

North American Agreement on Labor Cooperation (NAALC)

**REPORT OF REVIEW OF
U.S. NAO SUBMISSION NO. 2003-01**



**U.S. NATIONAL ADMINISTRATIVE OFFICE
BUREAU OF INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR**

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EXECUTIVE SUMMARY

PURPOSE OF THE REPORT

- Submission No. 2003-01 was filed pursuant to the North American Agreement on Labor Cooperation (NAALC) on September 30, 2003, by the U.S.-based United Students Against Sweatshops (USAS) and the Mexico-based Centro de Apoyo al Trabajador (CAT) and was later joined by the Canada-based Maquiladora Solidarity Network (MSN).
- The submission was accepted for review on February 5, 2004, 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 April 1, 2004 and consultations in Mexico with Mexican Government officials, workers, and employers.

SUMMARY OF THE SUBMISSION

- The Submission raises issues concerning freedom of association and protection of the right to organize, the right to bargain collectively, occupational safety and health, and minimum employment standards (e.g., minimum wage and overtime pay). The Submission also raises issues regarding access for workers to fair, equitable and transparent labor tribunal proceedings, and alleges that the allegations represent an overall and persistent pattern of non-enforcement of labor laws. All of the issues raised concern alleged events taking place at the Matamoros Garment S.A. de C.V. and Tarrant México S.R. de C.V. garment manufacturing factories in the state of Puebla, Mexico.
- According to the submission, the alleged worker rights violations were brought to the attention of management and government officials beginning in 2000 and 2003 respectively. Over the course of the factories' operation, issues raised included freedom of association (union registration denials and associated harassment), occupational safety and health violations (poor cafeteria conditions, ventilation and bathroom conditions, and lack of personal protection equipment), and minimum employment standards (minimum wage violations and non-payment of back wages).

- In response, Matamoros Garment and Tarrant workers began efforts to form unions, but learned in both cases that they already had union representation – although allegedly without their knowledge (alleged “protection contracts”). Believing the existing unions were not adequately representing their rights, the workers began efforts to form separate or independent unions – filing union registration petitions before the Local Conciliation and Arbitration Board of Puebla. In both the Matamoros Garment and Tarrant cases, union registration petitions were denied, the reasons for which the submitters allege were based on justifications outside Mexican labor law.

ANALYSIS AND FINDINGS

- The U.S. NAO review of the written documentation and oral testimony, including the decisions of the Local Conciliation and Arbitration Board in Puebla (Junta Local de Conciliación y Arbitraje – hereinafter “JLCA de Puebla”), supports the submitters’ contention that the rejections of their union registration petitions were based on technical grounds and that the JLCA de Puebla did not inform the workers about any technical deficiencies nor provide them with an opportunity to correct the errors.
- Matamoros Garment workers failed to file an appeal of the JLCA de Puebla decisions and workers at Tarrant withdrew their appeal. The submitters assert that Matamoros Garment workers received the JLCA de Puebla decision late and that it is difficult for workers to find attorneys to assist them. In the case of Tarrant, the submitters assert that workers who have no unemployment insurance and who face potential blacklisting have little choice other than to take severance rather than pursue what could be lengthy appeals. They also assert that workers are harassed and intimidated into taking severance and that workers are often required to sign severance agreements when they are hired, which are often used against them later.
- While the U.S. NAO acknowledges that these practices are known to occur in Mexico, had the workers pursued their rights to appeal, the courts may well have found in their favor. In fact, the U.S. NAO takes note that reviews of recent Mexican court decisions in this area appear to support efforts on the part of the courts to direct JLCAs to comply with the law. Nonetheless, the U.S. NAO cannot ignore the similarities in this case and previous submissions before it regarding denial of union registration on what seem to be hyper-technical grounds. The same similarities also appear in recent and ongoing cases in Mexico as noted by the submitters.
- As the ILO has expressed, administrative formalities should not be used as the equivalent of prior authorization to establish a union and should not be used to delay or prevent union formation. While the workers in this case did not pursue

the available appeal processes, what is supposed to be a mere administrative formality should not be implemented in a way that effectively obstructs the basic worker right of freedom of association.

- The continuing difficulty for independent unions to gain registration rights, especially within the maquiladora sector, is supported by credible testimony of non-governmental organizations and legal experts within Mexico. The Government of Mexico itself has on several occasions recognized shortcomings in the union registration process, but, if it has taken action to address the matter, the results are not immediately evident. Transparency in the union representation process, internal union democracy, responsiveness to union membership, and workers' freedom to choose the union to represent them (or to choose not to be represented) are important issues raised in this submission which merit further consultations.
- Regarding the allegations of minimum employment standards violations, the evidence available to the U.S. NAO is conflicting. It appears that some workers filed complaints with the State Attorney General's Office of Puebla alleging failure to pay proper wages and that these complaints are still pending after more than a year. In addition, reinstatement demands due to alleged illegal firings and documents requesting back wages owed also were submitted to government officials on behalf of Tarrant workers.
- Concerning alleged occupational injuries and illnesses, the submitters presented no evidence that they filed formal complaints with governmental authorities. In view of this failure, the U.S. NAO cannot find that the Government of Mexico failed to enforce labor laws encompassing requirements to respond to worker complaints.
- Nonetheless, there is credible evidence that workers made authorities aware of safety and health concerns in ways other than formal complaints. Mexican authorities also may have been aware of relevant safety and health conditions through periodic inspections performed under the law. The U.S. NAO is unable to draw definitive conclusions on these matters because it is still awaiting additional relevant information from the Government of Mexico.
- In summary, the myriad issues raised by this submission indicate a general lack of knowledge and transparency about legal requirements, processes for filing complaints, government inspection processes and reporting requirements, and available governmental assistance. Further consultations between the Governments of the United States and Mexico on how best to increase outreach efforts to educate workers, employers, and government officials, and to increase transparency on legal requirements, processes followed, and results of enforcements efforts would be beneficial for the public in Puebla, as well as elsewhere within Mexico.

RECOMMENDATION

- Pursuant to Article 22 of the NAALC, the U.S. NAO recommends ministerial consultations with the Government of Mexico on the issues of freedom of association, minimum employment standards and occupational safety and health.

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REPORT OF REVIEW OF U.S. NAO SUBMISSION NO. 2003-01

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.¹ Pursuant to these guidelines, once a determination is made to accept a submission for review, the U.S. NAO shall conduct 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, 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. 2003-01 was filed with the U.S. NAO on September 30, 2003, by the U.S.-based United Students Against Sweatshops (USAS) and the Mexico-based Centro de Apoyo al Trabajador (CAT), and was later joined by the Canada-based Maquiladora Solidarity Network (MSN). The submission centers on events at two garment manufacturing plants in the state of Puebla, Mexico, where alleged violations of worker rights took place regarding freedom of association, minimum employment standards, and occupational safety and health. The submission was accepted for review on February 5, 2004, and a notice of the acceptance of review was published in the Federal Register on February 11, 2004.²

¹ 59 Fed. Reg. 16660-16662 (1994).

² 69 Fed. Reg. 6691 (2004).

The submitters argue that the alleged events are indicative of a broader pattern of non-enforcement of labor laws in Mexico, specifically regarding freedom of association and protection of the right to organize, the right to bargain collectively, occupational safety and health, and minimum employment standards (e.g., minimum wage and overtime pay). The Submission also raises issues regarding access for workers to fair, equitable, and transparent labor tribunal proceedings, and argues that the allegations represent an overall and persistent pattern of non-enforcement of labor laws in Mexico.

2. Summary of Submission

2.1 Case Summary

Matamoros Garment S.A. de C.V. (hereinafter “Matamoros Garment”) is a garment manufacturing factory located in Izúcar de Matamoros in the state of Puebla. Matamoros Garment employed approximately 700 to 800 workers. Tarrant México S.R. de C.V. (hereinafter “Tarrant”) is a garment-manufacturing factory located in Ajalpán, Tehuacán, in the state of Puebla.³ The Tarrant plant in Ajalpán employed approximately 1000 to 1200 workers. Both Matamoros Garment and Tarrant produced garments for export to the U.S. market.

According to the submission, numerous worker rights violations occurred at Matamoros Garment and Tarrant, which workers brought to the attention of management and government officials beginning in 2000 and 2003 respectively. Over the course of the

³ In a June 1, 2004 letter to the U.S. NAO, the Tarrant Apparel Group of Los Angeles, California notes that Tarrant Mexico S.R. de C.V. is one of the parent company’s indirect subsidiaries.

factories' operation, issues raised included freedom of association (union registration denials and associated harassment), occupational safety and health violations (poor cafeteria conditions, a lack of personal protection equipment, improper ventilation, and occupational injuries and illnesses), and minimum employment standards (minimum wage violations, back wages owed, forced overtime, improper dismissals, and compensation following plant closures). In response, Matamoros Garment and Tarrant workers began efforts to form unions, but learned in both cases that they already had union representation – although allegedly without their knowledge (i.e., “protection contracts”). Believing the existing unions were not adequately representing their rights, the workers began efforts to form separate or independent unions – filing union registration petitions before the Local Conciliation and Arbitration Board of Puebla (*Junta Local de Conciliación y Arbitraje de Puebla* - hereinafter JLCA de Puebla). In response to these actions, workers allegedly suffered threats and harassment from their employers and harassment and surveillance by “official union” representatives.

As for the union registration process, in both the Matamoros Garment and Tarrant cases union registration petitions were denied based on what the submitters allege were justifications outside Mexican labor law. The submitters also allege that the JLCA de Puebla failed to notify workers of errors in their petitions for legal recognition, and, in the case of Matamoros Garment, mailed the decision notice to the wrong address - which did not give workers enough time to file an appeal. The submitters further allege that workers were illegally fired by Tarrant management for union organizing efforts, intimidated by Tarrant management to accept severance payments, and blacklisted

throughout Puebla making it difficult for former employees to find new jobs, and that Mexican government authorities failed to enforce the laws against these practices.

In arguing that the alleged non-enforcement of labor laws is a widespread and recurring problem, the submitters note the failure of the Government of Mexico and the JLCA de Puebla to uphold similar principle labor rights in the recent case at the MexMode factory (formerly KukDong) in the state of Puebla, where issues also included alleged violations of workers rights – most notably freedom of association.

2.2 Issues

Among the provisions of the NAALC relevant to this submission, Article 1(b) calls for the Parties to promote, to the extent possible, the labor principles set out in Annex 1 of the NAALC, which include 1) freedom of association and protection of the right to organize, 2) the right to bargain collectively, 3) the right to strike, 4) prohibition of forced labor, 5) labor protections for children and young persons, 6) minimum employment standards, 7) elimination of employment discrimination, 8) equal pay for women and men, 9) prevention of occupational injuries and illnesses, 10) compensation in cases of occupational injuries and illnesses, and 11) protection of migrant workers.⁴

⁴ NAALC, Annex 1.

NAALC Article 2 obliges each party to “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.”⁵

NAALC Article 3 obligates each party to “promote compliance with and effectively enforce its labor law through appropriate government action”, and “ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party’s labor law.”⁶

Additionally, the submission alleges failure of the Mexican Government to fulfill its obligations with respect to NAALC Articles 4 and 5, regarding ensuring access for workers to fair, equitable, and transparent labor tribunal proceedings.

2.2.1 Freedom of Association

The submitters allege that the JLCA de Puebla improperly denied union registration petitions for workers from both Matamoros Garment and Tarrant. Allegations also include the use of force to disperse strikers, enactment of a “protection contract” without the knowledge of workers, threats that the formation of an independent union would result in the loss of contracts with buyers, surveillance and harassment of independent

⁵ NAALC, art. 2.

⁶ NAALC, art. 3.

union leaders, and the imposition of a “technical work stoppage” at a factory without prior notice of the factory’s financial distress.

2.2.2 Minimum Employment Standards

The submitters allege that workers were not paid their minimum wage and not paid back wages or legally mandated severance pay after factory closure. Additionally, the submitters allege the Mexican Government failed to protect workers from forced labor and overtime, illegal suspensions, and layoffs.

2.2.3. Prevention of Occupational Injuries and Illnesses

Occupational safety and health allegations include persistent unsanitary conditions in the factories’ cafeterias and bathrooms, inadequate safety equipment, improper ventilation, occupational injuries and illnesses, and instances of mistreatment and verbal abuse of workers.

2.2.4 Alleged Pattern of Non-Enforcement

Seeking to highlight the pattern of non-enforcement of labor laws in Mexico, the submitters cite past U.S. NAO findings concerning failure on the part of Mexico to protect the right of workers to form independent unions (U.S. NAO Submission 9403), to ensure access to fair and impartial labor boards (U.S. NAO Submissions 9702 and 9703), and to ensure occupational safety and health protections (U.S. NAO Submission 2000-01). The submitters also allege that Mexico has failed to live up to the commitments it made as part of the Ministerial Consultations Joint Declarations signed in May 2000

(joined by Canada) and June 2002, where the Mexican Government reaffirmed its commitment to enforce its labor laws regarding freedom of association and protection of the right to organize, minimum employment standards, and occupational safety and health protections.

2.3 Action Requested

Action requested of the U.S. NAO by the submitters includes:

1. Conduct cooperative consultations, as outlined in Article 21 of the NAALC, in order to resolve the issues raised in the submission;
2. Conduct ministerial consultations, as outlined in Article 22 of the NAALC, to discuss the failure to enforce applicable Mexican labor laws and international laws as cited in the submission;
3. Hold one or more public hearings to receive oral testimony regarding issues contained in the submission;
4. Convene an evaluation committee of experts as outlined in Article 23 of the NAALC, to review the issues raised in the submission that are trade related and mutually recognized labor laws, specifically in the following areas:
 - a. Freedom of association consultations
 - b. Wage consultations; and
 - c. Occupational safety and health consultations; and
5. Failing the above, convene an arbitral panel, as outlined in Article 29 of the NAALC, to discuss an alleged pattern of non-enforcement of labor laws

regarding minimum employment standards and occupational safety and health.

Additionally, as part of their testimony during the U.S. NAO public hearing in Washington, D.C. on April 1, 2004, the submitters further requested that the following recommendations be presented to the Government of Mexico:

1. A reminder to the Government of Mexico of its obligation under the NAALC to enforce its national laws;
2. That all federal and local Labor Boards publicly disclose union registration and collective bargaining agreements, and that they grant union registrations in a transparent manner in strict accordance with Mexico's federal labor law;
3. That a tri-national oversight committee be established, composed of labor rights experts with the authority to investigate and issue findings regarding violations of the first three principles of the NAALC;⁷
4. That a public cooperative activity focusing on freedom of association (in particular the union registration process) be held in the state of Puebla, with the participation of the Governor of Puebla, Puebla Labor Board officials, and the submitters; and
5. That the matters presented in the submission be subject to review by an evaluation committee of experts – specifically those dealing with workplace safety and health, forced labor, and minimum wages.

⁷ Principle 1 deals with freedom of association and protection of the right to organize; principle 2 deals with the right to bargain collectively; principle 3 focuses on the right to strike.

3. U.S. NAO Review

Submission No. 2003-01 was accepted for review on February 5, 2004. The review was deemed appropriate as the submission 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 as a determination on the validity or accuracy of the allegations contained in the submission.

In conducting its review, the U.S. considered information from the submitters, workers, Tarrant management, representatives from unions, government officials, and testimony received at a public hearing. The U.S. NAO also visited Mexico City and the state of Puebla on April 21-29, 2004.

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, minimum employment standards, and occupational safety and health.

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. The submission included sixteen appendices containing worker testimony, correspondence between the submitters and an athletic apparel company concerning alleged worker rights violations related to the Matamoros Garment factory, correspondence from the submitters

to Mexican government officials regarding alleged worker rights violations at the Matamoros Garment factory, union formation documents, union registration petition documents, union registration petition denials from the JLCA de Puebla, copies of pay stubs, and a petition filed with Puebla government officials regarding non-payment of wages and harassment of workers based on union activities.⁸

An amendment to the submission included allegations of worker rights violations related to the Tarrant factory in Ajalpán, Tehuacán, Puebla. Appendices to the amendment included union formation documents, union registration petitions, union registration petition denials, and formal appeals against the denial of union registration.⁹ A third amendment was submitted to the U.S. NAO in February 2004 which was a legal analysis and summary of activities at Tarrant. Appendices included an appeal document filed before the Third District Court and its resolution, and reinstatement demands.

Additional information and materials submitted to the U.S. NAO by the submitters included video taped worker testimony, a legal analysis by a Mexican labor law attorney regarding issues raised in the submission, photos of workers, a report on alleged worker rights violations at Tarrant produced by the Worker Rights Consortium, news articles from Mexican and international press regarding the alleged events raised in the submission, union registration petitions and denials regarding the KukDong/MexMode

⁸ These documents are on file with the U.S. NAO.

⁹ Ibid.

factory in Atlixco, Puebla, and harassment and surveillance complaints filed before Puebla government officials.¹⁰

3.2 Information from Mexican NAO

The U.S. NAO sent two sets of questions relating to the issues raised in the submission to the Mexican NAO dated February 5, 2004 and May 7, 2004.¹¹ On June 2, 2004, the Government of Mexico provided the U.S. NAO with responses to some of the questions. The U.S. NAO also requested NAO consultations under Article 21 of the NAALC with the Mexican NAO on the matters raised in the submission, in order to better understand the responsibilities and enforcement actions of the responsible government agencies. A brief meeting between the U.S. and Mexican NAOs was held in Mexico City on April 22, 2004, but the Mexican NAO declined the U.S. request to arrange meetings with other government officials.

3.3 Information from Visit to Mexico

Representatives from the U.S. NAO and U.S. Embassy traveled to Mexico City and the state of Puebla on April 21-29, 2004. In addition to the meeting with Mexican NAO officials, meetings were held with Mexican labor lawyers, officials from the JLCA of the Federal District (Mexico City), an official from the JLCA de Puebla, representatives of the Sindicato Nacional “Francisco Villa” of the Confederación de Trabajadores Mexicanos union (CTM) and the Federación Revolucionaria de Obreros y Campesinos -

¹⁰ Ibid.

¹¹ Ibid.

Confederación Revolucionaria de Obreros y Campesinos union (FROC-CROC), CAT officials, representatives of the Puebla branch of the National Chamber of the Transformation Industry (CANACINTRA), management of the Tarrant factory, and workers from Tarrant, Matamoros Garment, KukDong/MexMode, and the Puebla Children's Hospital.

3.4 Information from Public Hearing

As part of the review process, the U.S. NAO conducted a public hearing in Washington, D.C. on April 1, 2004. Notice of the hearing was published in the Federal Register on March 2, 2004.¹² Notice of the hearing also was provided to the Mexican and Canadian NAOs, the submitters, and representatives of garment brands named in the submission as having sourced garments from either Matamoros Garment or Tarrant.

Nine witnesses testified at the hearing. Nilay Vora of the United Students Against Sweatshops (USAS) and Bob Jeffcott of the Maquila Solidarity Network (MSN) gave an overview of the allegations listed in the submission and restated the action the submitters requested be taken by the U.S. NAO regarding the alleged non-compliance of the Government of Mexico with its labor laws and NAALC obligations. Salvador García Sánchez and Maribel Ramírez Torres, both former workers at Tarrant, described their experience and working conditions at Tarrant, recounted the union formation effort and noted the difficulties they have faced in finding other work in the region due to alleged

¹² 69 Fed. Reg. 9845-9846 (2004).

blacklisting. Scott Nova, Executive Director of the Washington-based Worker Rights Consortium (WRC), gave an overview of Mexican labor law in the context of freedom of association, and detailed his first-hand experience reporting on alleged worker rights violations at Tarrant. Shaila Balderas Toledo and Blanca Velázquez Díaz (President) of the Centro de Apoyo al Trabajador (CAT) described worker rights in the state of Puebla generally and detailed their experience supporting workers seeking to form unions at the KukDong/MexMode, Matamoros Garment, and Tarrant factories in the state of Puebla. Alejandra Constanza Ancheita Pagaza, Human and Labor Rights Attorney with the Centro de Derechos Humanos “Miguel Agustín Pro Juárez”, provided further information on Mexican labor law. Benjamin Cokelet, Liaison to the CAT and Consultant to the AFL-CIO’s (American Federation of Labor-Congress of Industrial Organizations) American Center for International Labor Solidarity (Solidarity Center), summarized the efforts made by workers and worker rights groups to present complaints on alleged worker rights violations before Mexican Government authorities.

4. Relevant Mexican Government Agencies Responsible for Enforcing Labor Law

Article 523 of Mexico’s Federal Labor Law (LFT)¹³ specifies the labor authorities and social service entities responsible for the application of labor norms in Mexico. Relevant labor authorities concerning U.S. Submission 2003-01 include the Secretariat of Labor and Social Welfare (STPS), Local Conciliation and Arbitration Boards (JLCAs), Mexican

¹³ Federal Labor Law (Ormond Beach, FL: Foreign Tax Law Publishers, Inc., trans., 1995). This English translation of the LFT will be used throughout the report with exceptions to be noted.

Courts, the Procuraduría Federal de la Defensa del Trabajo – PROFEDET (Office of the Labor Public Defender), and the Inspectorate of Labor.

Secretariat of Labor and Social Welfare

The Secretariat of Labor and Social Welfare (STPS) is the leading labor body in Mexico. Article 524 of the LFT defines the duties of STPS and the Labor Offices. STPS is an executive agency that oversees compliance with labor laws, as well as collective bargaining, fair labor standards, labor defense, and job training.¹⁴ The General Directorate for Registration of Associations is housed within STPS and is charged with trade union registration for matters under federal jurisdiction.¹⁵

Local Conciliation and Arbitration Boards

Article 123, Section XXXI of the Mexican Constitution provides that the application of labor law is the responsibility of state authorities in their respective jurisdictions, and matters within state jurisdiction are the responsibility of the state JLCAs.¹⁶ Some sectors of the economy fall under the jurisdiction of Mexican federal authorities, and are listed in LFT Article 527. The federal JLCA has jurisdiction over matters involving federal economic issues. The two plants in this submission are *maquiladoras*, which are

¹⁴ Labor Relations Law in North America (Washington, DC: Secretariat of the Commission for Labor Cooperation, 2000) 145. Copies of this book are available at: www.naalc.org (also available in Spanish and French). [hereinafter Commission, Labor Relations Law].

¹⁵ *Ibid.*, 146.

¹⁶ Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos). [hereinafter Political Constitution]. Cámara de Diputados del Honorable Congreso de la Unión de los Estados Unidos Mexicanos. Available: <http://www.cddhcu.gob.mx/leyinfo/1/> [March 30, 2004] English translation by Historical Text Archive Ron Pamachena available at: <http://www.historicaltextarchive.com> [March 30, 1994]. This English translation of the Mexican Constitution will be used throughout the report with exceptions to be noted.

transnational companies allowed to operate in Mexico under special rules promulgated to promote investment.¹⁷ While the two plants produced textiles, which according to LFT Article 527 is a sector governed by federal authorities, the factories are technically *maquiladoras* which, despite often operating in the same sectors enumerated as being under federal jurisdiction, are considered a separate sector that falls under the jurisdiction of state authorities.¹⁸

Final decisions of the JLCAs are defined as *laudos*. A *laudo* is a judicial order, which may require the reinstatement of or issuance of severance payment to a worker unjustifiably discharged or may order the employer otherwise to comply with the law or with the collective contract.¹⁹ The decisions of local or federal JLCAs may only be challenged on constitutional grounds through a separate proceeding referred to as the *amparo* lawsuit (*juicio de amparo*).²⁰

Mexican Courts

Under constitutional and statutory rights of *amparo*, a private party injured by the decision or action of a JLCA may seek review in the courts alleging that the JLCA has engaged in a violation of fundamental rights or due process of law.²¹ Federal courts have

¹⁷ See Section 5 of this report for additional information on *maquiladoras*.

¹⁸ Commission, Labor Relations Law, 98.

¹⁹ *Ibid.*, 156.

²⁰ See Anna Torriente, Study of Mexican Supreme Court Decisions Concerning the Rights of State Employees to Organize in the States of Jalisco and Oaxaca (Study funded by the U.S. NAO: November 11, 1996) 8. [hereinafter Torriente, Study of Mexican Supreme Court Decisions].

²¹ See Plant Closings and Labor Rights: A Report to the Council of Ministers by the Secretariat of the Commission for Labor Cooperation (Washington, DC: Secretariat of the Commission for Labor Cooperation, 1997) 48. See also Article 1 of Mexico's *Ley de Amparo* (Amparo Law in Mexico) and

exclusive jurisdiction over *amparos* and complaints must be filed before the courts within 15 days of the issuance of the act or decision to be challenged.²² Where a JLCA decision is overturned, the court will identify the legal errors committed, indicate the legal interpretations that should govern, and direct the JLCA to reopen or resume its proceedings so that a decision may be reached in accordance with those interpretations.²³

In Mexico, the Supreme Court and the federal appeals courts create binding precedent, referred to as *jurisprudencia firme*, only when they issue five consecutive consistent decisions on the same point.²⁴ In the absence of such a series of decisions, a court ruling binds only the parties to a particular case in question and need not be followed in other cases.²⁵

Procuraduría Federal de la Defensa del Trabajo – PROFEDET (Office of the Labor Public Defender)

Pursuant to Article 4 (Section II) of its regulations, the Office of the Labor Public Defender is responsible for training and advising workers, their unions, and beneficiaries about rights and obligations regarding workplace rules, social welfare, and safety - including the procedures and competent organizations responsible for enforcement.²⁶

Articles 103 and 107 (Section V – D) of the Political Constitution of the United Mexican States. [hereinafter Commission, Plant Closings and Labor Rights].

²² Commission, Labor Relations Law, 154.

²³ *Ibid.*, 155.

²⁴ *Ibid.*, 101.

²⁵ *Ibid.*

²⁶ Reglamento de la Procuraduría Federal de la Defensa del Trabajo (Mexico: Published in the *Diario Oficial*, December 14, 1999). Available at: www.stps.gob.mx [as of 17 May 2004]. Unofficial English translation summary provided by U.S. NAO.

This office is also responsible for receiving complaints filed by workers regarding non-compliance and violations of workplace rules and, when necessary, summoning employers or unions (Section III) on these matters, as well as proposing to interested parties amicable solutions to resolve conflicts via the use of agreements.²⁷ Article 5 states that the services provided by the Office of the Labor Public Defender for workers, their unions and beneficiaries are free, except for cases established in the law.²⁸

Inspectorate of Labor

LFT Article 541 states that labor inspectors shall have the following duties:

- I. ensure that the labor norms are observed, in particular those prescribing the rights and obligations of workers and employers, those concerning the prevention of employment injuries, safety and health;
- II. inspect enterprises and establishments during the hours of work (day or night) on producing identification ...[and]
- V. to suggest that any nonobservance of the employment conditions be corrected

Article 542 (Section II) states that labor inspectors shall inspect enterprises and establishments periodically. Pursuant to Section IV, inspectors are required to write reports, consult with workers and the employer, report any nonfulfillment or violation of the labor norms, provide a copy of such report to the parties consulted, and forward the report to the appropriate authority.

²⁷ Ibid.

²⁸ Ibid.

5. Labor Law and the *Maquiladora* Industry in Mexico

The two garment manufacturing plants referenced in the submission are *maquiladoras*. *Maquiladoras* were established in 1965 in Mexico to attract investment and create jobs, mainly in Mexican states bordering the United States.²⁹ Of the three categories of *maquiladoras* (captured, subcontracting and sheltered), the most prevalent is “captured,” defined as a majority owned or wholly owned foreign plant subject to most Mexican Laws.³⁰ Labor relations in *maquiladora* operations are regulated by the LFT.³¹ *Maquiladoras* do not enjoy any special status or exemptions from complying with labor law and labor protections.³²

Articles 2, 3, and 7 of the Presidential Decree for the Promotion and Operation of the Maquiladora Industry, published in the Diario Oficial on December 22, 1989, govern the registration and operation of a *maquiladora*.³³ Several Government agencies are responsible for the regulation of the *maquiladora* industry including the Secretariat of Commerce and Industrial Development (SECOFI)³⁴ and the Secretariat of Treasury and

²⁹ International Trade: Mexico’s Maquiladora Decline Affects U.S. – Mexico Boarder Communities and Trade: Recovery Depends in Part on Mexico’s Actions (Washington, DC: GAO Report, July 2003) 3.

³⁰ M. Angeles Villarreal, Mexico’s Maquiladora Industry, Vol. 2 No. 4, Mexico Trade and Law Reporter 17, 17 (1992).

³¹ Benjamin Aguilera, David K. Armstrong, and Gerard Morales, An Overview of the Maquiladora Program (1994) 8.

³² Dr. Néstor de Buen Lozano and Lic. Carlos E. Buen Unna, A Primer on Mexican Labor Law (Washington, DC: U.S. Department of Labor, Bureau of International Labor Affairs, 1991) 3.

³³ R. Leticia Cuevas, Analysis of Submissions Nos. 940003 and 940004 Brought Before: The U.S. National Administrative Office of the United States Department of Labor (January 21, 1995) 55. [hereinafter Cuevas, Analysis of Submission Nos. 940003 and 940004].

³⁴ Post restructuring initiatives of the Fox Administration in Mexico, SECOFI no longer exists, but responsibility for its former mandate now lie with the Secretaría de Economía.

Public Credit (SHCP).³⁵ In addition, STPS is a member of the inter-secretariat commission created to coordinate interaction of governmental agencies with *maquiladoras*.³⁶ One of the administrative requirements mandated by the laws governing *maquiladora* formation includes the negotiation of a collective bargaining agreement between the *maquiladora* and a labor union.³⁷

6. Freedom of Association and Protection of the Right to Organize and the Right to Bargain Collectively

6.1 NAALC Obligations

As noted, NAALC Article 1(b) calls for the Parties to promote, to the extent possible, the labor principles set out in Annex 1 of the NAALC, which include 1) freedom of association and protection of the right to organize and 2) the right to bargain collectively. Annex 1 more specifically defines the principle of freedom of association and the protection of the right to organize as the “right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests” and defines the right to bargain collectively as the “protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.”

Pursuant to NAALC Article 3 (1) and (2), each Party shall promote compliance with and effectively enforce its labor law through appropriate government action – ensuring that

³⁵ Cuevas, Analysis of Submissions Nos. 940003 and 940004 (January 21, 1995) 55.

³⁶ *Ibid.*, 55-56.

³⁷ *Ibid.*, 56.

competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law. Additionally, NAALC Article 4(1) commits each Party to "ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or labor tribunals for the enforcement of the Party's labor law." NAALC Article 5(1) commits each Party to "ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor laws are fair, equitable and transparent." Further, NAALC Article 5(3) commits each Party to provide (within the law and "as appropriate") to parties to the aforementioned labor tribunal proceedings, the right "to seek review and, where warranted, correction of final decisions issued in such proceedings."

6.2 Mexican Law

6.2.1 Mexican Constitution

Article 133 of the Mexican Constitution provides that it is the supreme law of the land. Accordingly, protections granted by the Constitution take precedence over any subordinate laws, such as state statutes, that might contradict or violate those constitutional protections.³⁸ Freedom of association protections are provided for under Article 9 of the Constitution, which states that the right to assemble or associate peaceably for any lawful purpose cannot be restricted. Article 14 of the Constitution

³⁸ Torriente, Study of Mexican Supreme Court Decisions, 40.

states that no person shall be deprived of life, liberty, property, possessions, or rights without a trial by a duly created court in which the essential formalities of procedure are observed and in accordance with laws issued prior to the act.

6.2.2 Federal Labor Law

LFT Article 1 (extension and application of the law) states that this law shall be generally observed throughout the Republic and shall govern the labor relations referred to in Article 123(A) of the Constitution.

Precedence Toward Workers

LFT Article 18 provides that in case of doubt when interpreting labor norms the more favorable interpretation shall be made in deference to workers.

Workers' and Employers' Rights and Obligations

LFT Article 133, Section IV states that an employer shall not “compel an employee by coercion or any other means to join or withdraw from the individual association or group of which he is a member, or to vote for a specified candidate.” Section IX states that employers shall not employ the system of blacklisting with regard to employees who leave or have left their employment, with a view to preventing their future employment.

Freedom of Association and Protection of the Right to Organize and Bargain Collectively

Freedom of association and protection of the right to organize are provided in LFT Articles 357 and 358. LFT Article 357 states that “[w]orkers and employers shall have

the right to establish trade unions without prior authorization,” while LFT Article 358 states that “[n]obody shall be obligated to join or abstain from joining a trade union.”

Number of members to form a trade union

LFT Article 364 states that trade unions must be formed with no less than twenty workers in active employment or no less than three employers.

Recognition of Unions

LFT Article 365 lays out union registration requirements stating that unions shall submit the following documents in duplicate:

- I. a duly authorized or authenticated copy of the minutes of the constituent assembly;
- II. a list showing the number of members and indicating their names and addresses, the name and addresses of the employees, enterprises, or establishments in which they are employed;
- III. an authenticated copy of the rules;
- IV. an authenticated copy of the minutes of the meeting at which the board of directors was elected.

LFT Article 365 further states that the above documents shall be endorsed or authenticated by the general secretary, the organizing secretary and the minutes secretary of the union, unless there is a provision to the contrary in the union bylaws.

Article 366 states that registration may be refused only if:

- I. the trade union does not have the aims and objects referred to in Article 356;
- II. the trade union does not have the number of constituent members prescribed in Article 364;
- III. the documents referred to in the preceding articles are not submitted.³⁹

LFT Article 366 further states that if the requirements for registration of a trade union are fulfilled the competent authorities shall not refuse registration.

Until a union is registered, it does not have legal recourse to the laws that govern collective interests, including signing a collective bargaining agreement, representation before legal bodies, or appearing in court.⁴⁰

Collective Labor Contracts

In Mexico, LFT Article 386 defines collective bargaining agreements as “any agreement concluded between one or more worker trade unions and one or more employers or employer trade unions, for purposes of prescribing the conditions that will govern the

³⁹ See Public Transcript from the 1996 NAALC Third Seminar on Procedures For Registering Labor Unions (Monterrey, Nuevo León: February 28-March 1, 1996) 50. Regarding the use of the word “may” in Article 366, during the 1996 NAALC’s Third Seminar on Procedures for Registering Labor Unions, the former Director General for Registration of Labor Associations from Mexico’s Secretariat of Labor and Social Welfare (STPS) stated, “It could be assumed that the word “may”, which appears in article 366, when referring to the denial of registration, can be interpreted as if the article were granting the registering authority a discretionary power. That is not the case. This article has always been interpreted as it should be, considering that the cases in which registration is denied have to do with the essential requirements pertaining to the existence of the union, and those which prove that it has been formed, in which case the only logical action would be for the registering authority to deny the application for registration.... So the word “may” is not actually empowering, or mandatory - even on legal grounds -, but a question of exercising common sense.”

⁴⁰ See Government of Mexico responses to the U.S. NAO concerning U.S. Submission 940003 and 940004, dated February 3, 1995, on file at the U.S. NAO.

performance of work in one or more business enterprises or establishments.”⁴¹ Section I of LFT Article 388 provides that if there are two or more workers’ unions or industrial unions or one or more of each, the collective contract shall be made with the union holding the greatest number of members employed in the enterprise.

Notification of Errors in Union Registration Petitions

LFT Article 685 provides that proceedings in labor disputes must be public, without cost, immediate and primarily oral in nature. LFT Article 686 provides that the JLCAs shall order correction of any irregularity or omission noted in the way proceedings are conducted. LFT Article 873 provides that upon receiving a written complaint, within 24 hours the respective JLCA must issue a resolution setting a date and time for a hearing, and that the hearing date must be held within 15 days of when the complaint was received. In the same resolution, the law stipulates that both parties to the complaint must be notified, and that failure of the defendant to attend will result in the allegations in the complaint being accepted as true.

Amparos in Mexico

As noted, *amparos* are established in Mexico’s Constitution under Articles 103 through 107. Best described as a special lawsuit authorized by the Mexican Constitution, the *amparo* is a procedural vehicle used to protect individuals from the infringement of their rights under the Constitution.⁴² The filing of an *amparo* is not an appeal, but rather a

⁴¹ Francisco Breña, Mexican Labor Law Summary (Mexico City: Breña y Asociados. S.C., 2002) 174.

⁴² Torriente, Study of Mexican Supreme Court Decisions, 8-9.

separate lawsuit challenging the constitutionality of certain acts of government authorities, including court rulings or the unconstitutional application of laws.⁴³

Dismissal of Employees

LFT Article 47 lists fifteen causes for a worker or employer to rescind the labor relationship without liability.⁴⁴ Rescission denotes termination of the employment relationship for breach or nonperformance by one of the parties.⁴⁵ Pursuant to LFT Article 47 employers shall serve written notice on the employee indicating the date of and reasons for termination of the contract. Failure by the employer to notify the worker or the JLCA shall be sufficient grounds to consider that the dismissal was not justified. LFT Article 48 provides that the worker may apply to a JLCA for his reinstatement in the position he occupied, or for compensation in the form of three months' wages, at his choice. LFT Article 49 provides five exceptions through which employers can be relieved of their obligation to reinstate workers, provided the employer pays compensation as detailed in LFT Article 50. LFT Article 53 covers the grounds for terminating the labor relationship, and is distinguished from LFT Article 47 in that rescissions in LFT Article 47 generally stem from a breach, nonperformance or a similar unlawful act carried out against one of the parties. LFT Article 53, by contrast, allows for terminations originated by the joint will of the parties or those due to causes beyond their control (e.g., death or mental incapacity of the worker).⁴⁶

⁴³ Ibid.

⁴⁴ See U.S. NAO Report of Review 9901 (TAESA) 18.

⁴⁵ Francisco Breña, Mexican Labor Law Summary (Mexico City: Breña y Asociados. S.C., 2002) 35.

⁴⁶ Ibid., 45.

Exclusion Clause

LFT Article 395, known as the *exclusion clause*, gives employers the right not to employ workers who are not members of the union holding the collective bargaining agreement at the company. LFT Article 371 (VII) specifies that union bylaws must include provision for expulsion or other disciplinary action of members.⁴⁷

6.2.3 International Conventions/Treaties Ratified by Mexico

Article 133 of the Mexican Constitution provides that the laws passed by the Congress, and all treaties concluded by the President and approved by the Senate – that are in accord with it - will be the Supreme Law of the Union. The judges of every state will follow the Constitution and these laws and treaties.⁴⁸

Mexico ratified International Labor Organization (ILO) Convention 87 (freedom of association), which entered into effect on July 4, 1950. The Government of Mexico thereby recognizes the Convention as part of Mexico's labor law.⁴⁹ Articles 2 - 5 of ILO Convention 87 provide workers with the right to establish and join organizations of their own choosing without previous authorization and the right to unionize without interference that would restrict this right.

⁴⁷ See U.S. NAO Report of Review 9901 (TAESA) 19.

⁴⁸ See Political Constitution, art. 133.

⁴⁹ See Government of Mexico responses to the U.S. NAO concerning U.S. Submission 940003 and 940004, dated February 3, 1995.

Additional relevant international agreements ratified by Mexico include the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

6.3 Analysis

The freedom of association issues raised in the submission focus on the legal process for recognition of unions in Mexico and the role of the Government of Mexico in taking action when alerted to these issues. To support their allegations, the submitters presented oral and written testimony to the U.S. NAO, as well as copies of legal materials describing the decisions made by the JLCA de Puebla. The testimony is consistent with the legal decisions concerning the description of events. Copies of letters written by the submitters, NGOs, and private labels/brands, alerting local and federal Mexican government authorities about alleged freedom of association violations at Matamoros Garment and Tarrant, were also presented to the U.S. NAO by the submitters.

6.3.1 Legal Registration Process

According to the submission, after a prolonged period of worker dissatisfaction due to a series of alleged worker rights violations, on January 13, 2003 Matamoros Garment workers held a strike, publicly announced their grievances to news media, and signed documents to form the Sindicato Independiente de Trabajadores de la Empresa Matamoros Garment, S.A. de C.V. (SITEMAG) union. On that same day, striking

workers were visited by JLCA de Puebla and Puebla State Attorney General officials, who informed workers that they already had union representation, through a pre-existing collective bargaining agreement between Matamoros Garment management and the CTM union. Matamoros Garment workers allege that prior to hearing the news from the JLCA de Puebla officials that day, they had never been made aware that they had union representation.⁵⁰ CTM officials allege, however, that workers were fully aware that the CTM held the collective bargaining agreement at Matamoros Garment – particularly as Izúcar de Matamoros is a small town where news and information among workers is quickly spread.⁵¹

On January 20, 2003, workers filed a union registration petition signed by 162 workers with the JLCA de Puebla. On March 26, 2003, the JLCA de Puebla issued a decision denying SITEMAG's petition for union registration, citing the following reasons: 1) the two lists of members names are not identical (the name of one union committee member is written incorrectly), the reason for forming the union is not written on one of the lists, and one list is not properly authorized; 2) the lists submitted do not authenticate that all members attending the union formation assembly were over 14 years of age as required by law; 3) one of the workers whose name is on the list denied he had ratified his signature; and 4) the legally mandated minimum of 20 workers required to register a

⁵⁰ Interview with former Matamoros Garment workers Augustina Reyes and Jaime Ayala in Izúcar de Matamoros, Puebla State, on April 26, 2004.

⁵¹ Interview with Mario Alberto Sanchez Mondragon, CTM General Secretary on April 23, 2004 in Mexico City.

union could not be confirmed because the factory was closed when the JLCA de Puebla visited the factory (March 18, 2003) as part of its analysis.⁵²

Regarding Tarrant, the submitters claim that, after alleged worker rights violations and the failure to satisfactorily receive redress from plant management, Tarrant workers filed a union registration petition for the Sindicato Unico Independiente de Trabajadores de la Empresa Tarrant México (SUITTAR) union before the JLCA de Puebla on August 7, 2003 – having convened their formative assembly and signed union formation documents on July 12, 2003. Apparently 728 workers signed the petition. Both before and after the filing of their union registration petition, the submitters allege that workers raised their issues on numerous occasions with plant management, held strikes and public marches, and presented their complaints publicly before local media, the JLC de Tehuacán (labor board with conciliation competency only), the JLCA de Puebla, and the Governor of Puebla. Upon filing their union registration documents, workers allege that they were informed that they already had union representation – a fact they state was previously unknown to them:

We were never told that we had a union. The dues were never deducted or anything, so when we ... requested our independent union, all these unions started appearing. But we had never heard of them before. We didn't even know there was a union in that company.⁵³

⁵² JLCA de Puebla's SITEMAG union registration denial, March 26, 2003.

⁵³ Testimony of Maribel Ramirez Torrez, U.S. NAO Public Hearing on U.S. 2003-01, April 1, 2004, Washington, D.C.

Tarrant management, however, noted in an interview with the U.S. NAO in April 2004, that on their first day of work workers were given a two-hour orientation, which included a review of benefits, informing workers of their existing union representation, and other general information about the workplace.⁵⁴

On October 6, 2003, the JLCA de Puebla denied the SUITTAR registration petition, citing five reasons: 1) failure to submit two copies of the original petition; 2) failure to form the union and elect its executive committee on two separate dates; 3) misspelling one of the 728 workers' names on the petition; 4) failure to establish by-laws regarding the union's assets; and 5) unclear by-laws regarding member discipline.⁵⁵

In a legal analysis of the JLCA decision, a Mexican labor lawyer asserted that “the denial of the registro is absolutely lacking in legal foundation,” finding that all of the reasons given for the denial contradict LFT Article 366, which provides the specific grounds on which a *registro* can be denied.⁵⁶ The lawyer opined that the SUITTAR registration petition met all of the requirements of Article 366. For example, based on a review of the petition documents submitted by SUITTAR, he concluded that duplicate copies of the petition were submitted. In addition, he maintained that SUITTAR provided the necessary evidence that it conducted a union assembly proceeding and election of an

⁵⁴ U.S. NAO meeting with management of Tarrant México, Tehuacán, Puebla State, Mexico, April 27, 2004. Separately, the Government of Mexico informed the U.S. NAO that the union holding the collective bargaining agreement at Tarrant is the Sindicato Juvenil de Trabajadores y Empleados de la Industria Textil en General con sus Derivados, Corte, Confección, Bordados y Similares de Republica Mexicana union.

⁵⁵ The JLCA de Puebla's SUITTAR union registration denial, October 6, 2003.

⁵⁶ Appendix A to the November 5, 2003 amendment to U.S. Submission 2003-01.

executive committee. Further, the attorney concluded that the bylaws submitted by SUITTAR include the necessary provisions addressing how union assets will be acquired and utilized and how members will be disciplined.

After pointing out errors in the five reasons given for denial of the union registration, the lawyer argues that the decision is “totally contrary to the law, lacking in elementary legal technique, making evident the bad faith and partiality with which it is conducted, and on the other hand it is totally original given that it invents motives that, in the legal history of our country, have not occurred to any judge. Therefore it obviously can be challenged in various ways.”⁵⁷ Finally, the lawyer asserts that the rejection decision indicates a direct violation of ILO Convention 87 on Freedom of Association and Protection of the Right to Organize.⁵⁸

LFT Article 365 clearly indicates the requirements and necessary documentation that must accompany a petition, and LFT Article 366 indicates that union registration may be refused if the requirements of Article 365 are not met or if the union does not have the correct number of members in accordance with Article 364 (20 members). However, a number of the reasons cited by the JLCA de Puebla for denying the union registration petitions appear to rest on technicalities. The submitters argue that LFT Articles 685, 686, and 873 dictate the responsibility of the JLCAs to correct petitions by workers that are incomplete. Indeed, some JLCA officials and legal experts in Mexico share this

⁵⁷ Ibid.

⁵⁸ Ibid.

view.⁵⁹ However, the Government of Mexico asserts that Article 685 applies only in labor dispute proceedings between employers and employees, and not in administrative proceedings such as the union registration process.⁶⁰ Separately, the Government of Mexico asserted before the ILO that Article 685 provides for the JLCAs to correct petition errors for individual workers – not unions – and therefore there was no requirement for the JLCA de Puebla to correct the omissions or errors cited as justification for denial of the union registration petitions.⁶¹

The ILO has urged the Government of Mexico to take measures to ensure that the JLCAs provide petitioners with the opportunity to correct irregularities identified in union registration documents when submitted.⁶² On the principle of freedom of association, the ILO observes: “The formalities prescribed by law for the establishment of a union should not be applied in such a way as to delay or prevent the setting up of occupational organizations.”⁶³ Further to this point, the ILO notes:

the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. Such authorization could concern the formation of the trade union organization itself, the need to obtain discretionary approval of the constitution or rules of the organization, or, again, authorization for taking steps prior to the establishment of the organization. This does not mean that the founders of

⁵⁹ Interview of Mexican labor lawyer Francisco Breña in Mexico City on April 22, 2004 and interview of JLCA del Distrito Federal President Lic. Jesus Campos Linas in Mexico City on April 22, 2004.

⁶⁰ Mexican Government response of June 2, 2004 to questions posed by the U.S. NAO on February 5 and May 7, 2004.

⁶¹ Mexican Government response of February 3, 2004 to the ILO Committee on Freedom of Association re: Case No. 2282 on Matamoros Garment S.A. case.

⁶² ILO Committee on Freedom of Association Definitive Report on Case 2282 concerning Matamoros Garment, June 22, 2004.

⁶³ *Ibid.*, paragraph 249.

an organization are freed from the duty of observing formalities concerning publicity or other similar formalities which may be prescribed by law. However, such requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition.⁶⁴

Additionally, the view expressed by the Government of Mexico that the JLCA has no duty to inform workers of errors and help them because the law refers to individuals rather than unions appears not only inconsistent with ILO interpretations, but actually to possibly support the submitters' assertion that the JLCA de Puebla had a responsibility to assist the workers. As the U.S. NAO understands Mexican law, the union has no legal recourse under the laws as an entity unless and until the registration is approved by the JLCA; thus, the petition before the JLCA would appear to have been submitted by "individuals" not by a "union."

The U.S. NAO review of the legal documentation submitted with the union petitions of SITEMAG and SUITTAR indicated that the petitions appear to have satisfied the provisions of Article 365. In the case of SUITTAR, although the JLCA de Puebla seemed to impose a burden of proof on the union to establish that petition signatories were over 14 years of age, there is no indication in Article 365 of an affirmative duty on the part of the petitioners to provide such documentation. While the JLCA's concern for underage workers is admirable, it does not seem reasonable, without evidence, to believe

⁶⁴ Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 4th Edition, paragraph 244, 1996.

that 143 of the 162 workers who signed the SUITTAR registration petition were under 15 years of age.

Further, the U.S. NAO review indicates that, if there were problems with the union registration petitions of SITEMAG and SUITTAR, those can be best described as minor technical errors. For example, in the case of SITEMAG, it appears that the JLCA de Puebla decision to deny the registration based on the workers' failure to submit a duplicate copy may simply have resulted from the workers submitting two identical lists, as required under Article 365, but in different forms (a handwritten list and a machine-printed list).

Similarly, the denials by the JLCA de Puebla of the SUITTAR petition based on the misspelling of one of the 728 names or the objection of one Matamoros Garment worker to having his name listed as one of the 162 workers included in the registration petition seem overly technical.

Based on all of the evidence presented to the U.S. NAO, it appears that in the case of SUITTAR and SITEMAG workers should have at least been given an opportunity to correct errors. This conclusion is supported by other legal authorities and is consistent with previous submissions brought before the U.S. NAO. Given these factors, questions are raised over the validity of the original registration denials for SITEMAG and SUITTAR issued by the JLCA de Puebla, the need to assist workers, and previous

authorization as an obstacle to union formation, as they appear to deviate from Mexican Law.

The issue of freedom of association in Mexico and non-enforcement of relevant labor laws has been raised in the majority of the fifteen submissions filed with the U.S. NAO against Mexico. In particular, the June 4, 1996 U.S. NAO report on ministerial consultations on U.S. NAO #940003 (a submission focusing on allegations concerning freedom of association and the right to organize at a facility in Tamaulipas, Mexico) made a number of findings which included: 1) it is very difficult for workers to register unions at the local level in Mexico; 2) registration laws are not uniformly applied in every JLCA jurisdiction; and 3) Mexican experts recognize these problems and recommend changes to the current union registration system at the local level.⁶⁵ In light of the recurring freedom of association issues raised in the current submission, it would appear that despite the passage of 10 years, the same enforcement deficiencies persist in Mexico.

As noted, the Mexican Constitution provides a process through which *amparos* can be filed to challenge the constitutionality of the acts of government authorities. Regarding the JLCA de Puebla's March 26, 2003 denial of the SITEMAG union registration petition, workers had 15 days to file an *amparo* contesting the decision. However, the submitters allege that the letter containing the JLCA de Puebla's decision was mailed to

⁶⁵ See U.S. NAO Report on Ministerial Consultations on U.S. NAO #940003, June 4, 1996, 7-14.

the wrong address, so that by the time it was located Matamoros Garment workers only had half (seven) of the legally allowed days remaining – which proved insufficient to prepare an *amparo*. The Government of Mexico asserts that by not filing an *amparo*, Matamoros Garment workers did not avail themselves of the legally mandated procedures and protections afforded them under the LFT.⁶⁶

In the Tarrant case, workers did file an *amparo* with the Third District Court in Puebla on October 27, 2003, to contest the JLCA de Puebla's denial of the SUITTAR union registration on October 6, 2003. The *amparo* was accepted for review on November 4, 2003. Over the following months, however, the SUITTAR union executive committee withdrew the *amparo* after workers accepted severance payments from Tarrant management due to alleged harassment and intimidation, coupled with the economic pressure of being unemployed in Mexico. In written testimony, one Tarrant worker alleged that he was obligated to desist from the *amparo* by a company representative and because he did not have money to support his family.⁶⁷

In view of workers having accepted severance, SUITTAR desisted from its appeal on November 28, 2003.⁶⁸ On December 8, 2003, the court formally dismissed the *amparo*, based on the majority of Tarrant workers having accepted their severance, the Union Executive Committee withdrawing its appeal, and the resulting severing of the labor

⁶⁶ See Government of Mexico responses to the U.S. NAO dated June 2, 2004 on file at the U.S. NAO.

⁶⁷ Written testimony of Martin Zacatzi, submitted for the U.S. NAO Public Hearing on U.S. Submission 2003-01, April 1, 2004. Unofficial English translation provided by the U.S. NAO.

⁶⁸ See U.S. Submission 2003-01 (Third Amendment - Report of Workers' Labor Rights Violations at Tarrant de México, February 6, 2004) 11.

relationship with the company under the terms of LFT Article 53. The issue of workers accepting severance rather than continuing to fight for reinstatement also is an issue that has been raised in past NAO submissions. In October 1994, the U.S. NAO reported in its Report of Review on Submission #940001 and #940002 that the majority of workers opted to take severance pay. As a result, the U.S. NAO made the following conclusion:

Since workers for personal reasons accepted severance, thereby preempting Mexican authorities from establishing whether the dismissals were for cause or in retribution for union organizing, the NAO is not in a position to make a finding that the Government of Mexico failed to enforce the relevant labor laws.⁶⁹

However, in subsequent submissions the U.S. NAO found that “maquiladora workers often feel pressured to sign voluntary resignations in order to receive severance rather than risk receiving nothing if they pursue legal redress and lose.”⁷⁰

In addition to the alleged series of worker rights violations that led Matamoros Garment and Tarrant workers to seek to exercise their freedom of association rights, the submitters allege that throughout the legal union registration process workers were harassed and intimidated by a variety of parties, in an effort to stop them from pursuing their union registration efforts. This alleged intimidation was brought to the attention of Mexican local and federal government officials and local media. On February 25, 2003, for example, Matamoros Garment workers filed a complaint with the State Attorney General's Office of Puebla, which included testimony from various SITEMAG members

⁶⁹ See Report of Review for U.S. NAO Submission 940001 and 940002, October 12, 1994, 30.

⁷⁰ See Report of Review for U.S. NAO Submission 940003, April 11, 1995, 26.

alleging harassment of themselves and their family members by twelve men believed to be affiliated with the union holding the alleged protection contract at the plant. One worker alleged:

as of a month ago, we members of the [independent] union have noticed that we are being followed. . . . when we meet in the plaza men arrive that stay watching us and writing in notebooks as if describing us, they measure the time we spend meeting and they follow us to the bus stop, and in my case they've even followed me home and I see them when I leave my house. . . . and generally they are the same people, about 12 of them. . . . they've even taken our pictures. . . .⁷¹

As of the date of publication of this report, nearly one and one half years after the filing of SITEMAG's February 25, 2003 harassment complaint before the State Attorney General's Office in Puebla, no official ruling or decision has been issued on this matter. In addition, the Government of Mexico has not yet responded to questions posed by the U.S. NAO on this matter.⁷²

6.3.2 Mexican Government Action

Throughout the alleged events at Matamoros Garment and Tarrant, Mexican government officials were alerted to the alleged freedom of association violations on numerous occasions. The submitters provided the U.S. NAO with letters and documents filed with the following local and federal government officials in Mexico: President Vicente Fox Quesada; Mexican Labor Secretary Carlos María Abascal Carranza; the Governor of the state of Puebla - Lic. Melquiades Morales Flores; the JLCA de Puebla; the JLC de

⁷¹ See testimony of Gabriela Tejeda Hernandez, in the February 25, 2003 complaint submitted to the State Attorney General's Office of Puebla (Appendix M).

⁷² Letters containing two sets of questions from the U.S. NAO to the Mexican NAO dated February 5, 2004 and May 7, 2004 (on file in English and Spanish with the U.S. NAO).

Tehuacán; the State Attorney General's Office of Puebla; and emails and letters to high level officials at the Mexican Embassy in Washington.

A letter sent to Mexican President Vicente Fox and Mexican Labor Secretary Carlos Abascal dated April 17, 2003,⁷³ detailed alleged domestic and international labor law violations at Matamoros Garment. In the letter, the submitters requested that the JLCA reconsider SITEMAG's application for registration, and that applicants be provided with assistance to correct technical deficiencies on the application as required under LFT. The submitters also requested that President Fox and Secretary Abascal communicate with the Governor of Puebla about the issues at the plant and request his intervention with the JLCA de Puebla.

As recently as March 4, 2004, the submitters wrote to the Governor of Puebla requesting he hold a hearing to discuss the issues at Tarrant due to alleged freedom of association violations and other worker rights violations at the plant. Additional letters were submitted to the Governor of Puebla on October 2, 2003 (a preliminary copy of U.S. Submission 2003-01 and the report written by the Worker Rights Consortium detailing alleged worker rights violations at Tarrant), September 11, 2003 (a letter of appreciation for agreeing to intervene and meet with the JLCA de Puebla based on Tarrant workers' demands), and August 25, 2003 (a letter alerting the Governor to the formation of

⁷³ See U.S. NAO Submission 2003-01, page 43 (Appendix I).

SUITTAR and illegal firings due to union organizing attempts at Tarrant and other alleged labor rights violations).⁷⁴

Letters and documents also were filed with the JLC de Tehuacán and high-level officials at the Mexican Embassy in Washington, D.C. detailing the alleged worker rights abuses.⁷⁵ Additionally, on September 15, 2003 and October 22, 2003, a senior official from a U.S. garment label wrote letters to the Governor of Puebla, with copies to the U.S. Ambassador to Mexico, the Mexican Ambassador to the United States, and the President of the JLCA de Puebla, expressing concern over the alleged worker rights violations at Tarrant and asking the Governor to lend attention to the matter.

As noted, NAALC Article 3 (1) and (2) obliges each Party to promote compliance with and effectively enforce its labor law through appropriate government action. It is clear that the Government of Mexico was made aware on numerous occasions of the alleged worker rights violations taking place at the Matamoros Garment and Tarrant factories, through letters, local news reports, and face-to-face meetings with workers, worker rights groups, and Mexican and foreign private companies. The U.S. NAO is awaiting response from the Government of Mexico as to what, if any, action resulted from the various requests for action.

⁷⁴ Copies of these letters are on file at the U.S. NAO.

⁷⁵ Copies of these documents are on file at the U.S. NAO.

7. Minimum Employment Standards

7.1 NAALC Obligations

The provisions of the NAALC relevant to the minimum employment standards issues raised in this submission include NAALC Article 1(b), which calls for the Parties to promote, to the extent possible, the labor principles set out in Annex 1 of the NAALC. Specifically, NAALC Principle 6 covers the “establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.”⁷⁶ Also relevant to this section of the report, NAALC Principle 4 commits each Party to prohibit all forms of forced or compulsory labor.⁷⁷

As noted in Section 6.1 of this report, NAALC Article 3 (1) commits each Party to promote compliance with and effectively enforce its labor law through appropriate government action. Additionally, NAALC Article 4(1) commits each Party to ensure that persons with a legally recognized interest have appropriate access to administrative, quasi-judicial or labor tribunals for the enforcement of the Party’s labor law; Article 5(1) commits each Party to ensure that labor tribunal proceedings are fair, equitable and transparent; and Article 5(3) commits each Party to provide parties to the aforementioned labor tribunal proceedings, the right “to seek review and, where warranted, correction of final decisions issued in such proceedings.”

⁷⁶ NAALC, Annex 1.

⁷⁷ Ibid.

7.2 Mexican Law

7.2.1 Mexican Constitution

Article 123, Title 6 of the Mexican Constitution establishes minimum employment standards in Mexico. In addition, Article 123 (A)(I) and (II) of the Mexican Constitution provides that the duration of the work day is eight hours during daytime and seven hours at night. Article 123 (A)(XI) states:

When, because of extraordinary circumstances, the hours of work must be increased, wages or salary must be paid at the rate of 100% more than the amount set for normal time. In no case may the overtime exceed three hours daily, or three consecutive times. Those younger than sixteen years of age are not included in this class of worker.

7.2.2 Federal Labor Law

LFT Article 3 provides that work be performed under conditions that insure the life, health and decent standard of living for the worker and his family.

Hours of Work

Pursuant to LFT Article 61, the maximum daily hours of work shall be eight for day work, seven for night work and seven and a half in the case of mixed hours. LFT Article 66 provides that daily work hours may only be prolonged on account of exceptional circumstances, on condition that they not exceed the normal hours by more than three hours per day or three times a week. LFT Article 68 provides that no worker shall be compelled to work hours in excess of those determined by law and that overtime over and above nine hours per week shall be paid for by the employer at the rate of three times the ordinary rates paid for normal working hours. These overtime wages do not, however,

amount to part of the worker's salary for purposes of severance – unless it was paid in a permanent manner.

Wages

Pursuant to LFT Article 85, wages shall be sufficiently remunerative and never less than the amount fixed by the LFT as a minimum. LFT Article 88 provides that the intervals between paydays shall in no case exceed one week (in the case of persons engaged in manual work) or 15 days (in the case of all other workers).

Minimum Wage

LFT Article 90 defines the “minimum wage” as the smallest cash payment that a worker shall receive for services performed during the hours of work.

Weekly Rest and Holidays (Compulsory Rest days)

Pursuant to LFT Article 69, the workers shall be entitled to at least one rest day with full pay every six days. LFT Article 74 provides for compulsory days of rest, including specific holidays.

Vacation

Pursuant to LFT Article 76, workers in service of an employer for more than a year are entitled to paid annual vacation leave.

Employers' Obligations

LFT Article 132 (Section II) states that employers shall pay workers the wages and other payments to be made to the workers, in accordance with the rules applicable in the company.

Collective Suspension of Labor Relations

Temporary plant closings are covered under LFT Article 427 (Section V), which states that grounds for the temporary suspension of the labor relationship can include lack of money and the impossibility of obtaining it for the normal continuance of work, if these facts are adequately provided by the employer. The appropriate procedures to be followed are listed under LFT Articles 892-899. Permanent plant closings are covered under LFT Articles 433-439 and procedures under Articles 900-919.⁷⁸ LFT Article 428 provides that staff of lesser seniority shall be the first to be suspended. LFT Articles 430-431 provide that the JLCA shall authorize or endorse the suspension of the labor relationship and shall fix the compensation to be paid to workers. The trade union and workers may request that the JLCA provide verification as to whether the original grounds for the suspension still apply.

⁷⁸ Commission, Plant Closings and Labor Rights, 42-43.

Severance Compensation

LFT Article 50 calls for compensation for workers who are not reinstated. LFT Article 51 (Section V) allows a worker to terminate the labor relationship without liability for the worker if the worker does not receive the wages owed at the time or in the place agreed upon or fixed according to custom.

7.2.3 International Conventions/Treaties Ratified by Mexico

Article 1 of ILO Convention 131, ratified by Mexico on April 18, 1973,⁷⁹ calls for ratifying members to establish a system of minimum wages that will cover all groups of wage earners whose terms of employment are such that coverage would be appropriate. Pursuant to Article 2, minimum wages shall have the force of law and shall not be subject to abatement and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions. Article 3 provides for protections concerning the level of minimum wages.

7.3 Analysis

The submitters raised four issues relevant to minimum employment standards: (1) wages and overtime, which includes forced labor to meet production demands; (2) dismissal of employees; (3) collective suspension of labor relations; and (4) severance compensation. To support their allegations, the submitters presented oral and written testimony, copies of press reports, payroll receipts, and numerous letters and documents filed before the

⁷⁹ ILO Conventions ratified by Mexico (www.ilo.org).

Government of Mexico concerning salary theft, back wages owed, profit sharing, forced labor and overtime, mandatory days of rest, and reinstatement demands for illegally fired workers.

7.3.1 Wages and Overtime

Concerning alleged wage and overtime violations, the submitters' allegations include: failure to pay the minimum wage to garment sewers (Matamoros); failure to pay three weeks of back wages owed workers, and eventual payment by management of only half the wages owed workers (Matamoros); witnessing by the JLCA de Puebla of insufficient back wage payments to workers on more than one occasion (Matamoros); non-payment of contractually agreed wages (Tarrant); and alleged failure to protect workers from forced labor (i.e., allegations of workers being locked inside the factories) and unpaid overtime – including work performed on weekends and holidays (Matamoros Garment and Tarrant).

To support the allegations, workers from Matamoros Garment and Tarrant presented testimony to the U.S. NAO concerning wage and overtime issues. Workers from Matamoros Garment alleged that the factory paid professional garment sewers below the minimum wage.⁸⁰ Agustina Reyes, an employee at Matamoros Garment for three years, testified that her daily wage before overtime and other allowances was 39 pesos.⁸¹

⁸⁰ U.S. Submission 2003-01 (Appendix P).

⁸¹ Ibid., (Appendix B).

Similarly, Jaime Ayala Sánchez, former SITEMAG leader at Matamoros Garment, stated in written testimony to the U.S. NAO:

Wages received were 38 pesos a day plus incentive bonuses (primas). The legal minimum wage during the time the factory opened was 54 pesos per day.⁸²

Workers from Matamoros Garment and Tarrant also presented testimony concerning back payments owed, non-payment of contractually agreed wages, excessive work hours, and forced labor and overtime due to high productivity demands. Jaime Ayala Sánchez, testified:

We went three weeks without being paid. Our pay was supposed to be deposited in the bank but sometimes we were tricked because we would go to the bank and the money was not there. We were obligated to work extra hours without pay and we were threatened if we did not stay. Sometimes we worked Saturday and Sunday, and on occasions management would lock us inside the factory to meet production demands. These are the reasons as to why we decided to form our independent union SITEMAG.⁸³

Salvador García, Maribel Ramírez, and Martin Zacatzi Tequextle, former SUITTAR leaders from Tarrant, presented similar testimony. Mr. García stated:

When we didn't produce enough, we were forced to work overtime. We were threatened by management who informed us that if we did not stay, we were not going to be paid for that week. Very few times we were paid overtime and for work on holidays. We worked 10 hours from 8:00 a.m. to 7:00 p.m. Monday through Friday but when the production was not up

⁸² Written testimony from Mr. Ayala on file at the U.S. NAO. Mr. Ayala also was interviewed by U.S. NAO staff in the state of Puebla in April 2004. The submitters presented copies of pay stubs that showed that some workers were being paid 39 pesos daily during that time period. Though it is difficult to determine the exact profession of the workers from the pay stubs provided, as of January 2003, the general minimum wage in Puebla State (Zone C) was 40.30 pesos daily. In addition, the daily minimum professional wages in pesos for Sewers/Seamstresses in garment work in Puebla State (Zone C), in factories or workshops was 52.10 pesos daily. See Salarios mínimos vigentes a partir del 1o. de enero del año 2003 (Secretaría del Trabajo y Previsión Social – STPS and the Comisión Nacional de los Salarios Mínimos – CNSM). See also www.conasami.gob.mx.

⁸³ Ibid. Additional written testimony from Matamoros Garment Workers can be found in U.S. Submission 2003-01 (Appendix P).

to par, we had to work on Saturdays and sometimes on Sundays, and we were not paid.⁸⁴

To further support wage and overtime allegations, the submitters presented the U.S. NAO with copies of documents signed between worker representatives and management at both Matamoros Garment and Tarrant. At Matamoros Garment, the workers and the director signed an agreement, allegedly witnessed by an official from the JLCA de Puebla, on January 21, 2003 in response to workers' demands for three and one half weeks of back pay owed and an end to forced overtime, among other issues.⁸⁵ In the document, the company agreed to pay workers their salaries and agreed to provide workers with advance written notice about workdays that would require overtime – with the decision on working extra hours left up to the workers.⁸⁶ At Tarrant, a copy of a list of demands (*Pliego Petitorio*) was submitted by the Tarrant Workers' Negotiating Committee to Tarrant management requesting an 8-hour workday, pay for overtime, respect for mandatory days of rest, and payment of salaries for days during the work stoppage.⁸⁷ In a signed document referencing the *Pliego Petitorio*, management and workers agreed to the following: a 10-hour workday, Monday – Friday only; overtime regulations shall be followed pursuant to LFT Articles 66-68, and always and if workers are available as needed by the company; and mandatory days of rest shall be respected

⁸⁴ Public Hearing Transcript of U.S. Submission 2003-01 (www.dol.gov/ilab/media/reports/nao/submissions/2003-01Transcript.htm).

⁸⁵ Document on file at the U.S. NAO titled Carta Convenio Celebrado Entre los Trabajadores de Matamoros Garment y Matamoros Garment dated January 21, 2003, 1.

⁸⁶ Ibid.

⁸⁷ The *Pliego Petitorio* is on file at the U.S. NAO.

pursuant to LFT Article 74.⁸⁸ The document was ratified before the JLC de Tehuacán on July 8, 2003.

A clothing label sourcing with Matamoros Garment conducted an audit of the facility in September 2002 and reported that salary levels were above the required minimum wage,⁸⁹ but later on January 18, 2003 temporarily stopped sourcing due to alleged Corporate Code of Conduct violations at the plant.⁹⁰ An email from the clothing label written almost one month later, on February 13, 2003, acknowledged that some workers were paid below the minimum wage:

Although you rightly indicated that payments were made below the appropriate classification of the respective workers, matters to correct this discrepancy have already been initiated.⁹¹

The clothing label also supported the submitters' assertion that the JLCA de Puebla witnessed workers being paid late, though only for one week, and not 2-3 weeks as alleged by the submitters.⁹² The clothing label stated that workers were paid late as a result of Matamoros Garment's financial difficulties, but noted workers were paid their full wages.⁹³ In addition, contrary to the submitter's allegations of forced labor and overtime violations at Matamoros Garment, an inspection by the same clothing label in February 2003 reported the following:

⁸⁸ Document filed before the JLC de Tehuacán dated July 8, 2003 (on file at the U.S. NAO).

⁸⁹ U.S. Submission 2003-01 (Appendix E).

⁹⁰ Chronology of Events – Matamoros Garment written by the Submitters of U.S. Submission 2003-01 (on file at the U.S. NAO) 4.

⁹¹ Email from a clothing label to the Centro de Apoyo al Trabajador (CAT) dated February 13, 2003 (on file at the U.S. NAO).

⁹² Email from a clothing label to the CAT dated February 12, 2003 (on file at the U.S. NAO). The Submitters allege that the JLCA de Puebla witnessed 2-3 weeks of back wages owed.

⁹³ Ibid.

All 22 interviewed employees indicated that they were never locked in the factory. They could, with permission from Human Resources and/or their Supervisors, leave the factory at any time.⁹⁴

A different clothing label operating at Tarrant informed the U.S. NAO that its May 2003 assessment at the plant found Terms of Engagement violations prior to beginning production. The company stated:

We identified as part of that review Terms of Engagement violations, including non-payment of proper overtime wages and excessive overtime hours. At that time, factory management was responsive to meeting our Terms of Engagement and agreed to address issues that were identified.⁹⁵

One month later, the clothing label confirmed during a follow-up visit that employees had received back wages owed, employees were no longer working excessive overtime, and a manager had been replaced.⁹⁶

7.3.1.2 Mexican Government Action

Throughout the alleged events at Matamoros Garment and Tarrant, formal complaints and letters were submitted to local and federal government officials alerting them to minimum employment standards violations (i.e., sub-minimum wages, unpaid wages, forced overtime, and instances of workers being locked inside the factories) at both Matamoros Garment and Tarrant. Workers filed a formal complaint on March 24, 2003 with the State Attorney General's Office of Puebla alleging salary theft against the director of Matamoros Garment.⁹⁷ In addition, reinstatement demands due to alleged

⁹⁴ Letter from a clothing label to the U.S. NAO dated March 23, 2004 (on file at the U.S. NAO).

⁹⁵ Letter from a clothing label to the U.S. NAO dated March 31, 2004 (on file at the U.S. NAO).

⁹⁶ Ibid.

⁹⁷ U.S. Submission 2003-01 (Appendix N).

illegal firings and documents requesting back wages owed were also submitted to government officials on behalf of Tarrant workers. Furthermore, letters were submitted to Mexican President Vicente Fox and Labor Secretary Carlos Abascal,⁹⁸ the Deputy Chief of Mission at the Mexican Embassy,⁹⁹ the Governor of Puebla,¹⁰⁰ and the Town President (Presidente Municipal) of Izúcar de Matamoros concerning back wages owed,¹⁰¹ and to the clothing labels requesting an audit due to minimum wage violations.¹⁰²

The submitters also claimed that they met with the Municipal Office of Izúcar de Matamoros (Dirección de Gobernación) concerning minimum employment standard violations at Matamoros Garment.¹⁰³ In addition, the Municipal Office wrote a letter to US Labor Exchange in the Americas Project (LEAP) dated March 25, 2003, which confirms that the Government of Mexico was aware of minimum employment violations at the plant (i.e., back pay owed, debt, and working conditions). The letter mentioned that some back pay was issued to workers and, as far as the municipal office was aware, workers were paid in entirety.¹⁰⁴ The letter also mentioned that the JLCA de Puebla was reviewing the workers' concerns very carefully.¹⁰⁵

⁹⁸ Ibid., (Appendix I - letter dated April 17, 2003).

⁹⁹ Ibid., (Appendix H - letter dated March 18, 2003).

¹⁰⁰ Letters dated August 25, 2003, September 11, 2003, March 4, 2004 (on file at the U.S. NAO).

¹⁰¹ Letter dated March 18, 2003 (on file at the U.S. NAO).

¹⁰² Letter from SITEMAG to Puma dated January 13, 2003 (on file at the U.S. NAO).

¹⁰³ U.S. Submission 2003-01 (Appendix P).

¹⁰⁴ Letter from the Municipal Office in Izúcar de Matamoros to US Leap dated March 25, 2003 (on file at the U.S. NAO). Unofficial English translation provided by the U.S. NAO.

¹⁰⁵ Ibid.

On January 14, 2003 and in March 2003, the submitters alleged that the JLCA de Puebla witnessed Matamoros Garment management paying workers 2 to 3 weeks of back wages owed at less than the daily minimum wage.¹⁰⁶ Allegedly the JLCA never acknowledged these violations when the payments were made, and did not take any action to correct the situation. Should this have been the case, it would indicate knowledge on the part of the JLCA de Puebla that minimum employment standards violations had occurred at Matamoros Garment. Concerning minimum wage violations, pursuant to Articles 386 and 387, Section XII of the Federal Penal Code, evasion by an employer to pay the minimum daily wage will subject the employer to a criminal penalty for salary fraud.¹⁰⁷ The U.S. NAO posed specific questions to the Government of Mexico concerning the allegation that the JLCA de Puebla witnessed back payments to Matamoros Garment workers.¹⁰⁸ In June 2004, the Government of Mexico informed the U.S. NAO that information has been requested from the appropriate authorities about this matter.¹⁰⁹

Furthermore, the document filed on March 24, 2003 with the State Attorney General's Office of Puebla alleged salary theft against the director of Matamoros Garment. Though 59 workers signed the petition, the document stated that more than 100 workers had not received wages owed to them by management and, when workers arrived at the plant to pick up their paychecks, the plant was closed without any additional information or

¹⁰⁶ Letter from the Submitters of U.S. Submission 2003-01 to the U.S. NAO dated December 16, 2003 (on file at the U.S. NAO). Pursuant to LFT Article 85 wages shall never be less than the amount fixed by the LFT as a minimum. LFT Article 88 states that the intervals between paydays shall in no case exceed one week (in the case of persons engaged in manual work) or 15 days (in the case of all other workers).

¹⁰⁷ Anna Torriente, *Minimum Employment Standards in Mexico* (1997).

¹⁰⁸ See U.S. NAO questions to the Government of Mexico dated May 7, 2004 (on file at the U.S. NAO).

¹⁰⁹ See Government of Mexico responses to the U.S. NAO dated June 2, 2004 (on file at the U.S. NAO).

guidelines provided.¹¹⁰ In response to specific inquiries by the U.S. NAO regarding the official complaint,¹¹¹ the Government of Mexico informed the U.S. NAO that information has been requested from the appropriate authorities.¹¹² Therefore, despite the formal complaint being filed with Government of Mexico officials over one year ago, the U.S. NAO is unable to determine what action, if any, the Government of Mexico is taking to effectively enforce the relevant labor laws.

The Government of Mexico informed the U.S. NAO that the legal representative of Tarrant was summoned by the JLC de Tehuacán in June 2003 to address the various labor problems at the plant, and that workers' demands from the *Pliego Petitorio* were later ratified by the JLC de Tehuacán on July 8, 2003 following conciliation proceedings held by mutual agreement on June 18 and 30, 2003.¹¹³ However, workers alleged that management continued to violate the agreement and as a result formed the SUITTAR union just days later.¹¹⁴ Corroborating the allegations that worker rights violations continued at Tarrant after the July 8, 2003 agreement is the Government of Mexico's acknowledgement that a complaint was filed before the JLCA de Puebla in August 2003 by six workers concerning reinstatement of dismissed workers, overdue or back wages as from the date they were dismissed, overtime, and profit-sharing. Regarding this complaint, the Government of Mexico informed the U.S. NAO that while the JLCA de

¹¹⁰ U.S. Submission 2003-01 (Appendix N). Unofficial English translation provided by the U.S. NAO.

¹¹¹ See U.S. NAO questions to the Government of Mexico dated February 5, 2004 (on file at the U.S. NAO).

¹¹² Government of Mexico responses to the U.S. NAO dated June 2, 2004 (on file at the U.S. NAO).

¹¹³ Ibid.

¹¹⁴ U.S. NAO interview with former SUITTAR leaders in Puebla State in April 2004.

Puebla notified all relevant parties to prepare for a conciliation hearing, the hearing was later suspended at the request of the parties as mutually agreed for purposes of a settlement.¹¹⁵ Subsequently the company and workers signed agreements in October and November 2003 that the Government of Mexico claims fully satisfied the workers' demands for benefits found in their initial complaint and the JLCA de Puebla therefore ordered the case be set aside and considered closed as it lacked legal grounds on which to proceed pursuant to LFT Article 5 (Section XIII), 33, 53, 692, 713, 724, 880, 889, 938, 949, 987 and other related articles.¹¹⁶ Whether any follow-up action by the Government of Mexico took place, based on workers assertions that problems remained once the conciliation proceedings were declared resolved, remains unclear.

7.3.2 Dismissal of Employees

Regarding alleged illegal firings and layoffs at Matamoros Garment and Tarrant, the submitters assert that the Government of Mexico failed to enforce its labor laws because the proper legal process before the JLCA de Puebla was not followed as required by law.¹¹⁷ Agustina García Reyes – a sewer with more than 20 years of experience and a three-year employee at Matamoros Garment – recalled:

When the company began to notice that workers formed an independent union, reprisals began for independent union members. Management began to fire workers, including myself. I was sent home because I was

¹¹⁵ Government of Mexico responses to the U.S. NAO dated June 2, 2004.

¹¹⁶ Ibid.

¹¹⁷ Though the issue of dismissals for union activity was considered in Section 6 of this report, it will be briefly discussed in this section as well because it also raises minimum employment standards issues in addition to freedom of association.

told there was no work, but I was never able to return. Months later the factory closed and I was never paid.¹¹⁸

During the NAO public hearing, SUITTAR leaders from Tarrant recalled their dismissals, which involved the participation of company security. Ms. Ramirez, with three years of experience at the plant, recalled her dismissal as follows:

They had a policeman escort me to the office and he told me, “We don’t have any work for you and therefore, you have to leave right away.” I could not even go back to pick up my sweater or anything, including my purse.... I said, “Well explain to me why you are firing me? What did I do or explain to me why I’m not performing up to par,” and they said, “Well they are orders that we receive from higher up.”¹¹⁹

Contrary to testimony from workers and the submitters, Tarrant management informed the U.S. NAO during an interview in the state of Puebla in April 2004 that the determination of which workers would be dismissed in groups at the plant was done based on seniority. Pursuant to LFT Article 428 (suspension of staff of lesser seniority), workers with less seniority shall be the first to be suspended. Furthermore, Tarrant management informed the U.S. NAO that the SUITTAR union leaders were the new employees at the plant and were therefore dismissed because they did not have seniority – not because of union organizing attempts. However, the U.S. NAO was able to confirm during interviews in the state of Puebla with former Tarrant workers (not affiliated with SUITTAR) that some workers with two years of experience or less were working up until

¹¹⁸ Written testimony from Agustina García Reyes submitted to the U.S. NAO in March 2004 (on file at the U.S. NAO). Unofficial English translation provided by the U.S. NAO. Ms. García was also one of the leaders of SITEMAG.

¹¹⁹ U.S. NAO Public Hearing Transcript for U.S. Submission 2003-01 (Panel II –Worker Testimony).

February 2, 2004 (the plant closing date), which appears to be contradictory to management's statement.¹²⁰

Tarrant management also informed the U.S. NAO during an oral interview that Tarrant had a policy for firing workers which included a verbal warning, followed by a written warning (i.e., inform workers in advance and on more than one occasion).¹²¹ Workers from both Matamoros Garment and Tarrant testified that they were not given any written notice and reasons for their dismissals.¹²²

To support the submitter's allegations, letters and formal complaints were filed with local and Mexican Government officials. Reinstallation demands for Tarrant workers allegedly illegally fired from the plant were filed in August, September and November 2003 with the JLCA de Puebla.¹²³ In addition, on September 15, 2003, a clothing label operating at Tarrant submitted a letter to the Governor of Puebla (with a copy to the Mexican Ambassador to the U.S. and the President of the JLCA de Puebla) urging the timely reinstatement of illegally fired workers if an investigation concludes that the allegations are true.¹²⁴

¹²⁰ Tarrant management informed the U.S. NAO in a letter dated June 1, 2004 that Tarrant Mexico operated from July 1, 2000-February 2, 2004 (letter on file at the U.S. NAO).

¹²¹ U.S. NAO interview with Tarrant management in April 2004 in the state of Puebla.

¹²² As mentioned in Section 6 of this report, pursuant to LFT Article 47, employers shall serve written notice on the employee indicating the date of termination of his contract and the reason or reasons. LFT Article 47 also states that failure by the employer to notify the worker or the JLCA shall be sufficient grounds to consider that the dismissal was not justified.

¹²³ U.S. Submission 2003-01 (Third Amendment – Report of Workers' Labor Rights Violations at Tarrant dated February 6, 2004, Appendices 10-12).

¹²⁴ Letter from a clothing label to the U.S. NAO dated March 31, 2004 (on file at the U.S. NAO).

Pursuant to the LFT, the seniority of Ms. Ramirez and Ms. Reyes as employees at Matamoros Garment and Tarrant should have been recognized when they were dismissed. Indeed, Tarrant workers testified that when the company name switched to Tarrant, the management made a commitment to respect seniority and profit sharing.¹²⁵ In addition, a petition was filed on November 12, 2003 before the JLCA de Puebla alleging illegal firings and dismissals of two workers in violation of LFT Articles 947¹²⁶ and 50.¹²⁷ Presented on behalf of one Tarrant worker with more than three years of experience and seniority at the plant, the petition stated:

Beginning in July 1999, the sewer worked from 8:00am-6:00pm from Monday – Friday, with a half hour to eat and to take a break. At 4:00pm, the maximum legal workday should have ended, but at 6:00pm, the worker had 2 extra work hours on a daily basis from Monday-Friday. In other words, 10 extra hours per week from the time the worker started until the time of the sewer’s illegal firing. Vacation pay owed was also included in the demand.¹²⁸

The Government of Mexico informed the U.S. NAO in June 2004 that 25 individual complaints alleging wrongful dismissal at Tarrant were filed with the JLCA de Puebla in 2003, of which fifteen were either settled or dismissed.¹²⁹ The nine remaining cases are still pending before the JLCA de Puebla.¹³⁰ To date, however, the Government of Mexico has not provided the U.S. NAO with specific information requested in May 2004

¹²⁵ Public Hearing Transcript for U.S. Submission 2003-01 (Panel II – Worker Testimony).

¹²⁶ LFT Article 947 states: “if the employer should refuse to submit its differences to arbitration or to accept the award made, the Board shall order that the worker be indemnified in the amount of three months’ wages”. For further discussion of this issue *see* Breña Garduño, Francisco, Mexican Labor Law Summary – Third Edition (Mexico City: Breña y Asociados. S.C., 2002) 305.

¹²⁷ A copy of the petition is located in U.S. NAO Submission 2003-01 (*See* Tarrant Legal Summary and Analysis – Annex 12).

¹²⁸ *Ibid.* Unofficial English translation provided by the U.S. NAO.

¹²⁹ Government of Mexico responses to the U.S. NAO dated June 2, 2004.

¹³⁰ *Ibid.*

concerning the procedures followed pursuant to the LFT concerning the dismissal of employees from Matamoros Garment and Tarrant. The Government of Mexico did inform the U.S. NAO that information has been requested from the appropriate authorities.¹³¹

7.3.3 Collective Suspension of Labor Relations/Plant Closing

The submitters allege that the Government of Mexico failed to properly enforce its labor laws related to plant closures. Temporary plant closings are covered under LFT Article 427 (Section V), which provides for the temporary suspension of the labor relationship on the basis of lack of money and the impossibility of obtaining sufficient funds for the normal continuance of work, if these facts are adequately proved by the employer. The applicable procedures are provided for under LFT Articles 892-899. Pursuant to LFT Article 429, employers must cite the reasons for the closing and obtain authorization from the JLCA prior to making the suspension effective.

As evidence that procedures were not followed in the case of Tarrant, an audit by the Worker Rights Consortium found:

The JLCA de Puebla confirmed, in an interview with the WRC, that Tarrant Ajalpán neither requested nor received this approval.¹³²

¹³¹ Ibid.

¹³² See Interim Report: Worker Rights Consortium Inquiry into Allegations of Labor Rights Violations at Tarrant Ajalpán (Worker Rights Consortium: September 15, 2003) 6.

Regarding Matamoros Garment, the submitters allege that on March 17, 2003, the factory informed the workers to return on March 20 for their last paychecks because production was coming to an end.¹³³ To support the submitters' allegation, on March 18, 2003 they met with a representative from the Municipal Office requesting assistance with the impending factory closure.¹³⁴ Two days later, allegedly on March 20, 2003, the company and the JLCA de Puebla arrived at the factory and informed the workers that they should return on March 24th to pick up their checks.¹³⁵ The submitters claim that on March 24, 2003:

The President of the JLCA de Puebla, a CTM representative, and Matamoros management declared the implementation of an *embargo precautorio* (precautionary embargo to protect the interest of the employees by seizing the company's material assets to ensure that workers will receive severance pay if the factory closes) which will result in a 15 day *paro técnico* (technical work stoppage), saying they can make no severance payments because the factory is only temporarily closed.... Management also admitted the factory is financially unstable.... The remaining workers are told they will be paid 50% of their salaries for the next 15 days and the management would pay the workers their two weeks' back pay from March 10-17 and March 17-24. The JLCA witnesses the payments of two weeks' back wages using backdated checks.... On April 8, 2003, the JLCA President announced a second *paro técnico* to last until May 2nd. During this period, workers continued receiving 50% of regular wages.¹³⁶

In a letter to the U.S. NAO, the submitters further alleged:

Workers never received formal word from either the factory or the JLCA about whether the factory had indeed permanently closed or if the *paro técnico* remained ongoing. The workers are unaware of what date the JLCA considers as the final closure of the factory.¹³⁷

¹³³ Chronology of Events at Matamoros Garment submitted to the U.S. NAO by the Submitters.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ See letter from submitters to the U.S. NAO dated December 16, 2003 (on file at the U.S. NAO).

The submitters concede that the alleged financial difficulties at Matamoros Garment and the closure decision were reported to workers on March 24, 2003 by the CTM, the JLCA de Puebla, and plant management. Additionally, during an interview in Mexico City in April 2004, a representative from the CTM informed the U.S. NAO that the union has a lawsuit currently pending against the owners of Matamoros Garment due to the plant closing and the payments owed to workers.¹³⁸

Although the CTM apparently participated in discussions before the JLCA on behalf of Matamoros Garment Workers, many of those workers maintain that they were not aware that they had union representation through the CTM. Thus, the submitters argue that when the JLCA de Puebla, the CTM, and Matamoros Garment management met and agreed to the *embargo precautorio* and subsequent *paro técnico*, the views of all workers were not represented. In fact, had the workers petition for recognition of SITEMAG been approved in a timely fashion, those workers would have had representation of their choosing prior to the plant closing proceedings.

Pursuant to LFT Articles 900-919, collective conflicts of an economic nature require the following:

the JLCA is obligated to pursue conciliation by agreement of the parties, even as litigation ensues. This procedure is initiated by a written petition from the employer seeking permission to close the plant, with documents demonstrating the economic condition of the company and the necessity of the relief sought The JLCA convenes a hearing for the company and

¹³⁸ The Government of Mexico confirmed that the Sindicato Francisco Villa de la Industria Textil y Conexos (CTM affiliated) holds the collective bargaining agreement at Matamoros Garment in a letter to the U.S. NAO in June 2004.

the union within 5 days, and appoints a team of expert witnesses independent of the expert witnesses of the parties. The JLCA's expert witnesses undertake the research and may demand of the parties reports and information as needed.¹³⁹

Although a hearing and independent witness research as noted above are required under the LFT, the U.S. NAO has no indication of whether such a hearing or research took place in the case of Matamoros Garment, nor what, if any, proceedings took place in the case of Tarrant. In addition, SITEMAG allegedly met with a representative from the Municipal Office of Izúcar de Matamoros on March 18, 2003 to ask for assistance with the impending factory closure, among other issues.¹⁴⁰ The Municipal Office allegedly contacted the JLCA de Puebla who then informed the Municipal Office that the situation was a "dispute between two unions."¹⁴¹ The U.S. NAO requested additional information from the Government of Mexico in February and May 2004 concerning the plant closing dates, the steps taken concerning the plant closings according to provisions of the LFT, including procedures employers must follow and the role of the JLCA in this process. To date, the Government of Mexico informed the U.S. NAO that information has been requested from the appropriate authorities. Without additional information, the U.S. NAO is unable to determine the extent to which Mexico effectively enforced its labor laws related to this issue.

¹³⁹ Commission, Plant Closings and Labor Rights, 47.

¹⁴⁰ Chronology of Events at Matamoros Garment submitted to the U.S. NAO by the Submitters.

¹⁴¹ Ibid.

7.3.4 Severance Compensation

The submitters charge that the Government of Mexico failed to properly enforce its labor laws related to legally mandated severance pay following the closure of Matamoros Garment and Tarrant. In an interview with U.S. NAO officials in the state of Puebla in April 2004, former Matamoros Garment workers stated they have yet to receive their severance payments.

In addition, as mentioned in Section 6.3.1 of this report, the Tarrant workers filed an *amparo* before the Third District Court for union registration, which was later dismissed because most workers had already severed their labor relationship under the terms of LFT Article 53 (Section I) by accepting severance payments.¹⁴² However, the submitters allege that Tarrant management harassed and intimidated workers into accepting their severance payments through the signing of voluntary resignation agreements. In addition, the submitters alleged in a letter to the U.S. NAO dated December 16, 2003 that four of the fired SUITTAR leaders were coerced by the plant's lawyer to accept more than their legally entitled severance pay to encourage them to desist from the appeal.¹⁴³

Contrary to submitter and worker testimony, Tarrant management informed the U.S. NAO in an interview in April 2004 that it never forced any workers to sign voluntary resignation agreements and that all severance and dismissal was done in compliance with

¹⁴² LFT art. 53 (Section I) states: "cause for termination of an employment relationship is based on mutual consent of the parties."

¹⁴³ See letter from the submitters to the U.S. NAO dated December 16, 2003.

the LFT. Evidence presented to the U.S. NAO from Tarrant management included copies of signed voluntary resignation agreements dated February 2, 2004, which indicated that workers voluntarily ended the working relationship and received everything legally owed to them (i.e., salary, vacation pay and bonuses, overtime pay).¹⁴⁴

In response to specific questions posed, the Government of Mexico informed the U.S. NAO that it has contacted the appropriate authorities for further information concerning the awarding of severance, recourse available, if any, for workers if they allege that they were coerced into signing a severance agreement, and the issuance of voluntary resignation agreements. Concerning Matamoros Garment, testimony from the submitters, workers, and the union holding the collective bargaining agreement confirm that Matamoros Garment has major financial difficulties which may explain why workers have yet to receive their legally mandated severance, and a lawsuit is pending. At Tarrant, given that the Tarrant Union Executive Committee desisted from the *amparo* and the majority of workers accepted severance payments pursuant to LFT Article 53 (Section I), the U.S. NAO cannot determine if the Government of Mexico failed to effectively enforce the relevant labor laws. However, the issue of workers being harassed and intimidated into accepting severance and compensation is an area that needs to be addressed further.

¹⁴⁴ See redacted copy of voluntary resignation agreements on file at the U.S. NAO.

8. Prevention of Occupational Injuries and Illnesses

8.1 NAALC Obligations

Article 1 (b) of the NAALC commits each party to promote its labor principles. Principle 9 covers occupational injuries and illnesses, including prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.¹⁴⁵ Additionally, as noted in Section 6.1 and 7.1 of this report, NAALC Article 3(1) obligates each Party to promote compliance with and effectively enforce its labor law through appropriate government action. NAALC Articles 4 and 5 obligate the parties to ensure access for workers to fair, equitable, and transparent labor tribunal proceedings.

8.2 Mexican Law

8.2.1 Mexican Constitution

Article 123 (XV) of the Mexican Constitution requires an employer to observe safety and health regulations at its company. This article also calls for the inclusion of sanctions for occupational safety and health violations.¹⁴⁶

8.2.2 Federal Labor Law

The submitters allege that the Government of Mexico failed to enforce its labor laws to prevent occupational injuries and illnesses, including LFT Articles 51 and 132. LFT Article 51 states that the following shall constitute grounds for terminating the labor relationship without liability for the worker:

¹⁴⁵ NAALC, Annex I.

¹⁴⁶ See U.S. NAO Report of Review 9901 (TAESA), 59.

If the employer ... or its top management are guilty in the course of the employment of a dishonest or dishonorable action, violence, threats, insolence, ill-treatment or the like towards the worker or his family.¹⁴⁷

General Occupational Safety and Health Standards

LFT Article 132 (Section VI) provides that employers shall behave towards the workers with proper consideration and abstain from ill treatment by work or deed. Section XVI provides that employers shall equip the factories, workshops, offices, and other places in which the work is to be performed in accordance with the principles of safety and health to prevent work accidents and losses to the worker, as well as adopt the necessary measures to assure that contaminants do not exceed the maximums permitted in the regulations. Section XVII calls for the adoption of statutory and other suitable measures for the prevention of accidents and sickness in the work centers and places in which work is performed. Section XXVII calls for protections for pregnant women in the workplace.

Government Compliance through Inspections

STPS conducts safety and health inspections in the workplace and monitors proper compliance with labor standards with regard to pollutants in the workplace environment, personal protective equipment, and accidents in the workplace as set forth in the *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo* [Federal Regulation on Workplace Safety, Health, and Environment] and the *Normas Oficiales Mexicanas* (NOM) [Mexican official standards] issued by STPS.¹⁴⁸

¹⁴⁷ LFT, art. 51 (Section II).

¹⁴⁸ See Government of Mexico responses to the U.S. NAO, dated March 2001, concerning U.S. Submission 2000-01.

According to LFT Article 527, STPS through the Dirección General de Inspección Federal del Trabajo (Bureau of Federal Workplace Inspection) and the Delegaciones Federales del Trabajo (Federal Labor Branch Offices) located throughout the states, is responsible for monitoring compliance with labor regulations in the areas of general labor conditions and general occupational safety and health conditions in firms and establishments subject to their authority.¹⁴⁹ Article 542(II) obligates labor inspectors to inspect enterprises and establishments periodically. In addition, Article 547 states that inspectors shall be held liable if they fail to carry out inspections, give false information in reports, or if they receive directly or indirectly any bribe or gift from the workers or employers.

Reporting Violations

LFT Article 1003 states: “any worker, employer, trade union, federation or confederation of employers or workers may report violations of the norms to the authorities.” Workers may complain individually or through a union about unsafe work, inaccurate reports, and joint committee failures to identify hazards or secure abatements.¹⁵⁰ Authorities review complaints along with incident reports and other information to determine whether special inspections are warranted.¹⁵¹ In March 2001, the Government of Mexico

¹⁴⁹ Ibid.

¹⁵⁰ Occupational Safety and Health Administration, U.S. Department of Labor & General Directorate of Medicine & Safety in the Workplace, Mexican Secretariat of Labor and Social Security, A Comparison of Occupational Safety and Health Programs in the United States and Mexico: An Overview, II-11 (1992).

¹⁵¹ Ibid., II-4, 5.

provided information to the U.S. NAO concerning employer obligations to report occupational injuries and illnesses:

According to provisions of the Social Security Law itself, the employer must notify the Mexican Institute of Social Security (IMSS) of the accident or illness within a period no longer than 24 hours if the incident occurs in the workplace (SSL, Article 58).¹⁵²

Workplace Safety and Health Committees

Article 509 provides that “[s]afety and health committees consisting of an equal number of representatives of the workers and the employer shall be established as found necessary in every enterprise or establishment, to investigate the causes of accidents and diseases, proposing preventive measures and enabling compliance therewith.” Article 510 states that the committees shall meet during work hours and cannot be paid.

Employee Training

LFT Article 132 Section XV and Article 153 state that employers have an obligation to provide training to workers.

8.2.3 International Conventions/Treaties Ratified by Mexico

Mexico has ratified ILO Conventions 155, 161, 167, and 170 pertaining to occupational safety and health matters.¹⁵³ Mexico also has ratified other international agreements, such as the Constitution of the World Health Organization (WHO), and the Constitution of the Pan American Health Organization.¹⁵⁴

¹⁵² See Government of Mexico responses to the U.S. NAO submitted in March 2001 concerning U.S. Submission 2000-01.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

8.3 Analysis

8.3.1 Prevention of Occupational Injuries and Illnesses

Concerning government enforcement of occupational safety and health laws, the submitters alleged a number of worker rights violations at both Matamoros Garment and Tarrant. Allegations included: a lack of adequate safety equipment (i.e., face masks and gloves); poor ventilation; occupational injuries (i.e., cuts from knives located on sewing machines, foot pain, allergies, and respiratory illnesses due to dust and chemicals); occasions on which employers allegedly intimidated, threatened, verbally abused, and harassed workers; and persistent unsanitary conditions in the factories' cafeterias.¹⁵⁵ To support their allegations, the submitters presented the U.S. NAO with oral and written testimony, copies of press reports, a copy of an interim report by the Worker Rights Consortium (WRC), photos, video testimony showing alleged injuries to workers, correspondence with clothing labels, and copies of documents and letters filed with the Government of Mexico.

Concerning the alleged lack of adequate safety equipment for workers, former workers Jaime Ayala Sánchez (Matamoros Garment) and Martín Zacatzi Tequextle (Tarrant) presented written testimony alleging that they and their co-workers were exposed to high volumes of dust and chemicals from dyes used to color blue jeans, as well as liquids used to remove garment stains, which allegedly resulted in workers suffering from headaches

¹⁵⁵ Additional safety and health violations were submitted to the U.S. NAO following the filing of U.S. Submission 2003-01. *See* Public Hearing Testimony for U.S. Submission 2003-01.

and respiratory illnesses, such as asthma.¹⁵⁶ Workers from Matamoros Garment and Tarrant also testified to poor ventilation in the plants.¹⁵⁷

The submitters reported that Liliana Tejada Hernández, an assistant supervisor at Matamoros Garment, allegedly injured her hand while working at a sewing machine, noting:

Liliana immediately sought medical treatment, only to find that there was no First Aid kit available. Instead she had to go to the equipment room where she removed the broken needle herself with a pair of pliers.¹⁵⁸

Similarly, Salvador García Sánchez, a former sewer from Tarrant, recounted his experience when injured at the plant and the authorities' reaction:

I was cut several times and the only thing that they did was send me to the nurse. The only thing she did was wash my hands and give me a pill for the pain. We had to go back and keep on working and even if we were hurt, we had to keep up with production. . . . The dye on our hands could not be removed. When I was working there I got sick.¹⁵⁹

In support of Mr. García's allegations, video testimony was presented to the U.S. NAO showing workers allegedly with permanent blue dye on their hands.¹⁶⁰

Concerning allegations of mistreatment, violence, verbal abuse, and harassment toward workers, Agustina García Reyes stated in written testimony that management at

¹⁵⁶ See unofficial English translation summary of written testimony from Jaime Ayala Sanchez and Martín Zacatzi Tequextle.

¹⁵⁷ See U.S. Submission 2003-01 (Appendices A, B, and worker testimony from the U.S. NAO Public Hearing).

¹⁵⁸ Matamoros Garment Campaign (March 14, 2003) written by the Centro de Apoyo al Trabajador (on file at the U.S. NAO).

¹⁵⁹ See Transcript of Public Hearing on U.S. Submission 2003-01 (Panel II - worker testimony).

¹⁶⁰ See video of Tarrant workers on file at the U.S. NAO.

Matamoros Garment would yell and physically intimidate workers, and fire or suspend workers when they would stand up for themselves.¹⁶¹ Former Matamoros Garment worker Ricarda Vazquez stated:

A manager at the plant yelled at another worker for being idle – she was waiting for some production to come down the line - and he threw pieces of cloth at the workers in May 2002.¹⁶²

Ms. Vazquez also mentioned that union members and activists were harassed inside and outside the facility and followed to their homes.¹⁶³ Mr. Zacatzi, former SUITTAR leader from Tarrant, also recounted his personal experience with mistreatment stating that management would call workers' names and mock their indigenous heritage.¹⁶⁴ Similar allegations of threats and intimidation also were detailed in the Interim Report by the Worker Rights Consortium (WRC) based on an investigation at Tarrant.¹⁶⁵

Concerning cafeteria conditions at Matamoros Garment, Mr. Ayala stated in written testimony: “The cafeteria was also in very bad condition and the food was horrible. During the rainy season, flooding took place in the cafeteria and it was not cleaned.”¹⁶⁶ Tarrant workers also described poor sanitation and food quality in their cafeteria in written statements and in testimony at the U.S. NAO public hearing.¹⁶⁷

¹⁶¹ See U.S. Submission 2003-01 (Appendix B). Ms. Garcia was also interviewed by the U.S. NAO in Puebla State in April 2004.

¹⁶² Ibid (Appendix A).

¹⁶³ Ibid.

¹⁶⁴ See written testimony from Martin Zacatzi on file at the U.S. NAO.

¹⁶⁵ Interim Report: Worker Rights Consortium Inquiry into Allegations of Labor Rights Violations at Tarrant Ajalpán (Worker Rights Consortium), September 15, 2003. For a copy of the report please visit www.workersrights.org. See also U.S. Submission 2003-01. Twenty-four employees were interviewed by the WRC.

¹⁶⁶ See written testimony from Jaime Ayala on file at the U.S. NAO.

¹⁶⁷ See U.S. Submission 2003-01 and the public hearing transcript for U.S. Submission 2003-01.

In contrast to the above testimony, approximately 30 former Tarrant workers, who met with the U.S. NAO in April 2004 in the state of Puebla, described a different situation. The group of workers, not affiliated with SUITTAR, informed U.S. NAO officials that they did indeed have proper safety equipment at all times at the plant, they were not exposed to hazardous chemicals or dyes, and they were satisfied overall with workplace conditions at the plant.

Tarrant management asserted that they had operated in compliance with Mexican occupational safety and health laws. In support, Tarrant management provided the U.S. NAO with copies of voluntary resignation agreements signed by workers indicating that they did not suffer from any occupational injuries while employed at the plant.¹⁶⁸

During a visit to the Tarrant plant in the state of Puebla, Tarrant management also provided the U.S. NAO with a document titled *Other Voluntary Benefits to Tarrant México Ajalpán Workers*.¹⁶⁹ The document was offered to show that management provided workers with a weekly doctor examination for workers that needed it and an in-plant nurse for emergencies, among other benefits.

A clothing label sourcing garments from Matamoros Garment conducted an investigation in February 2003 and noted:

Unhealthy cafeteria problems stemmed from the agricultural use of surrounding fields resulting in flooding of the factory's cafeteria. A

¹⁶⁸ See document on file at the U.S. NAO.

¹⁶⁹ See document on file at the U.S. NAO.

professional contractor hired by the company to construct proper flood prevention barriers has resolved this problem. More importantly, even on days when flooding did occur, a cleaning crew swept the cafeteria prior to employee lunch breaks.¹⁷⁰

While the above appears to support the submitters allegations regarding the cafeteria conditions at Matamoros Garment, it also appears to indicate that plant management took steps to resolve the problem.

In the case of the alleged poor cafeteria conditions at Tarrant, management informed the U.S. NAO that, following a July 8, 2003 agreement between management and workers, it undertook numerous additional actions, including ensuring that the cafeteria was a clean and sanitary environment.¹⁷¹ An audit by a clothing label in September 2002 found the factory to be in satisfactory condition concerning work conditions, employee treatment, and adherence to international standards.¹⁷² The same clothing label informed the U.S. NAO that it interviewed employees who overwhelmingly denied that physical or verbal abuse occurred at Matamoros Garment.¹⁷³

With regard to the existence of occupational safety and health committees at the facilities, during the U.S. NAO Public Hearing and oral interviews in the state of Puebla, workers from both Matamoros Garment and Tarrant informed the U.S. NAO that no such committees existed. To support their testimony, Scott Nova from the Workers' Rights' Consortium (WRC) stated at the hearing:

¹⁷⁰ Letter from a clothing label to the U.S. NAO dated March 23, 2004 (on file at the U.S. NAO).

¹⁷¹ Letter from Tarrant management to the U.S. NAO dated June 1, 2004 (on file at the U.S. NAO).

¹⁷² Letter from a clothing label to the U.S. NAO dated March 23, 2004.

¹⁷³ Ibid.

In the factories we have investigated in-depth, we have yet to see an actual functioning health and safety committee. All we've seen is either nothing in place or health and safety committees that are obviously going through the motions and not doing any of the real work that they are legally obligated to do.¹⁷⁴

In written questions submitted to the Government of Mexico, the U.S. NAO made specific inquiries as to the existence of safety and health committees at Matamoros Garment and Tarrant. However, to date the Government of Mexico has not provided any information. The non-existence of such committees would appear to be a violation of LFT Article 509, which calls for the establishment of safety and health committees at workplaces, composed of workers and employers, to investigate the causes of accidents and diseases and propose preventive measures and compliance.

The U.S. NAO has been unable to find any evidence that workers filed formal complaints with governmental authorities concerning safety and health conditions at the plants.

During the NAO Public Hearing, CAT President Blanca Velázquez responded to the U.S. NAO's question as to why workers did not file formal complaints before the Government of Mexico:

Complaints are filed by the workers to the owners. The complaints are not submitted to any labor ministry or labor authority. . . .¹⁷⁵

Ms. Velázquez offered further reasoning for why workers are reluctant to file complaints:

Often companies take workers to private doctors, to avoid registering injuries with IMSS. When injured on the job, one worker was told by her

¹⁷⁴ See Public Hearing Transcript for U.S. Submission 2003-01 (Panel III).

¹⁷⁵ Unofficial English translation summary of testimony from Blanca Velázquez. See Transcript of Public Hearing on U.S. NAO Submission 2003-01.

employers, “Don’t say anything. If you say anything, we’re going to fire you.”¹⁷⁶

Despite Ms. Velázquez’s testimony, a review of Article 1003 of the LFT clearly indicates that individual workers or unions may report violations to authorities. And as previously noted, once government authorities are notified of alleged violations of the LFT, they would be obligated under the NAALC to “ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party’s labor law.”¹⁷⁷

Although no formal complaints were filed with authorities, workers did undertake several efforts to bring their concerns to the attention of management, as well as the local media.¹⁷⁸ The U.S. NAO also received credible evidence that Government of Mexico officials were or should have been aware that workers had concerns about occupational safety and health conditions at Matamoros Garment and Tarrant. On January 21, 2003 (seven days after a technical work stoppage), Matamoros Garment management and workers signed an agreement in which the plant director agreed to improve the cafeteria conditions, although an agreement was not reached on verbal abuse.¹⁷⁹ The submitters allege that officials from the JLCA de Puebla witnessed the signing of the agreement.¹⁸⁰ The submitters further allege that the plant director intimidated workers into signing the

¹⁷⁶ Ibid.

¹⁷⁷ NAALC, art. 3(2).

¹⁷⁸ See letter from the submitters to the U.S. NAO dated December 16, 2003 (on file at the U.S. NAO).

¹⁷⁹ See agreement on file at the U.S. NAO.

¹⁸⁰ See Chronology of Events – Matamoros Garment on file at the U.S. NAO.

agreement in exchange for SITEMAG signing letters retracting its public grievances, which they refused to do.¹⁸¹

Almost three months after the signing of the January 21, 2003 agreement, the workers wrote an April 17, 2003 letter to Mexican President Vicente Fox and Secretary of Labor Carlos Abascal notifying them of worker rights abuses, including occupational safety and health violations, such as workers being locked inside the factory, verbal abuse, unhealthy cafeteria conditions, and intimidation and harassment by management and the CTM.¹⁸² In the letter, the workers also requested that President Fox and Secretary Abascal encourage the Governor of Puebla to intervene in the issue. In response to specific inquiries from the U.S. NAO regarding authorities' response to the letter, the Government of Mexico informed the U.S. NAO in June 2004 that it is its policy to forward such documents to the competent authorities.¹⁸³ However, specific information, such as whether this particular letter was forwarded to competent Mexican authorities, to whom, when, and what action was consequently taken, has not yet been provided by the Government of Mexico.

On July 8, 2003, the Tarrant Workers' Negotiating Committee and Tarrant management signed an agreement before the JLC de Tehuacán. In June 2004, the Government of Mexico confirmed the signing of this agreement and informed the U.S. NAO that the

¹⁸¹ Ibid.

¹⁸² Matamoros Garment allegedly shut down production one month earlier on March 24, 2003. See copy of letter in U.S. Submission 2003-01 (Appendix I).

¹⁸³ See Government of Mexico responses to the U.S. NAO dated June 2, 2004 (on file at the U.S. NAO).

labor conflict at Tarrant was deemed resolved:

the workers and the company reached an agreement before the Local Conciliation Board of Tehuacán on the company's obligations and their compliance with regard to various benefits such as . . . respect for production work; non-aggression toward workers; the right to eat food; . . . the length of the workday; . . . improvement of medical services; fair and dignified treatment of female employees; improved health services
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. . . .

However, former Tarrant workers alleged that worker rights violations continued at the plant after the signing of the agreement – leading to the workers' desire to form the independent union SUITTAR. In support of the workers' allegations, the submitters provided the U.S. NAO with a letter from SUITTAR to the Governor of Puebla, dated August 25, 2003 (one month after the signing of the July 8, 2003 agreement), alerting him to alleged ongoing labor rights violations at Tarrant.¹⁸⁵ The alleged ongoing intimidation of more than 300 illegally fired workers is among the complaints listed in the letter, which requests the Governor's immediate intervention.

In addition to responding to worker complaints, STPS is responsible for conducting regular and special inspections pursuant to LFT Articles 527 and 541.¹⁸⁶ Inspectors must

¹⁸⁴ Ibid.

¹⁸⁵ See letter on file at the U.S. NAO.

¹⁸⁶ *Regular Inspections*: initial (first-time), periodic (12 month intervals), and Verification (conducted when necessary to establish compliance with safety and health measures or orders issued previously). *Special Inspections*: conducted when labor authorities know of any potential violation of the labor laws; a review of documentation submitted in order to obtain authorizations discloses potential irregularities on the part of the employer; the labor authorities know of accidents or damage that have occurred at any workplace; on a regular inspection visit the employer visited provided false information or behaved with willful misrepresentation, bad faith, or violence; or the labor authorities know that there is imminent danger to the physical integrity or health of the workers. Information taken from the Government of Mexico's responses (2000-01) to the U.S. NAO and the Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral (R.G.I.A.S.V.L.L) [General Regulations for Inspection and Imposition of Sanctions for Violations of Labor Laws].

submit reports following each inspection.¹⁸⁷ In addition to ensuring basic regulatory compliance, inspectors are responsible for monitoring legally required workplace permits along with employee ability certificates and joint committee operations.¹⁸⁸ The law also requires that inspectors communicate with workers during the course of the inspections.¹⁸⁹ IMSS and the National Advisory Commission on Occupational Safety and Health (Advisory Commission) are two other key agencies.¹⁹⁰

There is conflicting evidence as to whether and to what extent governmental authorities undertook workplace inspections. Maribel Ramírez Torres testified that, while she recalls clothing labels conducting inspections at the plant, she did not recall ever seeing government health and safety inspectors visiting Tarrant.¹⁹¹ Ms. Ramirez emphasized:

We never saw anybody because they never knew what the conditions were. The only way for them to know about the conditions is if we approached them and told them. Even though we asked, they never did anything.¹⁹²

Tarrant management maintains that the Government of Mexico did conduct inspections at the plant:

From July 1, 2000 to February 2, 2004, plant management treated its employees fairly and in compliance with Mexican law. In fact, Tarrant

¹⁸⁷ See Occupational Safety and Health Comparison (Washington, DC: 1999) 76.

¹⁸⁸ Ibid., 76. See also Reglamento general para la inspección y aplicación de sanciones por violaciones a la legislación laboral (R.G.I.A.S.V.L.L.), D.O., 6 de Julio de 1997 (Mex.), art. 9.

¹⁸⁹ See U.S. NAO Report of Review for Submission 2000-01, 72.

¹⁹⁰ See Occupational Safety and Health Comparison (Washington, DC: 1999) 69.

¹⁹¹ A clothing label informed the U.S. NAO in a letter dated March 31, 2004, that when the company was going to conduct an independent investigation at the plant concerning allegations of worker rights violations, Tarrant informed the company (September 8, 2004) that Tarrant's business relationship with the company would come to an end – thus violating the company's Term of Engagement. As a result, in October 2004 the label formally ceased doing business with the Tarrant facility. It is unclear to the U.S. NAO as to why Tarrant management would not allow the company to conduct an investigation at the plant.

¹⁹² See Transcript of Public Hearing on U.S. NAO Submission 2003-01.

Mexico Ajalpán management took a number steps to ensure a safe and healthy working environment – cooperating with both government inspections and those conducted by several U.S. retailers. Continuous occupational and health training was provided to employees as part of the plant’s Safety and Health Program. Indeed, inspections were made by Mexican governmental agencies without further action being taken by them.¹⁹³

An email from the director of Matamoros Garment to the submitters stated that IMSS had removed 300 of the factory’s machines from the plant in August 2002, eight different government agencies had inspected the plant, and immigration officials visited the plant three times during 2002-2003.¹⁹⁴ An interview between U.S. NAO staff and the CTM Director General in April 2003 in Mexico City provided corroborating testimony that IMSS had embargoed equipment from Matamoros Garment.

The U.S. NAO requested specific information from the Government of Mexico concerning occupational safety and health complaints, inspections and/or reports at Matamoros Garment and Tarrant, but no specific details have been provided to date. The Government of Mexico provided the U.S. NAO with a copy of its *Informe de Labores* (Annual Report) dated September 1, 2003, in which the Bureau of Federal Inspections reported that 203 occupational safety and health inspections had been conducted that year in the *maquiladora* industry throughout Mexico.¹⁹⁵ However, this report does not include any information specific to Matamoros Garment or Tarrant – in

¹⁹³ Letter from Tarrant Apparel Group to the U.S. NAO dated June 1, 2004 (on file at the U.S. NAO).

¹⁹⁴ Email on file at the U.S. NAO between the submitters and the director of Matamoros Garment.

¹⁹⁵ Document on file at the U.S. NAO.

particular concerning inspections and occupational safety and health committees, as required under Mexican Law.

The Government of Mexico also provided the U.S. NAO with information on its programs designed to encourage compliance with occupational safety and health regulations. However, it did not provide any specific indication as to whether Matamoros Garment and Tarrant participated in these programs.¹⁹⁶

9. Findings

This submission involves freedom of association, minimum employment standards, and the prevention of occupational injuries and illnesses as defined by the NAALC concerning labor law enforcement in the state of Puebla, Mexico. Pursuant to the NAALC, the U.S. NAO's review has focused on the action or inaction of Mexican governmental authorities, both federal and state, as regards the effective application of Mexican labor law. The U.S. NAO makes several findings below in support of its recommendation to the Secretary of Labor.

Freedom of Association

A review of the written documentation and oral testimony, including the decisions of the JLCA de Puebla, supports the submitters' contention that the rejections of their union

¹⁹⁶ One program is the Campaign for Responsible Management and Employees in Workplace Safety and Health, designed to provide technical assistance to companies developing workplace safety and health programs. In the state of Puebla, 67 voluntary agreements were signed with companies to maintain compliance with regulations and to achieve excellence. *See* Government of Mexico responses to the U.S. NAO dated June 2, 2004 (on file at the U.S. NAO).

registration petitions were based on technical grounds. Moreover, the JLCA did not inform the workers about any technical deficiencies nor provide them with an opportunity to correct the errors. Consistent with NAALC Article 5(3), Mexican law affords the opportunity to seek review of the JLCA decisions through the *amparo* process. In this case, workers at Matamoros Garment failed to file an appeal of the JLCA decision and workers at Tarrant withdrew their appeal. Had the workers pursued their rights to appeal, the courts may well have found in their favor. In fact, the NAO takes note that reviews of recent Mexican court decisions in this area appear to support efforts on the part of the courts to direct JLCAs to comply with the law.

As justification for the workers not pursuing *amparos*, the submitters assert, in the case of Matamoros Garment, that the decision of the JLCA was received late and that it is difficult for workers to find attorneys to assist them. In the case of Tarrant, the submitters assert that the lack of unemployment insurance and the possibility of being blacklisted leaves workers with no alternatives but to take severance rather than pursue what could be lengthy and costly appeals. They also assert that workers are harassed and intimidated into taking severance and generally required to sign severance agreements when they are initially hired, which are often used against them later. The U.S. NAO acknowledges that these practices are known to occur in Mexico, but is not persuaded that workers, in the case of Matamoros Garment, were unable to file an *amparo* within the allotted time or, in the case of Tarrant, necessarily unable to pursue the appeal process. The U.S. NAO has no evidence that governmental authorities did not enforce laws against forced severance. Nonetheless, the U.S. NAO cannot ignore the similarities

in this case and previous submissions before it regarding denial of union registration on what seem to be hyper-technical grounds. The same similarities also appear in recent and ongoing cases in Mexico as noted by the submitters. The continuing difficulty for independent unions to gain registration rights, especially within the maquiladora sector, is supported by credible testimony of non-governmental organizations and legal experts within Mexico. The Government of Mexico itself has on several occasions recognized shortcomings in the union registration process, and, if corrective actions were taken, the results are not immediately evident. This case provides ample indication that the matter continues to be of some concern within Mexico and could benefit from further consultations between the Governments of the United States and Mexico.

The impact of the union registration process on the formation of independent unions presents several issues that deserve the highest priority in government-to-government consultations. As the ILO has expressed, administrative formalities should not be used as the equivalent of prior authorization to establish a union and should not be used to delay or prevent union formation. While the workers in this case did not fully pursue the available appeal processes, what is supposed to be a mere administrative formality should not be implemented in a way that effectively obstructs the basic worker right of freedom of association.

The JLCA's have tripartite composition and the union membership tends to come from the well-established, traditional unions.¹⁹⁷ While this may not present an issue when a worker brings a case as an individual against an employer, it does present an issue of impartiality when workers seek to form a union to challenge an existing union. It is not difficult to foresee a potential for conflict of interest if the union representative on the JLCA considering the petition is a representative of a union affiliated with the union the workers intend to challenge. This raises issues as to whether Mexico is in conformity with the obligation of NAALC Article 5(4) to ensure that tribunals are "impartial and independent and do not have any substantial interest in the outcome of the matter."

Workers in this case and in previous submissions before the U.S. NAO have alleged that they were unaware that a union existed at their facility until they attempted to form a union. While STPS maintains a public list of federal union registrations, the list is not accessible by employer name and does not indicate whether a union exists at a particular plant. Additionally, workers are not provided with copies of collective bargaining agreements and are often denied even when requests are made for such documents. The Government of Mexico committed in the May 18, 2000 Ministerial Consultations Joint Declaration that workers be provided information pertaining to collective bargaining agreements, which presumably would mean assuring that workers are provided with a copy of the collective terms covering their employment or at least an opportunity to view the agreement. Currently, the only effort the U.S. NAO is aware of in Mexico to assure

¹⁹⁷ The U.S.NAO requested information from the Mexican NAO as to the specific affiliation of the JLCA members responsible for the decisions relevant to this submission, but did not receive a response.

workers have such access is one on the part of the Federal District Labor Board.

Transparency in the union representation process, internal union democracy, responsiveness to union membership, and workers' freedom of choice in choosing the union to represent them (or to choose not to be represented) are important issues raised in this submission which merit further consultations.

With regard to the JLCA's failure to inform workers of the deficiencies in their petitions and to provide an opportunity to correct those deficiencies, the U.S. NAO is unable to determine what the appropriate standard is under Mexican law. There are conflicting viewpoints among legal experts and Mexican government officials, which have not been clarified by the information provided by the Government of Mexico. In light of this lack of clarity, as well as the view of the ILO that union registration processes requiring more than merely administrative formality are not within the letter of ILO Convention 87, which Mexico has ratified, further consultations on how the Government of Mexico addresses this matter would be beneficial.

Minimum Employment Standards

The evidence available to the U.S. NAO concerning the allegations on minimum employment standards is conflicting. It appears that some workers filed complaints with the State Attorney General's Office of Puebla alleging failure to pay proper wages and that these complaints are still pending after more than a year. In addition, reinstatement demands on the basis of illegal firings, as well as requests for back wages were also submitted to government officials on behalf of Tarrant workers. Information from

clothing labels supported the submitters' allegations that wage and overtime payments were not in compliance with the law, but the information also supported that the matters were satisfactorily resolved. There is some evidence that labor authorities were present at meetings attended by workers and the employers and that officials witnessed the signing of documents intended to settle disputes over wages and overtime. However, rather than supporting submitters' allegations that authorities did not enforce the law, their presence when workers accepted payments may well indicate their belief that no additional enforcement efforts were necessary. The submitters assert that the employers reneged on the promises, but, although there is some evidence that workers attempted to bring their concerns to the attention of governmental officials, it is not clear to what extent workers pursued these matters by filing formal complaints with relevant labor authorities. The U.S. NAO is currently awaiting further information from the Government of Mexico on these matters. At this time, the U.S. NAO is unable to determine what information the governmental authorities were aware of and what actions, if any, had been taken. Further consultations with the relevant authorities will help clarify what transpired and whether appropriate governmental enforcement efforts were undertaken.

Prevention of Occupational Injuries and Illnesses

The workers in this case presented no evidence that they filed formal complaints with governmental authorities concerning occupational injuries and illnesses. In view of this failure, the U.S. NAO cannot find that the Government of Mexico failed to enforce labor laws encompassing requirements to respond to worker complaints. When utilizing international processes to raise allegations that domestic authorities have failed to enforce

the law, the credibility of the allegations would seem stronger if workers are able to show that they have attempted to utilize available domestic processes. Such action would seem to be beneficial to individual workers and to the domestic processes, as well as enhancing the value of international procedures.

Nonetheless, there is credible evidence that workers made authorities aware of safety and health concerns in ways other than formal complaints. Mexican authorities also may have been aware of relevant safety and health conditions through periodic inspections performed under the law. The U.S. NAO is unable to draw definitive conclusions on these matters because it is still awaiting additional relevant information from the Government of Mexico. Further consultations may help shed light on how governmental authorities responded to the information provided by workers and the efficacy of inspection processes. The availability of information on workplace inspections conducted, the processes utilized for such inspections, the results of any such inspections, employer responses to any violations, and any follow-up by governmental authorities to assure compliance are crucial to effective consultations. The United States, Mexico, and Canada have established a tri-national working group on occupational safety and health that is tasked with reviewing relevant issues and providing recommendations to the governments. Further consultations would help determine whether the working group is an appropriate mechanism for reviewing these matters or whether they are better dealt with separately.

A review of all of the issues raised by this submission indicates a general lack of knowledge and transparency about legal requirements, processes for filing complaints, government inspection processes and reporting requirements, and available governmental assistance. Further government-to-government consultations on means for educating workers, employers, and government officials, and increasing transparency with respect to legal requirements, processes followed, and results of enforcement efforts would greatly enhance public awareness in Puebla, as well as elsewhere within Mexico.

During the submission review process, the U.S. NAO requested consultations with the Mexican NAO under Article 21 of the NAALC with a view towards engaging the Government of Mexico in effective and frank consultations that would lead to a full understanding of the relevant issues and potential resolution of the submission.

Regrettably, the Mexican NAO declined the request of the U.S. NAO to arrange meetings with the various authorities in Mexico responsible for enforcement of the relevant labor laws and limited contact to responding in writing to written questions submitted by the U.S. NAO. While written exchanges are important to the consultations process, limiting consultations to written communications is not the most effective method for successful consultations. As NAALC Article 22(3) states: “The consulting Parties shall make every attempt to resolve the matter through consultations under this Article, including through the exchange of sufficient publicly available information to enable a full examination of the matter.”

10. Recommendation

Accordingly, the U.S. NAO recommends ministerial consultations with the Government of Mexico pursuant to Article 22 of the NAALC.

Lewis Karesh
Acting Secretary
U.S. National Administrative Office

August 3, 2004