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Spanish

**Public Communication
to the National Administration Office (NAO) Regarding
Irreparable Harm to the
Right of Freedom of Association and the
Right to Organize and Regarding
the U.S. Government's Failure to Enforce the Law**

**The Case of Solec, Inc.
in
Carson, California, United States of America**

Submitted by:

**Oil, Chemical, and Atomic Workers International union (OCAW), Local I-675
Community Union for the Defense of Labor
"October 6" Union of Industry and Commerce
Support Committee for Maquiladora Workers**

April 9, 1998

- 2 -

Table of Contents

Section		Page
I	Introduction	3
II	Petitioners	5
III	Jurisdiction	6
IV	Facts	9
V	Irreparable harm to the right of freedom of association, the right to organize, and the right to bargain collectively; and a persistent history of non-compliance with U.S. labor law and, thus, violation of international treaties regarding labor laws, with complicity between the Government of the United States of America and Solec International, Inc.	22
VI	Actions Requested of the Mexican NAO	28
Attachments [Not received in LS]		

- 3 -

Secretary, National Administrative Office
Periférico Sur No. 4271 -Edificio A -Planta Baja
Colonia Fuentes del Pedregal, Delegación Tlalpan
C.P. 14149, Mexico, D.F.

Madam Secretary:

The following persons respectfully enter an appearance and state as follows: I, Enrique Hernández Félix, in my capacity as General Secretary of the "October 6" Union of Industry and Commerce, with domicile for the receipt of notifications of all types at Avenida Madero 1414-2, Tijuana Center City Area, Baja California, telephone number (66) 34-03-08; I, José Angel Peñaflor Barron, in my capacity as Legal Adviser of the Community Union for the Defense of Labor, with domicile for the receipt of notifications of all types at Avenida Madero No. 1414, Tijuana Center City Area, Baja California, telephone number (66) 84-19-36; I, Kelly J. Quinn, in my capacity as President of the Oil, Chemical, and Atomic Workers International Union, Local I-675, with domicile for the receipt of notifications of all types at 1200 East 220th Street, Carson, California, 90745-3505, U.S., telephone number (310) 522-2277; and I, Mary Tong, in my capacity as Executive Director of the Support Committee for Maquiladora Workers, with domicile for the receipt of notifications of all types at 3909 Centre Street, No. 210, San Diego, California 92103, telephone number (619) 542-0826, by means of this submission, hereby file with the NAO this Public Communication regarding lack of compliance with U.S. labor law, as published in the April 28, 1995 Mexican Official Gazette.

I. Introduction:

During the debate in the U.S. Congress concerning the North American Free Trade Agreement (NAFTA), there was a great deal of public concern as to whether the free trade agreement provided adequate protection of workers' rights. To respond to these concerns, the

U.S., Mexico, and Canada negotiated side agreements to NAFTA, including the North American Agreement on Labor Cooperation (NAALC):

Under the NAFTA procedure, the three signatories established the National Administration Offices (NAOs), which are authorized to investigate incidents relating to violations of workers' rights in the three countries.

The petition we are filing in this submission to the Mexican NAO relates to labor incidents that occurred at Solec International in Carson, California, which is owned by Sanyo and Sumitomo Bank and operates under the name of Solec International, Inc., (hereinafter "Solec") and which acted in complicity with the U.S. Government through the latter's agents, the National Labor Relations Board (hereinafter "NLRB Section 31") and the Office of Safety and Health Administration (hereinafter "OSHA"), to suppress the labor rights and safety and health rights of Solec workers engaged in lawful efforts to organize as a union. This charge is documented by:

- (1) The persistent dilatory conduct and complicity of the NLRB, which permitted persistent violations by Solec of its workers' rights to decent conditions and their right to organize, particularly with respect to trade union rights;
- (2) A series of actions taken against trade union activists, including threats and official acts without the least regard for U.S. law, and with harassment and abuse, regarding which the NLRB failed to afford guarantees for the enforcement and observance of labor law, which provides for freedom of association, as well as collective bargaining and the right of workers to organize;
- (3) Ongoing violations of U.S. federal labor law with regard to working hours--violations the NLRB knew about yet regarding which it took no action; and

- 5 -

(4) The persistent failure of the U.S. Government to enforce the laws on labor rights and health and safety standards.

The petitioners hereby urge the Mexican NAO to:

(1) Conduct an investigation into these specific charges against Solec and, more broadly, into the NLRB's failure to observe the right of freedom of association, inasmuch as this is not a matter of an isolated incident on the part of the NLRB, but rather a repetitive practice in violation of the NAALC;

(2) Hold a public hearing on this matter in Tijuana or at another site close to the border;

(3) Take specific measures to ensure that at Solec, the United States complies with U.S. law and with the NAALC, specifically as concerns collective bargaining between the corporation and its employees;

(4) If it is determined that the NLRB is not acting as an impartial tribunal as required under the NAALC, but rather in a manner that permits Solec to interfere with and deny the right of its workers to organize their own union, then, recommend that Mexico and the U.S. hold ministerial consultations concerning the failure of the NLRB to comply with the law and the NAALC agreements; and

(5) Investigate the causes of OSHA's failure to take measures regarding existing safety and health violations despite the fact that laws in this domain provide for the ordering of penalties to be imposed by the U.S. Government.

II. Petitioners:

Local I-675 of the **Oil, Chemical, and Atomic Workers International Union** is the largest local section of this oil, chemical, and atomic workers' union in the United States. Local 675 is the OCAW section for Southern California.

- 6 -

The "October 6" Union of Industry and Commerce, a trade union locally registered in the State of Baja California, works to unionize maquiladora industry workers. Its headquarters is located in Tijuana, State of Baja California, Mexico.

The Community Union for the Defense of Labor is a non-governmental organization that provides legal advisory services to maquiladora industry workers in the cities of Tijuana, Tecate, Mexicali, and Ensenada, in the State of Baja California, Mexico. It also works in marginal communities in those cities, and, in addition, it focuses on making the general population more aware of their Constitutional, labor, and social action-related rights.

The Support Committee for Maquiladora Workers is a non-profit organization based in San Diego, California that promotes improved working conditions in the maquiladora industry in Mexico through joint actions with the workers to exert pressure on maquiladora parent corporations that engage in the violation of labor rights.

III. Jurisdiction:

This petition is based on Section C of the North American Agreement on Labor Cooperation (hereinafter "NAALC" or "the Agreement") and is made in accordance with the procedures set forth in the Mexican NAO regulations.

This compilation of documents complies with the requirements of Article 1 of the Mexican NAO regulations, which establish that, upon the submission of public communications, a detailed account must be given of labor legislation matters arising in U.S. or Canadian territory.

First, the United States Government failed to comply with its obligations under Part II of the Agreement, which requires that each country "shall promote effective compliance with

enforcement of its labor law through direct government action, subject to Article 42, such as...monitoring compliance and investigating...violations...promoting the encouragement of mediation, conciliation and arbitration services; or...appropriate sanctions or remedies for violations of its labor law;" [*]

Second, OSHA failed to take measures to compel Solec to remedy its non-compliance with health and safety laws, which non-compliance consisted, in part, of exposing its employees to toxic chemicals, causing irreparable harm to those workers.

Third, the matters included herein demonstrate a history of non-compliance with U.S. labor law by the U.S. Government.

These are violations of Part I, Article I of the Agreement, which requires that the governments promote to the maximum extent possible the labor principles set forth in Annex I:

- (i) Freedom of association and protection of the right to organize;
- (ii) Collective bargaining;
- (iii) The right to strike;
- (iv) Prohibition of forced labor;
- (v) Minimum employment standards, [such as] minimum wages and overtime pay;
- (vi) Compliance with and effective enforcement by each Party of its labor law; and

[* Translator's Note: This text differs from the official Spanish version of Part II of the NAALC, which reads in pertinent part: "*Cada una de las Partes promoverá la observancia de su legislación laboral y la aplicará efectivamente a través de medidas gubernamentales adecuadas, sujeto a lo dispuesto en el Artículo 42, tales como... vigilar el cumplimiento de las leyes e investigar las presuntas violaciones, inclusive mediante visitas de inspección "in situ";... proveer y alentar el uso de servicios de mediación, conciliación y arbitraje;... o... iniciar de manera oportuna procedimientos para procurar sanciones o soluciones adecuadas por violaciones a su legislación laboral.*" The official English version of that passage reads: "Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as... monitoring compliance and investigating suspected violations, including through on-site inspections;... providing or encouraging mediation, conciliation and arbitration services;... or... initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law." (emphasis added)]

- 8 -

(vii) Transparency in the administration of labor law by each party.

Under U.S. law, as under the principles of supremacy in Mexican law, international treaties signed and ratified by the U.S. have the force of law and, in cases of conflict between the provisions of domestic statutes and international treaty obligations, the latter shall prevail (U.S. Constitution, Article VI).

Article 2 of International Labor Organization (ILO) Convention 87, which the U.S. ratified in 1946, protects the right of workers, without distinction whatsoever, "to establish[...]and to join organizations of their own choosing without previous authorization." Article 3(2) stipulates that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof." The "lawful exercise" or [sic--of] the right of freedom of association must include, at an absolute minimum, the right to compete, without interference from the authorities, for collective bargaining rights. By means of several different actions described herein, the United States Government itself has seriously violated this Convention and breached its provisions.

In the Solec case, the United States Government has failed to enforce a series of basic laws and international treaties carrying domestic force of law. This negligence, whether or not intentional, poses an imminent risk of irreparable harm, in violation of the right of freedom of association, the right to organize, and the right to bargain collectively. The unwarranted delays caused by the persistent history of failure by the Government to address workers' rights effectively denies those workers access to justice through legal channels.

The petitioners affirm that neither the matter forming the cause of action herein, or any matter related thereto, is pending before any international body. Therefore, the ILO conventions

- 9 -

ratified by the United States and its obligations under the NAALC are fully in force as legal provisions under U.S. law.

Review of this case by the Mexican NAO will promote the objectives of the Agreements by demonstrating that corporate violations of these principles that have been persistently ignored by one of the signatories to the Agreement will receive serious attention in the NAO process under the NAALC. It will enable the workers of Mexico, the United States, and Canada to trust that their interests are not always going to be overlooked, especially when the violation of their interests is as serious as in this case.

IV. Statement of Facts:

Solec International, Inc., is a solar panel manufacturing company located in the City of Carson, California. It is owned by independent subsidiaries of two corporate giants of Japan: Sanyo and Sumitomo. Approximately 130 production-line workers, paid by the hour, are employed at this site. About 70 percent of the panels produced at this facility are exported directly to the Sanyo Electric Company, Ltd. in Japan. The rest are sold to various independent customers located in the United States and Western Europe. The company's public business plan is to increase the current level of annual production by nearly 400 percent over the next three to four years.

Workers in the plant (which was previously located in Hawthorne, California) began to organize themselves within the Oil, Chemical, and Atomic Workers International union (OCAW), Local I-675, in April 1997. Their principal concerns were:

- (1) Health and security, mainly with regard to improper exposure to toxic chemicals resulting from the production process;

- 10 -

(2) The lack of defined job categories and corresponding pay levels that would take into account a worker's experience and his level of training and seniority, in contrast to the present system, in which each worker's pay is determined on a case-by-case basis by management, in accordance with personal favoritism;

(3) Low wages, with most workers receiving between \$5.00 and \$7.00 per hour;

(4) Company violations of laws applicable to overtime; and

(5) Racial discrimination against specific groups by management personnel.

Non-Compliance with Occupational Health Laws

Evidence of complicity between the U.S. Government and corporations to prevent the workers from organizing can be seen not only in the conduct of the NLRB but also, consistently, in that of OSHA, which is the U.S. government authority responsible for imposing penalties to encourage compliance with occupational health and safety standards.

On July 24, 1997, a few days after a large majority of Solec workers submitted their petition to the company and to the NLRB for recognition of the union and for resolution of various problems, including a demand for compliance with and observance of health and safety standards, an OSHA health officer identifying himself as "OSHA health officer No. J4939" came to the company to conduct a so-called "inspection without advance notice." According to the OSHA report, the inspection was "comprehensive" and was conducted between July 24, 1997 and September 11, 1997, with "105 hours of inspection in the workplace, 55 logged at the company, and 70 hours of investigation." The sole purpose was to impress the workers that attention was being paid to their petition for compliance with health and safety standards at work. The workers knew, however, that only one inspection visit actually occurred at the workplace,

- 11 -

which could not possibly have accounted for the hours of inspection the Administration reported it had logged at the company. Worse yet, if that number of hours had actually been logged, the results reported could not have been produced, since only minor irregularities were reported, thus allowing the company to evade compliance with health and safety standards. For example, it was reported only that worker traffic areas were partially blocked, but no inspection was ever done of the rooftop warehouse (attic). It is there that the company secretly deposits a wide variety of toxic materials and heavy metals that leak through the ceiling on to the workers, and this is the principal complaint of the workers, who feel that this situation poses a hazard to their health. Furthermore, the inspection was conducted deliberately without consulting the union, much less the workers, about areas of danger that pose a hazard to health and violate health and safety standards--violations for which OSHA is supposed to impose penalties. Thus, the inspection conducted only made it easy for the company to pretend that it was in compliance with health and safety standards in reaction to the workers' demands.

Part of the solar panel manufacturing process involves the handling and mixing of various toxic chemicals, including compounds containing hydrofluoric acid, titanium, nickel, and chromium. Many of the workers employed at the plant complain of itching of the skin, eye and throat irritation, and respiratory problems. The company has not provided these workers with adequate safety equipment or training and, clearly, the rules established by the California Occupational Health and Safety Act are not being observed. Although several workers handle these types of toxic substances, none has received a physical examination by a company physician or by an independent physician, which would be the appropriate way to document the effects of any improper exposure to chemicals.

- 12 -

On May 20, 1997, Bill Hundley, a maintenance worker, brought the OCAW Local I-675 organizers a sample of the production-derived dust that covers the windows at Solec and leaks from there onto the workers during each shift. The laboratory analysis (attached [not received in LS]) of the dust revealed harmful and dangerous heavy metals. The company's response was to compare daily exposure to the dust to exposure to dust found in toothpaste during daily tooth brushing!

The workers also complain that they do not know very much about the chemicals they are handling. Mrs. La Xiong is a production worker at Solec. She stated that the information furnished by the OSHA material safety data sheet (MSDS) is incomplete and difficult to comprehend. At this time, she is disabled by illness in [sic--from?] the plant. The work force in the soldering area, which is comprised solely of women, is exposed to harmful fumes from the smelting process and has complained of headaches from the extremely poor ventilation of fume exhaust.

The lack of safety equipment is a constant problem. One illustration of this problem is the burn suffered by José Chavarría, as a result of the fact that protective gloves normally last only one month before they wear out and become unusable. Chavarría states that the company refuses to replace old gloves with new ones until the old ones completely fall apart. Consequently, the employees are forced to work under hazardous conditions that expose them to severe burns, until the company can provide them with adequate gloves. Even more dangerous is the lack of emergency respirators and oxygen tanks required by state and federal law under the conditions found at the Solec plant; the minimum number required is not available there. Several workers have become ill or injured themselves at the Solec plant as a result of the lack of

- 13 -

importance the company places on health and safety matters. Management's attitude regarding these health and safety matters seems to be: "The machines are important; but the workers are disposable."

Favoritism and Seniority at Solec

Promotions are granted in a capricious fashion, based primarily on family connections within the supervisory hierarchy. There is no written standard for granting salary raises except connections with one of the company supervisors.

When Refugio Andrade, a worker, asked management to raised his hourly pay (this was prior to the campaign to organize a union), he was fired as a result of his request.

José Chavarría was fired when he refused to train another worker to take a job above him, as his group leader (but he was subsequently reinstated).

Mario Girón, a worker and group leader, says there is a very definite history of favoritism under the current management at Solec, and as evidence he points out that when he started working for the company he earned \$7.00 an hour and now, as a group leader, he earns \$8.84. In contrast, Jamal Akbar, a worker on Girón's production line, has earned \$10.00 an hour from the time he started with the company, without any experience in manufacturing crystals.

Low Wages

Most of the workers at Solec earn between \$5.00 and \$7.00 an hour and, in principle, are engaged in repetitive tasks relating to assembly, soldering, lamination, and packing. Many workers, like Angel Andrade, have gone up to three years without receiving a single pay raise.

When Manuel Arrianga, a worker, complained to management that his raise of 16 cents an hour, the first he had received in two years, was meager in view of his current experience in

- 14 -

three areas of the plant, management told him that he already earned too much at \$8.00 an hour. Until the unionization campaign in mid-1997, workers at Solec were accustomed to seeing new employees earn more than workers with seniority.

Recently José Chavarría of the Crystal Manufacturing Department complained that his area was the only one that did not receive a differential pay rate for the night shift. The company responded that he could obtain his differential pay but that in that case he would lose his half-hour paid lunch break.

Company Violations of Law Applicable to Overtime

Shortly after the unionization campaign began, several workers informed the union activists that the company was in the practice of violating the overtime provisions in the laws known as the "California Wage and Hour Laws." When the company was confronted with this claim through a flier drafted by the workers, it admitted the "irregularity" in the payment of overtime. Solec informed the workers in September 1997 that it intended to remedy these violations voluntarily. When, on December 23, 1997, the company finally paid the workers the money it had stolen from them in overtime over the course of several years, it refused to pay this overtime to many union activists, like Salvador Andrade, a wire-saw operator, while others who had not acted in support of the union were paid up to \$7,000.

Furthermore, Solec denied its workers the right to view their own complete personnel files and registration cards for the time they had worked for the company, despite the fact that many, like Mario Girón, the operator in the crystal manufacturing area, had requested in writing of Rudy Nimitz, Director of Human Resources, to view and have a copy of all their files.

History of Discrimination

- 15 -

The Solec work force is comprised principally of Latin Americans, who complain of discrimination in both hiring and promotions. Several workers say they have seen management throw work applications from Latinos in the trash the moment the Latino applicant leaves the building.

At this time, there is no African American working at Solec. And when there were African-American employees, they received the most menial jobs and never got promotions. A specific case is that of Aubry Washington, who was secluded in the Dispatch and Packaging Department until August 1997, when he finally resigned to look for another job in which he might have some opportunity for advancement.

Chronology of the Election Campaign and Unjustified Delays by the NLRB

On June 20, 1997, two activists from the Union Local accompanied a group of approximately 30 production-line workers when they requested a meeting with the general manager of the Solec plant. Their goal was to deliver to the company a petition for union representation that had the signatures of approximately 75 percent of their colleagues. Management refused to meet with the workers and called the police to remove them from the premises.

On July 21, 1997, the petition was delivered to the NLRB Section 31 office in Los Angeles, California. The workers formally requested an election to vote for union representation, based on the number of employees that had signed the petition.

On July 23, 1997, the NLRB informed all the parties that it had scheduled a hearing for August 4, 1997, to discuss the representation matter at issue prior to determining whether an election was "appropriate" in this case.

- 16 -

The company hired the internationally renowned law firm of Pillsbury, Madison, & Sutro, LLP, (with offices in Los Angeles, San Francisco, New York, London, Hong Kong, and Tokyo). The firm's attorneys immediately filed an appeal of the election with the NLRB. They stated that:

(1) The 16 production-line workers known as the "group leaders" at the plant should be excluded from the election, based on their supervisory status.

(2) Management defined these workers as supervisors for the purpose of claiming that they should be barred because many of them were members of the organizing committee within the plant and, in that capacity, were responsible for promoting the signing of the petition for union elections. Based on that allegation, the company requested that the NLRB dismiss the election petition.

During the hearing held at the NLRB on August 4, 1997, seven of these "group leaders" testified that they were not supervisors. They were simply production-line workers who had received the "group leader" title based on their ability to translate the management's instructions from English to one of the languages used by other workers. The company showed only one difference between these "group leaders" and the rest of the production-line workers: they did not earn more money or have more authority or responsibility--the only thing that distinguished them was that they wore shirts of a different color!

On September 5, 1997, the NLRB informed all the parties that it had rejected the company's objection to the election.

The company hired the renowned "anti-union adviser" Carlos Restrepo. In the previous five years, this individual had worked at 30 companies to help them destroy unionization

campaigns. In only one company in which he was involved did the workers succeed in forming a union. Restrepo immediately began to hold "captive audience" meetings with the Solec workers in groups of just 10 workers, every other day, during regular working hours.

On September 17, 1997, the NLRB informed all parties that it had scheduled the election for October 3, 1997.

On September 18, 1997, corporate counsel filed an appeal of the Section 31 decision with the Executive Secretary of the National Labor Relations Board in Washington, D.C.

The following week, the national office of the National Labor Relations Board dismissed the company's appeal of the NLRB decision.

Mr. Restrepo continued to engage in his tactics against the union, participating in acts that were in violation of the National Labor Relations Act and, in many cases, in violation of other labor laws. This included harassment of, and direct threats of taking jobs away from, persons openly supporting unionization, offering financial compensation to workers who would speak openly against the organizing union, and threatening that the plant would be shut down and moved to Mexico in the event that the workers voted for the union.

On September 22 and 23, 1997, someone called the Solec company offices to say that a bomb had been placed in the plant, which caused evacuation of personnel on those two dates. In a written letter, which he distributed to all employees the following day, the General Manager blamed the members of the organizing union.

On September 25, 1997, the corporate counsel filed a complaint against the union representatives for allegedly threatening the workers with violence if they opposed the unionization campaign, threatening to have workers who voted against the union fired, and

- 18 -

threatening to call the U.S. Immigration and Natural Service if they voted not to be represented by a union.

On October 3, 1997, in the presence of the Section 31 agent, an election was held to determine whether the workers as a whole favored union establishment and representation. Said agent informed the workers that he intended to withhold the ballots and close the polls owing to the pending complaint on unfair labor practices earlier submitted by the company. During the election, the company challenged the voter eligibility of the so-called "group leaders," so that it would be able to object later if the union prevailed in the election and those employees' votes turned out to be deciding ones. The NLRB agent permitted these challenges even though the NLRB Section 31 Director and the Executive Secretary of the NLRB in Washington, D.C., had already determined that these so-called "group leaders" were eligible to vote.

On December 16, 1997, two and a half months after the election, the NLRB Section 31 Director informed all parties that his investigation of the company's complaint of "unfair labor practices" had been concluded and that all grievances submitted by the company had been rejected. On December 30, Solec appealed the decision of the Section Director to the NLRB Office of Appeals in Washington, D.C., where it has remained pending for an indefinite period of time. The lack of a decision on that appeal is contrary to the interests of the workers in obtaining speedy and expedient justice.

On Monday, February 1, 1998, Syd Rosen, Assistant to the NLRB Section 31 Director, called the OCAW to inform it that the NLRB had decided to dismiss the Solec complaint prior to the tallying of the votes cast in the election in which it had been sought to prevent the group leaders from voting. The workers' votes were finally tallied, and the company refused to depart

- 19 -

from its position that the so-called group leaders were not eligible to vote, notwithstanding the fact that the NLRB had repeatedly rejected the company's position on this matter. But then, when the workers' votes were finally tallied, the NLRB yielded to the company's decision, denying approximately 15 percent of the workers the right to vote. Accordingly, the result was a total of 62 votes for the union and 37 votes against the union. The company objected to 19 votes, which it sought to take away from the union. It was very well known, as far as this objection on the part of the company is concerned, that 17 of those votes were cast by the workers most active in the union movement. NLRB regulations provide for a two-week period within which companies may challenge an election proceeding, and an objection is the only way under law that a company can seek to block certification of union recognition. On February 13, 1998, the corporate counsel filed a complaint with the NLRB objecting to the election. The complaint duplicated each of the charges the union workers had earlier filed with the NLRB against the company and added some others, such as:

(1) "Intimidation" and "harassment tactics to obtain votes," offering as evidence of these charges the fact that the workers on the second shift had come to work in T-shirts bearing the acronym "OCAW"; and

(2) "The union induced the employees in an inappropriate fashion...(through)...its representatives with excess gifts," an allegation based on the fact that the union, through a volunteer attorney, had given advice to Solec workers who had questions about changes in U.S. immigration law.

At the present time, this complaint challenging the election is being investigated by Steve Alduenda, NLRB Section 31 agent.

- 20 -

Subsequent to the October 3, 1997 election, Solec management has repeatedly and flagrantly broken the law by making comprehensive changes in the working conditions of all workers potentially represented by the union as a means of intimidating them. The company is taking advantage of the fact that the official results of the elections are still pending. The union has sent several letters to the company by certified mail, requesting that it desist from violating the law by making changes in the employment relationship with the obvious intent of inhibiting and intimidating workers from joining the union.

To date, however, the company has refused to recognize the union and has persisted in its failure to comply with the laws applicable to Solec and other companies which, it is clear, are able to continue to act with impunity because the NLRB takes no action in response to these persistent violations and because the NLRB takes such a long time to issue rulings. These delays permit Solec to flout the law and trample the rights of the workers to have a union that will represent them in their demands vis-à-vis the company.

Effect of NLRB Delays on Solec Workers

The appeal filed by the company, to which we referred in the above paragraph, has been languishing as a result of neglect on the part of the regional and national NLRB offices. Solec has taken advantage of the delay to harass and demoralize the workers supporting the union, and Mr. Carlos Restrepo has taken advantage of the delay to crush the workers' plans to unionize. In the meantime, the workers continue to be exposed to the hazards inherent in the toxic chemicals, as well as to discrimination, favoritism, low salaries, and inadequate payment of overtime.

Subsequent to the date of the election, Solec has continued its habitual practice of making unilateral changes without consulting union leaders, much less offering them the opportunity to

- 21 -

negotiate. The items on the following list constitute black marks, showing what the Solec management has done since the election on October 3, 1997, without taking into consideration the union committee of workers:

- (1) Promotion of rank-and-file employees to supervisory positions and positions of trust;
- (2) Changes in the schedule;
- (3) Firings;
- (4) Hiring of personnel without the consent of, or through, the union;
- (5) Temporary suspensions of personnel;
- (6) Changes in health and safety conditions and retirement and benefit plans;
- (7) Change in the location of the work area;
- (8) Denial of employees' overtime rights;
- (9) Changes in the assembly line system, without adequate payment of wages; and
- (10) Subcontracting of companies to do the same work, rather than hiring more workers

at the plant, which has entailed the closing of work areas.

Notwithstanding the campaign of willful harassment waged by Solec and by the NLRB to demoralize the workers, [they] firmly believe that they have the power to improve their lives through the union and collective bargaining. As a way of demonstrating their resolve, the workers meet every Tuesday across from the plant facilities to discuss strategy and tactics and to organize themselves freely as a union. The campaign is indeed having a insidious effect on these workers, however, in that they fear that the company will take reprisals against them, and some of them are asserting that the union has no power while others say that nothing can be fixed even if they have the votes. Thus, the purpose of this complaint is to stop the effects of the campaign

- 22 -

of delay waged by the NLRB, which favors the interests of the Solec corporation (Sanyo/Sumitomo).

V. Irreparable harm to the right of freedom of association, the right to organize, and the right to bargain collectively; and a persistent history of non-compliance with U.S. labor law and thus, violation of international treaties regarding labor laws, with complicity between the Government of the United States of America and Solec International, Inc.:

The persistent and unwarranted delay by the NLRB in tallying the votes and certifying the election constitutes irreparable harm which deprives Solec workers of their right of freedom of association and protection of their right to organize a union and their right to bargain collectively. Therefore, the U.S. Government, through its representatives, the National Labor Relations Board, is in violation of each of the following labor law provisions:

(1) The National Labor Relations Act (NLRA), and in particular, the provisions of Section 1.b., which orders: "neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest." [Yet there exists] an unprotected production process whereby heavy metals leak into the environment, thus jeopardizing the health, safety, and interest of the community that is in contact with those chemicals. The workers have made innumerable efforts to get the company to solve this problem; however, to date, these efforts have been unsuccessful owing to the lack of an NLRB-certified union, and we have thus been left open to public ridicule, as if we lacked reason.

(2) Section 1 [sic--Section 7] of the National Labor Relations Act grants workers the power of self-organization and to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing. In the case of the Solec workers, however, the

- 23 -

NLRB delayed acting for so long that a simple procedural matter of counting ballots for purposes of certifying union representation is destroying the guarantee provided for in the Act.

(3) Solec management, acting with impunity, thanks to assistance furnished by the NLRB, [has committed] unfair labor practices vis-à-vis its workers and their union representatives, such as interfering, restraining, and coercing its employees in the exercise of their labor rights and making belligerent statements about the workers and union representatives. At a captive audience meeting during working hours, Carlos Restrepo told a worker by the name of Rene Gomex that if the workers voted to form a union, they would be required to pay monthly dues forever even if some day they decided to terminate their relationship with Solec.

Furthermore, at a captive audience meeting attended by Mrs. Catalina Gonzales, Aki Toyoshima, the Vice President of Solec, stated that the workers would have to pay an initiation fee if they voted to form a union.

(4) Section 302(a) of the NLRA provides that it shall be unlawful for any employer or any person to act as a labor relations expert, adviser, or consultant to an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value to any representative of the workers who is employed in an industry affecting commerce; or to pay to any employee or group of [sic--or] committee of employees of such employer compensation for the purpose of causing such employee to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.[*] Yet Mr. Carlos

[* Translator's Note: The part of Section 302(a) of the National Labor Relations Act that has been paraphrased reads in pertinent part: "It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value - (1) to any representative of any of his employees who are employed in an industry affecting commerce; or... (3) to any employee or group or committee of employees of such employer... for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing..." (emphasis added)]

- 24 -

Restrepo, a union buster hired by Solec, made various attempts, prior to the October 3, 1997 election, to give money to a worker by the name of Mike Katic, so that he would help Mr. Restrepo in his anti-union practices. On October 2, 1997, Mr. Restrepo was chatting with Mr. Katic, and, while the two were standing next to some other workers, he tried to place a roll of bills in Mr. Katic's shirt pocket as a tactic to discredit him in the eyes of his fellow workers.

(5) Article 3(1) of the NAALC provides, in essence, that each Party shall promote effective compliance with its labor law through its own government action, which has a direct relationship with [sic--which is subject to] Article 42, which Article establishes mechanisms such as 3(1)(b), for the monitoring of compliance and the investigation of suspected violations, including through on-site inspections. The Government of the United States has failed in its responsibility to monitor compliance with basic health and safety rules at the Solec plant. If an inspector had ever made a serious attempt to inspect working conditions at the plant, he would have discovered that toxic chemical dust is in the environment there. The level of contamination was such that in the Maintenance Department, Bill Hundley complained that when he left his cup of coffee for five minutes or so, it would be covered with a thick layer of white dust when he returned. The dust was also falling from an air duct above the food vending machines.

(6) Article 5(1) of the NAALC states that each Party shall ensure that its administrative, quasi-judicial, judicial or labor proceedings for the enforcement of its labor laws are fair, equitable, and transparent and, to that end, each party shall provide that (d) such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays. The U.S. Government and the directors of Solec are acting in complicity with one another to frustrate [the workers'] legitimate aspirations to improve their lives through

- 25 -

collective bargaining, and the workers allege that NLRB government agents are being paid off by Solec management to create unwarranted delays in the elections, counting of ballots, and certification--delays which are advantageous to the company.

(7) Annex 1(1) of NAFTA [sic--the NAALC] establishes: "The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests". Considering the obstacles placed in their way by the U.S. Government, the workers at Solec obviously do not have the right to choose freely and without significant impediment to hold their own election.

(8) Annex 1(2) of NAFTA (sic--the NAALC) establishes: "The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment." The workers at Solec have been denied the rights conferred by U.S. law, whereby companies have the duty to negotiate with workers' organizations to the extent recognized by the government, because the union is facing unwarranted delays which, for all intents and purposes, nullify these rights.

(9) Annex 1(6) of NAFTA (sic--the NAALC) establishes: "The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements." Solec is in ongoing violation of the overtime payment rules, which, as this document has shown, constitutes a violation of California State law. Over the course of several years, Solec illegally withheld its workers' wages for long periods of time and also engaged in the practice of refusing to pay overtime until an employee had worked 40 hours. Such refusal is in violation of the law, which mandates payment of

- 26 -

overtime after 8 hours of work. Solec acknowledged this in a letter to the employees dated September 12, 1997.

(10) Annex 1(7) of NAFTA (sic--the NAALC) establishes: "Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, [where applicable,] [bona fide] occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination." Discrimination against workers of Latino descent is routine and constant, and is especially harsh with regard to the plant's black workers. Workers raised this as a key issue during their unionization campaign and have been frustrated by the government in their attempts to correct this situation.

(11) Annex 1(9) of NAFTA [sic--the NAALC] establishes: "Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses." The United States has legal standards for minimizing injuries and illnesses, but those standards have no effect and are not being complied with. Direct responsibility for this situation rests with OSHA of California and with the South Coast Air Quality Management District (SCAQMD). Nevertheless, the NLRB, through its dilatory tactics, is an accomplice owing to its failure to protect the health of the workers as a result of its greed for capital.

(12) The International Labor Organization (ILO), in Article 36 of the Human Rights Convention [sic], orders: "All appropriate measures should be taken to guarantee that irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear, and threats of

- 27 -

any kind." The existence and capacity in the United States of anti-worker advisers like Carlos Restrepo make a mockery of the ILO Convention. The very purpose of such advisers in general and of Restrepo in particular is to create a climate of pressure, fear, and seniority [sic--anxiety?] in which workers fear for their safety and physical welfare. On various occasions, Carlos Restrepo has threatened Solec workers when they were engaged in legally permissible union activities.

(13) The International Labor Organization (ILO), in Article 43 of the Human Rights Convention [sic]] [states]: "Allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities." Solec management sent a letter to workers at the plant, blaming the OCAW for the terrorist bomb threats that occurred on September 22 and 23. Solec also alleged that members of the Union had physically threatened individuals who had not joined the organization.

(14) The ongoing, unwarranted delay by the NLRB in counting the ballots and certifying the election of the workers at Solec constitutes irreparable harm in that it deprives them of their right of freedom of association, protection of their right to organize a union, and their right to bargain collectively, as guaranteed by the ILO Constitution.

(15) The United States Government has failed in its responsibility to "ensure that tribunals that conduct or review labor proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter." (NAALC, Part II, Article 5(4)). The NLRB has shown favoritism by delaying the proceeding to such an extent that it is giving the appearance of postponing the entire matter in order to prevent trade union representation.

- 28 -

(16) ILO Convention No. 135, which concerns the protection and facilities afforded to workers' representatives in the undertaking, has been ratified by the United States. Article 1 states: "Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities...." Yet the United States Government, without taking any preventive or punitive action, has permitted the payment of up to \$7,000, which had been illegally withheld by the company, to anti-union workers at Solec, while the company refused to pay what it owed many pro-union workers. This failure to protect the workers as they seek to collectively confront the injustices inflicted upon them by the corporation actually makes the government an accomplice in the very same crime against the workers.

The facts of the Solec case demonstrate a history by the NLRB of using delays to avoid providing for and protecting the rights of the workers, while giving management the time it seeks carry out a plan of harassment and intimidation against those who support the union. The fact that a simple tallying of votes should go on for six months without a decision is further indication of the well-known history of the NLRB of using such tactics to avoid decisions that support labor law to the detriment of the established interests of corporations.

VI. Actions Requested of the Mexican NAO:

In view of the foregoing, the petitioners request of the Mexican NAO the following:

- (1) Through the appropriate means, to urge the NLRB to proceed immediately to count the ballots cast at the union election of October 3, 1997, and if the union has prevailed, to certify the election without further delay, and to vigorously enforce all other U.S. laws ensuring

- 29 -

full protection for the rights of Solec workers to organize a union and bargain collectively, as well as to engage in lawful union activities without interference or reprisals by their employer and to work under conditions that comply with U.S. legal requirements and, more specifically, to urge that the NLRB request that Solec:

- (a) Stop discriminating against the workers in a manner that causes irreparable harm to them in their efforts and in their right of freedom of association;
- (b) Stop using "strike breakers," and, especially, Carlos Restrepo, who is trying to manipulate the workers to get them to support the company by changing the employment relationship in a conditional manner;
- (c) Observe and respect retroactively, from the date of the election, all negotiations involving the employment relationship in terms of hours and wages; and
- (d) Prevent the company from interfering with the workers' rightful efforts to unionize.

2. In accordance with Article 16 [sic] of the NAALC, initiate an investigation into the conduct of Solec and the failure of the U.S. Government to enforce labor and health and safety standards, as required by international treaty and its own labor law as they apply to violations found at the Solec company, particularly as these standards relate to freedom of association and to the guarantee of respect for the right to organize; and, at the same time, seek to impose penalties on the company for its interference with the union election process. This interference has consisted of coopting and infiltrating workers engaged in the union movement with a view to fraudulently manipulating the election via the provision of false information to the NLRB and to workers who support the union, of taking reprisals against employees for participating in the

- 30 -

organization and election of their union, and of bypassing negotiations with elected union representatives while promoting changes in working conditions.

3. To hold a briefing, in the form of a public hearing, to obtain greater knowledge of, and more information about, the violations raised herein. The session should take place at a site close to the border, preferably in the City of Tijuana, Baja California, thus allowing for a substantial number of workers, other participants, and expert witnesses to attend. The purpose of such a session would be to prove [sic--provide?] the NAO with more information, which would enable it to corroborate the information given herein; as much assistance as possible should be furnished to cover its cost, and assurances should be given us that foreign-language interpreters will be provided, and that such a hearing, as well as any other event relating to the case, will be scheduled within a reasonable period of time.

In the event that a decision is not rendered with sufficient speed and in an appropriate manner, we request that the Secretary of the Mexican NAO recommend ministerial consultations to bring about compliance with labor and health and safety standards by virtue of Article 22 of the NAALC and to obtain an explanation on the part of the U.S. Government as to its persistent failure to enforce the labor-law, Constitutional, and international treaty provisions that are being flagrantly violated at Solec and in other similar cases. We further request that the U.S. Government response, through its Secretary of Labor, be released to the public and that it

indicate the measures taken to correct the violations of the labor and health and safety standards at issue and indicate the amount of the penalties imposed on Solec.

In witness whereof, we hereby affix our signatures hereto:

[Signature]

Kelly J. Quinn
President of OCAW Local I-675

[Signature]

José Angel Peñaflor B.
Community Union for the Defense of Labor

[Signature]

Mary E. Tong
Executive Director
Support Committee for Maquiladora Workers