

**Public Communication to the U.S. National Administrative Office (NAO)
under the
North American Agreement on Labor Cooperation (NAALC)**

on

Labor Law Matters Arising in the Territory of Mexico:

**Violations of NAALC Labor Principles and Obligations
regarding the
Union Representation Election
at
Duro Bag Manufacturing Corp., Rio Bravo, Tamaulipas**

submitted by

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I. Statement of Violations

This case goes to the heart of the North American Agreement on Labor Cooperation and whether a government – any government – will live up to its commitments made pursuant to the NAALC, or ignore those commitments.

The facts of the case are similar to earlier ones involving events at Han Young and ITAPSA,¹ but with a key difference. Those cases led to a Ministerial Agreement between the United States and Mexico supporting secret ballot elections for workers in their choice of trade union representative.² A secret ballot election was denied to workers at the Duro Bag Manufacturing Corp. plant in Rio Bravo, Tamaulipas on March 2, 2001 in direct violation of this agreement.

Workers' rights violations under the NAALC took place through joint actions of the company and of the government of Mexico:

A. By Duro Bag Manufacturing Corp.

Duro Bag Manufacturing Corp. violated the right of workers to a free, fair election of their union bargaining representative by rejecting workers' request for a secret ballot election at a location and under conditions free of management coercion. Instead, Duro colluded with government authorities to require an open, oral voting procedure where each worker, one-by-one, had to individually declare his or her choice of representative in front of management and government officials.

B. By the Government of Mexico

1. Ministerial Agreement

The most alarming aspect of the Duro case in light of the NAALC is the government of Mexico's manifest failure to live up to its commitments in a 2000 Ministerial Agreement to make "efforts . . . to promote the use of eligible voter lists and secret ballot elections over the right to hold the collective bargaining contract . . . and promote secret ballots and neutral voting places . . ."³ The government of Mexico abandoned this secret ballot agreement, making no effort in the Duro case to fulfill its promise. On the contrary, the government allowed Duro management and the FCAB

¹ See U.S. NAO cases 9702 and 9703, on file with the U.S. National Administrative Office.

² See Agreement on Ministerial Consultations, U.S. NAO Submissions 9702 and 9703, May 18, 2000.

³ *Id.*, at 2.

to force workers into public declarations of their union sentiments in a non-neutral location under conditions totally destructive of free choice of union representation.

2. NAALC Labor Principles

The government of Mexico violated its obligations under the NAALC's labor principles to promote freedom of association, to protect the right to organize and bargain collectively, and to develop laws, regulations, procedures and practices that protect the rights and interests of Mexican workers.

Government authorities refused workers' request for a secret ballot election at a location and under conditions free of coercion. The Federal Conciliation and Arbitration Board (FCAB) overseeing the case required an open, oral voting procedure where workers had to individually declare their choice of representative in front of management and government officials.

3. NAALC Obligations

By denying a secret ballot election at a neutral site, the government of Mexico violated its obligations under Articles 2-5 of the NAALC to:

- ensure that its labor law and regulations provide for high labor standards;
- continue to strive to improve those standards;
- promote compliance with and effectively enforce its labor law through appropriate government action;
- ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings are fair, equitable and transparent;
- provide that parties to administrative, quasi-judicial, judicial and labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights.

4. Mexican Law

The government of Mexico failed to effectively enforce Mexican laws meant to protect workers' freedom of association and rights to organize and bargain collectively. Through the actions of the FCAB in the Duro case, Mexico failed:

- to enforce Article 123 of the Constitution, Section XVI's guarantee of workers' right of association and right to form unions to defend their interests;
- to enforce ILO Convention 87, ratified by Mexico and thus part of Mexico's domestic legislation, protecting workers' freedom of association and right to establish organizations of their own choosing for furthering and defending their interests;

- to enforce Article 17 of the Federal Labor Law (FLL), which states that “absent express disposition in the Constitution, in this Law or in its regulations, . . . general principles of social justice . . . and equity shall be taken into consideration.”

II. Statement of Jurisdiction

A. NAO Jurisdiction

NAO jurisdiction to review this submission is authorized by Article 16(3) of the NAALC, granting each NAO the power to review public communications on labor law matters arising in the territory of another Party, in accordance with domestic procedures. This submission involves labor law matters related to freedom of association and the right to organize and bargain collectively arising in the territory of Mexico. The U.S. NAO has established domestic procedures for treating submissions.⁴

B. Ministerial Review Jurisdiction

Article 22 of the NAALC empowers the Secretary of Labor of the United States to request consultation with the Secretary of Labor and Social Welfare of Mexico regarding any matters within the scope of the NAALC. The matters raised in this submission are within the scope of the NAALC.

III. Background

The Duro Bag Manufacturing Corp. is a multinational producer of high-quality, premium shopping bags for well-known retail sales companies like Hallmark and Nieman-Marcus. Based in Ludlow, Kentucky, with several plants around the United States, Duro set up operations in Mexico in the 1970s to take advantage of low-wage labor for high volume, labor-intensive production. Duro’s plant in Rio Bravo, Tamaulipas employs hundreds of workers making \$6.00-\$10.00 per day.

When Duro began operations in Mexico, the company arranged for union representation through a “protection contract” (protecting the employer’s interests) with a union that promised a docile, controlled workforce with no labor “unrest.” Workers had no voice in the selection of a union representative; there was no vote of any kind.

⁴ See Revised Notice of Establishment of the U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16660-16662 (1994)

Concerned about low wages and hazardous working conditions, two years ago workers began organizing for internal reform within the union at Duro. Management responded by firing key leaders and active workers. Frustrated by the tactics of company management and its preferred union, workers formed a new independent union to seek “title” to the collective bargaining agreement – the Mexican term for representation rights in the workplace.

In filing their application for a representation election, Duro workers requested a secret ballot election at a neutral site with guarantees of free, fair, noncoercive conditions for the election. Mexican labor law does not specify the precise form of a union representation election (called a *recuento*) for transferring “title” from one union to another, and whether such an election should be by secret ballot at a neutral site. However, the law in no way precludes a secret ballot. As a general matter, the secret ballot is undisputably one of the surest means of achieving the goals set forth in Article 17 of the FLL and ILO Convention 87, discussed above. Indeed, there is precedent in Mexico for a secret ballot representation election with the consent of the company, union, and conciliation and arbitration board.⁵ Such consent was denied by Duro and by the FCAB in this case.

Duro and the FCAB also rejected workers’ invocation of the May 18, 2000 secret ballot agreement between Mexico and the United States. Duro management scorned this solemn agreement between governments as having “no legal or probative value.”⁶ The FCAB dismissed the Ministerial Agreement as a mere “plan of action,” not an international agreement, despite the fact that Mexico’s commitment to promote secret ballot elections at neutral sites is set forth in a document titled “Agreement” and signed by the secretaries of labor of the two countries.⁷

The voting took place March 2, 2001. Instead of a secret ballot election at a site and under conditions free of coercion, workers had to make a forced declaration, openly and orally stating their choice of bargaining representative in front of management, government, and company union officials. These officials ostentatiously noted how each worker voted.⁸

⁵ This precedent was established by a 1994 election involving a Juarez, Chihuahua plant of the General Electric Co. The union lost the secret ballot election amid charges of company threats to close the facility if workers selected independent union representation. See Submission USNAO#94004 (1994), on file with U.S. NAO (the submission was accepted for review but was withdrawn by the petitioner before a review was completed).

⁶ See Junta Federal de Conciliación y Arbitraje, *Sindicato de Trabajadores de la Empresa Duro de Rio Bravo vs. Duro de Rio Bravo y Sindicato de Trabajadores de la Industrias Papeleras et al.*, Exp. Num. IV-257/2000, Acums. IV-410/2000 y IV-8/2001, February 176, 2001, p. 5 (hereafter FCAB Duro decision).

⁷ *Id.*, p. 9.

⁸ According to independent union supporters and international observers, the atmosphere was not conducive to freedom of choice by workers. Management and government officials allowed outside supporters of the incumbent union to throng the voting area while refusing admittance to independent union supporters or to international observers. Workers had to run a virtual gauntlet of supervisors and opponents of the independent union. The FCAB dismissed protests over these conditions and certified the election results.

IV. Argument

A. Ministerial Agreement

The government of Mexico made a solemn commitment in 2000 in an international agreement to promote secret ballot elections in neutral voting places on workers' choice of a union to hold the collective bargaining contract. However, the government violated this agreement.

The government of Mexico not only failed to ensure adequate secret ballot proceedings, making no effort to support Duro workers' request for a secret ballot election at a neutral site. Rather, the government actively participated in a process designed to suppress freedom of choice. The FCAB that conducted the voting falls under the jurisdiction of the Mexican labor department, the same federal government agency that signed the Ministerial Agreement. But the labor department failed to exercise its authority over the FCAB to uphold its secret ballot agreement with the United States.

The government of Mexico stood silent while Duro management mocked its international agreement with the United States as having no legal effect. The government of Mexico failed to assert the terms of the Ministerial Agreement to its own federal labor board, again standing silent while the FCAB treated the government's commitment as an irrelevant trifle. The government took no steps to contest the FCAB's dismissal of the Ministerial Agreement as a mere "plan of action," not an international agreement, in plain contradiction of the agreement signed by the two governments.⁹

This violation is all the more flagrant in light of Vicente Fox Quesada's quick affirmation of the commitment of the labor secretaries to secret ballot elections in their ministerial agreement of May 2000, and his adoption of its principles as a cornerstone of his administration's labor policy. Among the "authoritative principles . . . that must guide the acts of my administration," declared Fox shortly before the 2000 presidential election, is "full trade union freedom, with measures such as free and secret ballots in elections for title to collective bargaining agreements."¹⁰

⁹ Submitters note that on May 1, 2001, the president of the local FCAB for the federal district (Mexico City) announced that henceforth *recuentos* under the jurisdiction of this board would be held by secret ballot. The federal district is governed by an opposition party, and the local board took this action alone. Duro Bag Manufacturing Corp. and thousands of other workplaces in the rest of Mexico do not come under the jurisdiction of this local board. The government of Mexico remains in violation of its secret ballot election agreement under the NAALC.

¹⁰ See letter of Vicente Fox Quesada announcing his agreement with "20 Commitments for Trade Union Democracy and Freedom," June 27, 2000, in J.A. Bouzas, ed., *Democracia Sindical* (National Autonomous University of Mexico, 2001), pp. 328-331.

B. NAALC Labor Principles

Annex 1 of the NAALC sets forth *Labor Principles* that Mexico and the United States are “committed to promote.” In adopting these principles, the governments asserted that they have developed “laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.”

Labor principle 1, titled “Freedom of association and protection of the right to organize,” commits governments to promote “the right of workers *exercised freely and without impediment* to establish and join organizations of their own choosing to further and defend their interests.” Labor principle 2, titled “The right to collective bargaining,” enshrines “the protection of the right of organized workers to *freely* engage in collective bargaining on matters concerning the terms and conditions of employment” (emphases added).

The Mexican government’s refusal of Duro workers’ request for a secret ballot election at a neutral site violated the guarantees of free exercise of organizing and bargaining rights. Indeed, by forcing an open, oral vote where workers had to individually declare their choice of representative in front of management and government officials, the company and the government placed “impediments” – indeed, insuperable barriers – in the way of such free exercise.

This is not to argue that a secret ballot election is the only valid means of determining workers’ choice of a bargaining representative. The core right expressed in ILO jurisprudence and in the NAALC’s labor principles is for workers to choose representatives freely, without interference or coercion by management or by government authorities. In too many instances in the United States, the election process opens the door to aggressive campaigns of fear and intimidation by management.¹¹ In several Canadian jurisdictions, and in the United States where employers and unions make what is called a “card-check/neutrality” agreement, workers can select a representative by signing an authorization card in the privacy of their own home, uncoerced and acting freely.

But this case is not about Canada or the United States. Duro workers requested a secret ballot election as their desired method of selecting a representative of their own choosing. Duro management resisted their request, and the government of Mexico rejected their request. The method forced on Duro workers by management and by the government – having to orally declare their sentiments in front of management and government officials – is inherently destructive of workers’ right to freely choose their representatives.

¹¹ See *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards* (Human Rights Watch 2000).

C. NAALC Obligations

Mexico assumed solemn obligations under the NAALC. The first, under Article 2, is to “ensure that its labor laws and regulations provide for high labor standards” and to “continue to strive to improve those standards . . .”

By denying a secret ballot election and requiring a forced declaration with the direct involvement of government authorities who conducted the election, the government of Mexico violated this obligation. Indeed, the failure to provide for free choice of union representative reflects *low* labor standards. Moreover, given an opportunity in the Duro case to improve standards by granting a secret ballot election at a neutral site, and President Fox’s stated commitment to the secret ballot in his June 2000 declaration, Mexico failed to “strive to improve” labor standards.

Article 3 of the NAALC obligates Mexico to promote compliance with and effectively enforce its law through appropriate government action. The government’s action in the Duro case was wholly inappropriate, denying a secret ballot election and allowing an election to take place in a manner that violated workers’ rights rather than protecting them.

NAALC Article 4 obligates the government to “ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party’s labor law.” Duro workers had access to the FCAB, but the board’s inappropriate actions led to the direct *non-enforcement* of Mexico’s labor law.

Article 5 of the NAALC constrains governments to “ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and . . . comply with due process of law.” In the Duro case the proceedings of the FCAB included the forced declaration procedure that denied basic elements of due process.

Article 5 also provides that “parties to administrative, quasi-judicial, judicial and labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights.” The remedy sought by Duro workers to ensure the enforcement of their rights to freedom of association, organizing and collective bargaining was a secret ballot election in a neutral site. The government of Mexico failed to discharge this obligation in the Duro case by denying this remedy.

D. Mexican Law

Section XVI of Article 123 of the Mexican Constitution guarantees workers’ right of association in defense of their interests by forming trade unions. Article 17 of the Federal Labor Law (FLL).

declares that “absent express disposition in the Constitution, in this Law or in its regulations, . . . general principles of social justice . . . and equity shall be taken into consideration.”

Mexico ratified Convention No. 87 on freedom of association of the International Labor Organization in 1950, making the ILO convention an integral part of domestic labor law. Convention 87 guarantees workers the right to form unions “of their own choosing.” Convention 87 also says that “the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.”

As noted earlier, Mexico’s federal labor law does not specify the method for conducting union representation elections. However, by denying Duro workers’ request for a secret ballot election at a neutral site, the government failed to enforce the guarantees and protections contained in the aforementioned elements of domestic labor legislation. A forced declaration in front of management and government officials violates the right to freedom of association and choice of representatives and flies in the face of principles of social justice and equity. The FCAB in the Duro case applied Mexican law so as to impair the guarantees provided for in Convention 87.

It should be noted that the FCAB relied on Article 931 of the FLL to set conditions for the election, stating that under Article 931 the vote must take place on the company’s premises. But Article 931 states only that “the board will indicate the place, day and time” of the vote, without further elaboration. It does not say that the election must be held on company property.

The FCAB stated that the vote must take place at the company’s factory because holding it at a neutral site “would occasion harm” to management’s production schedule.¹² This is a patently specious argument. Workers could vote at a neutral site before work or after work. Moreover, the FCAB’s argument gives higher priority to management’s production interests than to workers’ human rights. Even during work time, management could release workers to a neutral site in the interest of a fair election.

Article 931 does not say that voting must take place by open, oral declaration in front of company management. The FCAB was fully empowered to order a secret ballot election, as Mexico committed itself to in the 2000 Ministerial Agreement on secret ballot elections.

The FCAB argued that the election must be an open ballot because Article 931 says that objections to a worker’s eligibility to vote must be made at the time of voting. But nothing in a secret ballot proceeding precludes objections to voters’ eligibility at the time of their vote. Such objections are common in secret ballot elections of all kinds – in political elections in Mexico, to take the most obvious example.

Challenged ballots in a secret-ballot election are set aside in a separate, secure container to be opened only if they would affect the results of the election and after workers’ eligibility to vote is

¹² FCAB Duro decision, p. 9.

upheld or denied. This is standard operation procedure in union representation elections in most of the rest of the world.

V. Conclusion

Actions of Duro management and the accompanying failure of the government of Mexico to fulfill its commitment in the Ministerial Agreement (as embraced in the June 2000 declaration of then-candidate Fox) and to effectively enforce its labor law not only violate workers rights and Mexico's obligations under the NAALC. They are also affronts to the U.S. government, which signed the Ministerial Agreement in good faith and itself undertook several commitments under the agreement.

Mexican workers are justifiably proud of their country's development in recent years toward a more open, democratic society. The election of a new President and Congress in 2000 in free, fair *secret ballot* elections reflect this development.

But Mexico has failed to extend this new democratic dynamic to the workplace in situations like that affecting Duro workers. Mexico's failures to fulfill its NAALC obligations, to effectively enforce its laws, and to implement a solemn international agreement in the Duro case, are a measure of how far workers still have to go to have their basic rights fully honored and respected.

Denying a secret ballot election for trade union representation and instead forcing workers to an open, oral declaration in front of management and government officials are actions unworthy of a democracy. They are unworthy of a signatory to the NAALC. They are unworthy of a member of the Organization for Economic Cooperation and Development, and of a country that aspires to leadership among developing nations of the Western Hemisphere and around the world.

VI. Action Requested

We ask the U.S. NAO to undertake an immediate review of this submission. Furthermore, the Ministerial Agreement of May 18, 2000 commits the United States and Mexico to "review the activities and commitments made pursuant to this Joint Declaration." In light of Mexico's failure to implement the Ministerial Agreement on secret ballot elections, we ask the U.S. Secretary of Labor to request immediate consultations with the Secretary of Labor and Social Welfare of Mexico on matters raised in this submission to review commitments under the agreement.

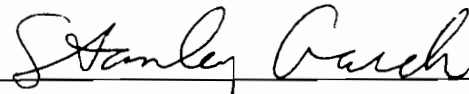
The labor secretaries should consult with a view to immediately implementing the secret ballot agreement for union representation elections in all of Mexico. Only by honoring this agreement with immediate and full implementation can the governments give effect to their commitments to promote NAALC labor principles and their obligations to provide high labor standards, effective labor law enforcement, and democratic rights for workers.

Respectfully submitted,

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