

NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

PUBLIC REPORT OF REVIEW OF
U.S. SUBMISSION 2011-02 (MEXICO)



OFFICE OF TRADE AND LABOR AFFAIRS
BUREAU OF INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR

JUNE 30, 2020

TABLE OF CONTENTS

List of Acronyms	iii
I. North American agreement on labor cooperation.....	1
A. Submission Report.....	1
B. Summary of Proceedings U.S. (Submission 2011-02).....	1
II. Summary of the SME negotiations with the GOM.....	4
III. Findings.....	5
A. NAALC Article 1: Promote the Labor Principles Set Out in Annex 1 of the NAALC.....	5
B. NAALC Article 2: Levels of Protection.....	6
C. NAALC Article 3: Government Enforcement Action.....	6
1. Failing to Rescind the LyFC Dissolution Decree	6
2. Failing to Apply Substitute Employer Obligations to the CFE to Employ SME Workers	7
3. Interfering with the SME's Autonomy by Denying Legal Recognition to its Elected Leaders	7
4. Violating the Rights of Pregnant and Disabled Workers.....	7
5. Failing to Conduct Occupational Safety and Health Inspections of Workplaces.....	8
D. NAALC Article 5: Procedural Guarantees	8
1. Lack of Impartiality of the JFCA.....	9
2. Unwarranted Delays.....	9
E. NAALC Article 6: Notice Requirements.....	10
IV. Conclusion	10
V. Recommendations.....	10

LIST OF ACRONYMS

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
CFE	Federal Electricity Commission (<i>Comisión Federal de Electricidad</i>)
GOM	Government of Mexico
JFCA	Federal Board of Conciliation and Arbitration (<i>Junta Federal de Conciliación y Arbitraje</i>)
LFT	Federal Labor Law (<i>Ley Federal del Trabajo</i>)
LyFC	Central Light and Power (<i>Luz y Fuerza del Centro</i>)
MOU	Memorandum of Understanding
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office
OTLA	Office of Trade and Labor Affairs
SEGOB	Secretariat of the Interior (<i>Secretaría de Gobernación</i>)
SAE	Assets Administration and Transfer Service (<i>Servicio de Administración y Enajenación de Bienes</i>)
SME	Mexican Union of Electrical Workers (<i>Sindicato Mexicano de Electricistas</i>)
STPS	Secretariat of Labor and Social Welfare (<i>Secretaría del Trabajo y Previsión Social</i>)

I. NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

A. Submission Report

The United States, Mexico, and Canada signed the North American Agreement on Labor Cooperation (NAALC) on September 14, 1993, and the agreement came into force on January 1, 1994, immediately after entry into force of the North American Free Trade Agreement (NAFTA). The NAALC states that each Party shall establish a National Administrative Office (NAO) at the federal level to serve as a contact point with the other Parties.¹ For the United States, the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) was designated as this contact point in a *Federal Register* notice published on December 21, 2006.²

Under the NAALC, each Party's contact point provides for the submission, receipt, and consideration of communications on matters related to the Agreement and reviews such communications in accordance with domestic procedures.³ The same *Federal Register* notice that designated the OTLA as the U.S. contact point also set out the Department of Labor's Procedural Guidelines for the receipt and review of public submissions. According to the definitions contained in Section B of the Procedural Guidelines, a "submission" means "a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under Part 2 of the NAALC."⁴

B. Summary of Proceedings (U.S. Submission 2011-02)

On November 14, 2011, the OTLA received a public submission (U.S. Submission 2011-02) filed under Article 16.3 of the NAALC from the Mexican Union of Electrical Workers ("SME," in Spanish) and 93 other organizations, including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).⁵ The submission alleges that the Government of Mexico (GOM) violated its obligations under the NAALC as they relate to labor laws pertaining to freedom of association, the right to bargain collectively, the right to strike, occupational safety and health, and procedural guarantees.

On January 13, 2012, the OTLA accepted for review U.S. Submission 2011-02 (Mexico), stating that it met the criteria for acceptance. The decision to accept the submission was then published in a *Federal Register* notice on January 27, 2012.⁶

¹ North American Agreement on Labor Cooperation, Arts. 15-16, <https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/naalc.html#naalc> [hereinafter "NAALC"].

² See 71 Fed. Reg. 76694 (Dec. 21, 2006), <https://www.federalregister.gov/documents/2006/12/21/E6-21837/bureau-of-international-labor-affairs-notice-of-reassignment-of-functions-of-office-of-trade#p-30>. The OTLA will retain the functions of, and designation as, the National Administrative Office to administer Department of Labor responsibilities under the NAALC until July 1, 2020, when the USMCA enters into force and the NAALC is terminated.

³ NAALC Art. 16.3.

⁴ 71 Fed. Reg. 76691 (Dec. 21, 2006).

⁵ U.S. Submission 2011-02 (Mexico), *Public Submission*, Nov. 14, 2011, <https://www.dol.gov/sites/dolgov/files/ILAB/submissions/MexicoSubmission2011.pdf>.

⁶ 77 Fed. Reg. 4366 (Jan. 27, 2012), <https://www.federalregister.gov/documents/2012/01/27/2012-1765/north-american-agreement-on-labor-cooperation-notice-of-determination-regarding-review-of-submission>.

On May 25, 2012, the OTLA received a supplemental submission from the submitters containing new allegations of violations of labor law protections against discrimination based on pregnancy, disability, and union membership. On June 22, 2012, the OTLA notified the GOM and the submitters that it was extending the period for review. The decision to extend was then published in the *Federal Register* on July 2, 2012.⁷ On October 9, 2012, Mexico's Second Collegiate Court ruled in favor of the submitters on issues central to their claims, and on November 9, 2012, the submitters sent the OTLA their analysis of the court's decision. On January 30, 2013, the Supreme Court of Mexico reversed the Second Collegiate Court's findings. On February 2, 2013, the submitters notified the OTLA of their intent to send their analysis of the Supreme Court's ruling, which the OTLA received on April 30, 2013. During the course of the OTLA review, the OTLA learned that the SME and the GOM were engaged in negotiations to resolve the issues raised in the submission. As a result, the OTLA deferred the preparation of its Public Report of Review pending the outcome of the negotiations and implementation of any settlement.

Submission 2011-02 alleges violations of the NAALC Articles 1-6 stemming from the decision by Mexico's former President, Felipe Calderon, to issue a Dissolution Decree on October 10, 2009, abolishing one of the two state-owned electrical power companies that provided all electricity in Mexico, Central Light and Power ("LyFC," in Spanish). The Dissolution Decree cited unsustainable economic conditions at the company as the basis for the dissolution.⁸ The Decree terminated the employment relationship of the 44,362 LyFC workers, all of whom were members of the SME.⁹ At the time of the submission, the SME reported that of the 44,362 former LyFC workers, approximately 27,280 had accepted severance payments from the GOM due to economic pressure and 16,720 refused to accept payment and remained unemployed.¹⁰ By April 2014, the number of former LyFC workers that still refused to accept severance was down to 16,599.¹¹

Submission 2011-02 asserts that the mass dismissal of LyFC workers through an executive order was undertaken to eliminate the SME's collective agreement and bargaining rights, and was done without consultation with the workers or their lawful union as required by Mexican law. Such an action allegedly violates the requirement of Article 1 of the NAALC for Parties "to promote, to the maximum extent possible, the labor principles set out in Annex 1," specifically the right of workers to establish and join organizations of their own choosing to further and defend their interests.¹² The submitters allege that the dismissal also violates Mexico's obligation under Article 2 of the NAALC to ensure that its "labor laws and regulations provide for high labor standards" and the obligation to "continue to strive to improve those [labor] standards"¹³.

⁷ 77 Fed. Reg. 39265 (July 2, 2012), <https://www.federalregister.gov/documents/2012/07/02/2012-16140/north-american-agreement-on-labor-cooperation-notice-of-extension-of-the-period-of-review-for>.

⁸ Dissolution Decree, preamble (Oct. 11, 2009), <http://www.diputados.gob.mx/LeyesBiblio/regla/n237.pdf>.

⁹ Ibid.

¹⁰ U.S. Submission 2011-02 (Mexico).

¹¹ SME Email, April 25, 2014.

¹² NAALC, Article 1.

¹³ Ibid., Article 2.

The submission alleges that the failure of Mexico’s courts’ and the Federal Conciliation and Arbitration Board (“JFCA,” in Spanish) to rescind the Executive’s actions amounts to a failure by the GOM to adequately enforce its labor laws in violation of Article 3.1 of the NAALC. Article 3.1 requires each Party “to promote compliance with and effectively enforce its labor law through appropriate government action.”¹⁴ The submitters also allege that the GOM violated the International Labor Organization’s Convention 87 on Freedom of Association when it interfered in internal union affairs by failing to grant legal recognition (*toma de nota*) to the union’s duly elected leadership in July 2009. Although the submitters’ allegation related to *toma de nota* asserts a violation of an ILO Convention and not a NAALC obligation, the OTLA notes that this concern implicates provisions of Mexican labor law providing workers with the right to freedom of association, and thus was analyzed as an alleged violation of Article 3 of the NAALC.

The submitters allege that the JFCA’s decision to uphold the LyFC termination, which resulted in the termination of the SME collective agreement, along with extensive delays in the resolution of the SME’s employer substitution claim at the time, effectively denied their ability to enforce their collective bargaining rights under domestic procedures. The SME sought to have the remaining government-owned electrical company declared a substitute employer responsible for employing the LyFC workers and for bargaining with the SME. The JFCA’s actions allegedly violate Mexico’s obligation under Article 4.2 to ensure that “persons may have recourse to, as appropriate, procedures by which rights arising under its labor law...and collective agreements, can be enforced.”¹⁵

The submission alleges procedural violations in the JFCA decision to uphold the termination of the LyFC workers and to reject the SME’s claim that former LyFC workers should be hired by the remaining state-owned electrical company, the Federal Electricity Commission (“CFE,” in Spanish), based on an employer substitution claim. These actions allegedly constitute a violation of Mexico’s obligations under Article 5 of the NAALC to ensure that “administrative, quasi-judicial, judicial, and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent”.¹⁶ The actions also allegedly violate the obligation under Article 5.2 to:

- provide final decisions on the merits of the case in such proceedings that are:
- (a) in writing and preferably state the reasons on which the decisions are based;
- (b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and (c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.¹⁷

The submitters also allege a violation of the obligation in Article 5.4 to “ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.”¹⁸

¹⁴ Ibid., Article 3.

¹⁵ Ibid., Article 4.

¹⁶ Ibid., Article 5.

¹⁷ Ibid.

¹⁸ Ibid.

Finally, the submitters allege that the GOM failed to publish in advance the Dissolution Decree that dissolved LyFC, in violation of its obligations under Article 6.2 of the NAALC, which states: “When so established by its law, each Party shall: (a) publish in advance any such measure that it proposes to adopt; and (b) provide interested persons a reasonable opportunity to comment on such proposed measures.”¹⁹

II. SUMMARY OF THE SME NEGOTIATIONS WITH THE GOM

On October 9, 2013, Mexico’s Treasury Department (“SEGOB,” in Spanish) and the SME signed a Memorandum of Understanding (MOU).²⁰ Under the MOU, the GOM agreed to pay pensions to 1,400 former LyFC workers. From May 9-11, 2014, the GOM made payments to 984 retired workers.²¹ According to the SME, the GOM did not authorize payments for the remaining 416 retirees.²²

On July 10, 2015, SEGOB and the SME signed another MOU.²³ On December 1, 2015, the SME informed the OTLA that the GOM agreed to give a new electric company partly owned by the SME, FENIX, a 30-year concession to use 14 hydroelectric plants formerly owned by LyFC.²⁴ According to the SME, the GOM also agreed to transfer 25 additional factories and workshops formerly owned by LyFC to FENIX.²⁵ Income from the plants would be used to establish a Cooperative (LF del Centro) that would produce goods and services for the electricity sector, which would also reemploy former LyFC workers.

The Mexican NAO provided an update to the OTLA on April 5, 2017, on the status of agreements reached between the SME and the GOM. According to the GOM, of the former that had not accepted severance payments initially, 14,610 of them received severance payments by early 2017 based on the LyFC collective bargaining agreement. This amounted to \$5.200 million pesos (US \$237,846.62). As of April 2014, the SME reported that the number of former LyFC workers that remained without severance payments was 16,599.²⁶

On July 11, 2018, the SME confirmed it had entered into a collective bargaining agreement with FENIX. The SME also reported that negotiations with the GOM had concluded, but full implementation of the October 2013 and July 2015 agreements was still pending.²⁷ The SME reported it had been able to reemploy about 1,600 former LyFC workers (538 by FENIX and the rest in the Cooperative). The SME noted it had physical possession of all the LyFC properties,

¹⁹ NAALC, Article 6.2.

²⁰ Ibid., on September 24, 2014, the Mexican NAO sent OTLA an email with what appears to be the signature page for the October agreement between SEGOB and the SME, but neither the GOM or the SME agreed to provide a copy of the MOU.

²¹ Ibid., and SME Email, January 17, 2020.

²² SME Email, Jan. 17, 2020.

²³ El Universal, “INAI reserva un año expediente SEGOB-SME sobre Luz y Fuerza, <https://www.eluniversal.com.mx/articulo/nacion/politica/2016/03/16/inai-reserva-un-ano-expediente-segob-sme-sobre-luz-y-fuerza>. Neither the GOM nor the SME provided a copy of the MOU.

²⁴ SME Email, “Information for OTLA,” Dec. 1, 2015.

²⁵ Ibid.

²⁶ SME Email, Apr. 25, 2014.

²⁷ SME Email, July 11, 2018.

but alleged that some of the promised property had been taken over by third parties or the GOM had taken the land for public use, such as for building roads. They also claimed that some administrative records had not been turned over and transfer of ownership had not been published in the Official Gazette of the Federation for most properties.²⁸ On August 20, 2018, the SME informed the OTLA that it had negotiated an agreement with FENIX to purchase energy from the new LF Cooperative and to hire more former LyFC workers.²⁹

On January 2, 2020, the SME told OTLA that the GOM had not yet fully implemented the terms of its October 2013 and July 2015 agreements with the SME, including the signing of a 25-year contract with FENIX to supply up to 1700 MW of electricity FENIX.³⁰ The contract would allow the SME to re-hire an additional 3,000 former LyFC workers.³¹ As of January 2020, the SME reported it had been able to hire 1,600 of the former 16,599 workers that had not accepted severance payments initially, and that the GOM had made severance payments to 14,610 of them. On April 7, 2020, the Mexican NAO informed the OTLA that it had no additional information related to the SME issues raised in the SME response from January 2.

III. FINDINGS

The OTLA has reviewed thoroughly the relevant laws and the documentation provided by the submitters and by the GOM. In addition, the OTLA undertook a fact-finding visit to Mexico City from March 19-23, 2012, to conduct interviews with the submitters, labor law experts, and the GOM.

The negotiations carried out by the SME and the GOM appear to have addressed issues related to outstanding payments owed to former LyFC workers, including severance payments and pension payments to SME retirees. The negotiations also resulted in the creation of new electricity-generating companies operated in part by the SME, FENIX and LF del Centro, which created reemployment opportunities for former LyFC workers.

As to the alleged NAALC violations by the GOM, the OTLA makes the following findings:

A. NAALC Article 1: Promote the Labor Principles Set Out in Annex 1 of the NAALC

The submitters allege that the mass dismissal of LyFC workers through a Dissolution Decree was undertaken to eliminate the SME's collective agreement and bargaining rights. Such an action allegedly violates the requirement of Article 1 of the NAALC for Parties to promote, to the maximum extent possible, the labor principles set out in Annex 1, specifically the right of workers to establish and join organizations of their own choosing to further and defend their interests.

²⁸ Ibid.

²⁹ SME Email, Aug. 20, 2018.

³⁰ SME Email, Jan. 17, 2020; SME Email, July 11, 2018.

³¹ SME Email, July 11, 2018.

LyFC was a decentralized parastatal entity established by a Presidential Decree in 1994 pursuant to the Federal Law of Parastatal Entities (Parastatal Law).³² According to the Parastatal Law, dissolution of decentralized entities must be carried out through the same mechanisms that established them.³³ The Dissolution Decree issued by President Calderon to dissolve LyFC cited as key factors the unsustainable economic conditions at the company, including large government subsidies, large operating deficits, and high pension costs.³⁴ Although the cause of the economic conditions described in the Dissolution Decree has been disputed, there is no dispute that LyFC was operating with great inefficiencies and financial costs.³⁵ Therefore, the evidence suggests that the financial condition at LyFC was a legitimate basis for issuing the Dissolution Decree.

The submitters provided copies of public statements by the GOM that allegedly reflect anti-union animus towards the SME, purportedly revealing that the true motive for the dissolution was to undermine the union.³⁶ However, the OTLA review determined that such statements were not sufficient to rebut the GOM's argument that the reasons for the dissolution were economic in nature and not to eliminate the SME's collective agreement and bargaining rights. Based on the evidence reviewed by the OTLA, the OTLA finds that there is insufficient evidence to conclude that the issuance of the Decree constituted a violation of Article 1 of the NAALC.

B. NAALC Article 2: Levels of Protection

The submitters allege that the termination of the employment relationship at LyFC through a Dissolution Decree violates Mexico's obligation under Article 2 of the NAALC to ensure that its labor laws and regulations provide for high labor standards and the obligation to continue to strive to improve those labor standards. The submission does not challenge Mexico's labor laws as written. Instead, it alleges that *in practice*, the laws fall short of high labor standards.

Because the submitters' allegations related to Article 2 of the NAALC essentially center upon the ways the laws are applied in practice, the OTLA determined that these allegations were more properly analyzed under Article 3.1 of the NAALC, which focuses on means of enforcement and promotion of compliance.

C. NAALC Article 3: Government Enforcement Action

1. Failing to Rescind the LyFC Dissolution Decree

The submitters allege that the Mexican courts' and the JFCA's decisions not to rescind the Dissolution Decree violates the GOM's commitment under Article 3 of the NAALC to effectively enforce its labor laws. Pursuant to Article 5.8 of the NAALC, "decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as

³² Decree Establishing Luz y Fuerza del Centro as a Decentralized Entity, February 9, 1994, http://dof.gob.mx/nota_detalle.php?codigo=4667745&fecha=09/02/1994.

³³ Federal Law of Parastatal Entities, Article 15.IX, http://www.diputados.gob.mx/LeyesBiblio/pdf/110_010319.pdf.

³⁴ Dissolution Decree, Preamble (Oct. 11, 2009).

³⁵ *Evaluación de la Cuenta Pública 2009. Cuaderno 4. Sector Energético*, Comisión de Vigilancia de la Auditoría Superior de la Federación, Unidad de Evaluación y Control (November 2010), 71-73.

³⁶ SME Submission, exh. 13-17.

related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.”³⁷ In this case, the Mexican Supreme Court determined that the LyFC closure was carried out in accordance with Mexican labor law. As such, the OTLA cannot review whether the Supreme Court’s determination constitutes a possible violation of Article 3 of the NAALC.

2. Failing to Apply Substitute Employer Obligations to the CFE to Employ SME Workers

The submitters allege that the GOM violated its obligations under Article 3.1 of the NAALC by failing to consider the CFE as a “substitute employer” under Mexican law, which would have required the CFE to honor all existing labor obligations of LyFC.

The Mexican Supreme Court determined that the CFE was not a substitute employer in accordance with Mexican labor law. Pursuant to Article 5.8 of the NAALC, the OTLA is unable to review whether the Supreme Court’s determination constitutes a possible violation of Article 3.1 of the NAALC.

3. Interfering with the SME’s Autonomy by Denying Legal Recognition to its Elected Leaders

The submitters allege that the GOM interfered with the SME’s autonomy when the Secretariat of Labor and Social Welfare (“STPS,” in Spanish) denied legal recognition to the SME’s elected officials (“*toma de nota*”) from an April-July 2009 election, and thus denied union leaders access to SME funds in violation of the LFT.

The SME challenged the STPS resolution in the Fourth Collegiate Labor Court through an appeal based on Constitutional grounds known as an *amparo*.³⁸ Based on the information provided by the submitters, it appears the *amparo* was dismissed because it was rendered moot by the subsequent JFCA decision that invalidated the April-July 2009 SME elections.³⁹ A new union election was held from November 22 to December 8, 2010, and the SME slate was granted *toma de nota* on December 15, 2010.⁴⁰ Based on the evidence provided, it appears that the SME pursued available legal remedies to challenge the *toma de nota* decision and ultimately succeeded in attaining legal recognition for its leaders. As such, the OTLA finds the question as to whether the denial of *toma de nota* constitutes a violation of Article 3.1 of the NAALC, to be moot.

4. Violating the Rights of Pregnant and Disabled Workers

The submitters allege that through the Dissolution Decree, the GOM violated Article 3.1 of the NAALC by not effectively enforcing protections under Mexican law when it terminated the employment of pregnant workers without just cause and denied pregnant and disabled workers—

³⁷ NAALC, Article 5.8.

³⁸ SME Responses to OTLA questions (March 20, 2012), 8-9; SME Responses to OTLA questions (July 10, 2012), 4.

³⁹ When asked by the OTLA to provide a copy of any legal decisions on the appeal, the submitters did not provide any supporting documentation. See SME March 20, 2012, responses, response to question 15.

⁴⁰ DGRA Expediente 10/5096-27 Oficio No. 211.2.2.-5405, 1.

two groups protected under Mexican law—leave, benefits, medical coverage, and salary in violation of the LFT.

The OTLA found that when LyFC closed as a result of the Dissolution Decree, every worker lost his or her job, including pregnant workers and disabled workers. The OTLA’s review did not uncover any evidence that these workers were fired due to their pregnant or disabled status. Accordingly, the OTLA did not find that the GOM’s actions were inconsistent with its commitment under Article 3.1 of the NAALC to effectively enforce its labor laws related to minimum employment standards and anti-discrimination laws based on pregnancy and disability.

5. Failing to Conduct Occupational Safety and Health Inspections of Workplaces

The submitters allege that the GOM failed to effectively enforce its health and safety laws in violation of Article 3.1 of the NAALC by failing to perform adequate periodic inspections as well as incident-based inspections in reaction to workplace injuries and deaths suffered by CFE workers after the CFE took over LyFC operations. The submitters alleged widespread accidents and deaths at facilities operated by the CFE, citing six specific instances that resulted in the deaths of five workers and injuries to five others.

As evidence, the submitters provided newspaper articles that reported on each incident.⁴¹ The submitters offered no evidence, however, that these accidents had been reported to the GOM, noting that without a presence at the CFE facility, it was unable to file any complaints on behalf of the affected workers or to monitor working conditions at the CFE.⁴² Responses from the GOM to questions posed by the OTLA indicate that health and safety inspections took place at the CFE before and after the Dissolution Decree was issued, although the GOM did not provide the OTLA with supporting documentation related to either periodic inspections or inspections of specific incidents.⁴³ Based on the evidence available, the OTLA was not able to reach a conclusion about this allegation.

D. NAALC Article 5: Procedural Guarantees

The submitters allege that the GOM violated Article 5 of the NAALC by not providing fair, equitable, and transparent enforcement proceedings related to the JFCA’s review of the Dissolution Decree and the SME’s claims of wrongful dismissal and substitute employer.⁴⁴ The submitters specifically allege that: (1) the Chairman of the JFCA was not an impartial judge

⁴¹ Submission exh. 59-66.

⁴² SME responses, March 20, 2012, 12-14.

⁴³ GOM responses to OTLA questions, March 28, 2012.

⁴⁴ The submitters alleged procedural violations under Article 4 of the NAALC as well as Article 5. Article 4 obligates Parties to “ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party’s labor law.” The fact that SME’s complaints were heard by multiple levels of tribunals—from the JFCA to the Supreme Court—demonstrates that SME did in fact have access to enforcement tribunals. Article 5 requires Parties to ensure that those tribunals are fair and effective. Because the submitters’ allegations center upon the effectiveness of those proceedings, not SME’s ability to actually access the tribunals, the submitters’ claims were analyzed under Article 5 of the NAALC.

because he was appointed by the President of Mexico, who issued the Dissolution Decree, and (2) delays in the legal proceedings were unwarranted.⁴⁵

1. Lack of Impartiality of the JFCA

The submitters allege that the Chairman of the JFCA failed to recuse himself from the October 2009 proceedings for termination of labor relations, despite the alleged conflict of interest created by the fact that he was appointed by the President of Mexico, who also issued the Dissolution Decree that was being considered by the JFCA. As a result, the GOM allegedly violated the provisions of Article 5.4 of the NAALC requiring that proceedings in tribunals be “impartial and independent.”

The JFCA did not grant the submitters request for recusal of the JFCA Chairman on grounds that the SME failed to file their request with the STPS, which is the entity that must address recusal requests involving the JFCA Chairman.⁴⁶ The submitters filed an *amparo* challenging the JFCA decision, but the appeal was rejected by the Second Collegiate Court.⁴⁷ Pursuant to Article 5.8 of the NAALC, the OTLA is unable to review whether the Collegiate Court’s determination constitutes a possible violation of Article 5.4 of the NAALC.

2. Unwarranted Delays

The submitters allege that the GOM violated Article 5.1 of the NAALC by causing unwarranted delays in the SME’s unjust dismissal case, which denied the SME due process of law. The submitters specifically allege that the analysis of the SME leaders’ standing and the admission of individual testimony to assess such standing from thousands of workers were tactics employed by the GOM to create delays in the proceedings.

The Dissolution Decree provided for the transfer of LyFC’s assets to the Assets Administration and Transfer Service (SAE)—a government liquidation agency. On September 24, 2010, the SAE filed a motion challenging the standing of the SME’s leaders to represent the SME’s workers before the court in their unjust dismissal claim.⁴⁸ On February 22, 2011, the SAE withdrew the motion, but the JFCA decided, on its own authority, to review the leaders’ standing.⁴⁹ The legal process for the review of standing concluded on November 18, 2011, when the SME won an *amparo* challenging the JFCA’s denial of standing.⁵⁰

⁴⁵ The submitters also allege that the Supreme Court decision on the issues of *force majeure* and substitute employer demonstrated the lack of impartiality. However, the submitters provided no evidence as to the alleged lack of impartiality other than to question the legal basis for the Court’s analysis. In effect, the OTLA is being asked to review whether the Supreme Court had jurisdiction to review this matter, which would appear to exceed our scope of review under Article 5.8 of the NAALC.

⁴⁶ Decision of Second Collegiate Court for Labor Matters of the First Circuit on Amparo, 1337/2010 (Sept. 13, 2012) pgs. 295-96, (quoting JFCA decision, October 31, 2009), *See also* LFT, Article 709.

⁴⁷ *Ibid.*, 300-01. The SME filed an *amparo* to challenge the Chairman’s failure to recuse himself. The Court held that the SME did not use the proper procedure to request recusal and that the issue does not affect individual rights, which is required for standing to file an *amparo*.

⁴⁸ SAE Amendment to Statement of Defense (Exp. 1267/2009), filed September 24, 2010, before the Special Board 5 of the JFCA [Submission exh. 31].

⁴⁹ JFCA Special Board 5 ruling, Exp. 1267/2009, March 8, 2011 [Submission exh. 78].

⁵⁰ Decision on amparo 48/2011, Nov. 18, 2011 [SME responses (round 1) to OTLA questions, annex 6]

The SAE also contested whether each worker listed in the SME's complaint (21,880 at the time) had given authority to the SME to represent him or her individually, and requested the ability to take testimony of each of the workers as to whether they granted such authority to the SME.⁵¹ On May 19, 2011, the JFCA granted the SAE's request and subsequently denied two SME appeals challenging the admission.⁵² In the May 2011 decision, the JFCA set a timeline for the hearing of the first group testimony and scheduled 20 workers per day.⁵³ The submitters reported that the JFCA had started to take worker testimonies in 2013, but the process concluded after the SME signed the October 9, 2013 MOU with the GOM and withdrew the unjust dismissal claim.⁵⁴ Based on the settlement reached between the SME and the GOM, the OTLA finds the question as to whether the JFCA's determination to allow a review of the SME's standing constitutes a violation of Article 5 of the NAALC, to be moot.

E. NAALC Article 6: Notice Requirements

The submitters allege that when the GOM published the Dissolution Decree without prior consultation with workers, it violated the requirements of Article 6 of the NAALC that Parties publish in advance and make available for comments laws, regulations, procedures, and administrative rulings of general application, when so established by law.

The OTLA review found that Mexican law did not require advance publication of the GOM's intention to issue the Dissolution Decree, and as such, its publication was not in violation of Article 6.2 of the NAALC.

IV. CONCLUSION

The OTLA conducted a thorough review of available information related to the allegations in U.S. Submission 2011-02. Based on its review, the OTLA did not find that the GOM violated its obligations under the NAALC.

V. RECOMMENDATIONS

Based on the findings above, the OTLA does not recommend consultations on the issues raised in Submission 2011-02, but strongly encourages the GOM to ensure that all commitments made under the October 9, 2013, and July 10, 2015, agreements between the SME and SEGOB are fully implemented.

⁵¹ Email from SME attorney to the OTLA, Feb. 5, 2013.

⁵² Ibid.

⁵³ JFCA Special Board 5 ruling, Exp. 1267/2009, May 19, 2011.

⁵⁴ SME email, November 8, 2013.