SECRETARIAT OF LABOR AND SOCIAL SECURITY

GENERAL INTERNATIONAL AFFAIRS COORDINATION OFFICE
NATIONAL ADMINISTRATIVE OFFICE
FOR THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

REVIEW REPORT
PUBLIC NOTICE MEX 9801

Mexico City, Federal District, August 1999.

PUBLIC NOTICE MEX 9801
REVIEW REPORT FROM THE MEXICO NAO

I. Executive Summary

The NAALC's objective is to improve labor conditions and living standards on each Party's territory; to promote to the maximum extent the principles established within Annex 1; to promote the effective compliance and application of each Party's labor law; and to promote transparency in the administration of labor law. In order to achieve such objectives, the NAALC provides for public notices, among other mechanisms. Through public notices, each Party's National Administrative Office (NAO) reviews labor law issues which have arisen on each Party's territory, within the framework of cooperative consultations and evaluations under Part Four of the NAALC.[1]

On April 13, 1998, the Mexico National Administrative Office (Mexico NAO) received a Public Notice "regarding the irreparable harm to the right of freedom of association, the right to organize and the failure of the U.S. Government to apply the law." Such notice was presented by the following petitioners: The Oil, Chemical and Atomic Workers International Union, Local 1-675; The "October 6" Industry and Trade Union; the Community Labor Defense Union; and the Support Committee for Maquiladora Workers.

The Public Notice refers labor issues at Solec International, located in Carson, California. The petitioners argue that Solec "was cooperating with the U.S. Government through its agents on the National Labor Relations Board...and the Office of Safety and Health Administration...to suppress the labor rights and rights to safety and health of its workers in their legitimate efforts to organize a union.

The Public Notice also argues that the corresponding U.S. authorities did not ensure that the company fulfill the minimum labor conditions, and did not require the employer, as specified in the corresponding labor law, to pay overtime, to conform to the workers' agreed-upon wages, and to not use such conditions as "a means of intimidating" workers. They also point to a failure by the authorities to prevent company practices that are discriminatory by reason of race and national origin.

The petitioners also note problems in applying labor law in matters of safety and health, by virtue of the failure, by the authorities with jurisdiction to verify fulfillment of the minimum safety

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[1] It is to be noted that it is not the NAO's duty to judge the laws of the other Parties, but rather to promote the effective application thereof with a view to promoting the protection of worker rights. Penalizing violations of such laws is the domain of the dispute resolution mechanisms provided for in Part V thereof, the Arbitration Panels, once all opportunities for cooperative consultations and evaluations have been exhausted.

standards, particularly with respect to places in which workers are exposed to toxic or hazardous substances.

The labor right violations claimed by the petitioners in the Public Notice referred to four of the principles included in Annex 1 of the North American Agreement on Labor Cooperation (NAALC): freedom of association and right to organize (1), minimum working conditions (6), job discrimination (7), prevention of job-related injuries and illnesses (9) and compensation in cases of job-related injuries and illnesses (10).

On July 10, 1998, the Mexico NAO accepted the Public Notice for review, and on that same day, pursuant to article 21 of NAALC, requested cooperative consultations with the NAO of the United States of America (U.S. NAO) on the aforementioned public notice. The U.S. NAO sent information relating to its laws and the authorities with jurisdiction over matters of minimum labor conditions, racial discrimination and freedom of association and right to organize.

U.S. law, both federal and local, protects the rights of workers against the practices mentioned in the Public Notice, and it is the duty of the corresponding authorities to ensure proper compliance with the law and, as the case may be, to apply the corresponding penalties.

During the review, labor-related issues were considered that had arisen on U.S. territory, as presented by the petitioners, and well as the relationship between such issues and the obligations established in NAALC. Based on this, pursuant to article 22 of the NAALC, the Mexico NAO recommends that the Secretary of Labor and Social Security ask the U.S. Labor Secretary for ministerial-level consultations on the following issues: freedom of association and right to organize; minimum labor conditions; job discrimination; prevention of job-related injuries and illnesses; and compensation in cases of job-related injuries and illnesses.

II. Introduction

The review by the Mexico National Administrative Office (NAO) was carried out within the framework of the North American Agreement on Labor Cooperation (NAALC) signed by the governments of Mexico, United States and Canada, and in force since 1994. The governments committed to encouraging their labor authorities to apply national labor law effectively. It is to be noted that the NAALC commitments did not provide for the establishment of common standards in labor matters, changes in domestic laws, or recourse to supra-national authorities.

This report refers to issues relating to the application of U.S. labor law, based on Public Notice MEX 9801, submitted to the Mexico NAO. The petitioners claim that the labor authorities of that country did not effectively apply its labor law in matters of:

Freedom of association and the right of workers to organize,
Minimum labor conditions,
Job discrimination, and
Prevention and compensation in the case of job-related injuries and illnesses (safety and health).

This report refers to the corresponding provisions of U.S. labor law, the resources available to the affected parties, and the results that have been obtained.

Framework:

The NAALC includes the following objectives: "to improve labor conditions and living standards on each Party's territory;" "to promote to the maximum extent the principles established in Annex 1;[2]" to promote the observance and effective application of each Party's labor law;" and "to promote transparency in the administration of labor law."[3]

With a view to achieving these objectives, the Parties are required to:
establish government measures for the effective application of the labor laws;
guarantee access by private parties to the procedures;
guarantee that the procedures brought before their administrative, quasi-judicial or labor courts are fair, equitable and transparent;
publish their laws, regulations and procedures; and

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[2] The labor principles that the Parties committed to promoting under the conditions established by their domestic labor law (Annex 1 of the NAALC) are the following: 1) freedom of association and the right of workers to organize; 2) right of collective bargaining; 3) right to strike; 4) prohibition of forced labor; 5) restrictions on child labor; 6) minimum working conditions; 7) elimination of job discrimination; 8) equal wages for men and women; 9) prevention of job-related injury and illness; 10) compensation in cases of job-related injury and illness; and 11) protection of migrant workers.
[3] Article 1 of the NAALC.

promote information and public awareness of their labor laws.[4]

In performing the review, the Mexico NAO took into consideration the fact that the NAALC acknowledges that the effective application of the labor laws must be by the labor authorities with jurisdiction in each country, since the NAALC does not create or recognize supra-national mechanisms. Each Party promises to fully abide by its respective Constitution and to acknowledge its right to establish its own labor standards and to consequently amend its labor laws and regulations (Article 2). In this regard, the Mexico NAO also took into consideration the fact that the NAALC establishes that "resolutions decreed by the administrative, quasi-judicial, judicial or labor courts, issues pending resolution, as well as other related procedures shall not be subject to review, nor be re-opened pursuant to the terms of the provisions of this Agreement" (Article 5.8).

The NAALC provides for the NAO to establish rules for the presentation and receipt of Public Notices on labor law-related issues arising on each Party's territory. In this regard, a review of such issues by the NAO will be consistent with each country's procedures.[5]

Mexico published the "Mexico National Administrative Office Regulation (NAO) on Public Notices" to which article 16(3) of the North American Agreement on Labor Cooperation Agreement (NAALC) of 28 April 1995 refers. Such ordinance establishes that Public Notices:
will be addressed to the domicile of the NAO;
will be drafted in Spanish;
will be identified to the petitioner;
will state whether they contain confidential information, in which case the NAO will withhold information of that nature; and
will detail labor law-related issues arising on the territory of the other Parties (Canada and the United States).

Once having received the Public Notice, the NAO will notify the petitioner of its acceptance or any missing data. For review purposes, the NAO may request consultations with the National Administrative Offices of either Party, as provided for in article 21 of the NAALC; obtain additional information from the petitioners, as well as engage experts and consultants; or organize information sessions.

Within a reasonable period, depending upon the complexity and nature of each Public Notice, the NAO shall issue a report containing the following:
labor law-related issues arising on the other Parties' territory;
the relationship between such issues and the obligations established in NAALC;
a recommendation as to whether or not to request ministerial-level consultations pursuant to article 22 of the aforementioned Agreement, and any other measures to strengthen fulfillment of the

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[4] Articles 3 to 7 of the NAALC.
[5] Article 16.3 of the NAALC.

NAALC's objectives.

In accordance with the NAO's recommendation, the Secretary of Labor and Social Security may request ministerial-level consultations regarding any issue falling within the scope of the Agreement, with his counterpart in the U.S. or Canada, with a view to undertaking an exhaustive examination of the specific case through the available public information.[6]

Public Communication MEX 9801

On April 13, 1998, the Mexico NAO receive Public Communication MEX 9801 submitted by the Oil, Chemical and Atomic Workers International Union, Local 1-675, the "October 6" Industry and Trade Union, the Community Labor Protection Union and the Support Committee for Maquiladora Workers. The Public Communication referred to workers in the solar panel company Solec International, Inc., located in Carson, California. The petitioners claim alleged violations by the labor authorities with jurisdiction in the U.S. in matters relating to freedom of association and the right of workers to organize (principal 1 of the NAALC), for not having penalized violations that occurred during the union campaign drive and unjustified procedural delays.

They believe that minimum labor conditions have been violated because promotions and raises at the company are made capriciously, i.e., at the discretion of the supervisors, and night shift and overtime payments do not conform to the law (principal 6).

They point to violations with respect to the elimination of job discrimination, since there are racial differences in the hiring and promotion processes; at this time there are no African-American working at the Company (principal 7).

They state that the principles relating to the prevention of job-related injuries and illnesses and compensation in such cases have been violated, since inspections to verify that the company is providing the minimum safety and help conditions are not complete. They also note that the rights of workers are being violated in that they are not given adequate and sufficient equipment for handling toxic chemical substances. They also note high levels of toxicity in the air, a lack of proper ventilation, and a severe lack of information to workers on the appropriate handling and treatment of hazardous chemical products used at the Company (principles 9 and 10).

The Mexico NAO accepted the Public Communication for review on July 10, 1998 and notified the petitioners. To obtain information, the Mexico NAO requested that the U.S. NAO undertake cooperative consultations on the labor issues mentioned in the public communication. During the cooperative consultations, information was requested in writing from the U.S. NAO (including a questionnaire dated July 10, 1998, which is available to the public at the Mexico National Administrative Office).

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[6] Article 22 of the NAALC.

Summary of the cooperative consultations with the U.S. NAO

The U.S. NAO sent information relating to the laws and authorities responsible for matters relating to minimum job conditions, racial discrimination and freedom of association and the right to organize. In response, on November 24, 1998, the U.S. NAO indicated its intent to answer the questions, but without directly addressing the content of the public communication.[7]

Regarding the issue of minimum labor conditions, the U.S. NAO stated that the applicable federal law is the Fair Labor Standards Act of 1938 (NLRA), which does not distinguish between job levels on the basis of risk, experience, training or seniority and which provides that employers must pay all workers a wage no less than the minimum for all hours worked, and even more for overtime. It stated that the authority responsible for administering such law is the Wage and Hour Division of the U.S. Labor Department.

California has its own labor standards. Like the FLSA, California law does not distinguish between job levels based on risk, experience, training or seniority.

With respect to the issue of discrimination, the U.S. NAO indicated that both federal and local law prohibit racial discrimination and establish procedures to which workers may resort who are affected by discriminatory actions by their employers. It also provides that workers must be assured non-discriminatory treatment in all aspects of their work. The California Government Code states that non-discrimination is a civil right.

With respect to the issue of freedom of association and the right to organize, it stated that the applicable law is the National Labor Relations Act (NLRA) and the Constitution of the United States. It also stated that the administrative authority responsible is the National Labor Relations Board (NLRB).

The U.S. NAO reported that no penalties have been established for violations of this law. It also stated that the NLRB has not defined maximum time frames for its procedures, and that such periods may vary, ranging from several months to three or four years. It also noted that there is no procedure intended to protect workers against reprisals by employers, although the NLRB is currently reviewing this matter.

III. Issues relating to labor laws and NAALC obligations

This report seeks to systematically discuss the events presented by the petitioners of the public communication and the applicable labor law with respect to each of the NAALC articles and principles relating to the public communication. To this end, reference is first made to the events presented by the petitioners; second, to the NAALC principal or article; and third, to the applicable

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[7] See U.S. NAO Response to Mexico, NAO Submission No. 9801, November 24, 1998.

labor law as identified by the U.S. NAO.

1. Issues relating to freedom of association and protection of the right to organize

1.1 Actions that the petitioners specify in the Public Communication[8]

The petitioners state in the Public Communication that the Government of the United States has not promoted compliance with its labor laws, nor effectively enforced them through government measures, as demonstrated by the violations of the principles set forth in Annex 1 of the NAALC as stated below:

1. On July 21, 1997, the company's workers filed a petition with Section 31 of the National Labor Relations Board (NLRB) in Los Angeles, California bearing the signatures of approximately 75% of the company's workers, formally requesting that an election be held to appoint a union representative.

2. On August 4 of the same year, the NLRB held a hearing to discuss the representation issue in dispute, before determining whether or not it was appropriate to hold an election for a representative. Through a well-known law firm, the company immediately filed an appeal against the election of a representative.

3. On September 5, 1997, the NLRB rejected the company's appeal.

4. The election was held on October 3. During the vote, the agent representing NLRB Section 31 attempted to cancel the vote because of the pending unfair labor practices claim, and accepted the company's complaint with a view to preventing certain workers (line supervisors) from voting, which skewed the results of the vote, even when the Section Director and the NLRB in Washington D.C. ruled that those workers were entitled to vote.

5. On December 16, 1997, the NLRB Section 31 Director dismissed the complaints filed by the company in the claim for unfair labor practices. The company appealed that decision, and according to the petitioners, at the time the Public Communication was presented, that appeal has not yet been resolved.[9]

6. Although the NLRB had already approved the participation of the so-called Line Supervisors in the vote, when the ballots were recounted their participation was denied; these votes counted for approximately 15% of the total workers, which considerably affected the results.

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[8] Pages 7 to 13

[9] The U.S. NAO reported that there is no judgment pending resolution at any level in Washington or any other Region. Page 9 of the responses sent by the U.S. NAO to the Mexico NAO during the consultation process.

7. In February 1998, the company filed an objection with the NLRB against the holding of elections, using the same arguments as were previously expressed by the workers to the same authority.[10]

8. The delay by the responsible authority in taking action, as well as the contradictions that were committed during the election procedure, favored intimidation practices by the company against the workers.[11]

1.2 Relevant NAALC principal or article

NAALC Principle 1: Freedom of association and protection of the right to organize.
The right of workers, exercised freely and without impediment, to form organizations and join them at their own discretion, with a view to promoting and defending their interests.

NAALC Article 3: "Each Party shall encourage compliance with its labor law and shall effectively apply it through appropriate government measures, subject to the provisions contained in article 42..."

NAALC Article 4: "Each Party shall guarantee that parties with a legally recognized interest pursuant to their domestic law covering specific matters shall have appropriate access to the administrative, quasi-judicial, judicial or labor courts for application of the Party's labor law."

NAALC Article 5: Procedural guarantees. Part 1. "Each Party shall guarantee that the procedures filed before their administrative, quasi-judicial, judicial or labor courts for application of the Party's labor law are fair, equitable and transparent..."

1.3 Applicable laws[12]

The federal laws as generally applied protect worker rights in matters of freedom of

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[10] The U.S. NAO reported that the NLRB resolved this on April 10, 1998, certifying the union.
[11] According to the Labor Secretariat, "The complete legal proceeding may take months or even years, and these delays are grounds for criticism as to the fact that they harm the rights of union organization." Secretariat of the Commission for the North American Agreement on Labor Cooperation, Preliminary Report to the Ministerial Council, The labor law of Mexico, Canada and the United States, 1996. Page 13
[12] The petitioners stated in their request that the government of the United States had violated the stipulations in ILO [International Labor Organization] Agreement 87, although the United States has not ratified such agreement.

association and the right to organize, stipulating that workers are entitled to organize, form, join or assist labor organizations to collectively bargain through representatives elected by themselves. They also authorize workers to engage in other agreed-upon activities with a view to collectively negotiating or providing any other assistance or mutual protection, and workers must also have the right to abstain from any or all such activities.[13]

Also noted as being an obligation of the authority is to ensure that the employer does not commit acts of intimidation against its workers by interfering, restricting or exercising coercion against them in the event that they attempt to exercise their rights; dominating or interfering in the creation or administration of any labor organization; discriminating in hiring a worker, or making such hiring conditional upon the objective of encouraging or discouraging affiliation with any labor organization; dismissing or discriminating against a worker for having filed charges against it; or refusing to collectively bargain with worker representatives.[14]

The authority responsible for administering compliance with the law in this matter is the National Labor Relations Board. It is also the authority responsible for ensuring employers' full compliance with the law.[15]

2. Issues relating to minimum job conditions

2.1 Events noted in the Public Communication

1. The authority has not attempted to prevent or penalize the company for dismissing workers who request a raise.[16]

2. The authority has not verified that workers are receiving an appropriate and fair wage in accordance with their skills, knowledge, experience and seniority, but on the contrary, the company makes distinctions between individuals with the same qualifications.[17]

3. The authority has not taken the measures needed for workers to receive differential pay for night shift work.[18]

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[13] National Labor Relations Act (NLRA), Section 7.
[14] National Labor Relations Act (NLRA), Section 8(a).
[15] On the NLRB's responsibilities, see the summary of powers in the First Annual Mexico-United States of America Conference on Labor Law, STPS and DOL, 1992, pp. 68-71.
[16] Page 6, paragraph 3
[17] Page 6, paragraphs 7 and 8
[18] Page 6, last paragraph

4. The authority has not acted to prevent the company from abusing workers by offering them differential pay for night shift work, in exchange for not giving them time for breakfast.[19]

5. The authority has not required the company to allow workers to review their files, to account for the overtime owed to them and thereby make it possible to demand payment thereof.[20]

6. The authority has not ensured compliance with the law in matters of wages, nor required the company to pay overtime accumulated over a long period of time. Nor has it acted against discriminatory practices carried out under this category, since when the company admitted such irregular practices, it paid the amounts due only to some workers, leaving many unpaid because they were union activists.[21]

7. NLRB government agents are bribed ... in order to create unjustified delays in the election, ballot counting and certification, by handing down final decisions without justifying the individual delays, thereby favoring the company.

2.2 Relevant NAALC principle

NAALC Principal No. 6: Minimum working conditions.
The establishment of minimum working conditions, such as minimum wage and payment of overtime for salaried workers, including those not protected by a collective agreement."

NAALC Article 3 (cited previously).

2.3 Applicable law.

If the Wage Commission finds that the wages paid are insufficient to cover the cost of living, or that the work schedules or conditions may be harmful to the workers' health, morale or well-being, it must select a wage board to investigate any of these matters and transfer thereto any information supporting the conclusions in question.[22]

Without contradicting any provision subsequent to March 1, 1997, the minimum wage for all industries must not be less than $5.00 per hour.[23]

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[19] Page 7, first paragraph
[20] Page 7, paragraph 3
[21] Page 7, paragraph 2
[22] California Labor Code, Section 1178
[23] Section 1182.11

No employer may employ a worker for more than 40 hours per week, unless such worker receives compensation for overtime work, in an amount equivalent to at least 1 1/2 hours of regular work per hour of overtime.[24]

The authority is required to impose monetary sanctions on any employer that violates the Law by not paying overtime.[25]

The authority must also penalize any other individual, agent, manager, foreman or official who has the ability to pay, but refuses to do so; refuses or changes the amount due with a view to benefiting himself, the employer or another individual; or discounts the amount due, with the intent of annoying, hounding, oppressing or defrauding the worker, or slowing and delaying payment.[26]

The Division of Labor Law Enforcement must diligently investigate any violation of this Law, and when necessary, take action with a view to applying the penalties provided for herein, as well as to ensure compliance.[27]

All employers must, during reasonable periods and intervals set by the Labor Commissioner, at the request of any worker, allow him to review his personnel file, containing the documents used to determine the workers knowledge (qualifications), promotions, additional compensation, termination or any other disciplinary action. Every employer must also keep a copy of each worker's personnel file at the workplace, or provide it to the worker and the authority as quickly as possible, after being requested thereby.[28]

3. Issues relating to the elimination of job discrimination

3.1. Events specified in the Public Communication

1. The petitioners state that the authority has done nothing to penalize the company's racial discrimination practices. They claim that job applications submitted by Latin Americans are thrown in the trash without being considered, and that any African-American workers who have ever worked at the company have only filled low-level positions and have never been promoted. There are not currently any African-American workers working at the company.[29]

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[24] Fair Labor Standards Act of 1938, Section 7, and California Labor Code, Section 204.3(a).
[25] Section 210.
[26] Section 216.
[27] Section 217.
[28] Section 1198.5(a)
[29] Page 7, paragraphs 4 and 5

3.2. Relevant NAALC principle

NAALC Principle 7. Elimination of job discrimination
Elimination of job discrimination by reason of race, sex, religion, age or other factors, with certain reasonable exceptions, such as, "where applicable, job requirements or qualifications, as well as established practices or rules that govern requirements for removal that have been established in good faith, and special measures to protect or support specific groups, which are intended to counteract the effects of discrimination."

NAALC Article 3 (mentioned previously).

3.3. Applicable law

The Equal Employment Opportunity Commission has the duty to ensure fulfillment of the specifications of Title VII of the Civil Rights Act of 1964, which prohibits discriminatory practices by reason of race.

The Employment Standards Administration must ensure that employers do not discriminate against workers or job applicants by reason of race, color, religion, sex or nationality, and requires them to take action to ensure that all qualified applicants and employees receive the same job opportunities.[30]
In prohibiting discrimination, the Labor Department standards have established labor practices such as for recruiting, wages, raises, dismissals, promotions and selection for training, among others. According to the Executive Order, race, color, religion, sex or origin are distinctions that may not be made in the practices of recruiting, advertising of efforts, job opportunities, wages, schedules, job classifications, experience, retirement age or benefits as well as employer contributions to company pensions or insurance plans.

4. Issues relating to the prevention of job-related injuries and illnesses; and compensation in cases of job-related injuries or illnesses.

4.1. Facts noted in the Public Communication

1. The inspection carried out by OSHA on July 24, 1997 was insufficient, since the roof, the location where toxic items and heavy metals are stored, was not inspected, nor were all hours reported in the inspection report.[31] This place is unsafe since drips fall

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[30] Executive Order 11246 and the rules implementing it

[31] According to the petitioners, the inspection was carried out by OSHA Official #74939. 105 hours of inspection were reported at the work site, however the petitioners state that this information is false.

on the workers and cause skin damage and risk their health.[32]

2. OSHA performed an inspection without consulting the union or the workers regarding areas of risk.[33]

3. The authority has not verified nor required the company to provide sufficient safety equipment, such as gloves in good condition, respirators and oxygen tanks, even when workers are exposed to toxic chemicals. Workers must carry out their work under hazardous conditions, exposing themselves to severe burns.[34]

4. The authority has not required that the company perform periodic examinations of workers who are in contact with toxic substances to document the effects caused by such exposure.[35]

5. The authority has done nothing to penalize the company for the area's limited ventilation, even when women working in the welding area are exposed to harmful vapors.[36]

6. The authority has not provided nor required the company to provide training on chemicals handled by workers. The information provided by the Occupational Health and Safety Institute (MSDS) is incomplete and difficult to interpret.[37]

7. The U.S. government has failed in its responsibility to monitor compliance with basic health and safety rules at the SOLEC plant.

4.2. Relevant NAALC principle

NAALC Principle 9, Prevention of job-related injuries and illnesses.
The requirement and application of standards that minimize the causes of injury and illness.

NAALC Principle 10. Compensation in cases of job-related injuries or illnesses.
The establishment of a system that provides for benefits and compensation for workers or their dependents in the event of job-related injuries, accidents or death occurring on the job, in connection to or occurring by reason thereof.

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[32] Page 5, paragraph 6
[33] Page 5, paragraph 6
[34] Page 5, paragraph 7, and page 6, paragraph 2
[35] Page 5, paragraph 7
[36] Page 6, first paragraph
[37] Page 6, first paragraph

NAALC Article 3 (cited above).

4.3 Applicable law

Protection must be provided for worker safety and health by promoting safe and healthy working conditions. Employers are required to keep the workplace free of risks which harm or may harm health, including causing the death of workers.

The authority must guarantee the existence of standards that provide for the use of labeling or any other form of notices to ensure that workers are aware of all the risks to which they are exposed, significant symptoms and appropriate emergency treatments, as well as conditions and safety precautions that must be taken into consideration in the event of use of or exposure to the products. When appropriate, such standards must also provide for the use of appropriate protection equipment, and monitoring or technical procedures to be used in connection with risks in the workplace and at intervals, and in any other form that may be needed for worker protection. In addition, when appropriate, any other standard which provides for the obligation to perform the type and frequency of medical or other examinations needed by workers exposed to hazardous substances, with a view to demonstrating whether or not the health of such workers is being affected and to prevent any serious illness. The examinations must be offered by the employer, which shall assume their cost.[39]

In inspections carried out by OSHA, an employer representative and a worker representative must be present. In the event that an authorized worker representative is not present, the OSHA official must consult with an appropriate number of workers regarding health and safety conditions at the work site.[40]

Workers may not dismissed, nor be subject to discrimination of any kind for filing complaints relating to safety or health or for participating in union activities with respect to issues of safety and health, or for in any other way exercising the rights granted them by law.[41]

The authority with jurisdiction to monitor application of this Law is the Occupational Safety and Health Administration (OSHA), which is required to perform inspections to verify proper application of the safety and health standards specified in such law. The law sets penalties of a monetary and criminal nature for companies that violate safety and health standards.

Hazardous substances in the workplace, in certain forms and concentrations, may

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[39] Occupational Safety and Health Act of 1970 and its standards. Section 6(a)(7)

[40] Occupational Safety and Health Act of 1970 and its standards. Section 8(a)

[41] Occupational Safety and Health Act of 1970 and its standards. Section 11(c)

potentially cause chronic illnesses and endanger the health of workers exposed to them. It is for this reason that workers and employers are entitled and required to know the properties and risks of the substances to which they may be exposed and their awareness is essential to reduce the incidence and cost of job-related illnesses. Employers must make available adequate information on the content and properties of the toxic substances, information needed to keep the work site clean and risk-free. It is the employer's responsibility to provide such information and to train its workers in these matters.[42]

[42] Hazardous Substances Information and Training Act, Section 6361, (a)(1)

IV. Recommendation

The workers at SOLEC company and the petitioners state that the corresponding authorities acted or failed to act in such a fashion that their rights were affected by violations of the law in matters of health and safety, job condition, racial discrimination, freedom of association and right to organize, all of them principles protected by NAALC.

Federal and local labor laws protect and regulate these rights and state in all cases that the government of the United States of America, through the corresponding administrative authorities, must ensure the fulfillment of such laws.

The review made by the Mexico NAO was carried out within the framework of the NAALC, at the request of the petitioners, in an effort to obtain the governments' attention through exchanges of information regarding the points in question.

It is to be noted that the Mexico NAO review was in full compliance with the laws and labor authorities with jurisdiction in the United States of America, and that it was not intended to create supra-national mechanisms, since it is not its function to judge or attempt to amend laws, but rather to promote strict compliance with U.S. law and to protect worker rights.

An in-depth examination of the failure to effectively enforce the laws is the purview of the Expert Evaluation Committees; and penalties, where necessary, for a persistent failure to enforce such laws fall under to the dispute resolution mechanisms provided for in Part V.

With a view to fulfilling the provisions set forth in Article 5.8 of the NAALC, the Mexico NAO sought to obtain information relating to issues that might be pending resolution, and to leave outside this report any *sub judice* issue.

After reviewing Public Notice MEX 9801, which was submitted by the following petitioners: Oil, Chemical and Atomic Workers International Union, Local 1-675, the "October 6" Industry and Trade Union, the Community Labor Protection Union and the Support Committee for Maquiladora Workers; the Mexico NAO, pursuant to Article 22 of the North American Agreement on Labor Cooperation, recommends that the Secretary of Labor and Social Security request ministerial-level consultations with the Secretary of Labor of the United States of America, to obtain further information on actions carried out by the Government of the United States to guarantee worker rights in matters of freedom of association and collective bargaining, job safety and health, minimum working conditions, and racial discrimination on the job.