SUBMISSION TO THE US NATIONAL ADMINISTRATIVE OFFICE
(Currently the Office for the Implementation of Trade Agreements)

under the North American Agreement on Labor Cooperation

Submitted by

United Steelworkers

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I. Introduction

Under the North American Agreement on Labor Cooperation (NAALC), the Government of Mexico agreed to promote the eleven basic labor principles set forth in its Annex 1. Petitioners claim that in the case of the Pasta de Conchos mine, in the State of Coahuila, involving worker members of the National Union of Miners and Metalworkers and non-union members, the Government of Mexico failed to fulfill its obligations regarding protection of labor rights, which we will later proceed to describe four key principles.

This submission shows that the case of workers affiliated with the National Union of Miners and Metalworkers is not an isolated situation. The continued violations of basic workers rights in Mexico are an effect of the pervasive inability of the Mexican labor authorities to enforce the labor law in an impartial and efficient way.

The fact that the labor authorities granted a recognition letter (*toma de nota*) to an illegitimate union's National Executive Committee (*Comité Ejecuitivo Nacional*), which did not meet the requirements of the Mexican labor law, while removing the legitimate National Executive Committee and the President of the Union's General Council of Vigilance and Justice, without hearing from them in an impartial trial, as provided for in the Mexican Constitution, represents a clear violation of NAALC Principle 1:

> "**Principle 1. Freedom of association and protection of the right to organize.** The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests."

The failure of the Secretariat of Labor and Social Welfare to effectively enforce labor regulations regarding Occupational Health and Safety Inspections provoked one of Mexico's worst mine accidents ever in the Pasta de Conchos mine, in the State of Coahuila, where 65 workers were trapped in a blast caused by a lack of maintenance by the mining company Grupo México and the lack of enforcement of satisfactory working conditions by the Mexican government, thus violating NAALC Principle 6:

> "**Principle 6. Minimum employment standards**. The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements."

Conditions under which mine workers performed their work in Pasta de Conchos were far from those necessary for the prevention of occupational illnesses, as required by **Principle 9. "Prevention of occupational injuries and illnesses.** Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses."[1]

In addition to violations of the basic labor principles listed above and further developed later in this document, the Government of Mexico also failed to comply with Articles 4 and 5 of the NAALC, which establish the obligation of the Mexican government to provide for labor tribunals whose procedures are accessible, fair and transparent:

Article 4 states 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."

Article 5 states that,

"1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

(...)

4. such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

1. in writing and preferably state the reasons on which the decisions are based;
2. made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
3. based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

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[1] See Annex 1, North American Agreement on Labor Cooperation, http://www.dol.gov/ILAB/regs/naalc/naalc.htm.

4. Each Party shall 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."

However, as it will be shown in this submission, the Government of Mexico is flagrantly violating this Article, as it uses administrative entities such as the General Direction of the Registry of Associations to intervene in the internal affairs of the National Union of Miners and Metalworkers, thus violating the union's autonomy and preventing it from having access to impartial and independent labor justice to counter this violation by the Secretariat of Labor and Social Welfare.

Finally, under Article 3 of the NAALC, the Government of Mexico is obligated to "...effectively enforce its labor law through appropriate government action." However, over the years the Government of Mexico has repeatedly failed to fulfill its obligation to enforce labor regulations requiring employers to provide workers with satisfactory working conditions that are free of health and safety hazards. In the case of the Coahuila-located Pasta de Conchos mine, the Secretariat of Labor and Social Welfare has tried to elude its responsibility for the general lack of compliance with occupational health and safety provisions by the Company Minera México, S.A de C.V, which were documented in the many reports compiled by members of the Mexican Congress.[2]

Petitioners claim that the Government of Mexico has repeatedly failed to fulfill its obligations under both domestic and international law, as discussed in Section II of this submission. In this presentation, we show how the Government of Mexico has failed to enforce the right to freedom of association, the right to minimum employment standards and the right to occupational health and safety. In addition, the Government of Mexico has failed to ensure that its labor authorities are independent and impartial.

This submission meets all the requirements set forth in the 1994 Rules of Procedure. The US OTAI is empowered to receive public communications on labor law matters arising in Canada or Mexico, as established by Article 16 of the NAALC. Specifically, this case will provide evidence of systematic problems in Mexico's labor law enforcement system to protect workers rights.

II. National Union of Miners and Metalworkers

Background:

[2] Interim Opinion regarding the report submitted by the Secretariat of Labor and Social Welfare to the Working Group of the Chamber of Deputies on the Pasta de Conchos coal mine.

1.- On April 25, 1934 the National Union of Miners and Metalworkers (*Sindicato Nacional de Trabajadores Mineros, Metalúrgicos y Similares de la Republica Mexicana*, hereafter SNTMMSRM) was created and registered in the Department of Labor, currently the Secretariat of Labor and Social Welfare, with registration number 854.

2.- On May 9, 2002, at its 32nd General Ordinary Conference, the SNTMMSRM amended its by-laws and submitted the amendments to the General Direction of the Registry of Associations (*Dirección General de Registro de Asociaciones*, hereinafter DGRA) at the Secretariat of Labor and Social Welfare (*Secretaría del Trabajo y Previsión Social*, hereinafter STPS), which took note of the changes through Official Letter No. 211.2.1.1986, File No. 10/668-9, dated July 3, 2003. Several Articles of the SNTMMSRM by-laws regulate the union's internal affairs, self-government and discipline mechanisms in a clear way[3].

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[3] Art.22.- The sovereignty of the Union lies primarily with its members... The representation of the Union shall be exerted by the Secretary-General, both on legal and labor matters.

Art.23.- The Union exerts its sovereignty through the following self-government bodies: a) General Ordinary or Extraordinary Conferences, b) A National Executive Committee c) A General Council of Vigilance and Justice...

Art. 26.-The National Executive Committee shall be integrated by: a) 1 Secretary-General, b) 1 Secretary of Internal Affairs and Acts, c) 1 Secretary of Collective Bargaining, d) 1 Secretary-Treasurer, e) 1 Secretary of Labor, f) 1 Secretary of Organization, Propaganda, Statistics and Education, g) 1 Secretary of Social Security, Welfare and Industrial Health and Safety, h) 1 Secretary General of Cooperative Promotion and Social Action, j) 1 Secretary of Political Affairs, k) 1 Secretary of Social Conflicts and Housing."

Art. 27.- The General Council of Vigilance and Justice shall consist of: a) I Chairperson, b) 1 First Assistant, c) 1 Second Assistant

Art. 35.- When electing members of the National and Local Executive Committees and the General and Local Councils of Vigilance and Justice, of Sections (union locals) and Fractions, a substitute deputy per each elected official shall de appointed. This deputy will substitute the elected official in case of his/her temporary or permanent leaves according to these By-laws.

Art. 40.- The obligations and functions of the National Executive Committee are:: I.- Exert the highest representation of the Union... II.- Exert the legal representation of the Union, before the federal and local authorities, in all matters concerning it directly or indirectly ...III.- Direct and guide the Union...VII.- Hold, together with the General Council of Vigilance and Justice, weekly ordinary sessions and extraordinary sessions when needed...VIII.- Convene Ordinary Conferences on the dates scheduled herein, and Extraordinary Conferences on the dates that are considered as necessary...XIV.- Agree, together with the General Council of Vigilance and Justice, on matters that are not purview in these by-laws, submitting such agreements to the next Conference for its approval...XXII.- Study and resolve the Union's political affairs...XXIV.- In general, adopt all measures necessary to the achievement of the Union's goals and the protection of its members' interests.

Art. 41.- In order to be elected or appointed as a union official it is required that workers have a record of honesty... The lack of fulfilling any of the requirements herein at any time shall result in the revocation of the conferred mandate. Such revocation shall be decided by a Conference or through a prior investigation.

Art.43.- The members of the National Executive Committee and the General Council of Vigilance and Justice shall serve in office for six years...

Art. 47.- The obligations and functions of the Secretary-General of the Union: I.- Direct the Union's policy...III.- Represent the Union and the National Executive Committee on legal matters...IV.- Grant general and special powers as broad as necessary to address the union's affairs...V.- Implement resolutions of Conferences and the CEN....XXIII.- Oversee the general status of the union affairs, promote everything that benefits the Union, and prevent everything that can damage the Union...

Art.56.- The obligations and functions of the General Council of Vigilance and Justice are: I.- Make itself represented by any of its majority-elected members to perform duties not explicitly mandated for the totality of its members. However, for decisions to be considered valid the authorization of at least two of its members is required; II. Council decisions shall be taken in all cases by the majority vote of its members....XI.- Set aside -and report at General Conferences on issues that are impossible to resolve due to conflicting interests or to their significance for the Union, as well as on controversies arising between the National Executive Committee and the General Council of Vigilance and Justice; XII.- Know of and resolve within legal timeframes accusations against that majority or the plenary of the Local Vigilance and Justice Councils of

Sections, made by individual union members. The General Council of Vigilance and Justice, through its resolution on discipline matters, shall establish due and compulsory union practice. The criteria for application of discipline shall not be changed, except by the decision of a Conference. The General Council of Vigilance and Justice cannot hold criteria regarding the attributions of the Assembly or the union officials in a specific case, and then rule in the opposite way, as the difference of opinion would negatively affect the responsibility of the Council.
...

Art. 104.- The General Conferences constitute the Union's highest authorities. They can know of and resolve the Union's businesses, whatever their nature, and their rulings shall be not be appealed.

Art. 109.- Conferences can be either ordinary or extraordinary. The first will be held every 2 years during the first ten days of May on even years, and the latter can be held whenever the Union's affairs cannot and must not be resolved otherwise.

Art. 125.- (At Conferences) performance of members of the National Executive Committee and the General Council of Vigilance and Justice will be reported ... To that end, at Conferences resolutions considered by delegates to be relevant and well supported will be assessed by the Honor and Justice Commission, which will hold hearings with the defendants, unless the Committee itself has clear evidence against a union official or members. In this case, appropriate discipline will be applied immediately in order to prevent further damages to the Sections or the Union.

Art. 128.- At Ordinary and Extraordinary Conferences, members of the National Executive Committee and the National Council of Vigilance and Justice will be elected.

Art. 215.- The elections of union officials for the National Executive Committee and the General Council of Vigilance and Justice will be carried out at General Ordinary Conferences. Only in case of death, resignation or dismissal of such officials and their replacements during their terms in office, provisional officials may be appointed to office by a Plenary of the General Executive Committee and the General Council of Vigilance and Justice. These elected officials shall be ratified or rectified at the next Ordinary or Extraordinary General Conferences.

Art. 220.- Union officials shall be elected for six-years terms in the (CEN) and the General Council of Vigilance and Justice... In the case of the members of the (CEN) and the General Council of Vigilance and Justice, elections shall take place by Groups under the terms of the following Article...

Art. 275.- No Union member can be disciplined without having been previously heard in a trial that complies with the provisions herein, with the exception of cases where the General Council of Vigilance and Justice or the Honor and Justice Commissions at Conferences have solid evidence and documentation against an official or member. In this case, the Council or the Honor and Justice Commission shall act immediately to apply the appropriate discipline in order to prevent further damage to the Sections or the Union...

Art. 300.- Union officials referred to in Article 301 shall be dismissed from their positions and disciplined with the full suspension of their union rights for the following causes...

Art. 301.- Discipline to the members of the National Executive Committee, the General Council of Vigilance and Justice, Workers Representatives, Special Delegates and General Commissioners shall be the following: I.- Warning; II.- Dismissal; III.- Dismissal and full suspension of union rights for 2 to 5 years; VI.- Desertion; VII.- Expulsión.

Art. 319.- The disciplinary procedures for the members of the National Executive Committee and the General Council of Vigilance and Justice... who incur the faults listed in Articles 303, 304 and 306, shall be the following: I.- The General Council of Vigilance and Justice shall notify the defendant of the charges filed against him/her and, with the prior consent of the National Executive Committee, shall temporarily suspend him/her of his/her position. Where there is no charges filed, but the General Council of Vigilance and Justice has evidence of the faults committed, the procedure shall be the same. II.- The General Council of Vigilance and Justice shall then proceed to open a file which shall contain evidence of the fault or misconduct, the witnesses' declarations, if there are any, and the defendant's declaration. In all cases, written records of the investigations shall be included in the file. III.- With the findings of the investigations, a decision on the case shall be issued within 90 days of the date when the charges were filed, establishing the disciplinary measures in accordance to the statutory provisions. Copies of the filed shall be sent to all the Union's Sections and Fractions to study and approve the ruling or to a Conference if there is one being held or scheduled within 6 months. V.- After receiving their copies, Sections and Fractions shall forward them to the Local Councils of Vigilance and Justice so that they, after having reviewed the ruling, render an opinion to a Extraordinary Assembly for its analysis, approval, rejection or modification. VI. The response of the Union's Sections and Fractions on the ruling submitted to them, along with the record of the assembly where the decision was made, shall be sent back to the General Council of Vigilance and Justice within 90 days after the date when the copy of the original ruling was received. It is compulsory for Sections and Fractions to submit their decision on the matter. VII.- Once the response from Sections and Fractions has been received within 90 days, the General Council of Vigilance and Justice shall proceed with the computation. VIII.- If the Sections and Factions have issued an absolutory ruling, the union official shall be reinstated in his/her position. If the ruling is condemnatory, the General Council of Vigilance and Justice shall apply the appropriate disciplinary measure, notifying the System and calling the replacement to take office. X.- When any member of the General Council of Vigilance and Justice incurs in any of the misconducts listed in Articles 303, 304 an 306, the procedure described above shall be implemented by the other members of the Council.

Art.342.- All the disciplines agreed to outside of this statutory provisions are void and null and have no effect. The Union high authorities shall be empowered to hold anyone responsible in each case.

3.- In May 2002, at the 32nd General Ordinary Conference of the SNTMMSRM, elections were held to appoint members of Group "A" and to restructure Groups "B" and "C" (union officials are split in three groups for leadership election purposes?), which include the members of the National Executive Committee (hereinafter CEN), the General del Council of Vigilance and Justice (hereinafter CGVJ) and other union officials, and the STPS's DGRA took note of it through Official Letter 211.2.1.1929, File No. 10/670-7, dated July 1, 2002. Later on, through Official Letter No. 211.2.1.3949 of September 29, 2003, the STPS's DGRA issued a new recognition letter (*toma de nota*) in response to changes to CEN titles arising from the amendments to the union's by-laws referred to in Paragraph No. 2, which suppressed the word "General" to most CEN Secretary titles except the Secretary-General. This official letter replaced the July 1, 2002 official letter.

4.- In Group "A" were Napoleón Gómez Urrutia, José Ángel Rocha Pérez, Rubén Ruiz Villalobos, and Raúl Hernández Vega, whose terms are set to end on May 31, 2008. Within Group "B" were Enrique Ochoa Medina, Héctor Félix Estrella, Vicente Montelongo Domínguez, and Juan Escamilla Ortega, whose terms were set to end in May, 2006.

5.- On May, 2004, at the 32nd General Ordinary Conference of the SNTMMSRM, elections were held to appoint members of Group "C". The STPS's DGRA took note of this through Official Letter No. 211.2.1.3802, File No. 10/670-7, dated August 2, 2004.

6.- In Group "C" were Lino Juárez Méndez and Carlos Pavón Campos, whose terms are set to end on May 31, 2010.

7.- On February 17, 2006, Mr. José Cervantes Calderón, General Director of the Registry of Associations at the STPS, issued a resolution through Official Letter No. 211.2.1.076, addressed to the "Secretary-General of the National Union of Miners and Metalworkers", stating:

"In response to the letter dated and received on February 17, 2006, in which Mr. Juan Zúñiga Velásquez and Mr. Juan Pablo Patino Rocha, First Assistant and Second Assistant of the General Council of Vigilance and Justice of the National Union of Miners and Metalworkers, report on disciplines to and dismissals of union officials who are members of the National Executive Committee, including the Chairman of the General Council of Vigilance and Justice and his replacement, based on the agreements of the members of the General Council of Vigilance and Justice on February 16, 2006, for which the signatories request recognition (*toma de nota*) of the new union officials elected by the agreement of the Plenary of the General Council of Vigilance and Justice, this General Direction of the Registry of Associations, located in Carretera al Ajusco No. 714, Colonia Torres de Padierna, Delegación Tlalpan, Código Postal 14209, México, D.F., based on Articles 377 Fraction II, of the Federal Labor Code (*Ley Federal del Trabajo*); 19 Fraction

III, of the Internal Regulations of the Secretariat of Labor and Social Welfare; 56 Fraction XII, 57, 58 Fractions III and V, 215, 275, and 333 of the Union's by-laws, takes note of the interim appointment of a new National Executive Committee and a new Chairman of the General Council of Vigilance and Justice, whose term shall extend until an Ordinary or Extraordinary General Conference is held to ratify the new union officials. The new members of National Executive Committee are the following officials:

"GROUP "A".- SECRETARY-GENERAL: ELÍAS MORALES HERNANDEZ; Secretary of Internal and External Affairs and Acts: Francisco Ángel Zaragoza Leija; Secretary of Labor: Miguel Castillejo Mendiola; Secretario de Social Security, Welfare and Industrial Health and Safety: Javier Herrera Lagunillas.

"GROUP "B".- Secretary of Collective Bargaining: Inocencio Alcocer Solares; Secretary-Treasurer: Agustín Ruiz Ruiz; Secretary of Organization, Propaganda, Statistics and Educations: Francisco Téllez Salazar; Secretary of Social Conflicts and Housing: Felipe Barrón Cortez.

"GROUP "C".- Chairman of the General Council of Vigilance and Justice: José Martín Perales Lozano; Secretario of Cooperative Promotion and Social Action: Ezequiel Hernández Ramírez; Secretary of Political Affairs: Cesar Reyes Carvajal.

"Official Letters No. 211.2.2.3494 of September 29, 2003 and 211.2.1-3802 of August 2, 2004 are declared null and with no effects".

Facts:

1.- On February 28, 2006 the National Executive Committee, composed by Napoleón Gómez Urrutia, José Ángel Rocha Pérez, Rubén Ruiz Villalobos, Raúl Hernández Vega, Enrique Ochoa Medina, Héctor Félix estrella, Vicente Montelongo Domínguez, Juan Escamilla Ortega, Lino Juárez Méndez, and Carlos Pavón Campos learned of the resolution above through media news reports.

2.- As shown by the official letter above, on February 17, 2006 a petition was submitted by Juan Luís Zúñiga Velásquez and Juan Pablo Patino Rocha, assistants to the SNTMMSRM's CGVJ, requesting that the STPS's DGRA take note of the interim appointment of a new CEN and CGVJ Chairman, resulting from the dismissal of all the current CEN members and CGVJ Chairman and his replacement. This petition was answered favorably by the General Direction of the Registry of Associations in an expedited way never seen before, which is not only absolutely unusual in these procedures, but also makes it evident that the DGRA did not analyze the petition deeply enough as is mandated to in order to determinate that the statutory requirements had

been fulfilled for both the dismissal procedure of the CEN and CGVJ members and the appointment of new union official for whom recognition (*toma de nota*) was requested.

3.- At 2:12 a.m. on Sunday, February 19, 2006, there was an explosion in the *Pasta de Conchos* mine, located in the town of San Juan de Sabinas, State of Coahuila, México. At the time, there were 78 miners working, of whom 65 were trapped inside. According to public reports supported by the Secretariat of Labor and Social Welfare, the explosion increased temperature in the mine to 600° C, generating high concentrations of Methane gas and producing collapses throughout the mine.

4. The following is a list of names of miners who were trapped inside the *Pasta de Conchos* mine, whose bodies have not been recovered to date:

1) **ADRIÁN BARBOZA ALVAREZ, PRODUCTION EQUIPMENT OPERATOR**
2) **AGUSTÍN BOTELLO HERNÁNDEZ, PRODUCTION EQUIPMENT OPERATOR**
3) **AMADO ROSALES HERNÁNDEZ, SUPERVISOR**
4) **ARTURO GARCÍA DÍAZ, MINE TIMBER SETTER**
5) **ELIUD VALERO VALERO, GENERAL SERVICES OPERATOR**
6) **ERNESTO DE LA CRUZ SÁNCHEZ, MOVER**
7) **FELICIANO VÁZQUEZ POSADA, SUPPLIER**
8) **FELIPE DE JESÚS TORRES REYNA, GENERAL SERVICE OPERATOR**
9) **FERMÍN TAVARES GARZA, MECHANICAL OFFICER**
10) **GIL RICO MONTELONGO, PRODUCTION EQUIPMENT OPERATOR**
11) **GILBERTO RÍOS SALAZAR, LONG FRONT OPERATOR**
12) **GREGORIO RANGEL OCURA, MOVER**
13) **GUILLERMO IGLESIAS RAMOS, PRODUCTION EQUIPMENT OPERATOR**
14) **GUILLERMO ORTIZ MORA, GENERAL SERVICES OPERATOR**
15) **HUGO RAMÍREZ GARCÍA, OPERATOR**

16)IGNACIO CAMPOS ROSALES, PRODUCTION EQUIPMENT OPERATOR
17)IGNACIO HERNÁNDEZ LÓPEZ, PRODUCTION EQUIPMENT OPERATOR
18)ISIDORO BRISEÑO RIOS, LONG FRONT OPERATOR
19)JAVIER PÉREZ AGUILAR, SUPERVISOR,
20)JESÚS ALBERTO DE LEÓN CAMARILLO, PRODUCTION EQUIPMENT OPERATOR
21)JESÚS ALVAREZ FLOTA, PRODUCTION EQUIPMENT OPERATOR
22)JESÚS ARMANDO RODRIGUEZ TORRES, INTERIOR ASSISTANT
23)JESÚS CORTÉZ IBARRA, SUPERVISOR
24)JESÚS MORALES BOONE, SUPERVISOR
25)JESÚS PATLÁN MARTÍNEZ, SUPERVISOR
26)JESÚS VIERA ARMENDARIZ, GENERAL SERVICES OPERATOR
27)JORGE ANTONIO MORENO TOVAR, PRODUCTION EQUIPMENT OPERATOR
28)JORGE ARTURO ORTEGA JÍMENEZ, MINE TIMBER SETTER
29)JORGE BLADIMIR MUÑOZ DELGADO, GENERAL OPERATOR
30)JOSÉ ARMANDO CASTILLO MORENO, LONG FRONT OPERATOR
31)JOSE ALFREDO ORDOÑEZ MARTÍNEZ, LONG FRONT OPERATOR
32)JOSE ALFREDO SILVA CONTRERAS, MINE TIMBER SETTER
33)JOSÉ ÁNGEL GUZMAN FRANCO, PRODUCTION EQUIPMENT OPERATOR
34)JOSÉ EDUARDO MARTÍNEZ BALTAZAR, GENERAL SERVICES OPERATOR
35)JOSÉ GUADALUPE GARCÍA MERCADO, INTERIOR ASSISTANT
36)JOSÉ ISABEL MIJARES YANES, ELECTRO-MECHANIC
37)JOSÉ LUIS CALVILLO HERNÁNDEZ, PRODUCTION EQUIPMENT OPERATOR

38)JOSE MANUEL PEÑA SAUCEDO, GENERAL SERVICES OPERATOR
39)JOSÉ PORFIRIO CIBRIAN MENDOZA, SUPERVISOR
40)JUAN ANTONIO CÁRDENAS LIMÓN, OPERATOR
41)JUAN ANTONIO CRUZ GARCÍA, MECHANICAL OFFICER
42)JUAN ARTURO SALAZAR OLVERA, OPERATOR
43)JUAN FERNANDO GARCÍA MARTÍNEZ, GENERAL OPERATOR
44)JUAN MANUEL ROSAS HERNÁNDEZ, PRODUCTION EQUIPMENT OPERATOR
45)JUAN MARTÍN GOMEZ MARTÍNEZ, GENERAL SERVICES OPERATOR
46)JUAN RAMÓN BARRIENTOS GLORIA, MECHANIC
47)JUAN RAÚL ARTEAGA GARCÍA, MINE TIMBER SETTER
48)JULIÁN MARTÍNEZ OJEDA, MOVER
49)LAURO OLACIO ZARAZU, SUPERVISOR,
50)LUIS JORGE DE HOYOS MARQUEZ, MINE TIMBER SETTER
51)MARGARITO CRUZ RIOS, GENERAL SERVICES OPERATOR
52)MARGARITO ZAMARRÓN ALFARO, LONG FRONT OPERATOR
53)MARIO ALBERTO RUIZ RAMOS, INTERNAL SERVICES OPERATOR
54)MARIO DE JESÚS CORDERO AREVALO, GAS WORKER
55)MAURO ANTONIO SÁNCHEZ ROCHA, GENERAL SERVICES OPERATOR
56)ÓSCAR JAVIER CERDA ESPINOZA, PRODUCTION EQUIPMENT OPERATOR
57)PABLO SOTO NIETO, GENERAL SERVICES OPERATOR
58)PEDRO DOÑEZ POSADA, INTERNAL SERVICES OPERATOR

59)RAÚL VILLASANA CANTÚ, GENERAL SERVICES OPERATOR
60)REYES CUEVAS SILVA, GENERAL SERVICES OPERATOR
61)RICARDO HERNÁNDEZ ROCHA, INTERNAL SERVICES OPERATOR
62)ROBERTO GUERRERO RAMÍREZ, PRODUCTION EQUIPMENT OPERATOR
63)ROBERTO ZAPATA GONZÁLEZ, PRODUCTION EQUIPMENT OPERATOR
64)ROLANDO ALCOCER SORIA, PRODUCTION EQUIPMENT OPERATOR
65)JOSÉ RAMÓN HERNÁNDEZ RAMOS, MINER JOY 4

5.- The workers who were able to get out of the mine alive are JAVIER MORÍN, ISRAEL MUÑIZ, RICARDO JAVIER RAMÍREZ, JESÚS CASTILLO REYES, CRUZ ALVAREZ, FERMÍN ROSALES, MARCO ANTONIO CONTRERAS, ERVEY FLORES MORENO, JUAN JOSÉ GALVAN MALTOS, JUAN VELAZQUEZ CASTRO, SAN JOSÉ CHAVEZ TORRES, ELIAS AGUILERA DE LA ROSA, and NORBERTO OLALDE.

6.- It has been publicly stated that of these 65 miners, only 25 were union members; another 4 were managerial workers for Industrial Minera México S.A. de C.V, and the rest worked for a subcontractor, *Compañía General de Hullua*, with fewer benefits compared to the union workers.

7.- According to public reports, the Federal Government maintains only two inspectors to oversee safety and health conditions in the 129 mines that officially operate in the State of Coahuila, México. These two public officials are charged with supervising the conditions under which 6,970 people work in coalmines, and vertical and open pits

8.- The State Government of Coahuila has informed the media that from 1889 to 2000 over 1,500 people have died, the large majority due to explosions of firedamp not detected by the exploration equipment used. In spite of these situations, the federal authorities have not considered it necessary to open an office of the Federal Conciliation and Arbitration Board, an office of Labor Procurement, or to implement actions for worker training in the State of Coahuila.

9.- The last inspection at the Pasta de Conchos mine by the Secretariat of Labor was carried out in July, 2004. The inspection was requested by the SNTMMSRM Executive Committee which, as the workers' representative in other Grupo México-owned

companies, had previously denounced the unhealthy, unsafe and extremely dangerous conditions under which other miners were working. However, it was not until a year later that the labor authority issued 34 measures that the company should adopt in order to correct unsafe conditions in the mine.

10.- Without any pressure from the authorities, the company took seven months until it finally responded to the observations, on February 2, 2006. On February 7, 2006, inspectors from the Secretariat of Labor, headed by Francisco Javier Salazar, showed up at offices of the company running the Pasta de Conchos mine, but did not conduct a physical verification of compliance with the observations made.

11.- On February 26, 2006, Grupo México and Minera México issued a press release dated the day before:

"SATURDAY FEBRUARY 25, 2006.

"WITH DEEPEST REGRETS GRUPO MÉXICO, THROUGH ITS SUBSIDIARY, INDUSTRIAL MINERA MÉXICO, S.A. DE C.V., INFORMS THE MEXICAN PEOPLE THAT:

THE LAST TOXIC GAS MEASUREMENTS IN THE SECTIONS OF THE MINE WHERE IT IS SUPPOSED THAT THE MAJORITY OF THE MINERS ARE TRAPPED ARE NEGATIVE, THAT IS TO SAY, THE RESULTS CONFIRM THAT THE LEVELS OF TOXIC GASES WOULD MAKE IT IMPOSSIBLE FOR HUMAN LIFE TO SURVIVE IN THE ENTIRE MINE.

IT IS FOR THIS REASON THAT THE RESCUE EFFORTS HAVE BEEN CONCLUDED AND WE MUST NOW TURN TO THE HARD MISSION OF RECOVERING OUR MINERS, CORE OF OUR COMPANY. INDUSTRIAL MINERA MÉXICO WILL USE ALL RESOURCES HUMANLY POSSIBLE TO FIND OUR MINERS SO THAT THEIR FAMILIES CAN, WITH DIGNITY, BEGIN THEIR MOURNING.

THE COMPANY WILL CONTINUE TO SUPPORT THE FAMILIES OF THE MINERS AND WILL NOT ABANDON THEM. IT WILL CONTINUE TO ATTEND TO THE INJURED AND RIGHTLY ACKNOWLEDGES THE RESCUE TEAM FOR THEIR GENEROUS AND HEROIC LABOR.

ADVERSITIES TEST THE WILL OF PEOPLE AND INSTITUTIONS. THE COMPANY IS ABSOLUTELY CONCENTRATED IN ITS HUMANITARIAN

PRIORITIES, ITS ATTENTION TO THE FAMILIES OF THE MINERS AND WILL ASSUME ITS ROLE ACCORDINGLY."

12.- On February 28, 2006, mass media reported that the day before, February 27, Mr. Elías Morales Hernández had informed the media about the interim appointment of a new Executive Comrnittee and showed a copy of the recognition letter (*toma de nota*) issued by the STPS certifying the new CEN and him as the new Secretary-General of the SNTMMSRM.

13.- These conditions, including both the regrettable mine accident and the illegal dismissal of the National Executive Committee of the National Union of Miners and Metalworkers, have unveiled the serious violations and omissions of the Government of Mexico regarding the right to freedom of association, as well as its lack of compliance with regulations on occupational health and safety, working conditions and accident prevention, thus seriously affecting mineworkers and their families throughout the country.

II. The Government of Mexico's Lack of Enforcement of the Relevant Labor Law .

A. Enforcement of Mexico's Federal Labor Code

The resolution issued on February 17, 2006 by the General Director of the Registry of Associations at the STPS, File No. 10/670-9, was not limited to recognizing a new CEN and Chairman of the CGVJ at the SNTMMSRM, as implied in the decertification of the legitimate CEN members and Chairman of the CGVJ who had been previously recognized by the same authority. It also constituted a clear violation of Articles 369 and 370 of the Federal Labor Code[4].

In fact, this official letter states that the members of the National Executive Committee reported "on disciplines and dismissals of union officials who were members of the National Executive Committee, including their substitute deputies, and the Chairman of the General Council of Vigilance and Justice and his substitute, under the agreements reached by the members of the General Council of Vigilance and Justice on February 26, 2006", thus recognizing the dismissals referred to above by granting recognition (*toma de nota)* to the new appointees and leaving " Official Letters No. 211.2.2.394 of September, 2003, and No. 211.2.1-3802 of August 2, 2004 with no effect", as this official letter states.

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[4] http://info4.juridicas.unam.mx/ijure/fed/137/418.htm?s=: Federal Labor Code (*Ley Federal del Trabajo*):
Article 369. The registry of a union may be cancelled only: I. In case the union is dissolved and II. When the union has ceased to meet the legal requirements. The Conciliation and Arbitration Board shall pass resolutions on decertification matters.
Article 370. Unions are not subject to dissolution, suspension or decertification through administrative measures.

Such official letters constitute the recognition (*toma de nota*) of the CEN members who were dismissed.

In this way, the Mexican labor authorities, specifically the DGRA at the Secretariat of Labor and Social Security, violated the provisions referred to by using administrative procedures to cancel the recognition (*toma de nota*) of the SNTMMSRM's CEN members, including their substitutes, and the Chairman of the CGVJ and his substitute. They were all left undefended as they were denied their right to be heard in trial and their right to exert their union functions. This constitutes a clear violation of the right to a hearing established in Article 14 of the Constitution.

There is no explicit provision in the Federal Labor Code establishing a specific procedure for dismissal or decertification (*cancelación de tomas de nota*) of union leaders, and its Article 370 prohibits decertification of unions through administrative procedures. However, Article 369 requires that Conciliation and Arbitration Boards resolve union decertification issues. This procedure is similar to the cancellation of *tomas de nota* of union leaders and consequently should de addressed in the same way, as Article 17 of the Federal Labor Code establishes that, when there are no explicit provisions in the Constitution, laws, regulations or international treaties, provisions which apply in similar cases should be taken into consideration.

This was the criterion of the Judicial Branch of the Federation, as shown by the following Jurisprudence from the Sixth Collegiate Court on Labor Matters of the First Circuit:

UNIONS, DECERTIFICATION OF THEIR ELECTED OFFICIALS. After systematic interpretation of Articles 365, 368, 369, 376 and 377 of the Federal Labor Code, and Article 18 of the Internal Rules of the Secretariat of Labor and Social Welfare, published in the Official Journal of the Federation on the thirtieth of June of nineteen ninety eight, be it established that unions acquire legal personality and life from the moment they obtain their registration from the appropriate administrative authority. In the exercise of their rights and in the performance of their functions before authorities and third parties, unions act through their leadership, and whenever leadership is modified, the union involved has the obligation to notify the appropriate authority of any changes. In this way, after the authorities take note of the people comprising the new leadership, they are responsible for the union representation with the functions and obligations thereof. Since the Federal Labor Code establishes that the Conciliation and Arbitration Boards are in charge of issuing resolutions on union decertification issues, it should be established without a doubt that, in a case involving the cancellation of the recognition (*toma de nota*) of new union officials, the same criterion should be applied, as unions act legally before authorities and third parties through their officials and, under such circumstances, there are rights and obligations acquired by the people who make up the leadership to

represent a union. Therefore, if a group of union members requests that the *toma de nota* of their union leadership be cancelled as a result of irregularities in the union election, this controversy shall be processed through a jurisdictional procedure where the current leadership's right to hearing shall be respected. This right would not be respected if an administrative authority decided on the cancellation referred to above, as it cannot hear the challenged leadership because it does not have jurisdiction to resolve on the legality of the *toma de nota*, given the fact that it can only resolve administratively on the la relevance of the registration of changes of union leaderships. (Single Jurisprudence No. I.6°.T.79 L from the Sixth Collegiate Court on Labor Matters of the First Circuit, Nineth Stage, Semanario Judicial de la Federación y su Gaceta, Collegiate Circuit Courts, Vol. XII, November 2000, P. 885, Registration 190,875.)

It is also relevant to quote the resolution issued on October 14, 2005 by the Second Collegiate Court on Labor Matters of the First Circuit in the direct *amparo* (habeas corpus) suit DT.- 14022/2005, filed by José Luis Magaña López and others against the resolution of the Auxiliary Secretary of Collective Conflicts Special Board No. 3 of the Federal Conciliation and Arbitration Board. Through this resolution, the Board had denied admission to the plaintiffs' petition to cancel a *toma de nota* issued by the STPS's DGRA, stating that it lacked jurisdiction to process the petition. The Collegiate Court granted the *amparo* to the plaintiffs so that the Board admitted the petition. In the Fifth Consideration of this resolution it can be read (pages 34 and 35):

"...it is established that the Federal Conciliation and Arbitration Board has jurisdiction (on this petition), as the nullity of the (union) election or the *toma de nota* can only be resolved by a Conciliation and Arbitration Board after holding a hearing with the parties involved.

"by analogy the criterion supported in Jurisprudence No. 2. IX/98, by the Second Hall of the Supreme Court is applicable... whose language is:

"UNIONS. INDIVIDUAL CONFLICTS RAISED BY EX-UNION OFFICIALS CONTAINING COMPLAINTS AGAINST ACTIONS ARISING FROM THE FEDERAL LABOR CODE, THE UNION BY-LAWS OR THE COLLECTIVE AGREEMENT, ARE COVERED BY THE LABOR LAW AND THEREFORE THEY MUST BE PROCESSED BY THE CONCILIATION AND ARBITRATION BOARDS...

The violation committed by the labor authority becomes evident as it is not legally valid for the registration authority, the STPS's DGRA in this case, to grant a *toma de nota* recognizing, approving and validating the illegal dismissal of a union's leadership that did not have previous opportunity to be heard, as happened in this regrettable case.

B) Continuing the analysis of the violations committed by the Government of Mexico of the Mexican workers' right to freedom of association, it can also be established that the February 17 resolution violated the SNTMMSRM members' right to be represented by the people they freely elected at the General Conferences to the CEN, which is in charge of exerting the highest representation of the union according to Article 40 of the By-laws, and as Chairman of the Union's CGVJ, thus contradicting Article 359 of the Federal Labor Code[5], which recognizes the right of unions to freely elect their representatives and organize their internal administration and activities.

Article 374 of the Federal Labor Code[6] was also violated. This Article recognizes the capacity of unions to defend their rights before all authorities through duly registered representatives. Therefore, the undue cancellation of the *tomas de nota* of the current plaintiffs seriously violated the Union's autonomy by preventing it from exerting its rights through its own decisions.

Other Articles of the Federal Labor Code concerning union by-laws were also violated, such as Article 365[7], which imposes upon unions the obligation to register at the STPS, if they are under federal jurisdiction, having to submit, among other paperwork, certified copies of the union by-laws and the record of the assembly that elected the leadership; Article 368[8], which establishes that the union registration and that of its leadership produce effects before all the authorities; Article 371[9], which establishes the minimum content of union by-laws, including, among other things, the procedure to elect the leadership and its term in office; and Article 377[10], Fraction II, which imposes the obligation to notify the registration authority of modifications to by-laws and changes in the leadership. These Articles reveal the significance to union life of respecting any union's internal regulations and the representation it gives itself in accordance with such rules.

In the Background section of this submission, relevant Articles of the SNTMMSRM's by-laws were included as footnotes. These Articles are directly related to the challenged actions and demonstrate that they were carried out in open violation of the Union's internal rules, which had been registered by the same STPS's DGRA, some of which are worth highlighting.

Articles 22, 23, 35, 104, 128 and 215 of the Union's By-laws were violated by either tacitly or explicitly approving the dismissals of the CEN and CGVJ members democratically elected through the procedures established by the by-laws -General Ordinary or

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[5] http://info4.juridicas.unam.mx : Federal Labor Code
[6] Ibid.
[7] Ibid.
[8] Ibid
[9] Ibid
[10] Ibid

Extraordinary Conferences-, thus preventing union members from exerting their union autonomy.

Article 128 establishes clearly that Conferences are empowered to elect CEN and CGVJ members. No other entity is empowered to do that and for this reason Article 35 provides that for each CEN and CGVJ members a substitute is also elected.

Article 215 also clearly states that only in the case that CEN and CGVJ members and their substitutes "die, resign, or are dismissed... provisional replacements may be appointed by a Plenary of the General Executive Committee and the General Council of Vigilance and Justice". In this case, in the decision to appoint the provisional replacements, legitimated by the STPS's *toma de nota*, only two of the three CGVJ members and not even one CEN member participated, so this decision is null and with no effects.

A violation of Article 22 arises from the lack of observance of provisions establishing that union representation is exerted by the Secretary-General, ratified by Article 47 Fraction III, and in this case the Secretary-General was not even notified of the submission informing the STPS of the petition to dismiss him along with the rest of the union officials.

Likewise, obligations and functions conferred by Article 40 to the CEN were ignored. According to this Article, the CEN exerts the highest union representation in all legal affaire, directs and guides the union, studies and resolves its political problems and adopts all measures towards the achievement of its goals and the protection of its members' interests. The challenged resolution violates all provisions by certifying the alleged decision of two individuals who were members of the CGVJ to dismiss the CEN, without even hearing its members, with no consideration of the fact that this constitutes the highest union representation.

Articles 43 and 220 establish six-year terms in office for the CEN and CGVJ officials, but the resolution of the authorities violated the rights of both the members of such entities and the union's rights by shortening the terms for which were elected.

Article 56 is particularly important because it was one of the statutory provisions quoted in Official Letter No. 211.2.1.0726 of February 17, 2006 of the STPS's DGRS as being one of its elements.

Article 56, Fraction XI clearly establishes that, when it is impossible to resolve an issue due to conflicting interests or to its significance for the union, including controversies arising between the CEN and the CGVJ, the CEN shall set the issue aside and report on it to the General Conferences.

It cannot be denied that the dismissal of the entire CEN constitutes "conflicting interests" and that the decision is crucial for the union. It is also obvious that this constitutes a controversy between the CEN and the CGVJ of which the General Conference should have been informed. It is a bitter irony that the STPS's DGRS quotes Article 56 in its Official Letter without noticing its Fraction XI.

Fraction XII of Article 56, which was explicitly quoted in the Official Letter, refers exclusively to accusations against the "majority or the plenary of the Local Councils of Vigilance and Justice of the Sections" and not the CEN or the CGVJ. Therefore, its invocation by the authority is absolutely unjustified.

It seems that the authorities did not notice provisions of Article 125 of the by-laws, which empowers Conferences to know about the responsibilities of the CEN and CGVJ members, or the procedure that must be followed in the Honor and Justice Commission at any Conference, which is the competent entity to issue rulings and apply the appropriate discipline.

The STPS's DGRA also referred to Article 275 of the by-laws, which establishes the members' right to be heard before being disciplined, except when the CGVJ or the Honor and Justice Commission "has evidence and documentation against a union official or member.", However, it failed to comment on this and clearly the plaintiffs' right to hearing was violated and that the authorities said nothing about the apparent complaints that were made or the evidence or documentation referred to by this Article, in addition to the fact that regarding Article 125 of the by-laws, in this case it was the Honor and Justice Commission and not the CGVJ that should have acted.

Articles 303 and 304 address the causes that could lead to the dismissal of the union officials referred to in Article 301, including the CEN and CGVJ members, but the resolution of the authority does not mention any causes, making it evident it did not fulfill its obligation to verify that the procedure adhered to the by-laws, as established by the Supreme Court in its Jurisprudence 2ª./J.86/2000 transcribed below.

Furthermore, Article 319 establishes the disciplinary procedures for the CEN and CGVJ members in order to protect the integrity of these entities, which impose upon the Council the obligation to notify the defendant of the accusations against him/her (Fr. I), keep a file with the evidence and the witnesses' and the own defendant's declarations (Fr. II) and issue a ruling within 90 days (Fr. III).

Then, the CGVJ must submit the file to all the union's Sections and Fractions (Fr. III), which in turn must forward it for analysis to the Local Councils of Vigilance and Justice so

that they may render an opinion before the extraordinary conference which may approve it, reject it or modify it (Fr. V). This resolution must be sent, along with the record of the assembly, to the CGVJ within 90 days (Fr. VI). After having received a response from the Section and Fractions, the CGVJ must do the computation (Fr. VII) and, if the ruling is condemnatory, it must apply the sanction and call the substitute to office (Fr. VIII).

It is also purview that the issue can be addressed "at a conference, if there is one in progress or there is one scheduled within six months" (Fr. III). In this case, there was a scheduled conference, as Article 109 of the by-laws establishes that Ordinary Conferences are held every two years, during the first ten days of May on even years. The next one would take place between May 1 and 10, 2006; this is, within 6 months after the date when the CGVJ supposedly made its decision CGVJ, as according to the STPS's DGRA's Official Letter status that the CGVJ's agreements were reached on February 16, 2006. Therefore, the CGVJ's resolution should have been submitted to the Conference for approval.

It is clear that none of these requirements were fulfilled in this case, and nothing was explicitly addressed in the STPS's DGRA Official Letter.

Finally, it is important to point out that Article 342 declares null all sanctions agreed to outside of the statutory provisions.

Next, we quote the jurisprudence of the Supreme Court concerning the obligations of labor authorities to verify compliance with the statutory provisions:

UNIONS. THE LABOR AUTHORITY HAS JURISDICTION TO REVIEW ASSEMBLY RECORDS CONCERNING ELECTION OR CHANGE OF LEADERSHIP, IN ORDER TO VERIFY THAT THE PROCEDURE ADHERED TO THE BY-LAWS OR THE FEDERAL LABOR CODE. It is true that no provision in the Federal Labor Code explicitly empowers the labor authorities in charge of taking note of union leadership renewal processes to review records and documents submitted by union representatives to ensure that they adhere to the statutory rules. However, such attribution is clearly inferred from a linked interpretation of Articles 365, Fraction III, 371 and 377, Fraction II, of the Federal Labor Code, which establish that, in order to obtain their registration, unions must submit a copy of their by-laws regulating the union affairs and notify changes in their leadership "by submitting two certified copies of the relevant assembly records." **These requirements, when seen together, justify the need for the labor authority to verify that the leadership change or election procedure reflects the members' free will, particularly if we take into consideration the importance of the *toma de nota*, as certification conferred on those who received it not only the administration of the union's patrimony, but also the defense of its members and union's interests.** Therefore, it is

not exact to state that this review constitutes an intervention of the authority at the expense of the freedom of association declared in the Constitution. It is also untrue that the refusal to take note and issue a certification nullifies an election, as this can only be ruled by the Conciliation and Arbitration Board after holding a hearing with those affected, who in turn, can challenged this refusal through an *amparo* suit. (Jurisprudence No. 2ª/J.86/ 2000 of the Second Hall, in contradiction with Jurisprudence No. 30/2000-SS, Ninth Stage, semanario Judicial de la Federación y su Gaceta, Vol. XII, September 2000, P. 140, Registration: 191,095).

To complement the jurisprudence above quoted, we also quote the following single jurisprudence:

UNIONS. RECOGNITION OR DISMISSAL OF THE COMMITTEE (CEN). REQUIREMENTS THAT MUST BE MET. When challenging a resolution about the election or dismissal of a union executive committee, it is noticed that the authority(¿) failed to assess the evidence which it supports its resolution without considering what the by-laws regulating the affairs of the union provide for, and what Article 371, Fraction VII, of the Federal Labor Code establishes. This does not fulfill the requirements of motivation and foundation-laying called for by Articles 14 and 16 of the Constitution. (Single Jurisprudence of the First Collegiate Court on Labor Matter of the First Circuit, Eighth Stage, Semanario Judicial de la Federación, Collegiate Courts of District , Vol. X, July 1992, P. 413, Registration 219,008).

Previously, we referred to the ruling issued on October 14, 2005 by the Second Collegiate Court on Labor Matter of the First Circuit in the direct *amparo* suit DT.- 14022/2005, granting the *amparo* to the plaintiffs so that the Conciliation and Arbitration Board admitted the petition to nullify or cancel a *toma de nota*. To quote a few fragments of the Fifth Consideration of this ruling (pages 28-31):

"For purposes of registration of the union's new executive committee, the statutory provisions shall prevail..."

"For the election of union leadership, it must be observed that, as a result of the preceding considerations, the vote and its outcome must forcibly and necessarily adhere to the statutory terms..."

"Once paperwork has been submitted, the authority must register or "take note" of the leadership change by issuing the appropriate document. Through this certification issued by the Secretariat of Labor and Social Welfare or by a Local Conciliation and Arbitration Board, the union's elected executive committee acquires the representation of the union before all the authorities.

"This highlights the importance of the *toma de nota*, as it places in the hands of those who receive it not only the union's patrimony under the terms of Article 374 of the Federal Labor Code, but also the defense of the union members and the status of the union interests.

"This last question has enormous importance and makes it necessary for the authority in charge of reviewing or taking note of the union officials or executive committee to verify that, in the respective procedure, the workers' will was respected as established in the by-laws and in the Federal Labor Code. In light of this, if the authority did not have the obligation to collate the records with the statutory provisions, all the requirements and guarantees established in the law would be useless... The authority must not simply take note and certify anyone who requests it by submitting any kind of record, it must review the records with the by-laws to establish concordance."

Independently of the fact that the dismissal of the SNTMMSRM's CEN members and the Chairman of the CGVJ should have been processed through a jurisdictional procedure at the Federal Conciliation and Arbitration Board, as noted in the first claim of violation in the *amparo* suit, the fact that the administrative authority did not verified the compliance with the union's by-laws implies serious violations of the legal and statutory provisions previously quoted. Therefore, an amparo should be granted so that the authorities render ineffectual the resolution contained in the Official Letter 211.2.1.076 from the STPS's of February 17, 2006, which is the challenged act because of both the dismissal of union officials and the interim appointment of a new CEN and the Chairman of the CGVJ, and are ordered to issued the appropriate certification to the plaintiffs and send a copy of the resolution to the Federal Conciliation and Arbitration Board under the terms of Article Article 367 of the Federal Labor Code.

III. Implementation of International Agreements

Article 133 of the Mexican Constitution incorporates as binding legislation all of the commitments and recommendations acquired by Mexico through ratification of international agreements. In addition, Article 6 of the Federal Labor Law provides that ratified agreements shall be incorporated directly into domestic labor law "in every aspect that favors the worker." Mexico has ratified several international agreements concerning the right to freedom of association and minimum employment standards. These ratifications are the base on which petitioners allege violations of Mexico's international commitments:

As a Party to **ILO Convention 87**,[11] Mexico has the obligation to respect the right to freedom of association in the workplace. In addition, the ILO has declared that all of its member countries must "adhere to ILO Convention 87 as a condition of their membership, regardless of its ratification status."[12] In the case of SNTMMSRM workers, their freedom of association was violated by the Mexican labor authorities which dismissed their National Executive by issuing a recognition letter (*toma de nota*) to other leaders supposedly elected by the union. However, as shown in this submission, legal requirements established in the union's internal regulations were not fulfilled, thus violating the union's autonomy.

As a Party to the **American Convention on Human Rights,**[13] Mexico has the obligation to protect the right to freedom of association, including specifically on labor issues, as established in Article 16. México has violated this Article by allowing the General Direction of the Registry of Association at the Secretariat of Labor and Social Welfare to issue a resolution that did not comply with the internal regulations of the SNTMMSRM, thus violating not only the freedom of association but also the union's autonomy.

As a Party to the **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"**,[14] Mexico has a legal obligation to apply the following principle:

1. All persons have the right to organize trade unions and to join the union of their choice, as established in Article 8. Mexico has failed to enforce this principle by denying the SNTMMSRM the recognition of its leaders elected through the union's internal regulations, which were designed to allow its members to decide on their own representation without intervention of any labor authority, such as the DGRA, as shown by this submission.

As a Party to the **International Pact on Economic, Social and Cultural Rights,**[15] Mexico has the obligation to apply the following principles:

1. All persons have the right to work, as established by Article 6. The closure of the Pasta de Conchos mine while the STPS simulated the rescue of the 65 workers trapped in the accident that was caused by the lack of labor inspections, caused a lock out against miners which affected their family incomes.

[11] Ratified by Mexico on April 1, 1950, entered into effect on July 9, 1948.
[12] "Focus on Principles – NAALC." Available at http://www.naalc.org/english/publications/bulletin1vol1_8.htm
[13] Ratified by Mexico on March 24, 1981.
[14] Ratified by Mexico on April 16, 1996.
[15] Ratified by Mexico el March 23, 1981.

2. All persons have the right to a living wage and to safe and healthy working conditions, as established by Article 7. The working conditions of miners at Pasta de Conchos were far from being safe or healthy.

As a Party to the **International Pact on Civil and Political Rights,**[16] Mexico has the obligations to respect the principle that all persons have the right to freedom of association, including the right to form and create unions, as established in Article 22. The recognition letter (*toma de nota*) granted to a new National Executive Committee by the DGRA, without making sure that all the requirements established in the SNTMMRML's by-laws and the Mexican labor law had been met, reveals Mexico's reluctance to make a good faith effort to fulfill this obligation.

As a Party to **ILO Convention 150 on Labor Administration,**[17] the Government of Mexico has the obligation to promote an appropriate coordination of functions and responsibilities within the labor administration system as established in domestic law and practice. The ministry of labor or other equivalent entity shall have the means to ensure that government entities in charge of specific activities of labor administration, and all the regional and local entities to which such activities have been delegated, act in accordance to the domestic legislation and the stated goals. This legislation is not observed by the Government of Mexico, as was evident in the Pasta de Conchos mine accident, where no preventive or corrective measures were taken.

IV. Other Conclusions by the US OTAI and Systematict Non-compliance by the Government of Mexico

The way in which the US OTAI has addressed previous cases is commendable. This submission presents new evidence and allegations involving violations of the same laws. For this reason, the petitioners fulfill the new evidence requirement and show a systematic pattern of lack of enforcement of the labor law by the Government of Mexico. The US OTAI should accept this submission and act promptly to resolve the pending issues involving the dramatic condition of workers affiliated to the National Union of Miners and Metalworkers and non-affiliate workers who were the victims of the accident at the Pasta de Conchos mine.

[16] Ratified by Mexico on March 23, 1981.
[17] Ratified by Mexico on February 10, 1982.

US OTAI Conclusions on Mexico's Failure to Protect Occupational Health and Safety and Minimum Employment Standards

Health and safety problems in Mexico have been a frequent issue raised by petitioners before the US OTAI. The Han Young and Echlin cases were the first in which the US OTAI explicitly recognized the systematic failure of the Government of Mexico to enforce occupational health and safety regulations. In both cases, the US OTAI criticized the Government of Mexico for the lack of transparency in its labor inspections system, its inaccessibility to workers and the lack of follow-up to fines and other sanctions imposed. The US OTAI found find similar problem patterns in two later cases, those of TAESA and Auto Trim-Custom Breed (2000-01). All of these cases have led to ministerial consultations about the Mexican health and safety protection system. However, as in the case of the right to freedom of association and the right to collective bargaining, the problems identified by the US OTAI continue to happen. Finally, the US OTAI has also questioned Mexico's record of compliance with minimal employment conditions, especially in the case of TAESA, where the US OTAI criticized the Government of Mexico for not ensuring that legally mandated overtime was paid to workers.

We congratulate the US OTAI for its impressive record identifying and investigating Mexico's systematic problems in respecting the rights of independent union movements and enforcing health and safety regulations and minimum employment standards. We are confident that the US OTAI will address this submission in the same spirit, as the facts presented herein are consistent with findings in previous submissions. Furthermore, given the inability of previous rounds of ministerial consultations to resolve these continuous problems, we urge the US OTAI to take greater extend measures in order to achieve a significant progress on these issues. The US OTAI has won respect for its hard work and deep understanding of Mexico's labor law and practice. However, given the lack of concrete advances through ministerial consultations to date, we urge the US OTAI to join the petitioners in encouraging the labor ministers to take another step in the implementation of a truly effective system ensuring high labor standards in North America by the exploring the possibility of integrating an Evaluation Committee of Experts.

VI. Actions Requested

A. Trade-related and covered by mutually recognized labor laws

The issues raised by this submission are trade-related and covered by mutually recognized labor laws, which enables us to request an Evaluation Committee of Experts and an Arbitration Panel. The alleged violations are trade-related as the

company Minera de México, S.A de C.V. operates in Mexico and the United States and sells its Mexican products in the United States. Additionally, the alleged violations affect mutually recognized labor laws, including freedom of association, and the right to minimum employment standards and to occupational health and safety.

B. OTAI Cooperative Consultations

Petitioners request that the OTAI hold cooperative consultations, as established in Articles of the NAALC, in order to resolve the issues raised by this submission. The resolution must address all the violations reported in this submission in a satisfactory way:

* The Government of Mexico must commit to reviewing the procedure through which it granted recognition (*toma de nota*) to the SNTMMSRM's CEN on February 17, 2006 while illegally dismissing the same union's legitimate CEN and Chairman of the CGVJ.
* The Government of Mexico must commit to compensate the victims and the relatives of workers who died in the Pasta de Conchos mine accident, in the State of Coahuila, on 19 February, 2006.
* The Government of Mexico must commit to transparency in reporting on the obligations related to occupational health and safety of the Secretariat of Labor and Social Welfare and to fully enforcing the Mexican labor law.

C. OTAI Ministerial Consultations

Petitioners request that the US OTAI carry out ministerial consultations, as described in Article 22 of the NAALC, in order to discuss the Government of Mexico's failure to enforce the relevant Mexican labor law and the international law, as established in this submission.

D. Public Hearings

Petitioners request that the US OTAI hold one or more public hearings, as described in Section H of the Rules of Procedures, in Houston or San Antonio, in order to hear oral testimonies and further explanations on the issues raised by this submission.

E. Evaluation Committee of Experts

Petitioners request that the US OTAI seek support from the US Department of Labor to consider integrating an Evaluation Committee of Experts (ECE), as

provided for in Article 23 of the NAALC. As previously mentioned the questions raised in this submission meet the requirements of being trade-related and covered by mutually recognized labor laws.

No minister of labor of any of the three NAFTA countries has ever requested an Evaluation Committee of Experts. The furthest they have gone in the public communications process is to hold ministerial consultations. Petitioners summarize in this case the effect of prior ministerial consultations and intend to demonstrate that an Evaluation Committee of Experts is necessary to properly address the issues facing the Government of Mexico.

1. Consultations on Freedom of Association

Eleven public communications related to the Government of Mexico's failure to protect the right to freedom of association and the right to organize have been submitted. Two of this cases were withdrawn (US 940004 and US 9602). Another case failed to recommend ministerial consultations to the US Department of Labor (US 940001). Another case was dismissed (US 2001-01).

The other seven cases requested ministerial consultations which generated public reports and action plans. Although action plans have been developed and have improved conditions in individual plants, the questions raised in this submission show that the Government of Mexico still has pending issues with respect to freedom of association and the right to organize.

2. Consultations on Occupational Health and Safety

In the submissions arising from the cases of Han Young, Echlin, TAESA and Auto Trim Custom Breed, allegations were included for Consultations on Occupational Health and Safety. Since this case also presents violations of occupational health and safety regulations, the petitioners request that an Evaluation Committee of Experts review the application of occupational health and safety regulations.

F. Arbitral Panel

Since the matters related to lack of enforcement of applicable legislation cannot be resolved through ECEs, the petitioners request that the (US) Secretary of Labor explore the possibility of an Arbitral Panel, as described in Article 29 to discuss a probable pattern of non compliance with minimum working conditions and occupational health and safety. As previously mentioned the issues raised in this submission meet the requirement of being trade-related and covered by mutually recognized labor laws.

I. The Petitioner

We, the signatories, request that the US OTAI review this submission and take all the necessary measures as requested.

United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC ("USW")

By: _____

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