

940003

Before the
UNITED STATES NATIONAL ADMINISTRATIVE OFFICE
BUREAU OF INTERNATIONAL LABOR AFFAIRS
UNITED STATES DEPARTMENT OF LABOR

In re:)
)
)
Sony Corporation)
d/b/a/ Magneticos de Mexico)
_____)

1991 AUG 16 PM
RECEIVED
NATIONAL
ADMINISTRATIVE
OFFICE
UNITED STATES
DEPARTMENT OF
LABOR

I. INTRODUCTION

During the debate in the U.S. Congress over passage of the North American Free Trade Agreement (NAFTA), a great deal of public concern focused on whether the trade agreement provided adequate protection of workers' rights. In response to these concerns, the United States, Mexico and Canada negotiated side agreements to NAFTA, including the North American Agreement on Labor Cooperation (NAALC).

Under the procedures of the NAALC, the three signatories have established National Administrative Offices (NAOs), which are empowered to investigate incidents involving violations of workers' rights among the three countries.

This submission to the USNAO concerns labor practices at maquiladoras in Nuevo Laredo owned by Sony Corporation, operating under the name of Magneticos de Mexico (hereinafter "Sony" or MDM"). The submission documents: (1) Sony's persistent violations of workers' rights, particularly in the area of freedom of association; (2) a history of targeting union activists with firings, demotions, surveillance, harassment, and violence; (3) continuing violations of provisions of the Mexican Federal Labor Law that pertain to allowable hours of work; and (4) the Mexican government's persistent failure to enforce applicable Mexican labor laws.

Submitters urge the USNAO to: (1) hold public hearings on this matter in Laredo, Texas; (2) conduct an on-site investigation at Sony facilities in Nuevo Laredo; and (3) take steps to assure that Mexico will secure Sony's compliance with Mexican and international law, including reinstatement of workers unjustly dismissed.

II. THE SUBMITTERS

The International Labor Rights Education and Research Fund (ILRERF) is a non-profit organization representing human rights,

labor, religious, consumer, academic, and business groups dedicated to assuring that all workers labor under reasonable conditions and are free to exercise their rights to associate, organize and bargain collectively. Founded in 1986, ILRERF is committed to environmentally sound development that promotes broad-based economic growth and equitable distribution of wealth. Supported by contributions and foundation grants, ILRERF works to advance trade, investment and aid policies that promote worker rights around the world. ILRERF carries on research, publishing, educational and advocacy projects to advance international fair labor standards.

The Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers) is a network of legal professionals in Mexico committed to providing legal services, analysis and litigation in the defense of democracy and human rights. Its approximately 230 members include some of the most prestigious human rights authorities in Mexico, including noted specialists in labor law, arbitration, and collective bargaining.

The Coalition for Justice in the Maquiladoras is a tri-national coalition of 100 religious, environmental, labor, Latino, and women's organizations that seek to pressure U.S. transnational corporations to adopt socially responsible practices within the maquiladora industry to ensure a safe environment along the U.S.-Mexico border, safe work conditions inside the maquila plants, and a fair standard of living for the industry's workers.

The American Friends Service Committee ("AFSC") is a practical expression of the faith of the Religious Society of Friends. It is a non-profit organization carrying out work across the U.S. and in countries around the world in the interest of justice and peace. This involves AFSC in community development, organizing and educating for peace and justice. AFSC works closely with those most disadvantaged by society's social and economic systems; it works with those who benefit from such arrangements, using a variety of methods to urge them to change for the betterment of all. AFSC believes the spirit can move among all groups, making great change possible. AFSC's work along the Mexico-U.S. border for decades has made clear the need for democratically developed community and worker organizations to have a voice in the fast-moving economic changes in the region.

III. JURISDICTION

This submission is brought pursuant to the North American Agreement On Labor Cooperation [hereinafter "NAALC" or "Agreement"], Section C, and in accordance with the procedures set forth in the Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16,660 (Apr. 7, 1994) [hereinafter "USNAO Regulations"].

This submission meets the requirements of Section F of the USNAO Regulations. First, the government of Mexico has failed to comply with its obligations under Part II of the Agreement, which requires that each party "shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as . . . monitoring compliance and investigating violations . . . providing or encouraging mediation, conciliation and arbitration services; or . . . initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law." Second, Sony's illegal actions, including its wrongful dismissal of employees, have caused irreparable harm to its workers. Third, the matters complained of demonstrate a pattern of non-enforcement of Mexican labor laws by the government of Mexico.

Under Section G(2) of the USNAO Regulations, the Secretary "shall accept a submission for review if it raises issues relevant to labor law matters in the territory of another party and if a review would further the objectives of the agreement."

These objectives, stated in Part I, Article I of the Agreement, include promoting to the maximum extent feasible the labor principles set out in Annex I:

- (i) freedom of association and the right to organize;
- (ii) collective bargaining;
- (iii) the right to strike;
- (iv) prohibition of forced labor;
- (v) minimum employment standards--minimum wages, overtime pay;
- (vi) compliance with, and effective enforcement by each party of its labor law;
- (vii) transparency in administration of each party's labor law.

In the case of Sony, the Mexican government has failed to enforce: (1) Article 123 of the Constitution of the Republic of Mexico, which assures the right of free association and limits permissible hours of work; (2) Articles 60-61 and 73-75 of the Mexican Federal Labor Law, which governs the definition and regulation of the work day; (3) Convention 87 of the International Labor Organization (ILO), which guarantees the right to organize free trade unions, and which Mexico has formally ratified, thus making the convention and the principles stated therein part of its domestic law; and (4) ILO Convention 98, which guarantees the right of organization and collective bargaining, and which is binding on Mexico as a member of the ILO.

Submitters affirm that appropriate relief has been sought under the domestic law of Mexico by employees directly affected by the

illegal and unfair labor practices set forth in this complaint. (The matter remains unresolved and the manner in which the Mexican authorities have conducted their intervention forms part of the gravamen of the complaint.) Submitters further affirm that neither the matter or any related matter which forms the subject of this complaint is pending before any international body.

Review by the USNAO of this case would further the objectives of the Agreement by demonstrating that corporate transgressions of these principles, which have been persistently ignored by one of the parties to the Agreement, will be seriously addressed by the Parties to the NAALC. It will create confidence among workers in Mexico, the United States, and Canada that their interests will not be ignored, especially when the violations of those interests are as egregious as here.

IV. STATEMENT OF FACTS

For 15 years, Sony Electronics has operated maquiladoras in Nuevo Laredo, Tamaulipas, under the name Magneticos de Mexico. Approximately 1,700 unionized workers, 80% of whom are women, are employed in these operations. Sony operates five plants, designated #1, #2, #3, #6, and #7, which produce computer disks, video cassette tapes, and audio cassette tapes.

The turmoil at Sony must be understood in the context of two interrelated factors: the company's attempt to change work rules, for which it needed a compliant union leadership; and an intra-union struggle throughout the entire city of Nuevo Laredo, in which the leadership affiliated with the official Mexican labor confederation, the Confederation de Trabajadores Mexicanos (CTM), has been challenged by maquiladora workers seeking more democratic representation within their unions, who criticize the collaboration between management and the CTM leaders.¹

¹ This collaboration is aptly described by the Laredo Development Foundation:

In Nuevo Laredo, the unions are committed to new job creation. If requested by management, they perform many of the normal U.S. corporate personnel management's requirements and assists management in discharging and replacing unsatisfactory employees

The Nuevo Laredo chapter of the CTM recruits and screens prospective applicants according to management's stated requirements and assists management in discharging and

The leadership of the union, consequently, was not simply an intra-union matter, but was of intense interest to the management of MDM, as well as the other companies in the Nuevo Laredo vicinity. In the case of MDM, it was of particular importance because of Sony's decision to introduce work rule changes that caused a significant disruption in the lives of MDM workers.

A. The Work Rule Changes.

When Sony began operations in Nuevo Laredo, it operated with one work schedule, which has come to be referred to as the "Normal Shift" (Horario Normal). The Normal Shift allowed workers to receive a half day off on Saturday and the full day off on Sunday.²

When Sony installed injection molding machinery in the mid-1980s, it made the case to Mexican officials that the new equipment had to be run continuously, without being shut down, under a provision of the Mexican Federal Labor Law which allows shifts to be extended under "extraordinary circumstances."³ Therefore, employees who worked in the Molding Department worked what was called the "Mold Shift" (Horario Moldeo). This work schedule comprised three eight hour shifts, operating seven days a week. Each worker on the Mold Shift received one day off per week; however, most were required to work Saturdays and Sundays.

Unlike the injection molding machinery, equipment in other departments can be shut down without mechanical difficulties. In fact, from 1979 to 1993, the Company managed to operate successfully while allowing the vast majority of employees to work the Normal Shift.

However, between June and December 1993, Sony implemented the Mold Shift schedule throughout most of the company's departments. This schedule change caused great discontent among the work force. Workers object to the new work schedule because it violates Articles 60 and 61 of the Federal Labor Law, and because most employees are now required to work full time on Saturdays and Sundays. This makes it impossible for workers to attend

replacing unsatisfactory employees.

Laredo Development Foundation, Los Dos Laredos: Fact Book - Laredo, Texas and Nuevo Laredo, Mexico (n.d.).

² This is the traditional work schedule throughout Mexico and in the entire maquiladora industry, and is consistent with Articles 60 and 61 of the Federal Labor Law.

³ Mexican Federal Labor Law, art. 66. See infra Part V-A.

religious services, reduces leisure time, and has a destructive impact on family life.

Sony also denied workers their days off on National Holidays, in violation of Articles 73-75 of the Federal Labor Law. Under these provisions, employers may require employees to work National Holidays only if the operations must be continuous.⁴

B. Changes in the Union Leadership.

In October, 1993, Jose "Chema" Morales Dominguez became Secretary General of the Federacion de Trabajadores de Nuevo Laredo (FTNL), the overall confederation of CTM unions in Nuevo Laredo. Morales also claimed to be Secretary General of the Maquila Section of the FTNL,⁵ with the endorsement of the state CTM and the government, although he had not been elected to this post. This created acute discontent among maquiladora workers.

On January 6, 1994, a representative of Morales and MDM personnel manager Juan Fernando Leal del Toro (hereinafter "Leal") met with unionized workers of MDM Plant [REDACTED], first shift. Leal announced that their elected union delegate, [REDACTED] had been removed from her delegate position. [REDACTED] had aggressively expressed the workers' discontent with the recent schedule changes. The same day, Leal informed [REDACTED] that she would be suspended for 28 days with pay, during which time she was not to be seen talking with other workers, or else she would be fired.

On January 8, workers in Plant [REDACTED] went out on a wildcat strike to protest the removal of [REDACTED] workers were fired the next day by Leal, and went on a three day hunger strike.

When Morales announced an election for union delegates at each maquiladora in the Nuevo Laredo region, MDM workers who were dissatisfied with their leaders' response to the schedule changes began to organize an alternative to the official slate backed by Morales. The MDM management, in conjunction with Morales, then began a campaign of intimidation directed at the dissidents:

- (i) [REDACTED] spoke out at an in-plant union meeting in favor of the alternate slate. Days later, she was brought to the personnel office and told by Leal, in the presence of a pro-Morales union delegate, that an administrative complaint

⁴ Mexican Federal Labor Law, art. 75 commentary.

⁵ The official name is "Sindicato de Trabajadores en Industrias Establecidas en Nuevo Laredo al Amparo del Programa de Industrializacion para la Zona Fronteriza Norte."

had been levelled against her and that if she continued agitating workers, she would be fired. She was then demoted from [REDACTED] to a line job, where she was forced to lift heavy boxes all shift long;

(ii) On March 28, Leal fired [REDACTED] and [REDACTED], two of the candidates on the alternate slate, without giving any reason. He tried to persuade the two women to accept cash severance and not to challenge the legality of their dismissals. The same day, MDM management demoted four more alternate slate delegates: [REDACTED], [REDACTED], [REDACTED], and [REDACTED];

(iii) On March 30, another alternate slate candidate, [REDACTED] was fired without cause by MDM. Again, Leal attempted to pressure [REDACTED] to accept a cash settlement;

(iv) On April 12, [REDACTED], elected head of the alternate slate after the firing of [REDACTED], was herself fired by Leal.

C. The Flawed Election

On the evening of April 14, Sony authorized Benjamin Avila, a CTM representative from Mexico City, to enter several plants to inform workers that an election for union delegates would be held the following morning at 7:00. Sony management were present during these announcements. Many workers voiced objections that the election was being scheduled with such short notice, and that workers from all three shifts would have to be present at 7:00 a.m. if they wanted to vote. Since the notice was given in the evening, there was no time for notification of day shift workers, except by word of mouth (barely five percent of the workers have home telephones).

Even with the short notice, approximately 1,000 workers showed up on the morning of April 15 for the election, which was conducted on a sports field behind Plant #7. The following description of the election process has been compiled from interviews with more than ten workers who attended the election.

The election was administered by Avila, who was joined by Chema Morales and candidates from the official slate. Observing the election process were Sony managers Javier Solis, Alejo Flores, Fernando Leal del Toro, and others.

Throughout the proceedings, workers protested that not everyone had been informed of the elections and that not everyone had been allowed to attend. Workers from Plant [REDACTED] where [REDACTED] and [REDACTED] had worked prior to being fired, were absent.

Avila informed the workers that they were holding elections for union delegates and asked Chema Morales for the names of his candidates. Avila then asked the crowd if there were any alternative slates. A woman came forward with the names of six workers who were candidates on the alternate slate.

Avila stood before the assembly and read the names of the candidates proposed for each slate. The official slate candidates were supported by a contingent of a dozen cheerleaders dressed in red t-shirts who cheered, held up signs, and shook noisemakers. The short notice for the election had prevented the alternate slate from organizing a cheerleading squad.

Avila announced that the first order of business was to determine whether the vote would proceed by open ballot or secret ballot. Workers on the alternate slate argued that secret ballots were the only way to insure a free election. The official slate candidates spoke out aggressively for an open vote.

Avila proposed a show of hands to determine the manner in which the vote would proceed. He designated a representative from each side to help him count the votes, and then instructed workers in favor of an open vote to raise their hands. The cheerleaders cried "Open vote! Open vote!" and supporters of the first slate raised both their hands. Avila then instructed those in favor of the secret ballot to raise their hands. Avila surveyed the crowd, and announced that in his opinion, the open vote had won. The alternate slate representatives began protesting vigorously that they were in the majority and that the count was not fair.

Avila, persuaded to give the vote another try, announced to workers that supporters of an open vote should line up on one side of the field, and opponents on the other. Workers began rearranging themselves, some confidently and some hanging back as if unsure what to do. Their confusion was compounded when the delegates of the official slate began ordering workers over to their side, pulling some by the shirts and saying "you're with me." As the proceedings began to dissolve into chaos, Avila stepped up to the microphone and announced that the open vote had prevailed and that they would proceed in that fashion.

Immediately, alternate slate candidates came forward to protest. They demanded that Avila count heads, but he refused, stating that the company had only given him permission for one and a half hours and counting heads would take too long. Workers were enraged, and told him expressly that he knew what he was doing was wrong. "These elections are going to take place as I say, not as you say," was his response.

The workers' response was equally pointed. Without further argument they left the sports field, circling around to the front of Plant #7 and down the entrance road. Shouting "down with

Chema," they marched down La Reforma and Guerrero Avenues, two of the main arteries of the city.⁶

These events provoked a work stoppage that began on April 16 and continued for four days. When workers refused to enter the plants at the shift change on the 16th, management called the police. Management officials, including del Toro, were seen signalling police in riot gear who entered the plant grounds, positioned themselves for attack, and dislodged workers from in front of the plant. In the process, the police inflicted violence on many of the protesting workers, some of whom were hospitalized.⁷

⁶ An article by reporter Gaston Monge on the front page of the Local section of the April 16th issue of El Manana stated that "One thousand workers of the seven plants of the maquiladora Magneticos de Mexico SA, [Sony] of which there are 1,800 in total, marched yesterday along Reforma and Guerrero Avenues, interrupting traffic during a space of 15 minutes in front of the Presidential Palace, in protest of the imposition of union leaders."

⁷ In a letter to Congressman David Bonior dated May 2, 1994, Carl Yankowski, President of Sony Electronics discussed the police attack against Sony workers on April 16. Yankowski stated:

Local police were called to the scene to help maintain order and assure that nobody was injured. In our [Sony's] investigation, we found absolutely no evidence of any employees . . . who were treated for injuries, nor are we aware of any brutality.

These representations are directly contradicted by workers who were brutalized by the police and by contemporary newspaper accounts. [REDACTED], a Sony worker for eight years, was beaten by police and hospitalized after the attack. El Manana, published a picture of [REDACTED] on Sunday, April 17, which showed her on the ground holding her head in pain. The caption to the photo states: [REDACTED] was beaten on the head; she was taken to an emergency room to be hospitalized." The newspaper further reported, "At least 12 women workers were injured by blows they received; two of these were hospitalized with hematomas on the head and contusions on various parts of the body."

Sony's role in giving the police access to company property is corroborated by [REDACTED] who has worked in the company's warehouse for more than four years. In his affidavit (Exhibit 4), [REDACTED] stated:

In the following three days, workers staged a 24 hour vigil in front of the MDM plant, blockading the entrances in protest of the police violence. On April 18, management tried to break the blockade by driving school buses at the workers, stopping just short of hitting them. On April 19, at 5 a.m., 150 state police officers arrived and dislodged workers who had slept in front of the plant. Over the next few days the workers returned to the plant.

D. Reprisals After the Election

After the election, Sony continued to intimidate workers who supported the alternate slate. During the first days after the work stoppage, management kept the workers under constant surveillance. Many workers were harassed into quitting during these first days, and at least three workers were fired outright for their activities during the strike period.*

Sony officials brought a criminal complaint against workers involved in the dispute, and the very workers who had been beaten by police found themselves accused of perpetrating criminal activity.* Several of those accused by Sony were summoned by authorities to give formal statements. Others learned of the

First with a clicking of his fingers, the police commander ordered the police to enter through a door that Francisco Javier Rios (a Sony personnel manager) had opened. This door was found to one side of us and it was thus that the police positioned themselves squarely behind us. They began to knock us back with their shields and to beat us with their clubs. I saw that they were beating particularly hard a co-worker, [REDACTED]. I went to defend her and it was then that I felt myself being pulled back by my hair. They knocked me down and dragged me across the street where they had a police van parked. Two policemen carried me and threw me inside. They handcuffed me to another co-worker whom they had also detained.

* On April 27, El Diario reported that [REDACTED], [REDACTED], and [REDACTED] had been fired.

* The Nuevo Laredo newspaper El Diario reported on April 21 that a "legal representative of Magneticos de Mexico presented before the Justice Department [Fiscal del Estado] a list with the names and addresses of those participants in the labor stoppage that lasted for three days and which registered [according to plant management] losses of N\$2,234,507."

accusation through the press and gave statements voluntarily.¹⁰

In the following weeks, Sony management made some conciliatory gestures towards workers, claiming that they wanted to resume the labor peace that they had known in prior years. Yet when workers investigated the status of the criminal complaint against them, they were told by the Public Ministry's office that the case was still active and punitive action was still possible.

E. The Attempt to Form an Independent Union

On May 17, 1994, Jovita Garcia and 25 other workers petitioned the local Arbitration and Conciliation Commission (ACC) for the registration of a new union, Sindicato Unico de Trabajadores de la Cia. Magneticos de Mexico, to represent the Sony workers.¹¹ On June 30, Chema Morales, acting on behalf of the Maquiladora Section of the FTNL, formally opposed the registration of the independent union. Morales asserted that because the Maquiladora Section of the FTNL already had a collective bargaining agreement with Sony, the registration of an independent union of Sony workers would be illegal.

On July 15, the ACC denied the registration request, giving three reasons. First, the ACC claimed that the independent union had failed to include in its bylaws the precise language of Article

¹⁰ In her affidavit, [REDACTED], one of the accused, states:

A few days after the blows that we received during our protest in front of the company, a list came out in the newspaper of the names of those people who according to them were in charge of the movement. My name was one of those. I read that I had to present myself to the Public Ministry, and so I went there to make a declaration. They had me sit at a desk where two people of Public Ministry were present and they began to ask questions. They wanted to know who was behind us and they began to name names. I told them no, that no one was obliging us but that we ourselves were involved out of our own free will. They wanted to know who it was that had recommended us the lawyer that we had and who was paying him. They tried to frighten us, saying that the company was demanding a quantity of money from us and so we had to tell them who was directing us. But I repeated that no one, that the movement was ours and no one else's.

¹¹ The legal registration of a union does in itself create any obligation on the part of the employer to recognize or bargain collectively with that union. See infra Part V(B)(2).

356 of the Federal Labor Law concerning the union's objectives.¹² Second, the ACC stated that the Sony workers could not register an independent union because they were represented under an existing collective bargaining agreement with the Maquiladora Section of the FTNL. Third, the ACC asserted that the documentation submitted by the independent union was technically deficient.

V. ARGUMENT

Sony's actions have violated Article 123 of Mexico's Constitution and Articles 60, 61, and 73-75 of the Mexican Federal Labor Law. By failing to enforce its own laws against Sony, the government of Mexico has violated each of the above provisions. In addition, the Mexican government has violated its obligations under the NAALC and under ILO Conventions 87 and 98.

A. Sony Has Violated, and the Mexican Government Has Not Enforced, Provisions of the Mexican Constitution and Federal Labor Law That Regulate Hours of Work and National Holidays.

Article 123(A)(I) of the Mexican Constitution establishes a maximum of eight hours for a day shift, and seven hours for a night shift. This requirement is elaborated by Articles 60 and 61 of the Federal Labor Law, which state respectively:

Article 60. A day shift includes the hours between 6 a.m. and 8 p.m. A night shift includes the hours between 8 p.m. and 6 a.m. A mixed shift includes time periods of the day and night shifts, provided that the period of the night shift is less than three and one half hours; if it is more than three and one half hours the shift shall be considered a night shift.

Article 61. The maximum duration of the workday shall be: eight hours for a day shift, seven hours for a night shift, and seven and one half hours for a mixed shift.

Sony requires eight hour shifts for nearly all of its workers. By scheduling night shift and mixed shift workers for eight hour shifts, the company violates Article 61. Sony has never asserted or established that it faces "extraordinary circumstances" that

¹² The proposed bylaws stated that the union "is constituted as a coalition to defend our rights as workers." According to the ACC, the union should have stated that it is "an association of workers constituted for the study, improvement, and defense of their interests."

would allow it to exceed the statutory maximum number of hours.¹³ In fact, the company has explicitly stated that its sole reason for implementing a 24 hour production schedule is to increase productivity.¹⁴

In addition, Sony has violated Articles 73-75 of the Federal Labor Law by denying days off to its workers on national holidays.

B. The Government of Mexico Has Violated ILO Conventions 87 and 98, Which Guarantee the Freedom of Association for Mexican Workers in Selecting Their Representatives and Their Right to Organize and Bargain Collectively.

Article 123 of the Mexican Constitution assures Mexican workers the right of free association to form unions for purposes of collective bargaining.

The workers as well as the entrepreneurs shall have the right to combine in the defense of their respective

¹³ Article 66 of the Federal Labor Law permits an employer to extend the work day only in "extraordinary circumstances," and only up to three hours, three times per week. Thus, even if Sony were able to establish the existence of extraordinary circumstances, its schedule violates the statute because it exceeds the statutory maximum five times per week.

¹⁴ In a letter to Ted Jacobsen, Secretary Treasurer of the New York City Central Labor Council, John Stern, Vice President for Labor Relations at Sony Electronics, explains:

Since the inception of MDM [Sony's Nuevo Laredo plants] in 1979, the 48-hour, six-day work week has been a normal part of operation, as it is throughout most of Mexico. It is both traditional and legal. Since we try to maximize productivity by running our Mexican manufacturing operations seven days a week -- just as we do in the U.S. -- different work shifts are common. As a result, we have some people working on Saturdays and Sundays.

And Carl Yankowski, a senior Sony executive, stated in a May 2, 1994 letter to Congressman David Bonior that the Mold Shift schedule is used to meet "market demand." Mexican labor law nowhere states that market needs are an allowable criterion for scheduling continuous work. Moreover, the parties to the NAFTA agreed in negotiating the NAALC that the treaty should not, under guise of efficiency considerations, result in prejudice to workers in the member countries, and that it should foster observance of the labor principles set forth in the NAALC annex as well as domestic laws designed to protect basic worker rights.

interests, forming unions, professional associations, etcetera.¹⁵

1. Sony's Interference in the April 15 Election, and its Discharge of Employees for Electoral Activities, Violates the Mexican Constitution's Guarantee of Free Association

Sony has asserted that it played no role in the April 15 election. "The union election and its outcome on April 15 were in no way influenced by Sony management . . . We don't get involved with internal union election processes, and in this case in Nuevo Laredo we certainly didn't take any sides."¹⁶

In fact, the circumstances of the election strongly suggest that Sony management interfered extensively. Management and first slate candidates were often observed consulting together. The elections were announced by official union representatives in the presence of management. The union representative who conducted the elections stated as a reason for not conducting a secret ballot that he had only been given one and one half hours by the company to conduct an election for 1,000 voters. And the entire electoral process was observed by management personnel, who were able to observe the vote of each worker.

Sony also claims that it did not retaliate against the leaders of the alternate slate, six of whom lost their jobs at Sony in the month of March.

As for the six former union delegates, four of them resigned in March after the union relieved them of their union duties. They chose not to accept regular line operator jobs that we offered them. We dismissed the other two through a mutual separation agreement with severance above the norm (approved by the union and the Mexican Labor Department) because they disrupted the work operation in the past and, in our view, would not be able to continue as productive line workers without creating insubordination problems in the future.¹⁷

The record belies these representations. Sony dismissed four members of the dissident union slate: [REDACTED] and [REDACTED]. Four other members of the alternate slate felt that they could no

¹⁵ Mexico Const. art. 123(A)(XVI).

¹⁶ Letter from Carl Yankowski, President, Sony Electronics, to Rep. David Bonior, May 2, 1994.

¹⁷ Id.

longer work as line operators because of harassment and intimidation by the company and official union leadership, and therefore accepted indemnification in return for their resignations. Sony claims that its actions against the six former delegates were precipitated when the "union removed them of their union duties." However, the evidence suggests that the actions taken against former delegates were collaborative decisions by Sony and leaders of the official union which were intended to eliminate union dissidents.

It defies credibility to believe that MDM's dismissal of the four members of the alternate slate and the resignation under duress of four additional members of the slate were merely coincidental. Rather, this is prima facie evidence that Sony "took sides" in the election of union leadership by seeking to eliminate members of the alternate slate.

Since January, 1994, Sony has fired 13 union activists, and pressured four others to resign from their jobs. In almost every case, the workers against whom Sony took action had between seven and 13 years of service with the company, had excellent work records, and had been promoted to high level jobs within the plant.

In addition, Sony has harassed and demoted workers and changed their work schedules to pressure them to stop participating in organizing activities. (When Sony refers to workers who "chose to resign," or "agreed to a mutual separation agreement with severance above the norm," it is important to understand that even in cases where these workers were not technically fired, Sony pressured them to resign through a combination of harassment and offering large cash payments to leave their jobs.)

Finally, Sony collaborated with the police in violently repressing work stoppages and demonstrations resulting from the elections staged by Sony and the official union leadership.

By interfering in the elections and retaliating against the leaders of the alternate slate, Sony violated its obligations under Article 123 of the Mexican Constitution.

2. The Government's Denial of the Independent Union's Registration Petition Violates the Sony Workers' Constitutional Right to Free Association

In denying the independent union's registration petition, the ACC raised three objections. First, the ACC claimed that the independent union had failed to include in its bylaws the precise language of Article 356 of the Federal Labor Law concerning the

union's objectives.¹⁸ Second, the ACC stated that the Sony workers could not register an independent union because they were represented under an existing collective bargaining agreement with the Maquiladora Section of the FTNL. Third, the ACC asserted that the documentation submitted by the independent union was technically deficient.

These arguments are flimsy pretexts for a politically-motivated denial of the Sony workers' right to select a democratic representative, and they directly contravene the provisions of Mexican law governing administrative procedure.

First, the Federal Labor Law nowhere requires that a union's bylaws reproduce the exact text of Article 356. The Sony workers' stated objective, "to defend our rights as workers" is consistent with the purpose of that Article.

Second, the fact of an existing union and collective bargaining agreement covering the employees of an employer is no bar to the legal registration of another union representing these employees.¹⁹ The Federal Labor Law establishes the procedures to be followed when more than one union exists within a workplace.²⁰ While any number of unions may register and obtain legal personality, only the one with the support of the largest number of workers controls the administration [titularidad] of the contract. The ACC thus disregarded the specific injunction of the commentary to Article 389 of the Federal Labor Law that "one should not confuse the problem of administration of the collective work contract with the question of legal personality of unions, for these are two distinct things . . ." ²¹

¹⁸ The proposed bylaws stated that the union "is constituted as a coalition to defend our rights as workers." According to the ACC, the union should have stated that it is "an association of workers constituted for the study, improvement, and defense of their interests."

¹⁹ A comparison with U.S. labor law is instructive here. The Supreme Court has long held that it is an unfair labor practice for an employer to discharge or otherwise retaliate against an employee, at the instigation of a recognized union, because that employee refuses to become a member, or violates the rules, of the recognized union (for example, by joining another union). The employee's only legal obligations to the recognized union are the 'financial core' of dues and fees. See NLRB v. General Motors Corp., 373 U.S. 734 (1963); see also Hovan v. United Bhd. of Carpenters, 704 F.2d 641 (1st Cir. 1983) (Breyer, J.).

²⁰ Federal Labor Law art. 388.

²¹ Federal Labor Law art. 389 commentary.

Moreover, under the criteria applied by the ACC, the existing union is itself not legally registered, as it has been reorganized and renamed without following the procedures of Article 365.

Third, the independent union did in fact submit all of the required documents. But even if its petition were technically deficient, this would not be grounds for denial of registration. The legal principles of administrative procedure require the ACC, in the event of a procedural mistake or the lack of information in the application, to request a correction by the applicants. It is generally accepted under Mexican law that in an administrative procedure, the government's legal duty is to assist the applicant, not to treat the application as an adversarial document.

3. The Mexican Government's Actions Violate Fundamental Principles of International Labor Law as Defined in ILO Conventions 87 and 98

The Mexican Government has, in its actions with respect to Sony, violated its affirmative obligations under international law to: (1) guarantee that union elections are free and fair, and not conducted in an atmosphere of coercion; (2) prevent employer domination of and interference with labor organizations; (3) prohibit employer discrimination against employees in hiring, assignment of work, and working conditions, on account of the employees' union activities; and (4) promulgate and enforce maximum working hour standards.

Mexico is a member of the International Labor Organization and has ratified 66 ILO Conventions, including Convention 87 (Freedom of Association).²² These Conventions are incorporated into

²² Mexico has not ratified ILO Convention 98 (Right to Organization and Collective Bargaining). However, under the ILO Constitution, member states are bound to respect fundamental labor rights (including the rights of organization and collective bargaining), and are subject to the jurisdiction of the ILO Committee on Freedom of Association, whether or not they have ratified the conventions that affirm these rights. See ILO Constitution; ILO, Freedom of Association & Collective Bargaining, General Survey by the Comm. of Experts on the Application of Conventions & Recommendations, ¶ 5 ("the principles enunciated in the Constitution are applicable to all the member states of the Organization"); Comm. on Freedom of Association, 1st Report, ¶ 32. The Committee has asserted its jurisdiction over Mexico, and the Mexican Government has accepted this jurisdiction, in several cases involving violations of Convention 98. See, e.g., 133d Report, Case No. 603, ¶ 81; 157th Report, Case No. 827, ¶ 216. Similarly,

Mexican law through Article 133 of the Mexican Constitution.²³

As a general principle, the ILO has stated that:

Trade union rights can only be exercised in a climate that is free from violence, pressure, or threats of any kind against trade unionists; it is for governments to assure that this principle is respected.²⁴

ILO Convention 98 provides that:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to--
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade

the Committee has asserted jurisdiction over the United States, although the United States has ratified only one of the six Conventions regarding fundamental labor rights (No. 105).

²³ See Virginia A. Leary, *International Labor Conventions & National Law* 25 (1982). Article 133 states that treaties are the supreme law of the land when made in accordance with the Constitution. *Id.* at 45. Mexico generally has asserted that Article 133 is sufficient to enact all ratified ILO Conventions into national law, invalidating any national legislation to the contrary. *Id.* at 25-26. In the event of a conflict between a treaty and national law, however, the one later in time prevails. *Id.* at 45, 120.

²⁴ International Labor Organization, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶ 70 (3d ed. 1985) [hereinafter *ILO Digest*]. While governments are properly barred from intervening in the purely internal affairs of trade unions, the Committee on Freedom of Association's decisions make it clear that a government may not use non-interference in union affairs as a pretext to justify official tolerance of employer discrimination (in violation of Article 1 of Convention 98) or domination (in violation of Article 2). See *ILO Digest* ¶ 667 ("A complaint against another organization, if couched in sufficiently precise terms to be capable of examination on its merits, may nevertheless bring the government of the country concerned into question - for example, if the acts of the organization complained against are wrongfully supported by the government or are of a nature which the government is under a duty to prevent (e.g. by virtue of its having ratified an international labor Convention).").

union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.²⁵

The ILO Committee on Freedom of Association has emphasized that governments have an affirmative duty to prevent anti-union discrimination both by enacting nondiscrimination laws and by ensuring that these laws are enforced.²⁶ These measures must prevent discrimination in transfers and demotion as well as hiring and firing.²⁷ The employer's duty not to discriminate is the same regardless of whether or not the union represents a majority of the employer's employees or has entered into a collective bargaining agreement with the employer.²⁸

Sony's actions in discharging and transferring members of a dissident union faction, and its complicity in physical violence against union dissidents, clearly constitute prohibited discrimination within the meaning of Convention 98. The

²⁵ ILO Convention 98 art. 1. See ILO Digest ¶ 538 ("No person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities.").

²⁶ See ILO Digest, ¶ 542 (Report No. 157, Case No. 827 (Mexico))("Governments should, where necessary, take measures to ensure that workers are protected against acts, including dismissal, which are likely to provoke, or have as their object, anti-union discrimination in respect of employment of workers."); ¶ 545 (Report No. 133, Case No. 603 (Mexico))("Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of the workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts.").

²⁷ See ILO Digest ¶ 544 ("Protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker."); ¶ 560 ("A deliberate policy of frequent transfers of persons holding trade union office may seriously harm the efficiency of trade union activities.").

²⁸ See ILO Digest ¶ 552 ("No person should be prejudiced in his employment by reason of his membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned.").

government is under a duty to prevent such discrimination. It cannot evade this duty by claiming that Sony's actions were sanctioned by the official trade union: Convention 98's protections extend to all union activities, whether or not the organization in question is sanctioned by the state or recognized by the employer. Nor can the government excuse its inaction by contending that it has not received complaints from the affected workers: given the level of media attention to the Sony dispute and the fact of police involvement, the government clearly knew or should have known of Sony's discriminatory actions."

In addition to prohibiting discrimination, ILO Convention 98 enjoins employers from attempting to dominate or interfere with the functioning of labor organizations.

1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations shall be deemed to constitute acts of interference within the meaning of this Article.³⁰

Sony's interference in and surveillance of union elections, firing and transfer of union dissidents, and use of the police to suppress protests against these anti-democratic actions, have the object of placing the official union under employer control and are precisely the types of actions which Convention 98 was intended to prevent.

Finally, the Committee on Freedom of Association has warned that

²⁹ A number of workers interviewed by ILRERF stated that they considered it futile to attempt to obtain justice through the official arbitration and mediation procedures of Mexican labor law. There is substantial evidence not only that these procedures are exceedingly cumbersome and time-consuming, but also that the official arbitration and mediation commissions are controlled by the ruling political party (which also dominates the CTM). See Linda Robinson, *Reaching to the South: Free Trade Alone Cannot Bring Mexico and United States Together*, U.S. News & World Report, Mar. 1, 1993, at 43; see generally Dan LaBotz, *Mask of Democracy: Labor Suppression in Mexico Today* (1992).

³⁰ ILO Convention 98 art. 2.

the hypertechnical use of union registration laws, such as that demonstrated by the ACC in denying the Sony workers' petition, violates the fundamental freedom of association."¹¹

4. The Actions of Sony and the Mexican Government Violate the Labor Principles of the NAALC

Sony has interfered in union elections, fired dissident union activists, collaborated with police and union officials in harassment and violence against union members protesting the conduct of union elections, and pressured workers into accepting severance pay and relinquishing claims for reinstatement. The Mexican government has failed to punish or prevent these actions, and has denied the Sony workers the right to register an independent union. These actions violate Principle 1 of Annex I of the NAALC, freedom of association and protection of the right to organize."¹²

The imposition of work rule changes by Sony in violation of the maximum hours provisions of the Mexican Federal Labor Law contravenes Principle 5, minimum employment standards for wage earners.

All of these instances reflect ineffective enforcement or non-enforcement of "labor laws" as defined in Article 49 of the NAALC. Taken as a whole, these cases reveal a persistent pattern, within the meaning of Article 49, of the Mexican government's failure to enforce its own labor laws for the protection of its workers. This failure also violates Principle six of the Agreement.

VI. RELIEF REQUESTED

For the foregoing reasons, Submitters respectfully request:

A. That the USNAO initiate a review pursuant to Article 16

¹¹ See ILO Digest ¶ 281 (Where "a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude [] these factors are such as to create a serious obstacle for the establishment of a trade union and lead to the denial of the right to organise without previous authorization.")

¹² The negotiating history of the NAALC demonstrates that the Labor Principles set forth in Annex I take their essence from the corresponding ILO Conventions. Thus, in interpreting the NAALC Labor Principles, the ILO jurisprudence should be looked to for guidance.

of the NAALC;”

B. That the USNAO hold a public hearing in Laredo, Texas, having first made adequate arrangements for translation and visas for witnesses, and having provided adequate notice to Complainant, pursuant to Section (e)(3) of the USNAO Regulations;

C. That Mexico require Sony Corp. to comply with Mexican law and international agreements to which Mexico is signatory. Specifically, Submitters request that Sony be ordered to:

1. Stop discharging workers for union activity;
2. Desist from interfering in internal union elections;
3. Cease pressuring workers into accepting statutory severance pay and relinquishing claims for reinstatement, and immediately offer reinstatement with full back pay and lost benefits to:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]

” Submitters request that the review initiated in this case address the conduct of the Sony corporation and the failure of Mexico to enforce its labor laws with respect to the issues raised in this matter, in particular, those laws and regulations, or provisions thereof, that are directly related to: (1) freedom of association and protection of the right to organize, including interference in union elections, retaliation against employees for participation in electoral activities, and denial of registration to the independent union; (2) violations of laws governing hours of work.

The violations described in this submission, especially Sony’s dismissal of union dissidents and the harassment of workers who protested unilateral actions by Sony contrary to Mexican labor law, are similar to those described in Submission #940001 (General Electric Co.) and Submission #940002 (Honeywell, Inc.), for which the USNAO granted review on April 20, 1994. For the reasons for which review was granted in those cases, it should be granted here.

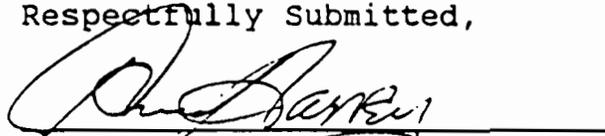
As part of its investigation, the USNAO should obtain from Sony an estimated more than 80 hours of video tape which Sony representatives shot during the events of April 16-19.

- (i) [REDACTED]
- (j) [REDACTED]
- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]

4. Comply with the obligations of Articles 60-61 and 73-75 of the Federal Labor Law; and,

D. In the event that the relief requested in paragraph C is not promptly and fully obtained, that the USNAO Secretary recommend that the Secretary of Labor request consultations at the ministerial level pursuant to Article 22 of the NAALC to obtain from the government of Mexico an explanation as to why there is a persistent pattern of failure by Mexico in the Sony case, as well as other similar cases, to enforce its own labor laws, constitution and international obligations, designed to protect core worker rights; and that the Secretary of Labor make such explanation public.

Respectfully Submitted,



Pharis J. Harvey
Executive Director
International Labor Rights Education
and Research Fund
100 Maryland Avenue, N.E.
Washington, DC 20002
(202) 544-7198
for the Submitters

Dated: August 16, 1994