attendants at TAESA sought representation by ASSA in 1997. ASSA is Mexico's largest flight attendant's union. It is an independent craft union affiliated with the National Union of Workers (UNT).<sup>7</sup> However, the company already had a collective bargaining agreement with an affiliate of the Confederation of Mexican Workers (CTM),<sup>8</sup> the National Union of Air Transport Workers of Mexico (SNTETA).<sup>9</sup> The CTM is the largest labor union organization in Mexico and is closely associated with the Institutional Revolutionary Party (PRI).<sup>10</sup>

In July, 1997, ASSA filed a petition for representation of the TAESA flight attendants before a federal Conciliation and Arbitration Board (hereinafter CAB).<sup>11</sup> The representation proceedings have involved numerous CAB decisions and *amparos*<sup>12</sup> over a two and one-half year period.

ASSA has received some favorable rulings but has not prevailed in its attempt to represent the flight attendants at TAESA.

A company-wide representation election was held on March 22, 1999, after a third union, the Union of Aeronautical Industry Workers, Similar and Associated Workers of the Mexican Republic (STIASCRM),<sup>13</sup> also sought title to the collective bargaining agreement at TAESA. The submitters allege that, during the election process, TAESA management and the SNTETA threatened and intimidated ASSA supporters. The submitters claim that some flight attendants were scheduled extra duty away from voting stations so that they would not be able to vote. Moreover, the submitters allege that ASSA supporters trying to vote were impeded in their attempts to enter the voting premises. They also assert that the company used blaring rock music, guards, and guard dogs as tactics of intimidation outside the voting station. Once inside, the workers had to vote orally in the presence of representatives of the company and the three unions. According to the submitters, the CAB officials overseeing the election refused to order a suspension despite the atmosphere of intimidation. The final vote tally was 1,442 for the SNTETA, 102 for ASSA, and 2 for STIASCRM.<sup>14</sup>

Following the election, supporters of ASSA were dismissed by the airline. The submitters assert that most have filed claims for reinstatement and indemnization with the CAB. These cases are pending.

On November 9, 1999, a TAESA aircraft crashed in Uruapan, Mexico, killing five crew members and thirteen passengers. In response to this tragedy, the General Directorate of Civil Aviation (DGAC) of the Ministry of Communications and Transport (SCT) conducted an investigation of TAESA, detecting problems in the areas of maintenance, operation, training, and administration.<sup>15</sup> As a result, the DGAC set forty-three conditions with which TAESA had to comply before it could resume operations.<sup>16</sup> TAESA has been unable to fulfill the financial requirement necessary to guarantee the company's viability and has filed for bankruptcy.<sup>17</sup>

## **2.2 Issues**

### **2.2.1 Freedom of Association**

The submitters argue that Mexico is in violation of Article 1 of the NAALC by failing to promote labor principles 1 (freedom of association and protection of the right to organize) and 2 (the right to bargain collectively), Article 2 by not ensuring high labor standards, and Article 3(1) by failing to enforce its labor laws on freedom of association through appropriate government action. The submitters also assert that Mexico, in failing to enforce its labor law, is in violation of the Mexican Constitution, the FLL, ILO Convention 87 on freedom of association, and ILO Convention 98 on the right to bargain collectively.

The submitters also claim that Mexico is not in compliance with NAALC Article 4(1) by failing to allow appropriate access to labor tribunals for the enforcement of its labor law. They further claim that Mexico did not fulfill its obligations under NAALC Article 5(1) by not ensuring that

its labor tribunal proceedings are fair, equitable and transparent, as well as Article 5(1)(d) by failing to ensure that such proceedings are not unnecessarily complicated and do not entail unwarranted delays. The submitters also argue that Mexico is in violation of NAALC Article 5(4) by failing to ensure that its labor tribunal proceedings are impartial and independent and Article 5(5) by failing to provide remedies to ensure the enforcement of the labor rights of parties in such proceedings.

### **2.2.2 Minimum Employment Standards**

The submitters assert that Mexico is in violation of the NAALC by not enforcing the FLL and other relevant laws in regards to minimum labor standards. They claim that Mexico has failed to fulfill its obligations under NAALC Articles 2, 3(1)(b), 3(1)(c), 4(1), and 5(5). The submitters argue that Mexico did not monitor compliance nor investigate suspected violations of its labor law, both of which are called for in NAALC Article 3(1)(b). They also assert that Mexico did not seek assurances of voluntary compliance of its labor law, which is found in NAALC Article 3(1)(c).

### **2.2.3 Occupational Safety and Health**

In relation to occupational safety and health issues, the submitters argue that Mexico is not in compliance with NAALC Articles 1, 2, 3(1)(b), 3(1)(c), 4(1), and 5(5). The submitters claim that Mexico failed to enforce the FLL, as well as the Civil Aviation Law<sup>18</sup> and its regulations.

## **2.3 Action Requested**

The submitters request that:

1. U.S. NAO undertake cooperative consultations with the Mexican NAO in order to provide the following resolutions:
  - a. recognition of ASSA as the collective bargaining representative of TAESA flight attendants;
  - b. reinstatement of ASSA supporters who wish to return to work, with back pay for lost wages;

- c. adoption of a collective bargaining agreement consistent with industry standards for flight attendants negotiated by ASSA;
  - d. proper payment of overtime, Sunday, and holiday pay, including back pay where proper payment was not made;
  - e. proper crediting and payment of social security, pension, and housing funds, including the period when flight attendants were unlawfully dismissed;
  - f. adequate training and retraining programs, improved airline cabin maintenance, and effective enforcement of maximum hour regulations and other safety and health standards;
- 2. U.S. NAO consult with relevant national and international air transport safety bodies regarding the health and safety violations at TAESA;
  - 3. U.S. NAO hold one or more public hearings on the matter; and
  - 4. U.S. NAO recommend ministerial consultations.

### **3. NAO Review**

Submission No. 9901 was accepted for review on January 7, 2000. The review was deemed appropriate as it raised issues related to labor law matters in Mexico and because a review would further the objectives of the NAALC. The decision to review was not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

In conducting its review, the U.S. NAO considered information from the submitters, the Mexican NAO, the U.S. Federal Aviation Administration (FAA), and testimony received at a public hearing. The U.S. NAO also reviewed legal research material, including an expert consultant's

report on freedom of association issues raised in this submission.

The focus of the review was to gather information to assist the U.S. NAO to better understand and publicly report on the issues raised in the submission concerning freedom of association and the right to organize, the right to bargain collectively, minimum employment standards, and occupational safety and health. Included in the review was the Government of Mexico's compliance with its obligations under Articles 1, 2, 3, 4 and 5 of the NAALC.

### **3.1 Information from Submitters**

The U.S. NAO engaged in meetings, telephone conversations, and written correspondence with the submitters in order to obtain additional information. As an attachment to a letter dated January 21, 2000, the submitters provided the U.S. NAO a copy of an ASSA report to the International Transport Workers' Federation detailing the safety and health problems at TAESA; testimony given by ASSA President Alejandra Barrales Magdaleno in a lawsuit brought against the union by TAESA; and relevant press reports.<sup>19</sup> The submitters also furnished the U.S. NAO with legal materials pertaining to decisions rendered by the CAB and appeals courts.<sup>20</sup> Additionally, the U.S. NAO was given maintenance reports filed by flight attendants to TAESA management, copies of pay records of individual flight attendants, and copies of financial attachment notices against TAESA.<sup>21</sup>

### **3.2 Information from Mexican NAO**

On December 20, 1999, the U.S. NAO sent a letter to the Mexican NAO requesting information on the issues raised in this submission.<sup>22</sup> A second letter to gather further information was sent on March 20, 2000.<sup>23</sup> The Mexican NAO responded with two letters dated April 25 and April 28, 2000.<sup>24</sup> In these letters, the Mexican NAO provided information on Mexican law regarding freedom of association, minimum employment standards, and occupational safety and health in the airline industry. The Mexican NAO could only provide limited information concerning the specific facts of this submission, stating that requests had been sent to the relevant Mexican government agencies. The U.S. NAO has made additional requests for this information but, as of the date of this report, has received no further material.

### **3.3 Information from Public Hearing**

The U.S. NAO conducted a public hearing in Washington, D.C. on March 23, 2000.<sup>25</sup> Notice of the hearing was published in the Federal Register on February 24, 2000.<sup>26</sup> Invitation letters also were sent to both the employer and the SNTETA through the Mexican NAO,<sup>27</sup> but neither sent representatives to the hearing.

Eight witnesses testified at the hearing, including representatives of the submitters and three TAESA flight attendants. Ms. Patricia Friend, President of the Association of Flight Attendants, summarized the basis for the submission. Ms. Alejandra Barrales Magdaleno, President of ASSA, addressed the problems that the union confronted in its attempts to obtain a collective bargaining agreement at TAESA. ASSA attorney, Lic. Jos, Luis Mendoza Garcia, provided information on Mexican law. He also discussed the legal efforts of the union in this case, including the fired flight attendants' petitions for reinstatement. Mr. Lance Compa served as counsel for the AFA and also spoke on the legal issues raised in the submission. Mr. Tim Beaty, the resident representative of the AFL-CIO in Mexico, elaborated upon his observations outside the voting station during the election. Mr. Carlos Alvarez Tejeda, Mr. Jorge Armando Barrientos Vivas, and Mr. Sergio Centeno Mota were flight attendants at TAESA. Each spoke of their experiences at the company, especially regarding safety issues aboard TAESA aircraft. The statement of Mr. Lebrac Alfredo Robles Rodriguez, a flight attendant who was unable to attend the public hearing, also was added to the record.

### **3.4 Information from the FAA**

On February 28, 2000, staff from the U.S. NAO and the Department of Labor's Office of the Solicitor met with FAA officials to discuss the occupational safety and health concerns raised in this submission. By letter dated March 31, 2000, the FAA provided further information, including the International Civil Aviation Organization (ICAO)<sup>28</sup> standards on flight safety.<sup>29</sup>

### **3.5 Information from Expert Consultants**

The U.S. NAO also sought information and analysis from a legal consultant on the freedom of association matters raised in this submission.<sup>30</sup> The consultant was asked to determine the extent to which these decisions are consistent with existing Mexican law and precedents.

## **4. Freedom of Association**

### **4.1 NAALC Obligations**

The relevant articles of the NAALC as they pertain to freedom of association and the right to bargain collectively in this submission are Articles 1(b), 1(d), 1(f), 1(g), 2, 3(1), 3(2), 4(1), 5(1), 5(1)(d), 5(3), 5(4), and 5(5).

Article 1 of Part One of the NAALC lists the objectives to which the three countries are committed. Article 1(b) calls for the promotion, to the maximum extent possible, of the labor principles in Annex 1. The first principle is freedom of association and protection of the right to organize, while the second principle addresses the right to bargain collectively. Article 1(d) sets

as an objective of the NAALC the exchange of information to enhance understanding of the laws and institutions governing labor in each country. Article 1(f) requires the Parties to promote compliance with, and effective enforcement of, their labor law, and Article 1(g) commits each country to foster transparency in the administration of labor law.

The obligations of the Parties are identified in Articles 2-7 under Part Two of the NAALC. Article 2 discusses levels of protection in the three countries. It reads as follows:

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Article 3(1) calls for the Parties to effectively enforce their labor law through government action, while Article 3(2) states that each Party must ensure that its authorities give due consideration to any request for an investigation of an alleged violation of labor law. Article 4(1) guarantees the right to private action, as each Party must ensure that its citizens have appropriate access to labor tribunals for the enforcement of its labor law. Also important are the procedural guarantees found in NAALC Article 5:

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

\* \* \*

(d) such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

\* \* \*

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

## **4.2 Mexican Law**

Freedom of association and the right to bargain collectively are protected under Mexican law. The first labor principle is guaranteed in the Mexican Constitution, and both are codified in the FLL. Also relevant to the review of this submission are ILO Conventions 87 and 98.

### **4.2.1 Mexican Constitution**

Freedom of association is affirmed by Article 19 of the Mexican Constitution, which states that "[t]he right to association or to hold meetings for any legal purpose cannot be curbed."<sup>31</sup> Article 123(A)(XVI) further asserts that workers have the right to organize in defense of their interests by forming unions. Moreover, Article 123(A)(XXII) protects workers from being unjustly dismissed because of union affiliation, averring that the employer of such a worker will be required "at the election of the worker to either fulfill the contract or to indemnify him to the amount of three months wages. . . ."<sup>32</sup>

Also relevant to this submission is Article 123(A)( XX), which calls for a CAB to adjudicate labor disputes. It affirms that "[d]ifferences between [management] and labor shall be subject to the decisions of a Conciliation and Arbitration Board, consisting of an equal number of representatives of workers and employers, with one from the government."<sup>33</sup>

### **4.2.2 Mexican Federal Labor Law**

Article 123 of the Mexican Constitution is the cornerstone of labor rights in Mexico. This article is codified by the FLL. An array of FLL articles have relevance to the areas of freedom of association and the right to bargain collectively in this submission. They include Articles 47 (dismissal), 133 (employer prohibited practices), 244 (dismissal of flight crew members), 357-359 (right to organize), 360 (types of union organization), 371 (union bylaws), 387 (obligation to bargain collectively), 388 and 389 (union representation), 395 (exclusion clause), 527 (industries under Federal jurisdiction), 604-624 (responsibilities of CABs), 625-675 (composition of CABs), 685 (labor dispute proceedings), 708 (disqualification of CAB member), 842 (suitability of award), 870-891 (proceedings before the CABs), 892-899 (special proceedings before the CAB), and 931 (representation elections).

#### **4.2.2.1 Freedom of Association & the Right to Bargain Collectively**

Freedom of association and protection of the right to organize are asserted in FLL Articles 357 and 358. FLL Article 357 states that "[w]orkers and employers shall have the right to establish

trade unions without prior authorization,"<sup>34</sup> while FLL Article 358 avows that "[n]obody shall be obliged to join or abstain from joining a trade union."<sup>35</sup> Furthermore, FLL Article 133 forbids employers to do the following:

IV. Compel an employee by coercion or any other means to join or withdraw from the industrial association or group of which he is a member, or to vote for a specified candidate;

V. Intervene in any manner in the internal activities of the industrial organization . . . ;

\* \* \*

VII. Perform any act in restraint of the rights granted to employees by law. . . .<sup>36</sup>

FLL Article 360 defines the types of trade unions in Mexico. A craft union consists of people in the same occupation or craft, whereas a company union is open to all employees in that company.<sup>37</sup> FLL Article 388 covers the possibility of having more than one union in an enterprise. Section III of this article states that:

[i]f there are craft unions and either company or industrial unions, the craft unions may enter into a collective labor agreement with respect to their trades, provided that the number of their members is greater than the number of those workers having the same occupation who form part of the company or industrial union.<sup>38</sup>

According to FLL Article 389, if a union ceases to have the largest membership among workers and, if this is certified by the CAB, then that union loses the right to be the titular party of the collective labor contract.

#### **4.2.2.2 Dismissal of Employees**

FLL Article 47 lists fifteen causes for which an employee can be dismissed with no liability to the company.<sup>39</sup> FLL Article 244 specifically covers the termination of flight crew employees, listing eight causes: (1) cancellation of appropriate licenses, passports, visas, and other documents required by domestic or foreign laws; (2) being under the influence of alcohol twenty-four hours preceding the start of the flight or during the flight itself; (3) being under the influence of a narcotic without a prescription from a specialist in air medicine; (4) violating laws relating to the import and export of merchandise in the performance of duties; (5) refusal to carry out or continue mercy, search, or rescue flights; (6) refusal to undergo training; (7) endangerment of passengers, crew, or property of third parties; and (8) failure to fulfill the special obligations in FLL Article 237 and failure to observe FLL Article 242(III).<sup>40</sup>

FLL Article 395, known as the Exclusion Clause, gives employers the right to exclude workers who are not members of the union holding the collective bargaining agreement at the company.

Article 395 reads as follows:

[a] collective contract may stipulate that the employer shall admit to his employment only persons who are members of the trade union which is a party to the contract. This clause and any other clause laying down privileges in their favor shall not be applied so as to prejudice workers (non-members of the trade union) already employed in the enterprise or establishment prior to the date on which the trade union asks for a collective contract to be made (or the revision of an existing collective contract) with the inclusion therein of any such "closed shop" clause.

It may also be established that the employer shall dismiss members who withdraw or who are expelled from the contracting union.<sup>41</sup>

According to the Mexican NAO, an employer could also use the exclusion clause to terminate a worker who is a member of one union and requests representation by another union.<sup>42</sup>

However, Article 395 is not without regulation. Article 371(VII) specifies that union bylaws must include provisions for expulsion or other disciplinary action of members. These provisions are as follows:

- (a) a meeting of the workers shall be called for the sole purpose of informing them of the expulsion;
- (b) in the case of trade unions subdivided into sections the expulsion procedure shall be carried out at a meeting of the section concerned; the motion of expulsion shall be submitted to the workers of each one of the sections of the trade union for their decision;
- (c) the worker concerned shall be entitled to make a statement in his defense in accordance with the rules;
- (d) the meeting shall hear the evidence on which the motion of expulsion is based and the evidence shall be submitted to the worker concerned;
- (e) workers shall not be represented by proxy vote by correspondence or in writing;
- (f) expulsion shall be approved by the two-thirds majority of the total membership of the trade union; [and]
- (g) expulsion may be decided only in those cases expressly stipulated in the rules, duly evidenced and exactly applicable to the case.<sup>43</sup>

#### **4.2.2.3 Federal Conciliation and Arbitration Board**

FLL Articles 604 through 624 establish the federal CABs as the primary authorities responsible for the adjudication of labor disputes, including union representation, within the industries

identified in Article 527(I). The airline industry was incorporated into the federal jurisdiction under FLL Article 527(I)(18).

FLL Articles 625 through 675 govern the composition of the CABs. Each CAB consists of one representative each from government, management, and labor. All representatives serve a six-year term. The government representative is designated by the Secretary of Labor and Social Welfare and serves as President of the CAB. The labor and management representatives are selected in conventions which are held by their respective organizations and are conducted under the supervision of the federal labor authorities. In practice, the largest and most representative labor organizations, such as the CTM, CROM, and CROC, are chosen to sit on the CABs.<sup>44</sup>

The FLL sets out procedures which the CAB must follow in its adjudication of labor disputes. Article 873 provides guidelines for determining a hearing date once a petition for *titularidad* is received. It reads as follows:

**Hearing of conciliation claim and exceptions.** The Full or Special Board, within the 24 hours following the moment it receives the written petition, shall pronounce a decision in which it sets forth a day and hour for holding the conciliation hearing, petition, exceptions, offerings and admission of evidence, which must be carried out within the 15 days following the receipt of the written petition. In the same decision it shall order that the parties be notified personally at least 10 days in advance of the hearing, sending a copy of the petition to the defendant, and ordering that the parties be notified with the summons to the defendant, his affirmative answer to the petition and of the loss of the right to offer evidence if they do not attend the hearing.<sup>45</sup>

FLL Articles 883 through 891 outline the CAB's standard hearing process, including the issuance of awards.

Special proceedings are invoked for disputes arising out of the application of Article 389, which states that the collective bargaining agreement is determined by the largest membership of the workers in question. The guidelines for special proceedings are found in Articles 892 through 899. Article 895(III) establishes that if inventory of the workers is offered as evidence, then Article 931 must be observed. Article 931 provides that workers can vote for union representation if they were employed at the enterprise when the petition of representation was filed; this includes those workers who were fired after the filing date. Management and workers hired after the date of the filing are disqualified from participating. According to Article 931(V), "[o]bjections to the workers present at the recount must be recorded in the minutes of the proceedings, in which case the Board shall arrange a meeting for the submission and presentation of evidence."<sup>46</sup>

FLL Article 685 calls for the CAB to "take the necessary steps to ensure that proceedings are conducted with a maximum of economy, concentration, and simplicity."<sup>47</sup> Moreover, Article 842 dictates that the awards issued by the CAB must be clear and congruent with the petition.

Finally, FLL Article 708 asserts that CAB members must disqualify themselves from trying a case if they have a personal interest in the case. Causes for discipline or removal of employer and worker representatives in the CAB are listed in FLL Article 671. One such cause is if the

representative "[v]otes in favor of any decision which is manifestly illegal or unjust."<sup>48</sup>

### 4.2.3 ILO Conventions

Relevant to this submission are ILO Convention 87 on freedom of association and protection of the right to organize and ILO Convention 98 on the right to bargain collectively. Mexico ratified Convention 87 in 1950 but has not ratified Convention 98.<sup>49</sup>

The ILO Committee of Experts on the Application of Conventions and Recommendations has found that efforts by employers to influence workers in choosing the organization to which they wish to belong are inconsistent with Conventions 87 and 98.<sup>50</sup> Article 2 of Convention 87 allows workers to establish and join organizations of their own choosing without authorization, and Article 2 of Convention No. 98 provides that workers' organizations shall enjoy adequate protection against any acts of interference by employers.

The ILO also has addressed the existence of multiple unions in the workplace. The ILO Committee on Freedom of Association has stated that the concept of the most representative trade union, and the granting to that union certain rights and advantages, is not necessarily contrary to the principle of freedom of association.<sup>51</sup> However, the Committee went on to state that:

the workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers. Therefore, the distinction should not have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), for organizing their administration and activities, and formulating their programmes, as provided in Convention No. 87.<sup>52</sup>

In addition, the Committee of Experts on the Application of Conventions and Recommendations has issued opinions regarding union security clauses, such as is found in FLL Article 395 (exclusion clause). The Committee has stated that such clauses, which require an employer to hire only union members, are compatible with Convention 87.<sup>53</sup> In addition, it has asserted that clauses which state that employees must remain in the union in order to maintain their employment are compatible as well.<sup>54</sup> However, the Committee also has noted that workers must be afforded the freedom to choose their representative.<sup>55</sup>

### 4.3 Analysis

This section on freedom of association is divided into four categories, covering (1) the legal

process, (2) the election process, (3) the question of CAB impartiality, and (4) the dismissal of the flight attendants.

### 4.3.1 Legal Process

In support of their claim, the submitters presented the U.S. NAO with legal materials pertaining to the decisions made by the CAB and the courts, as well as oral testimony. The testimony is generally consistent with the legal decisions concerning the description of events. In addition, the U.S. NAO reviewed a report prepared by consultants, who analyzed the legal aspects of the case.<sup>56</sup>

In 1997, ASSA sought to represent TAESA flight attendants, who already were represented by the SNTETA under the collective bargaining agreement at the company. On July 8, 1997, ASSA filed a petition for representation of the TAESA flight attendants before Special Federal CAB No. 2, which then forwarded the petition to its Department for Analysis and Registration of Collective Contracts and Domestic Labor Regulations.<sup>57</sup> FLL Article 873 dictates that, within twenty-four hours of receipt of the written petition, the CAB must issue a hearing date to be held within fifteen days, and FLL Article 685 calls for labor dispute proceedings to be expeditious. However, according to the testimony of Ms. Barrales, ASSA did not obtain an audience before the CAB until forty-eight days later, at which time the CAB refused to hear the union's complaint.<sup>58</sup>

On September 24, 1997, the CAB issued its decision, stating that a collective bargaining agreement that covers all workers in a company cannot be fragmented. The CAB opined that the collective contract to which title is being sought applies to all employees of the company and that ASSA, as a craft union, lacks scope to represent employees not in the craft and, therefore, could not gain title to the company-wide collective bargaining agreement at TAESA.<sup>59</sup> To support its judgement, the CAB further cited criterion regarding craft unions sustained by the Supreme Court of Mexico:

[t]he preceding provisions [Section III of Article 388] govern cases of competition between various unions to obtain the signing of a collective labor contract, but THEY ARE NOT APPLICABLE when within a company there already exists a collective contract with the Union that holds title to it, so that if a craft union seeks title to a collective contract that has already been entered into with a company, industry, or national industry union, IT LACKS SCOPE FOR IT, in that the Contract, by provision of Article 396 GOVERNS ALL of the labor relations within the Company or establishment to which it applies, since the craft union may only represent the professional interest of a portion of all the workers subject to the general rules of a collective contract to which the title is sought.<sup>60</sup>

On October 14, 1997, ASSA filed an *amparo*, claiming that the CAB violated FLL Article 873 and 685 in its handling of the case by ruling on the merits without holding a hearing. On December 15, 1997, the Chief District Judge in Labor Matters of the First Appeals Court<sup>61</sup> granted the *amparo* due to the failure of the CAB to hold a hearing and ordered the CAB to

"provide for hearing of the case filed, in which it will allow the parties to allege and prove what is in their interest and in due time and with full jurisdiction render a decision in accordance with the law."<sup>62</sup>

The CAB reopened the case, with TAESA then filing a Motion to Dismiss for Lack of Procedural Standing. On October 1, 1998, the CAB issued another decision to dismiss the ASSA petition.<sup>63</sup> As it had in its first ruling, the CAB asserted that a craft union cannot segment a company-wide collective bargaining agreement and that, as a craft union, ASSA could not represent the entirety of workers at TAESA.

On October 22, 1998, ASSA filed a second *amparo*. The Ninth Professional Tribunal of the Court for Labor Matters of the First Circuit<sup>64</sup> granted the *amparo* on December 9, 1998. The Court concluded that the CAB arguments provided in its decision determined questions of substance (standing *ad causam*), not whether ASSA had the legal power to appear before the CAB (procedural standing) with the petition to begin the processing of the case.<sup>65</sup> The Court reasoned that the CAB decision deprived the ASSA union of the opportunity to demonstrate by evidence through a vote that it had a greater right to the collective contract with respect to the flight attendants.<sup>66</sup> The Court ordered the CAB to continue the proceedings in accordance with the law.

On February 1, 1999, the CAB vacated its previous decision, and a hearing of ASSA's petition was scheduled for February 22, 1999. On this date, a Motion of Joinder was filed to include STIASCRM's petition for title to the collective contract at TAESA. ASSA argued that the cases should not be joined on the grounds that ASSA only asked to represent flight attendants, whereas STIASCRM wanted representation of all workers. On March 12, 1999, the CAB joined the two cases and arranged a representation election among all TAESA workers to be held on March 22, 1999.<sup>67</sup>

On the specified date, voting occurred at sixteen airports in Mexico where TAESA was domiciled. The official count was 1,442 votes for the SNTETA, 102 for ASSA, and 2 votes for STIASCRM.<sup>68</sup> During the voting process, ASSA representatives objected to all votes by non-flight attendants.<sup>69</sup> This is in accordance with FLL Article 931(V), which states that objections to workers participating in the vote must be recorded in the minutes of the proceedings and that the CAB then must arrange a hearing for the evidence to be submitted. In a letter dated April 25, 2000, the Mexican NAO stated that, of the voters who stated they were flight attendants, 71 voted for ASSA and 94 voted for SNTETA. ASSA asserts that it received 99 votes from flight attendants, with SNTETA only garnering 42 such votes.

On April 12, 1999, the CAB held a hearing so that the unions could submit evidence concerning the objections raised about the individual votes. ASSA presented a list of 876 voters, who allegedly were TAESA employees but not flight attendants; copies of their credentials shown at the voting site; and a list of 96 voters, whom ASSA claimed did not work at TAESA.<sup>70</sup> ASSA also submitted public documents consisting of various reports by the Mexican Social Security Institute (IMSS),<sup>71</sup> which could be used to determine the profession of the voters and if they indeed worked at TAESA. On May 17, 1999, the CAB issued a decision not to accept the above items as evidence.<sup>72</sup> The CAB asserted that "such evidence has no relationship to the process in

the instant case . . . because the recount was ordered so that all the workers who render services to the respondent company would participate in it and not by guilds as the submitting party would have it. . . ."73

In April 1999, ASSA also filed an *amparo*, concerning the CAB's resolution on March 12, 1999, to grant the Motion of Joinder. The union claimed that the CAB's decision to hold an election among all TAESA employees precluded the issuance of a legal decision for the certification of ASSA to represent TAESA flight attendants. On June 18, 1999, the Second District Judge on Labor Matters in the Federal District<sup>74</sup> denied the *amparo*, stating in his decision:

Pursuant to the provisions of Article 114, Section IV of the Law in this Matter, indirect appeal with respect to actions within a case is only admissible in two exceptional cases A) - When involving actions the performance of which cannot be redressed; B) - When they affect individuals outside the case. Thus, it is impossible to consider as irreparable those actions the consequences of which affect practical or procedural rights and whose effects are merely formal. Accordingly, the action being appealed produces only a practical effect without altering any substantive right protected by the cited law . . . and thus the admissibility of joinder is not an irreparable action, given that it does not harm the fundamental rights provided for in the individual guarantees, in that the joinder is presented precisely so as to prevent the issuance of contradictory rulings, without involving the deprivation of the right of defense in each of the joined actions [and] without altering the substantive issues disputed therein.<sup>75</sup>

In its request for the indirect *amparo*, ASSA included arguments concerning the handling of the vote conducted on March 22, 1999. In his June 18th decision, the judge also denied the *amparo* in relation to these arguments:

[w]ith respect to the action being appealed consisting of the evidence of a recount, the action for indirect relief is also inadmissible, in that this involves the handling of evidence in the labor case and thus does not constitute an action with respect to persons or things the performance of which cannot be redressed. On the other hand, it may constitute a procedural violation . . . and should it transcend the result of the decision can be appealed together with the decision rendered, by means of a direct appeal. . . .<sup>76</sup>

On September 20, 1999, the CAB issued its decision concerning which union represented the greater professional interest at TAESA. In ruling against ASSA, the CAB relied upon the same arguments previously stated concerning the lack of scope of ASSA to represent all workers at the company. The CAB found that ASSA is a "National Union of Workers in the Specialty of Flight Attendants, and thus its sphere of action is insufficient to encompass all workers who render their services to the respondent company."<sup>77</sup> It held that ASSA is not "authorized to seek title to a Collective Labor Contract that is applicable to all the workers in the different specialties who render their services to the respondent company."<sup>78</sup> The CAB stated that a craft union can represent only the professional interest of the company employees in that craft and that, if ASSA were given title to the collective bargaining agreement, it would be "fragmenting the Collective Labor Contract already signed in the respondent company and would affect the union freedom of the majority of the workers . . . ."79

In response to arguments that Article 388 of the FLL guarantees the right to represent a particular craft provided that a union represents the majority of the workers in that craft, the CAB indicated that such a right of a craft union does not apply in a case, such as the instant one, where a company-wide collective contract already exists. The CAB stated:

Article 388, Section III of the Federal Labor Law provides for the hypothetical case of competition between Guild Unions and Company or Industry Unions. . . . Guild organizations may enter into a Collective Labor Contract for their profession when the number of their members is greater than that of the workers in the same profession who are members of the company or industry union, but there is no provision for the case when within a company there is already a Collective Labor Contract entered into with the union holding title to it. . . .<sup>80</sup>

In the ruling on September 20, 1999, the CAB also issued its determination on the outcome of the vote and ruled that SNTETA still held the collective bargaining agreement at TAESA.<sup>81</sup> According to the CAB, SNTETA obtained a majority in the representation election, garnering 1,442 of a total of 1,546 votes. The CAB held that ASSA bore the burden of proof regarding its challenges to the votes cast and that the union had failed to carry its burden. The CAB asserted that "the challenges formulated by the complainant union lack any foundation as they assume that collective contracting should be applied exclusively to the Flight Attendants."<sup>82</sup>

ASSA then filed a fourth *amparo*, in which it asserted that the restrictive nature of FLL Article 388(III) as applied by the CAB is unconstitutional.<sup>83</sup> Article 388(III) allows a craft union to bargain collectively for the workers in the craft if a majority of all the company workers in that craft are in support, but, as the CAB has shown, the Supreme Court of Mexico determined that Article 388(III) does not apply in instances where a collective contract already covers all the workers. In addition, ASSA argued that the CAB was remiss in not accepting the IMSS documents into evidence regarding its challenges to the election of March 22, 1999.

On February 9, 2000, the Ninth Professional Tribunal of the Court for Labor Matters of the First Circuit granted the *amparo*, ordering the CAB to vacate its former ruling and to admit as evidence the public documents of the IMSS.<sup>84</sup> However, the Court noted that it was unnecessary to reach the other issues raised because the *amparo* was sufficiently granted on the aforementioned grounds. The case remains pending before the CAB.

The legal case of the *Association of Flight Attendants of Mexico v. Executive Air Transport and the National Union of Air Transport Workers and Employees* is complex, with various issues being addressed over a two-and-a-half year period. In order to better understand the nature of the ASSA legal petitions, the decisions of the CAB and the appellate courts, and the relevant legal precedents in Mexico, the U.S. NAO sought a consultant's independent legal analysis.<sup>85</sup>

According to the consultant, ASSA petitioned the CAB to be recognized as the representative of the majority of flight attendants at TAESA and thereby be entitled to administer the collective labor contract executed with TAESA on their behalf.<sup>86</sup> In doing so, ASSA requested a transfer of the current contract to it for application to the flight attendants.<sup>87</sup> Under Mexican law, the CAB would only be able to grant this request if ASSA represented a majority of all TAESA employees because the existing collective labor contract at the company applies to all land and air personnel

and ASSA does not have a legal right to fragment the existing collective labor contract to apply to flight attendants.<sup>88</sup> With regard to the request for a count of flight attendants only, it was determined that a representation vote "cannot be limited to only one sector of employees when a union requests the administration and representation of a [collective bargaining agreement]."<sup>89</sup> Therefore, the consultants concluded that the CAB did not violate Article 388 of the FLL by refusing to grant ASSA's request to represent the flight attendants because ASSA sought to fragment an existing agreement and did not show the support of a majority of the TAESA employees, a point which the submitters do not dispute.

The submitters allege that the legal decisions in this case indicate that Mexico has failed to meet its obligations under the NAALC to effectively enforce its labor law under Article 3(1) and to ensure that its labor tribunal proceedings are fair, equitable, and transparent under Article 5(1). In particular, they assert that the CAB has not enforced Article 388(III) of the FLL, which provides for a craft union to bargain collectively for the workers in the craft if a majority of all the company workers in that craft support that union, and Article 842, which states that all CAB awards must be congruent with the petition. The CAB ruled that Article 388(III) is restrictive in nature such that craft unions cannot segment a company-wide collective bargaining agreement already in place. ASSA maintains that Article 388(III) has no set limits and that the CAB's interpretation of this article is unconstitutional. ASSA also contends that its petition only concerns collective bargaining rights for TAESA flight attendants and, therefore, that the CAB decisions are incongruent by their inclusion of all company employees.

The submitters acknowledge that ASSA's initial petition requested to administer the existing collective contract for the flight attendants. ASSA's contention was to gain representation of the flight attendants and, then, to negotiate a separate collective bargaining agreement upon the expiration of the existing one. ASSA maintains that this was its only option, asserting that Mexican labor law does not provide a "window" during which challenges to the existing agreement on behalf of a craft union can be made. If SNTETA were to routinely renew its agreement before the expiration date, there may never be a time when there would not be an existing contract.

Although the court has not ruled on the substantive issue of whether Article 388 of the FLL limits ASSA's right to administer the existing collective labor contract for the flight attendants, the CAB offers precedent of the Mexican Supreme Court as support for its finding. It is true that the CAB twice denied ASSA's petition without holding a hearing as apparently required by law, including once even after the appellate court had instructed it do so. However, a hearing was eventually held and it appears that ASSA had the opportunity to present evidence in support of its position. In view of adverse rulings by the CAB, ASSA availed itself of the provisions under Mexican law to seek review and correction of those rulings. Indeed, ASSA received numerous favorable judicial rulings.

#### **4.3.2 Representation Election**

The submitters assert that Mexico failed to enforce its legislation in regard to the conduct of the

election and, therefore, is in violation of the NAALC. The testimonial statements presented at the hearing are consistent with the allegations made by the submitters. The information provided describes an election conducted in fear and intimidation, with employees being threatened by TAESA management and SNTETA representatives if they supported ASSA. FLL Article 133(IV) specifically prohibits employers from attempting to influence workers' affiliation to, or withdrawal from, a union and FLL Article 358 states that no one may be compelled to join or withdraw from a union.

Mr. Sergio Centeno Mota, a TAESA flight attendant, testified as to what he saw upon his arrival at the voting station:

And the day of the vote, when we got to TAESA's facilities in Mexico, we could see that there was so much security that the company had hired, armed soldiers . . . with heavy caliber arms, attack dogs, an electrified wire, to intimidate us so that we couldn't go in to the voting area since we were in favor of ASSA. Outside they had a loud speaker system, very loud audio, that went beyond safe hearing levels.<sup>90</sup>

Mr. Tim Beaty provided further descriptions of what occurred outside of the voting station, corroborating Mr. Centeno's account:

Those observations of mine, while I stood there for the day, included armed security guards, both on the other side of the fence, inside the grounds of the company as well as more armed security guards up on the roof of the TAESA building looking out towards the street entrances . . . .

In addition to the security guards, the armed security guards, many of them also had with them attack dogs. And the attack dogs were also lined up with the security guards along the fences on the inside of the company property, clearly focused on the folks that were outside and obviously, as well, the folks that were using those entrances to come into the complex to vote.

And in addition to the armed security guards and the attack dogs, there were a series of very large speakers that rivals any hard rock concert that I've ever been to . . . . But blaring out all day long the TAESA theme song to such a volume that standing right next to somebody, if you were near the entrance, you had to yell at the person beside you just in order to be heard. And this was the situation for all of the flight attendants that were using that entrance to come in and vote that day.<sup>91</sup>

Mr. Carlos Alvarez Tejeda, a TAESA flight attendant, was also present at the voting station in Mexico City. He spoke of the difficulty that he and other flight attendants experienced in trying to get inside to vote:

Those of us who wanted to change our union, we met very early that day. And at that time we were still employees, and we were not given access to the company. We saw how about 1500 people came to vote and that they were inside, and we were left outside. And we had our uniforms; we had our IDs; we were outside. It was raining. It quit raining. It started raining again. And then it quit raining again. And then after about six hours of waiting outside, they gave

us access.<sup>92</sup>

Mr. Jorge Barrientos Vivas, a flight attendant who voted for SNTETA, testified as to how he was treated at the polling site:

I voted for CTM, which is the other --- that was because Mr. Jesus Viva, my direct boss, threatened me that if I didn't vote for CTM, I would be fired like the rest of my colleagues that voted for ASSA. And that besides, my career in aviation would be over. I had economic problems and family problems, and so I saw myself forced to vote for CTM.

I was called at home and told to come to the airport to the main area, which we never did. We used to go just to TAESA's hangars. I went to the hanger where the voting was taking place and on the trip over there from the main lobby to the hanger, other company members threatened me, telling me what I should do, who I should vote for, and that I should have no contact with them because otherwise I would be fired.

And when I got to the hangar, I saw that my colleagues were outside. They wouldn't let them in; they were being threatened with dogs. They wanted to talk and they put loud music on the loud speakers. I voted for CTM. I was taken to a little cubicle far away, and I wasn't let out until everyone had gone. And then they let me go home.<sup>93</sup>

Mr. Barrientos further stated that those employees allowed inside were encouraged to offend and use foul language against ASSA supporters. He acknowledged that some of his co-workers did participate in such actions.<sup>94</sup>

Mr. Centeno recounted his experience of intimidation when he stated that he was voting for ASSA:

And there were lots of people who were intimidating us and telling us who we had to vote for. And telling us that if we didn't vote for CTM we'd be fired immediately. This went on all day long. And if that wasn't enough, when it was my turn to vote, I was asked by the polling staff who I was going to vote for.

I said I was going to vote for ASSA. I was asked again. "Are you sure you want to vote for ASSA?" And I said, "Yes." And he said "Well, okay." At that moment, a security individual came over, grabbed me by the arms and took me out to a CTM union representative.

With only three hours left to the end of the voting, thanks to the insistence of the ASSA representatives that were in the voting room, the notary finally allowed us to enter, to go in and vote. And the notary is the maximum authority there who obviously was in collusion with the company. Entrance into the voting was in groups of eight, and it wasn't directly into the area, it was to the management office of the flight attendants where confidence staff would intimidate us. Again, yet again, so that we would vote for CTM and not vote in favor of ASSA.<sup>95</sup>

Mr. Centeno also commented on how he had to vote in front of both management and SNTETA

representatives:

Inside the hanger, there were the voting tables. We had to vote facing the director of the company. He was sitting there in front of us. And we had to say out loud who we were voting for. There were approximately 300 people [there for the] . . . CTM, when there were only four people representing ASSA.<sup>96</sup>

Moreover, Mr. Centeno described an incident that occurred in front of CAB officials while he was voting:

When the voting took place, the sister of Captain Abed was there, and she was attacking us verbally. She was using foul language. I was here voting, and she was right in front of us, and she was intimidating us openly in front of the authorities. And the authorities did nothing, they just continued as if nothing were happening.<sup>97</sup>

The testimony of Jos, Luis Mendoza Garcia, an attorney for ASSA, supports the statements of the flight attendants:

In the case of TAESA they only allowed four of us to be there while the management had everyone there that they felt that they wanted to have there. And the other union, they let them intimidate the workers, pressure the workers.

In the case of TAESA, the tally, the vote was taken as follows. Behind the voting table, they had high chairs where the company's manager was seated with the management team looking how and observing how each worker's vote was going. At the same time, they had another little booth where the workers would first go in and they were asked who they were voting for.

There they could tell if they were going to vote for ASSA, they would be fired. . . . But to ask a worker ahead of time how they were going to vote to intimidate them -- when we told the notary publics who were present there who were certifying the vote, when we told them what was going on and we asked them to suspend this proceeding, they didn't accept it and the intimidation continued to the end.<sup>98</sup>

ASSA President, Alejandra Barrales, stated that ASSA did file immediate objections to the conduct of the election:

Yes. We did let the authorities know. We told them about the problems that our fellow flight attendants had. Some of them were taken to a room and they were told that they were going to tell them how they had to vote. We took this to the authorities and the authorities told us they could do nothing because the company was the one that decided, and it was the CTM that had the power there.

And we called four or five different times the Undersecretary of Labor to let this person know what was going on. And we did so to request that there could be greater impartiality on behalf of the authorities . . . we wanted to make sure that they knew that there had been police there and all the other things we mentioned. But the authorities told us, "Well, that's private property, and the

company can do what it feels is appropriate."<sup>99</sup>

The U.S. NAO finds the testimony provided by the TAESA employees and international observers to be credible. It suggests that TAESA management and labor union representatives participated in threats and intimidation for the purpose of affecting the outcome of the election. It is indicative of a chaotic atmosphere where the ability of workers to exercise free choice is questionable. The information is consistent with testimony of similar activities in previous submissions regarding the conduct of such elections in Mexico.<sup>100</sup> Articles 133 (IV) and 358 of the FLL prohibit activities designed to intimidate workers in their free choice of a labor representative. Officials from the CAB were present at the election. As noted by the Canadian NAO in its *Review of Public Communication CAN 98-1*, such officials "could be expected to bear the responsibility for maintaining order and safeguarding the integrity of procedures carried out under its auspices."<sup>101</sup> There is no indication in this case that the CAB officials exercised such authority.

The submitters also claim that the requirement to vote orally in the presence of representatives of the unions, management, and the CAB infringes on free choice of a bargaining representative. While the FLL does not cover which parties are allowed to observe the balloting, the Mexican NAO has stated that a CAB official must be present.<sup>102</sup> It is the practice in Mexico to conduct voting in the presence of representatives of the unions involved and management as well. It also is standard for open voting to occur, as secret ballots are provided only if the contending unions agree.<sup>103</sup> Nevertheless, voting could be affected if the employees must state their choice openly before management whose preferences have been made clear and before an excessive number of union representatives utilizing intimidation tactics. There is significant information that such intimidation occurred at the TAESA union representation election, presenting a clear indication of the value of a secret ballot. In fact, the Mexican Department of Labor and Social Welfare has stated in the Ministerial Consultations Agreement on Public Submissions US 9702 and US 9703 that it will make efforts to promote the use of secret ballots.<sup>104</sup> Additionally, under the New Labor Culture, business and unions in Mexico jointly recommend the use of secret ballots in union representation elections.<sup>105</sup>

### **4.3.3 Impartiality and Independence of the CAB**

The submitters assert that Mexico is in violation of its obligations under NAALC Article 5(4) to ensure that its labor tribunals are impartial and independent and that they do not have any substantial interest in the outcome of the matter being adjudicated. The CAB consists of one representative each from labor, business, and government.<sup>106</sup> According to the submitters, the labor representative of Special Federal CAB No. 2 is a member of the CTM, but the U.S. NAO does not know the employee representative's affiliation.<sup>107</sup> In an instance where a CAB member has an affiliation with one of the organizations involved in the matter before the CAB, the possibility of influence or lack of impartiality is raised. Under FLL Article 708, CAB members must disqualify themselves from trying a case if they have a direct or indirect personal interest in the case. Nonetheless, the Canadian NAO has recognized in its *Review of Public Communication CAN 98-1*, "a conflict of interest, real or perceived, could arise if one member has a close

affiliation, beyond 'direct or indirect personal interest,' with one of the parties involved in the case under investigation."<sup>108</sup> Since a CTM affiliate union represents the workers at TAESA, there is an appearance created that the labor representative of the CAB may have an interest in the outcome of this case. However, the U.S. NAO acknowledges that, in the CAB decision of September 20, 1999, the labor representative dissented in favor of ASSA for reasons unknown.

#### **4.3.4 Dismissal of Flight Attendants**

According to the submitters, all of the employees who voted for ASSA were dismissed soon after the March 22 election.<sup>109</sup> The submitters assert that these workers never received any notice of dismissal in writing as required by law. They simply were notified orally of their termination. At the public hearing, Mr. Alvarez gave the following statement regarding his dismissal:

In my case they didn't tell me absolutely anything. They just said, "Sign this sheet because you are no longer an employee and leave."<sup>110</sup>

Mr. Centeno spoke of how he too was dismissed from TAESA:

At that time the only thing they gave me to sign was a resignation. As if I wanted to resign. And since I didn't sign this paper for obvious reasons, they fired me. They fired me. I was ushered out with security guards. And I was given no further explanation. We presume, we know that it's because I was a sympathizer of ASSA.<sup>111</sup>

Mr. Mendoza testified that the dismissed workers had filed complaints before the CAB, asking for reinstatement and indemnization.<sup>112</sup> Mr. Mendoza stated that some hearings have been held but that, in at least eleven of them, neither the company nor its bankruptcy representative were present; therefore, the CAB could not make a ruling in these cases.<sup>113</sup>

Mr. Mendoza also stated that, in some hearings, the SNTETA representative claimed that the exclusion clause (FLL Article 395) was applied because the workers decided that they wanted to belong to another union.<sup>114</sup> However, Mr. Mendoza asserted that the workers were not told this at the time of their dismissal.<sup>115</sup> FLL Article 395 is regulated by FLL Article 371(VII), which states that a meeting must be held with the workers in order to inform them of their expulsion from the union and to allow them to make a statement in their defense. The expulsion then must be approved by a two-thirds majority of the total membership of the union. Mr. Alvarez confirmed that he was never informed of proceedings to remove him as a member of SNTETA.<sup>116</sup>

Considering the timing of the dismissals and that the discharged workers were associated with the challenging union, it appears plausible that the workers' dismissals occurred because of their participation in union organizing activities. Furthermore, the U.S. NAO was unable to uncover any information showing that SNTETA followed the required procedures under FLL Article 371(VII) to expel the ASSA supporters from its membership. Nor did the U.S. NAO receive any information indicating that the company checked to see if the workers were properly expelled from the union before firing them. Instead, the information suggests that the exclusion clause

was used as a basis for dismissal after the fact.

The U.S. NAO is unaware of any decisions having been issued concerning the wrongful dismissal cases pending before the CAB. However, the existing information raises serious concerns regarding the workers' dismissals in this case.

## **5. Minimum Employment Standards**

### **5.1 NAALC Obligations**

The provisions of the NAALC relevant to the issues of minimum employment standards in this submission are Articles 1(b), 1(d), 1(f), 1(g), 2, 3(1)(b), 3(1)(c), 3(1)(g), 4(1), and 5(5). Article 3(1)(b) calls for each Party to effectively enforce its labor law through monitoring compliance and investigating suspected violations, and, in Article 3(1)(c), each signatory further commits to seek assurances of voluntary compliance. Article 3(1)(g) requires that proceedings to seek sanctions or remedies for labor law violations should be initiated in a timely manner. See Section 4.1 of this report for a summarization of Articles 1, 2, 4(1), and 5(5).

### **5.2 Mexican Law**

Mexico has an array of laws protecting minimum employment standards. They include the Mexican Constitution, the FLL, the Social Security Act,<sup>117</sup> the Law of the National Workers' Housing Fund Institute (INFONAVIT),<sup>118</sup> the Retirement Saving Systems Law,<sup>119</sup> and the Federal Tax Code.<sup>120</sup>

#### **5.2.1 Mexican Constitution**

As established in Article 123(A)(I) and (II) of the Mexican Constitution, the duration of the Mexican work day is eight hours during daytime and seven hours at night. Article 123(A)(XI) states:

[w]henever, due to extraordinary circumstances, the regular working hours of a day must be increased, one hundred percent shall be added to the amount for regular hours or work as remuneration for the overtime. Overtime work may never exceed three hours a day nor three times consecutively.<sup>121</sup>

A day of rest for workers also is provided in Article 123(A)(IV).

#### **5.2.2 Mexican Federal Labor Law**

Articles 215 through 245 of the FLL govern the conditions of employment of flight crews. Article 233 guarantees thirty days of vacation, with the leave increasing by one day each year until a maximum of sixty days is reached. Article 223 states that the total period of duty for flight attendants must not exceed 180 hours per month. This includes actual flying time, scheduled flying time, and time spent on stand-by duties. Article 224 asserts that the actual flying time for a flight crew cannot exceed ninety hours per month. Hours in a workday are addressed in Article 225, which states:

[t]he actual flying time of the flight crew shall not exceed eight hours in the case of day work, seven hours in the case of night work, and seven and a half hours in the case of mixed work, and the said persons shall be granted, before or after completing the said turns of duty, a period of lying down rest equal to the flying time. Any hours in excess of the above maximum shall be treated as overtime.<sup>122</sup>

However, Article 228 of the FLL dictates that a crew member must continue his duties if his workday ends while in flight upon the condition that the flight take no more than three hours. If the flight is longer, then the crew member should be relieved from duty at the next airport. On flights longer than ten hours, flight crew members are to be granted rest on board the aircraft.

In regard to overtime, Article 230 specifically states, "[w]here crew members are required by the needs of the service to work longer than the total period of service, they shall be paid double time for each hour of overtime."<sup>123</sup> Double time also is granted in Article 232 for performing duties on holidays. FLL Article 71 establishes that time and a quarter will be paid to workers having to work on Sunday, the weekly day of rest. Article 235 states the following regarding the payment of the abovementioned wages:

[t]he salaries of flight crew members shall be paid together with the corresponding additional allowance on the fifteenth and final days of each month. Amounts payable in respect of night flying time and overtime shall be paid during the first fortnight of the month following that in which the work is performed and the amount in respect of work performed on compulsory rest days shall be paid during the fortnight immediately following that in which the duties are performed.<sup>124</sup>

Finally, Article 136 of the FLL obligates companies to provide housing to its workers by contributing five percent of total wages to the National Housing Fund.

### **5.2.3 Social Security Act**

The Social Security Act, the INFONAVIT Law, and the Retirement Saving Systems Law interdependently establish the Mexican pension system. Each worker is provided an individual pension account, which is divided into separate accounts for retirement and housing. Percentages of the worker's base salary are contributed to these accounts in accordance with the regulations set forth in the Social Security Act and the INFONAVIT Law.

On July 1, 1997, a modified version of the Social Security Act, as well as the Retirement Saving Systems Law, went into effect in Mexico, creating the New Pensions System. Before this, the Mexican pensions system was mandated solely by the Social Security Act. Workers employed before July 1, 1997, are allowed to choose between the old and new pension plans. The submitters allege that the non-payment of retirement contributions occurred both before and after the reform of the Social Security Act; therefore, relevant articles in both the new Social Security Act and its predecessor will be examined for the purposes of this submission.

Article 11 of both acts sets out the compulsory social insurance plan, which incorporates workers compensation insurance, illness and maternity benefits, disability benefits, retirement, mandatory retirement, old-age security, child-care benefits, and social welfare benefits. Under Article 12 of these acts, all individuals who have entered into an employment relationship are entitled to coverage in the aforementioned plan, and, according to Article 15(III) of the new law and Article 19(III) of its predecessor, it is the responsibility of the employer to "[d]etermine the employer-employee payroll contribution liability and pay such sum to the Mexican Social Security Institute."<sup>125</sup>

Article 168 of the new Social Security Act addresses employer obligations specifically regarding contributions for retirement, mandatory retirement, and old-age security. Article 168(I) states that the employer is to contribute two percent of the worker's base salary to the retirement fund. This corresponds with Article 183-B of the former law. Article 168(II) of the new act also requires that both the employer and the worker contribute 3.150 percent and 1.125 percent of the base salary respectively for mandatory retirement and old-age security.

Article 180 of the new law compels the employer to provide on a bimonthly basis to the labor union representing the insured workers a detailed summary of the contributions made on their behalf. Article 181 of the same act establishes that the Administration of Retirement Funds also must inform each worker as to the balance in his account in accordance with the terms established by the National Commission for the Retirement Saving System. This article does not preclude a worker from making inquiries regarding his account at any time.

Contributions are to be viewed as tax obligations according to Article 287 of the new Social Security Act and Article 267 of its predecessor. Articles 304 and 305 of the new act address the penalties for non-payment of these contributions. Specifically, Article 304 states that:

[i]f by virtue of an act or omission by an employer or other required payer the tax obligations under Article 287 are not fulfilled, the employer or payer shall be liable to a fine of from 70 to 100 percent of the amount not duly paid. Any other act or omission that is detrimental to an employee or to the Institute shall be penalized with a fine of from 50 to 350 times the prevailing Federal District general minimum wage. The aforesaid penalties shall be levied by the Mexican Social Security Institute as prescribed in the pertinent regulations.<sup>126</sup>

Under Article 283 of the former law, the penalties were limited to between 3 and 350 times the amount of the general minimum wage in the Federal District. Article 284 of that same law states that any employer engaged in illegal conduct violating the Federal Tax Code will be punished according to the terms established in the Code. Article 305 of the new act is more direct,

asserting that, if the employer fails to pay the employer-employee payroll contributions for 12 months or longer, then it will be considered tax fraud and the employer will be liable to the penalties set forth in the Federal Tax Code.

#### **5.2.4 Law of the National Workers' Housing Fund Institute (INFONAVIT)**

Article 29 establishes the employer's obligations under the INFONAVIT Law. This article mandates the employer to pay contributions for each worker employed by the company.<sup>127</sup> Under the section entitled "Payment of Contributions to Receiving Entities: Integration and Calculation," the employer is required to "[d]etermine the size of the contributions of 5% of the salaries of the workers employed and make payments to the receiving entities, which act on behalf and by order of the Institute, to be credited in the subaccount for housing corresponding to the individual worker accounts. . . ."<sup>128</sup>

Per Article 30, employers who do not pay their contributions are subject to penalties by the Department of the Treasury and Public Credit and INFONAVIT. These two agencies, as well as the Mexican Social Security Institute and the local fiscal authorities, are entitled to ascertain the amount of missing employer contributions and employee deductions in the event of employer misconduct. For this purpose, they can order audits and inspections. The penalty is determined according to the terms set forth in the Federal Tax Code.

As stated in Article 34, the workers have the right to request information regarding the amount of contributions in their accounts. The employees can make this request to either the employer or INFONAVIT. In addition, Article 38 mandates that the retirement funds administrator must inform each worker about the status of his housing subaccount in accordance with the terms set out in the Retirement Saving Systems Law.

#### **5.2.5 Retirement Saving Systems Law**

On July 1, 1997, the Retirement Saving Systems Law went into force, co-regulating the New Pensions System. While the Social Security Act and the INFONAVIT Law mandate that violations are penalized by the Department of Treasury and Public Credit under the Federal Tax Code, the Retirement Saving Systems Law does not have this direct requirement. Under Article 92, the National Commission for the Retirement Saving System must report employers who do not fulfill their obligations to the Department of Treasury and Public Credit, the Mexican Social Security Institute, INFONAVIT, and the Department of General Accounting and Administrative Development. The proper agencies then can take action under their laws. Article 99 also allows the Commission to impose fines for noncompliance, and if there is a recurrence of the violation, the Commission must set the new penalty as an amount equal or up to double the amount of the first fine imposed. Refusal to pay the fine for a single offense within a set time will also be considered a second violation and penalized as such.

### 5.2.6 Federal Tax Code

Violations of the Social Security Act and INFONAVIT law are punishable under the Federal Tax Code. The employer's failure to pay social security contributions can be considered tax fraud. Article 2(II) of the Tax Code defines social security contributions as those "contributions established by law to be paid by persons designated in compliance with the obligations fixed by the social security law."<sup>129</sup> Article 108 states that "[t]he crime of tax fraud is committed by whosoever availing himself of a mistake or by means of tricks, fails to pay all or part of some contradiction, or obtains benefit unduly with loss to the federal treasury."<sup>130</sup> Article 109(II) establishes that failure to pay money withheld or collected for tax purposes to the fiscal authorities will be considered the same as tax fraud. The penalty for tax fraud is imprisonment from 3 months to 6 years if the amount defrauded is under 100,000 pesos, or, if it is greater, the prison sentence increases to 3 to 9 years.

### 5.3 Analysis

The submitters raise three issues regarding minimum employment standards. They charge that TAESA forced flight attendants to work overtime and then failed to pay the required compensation for such overtime, as well as for work performed on Sundays and holidays. They also assert that flight attendants were refused vacation leave. Additionally, it is alleged in the submission that TAESA did not pay its payroll taxes for social security, pensions, and housing as required by law. To support their allegations, the submitters presented oral testimony, copies of payroll receipts with corresponding work schedules, copies of financial attachment notices against TAESA, and press reports. However, no information was presented to support the charge regarding vacation leave.

At the public hearing conducted by the U.S. NAO, Mr. Barrientos told of a flight from Mexico City to Chicago in which he was forced to work overtime. On November 6, 1999, four hours into the flight, the plane on which he was working made an emergency landing in Guadalajara due to a pressurization problem.<sup>131</sup> Both crew and passengers spent hours aboard the aircraft while the part was fixed and then resumed their flight to Chicago. Mr. Barrientos recounted his orders upon arrival to their destination:

When I got to Chicago, I informed the crew, the chief, that we were very tired because we had been working for more than 14 hours and we needed to rest. And they told us well we knew we had to make the return flight to Mexico, since they didn't want to put anybody up in the States. So that they wouldn't have hotel and food expenses, they wouldn't put us up, so we had to make the return flight. We made the trip back to Mexico, getting there at about 10:00, so we were working for more than 24 hours.<sup>132</sup>

Mr. Centeno began his testimony by stating that, during his seven year employment as a flight attendant at TAESA, he had never received pay for overtime, Sundays, and holidays.<sup>133</sup> He spoke of two separate occasions in which he worked over the maximum monthly work allowance

mandated in the FLL:

One example of my own situation was the following. In August, 1993, I did five transatlantic flights and some domestic flights in Mexico, accumulating a total of 112 hours of flight, and more than 240 hours of work, largely exceeding what Mexican law establishes as 90 hours of flight and 180 hours of monthly work as a maximum. In December of 1995, I flew a total of 122 hours in high season, since the company didn't hire extra staff for high seasons, and, therefore, we were flying much too many hours.<sup>134</sup>

Mr. Centeno also explained his duties at TAESA upon being promoted in 1997:

I was to intimidate newly hired flight attendants so that they wouldn't complain about long working days or the fact that we weren't paid overtime. I had to intimidate them so that they wouldn't complain, so that there would be no reason for the company to be upset.<sup>135</sup>

The written statement of Mr. Alfredo Lebrac Robles Rodriguez was added to the record of the public hearing. Mr. Robles also affirmed that, during his seven and a half years at TAESA, he never received pay for overtime, Sundays, holidays, and night hours.<sup>136</sup> He presented a clear example regarding overtime:

On the 25th of April, 1996, a sequence of flights was initiated with the itinerary offered in Annex "1." As one can observe, we had a total of 121 flight hours in 18 days, when the law establishes a maximum of 90 hours of flight per month. This included on two occasions work days of more than 30 consecutive and uninterrupted hours, upon rising in the morning until returning to the hotel . . . and unexpected delays as in St. Martin on the 7th of May, where we waited around five hours because the company had not paid for airport services and fuel.<sup>137</sup>

As annexes to his statement, Mr. Robles provided a copy of his official itinerary and corresponding payroll receipts.<sup>138</sup> Noted twice on the itinerary are warnings that the work hours exceed the maximum amount allowable. It is apparent that Mr. Robles worked overtime during this period, but his receipts do not show that he was compensated for any such overtime. According to Ms. Barrales and Mr. Mendoza, TAESA workers have filed individual complaints regarding the payments which they are owed, and these cases are pending.<sup>139</sup>

In his testimony, Mr. Centeno also asserted that TAESA did not pay its tax contributions to the IMSS, INFONAVIT, and the retirement system. This was ascertained when housing loans were denied to workers even though their payroll receipts showed that the contributions had been taken out of their salaries.<sup>140</sup> Mr. Barrientos corroborated these facts:

If we ever went to the Finance Department to ask, for example, if we wanted to receive what we deserve for purchasing a house, for example, we would be told that, "Well, you need to go to the bank, the bank takes care of that." Or "You need to go to the secretary that deals with that." When we would go to that bank, they would sometimes laugh at us, say, "What do you mean? You don't have one peso. You don't have a right to anything here because your company has not made any payments." So, we'd go back to the company and they would say, "We are going to improve our company and we are going to make good on all the back payments." But they never

did anything. And that was the answer that we would get. <sup>141</sup>

Mr. Alvarez testified that the owner of TAESA was arrested for tax evasion because the company had not paid its social security contributions to the IMSS. <sup>142</sup> Press reports confirm that Captain Alberto Angel Abed Shekaiban was arrested on December 10, 1998, and was charged with tax fraud for failing to pay withholding taxes of 28 million pesos in 1996. <sup>143</sup> To support their claim, the submitters presented documents from the Public Register of Property and Business of the

**Table 1: Financial Attachments Against TAESA, 1994-1998**<sup>144</sup>

[Text Version](#)

Date	Amount (Pesos)	Responsible Agency	Reason Given
09/94	\$49,206,907.30	Department of Treasury and Public Credit	Taxes Owed
04/95	\$15,497,347.00	Department of Treasury and Public Credit	Taxes Owed
09/95	\$20,007,260.35	Department of Treasury and Public Credit	Taxes Owed
01/96	\$20,428,211.28	IMSS	Social Security Contributions
10/96	\$524,944.75	Department of Treasury and Public Credit	Payroll Taxes
10/96	\$25,029,720.00	Banco Union, S.A.	Amount Owed on Loans
01/97	\$26,741,025.72	IMSS	Social Security Contributions
06/97	\$500,986,282.05	Department of Treasury and Public Credit	Tax Owed
10/98	\$692,060.00	Department of Treasury and Public Credit	Provisional Payment of Taxes Valued on Aggregate Basis for Employer Categories
10/98	\$2,989,848.55	Department of Treasury and Public Credit	Omission of Tax Payment
10/98	\$2,234,977.60	Department of Treasury and Public Credit	Omission of Tax Payment

Government of the Federal District. <sup>145</sup> Between 1994 and 1998, TAESA assets were frozen eleven times for debts owed. Eight of these financial attachments were applied by the Department of Treasury and Public Credit and two by the IMSS. Table 1 chronicles the history of these financial attachments. It is evident that much of the debt owed is for social security and back taxes. The tax fraud case against Captain Abed is still pending.

After the airplane crash on November 9, 1999, the Secretariat of Communications and

Transportation (SCT) suspended operations at TAESA and ordered an overall inspection of the company, including its finances. Upon completing the inspection, the SCT set forty-three conditions which TAESA had to meet in order to resume operations.<sup>146</sup> In accordance with Article 9 of the Civil Aviation Law, the Mexican aviation authority also demanded that TAESA credit its account with sufficient financial capital to guarantee the viability of its operations.<sup>147</sup> Press reports indicate that the company needed an outside investment of US\$130 million.<sup>148</sup> Captain Abed was unable to find investors, reportedly leaving the company US\$380 million in debt with only US\$60 million in assets.<sup>149</sup> TAESA has been undergoing bankruptcy proceedings since February 2000.<sup>150</sup>

The witnesses provided convincing and credible testimony, presenting serious allegations concerning TAESA's history of non-payment of overtime or payroll tax contributions. It is the allegation of the submitters that the Mexican Government did not adequately monitor compliance of overtime regulations and mandatory payroll tax contributions nor investigate suspected violations at the company. In this regard, the U.S. NAO sought information from the Mexican NAO concerning the history of enforcement at TAESA, but, as of the date of this report, the Mexican NAO has been unable to provide the requested information. Without such information, no determination can be made about the effective enforcement of Mexican overtime laws. On the matter of mandatory payroll contributions, the provided information indicates that the Mexican Government enforced its laws by placing financial attachments against the company and indicting the owner. However, it is unclear if the Mexican authorities initiated these proceedings in a timely manner as called for in NAALC Article 3(1)(g). The U.S. NAO continues to seek further information from Mexico concerning the history of enforcement at TAESA regarding minimum employment standards.

## **6. Occupational Safety and Health**

### **6.1 NAALC Obligations**

The provisions of the NAALC that are relevant to the issues of minimum employment standards in this submission are Articles 1(b), 1(d), 1(f), 1(g), 2, 3(1)(b), 3(1)(c), 4(1), and 5(5). See Sections 4.1 and 5.1 of this report for descriptions of the abovementioned articles.

### **6.2 Mexican Law**

Occupational safety and health for flight crews are protected under the Mexican Constitution, as well as the Civil Aviation Law and its regulations.

#### **6.2.1 Mexican Constitution**

Article 123(XV) of the Mexican Constitution requires an employer to observe safety and health regulations at his company. This article also calls for the inclusion of sanctions in its laws for occupational safety and health violations.

## **6.2.2 Civil Aviation Law**

Under Article 6(V) of the Civil Aviation Law, the SCT is entrusted with the responsibility "[t]o issue and apply occupational safety and health measures and regulations which must be observed in air transport services, as well as to verify compliance."<sup>151</sup> Article 18 obligates the DGAC of the SCT to perform these aforementioned tasks in addition to airplane maintenance inspections; moreover, this article gives the DGAC authority to cancel air worthiness certificates. Article 7(IV) also specifies that it is also the duty the commander of the airport to verify compliance with safety and health regulations in air transport services. For this purpose, the commander has air compliance officers at his disposal.

As mandated in Article 6(IX), the SCT is obligated to promote the training of technical aeronautical personnel, who are identified in Article 38 as being the licensed flight crew and the ground personnel. Article 39 states that the employer must provide the crew with the necessary training so that services rendered are safe and efficient. Also under this article, training instructors must be registered with the SCT, which determines the appropriate certification guidelines for assuring safety aboard aircraft.

Article 79 states that the company must provide technical equipment and the necessary personnel for the prevention of accidents and incidents in the air. Accidents are defined as those events that cause death or serious injury to persons aboard the aircraft or cause structural damage to the plane. Accidents also include vanishing airplanes, as well as those that land in inaccessible places. An incident is as an event which affects or could affect the safety of flight operations but which does not become an accident.

The SCT has the authority to sanction companies who violate the Civil Aviation Law. According to Article 86(II)(g), companies with planes that do not have safety instruments and related auxiliary equipment will be fined between 500 and 5,000 of the minimum salaries. Article 86(V) states that, when, in a negligent manner, incidents and accidents are not reported to the SCT, a fine of 1000 to 8000 the minimum salaries will be sanctioned. Article 88(XI) calls for the pilot to be fined between 300 and 3,000 of the minimum salaries if he does not inform the SCT or the closest airport commander within 48 hours of any accidents or incidents. Article 89 states the following:

Any other violation of this law or its regulations not explicitly provided in this chapter, will be sanctioned by the Ministry with a fine of 200 to 5,000 days of minimum salary.

In case of relapse, the Ministry can impose a sanction equivalent up to double the outstanding amount.<sup>152</sup>

## **6.2.3 Regulations of the Civil Aviation Law**

According to Article 84, all airlines must establish and maintain a training program authorized by the SCT. The flight crew must have annual training for emergency situations, encompassing their specific duties, the handling of emergency equipment, and the effects of a lack of oxygen due to depressurization. Article 93 mandates that the training take place in a SCT-authorized training center. Finally, Article 103(III) asserts that the company is responsible to the SCT for having its flight attendants know the regulations and procedures applicable to their duties.

Article 113 commands the flight crew to be in their seats during takeoff, landing, and during other circumstances when necessary. The crew also must assure that all passengers are seated with their seatbelts fastened. Article 115 states that the pilot is not to initiate a flight when technical circumstances put the safety of the flight in peril, and Article 109 requires the company to notify the SCT within 24 hours following any equipment or service deficiency during flight operations.

### 6.3 ICAO Standards

Annex 6 to the Convention on International Civil Aviation provides member countries with international standards and recommended practices regarding the operation of aircraft.<sup>153</sup> After a standard is adopted, it is put into effect by each ICAO member state in its own territories. Chapter 12 of this annex lists five standards specific to the cabin crew. Section 12.1 states that the operator of the aircraft, to its government's satisfaction, must establish the necessary duties of the cabin crew to be performed in an emergency for each type of airplane. According to Section 12.2, each flight attendant assigned to emergency evacuation duty must occupy a seat as specified in Section 6.16 of this annex.<sup>154</sup> Regarding the protection of the cabin crew during flight, "each cabin crew member shall be seated with seat belt or, when provided, safety harness fastened during take-off and landing and whenever the pilot-in-command so directs."<sup>155</sup> The ICAO standard for flight attendant training is found in Section 12.4 of Annex 6, which states the following:

An operator shall establish and maintain a training programme, approved by the State of the operator, to be completed by all persons before being assigned as a cabin crew member. Cabin crew shall complete a recurrent training programme annually. These training programmes shall ensure that each person is:

- a) competent to execute those safety duties and functions which the cabin crew member is assigned to perform in the event of an emergency or in a situation requiring emergency evacuation;
- b) drilled and capable in the use of emergency and life-saving equipment required to be carried, such as life jackets, life rafts, evacuation slides, emergency exits, portable fire extinguishers, oxygen equipment and first-aid kits;
- c) when serving on aeroplanes operated above 3,000 m (10 000 ft), knowledgeable as regards the effect of lack of oxygen and, in the case of pressurized aeroplanes, as regards physiological phenomena accompanying a loss of pressurization;
- d) aware of other crew members' assignments and functions in the event of an emergency so far as is necessary for the fulfillment of the cabin crew member's own duties; [and]

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- f) knowledgeable about human performance as related to passenger cabin safety duties including flight crew-cabin crew co-ordination.<sup>156</sup>

In addition, Section 12.5 calls for each member country to establish regulations concerning flight time, flight duty periods, and rest periods for the cabin crew.

Other standards set forth in Annex 6 also are relevant to the instant submission. Section 6.2.2 states that airplanes must be equipped with accessible and adequate medical supplies, and it is recommended that these supplies include one or more first-aid kits and a medical kit for doctors in aircraft authorized to carry more than 250 passengers. The airplane also must be outfitted with portable fire extinguishers and a seat, complete with seatbelt, for each person over the minimum age set by the country of the operator. Furthermore, Section 8.1.1 states that the operator of the aircraft must ensure that the airplane's certificate of airworthiness is valid and that the airplane is maintained in an airworthy condition, in accordance with its government's regulations. The operator also must assure that the airplane's operational and emergency equipment is serviceable.

## 6.4 Analysis

Two occupational safety and health issues were raised in this submission: (1) non-compliance with required training for flight attendants and (2) safety hazards aboard TAESA aircraft. In support of their allegations, the submitters provided testimonial statements, maintenance reports filed by flight attendants to TAESA management, and an ASSA report to the International Transport Workers Federation detailing the safety and health problems and training deficiencies at TAESA.

### 6.4.1 Flight Attendant Training

Under Mexican civil aviation regulations, airlines are required to provide training to their flight attendants. In her testimony, Ms. Barrales spoke of these requirements in relation to the situation at TAESA:

The airline regulations in Mexico stipulate that flight attendants must be trained, certain areas specified of importance for us to know, tests that we have to pass, so that we can guarantee security on board an aircraft. These areas are areas where TAESA flight attendants weren't trained. We constantly complained about this. They were hired, they were given a license which credited them as flight attendants as if they had received this training, and they were immediately put on the plane.

We, our colleagues, gave us all this information. And we proved that they were flying in planes that they didn't even know on many occasions how the doors operated, or internal changes in the equipment. For those of us that are involved in this activity, that's a dangerous risk. We need to know the changes in the equipment and all of this. The airlines, the Mexican airlines have the obligation to train attendants in these aspects, and this was never the case with TAESA.<sup>157</sup>

In the ASSA report to the Civil Aviation Section Committee of the International Transport Workers Federation,<sup>158</sup> ASSA states, however, that TAESA is registered as a training center by the DGAC, giving initial and periodic training for its flight attendants. The report states that initial training at the company lasts three weeks to a month and covers three modules. In the first phase, training is provided in a classroom environment, where the students learn such subjects as Mexican and foreign regulations, the rights and duties of flight attendants, safety procedures, and emergency equipment. The second module solely consists of first aid training, which is taught by TAESA's medical department. The last training module covers aircraft and emergency equipment demonstrations.

The aforementioned report asserts that the third module is insufficient for the proper training of flight attendants, as it does not incorporate the practical simulations of emergencies recommended in ICAO's Cabin Attendant Safety Training Manual.<sup>159</sup> According to the report, TAESA did not provide simulated training on emergency evacuations of a full passenger

airplane with fire and smoke in the cabin; nor were the flight attendants allowed to practice with the different types of fire extinguishers found aboard the aircraft. The report also states that the training failed to include ditching simulations, escape chute launchings and slidings, and how to properly use a life raft.

At the public hearing, Mr. Alvarez compared the training he received at TAESA with that which he had undergone while working at Aeromexico:

The first aid and emergency classes in almost all of the companies, as I said, I worked for seven years at Aeromexico, and we had two weeks to a month of this kind of training . . . And in TAESA we only received two days of training per year. Two days to train people that have never been flight attendants? That's inconceivable.

We flew seven different types of airplanes with different needs, how to open the doors, or where the security and safety system are, oxygen systems. So, if it was difficult for me to be in all of these, you can imagine how difficult it was for all the rest of the flight attendants.<sup>160</sup>

With his level of experience, Mr. Alvarez wanted to become a training instructor, but the manager of the flight attendants at TAESA denied his request. However, according to Mr. Alvarez, the person in charge of the administration of the flight attendants, who had flown only twice, was given an instructor's license.<sup>161</sup>

The submitters assert that Mexico failed to enforce its laws regarding the training of flight attendants and is therefore in violation of the NAALC. Article 84 of the Regulations of the Civil Aviation Law states that the airline must establish and maintain a training program authorized by the SCT. In her testimony, Ms. Barrales claimed that TAESA flight attendants were issued licenses without training. This conflicts with the information ASSA provided in its report to the International Transport Workers Federation. In that report, ASSA stated that "it is known that the company gives initial and periodical training for its flight attendants [and is] actually registered as a Training Center at DGAC."<sup>162</sup>

Article 84 also states that the flight crew must have annual training for emergency situations and that this training must include their specific duties, the handling of emergency equipment, and the effects of depressurization. This is in accordance with ICAO standards. ASSA's report to the International Transport Workers Federation did address deficiencies it found with respect to Article 84 in TAESA's training module covering aircraft and emergency equipment visualization. The testimony presented at the hearing on this matter also is convincing.

The Mexican NAO presented information to the U.S. NAO, providing the relevant law and regulations covering flight attendant training but did not provide information on the standards set by the SCT for such training. Moreover, the U.S. NAO has received no information with respect to the SCT's monitoring of training programs at TAESA.

## 6.4.2 Flight Safety

During the public hearing, the flight attendants presented an alarming image of the safety hazards aboard TAESA aircraft, declaring that TAESA airplanes were in no condition to fly due to poor maintenance. In support of his declaration, Mr. Barrientos gave the example of TAESA Flight 678 from Mexico City to Chicago, previously mentioned in Section 5.3 regarding minimum employment standards:

When we were in Mexico, the captain informed the Maintenance Department that there was a problem with the pressure on the aircraft. The technical personnel took the captain a part that was presumably the cause of the problem, telling him that they were going to change it. They brought him a new part and said it was going to be installed.

We took off from Mexico [City]; we landed in Morelia, and when we got to Morelia, the captain checked the pressurization problem again; they told him they were going to fix it. Taking off from Morelia for Chicago, 10 minutes later the captain called me into the cabin to tell me we were going to have to land in Guadalajara because the plane couldn't go on to Chicago because we still had the pressurization problem we had in Mexico [City].

Landing in Guadalajara, the captain called the mechanic and told him we had a pressurization problem. So they went down to check the area where presumably the problem was, and he saw that the part that presumably had been changed in Mexico [City] was the same one. He'd been deceived; they hadn't changed it.<sup>163</sup>

Mr. Alvarez also recounted a terrifying experience while on duty on TAESA Flight 8312 from Tapachula to Mexico City on September 15, 1998:

Thirty minutes after take off, the plane lost pressure, and the masks fell. I took the closest one, covered my mouth, but there was no oxygen. I took a portable bottle after I stood up, and I put it on. And what I had been taught at Aeromexico was to go and see how the pilots were doing and make sure that they had their oxygen masks on as well. They did have their masks on, but two minutes later there was no oxygen for them either.

I took off my bottle, and I gave it to the pilot. And the pilot declared an emergency. His name is Captain Balter, and we returned to Tapachula. In Tapachula, I checked the flight attendants cabin, and I found that 52 oxygen masks had not come out of their compartments. You can imagine, 52 passengers without oxygen in the air. What would have happened if I had not gone to check how the pilots were doing? They could have suffocated. What would have happened?

When I arrived in Mexico [City], I made my report at the Flight Attendant's Agency... And in that report, I informed what took place and what masks did not come out of their compartments. This report was never answered by the management of the flight attendants. I looked into the matter with the mechanics, and they said that the ducts, the oxygen ducts or tubes were plugged. They had dust, and they had other things blocking them. In fact, some of the masks did not have the elastic band on them.<sup>164</sup>

According to the flight attendants, numerous such incidents happened at TAESA, and they often feared a plane would crash. The flight attendants said that such an accident occurred on November 9, 1999, with five crew members and thirteen passengers losing their lives. Mr. Barrientos recounted the safety hazards aboard the ill-fated aircraft:

But many of us felt that that accident, if the aircraft had had the minimum maintenance, that accident could have been avoided because that aircraft was in terrible, terrible condition. That plane was the X8TKN. I know it was in awful condition. It was like the second-hand truck. It shouldn't have been allowed to fly at all.

For example, in the passenger cabin, the flight attendants' seat in the main station should be retractable so that if there is an accident, it can be -- you can get out quickly. This wasn't retractable, it would fall down. If we sat down,

the seat would fall. We had to sort of hang on so that the seat wouldn't fall.

The main door didn't close, so there was always a leak, a pressure leak on all flights. The smoke detectors in the bathrooms, since the ones that came with the plane were no longer any good, they bought some in the supermarket. Home models and they put them in the bathrooms. But since they wouldn't buy any batteries for them, the batteries would wear out and then they didn't work, they wouldn't work.

Lights in the cabin . . . didn't work. So, as far as the accident is concerned, had they been able to land, there would have been the likelihood that the lights wouldn't have gone on, they wouldn't have been able to find the exit. The microphone from the pilots to us didn't work. So, if they called us they couldn't reach us.<sup>165</sup>

As part of their duties, the TAESA flight attendants were required to inspect the cabin area for every flight and to report any deficiencies. The flight attendants provided the U.S. NAO with copies of their cabin maintenance reports for twenty-three TAESA aircraft, covering 1993 to 1997. These reports repeatedly detail problems with the emergency equipment aboard the airplanes. The flight attendants noted inoperative emergency tracking lights, an inadequate number of life jackets, and depleted first aid kits. Problems were also reported with the escape chutes, fire extinguishers, oxygen masks, and portable oxygen bottles. Faulty seats and seat belts were documented as well. In addition, the flight attendants consistently reported the bathrooms to be unclean and odorous and also indicated that toilets would not flush.

The flight attendants documented similar safety hazards on at least sixteen other TAESA aircraft, and these findings were presented in ASSA's report to the International Transport Workers Federation.<sup>166</sup> Of the six McDonnell Douglas DC-9 airplanes presented in the report, all had inoperative microphones, intercoms, and call buttons between the flight attendants and the pilots. The evacuation alarm on the main doors of these planes was noted to be inoperative, and the exit signs were not lighted and would fall off during take off and landings. In addition, the flight attendants reported broken overhead baggage compartment locks, seats that would not lock in their upright position, and seatbelts that would not fasten. Also described were inoperative oxygen masks, the lack of freon gas extinguishers, and emergency exits that were blocked by an extra row of seats.

The report also documented safety and health hazards aboard Boeing 727 and 737 series airplanes. The flight attendants reported damaged intercom systems, inoperative emergency tracking lights, and cracked windows. Food supplies were stowed inside specially designated emergency equipment compartments. A main door on one 727 would open during taxi, take off, and landing. There were also reports of pressure leaks, some caused by gaps between the frames and doors of the aircrafts.

In her testimony, Ms. Barrales stated that ASSA had presented such evidence to the aviation authorities regarding the safety hazards on TAESA airplanes and that the DGAC told ASSA it would work to resolve the problems.<sup>167</sup> Ms. Barrales did acknowledge that some inspections were made but insisted that no action really was taken as a consequence of ASSA's complaints.<sup>168</sup> Indeed, Mr. Centeno stated the following when asked about government inspections:

At least the department that I was in, we always knew ahead of time that certain authorities were going to come and inspect certain aircraft. So the company was always prepared so that there wouldn't be any kind of violation visible to these authorities. But they knew ahead of time when these inspections were going to take place, these visits on the part of the authorities.<sup>169</sup>

After the crash on November 9, 1999, the Mexican Government suspended the airline while it conducted an comprehensive investigation, reviewing the company's policies, procedures, maintenance, training and operations. A complete inspection of the TAESA fleet was carried out. In its press release concerning the findings of the investigation, the SCT first noted that:

the aviation authority applied, in a permanent and systematic manner, its Annual Inspection Program to all the national airlines. This Program includes the review of documentation, reports, and controls of the companies in order to evaluate the state of airworthiness of the air fleet, as well as physical inspections of the airplanes and

inspection of flights in route.<sup>170</sup>

Then, the SCT reported that, in its special inspection of TAESA, it detected important problems in the areas of maintenance, operation, training, and administration. The investigators made sixty-nine observations, emphasizing deficiencies in the organizational structure, a lack of updated manuals, and insufficient financial, human, and material resources.<sup>171</sup> As reported in the SCT press release, "the defects found did not affect flight safety on their own. However, there was the possibility that when combined, they could put flight operation at risk."<sup>172</sup> Accordingly, the DGAC set forty-three conditions with which TAESA had to comply before it would authorize the re-initiation of operations. For example, the inspectors observed six planes that required excessive maintenance, and, due to the age of these planes and the difficulty of acquiring the necessary parts, the DGAC mandated that these planes be retired.<sup>173</sup> Press reports indicate that TAESA has complied with the maintenance and operation requirements,<sup>174</sup> but the airline has been unable to find the financial capital necessary to guarantee the viability of its operations. TAESA has filed for bankruptcy, and its aviation license has expired.

The submitters presented convincing and credible information concerning occupational safety and health aboard TAESA aircraft. The testimony of the flight attendants describes a workplace fraught with safety hazards. Article 79 of the Civil Aviation Law states that the company must provide technical equipment for the prevention of accidents and incidents in the air. According to the flight attendants, such equipment was inoperative aboard the airplanes. Their testimony is corroborated by the maintenance reports that they filed with TAESA.

The witnesses at the public hearing acknowledged that the Mexican aviation authority had completed inspections of TAESA airplanes, as was indicated in the SCT's press release. The U.S. NAO requested from the Mexican NAO the history of inspection enforcement at TAESA, but no information was provided. Given the numerous safety and health deficiencies noted in the flight attendants' maintenance reports and the lack of forthcoming information from the Mexican Government, it is unclear the extent to which Mexican safety and health laws were enforced effectively with respect to TAESA. However, the U.S. NAO recognizes that, in the aftermath of the November 9th crash, the SCT did undertake a comprehensive inspection of TAESA and set the forty-three conditions with which the airline had to comply before it could resume operations.

## **7. Findings**

Mexico's Constitution and Federal Labor Law provide for the protection of freedom of association and the right of workers to join unions of their choice free from intimidation or interference. Procedures exist to challenge existing labor contracts, including the right to petition administrative and judicial bodies for review of such challenges. Mexican law also recognizes the right to form craft unions and to bargain on behalf of such crafts within a work place. The fact that ASSA represents flight attendants at other airlines in Mexico suggests that flight attendants can be an appropriate and distinct craft for representation within the Mexican airline industry.

However, the CAB, up to this point, has ruled that ASSA cannot gain title to the existing labor contract at TAESA because it would require fragmentation of an existing contract. In addition, the CAB has ruled that ASSA, as a craft union, is not eligible to represent all employees. ASSA has consistently maintained throughout these proceedings that it only seeks to represent the flight attendants. The primary issue raised by this submission is, considering the legal precedent adopted by the CAB, whether a craft union has any legal opportunity to seek representation of workers at a firm in the face of an existing company-wide agreement.

The CAB decisions in this case appear to be within Mexican legal precedent. This precedent does not permit the fragmentation of an existing contract, thus limiting a craft union's ability to represent potential members. It has been suggested that, under the circumstances presented here, a craft union could petition for representation under a separate and new collective bargaining agreement, rather than taking action related to an existing collective labor contract. Nevertheless, it remains unclear how the FLL provisions recognizing craft unions can be implemented in a case where a company-wide union exists. Moreover, this issue is even more significant given the historical practice in Mexico of collective bargaining agreements being signed with employers at the inception of the company and routinely renewed.

While the U.S. NAO does not find that the CAB or the courts have failed to enforce Mexican law in this case, either by directly refusing to apply the law or by using technical legal procedures to frustrate the true nature of the ASSA request, further information would be helpful in determining how the precedent applied in this case is consistent with the FLL provisions recognizing craft union rights and how Mexican law provides for a craft union to seek representation of workers in its craft where a company-wide collective labor agreement already exists.

With regard to NAALC obligations concerning access to fair, equitable, and transparent proceedings in this case, the CAB failed to hold a hearing before making its original ruling and then neglected to do so again after such a hearing was mandated by the Court. However, following a subsequent court ruling instructing it to do so, the CAB held hearings and provided ASSA the opportunity to present evidence. Additionally, in each instance, the CAB and the appellate courts provided reasoned legal opinions in support of their decisions. Further, ASSA was able to seek review by appellate courts of four CAB rulings, and, in three of those cases, received favorable decisions vacating the CAB decisions. Thus, it does not appear that Mexico failed to meet its obligations under Article 5(1) to assure that its tribunals are fair, equitable and transparent. Similarly, although the proceedings in this case have been lengthy, they are not unduly so in view of the complex legal issues involved.

The U.S. NAO finds that there is substantial evidence to question whether the representation election process conducted at TAESA was in conformity with Mexico's labor law and its obligations under the NAALC. Clearly a representation election where workers must declare their choice in the open and in front of hostile management and opposing union personnel, where workers are subject to intimidation and threats prior to and during the election, and where eligible voters are denied access to the voting area, is not likely to have an outcome of free choice.

In view of the information regarding the atmosphere at the election, as well as similar information in other cases reviewed by the NAO, it is not clear how Mexican labor authorities are able to assure the integrity of the election process. Consultations at the ministerial level would contribute to a better understanding as to how Mexican law ensures the integrity of the union election process so that workers are able to freely choose their bargaining representatives, including the authority and responsibility under Mexican law of CAB officials present during a representation election and in proceedings concerning challenges to the conduct of an election. These questions include how Mexico assures that CABs are impartial and independent and do

not have a substantial interest in the outcome of a matter, in view of situations where CAB members ruling in a case are representatives of competing unions or employers.

The dismissal of workers who supported ASSA is an additional element of concern. Many of these workers have filed complaints alleging improper dismissal. Their cases are pending, and the U.S. NAO is not aware of final decisions in any of the cases. However, the timing of the dismissals, the particular workers dismissed, and the lack of notification of the basis for the dismissals have the appearance of being related to the workers' union representation votes. Therefore, it would be appropriate to further consult in order to clarify the procedures under Mexican law that must be followed in the application of the exclusion clause.

The U.S. NAO finds substantial support to conclude that Mexico has undertaken efforts to enforce its laws concerning payroll tax contributions. Although the TAESA employees provided information of the TAESA's failure to meet its obligations under the law, the U.S. NAO's review found that significant legal action has been taken against the company, including placing financial attachments against the company and indictments against management. The government is also involved in bankruptcy proceedings in which appropriate payments are being sought. ASSA also indicated that complaints have been filed on behalf of the workers in this regard and that a successful outcome is anticipated. The U.S. NAO will continue to seek updated information from Mexico on this matter.

The U.S. NAO's review included substantial inquiry into the overtime and occupational safety and health issues raised by the submitters. The submitters provided credible information of disturbing neglect by the company in these areas. Since the focus of this review by the U.S. NAO is on government enforcement efforts, the U.S. NAO sought information from the Government of Mexico on the enforcement history regarding compliance with regulations governing overtime, training requirements, and safety and health aboard aircraft at TAESA. Article 16(2) of the NAALC obligates Parties to provide information requested by an NAO of another Party. However, Mexico has not fully responded to the U.S. NAO request for this information. The U.S. NAO will continue to seek the relevant information from the Mexican Government.

## **8. Recommendation**

Accordingly, the U.S. NAO recommends ministerial consultations regarding NAO Submission 9901 pursuant to Article 22 of the NAALC.

Lewis Karesh  
Acting Secretary  
U.S. National Administrative Office

July 7, 2000

## End Notes

1. 59 Fed. Reg. 16660-16662 (1994).
2. *Asociación Sindical de Sobrecargos de Aviación de México*
3. *Transportes Aéreos Ejecutivos, S.A. de C.V.*
4. 65 Fed. Reg. 2193-2194 (2000).
5. *Constitución Política de los Estados Unidos Mexicanos*
6. *Ley Federal de Trabajo*
7. *Union Nacional de Trabajadores*
8. *Confederación de Trabajadores Mexicanos*
9. *Sindicato Nacional de Trabajadores y Empleados del Transporte Aéreo de la República Mexicana*
10. *Partido Institucional Revolucionario*
11. *Junta Federal de Conciliación y Arbitraje*. Special Board No. 2 is the federal CAB for the airline industry.
12. An *amparo* is the legal instrument by which a person or legal entity seeks the protection of the courts against violations of constitutional protections by government authorities or their agents.
13. *Sindicato de Trabajadores de la Industria Aeronáutica, Similares y Conexos de la República Mexicana*
14. ASSA Petition for Direct *Amparo* (Mexico: File DT.-13439/99, Ninth Professional Tribunal of the Court for Labor Matters of the First Circuit, 12 Sept 1999), Antecedents, Section 17, p. 20. This petition contains excerpts of the CAB and court decisions made previously in this case. A copy of the petition is on file at the U.S. NAO. *See also* letter dated October 7, 1999, from Mexican Labor Subsecretary Javier Moctezuma Barragan to Andrew J. Samet, Deputy Under Secretary for International Labor Affairs, U.S. Department of Labor. This letter is on file at the U.S. NAO.
15. "SCT Emite Dictamen Final de Verificación Y Establece Las Condiciones Que TAESA Debe Cumplir Para Reiniciar Operaciones." Mexican Ministry of Communications and Transport (SCT) Press Release 329/1 (22 Dec 1999). Available: <http://www.sct.gob.mx/boletines/archivos/Bol-329.html> [16 Feb 2000]. Hereinafter, this will be referred to as SCT Press Release 329/1.
16. SCT Press Release 329/1.
17. Case, Brendan M. "Mexico's 3rd-Largest Airline Out of Business." *The Dallas Morning News* (22 Feb 2000).
18. *Ley de Aviación Civil*
19. These documents are on file with the U.S. NAO.

20. Copies are on file with the U.S. NAO.
21. These documents are on file with the U.S. NAO
22. A copy is on file at the U.S. NAO.
23. A copy is on file at the U.S. NAO.
24. These documents are on file with the U.S. NAO
25. A transcript of the hearing is on file at the U.S. NAO.
26. 65 Fed. Reg. 9299-9300 (2000).
27. These letters are on file at the U.S. NAO.
28. The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations.
29. The letter is on file at the U.S. NAO.
30. The U.S. NAO contracted with the National Law Center for Inter-American Free Trade (NCLIFT) to analyze the determinations, opinions, and decisions reached by the CAB and the relevant courts in the case. *See* Legal Memorandum on Submission 9901, (Tucson: National Law Center for Inter-American Free Trade, June 2000). Hereinafter the NCLIFT Legal Memorandum.
31. *Political Constitution of the United Mexican States*, Article 19.
32. Buen Lozano, Dr. Néstor de and Lic. Carlos E. Buen Unna. *A Primer on Mexican Labor Law* (Washington: U.S. Department of Labor, Bureau of International Labor Affairs, 1991), p. 43. An English translation of Article 123 of the Mexican Constitution is provided in this text on pp. 41-48.
33. *Ibid.*, p. 43.
34. *Federal Labor Law*, (Ormond Beach, FL: Foreign Tax Publishers, Inc., trans., 1995) Article 357. This English translation of the FLL will be used throughout this report with exceptions to be noted.
35. *Ibid.*, Article 358.
36. *Review of Public Communication CAN 98-1 (Part I)* (Ottawa: Human Resources Development Canada, Office for Inter-American Labour Cooperation), p. 18. English translation of FLL Article 133, Paragraphs IV, V, and VII.
37. Breña Garduño, Francisco, *Mexican Labor Law Summary* (Mexico City: Breña y Asociados, S.C., 1998-1999) p. 155. English translation of FLL Article 360, Paragraphs I and II.
38. 1997 WL 686905 (West). English translation of FLL Article 388, Paragraph III.
39. Cause for dismissal ranges from falsification of documents to committing immoral acts to absences on more than three occasions in a month without the employer's permission.
40. *Federal Labor Law*, Article 244, Paragraphs 1, II, III, IV, V, VI, VII, and VIII.

41. *Ibid.*, Article 395.
42. This information was provided by the Mexican NAO in a letter dated February 3, 1995. This letter is on file at the U.S. NAO.
43. *Federal Labor Law*, Article 371, Paragraph VII.
44. *Seminar on Union Registration and Certification Procedures* (San Antonio, TX: U.S. Department of Labor, Bureau of International Labor Affairs, 8 Nov 1995), p. 47.
45. *Federal Labor Law*, Article 873.
46. *Ibid.*, Article 931.
47. *Ibid.*, Article 685.
48. *Ibid.*, Article 671, Paragraph IX.
49. The *ILO Declaration on Fundamental Principles and Rights at Work* provides that all members, even if they have not ratified the Conventions in question, have an obligation to promote the principles concerning fundamental rights, including freedom of association and the right to collective bargaining. This declaration was adopted by the 86th Session of the International Labour Conference in June 1998.
50. International Labour Conference, 81st Session, Report III (Part 4B), *Freedom of Association and Collective Bargaining* (Geneva: International Labour Office, 1994), par. 231-232.
51. *Ibid.*, pp. 44-45.
52. *Ibid.*, p. 45.
53. *Ibid.*, par. 102
54. *Ibid.*
55. *Ibid.*, par. 91.
56. NLCIFT Legal Memorandum.
57. *Departamento de Análisis y Registro de Contratos Colectivos y Reglamentos Interiores de Trabajo*
58. Transcript of Public Hearing on Submission No. 9901, p. 15. Mexican witnesses presented their testimony in Spanish. Interpreters from the U.S. Department of State provided simultaneous translation, and their English translation is used throughout the transcript.
59. *Association of Flight Attendants of Mexico v. Executive Air Transport and the National Union of Air Transport Workers and Employees* (Mexico: File IV-392/97, Special Federal Conciliation and Arbitration Board No. 2 Resolution, 24 Sept 1997), p. 1.
60. *Ibid.*, p. 2. (Emphasis in original) For English translation provided by the U.S. Department of State, see ASSA brief for *Association of Flight Attendants of Mexico v. Executive Air Transport and the National Union of Air Transport Workers and Employees* (Mexico: File IV-392/97, Special Federal Conciliation and Arbitration Board No.

2, 23 April 1999) Appendix 2, p. 13. Attached to this brief are appendices which contain excerpts of the CAB and court decisions made previously in this case. A copy of the brief is on file at the U.S. NAO. Hereinafter, this brief will be cited as *ASSA v. TAESA* brief.

61. *C. Juez Primero de Distrito en Materia Laboral del Primer Circuito de Amparo*

62. *Amparo 1340/97: Association of Flight Attendants of Mexico* (Mexico Of. 359: File IV-392/97, Special Federal Conciliation Board No. 2, 17 Dec 1999). For English translation, see *ASSA v. TAESA* Brief, Appendix 4, p. 18.

63. *Association of Flight Attendants of Mexico v. Executive Air Transport and the National Union of Air Transport Workers and Employees* (Mexico: File IV-392/97, Special Federal Conciliation and Arbitration Board No. 2 Decision, 1 Oct 1998).

64. *Noveno Tribunal Colegiado de Circuito en Materia Laboral del Primer Circuito*

65. *ASSA v. TAESA* Brief, Appendix 6, pp. 27-28.

66. *Ibid.*, p. 25. The Court found that the CAB decision “deprive the complainant of the opportunity to demonstrate with the evidence of a recount its greater right to obtain title to the Collective Labor Contract with respect to Flight Attendants.” The decision is ambiguous as to whether the Court is indicating that it is appropriate to have a recount of just the flight attendants or whether *ASSA* would have to show that a majority of all workers support it. This, of course, is the key issue in *ASSA*’s litigation.

67. *Association of Flight Attendants of Mexico v. Executive Air Transport and the National Union of Air Transport Workers and Employees* (Mexico: File IV-392/97, Special Federal Conciliation and Arbitration Board No. 2 Decision, 12 March 1999): 2. For English translation, see *ASSA v. TAESA* Brief, Appendix 8, p. 30.

68. *ASSA* Petition for Direct *Amparo*, Antecedents, Section 17, p. 20. See also letter dated October 7, 1999, from Mexican Under Secretary of Labor Javier Moctezuma Barragan to Andrew J. Samet, Deputy Under Secretary for International Affairs, U.S. Department of Labor.

69. Transcript of Public Hearing on Submission No. 9901, pp. 104-105.

70. *ASSA* Petition for Direct *Amparo*, Antecedents, Section 20, pp. 41-42.

71. *Ibid.*, Section 20, pp. 38-39.

72. *Ibid.*, Section 19, p. 26. The U.S. NAO does not have an official copy of the decision and relied on the submitters extract. The CAB did accept as evidence two items submitted by *ASSA*, but the U.S. NAO is unaware of what these documents entailed or proved.

73. *Ibid.*, Section 19, p. 26.

74. *Juez Segundo de Distrito en Materia de Trabajo en el Distrito Federal*

75. *ASSA* Petition for Direct *Amparo*, Section 18, p. 22.

76. *Ibid.*, Section 18, pp. 24-25.

77. *Ibid.*, Section 20, p. 34.

78. Ibid., Section 20, p. 31.
79. Ibid., Section 20, p. 32.
80. Ibid., Section 20, pp. 35-36.
81. Ibid., Section 20, pp.31-32.
82. Ibid., Section 20, p. 41.
83. Ibid., Concepts of Violation, pp. 44-45.
84. *Direct Amparo DT-13439/99* (Mexico: Ninth Professional Tribunal of the Court for Labor Matters of the First Circuit, 9 Feb 2000), pp. 102-103. A copy of this court decision is on file at the U.S. NAO.
85. NLCIFT Legal Memorandum.
86. Ibid., pp. 2 and 6.
87. Ibid., p. 2.
88. Ibid., pp. 7 - 8.
89. Ibid., p. 18.
90. Transcript of Public Hearing on Submission No. 9901, p. 60.
91. Ibid., p. 86-88.
92. Ibid., p. 95.
93. Ibid., p. 74-75.
94. Ibid., p. 97.
95. Ibid., p. 61-62.
96. Ibid., p. 61.
97. Ibid., p. 95.
98. Ibid., p. 25-26.
99. Ibid., p. 93.
100. Considerable testimony was provided in the review of U.S. NAO Submission Nos. 9702 and 9703 regarding union representation elections at which threats were made to workers supporting the challenging union. In *Public Report of Review of NAO Submission No. 9702*, the submitters asserted that Han Young threatened to fire all of the challenging union's supporters if it won the representation election. In *Public Report of Review of NAO Submission No. 9703*, workers testified that they were intimidated by hired thugs, who carried thick sticks and pipes and

verbally threatened the workers. They also reported that the company set out loudspeakers with extremely loud music so that it was impossible to hear. Inside the room where the balloting took place, only three representatives of the challenging union were permitted, whereas thugs were allowed to form a gauntlet through which each voter had to walk before openly stating their vote. When the representatives of the challenging union asked the CAB officials to suspend the elections due to the violent circumstances, the authorities continued to carry out the process.

101. *Review of Public Communication CAN 98-1 (Part I)*, p. 35. This Canadian report addresses freedom of association issues at the ITAPSA plant, as does the *Public Report of Review of NAO Submission No. 9703*.

102. This information was provided in a letter from the Mexican NAO dated February 3, 1995. The letter was in response to the U.S. NAO review of Submission No. 940003 and is on file at the U.S. NAO.

103. *Ibid.*

104. Ministerial Consultations Agreement on Public Submissions US 9702 and US 9703, (DC: U.S. Department of Labor and Mexican Department of Labor and Social Welfare, 18 May 2000).

105. *Proposals to Improve Employer-Employee Relations in Labor Law*. Department of Labor and Social Welfare. Available: <http://www.stps.gob.mx> [6 July 2000].

106. *Federal Labor Law*, Article 593.

107. In its letter dated March 20, 1999, the U.S. NAO requested from the Mexican NAO the names of the members of Federal CAB No. 2 and their affiliation. The Mexican NAO did not provide this information, only stating the relevant Mexican law in its letter dated April 25, 2000.

108. *Review of Public Communication CAN 98-1 (Part I)*, p. 35.

109. In a letter dated December 20, 1999, the U.S. NAO asked the Mexican NAO to provide the names of those dismissed and to explain the reason for their dismissal, as well as indicating which union they voted for in the election. The Mexican NAO responded by letter on April 28, 2000, stating that the information had been requested from the CAB.

110. Transcript of Public Hearing on Submission No. 9901, p. 106.

111. *Ibid.*, p. 106-107.

112. *Ibid.*, p. 41. However, in a letter dated October 7, 1999, Mexican Under Secretary of Labor Javier Moctezuma Barragan reported that only 33 individual suits had been filed against TAESA at that time. He stated that the majority of these suits were asking for reinstatement, salary in arrears, and payment of benefits owed, i.e. contributions to the Mexican pension system. In a letter dated December 20, 1999, the U.S. NAO asked the Mexican NAO to determine if more wrongful dismissal cases had been filed and to provide copies of relevant documents and the status of these cases. The Mexican NAO responded by letter on April 28, 2000, stating that the information had been requested from the CAB.

113. *Ibid.*, p. 108-109.

114. *Ibid.*, p. 108.

115. *Ibid.*, p. 42-43.

116. *Ibid.*, p. 109.
117. *Ley del Seguro Social*
118. *Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores*
119. *Ley de los Sistemas de Ahorro para el Retiro*
120. *Código Fiscal de la Federación*
121. *A Primer on Mexican Labor Law*, p. 42. English translation of Article 123, Subparagraph A, Section XI of the Mexican Constitution.
122. *Federal Labor Law*, Article 225.
123. *Ibid.*, Article 230.
124. *Ibid.*, Article 235.
125. *Comparative of the Social Security Acts*. Mexican Social Security Institute. Available: <http://www.imss.gob.mx> [6 April 2000]. English translation provided by U.S. NAO.
126. *Social Security Act*, Article 304. Mexican Social Security Institute. Available: <http://www.imss.gob.mx> [4 April 2000]. English translation provided on Mexican Social Security Institute web site.
127. *INFONAVIT Law*, National Commission for the Retirement Saving System (CONSAR). Available: <http://www.consar.gob.mx> [5 April 2000]. This requirement is found in Article 29 in the section entitled, "Obligation of Contribution While There is a Work Relationship." English translation provided by U.S. NAO.
128. *Ibid.*, Article 29, "Payment of Contributions to Receiving Entities: Integration and Calculation."
129. *Federal Tax Code*, (Ormond Beach, FL: Foreign Tax Law Publishers, Inc., trans., 1995), Article 2, Section II.
130. *Ibid.*, Article 108.
131. Transcript of Public Hearing on Submission No. 9901, p. 77-79.
132. *Ibid.*, p. 79-80.
133. *Ibid.*, p. 55.
134. *Ibid.*, p. 55.
135. *Ibid.*, p. 57. It is unclear how large of a role such intimidation played in TAESA employees not reporting unpaid overtime to government authorities.
136. Written testimony of Alfredo Lebrac Robles Rodriguez, p. 1.
137. *Ibid.*, p. 1.

138. Ibid., Annexes 1 and 2.

139. Transcript of Public Hearing on Submission No. 9901, p. 116-117. In a letter dated December 20, 1999, the U.S. NAO asked the Mexican NAO to provide the history of enforcement concerning overtime pay, payroll tax contributions, and maximum working flight hours at TAESA. The Mexican NAO responded by letter on April 28, 2000, stating that the information had been requested.

140. Ibid., p. 56.

141. Ibid., p. 115.

142. Ibid., p. 118.

143. "Mexico's TAESA Airlines Chmn Arrested For Tax Fraud." Dow Jones International News (10 Dec 1998); "Airline President Abed Jailed for 28 Million Peso Tax Fraud." *Reforma* (11 Dec 1998); and "Transportation: Mexican Airline Chief Arrested." *Mexico Business Monthly* (1 Jan 1999).

144. Public Register of Property and Business, Government of the Federal District. No. 237093, 13 Sept 1994; No. 91784, 18 April 1995; No. 214192, 12 Sept 1995; No. 27358, 31 Jan 1996; No. 285479, 6 Nov 1996; No. 308063, 29 Nov 1996; No. 15705, 29 Jan 1997; No. 127450, 24 June 1997; No. 226195, 9 Oct 1998; No. 238288, 23 Oct 1998; and No. 244284, 30 Oct 1998.

145. *Departamento del Distrito Federal, Registro Publico de la Propiedad y de Comercio*

146. SCT Press Release 329/1.

147. Ibid.

148. "TAESA Backers Ask for Revision of Financing Rules." *Reforma* (20 Jan 2000) and "TAESA Pays Workers Wages, Moribund Airline Struggles On." *Reforma* (5 Feb 2000).

149. Case, Brendan M. "Mexico's 3rd-Largest Airline Out of Business." *The Dallas Morning News* (22 Feb 2000); "Court Declare TAESA Airlines Bankrupt, Place Restriction Order on Abed." *La Jornada* (23 Feb 2000); "Social Security Institute Attempts to Seize TAESA Assets, Workers Owed 235 Million Pesos." *Reforma* (10 March 2000); and "TAESA Airlines Legally Closed Down." *Reforma* (21 March 2000).

150. Case, Brendan M. "Mexico's 3rd-Largest Airline Out of Business." *The Dallas Morning News* (22 Feb 2000); "Court Declares TAESA Airlines Bankrupt, Place Restriction Order on Abed." *La Jornada* (23 Feb 2000); "Mexico's Taesa Attracts Investor Interest-Union." *Reuters English News Service* (6 March 2000); "Mexico's BANOBRAS Takes Over TAESA Airline." *EFE News Service* (10 March 2000).

151. *Civil Aviation Law*, Article 6(V). In Appendices 2 and 3 of the letter dated April 28, 2000, the Mexican NAO presented the relevant articles of the Civil Aviation Law concerning this submission. The U.S. NAO provided the English translation.

152. Ibid., Article 89. Available: <http://www.sct.gob.mx> [15 May 2000]. U.S. NAO provided English translation.

153. Annex 6 was first adopted on December 10, 1948, pursuant to Article 37 of the Convention on International Civil Aviation, and became effective on July 15, 1949. Mexico is a member of ICAO and currently sits on the Commission, a governing body elected by the ICAO Assembly for three year terms.

154. Section 6.16 of Annex 6 states that airplanes, whose individual certificate of airworthiness was first issued on

or after January 1, 1981, must be equipped with a forward or rearward facing seat that is fitted with a safety harness for the use of each cabin crew member assigned to emergency evacuation duty. This also is recommended for airplanes whose first air worthiness certificate was issued before January 1, 1981.

155. *Convention on International Civil Aviation, Annex 6, Part I*. (International Civil Aviation Organization, July 1998), Chapter 12, Section 3, p. 39.

156. *Convention on International Civil Aviation, Annex 6, Part I*, p. 39.

157. Transcript of NAO Submission No. 9901, p. 49.

158. Report to Civil Aviation Section Committee, International Transport Workers Federation. (Rome: Flight Attendants Association of Mexico, 3-4 June 1999), p. 16.

159. According to ICAO, “[t]his manual contains training syllabi for initial and recurrent training of cabin attendants. The syllabi suggested are not all inclusive and are provided as a guideline to the minimum requirements for training in Annex 6.” Available: <http://www.icao.int/amb/peltrg/trainar/index.html> [7 June 2000].

160. Transcript of NAO Submission No. 9901, p. 68.

161. *Ibid.*, pp. 68-69.

162. Report to Civil Aviation Section Committee, International Transport Workers Federation, p. 16.

163. Transcript of NAO Submission No. 9901, pp. 77-78.

164. *Ibid.*, pp. 69-70.

165. *Ibid.*, pp. 80-82.

166. Report to Civil Aviation Section Committee, International Transport Workers Federation, pp. 7-15.

167. Transcript of NAO Submission No. 9901, p. 45.

168. *Ibid.*

169. *Ibid.*, p. 112.

170. SCT Press Release 329/1.

171. In a letter dated March 20, 2000, the U.S. NAO requested from the Mexican NAO a copy of the inspectors’ report, as well as the DGAC report detailing the forty-three conditions imposed on TAESA. The Mexican NAO responded in a letter dated April 25, 2000 that these reports are available from the SCT. U.S. NAO attempts to obtain these reports were not successful.

172. SCT Press Release 329/1.

173. *Ibid.*

174. Sparrowe, Veronica. “Mexican Airline TAESA Faces Uncertain Future.” *Reuters English News Service* (14 Feb 2000); “Mexico’s TAESA Attracts Investor Interest-Union.” *Reuters English News Service* (6 March 2000); and

“TAESA Presents Three Recapitalization Offers.” *Airline Industry Information* (19 Jan 2000).