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BEFORE THE
UNITED STATES NATIONAL ADMINISTRATIVE OFFICE
BUREAU OF INTERNATIONAL LABOR AFFAIRS
UNITED STATES DEPARTMENT OF LABOR

The Association of Flight Attendants, AFL-CIO)
)
 Petitioners)
)
 and)
)
 The Federal Government of the Republic of the)
 United States of Mexico and its Cabinet Departments,)
 the Secretaria del Trabajo y Previsión Social (STPS))
 and the Secretaria de Comunicaciones)
 y Transportes (SCT),)
)
 Respondents)

PUBLIC COMMUNICATION ON
LABOR LAW MATTERS ARISING IN MEXICO:
STRIKE BY ASSA- MEXICO VS AEROVIAS DE MEXICO, S.A. de C.V.

FAILURE OF THE FEDERAL GOVERNMENT OF MEXICO TO COMPLY
WITH ITS OWN CONSTITUTION AND LABOR LAWS, AND OUTRIGHT
DENIAL OF THE RIGHT TO STRIKE GUARANTEED WORKERS UNDER THE
MEXICAN CONSTITUTION AND LABOR LAWS.

FAILURE OF THE FEDERAL GOVERNMENT OF MEXICO TO COMPLY
WITH THE PRINCIPLES AND PROVISIONS OF THE NORTH AMERICAN
LABOR COOPERATION AGREEMENT (NAALC), SPECIFICALLY ITS
RESPONSIBILITY, AS PARTY SIGNATORY TO THE NAALC, TO RESPECT
AND ENFORCE THE RIGHT TO STRIKE AS OUTLINED IN ANNEX # 1,
LABOR PRINCIPLE 3, OF THE NAALC.

INTRODUCTION

August 17, 1998

This petition is being submitted by Ms. Patricia A. Friend, International President, on behalf of the United States Association of Flight Attendants, AFL-CIO, (hereafter "The Petitioner") before the U.S. National Administrative Office (hereafter "U.S.NAO") of the International Labor Affairs Bureau of the U.S. Department of Labor, under the terms of the North American Agreement on Labor Cooperation (hereafter "NAALC")

The Petitioner is a U.S. labor organization representing 45,000 professional flight attendants employed by several U.S. airlines engaged in domestic and international operations. The Petitioner's membership is domiciled throughout the United States and in various countries in Europe, Asia-Pacific and Latin America.

The Petitioner is an affiliate of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and of the International Transport Workers' Federation (ITF). The Petitioner maintains close trade union organizational and professional ties with the Asociación Sindical de Sobrecargos de Aviación de Mexico, commonly known as ASSA.

The Petitioner, domiciled at 1275 K Street, NW, 5th floor, Washington, D.C. 20005, respectfully submits this petition before the U.S. NAO, to depose the following.

As the title holder and duly-recognized representative of AFA, on behalf of the entire

membership, and on my own behalf, I hereby express the dissatisfaction, doubts and fears elicited in the organization I represent due to the procedures adopted by the Executive Branch of the Mexican Government; represented by Dr. Ernesto Zedillo Ponce de León, President of the Republic of Mexico; regarding its intervention, on or about May 31, 1998, repressing the strike action legally undertaken by the Flight Attendants Association of Mexico (ASSA) against its employer Aerovías de Mexico, S.A. de C.V.

The following chapters will provide the basis for this petition, including the legal aspects of the case.

The Petitioner will demonstrate that the Mexican Government, and its cabinet agencies STPS and SCT, violated the letter and spirit of the NAALC articles by its blatant failure to live up to and enforce the Constitution and Labor Laws of Mexico without bias in the case of ASSA vs. Aerovías de Mexico, S.A. de C.V.

Chapter 1: JURISDICTION - RELEVANT PORTIONS OF THE NAALC

Jurisdiction over this matter is based upon Article 16 (3) of the North American Agreement on Labor Cooperation (NAALC), which provides that the NAO "shall review" submissions of public communications on labor law matters arising in the territory of another Party. This submission by the Petitioner is brought to challenge labor law matters as defined in Article 49 of the NAALC, arising in Mexico.

Further, in Article 1 of the NAALC, the signatory nations agreed to several objectives, which included:

“to improve working conditions and living standards in each Party’s territory, [Article 1 (a)]”; and to promote certain labor principles, which specifically includes protection of the workers’ right to strike [Annex 1, Labor Principle 3].

In addition, signatory nations agreed to certain obligations, which included promoting compliance with and effective enforcing of its own labor law through appropriate government action.

The Petitioner contends that the Government of Mexico’s intervention (requisa) of Aerovías de Mexico, S.A. de C.V. shortly after ASSA declared its legal strike was a blatant, pro-company, effort to deny ASSA employees the right to strike. The strike was a last resort action implemented to defend the collective interests of ASSA employees.

Chapter 2: RELEVANT PORTIONS OF FEDERAL MEXICAN LAW

- I. According to the Labor Legislation of the United States of Mexico, all Mexican workers without exception, have the right to go on strike whenever, because of circumstances covered by law, they have not arrived at a satisfactory solution with their employer or managing agent.

The body of laws and articles wherein that right is granted are, among others, the following:

The Political Constitution of Mexico

Article 123 of the Constitution, subheading XVII provides:

“XVII. The law will recognize strikes and work stoppages as a right of workers and of management.”

The Federal Labor Law

Articles 440, 441, 442, 443, 449, of this law set forth:

- Art. 440 a strike is a temporary interruption of work undertaken by a coalition of workers.
- Art. 441 For purposes of this Title, workers unions are permanent coalitions.
- Art. 442. A strike may encompass a single company or one or more of its sections, shops or departments.
- Art. 443. The strike must be limited solely to the interruption of work.
- Art. 449. The Conciliation and Arbitration Board and the appropriate civil authorities must safeguard compliance with the right to strike by giving the workers the necessary guarantees and providing them any assistance they may require for the interruption of work.

II. The aforementioned articles are of great significance in Mexican law since they are considered the SUPREME LAW OF THE UNION because they are a part of the Constitution and of a Law regulating it (the Federal Labor Law, regulates Article 23 of the Constitution). Its "supreme" position is based on article 133 of the Political Constitution of Mexico, which establishes:

Art. 133 - This Constitution, the laws enacted by the National Congress and all treaties consonant with the Constitution entered into by the President of the Republic, with Senate approval, will become the Supreme Law of the Union. The judges of each state will abide by said Constitution, and by the laws and treaties notwithstanding any provisions to the contrary that may exist in the different Constitutions or Laws of the States.

III. Finally, as stated in Article 450, Subtitles II and IV of the said Federal Labor Law, a strike may be called to demand revision of the Collective Agreement after it has expired as well as to demand compliance with it whenever it has been violated.

In support of this complaint, the Petitioner submits the following details:

Chapter 3: STATEMENT OF FACTS

- ❖ The Labor Union, known as the Association of Flight Attendants of Mexico (ASSA), had previously entered into a Collective Bargaining Agreement with the Company, known as Aerovías de Mexico, S.A. de C.V., (headquarters) in Av. Paseo de la Reforma No. 445, piso 12.

Col. Cuauhtémoc, Mexico City, D.F.

- ❖ The Collective Bargaining Agreement alluded to in the previous paragraph, covered an indefinite period of time, however, the flight attendants, represented by ASSA, had the legal right to seek a review and obtain a revision of said Agreement by May 31, 1998 at the latest.
- ❖ There were also a number of violations of the Collective Bargaining Agreement entered into by the ASSA and the Company. The flight attendants also had the right to demand the full compliance of the Company to all of the Agreement's provisions.
- ❖ Within the time frame specified under the law, ASSA requested a thorough revision of the Collective Bargaining Agreement and duly filed Legal Instrument Number 111-1446/98 before the Federal Board of Conciliation and Arbitration.
- ❖ In addition, based on the documented violations of the Collective Bargaining Agreement, ASSA also duly filed Legal Document number 111-1445/98 before said Labor government agency.
- ❖ In both these cases ASSA publicly announced that, if a satisfactory solution to the demands of the union was not reached, it would declare a nationwide strike commencing on May 31, 1998, at 12 midnight.
- ❖ A conciliatory solution was not reached, and as a result, a nationwide strike broke out in Mexico at midnight on May 31, 1998, affecting the various workplaces on the property of the Company.
- ❖ The following facts are the basis for the claim. These facts have caused the Petitioner and its membership grave fear and concern.

Chapter 4: FACTS SUPPORTING THE PETITION

Almost immediately after the ASSA strike went into effect at midnight on May 31, 1998, the President of Mexico, Dr. Ernesto Zedillo Ponce de Leon, signed an Executive Order, which set forth the following:

“Ernesto Zedillo Ponce de Leon, President of the United States of Mexico, by virtue of the powers conferred upon me in item 1 of Article 89 of the Political Constitution of Mexico, and on the basis of Article 27 of the said Constitution; and of the 2nd and 3rd and 112th paragraphs of the Law Governing the General Routes of Communication; as well as the 1st and 83rd paragraphs of the Civil Aviation Law and paragraph 36 of the Organic Law of the Federal Public Administration, and

WHEREAS

Air transport services must be rendered under conditions of quality, safety, timeliness, permanence and uniformity, in accordance with the aforementioned Civil Aviation Law and since Aerolíneas the Mexico S.A. de C.V., is a concession granted permission to provide commercial air travel services and is one of the most representative companies in that sector because of the service it provides and the importance of the demand it satisfies; and,

Whereas, the company has been served notice by the Association of Flight Attendants (ASSA) through the appropriate labor authorities, a strike would occur at midnight on May 31, 1998, as a result of the unresolved labor conflict; and

Whereas, should the strike break out, a deterioration of the conditions of quality, safety, timeliness, opportunity, permanence and uniformity of the services rendered would occur, thereby affecting the supply and distribution of basic commodities, isolating important areas of the country that are exclusively served by this company; and

Whereas, such a situation would endanger the national economy by the paralysis of important economic sectors that are dependent upon air transport; and

Whereas, Article 83 of the Civil Aviation Law sets forth that in the cases of imminent danger to the national economy, the Executive Branch may effect requisition of the aircraft and additional equipment used in public air transport services, as well as of the fixed and movable property that is necessary, and to use them as deemed necessary; and

Whereas, Article 112 of the Law Governing the General Routes of Communications also empowers the Government, should it judge that the national economy so require it, to requisition as well the means of transportation, its support services, accessories and agencies, fixed and movable property, and to make use of them as it deems appropriate: and

Whereas, irrespective of any proceedings and representations being made by the parties before the appropriate authorities in regards to the present conflict,

I deem it appropriate to issue the following Executive Order:

RESOLVED:

ARTICLE ONE: The Federal Government, through the Department of Communications and Transportation (SCT) hereby requisitions all property belonging to the company called Aerovías de Mexico, S.A. de C.V., which includes the routes it presently uses, the aircraft, and other equipment it utilizes for air transportation, and all fixed and movable property that it requires for the air transportation services it provides, and all other rights that are inherent

or are directly derived from the operation of such services, and empowers SCT to make use of it as deems convenient.

ARTICLE TWO: The administration of the property and of the rights included in the requisitioned property indicated in the foregoing article will be the responsibility of a general administrator appointed by the Secretary of Communications and Transportation.

The general administrator will perform all functions necessary for the company to continue rendering efficient services.

All expenses incurred in the administration of the Company will be defrayed by the requisitioned company.

ARTICLE THREE: The general administrator may continue to use the services of the current staff of the company or, should he deem it indispensable, he may use other personnel or replace them with confidential employees.

ARTICLE FOUR: Upon assuming his position, the general administrator, assisted by his appointees, will proceed to effect a general inventory of the property and rights entrusted to him for management.

ARTICLE FIVE: The requisition of the company's property will continue in effect until the conditions motivating it cease to exist.

Signed by President Ernesto Zedillo Ponce de Leon"

Chapter 5: ADDITIONAL FACTS SUPPORTING THE PETITION

- A. As announced by ASSA, and in the absence of a satisfactory settlement with the Company, a general strike action occurred in all work places on May 31, 1998 at midnight.
- B. Immediately after the strike broke out, groups marshals and inspectors from the Department of Communications and Transportation proceeded to notify ASSA, at its headquarters and the striking personnel at their own work places at airports throughout the Mexican Republic, of the content and immediate effectiveness of the Presidential Executive Order transcribed under Chapter VII above:
- C. The "Requisition" brought about the immediate forced resumption of work, in spite of the Mexican legislation that, as indicated earlier, states that a strike involves the interruption of work. The end of the strike was caused by the Mexican government's decision to intervene taking control of the management of the company, empowering the Aerovías Director General as "intervenor of the company" with sweeping powers to coax striking workers to return to service or to replace them with non-airline replacement workers.

- D. The legal foundation for the requisitioning adduced by the President of Mexico is rooted in the Law Governing the General Routes of Communication and in the Civil Aviation Law, guided by the following pertinent articles:

Law Governing the General Routes of Communication

Art. 2 - Integral parts of the general routes of communication are the following:

- i. Support services, road work, construction and other agencies and accessories, and;
- ii. The land and waterways that are needed for the right of way and for the rendering of services and the works referenced in the previous section. The area of the land and of the waterways, and the volume of the latter will be set by the Department of Communications and Transportation.

Art. 3 - The general routes of communication and the means of transportation using them are the exclusive jurisdiction of the Federal Government. The Executive Branch will exercise its authority through the Department of Communications and Transportation in the following cases, but not precluding any powers expressly granted in other legal provisions to Agencies of the Federal Government:

- i. Construction, improvement, maintenance and operation of the General Communication Routes;
 - ii. Inspection and surveillance;
 - iii. Grant-making, interpretation and enforcement of concessions made;
 - iv. Entering into contracts with the Federal Government;
22. Declaration of moratorium in the processing of applications for concessions to permits, as well as the authority to grant them, declare expiration or repeal of concessions and contracts entered into with the Federal Government, and making changes in cases covered by this law;
- vi. Granting and revoking permits;
 - vii. Expropriation;
 - viii. Approval, revision or changes of rates, bulletins, schedules, distance tables, classifications, and, in general, issuing all documents having to do with the operation;
 - ix. Registration;

24. Sale of the general communication routes and means of transportation as well as dealing with all matters affecting ownership;
- xi. Custodianship of the Rights of the Nation, respect for the legal status of the property subject to reversion under terms of this law, or of the appropriate concessions;
 - xii. Violations of this law or its regulations; and
 - xiii. Any matter of an administrative nature pertaining to the general routes of communication and means of transportation;

In the cases covered in subheadings IV and V, the prior approval of the Department of the Treasury and Public Finance will be indispensable if public funds are used in the implementation of those actions, or if public funds are compromised affecting federal property or property in the custody of the government.

Art. 112 - In the case of an international war with a serious disruption of public order or imminent danger to domestic peace or the national economy, the Government will be empowered to requisition the general routes and means of transportation, the support services, agencies, accessories, fixed and movable property, and use them as required by the security, defense, economy or tranquility of the country.

Likewise, the government may avail itself of the manpower servicing the route in question whenever it may deem it necessary. In that eventuality the nation will compensate the affected parties by paying the real value of any damages, and losses with a fifty-percent discount. If an agreement is not reached on the amount of the compensation, the damages will be set by experts appointed jointly by the parties, and the losses by using the average of the net income obtained during the year

preceding and the year following the seizure. The expenses incurred in the expert proceedings will be assumed by the National Treasury

In the case of an international war, as alluded to in this article, the Nation will be under no obligation to cover any compensation.

Civil Aviation Law

Art. 1 - The present law refers to public order and is intended to regulate the operation or utilization of the nation's air space for the provision of civil and government air transportation. The air space over the national territory is a general route of communications and is subject to the control of the nation.

Art. 83 - In case of a natural disaster, warfare, serious disruption of the public order, or when imminent danger to the national security or the national economy or the domestic peace is anticipated, the Federal Government may requisition the aircraft and all other equipment belonging to the public air transport services and make use of it as it may find convenient. In the same manner the Federal Government may also avail itself of any manpower serving the enterprise subject to requisition, whenever it may deem it necessary. The requisition will remain in effect while the conditions requiring it continue to exist.

Except in the case of an international war, the Federal Government will compensate all affected parties by paying for the real value of losses and damages. Should agreement fail to be reached

about the amount of the compensation, the damages will be assessed by experts, appointed jointly by the parties. and the losses will be paid on the basis of the net income during the year preceding the requisition. Each party will cover half of the expert assessment expenses.

Chapter 6: MEXICAN GOVERNMENT IGNORES NAALC PROVISIONS

Pursuant to the North American Agreement on Labor Cooperation (NAALC), the United States of Mexico are legally bound to:

- 1. To observe and comply with the objectives contained in such accord, which simply stated provide for the promotion, observance and implementation of all current and applicable labor law.**

As the Petitioner analyzes the preceding item 1, all existing statutes on labor matters do not limit or restrict the right to strike in any way. Yet, we have seen that laws of lower standing, such as the Law Governing the General Routes of Communications and the Civil Aviation Law, *through the use of a sweeping power called "requisa"* are used by the Federal Government of Mexico to *quash and invalidate the Right to Strike in the instant case involving the flight attendants represented by ASSA and employed the Company.*

Excess use of Federal Authority

This abuse of power is enforced using as argument paragraphs three and four of the Chapter titled "**Whereas**", of the Executive Order, under point VII , which states that should the strike occur, such development would cause the deterioration of the quality, safety, frequency, and uniformity in the availability of airline services, isolating many communities which depend exclusively upon the air services provided by this company.

The Government's Executive Order further alleges that the strike would jeopardize the national economy through the crippling of vital economic sectors, which rely heavily upon air transportation.

No Limitations to the Right to Strike

The foregoing arguments do not appear anywhere as exceptions to the right to strike of the Company's flight attendants. The right to strike is enshrined in the country's supreme labor laws as detailed in point "I". The law defines and accepts that strike action is tantamount to the paralysis of all work activity. And, as defined in Article 440 of the Federal Labor Law of Mexico, this paralysis of all work activity totally disappeared in the case of the flight attendants of the Company since, according to the second paragraph of Article 2 of the Right to Requisition of May 31, 1998, transcribed in point "VII" above, sets forth:

"The general administrator will exercise all necessary authority to ensure that the company may continue to provide services with efficiency."

The abuse of power on the part of the Mexican Government is clear and unmistakable. Instead of complying with its obligations under national laws, as well as the NAALC, as discussed in this chapter, the Mexican Government has improperly used secondary laws with the blatant and biased intent to render ineffective the right to strike granted under Mexican labor legislation to the flight attendants represented by ASSA.

2. **To implement government measures aimed at putting in place timely procedures for imposing sanctions or adequate solutions as redress for violations of the labor legislation.**

This responsibility of the Mexican Government, vested in Article 3 of the North American Labor Cooperation Agreement, is simply ignored. It is a case of non-compliance by the government itself.

We are not witnessing a private individual violating the law. Here we have measures taken by the Mexican Executive Branch that, instead of preventing violations of the country's Supreme Labor Laws, actually encourages other violations such as the specific case of this claim. By its actions, the Government annulled the right to strike of the flight attendants who work for the Company and are members of ASSA.

3. Protection of the workers' right to strike for the purpose of defending their collective interests.

This right is a part of the principles included in Annex 1 of the North American Labor Cooperation Agreement. In the Preliminary Report to the Ministerial Council presented by the Secretariat of the Commission for Labor Cooperation in its discussion of "Labor Principle 3: the right to strike," the following question is framed:

"What can a nation do to prohibit or limit the use of replacement striking workers in order to maintain a company in operation during a strike?"

As it pertains to Mexico, the following was noted in the Report:

"Mexican labor legislation does not permit the use of temporary or permanent replacement workers during strikes". Considering that during strike situations, company installations are usually occupied by the strikers and under its legal responsibility, labor unions should designate from among its own membership certain individuals who shall assume responsibility to ensure the proper care and maintenance of all equipment, raw materials and the workplace during the duration of the strike".

The following dictum was not followed in the instant case, since the requisition decree issued by the President of Mexico in its Article Three established:

ARTICLE THREE: *The general administrator may continue to use the services of the existing company personnel or, if he deems it appropriate or necessary, to use different non-striking personnel or replace them with supervisory personnel.*

THE PETITIONER, CONCLUDES, THEREFORE, that it is quite clear and evident that in the case of the Aerovias flight attendants represented by ASSA, their right to strike was deliberately suppressed and/or denied by the Mexican Federal Government.

FURTHER, THE PETITIONER IS DEEPLY CONCERNED that the Mexican Government may again resort to the use of the “requisita” approach to deny the right to strike to Mexican workers engaged in a lawful strike.

The incident described herein leads the Petitioner to the assumption that all Mexican workers rendering services to companies related to the general routes of communication, including airline companies, may expect to have their right to strike violated, denied or suppressed in the future.

Chapter 7 RELIEF REQUESTED

ACCORDINGLY, the Petitioner requests that the U.S. National Administrative Office

immediately implement the following relief:

- ❖ That the U.S. National Administrative Office (NAO) accept this submission by the Petitioner, and initiate a review pursuant to Article 16 of the North American Agreement on Labor Cooperation (NAALC);

- ❖ That, in connection with the review pursuant to Article 16 of the NAALC, that the U.S. NAO officially pursue Ministerial Consultations, as provided in Article 22 of the NAALC, between the U.S. Government and the Government of Mexico as a means of preventing a repetition of the improper use of the pertinent sections of the Law Governing the General Routes of Communication and the Civil Aviation Law, specifically the use of the “Requisa” as a device to quash, violate and nullify the right to strike as guaranteed under the Constitution and labor laws of Mexico.

- ❖ To fully implement the liaison activities described in Article 16 of the NAALC.

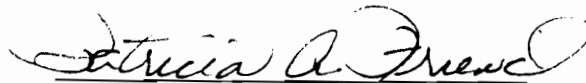
- ❖ That the U.S. NAO hold a public hearing in Mexico City, or should it not be able to do so, in the United States, for the purpose of receiving the testimony of labor representatives and flight attendants represented by ASSA-Mexico, whose right to strike was violated and denied.

- ❖ To empanel a committee of experts, for a determination and evaluation of the right to strike violations resulting from the “requisas” mandated by President Zedillo under the Law Governing the General Routes of Communication and the Civil Aviation Law.

- ❖ That the U.S. NAO, take all appropriate steps to ensure that, henceforth, the Mexican Government complies with and fully enforces its own labor laws and all of the provisions of the NAALC, which is embodied in the Supreme Law of Mexico, as stated in Article 133 of the Political Constitution of Mexico.

- ❖ That the NAOs of Mexico, the United States, and Canada convene a public forum in 1998, or early 1999, with the attendance of representatives of government and labor, together with management officials from the Mexican airline industry, for the purpose of exploring cooperative ways to enhance the collective bargaining process and to promote the observance of and respect for the right to strike.

Respectfully submitted,



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Washington, D.C.
August 17, 1998

APPENDIX A

Supplementary information to the Public Submission filed by the Association of Flight Attendants (AFA), AFL-CIO, on August 17, 1998 with the U.S. National Administrative Office in Washington, D.C., pursuant to petitioner's contentions that the Government of Mexico failed to enforce its own laws and Constitution, as well as the provisions of the NAALC regarding the right to strike. Complaint alludes to the strike of May 21, 1998 by ASSA Airline Flight Attendants employed by Aerovias de México S.A. de C.V.

- Exhibit #1 Strike Notice resulting from violation of the collective bargaining agreement

- Exhibit #2 Strike Notice resulting from revision of the Collective bargaining agreement

- Exhibit #3 Sworn affidavits before the Federal Mediation and Conciliation Board

- Exhibit #4 Presidential Executive Order decreeing the "**Requisa**" or state intervention of the company

- Exhibit #5 Documented legal steps followed by ASSA in the process of negotiations with Aerovias de México, S.A. de C.V.

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