

Mexico, D.F., August 4, 1998

Mr. Rafael Aranda Vollmer  
Secretary, National Administrative Office of Mexico  
Office of General Coordination for International Affairs  
Department of Labor and Social Welfare  
Av. Periférico Sur No. 4271, Edif. A, Planta Baja  
Col. Fuentes del Pedregal  
Del. Tlalpan  
C.P. 14149, Mexico, D.F.

Dear Sir:

I, Netzahualcóyotl de la Vega García, Secretary of Social Communication of the National Committee of the Confederation of Mexican Workers (CTM), hereby inform you, in my capacity as petitioner, that my address for purposes of hearing and receiving notifications of any kind is Calle de Vallarta No. 8, 2° Piso, Colonia Tabacalera, Delegación Cuauhtémoc, C.P. 06030, Mexico, Distrito Federal, phone number and fax 535-04-75.

Acting on the basis of Article 16(3) of the North American Agreement on Labor Cooperation Agreement (NAALC), and in compliance with the requirements of Article 1 of the Rules of the National Administrative Office of Mexico, concerning Public Communications, to which Article 16(3) of the NAALC refers, I hereby submit the following:

**Public Communication**

On alleged violations of labor rights in United States territory, with respect to:

- (a) Protection of migrant workers;

- (b) Minimum employment standards;
- (c) Elimination of employment discrimination;
- (d) Prevention of occupational injuries and illnesses;
- (e) Compensation in cases of occupational injuries and illnesses; and

all those principles that the NAALC member countries have pledged to observe.

#### **The Facts**

- In an unprecedented action, the Government of Mexico is participating as co-plaintiff in a class action suit to defend the employment and civil rights of Mexican farm workers employed by the DeCoster Egg Farm in the State of Maine.
- The workers referred to in the class action suit are Mexicans who are in U.S. territory as migrant workers. They claim that the U.S. authorities have not provided them with any guarantee of enforcement of the U.S. laws designed to protect them. This has resulted in serious violations of their rights with respect to minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, and compensation in cases of occupational injuries and illnesses, as described in detail below.
- The Confederation of Mexican Workers joins the Government of Mexico, taking advantage of the opportunity offered by the NAALC, to protect the employment rights of Mexican workers in the United States.

### **Possible Violations of Employment Rights in U.S. Territory**

From the facts described in the class action suit, the following principles set forth in the NAALC may have been violated:

#### **Protection of Migrant Workers**

The U.S. Government, under such laws as the NAALC, the Immigration and Nationality Act, and the Migrant and Seasonal Agricultural Worker Protection Act, has an obligation to guarantee that migrant workers enjoy the same legal protection, in terms of working conditions, as U.S. nationals.

Mexican workers have never received the legal protection they need to ensure that they are not hired by deceitful means. The U.S. Government has not implemented any action to protect Mexican workers and to prevent practices such as providing working conditions different from those promised. In the case at hand, for example, the workers were required to pay for transportation and housing when they had originally been told that such costs would be covered.

#### **Minimum Employment Standards**

The United States has enacted laws that establish the employer's obligation to furnish and safeguard minimum employment conditions, such as the Agricultural Worker Protection Act, the Agricultural Employees Labor Relations Act (State of Maine), the Fair Labor Standards Act, and the Fair Housing Act.

Nevertheless, the Mexican workers have reported a series of violations of minimum employment standards, primarily with regard to housing, and the failure to fulfill certain legal obligations.

(a) Housing

- The workers are required to pay for the housing that is provided to them, in violation of the Migrant and Seasonal Agricultural Worker Protection Act, and the terms of employment offered to the Mexican workers when they are hired;
- The Mexican workers have been living in housing that does not meet minimum health and safety standards;
- The workers are exposed to the risk of fire, smoke inhalation, electrical leaks, and possible electrocution; moreover, the kitchens, bathrooms, and showers, are inadequate; appropriate facilities for washing and drying clothing are absent; and there are no waste disposal facilities;
- Another housing-related problem is the crowding of a number of families of Mexican workers and their children into a single housing unit;
- These housing units have not been inspected by the State or by any competent local or federal health authority;
- No State or local health authority, or any responsible authority, has certified that the housing meets the required terms and conditions for occupancy; and
- The Mexican workers have not been notified with respect to the terms and conditions under which the housing assigned to them can be occupied.

(b) Violations of Minimum Employment Conditions

The Mexican workers:

- Have not been provided the terms and conditions of their employment in writing, as required under the Migrant and Seasonal Agricultural Worker Protection Act;

- Receive no notification at the farm of the rights and protections to which they are entitled under the Migrant and Seasonal Agricultural Worker Protection Act;
- Have received false or misleading information on the terms and conditions of their employment;
- Have not received free housing for each family under safe and healthful conditions, as they were promised;
- Have not received free transportation from their place of origin to the DeCoster Egg Farm, or from their lodging to their work site, as promised; and
- Have not received the free services they were promised.

#### **Elimination of Employment Discrimination**

The Mexican workers report that they have been the target of a discriminatory policy based on race.

Despite the existence of U.S. legislation prohibiting employment discrimination (NAALC; Title VII of the Civil Rights Act, 42 USC; and the Maine Human Rights Act), the Mexican workers have reported situations such as the following:

- They have been subjected to harassment and abuse on the job simply because they are Mexicans;
- They are the victims of threats and intimidation, and are assigned unsafe tasks that are not given to other workers;
- The benefits, rights, and terms and conditions they are given when hired are inferior to those of other workers;

- The accommodations they are provided are not the same as those furnished to other workers as far as safety, cleanliness, and the number of people occupying them are concerned;
- The housing provided to other workers is safe and clean, and occupied only by one family or person at a time. As many as three Mexican families are very often forced to occupy the same housing unit.
- The Mexican workers have not received proper services and medical care, compared to other workers. To illustrate:
  - (a) When a Mexican worker is injured on the job, he is frequently not taken to the hospital to receive medical care, or if he is taken to the hospital, it is after a considerable delay;
  - (b) Mexican workers who are injured and by doctor's orders cannot work are forced to resume working before they are fully recovered, under threat of losing their job if they refuse;
  - (c) Mexican workers who are injured on the job are not informed of their rights, or given the benefits stipulated in the laws on compensation for occupational injuries. Furthermore, no records are kept of the appropriate accident reports and injury-related documents, as required by the law on the compensation of occupational injuries.
- Performance criteria have been applied subjectively and the tasks assigned to Mexican workers are different from those assigned to other workers.

### **Prevention of Occupational Injuries and Illnesses**

The United States provides full health and safety protection under such legal instruments as the NAALC and the Occupational Safety and Health Act; the Mexican workers assert, however, that there has been no enforcement of rules designed to reduce job-related risks.

#### **(a) Safety**

In terms of safety, the Mexican workers indicate that their living quarters have not met and do not meet minimum safety standards, and that they risk exposure to fire, smoke inhalation, and possible electrocution.

#### **(b) Health**

Also reported was the existence of violations of health standards. For example, the kitchens, bathrooms, and showers provided to the Mexican workers are inadequate, there are no facilities for washing and drying clothes, and there are no waste disposal facilities.

The Mexican workers report that the competent health authority has not inspected the housing and has not certified that it meets the terms and conditions for occupancy.

### **Compensation in Cases of Occupational Injuries and Illnesses**

U.S. legislation on compensation in cases of occupational injuries and illnesses, such as the Maine Workers' Compensation Act, establishes systems that provide benefits and compensation to workers or their dependents for occupational injuries, accidents, or death occurring on the job, or in connection with or as a result of their employment.

The Mexican workers report that these laws are being violated and that when they have had an accident on the job, they have not been notified of their rights, or given the benefits stipulated in the laws that provide for compensation in case of job-related accidents.

Furthermore, no records are kept of the appropriate accident reports and documents, as required by the laws on workers' compensation.

### **Conclusions**

In light of the above, possible violations of the terms of the NAALC have been revealed with regard to the protection of migrant workers, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses; and compensation in cases of occupational injuries and illnesses (NAALC, Labor Principles 11, 6, 7, 9, and 10).

The United States Government is obligated to establish measures at the federal level to ensure the effective enforcement of labor laws, to ensure access by individuals to labor procedures, to provide guarantees of due process, and to furnish public information and awareness of its laws (NAALC, Articles 3, 4, 5, and 7). The Mexican workers do not believe that the labor laws have been effectively enforced in their regard. They assert that they lack proper access to the labor courts, and argue that U.S. labor laws in this respect are not being effectively applied in U.S. territory. They also note that they do not have adequate knowledge of the rights and protections afforded them under U.S. laws, owing to the failure to disseminate such information.

### **Petitions to the Mexican NAO:**

1. Consult the U.S. NAO concerning violations of U.S. labor laws to which Mexican workers are subjected in U.S. territory;
2. Consult U.S. labor authorities concerning the rights of freedom of association and protection of the right to organize; the right to bargain collectively; and the right to strike on the

part of Mexican workers in U.S. territory. These rights are set forth in the NAALC and form the foundation of worker protection.

3. Inasmuch as this is not an isolated problem, the Mexican NAO is requested to use every means at its disposal under the NAALC to direct, without delay, the attention of the U.S. labor authorities to this problem within their sphere of competence and at the highest level.

[Signature]

Netzahualcóyotl de la Vega García  
Secretary of Social Communication,  
National Committee of the  
Confederation of Mexican Workers