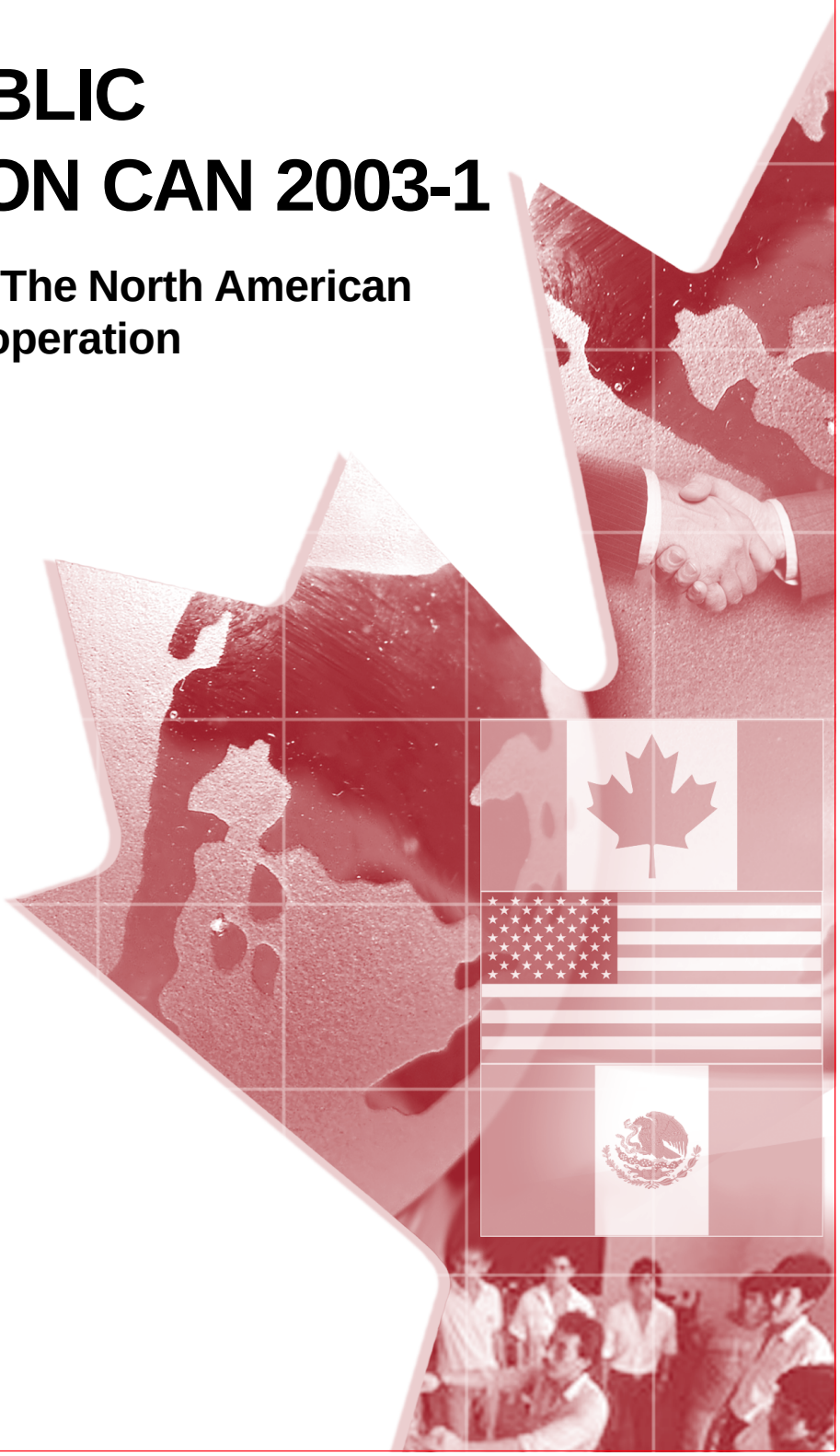
LABOUR PROGRAM

REVIEW OF PUBLIC COMMUNICATION CAN 2003-1

report issued pursuant to **The North American Agreement on Labour Cooperation**



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Review of
Public Communication
CAN 2003 – 1

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The North American Agreement
on Labour Cooperation

EXECUTIVE SUMMARY

Background

In the preamble to the North American Agreement on Labour Cooperation (NAALC) the Governments of the three countries recall their resolve to improve working conditions and living standards in their respective territories and to protect, enhance and enforce basic workers' rights. These goals are reflected in obligations on each Party to fairly, effectively and transparently enforce its labour laws. They are pursued through cooperative activities, and by means of mechanisms for intergovernmental consultations, independent evaluations and dispute settlement.

Under Article 16(3) of the NAALC, the National Administrative Office (NAO) of each Party is to provide for the submission and receipt of public communications on labour law matters arising in the territory of another NAALC country, and is to review such matters in accordance with domestic procedures. The *Canadian Guidelines for Filing Public Communications* enable any person or organization to file with the Canadian NAO such public communications.

Public Communication CAN 2003-1 was submitted to the Canadian NAO by United Students Against Sweatshops (USAS), an American non-governmental organization, and the Centro de Apoyo al Trabajador (CAT), a labour rights advocacy group in Mexico, on October 3, 2003. Amendments were added to the original submission on November 5 and 10, 2003, and February 13, 2004. A third petitioner, the Maquila Solidarity Network (MSN), a Canadian organization that works on labour issues in maquiladora factories and export processing zones, asked to be added to the Communication on January 29, 2004. The submitters also provided the NAO with additional written information on December 16, 2003, and January 8 and 30, 2004. The Canadian NAO accepted Public Communication CAN 2003-1 for review on March 12, 2004.

The Communication raises issues related to the enforcement of labour legislation in Mexico addressing three NAALC principles: freedom of association, occupational health and safety, and minimum employment standards. The submitters also allege that Mexico failed to meet its obligations under articles 2, 3, 4, 5 and 7 under the NAALC.

CAN 2003-1 concerns events that occurred from 2000 to 2003 at Matamoros Garment, and between June 2003 and February 2004 at Tarrant México, two apparel factories in the state of Puebla, Mexico. In each case, workers had grievances about their working conditions, and when they complained to management, in their view, very little improved. They say that, because the incumbent unions in both plants did little to represent workers, they had to organize themselves. They staged a work stoppage to protest their situation, but with little effect. They next decided to form an independent union (SITEMAG at Matamoros Garment, and SUITTAR at Tarrant México) to negotiate with their employer, by seeking to register the new union with the appropriate authorities, so that it would have legal status to act on their behalf. Submitters allege that in both plants, the employer responded to the organizing efforts of the workers with a campaign

of intimidation, dismissals and coercion, and, at Matamoros Garment, that the incumbent union participated in the intimidation.

Both petitions for registration were denied by the Local Conciliation and Arbitration Board (JLCA - *Junta Local de Conciliación y Arbitraje*) of the state of Puebla. The submitters say that the JLCA failed to provide a fair process for the registration of new unions, and failed to protect union supporters from discrimination and intimidation by company officials. They also say that the Mexican government has failed to ensure that the JLCA is impartial and independent. In addition, they allege in the case of Matamoros that local police and government authorities failed to protect workers from intimidation by the incumbent union.

Workers at Matamoros Garment did not avail themselves of the *amparo* process, a mechanism by which a tribunal's decision can be appealed on constitutional grounds. Workers say that they did not have sufficient time to do so within the 15-day period to file such an appeal. SUITTAR representatives did file an appeal but later withdrew from it.

The submitters also make a series of allegations with respect to the workers' underlying concerns about conditions in the two plants. They say that Mexican authorities failed to enforce laws on minimum wage, timely payment of wages, hours of work and overtime, severance pay in case of layoff, overtime pay, and prevention of occupational illnesses and injuries (lack of protective equipment, first aid supplies and medical services, poor ventilation, verbal and physical abuse, unsanitary cafeteria and rest rooms, lack of drinking water).

The submitters also argue that there has been "a persistent pattern of failure to enforce its labour law" on the part of Mexico. In this regard they refer to events in 2000-2001 at another factory, Kukdong International México in Atlixco, also in the state of Puebla, and to previous communications in which similar issues have been raised, including the following: US 94-03, US 97-02, US 97-03, CAN 98-1, US 99-01 and US 2000-01.

Review Process

On July 30, 2004, the Canadian NAO requested consultations with the Mexican NAO, in accordance with Article 21 of the NAALC, which consisted in submitting a series of questions related to actions undertaken by Mexican authorities and events relevant to Public Communication CAN 2003-1. A response from the Mexican NAO was received on October 22, 2004.

As part of its review process, Canada also consulted with the submitters, representatives from Matamoros Garment and Tarrant México, the incumbent unions at these two factories, the companies mentioned in the submission, and Mexican lawyers. In addition, the Canadian NAO held a public meeting in Toronto, on May 28, 2004, to provide members of the public an opportunity to present additional information relevant to the

review of CAN 2003-1. Provinces and territories were invited to the public meeting and were kept informed of the progress of the review.

Analysis and Findings

Union Registration Procedures

Freedom of association and the corresponding right to organize a union are constitutional rights in Mexico that are reinforced by federal legislation and provisions of international treaties incorporated into domestic law. Mexican workers have the right to join unions of their own choosing in an atmosphere free of outside interference. Of course, the enjoyment of that right depends in large measure upon the work of labour authorities, including providing timely and predictable union registration procedures, effective legal protection against interference, and the impartial application of labour laws.

Mexican labour legislation requires that union registration procedures operate in a timely and predictable manner. Union registration is a purely administrative procedure and Mexican labour law (LFT) appears to exclude any discretion to deny registration. Moreover, with respect to Convention 87 of the International Labour Organization (ILO), to which Mexico is a party, the Freedom of Association Committee has repeatedly emphasized that the freedom to organize a union without prior authorization requires that union registration procedures operate without delay and not be at the discretion of the registering authority.

The information presented to the Canadian NAO seems to support the submitters' allegations that the JLCA acted in a manner that exceeded clearly enunciated constraints on its discretion. The JLCA appears to have taken a highly technical approach in reviewing both independent unions' registration petitions and some of the grounds cited for denying the petitions have no apparent basis in the LFT.

While the JCLA may not be legally obligated in every case to draw technical errors to the attention of an applicant for registration, there is nothing in Mexican law that would have prevented it from doing so. In this case, such steps would have avoided delays that were inconsistent with ensuring the timely and predictable registration process contemplated by Mexican law.

Union registration is a matter in which time is clearly of the essence. The pattern of events surrounding the two petitions for registration filed by SITEMAG and SUITTAR raises concerns that the labour authorities caused significant delays in the registration of those unions without appropriate justification. The decisions in the SITEMAG and SUITTAR applications took 58 and 60 days respectively to render. No explanation of these delays was available in the course of this review. The LFT requires that registration be granted automatically to a union in the event that registration procedures take longer than 60 days to complete. This suggests that a 60-day period to complete the registration is not a normal delay, but rather one that is so excessive that it requires an automatic remedy.

In addition, when SUITTAR representatives sought *amparo* with respect to the JCLA's decision to deny registration, the JLCA failed to deliver its report on the decision to the District Court within the statutory deadline, which had the effect of delaying the *amparo* hearing.

The Canadian NAO finds it troubling that the SITEMAG petitioners did not seek *amparo* remedies with respect to the decision to deny registration to their union. The reasons provided by the workers for not pursuing this recourse in the SITEMAG case appear doubtful, as the deadline for filing an *amparo* action would not have begun to run until SITEMAG representatives had received the JCLA's decision. It is also troubling that the SUITTAR petitioners did not pursue their amparo case to its conclusion, though more understandable in light of the financial pressures faced by the workers who were parties to the *amparo* petition.

This pattern of events raises concerns about whether Mexico is in conformity with NAALC obligations to promote compliance with and effectively enforce national labour laws (Article 3), and to ensure that administrative proceedings for the enforcement of labour laws are not unnecessarily complicated and do not entail unwarranted delays (Article 5.1(d)).

Impartiality of Labour Authorities

The effective application and enforcement of labour law rests to a large extent on fair and equitable labour tribunals and processes. The Puebla JLCA is organized as a tripartite body. The arguments presented in the communication suggest that the institutional affiliations and connections of the worker representatives on the JCLA may in some cases create an apprehension of bias or conflict of interest in dealing with petitions for registration on behalf of unions not affiliated with established trade union confederations.

Even if provisions of the LFT allow a party to a proceeding to challenge the participation of a JLCA member on the basis of bias or conflict of interest, it is not clear that they can provide an adequate remedy.

This raises a concern about whether there is some way, without abandoning the principles of tripartism, of addressing the possibility that members of the JLCA can be influenced by the fact that the organization or organizations that supported their election to the JLCA have a stake in the outcome of registration decisions. As noted in Public Communication CAN 98-1, it is uncertain that the current provisions of the LFT can ensure that the JLCA is impartial and independent and does not have any substantial interest in the outcome of proceedings as required by Article 5.4 of the NAALC.

Protections against Interference

With respect to interference in workers' organizing efforts from employers and established trade unions, the NAO notes that workers filed no complaints to remedy the intimidation and coercion that they allege. As a general matter, it is not appropriate to draw conclusions with respect to obligations to effectively enforce labour laws where enforcement is complaint-driven and complaints are not filed. In the absence of a direct

refusal by the authorities to act upon a complaint, some onus to make use of available legal complaint processes must rest upon workers making a claim that legal protections were not properly enforced.

Information Available to Workers Represented by a Union

The information provided appears to indicate that, until a labour conflict started, some workers were unaware of a union already representing them and they were unable to obtain a copy of their collective agreement from the union that had negotiated it. Mexican labour law is in accordance with the principle of non-interference by the state in internal union affairs. However, this absence of regulation creates a risk that those who are represented by a union or covered by a collective contract may have little information about either. This in turn creates a risk that lack of information may impair the ability of workers to ensure that their union is acting on their behalf, to participate in its activities, and to exercise their right under Mexican law to personally enforce their rights under a collective contract. It may also impact on the freedom of workers not to associate with a union.

It is also unclear whether, under the LFT, workers can obtain a copy of the collective contract that governs their terms and conditions of employment by requesting it from the appropriate labour board. This raises concerns about whether Mexico is meeting its obligations to maintain high labour standards under NAALC Article 2, and its obligations under NAALC Article 4.2 to ensure that persons with a legally recognized interest have recourse to procedures by which they can enforce their rights under a collective contract.

Occupational Safety and Health

The Communication contains numerous allegations of violations of occupational safety and health (OSH) legislation and regulations at both Matamoros Garment and Tarrant México. As noted above, there is some onus upon workers to make use of available complaint procedures. Yet, workers do not appear even once to have filed a complaint with the relevant authorities to seek the intervention of inspection services to enforce OSH laws.

In the case of Matamoros Garment, workers did not bring their concerns about OSH violations to the attention of the enforcement authorities until the JLCA attended at the plant on January 13, 2003, in response to their work stoppage, and where, according to the submitters, workers complained informally about working conditions to a representative of the JLCA. In the case of Tarrant México, workers brought their OSH concerns to the attention of the authorities only when they sought the assistance of the Conciliation Board (JLC) to obtain a negotiated settlement with the employer. Since the function of the JLC is to conciliate disputes, it is reasonable that the JLC considered the matter closed when, on July 8, 2003, the workers' coalition representatives agreed to the 16-point settlement of their demands.

On the other hand, under Mexican law, the federal *Secretaria del Trabajo y Prevision Social* (STPS) has an obligation to conduct regular OSH inspections of workplaces. The Mexican NAO provided the Canadian NAO with specific dates upon which STPS

officials carried out inspections at both Matamoros Garment and Tarrant México. The information before the Canadian NAO suggests that some OSH issues might have merited investigation and there was no operating joint OSH committee in either plant. It is appropriate to ask what steps STPS inspectors may have taken to address any health and safety hazards in the two plants. It would be important to know what matters SPTS inspectors examined in each plant, what if any violations they found, and what if any steps were taken to remedy such violations.

The Canadian NAO will continue to seek relevant information from the Mexican NAO, such as copies of the reports by STPS inspectors on their inspections at Matamoros Garment and Tarrant México, in order to formulate an appropriate recommendation to the Minister of Labour.

Minimum Employment Standards

In Puebla, minimum employment standards in workplaces falling within state enforcement jurisdiction can be enforced through complaint-driven inspection processes. They can also be enforced by filing a complaint with the JLCA. Other than in one instance at Matamoros Garment, where the issue seems to have been resolved to the satisfaction of the complainants, it appears that at no time did workers seek to enforce their minimum standards rights by making a formal complaint to the relevant authorities. In the absence of such complaints, there is little basis upon which to draw conclusions about the effectiveness of enforcement processes with regards to matters, such as involuntary overtime, that likely would only come to the attention of an inspector or other authority if a complaint were filed.

However, in the case of Matamoros Garment workers, the information before the Canadian NAO suggests that the JLCA was aware of the workers' concerns and when they were brought informally to the attention of the JLCA representatives, their response to these concerns was passive and discouraging to the workers. The main concern from the point of view of NAALC obligations is that the informal interactions of the JLCA with workers may be discouraging workers from using appropriate enforcement procedures. In the case of Tarrant México, as noted above, the JLC considered the matter closed when on July 8, 2003, the workers' coalition agreed to the 16-point settlement of their demands.

On the other hand, the Canadian NAO has concerns about the lack of evidence of action on the part of the JLCA to ensure that the procedures called for by the LFT were followed during the collective suspensions of employment at Matamoros Garment and at Tarrant México that preceded the eventual shutdown of each plant. In the case of Matamoros Garment, there appears to have been evidence at the outset that the closure was permanent, which would have entitled workers to statutory minimum severance payments, and it is not clear why the closure was treated as temporary. The Canadian NAO is also concerned that the relatively passive approach by the JLCA to wrongful dismissal claims may have left workers vulnerable to pressure to abandon or unduly compromise their rights.

The Canadian NAO has yet to receive any information concerning regular minimum standards inspections at either plant. The Canadian NAO will continue to seek such information with a view to formulating an appropriate recommendation to the Minister. The LFT also requires that the JLCA and JLC notify the appropriate public prosecutor's office when an employer has ceased paying wages to its workers. The Canadian NAO will also continue to enquire into whether such notification was given at the appropriate time, and if so, what action or decision was taken.

Reluctance of Workers to Seek Assistance from Mexican Authorities

Another issue of concern to the Canadian NAO is the reluctance of workers to seek the assistance of the authorities. From the information gathered by the Canadian NAO during its review, this was evident across a range of different issues, including not only alleged anti-union discrimination, but also alleged occupational safety and health and minimum employment standards violations. Workers repeatedly told the Canadian NAO that they had no confidence in the JLCA because it had, unfairly in their view, denied their petition for registration, and in light of the passivity of the authorities in various instances.

Recommendation

The NAO makes the following recommendation in the spirit of Cooperative Consultations and in a desire to build on our comparative knowledge and understanding of labour law and its enforcement in North America.

Pursuant to Article 22 of the NAALC, which provides that a Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of the Agreement, the NAO recommends that the Minister of Labour seek consultations with the Mexican Secretary of Labour and Social Welfare on the following issues related to freedom of association:

a) ensuring timely and predictable union registration procedures;

b) how the requirement of the Agreement that labour boards (*Juntas de Conciliación y Arbitraje* in Mexico) be impartial and independent and not have any substantial interest in the outcome of decisions is respected in deciding upon union registration applications;

c) the enforcement of protections against interference in workers' rights to organize a union of their choosing, including layoff procedures and remedies to unjust dismissals; and

d) the dissemination of information on the content of collective bargaining agreements to union members and other interested parties.

The Canadian NAO may provide further recommendations to the Minister upon receipt of the following additional information from the Mexican NAO, or within 30 days, whichever is sooner, with respect to enforcement of occupational safety and health and minimum employment standards:

a) copies of the occupational safety and health STPS inspection reports;

b) OSH matters that were examined by inspectors, any violations found, and any steps taken to address these violations;

c) information regarding minimum employment standards inspections at either plant, and if any, copies of the inspectors' reports;

d) the actions taken by the JLCA with respect to the collective suspension of employment at both plants; and

e) whether notification to the public prosecutor' office was given when employers at both plants failed to make timely payment of wages to their workers.

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List of Acronyms

CAT	*Centro de Apoyo al Trabajador*
CCESHT	*Comisión Consultiva Estatal de Seguridad e Higiene en el Trabajo*
CCNSHT	*Comisión Consultiva Nacional de Seguridad e Higiene en el Trabajo*
CMSH	*Comisión Mixta de Seguridad e Higiene*
CROC	*Confederación Revolucionario de Obreros y Campesinos*
CTM	*Confederación de Trabajadores Mexicanos*
DGIFT	*Dirección General de Inspección Federal del Trabajo*
DGSHT	*Dirección General de Seguridad e Higiene en el Trabajo*
FROC	*Federación Revolucionaria de Obreros y Campesinos*
ILO	International Labour Organization
IMSS	*Instituto Mexicano del Seguro Social*
JCA	*Junta de Conciliación y Arbitraje*
JLC	*Junta Local de Conciliación*
JLCA	*Junta Local de Conciliación y Arbitraje*
LA	*Ley de Amparo*
LFMN	*Ley Federal Sobre Metrología y Normalización*
LFT	*Ley Federal del Trabajo*
MSN	Maquila Solidarity Network
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office
NOM	*Normas Oficiales Mexicanas*
OSH	Occupational Safety and Health
PROFEDET	*Procudaría Federal de la Defensa del Trabajo*
RFSHMAT	*Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo*
RGIASVLL	*Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral*
RISTPS	*Reglamento Interior de la Secretaría del Trabajo y Previsión Social*
SFV	*Sindicato Francisco Villa de la Industria Textil y Conexos*
SITEMAG	*Sindicato Independiente de Trabajadores de la Empresa Matamoros Garment S.A. de C.V.*
SITEKIM	*Sindicato Independiente de Trabajadores de la Empresa Kukdong Internacional de México*
SJT	*Sindicato Juvenil de Trabajadores y Empleados de la Industria Textil en General con sus Derivados, Corte, Confección, Bordados y Similares de la República Mexicana*
STPS	*Secretaría del Trabajo y Previsión Social*
SUITTAR	*Sindicato Unico Independiente de Trabajadores de la Empresa Tarrant México S. de R.L. de C.V.*
USAS	United Students Against Sweatshops
WCA	Wild Cat America Ltd.

1. INTRODUCTION

The North American Agreement on Labour Cooperation (NAALC) was signed by Canada, Mexico and the United States in conjunction with the North American Free Trade Agreement (NAFTA), both of which came into force on January 1, 1994. In the preamble to the NAALC, the Governments of the three countries recall their resolve to improve working conditions and living standards in their respective territories and to protect, enhance and enforce basic workers' rights. These goals are reflected in obligations on each Party to fairly, effectively and transparently enforce its labour laws. They are pursued through cooperative activities, and by means of mechanisms for intergovernmental consultations, independent evaluations and dispute settlement.

The NAALC provides for a Public Communication process through which members of the public can raise issues related to labour law matters arising in the territory of a NAALC Party. Each country has established a National Administrative Office (NAO) that can receive and review such communications.

A public communication was received by the Canadian NAO on October 3, 2003. It was submitted by United Students Against Sweatshops, based in the United States, and the Centro de Apoyo al Trabajador, based in Mexico. The Communication was later amended to add further information, and to add the Maquila Solidarity Network, based in Canada, as a submitting party. The Canadian NAO accepted the public communication for review on March 12, 2004.

Public Communication CAN 2003-1 is the fourth public communication submitted to the Canadian NAO. The Communication raises issues related to the enforcement of labour legislation in Mexico addressing three NAALC principles: freedom of association, occupational health and safety, and minimum employment standards. The Communication concerns events that occurred between 2000 and 2004 in the State of Puebla, Mexico, including at the Matamoros Garment factory in Izúcar de Matamoros, and the Tarrant México factory in Ajalpan.

The NAALC is not designed to determine whether or not specific employers and workers have complied with labour legislation. Rather, it creates a framework of values, principles and obligations that the signatory countries must respect. The focus of this review is the government of Mexico's enforcement of its laws and adherence to its obligations under the Agreement, rather than the specific actions of workers and employers.

This report consists of five sections. The first describes the review process undertaken by the Canadian NAO. Second, key elements of the information gathered during the review are highlighted. Third, the report reviews relevant Mexican labour legislation concerning the issues raised by the Communication. This is followed by an analysis and conclusions regarding the enforcement of Mexican labour legislation and the compliance of the Mexican government with its obligations under the Agreement. The final section contains specific recommendations addressed to the Canadian Minister of Labour.

2. REVIEW PROCESS

Under Article 16(3) of the NAALC, each NAO is to provide for the submission and receipt of public communications on labour law matters arising in the territory of another NAALC country, and is to review such matters in accordance with domestic procedures. The *Canadian Guidelines for Filing Public Communications* enable any person or organization to file with the Canadian NAO public communications "regarding labour law matters arising in the territory of another party to the Agreement" (paragraph 2.a).

Two submitters, United Students Against Sweatshops (USAS), an American non-governmental organization, and the Centro de Apoyo al Trabajador (CAT), a labour rights advocacy group in Mexico, presented this public communication to the Canadian NAO on October 3, 2003. Amendments were added to the original submission on November 5 and 10, 2003, and February 13, 2004. A third petitioner, the Maquila Solidarity Network (MSN), based in Toronto, asked to be added to the Communication on January 29, 2004. The submitters also provided the NAO with additional written information on December 16, 2003, and January 8 and 30, 2004.

The *Canadian Guidelines* state that the Canadian NAO shall accept a communication for review if it meets the eligibility criteria set out in paragraph 2.b and is submitted in accordance with the procedures in paragraph 3. The guidelines are largely technical and do not focus on the merits of the allegations made, which are addressed in the review itself.

The Canadian NAO accepted Public Communication CAN 2003-1 for review on March 12, 2004. The review was deemed appropriate as the submission raised matters that may constitute a failure on the part of the government of Mexico to comply with its obligations under the NAALC, and included new information not available in previous public communications.

The role of the NAO in reviewing a public communication is to gather information and make recommendations to the Minister of Labour of Canada on whether to engage in Ministerial Consultations under Part IV of the NAALC with respect to issues that were not resolved during the review. The NAO gathered information from a wide range of sources in order to better understand and respond to the issues raised in the Communication. The NAO has compiled a public file on the Communication, which includes documents received from the submitters, interested employers and/or their clients, and the Mexican and U.S. NAOs, transcripts, and teleconference notes.

The steps in the review process were as follows:

- The Canadian NAO met with the submitters on April 1, 2004, to present information on the review process, and discussed the process with them again in a teleconference on April 16, 2004.

- A list of questions was sent to the submitters on April 16, 2004, to which they responded on May 17, 2004.

- The Canadian NAO organized a public meeting on May 28, 2004, in Toronto, Ontario. A general invitation to the public was posted on the Labour Program/Human Resources and Skills Development Canada's website. Letters of invitation were sent to all parties involved with the issues raised in the Communication including the companies mentioned in the submission. The NAO received information from the submitters, from several workers who were personally involved in the events underlying the Communication, and from the Canadian Office of the United Steel Workers of America. In addition, four companies, Levi Strauss & Company, Tommy Hilfiger, Tarrant Apparel Group and PUMA, submitted written statements dated May 21, May 26, June 1 and May 26, 2004, respectively, in response to our invitation.

- Following the public meeting, the submitters provided additional information in response to pending questions, on July 1, 2004. The Canadian NAO also held a conference call with Licenciado Miguel Ruíz, one of the two lawyers representing workers at Tarrant México, on July 9, 2004.

- A series of questions were forwarded to the Mexican NAO on July 30, 2004.

- Letters were also sent, in August 2004, to the representatives of the employers and unions named in the Communication inviting them to respond to allegations concerning their conduct.

- A conference call was held with the Secretary General of the *Sindicato Francisco Villa de la Industria Textil y Conexos* on August 19, 2004.

- The services of two Mexican legal experts were retained in August 2004 to provide a legal analysis in response to questions related to Mexico's union registration procedures. Their report was submitted on September 2, 2004.

- A response from the Mexican NAO to the questions sent on July 30, 2004, was received on October 22, 2004.

Throughout the review process, the NAO kept its Mexican and U.S. counterparts informed of steps taken and information received. In addition, the NAO informed and sought the advice of the provinces that have signed the Canadian Intergovernmental Agreement regarding the NAALC. The review of the Communication was also discussed at the meeting of the Canadian Minister of Labour's Advisory Committee on International Labour Affairs (ACILA) on March 9, 2004.

3. BACKGROUND

This section presents a summary of the information provided by the submitters, the Mexican NAO, and other interested parties.

Notwithstanding considerable inconsistencies between different versions of events, the NAO did not attempt to reconcile the facts presented, nor does it believe that it is necessary to do so. Despite the discrepancies, the key issues related to the obligations stemming from the Agreement are not in question.

3.1 Information from the Submitters

3.1.a Overview

Public Communication CAN 2003-1 raises allegations that Mexico failed to enforce its labour laws on freedom of association, occupational health and safety, and minimum employment standards with respect to events that occurred from 2000 to 2003 at Matamoros Garment, and between June 2003 and February 2004 at Tarrant México, two apparel factories in the state of Puebla, Mexico.

The submitters also argue that there has been "a persistent pattern of failure to enforce its labour law" on the part of Mexico. In this regard they refer to events in 2000-2001 at another factory, Kukdong International México in Atlixco, also in the state of Puebla, and to previous communications in which similar issues have been raised, including the following: US 94-03, US 97-02, US 97-03, CAN 98-1, US 99-01 and US 2000-01.

The submitters describe similar chains of events at both Matamoros Garment and Tarrant México. In each case, workers had grievances about their working conditions, and when they complained to management, in their view, very little improved. They say that, because the incumbent unions in both plants did little to represent workers, they had to organize themselves. They staged a work stoppage to protest their situation, but with little effect. They next decided to form an independent union to negotiate with their employer, by holding an assembly, signing the required documents and membership lists, and seeking to register the new union with the appropriate authorities, so that it would have legal status to act on their behalf. In both plants, the employer responded to the petition with a campaign of intimidation, dismissals and coercion, and, at Matamoros Garment, the incumbent union participated in the intimidation.

Both petitions for registration were denied by the responsible authority, the *Junta Local de Conciliación y Arbitraje* (JLCA) of the state of Puebla. The submitters say that the JLCA failed to provide a fair process for the registration of the new unions, and failed to protect union supporters from discrimination and intimidation by company officials. They also say that the Mexican government has failed to ensure that the JLCA is

impartial and independent. In addition, they allege in the case of Matamoros that local police and government authorities failed to protect workers from intimidation by the incumbent union.

The submitters also make a series of allegations with respect to the workers' underlying concerns about conditions in the two plants. They say that Mexican authorities failed to enforce laws on minimum wage, timely payment of wages, hours of work and overtime, severance pay in case of layoff, overtime pay, and prevention of occupational illnesses and injuries.

In order to clearly identify the issues, the following sections summarize separately the information received from the submitters with respect to each NAALC principle relevant to their allegations - freedom of association and the right to organize, minimum employment standards and occupational safety and health. Readers may however wish to refer to the following chronological tables in order to see the overall sequence of events described in the Communication.

Table 1 - Chronology of Events at Matamoros Garment

Events	Date
Matamoros Garment opens for business The incumbent union is affiliated with the CROC	1999
Work stoppage regarding unpaid back wages The SFV replaces the CROC-affiliated union and signs a collective contract	November 2000
Flooding and unsanitary conditions of the cafeteria	August-September 2002
Wages not deposited for workers who had chosen direct bank deposit of their wages	October 25, 2002
Workers are often asked to stay to work past the closing time of 5:00 pm	November-December 2002
Wages not deposited for workers who had chosen direct bank deposit of their wages	November 1, 2002
Workers are asked to come in to work for half of the day but are forced to work until 7:00 pm. This a national holiday.	November 20, 2002
Some weeks, employees are not paid at all or are paid only 50% of their salaries	December 2002
Wages not deposited for workers who had chosen direct bank deposit of their wages	December 20, 2002
One-day strike Assembly to form an independent union: SITEMAG	January 13, 2003
Back wages are paid in presence of the JLCA	January 14, 2003
SITEMAG files its registration petition with the JLCA of Puebla	January 20, 2003
Agreement signed between the director of the plant and workers' representatives regarding the demands presented during the work stoppage	January 21, 2003

SITEMAG leaders file a complaint for harassment with the Puebla State Attorney General's Public Prosecutor SITEMAG leaders meet with municipal authorities to demand increased police protection	February 25, 2003
Some workers are sent home due to lack of production	February 26-March 24, 2003
Decision by the JLCA to deny SITEMAG union registration	March 19, 2003
Last day of production in the plant	March 20, 2003
59 workers file a lawsuit against the factory to the State Attorney General Office for failure to pay all the workers their legally entitled wages	March 24, 2003
Temporary plant closure for two weeks Workers are paid their last two weeks' wages	March 24, 2003
SITEMAG receives JLCA's written decision by mail denying registration	March 27, 2003
Announcement of another temporary closure of the plant until May 2	April 8, 2003

Table 2 - Chronology of Events at Tarrant México

Events	Date
Confecciones Jamil starts its operations	2000
Confecciones Jamil is bought by Tarrant Apparel Group and becomes Tarrant México	March 29, 2001
Tarrant México signs a collective contract with a union without the knowledge of workers. Workers are not aware that a union is representing them	June 4, 2002
Work stoppage to protest working conditions. Workers' coalition negotiates with plant management without reaching agreement Workers' coalition presents to the company in front of JLC of Tehuacán a list of 14 demands. Plant administrator refuses to negotiate with coalition	June 10, 2003 June 11, 2003 June 12, 2003
Conciliation talks between company and workers	June 18 & 30, 2003
Plant closures every Monday	July-August 2003
Conclusion of a 16-point agreement between workers' coalition and employer	July 8, 2003
Assembly to form an independent union, SUITTAR, and election of executive committee	July 12, 2003
Seven SUITTAR leaders are fired Two agree to resign voluntarily	July 16, 2003
Approximately 230 additional workers are dismissed About 75% of them accept severance payment lower than what they are legally entitled to	August 5-20, 2003
SUITTAR files its registration petition with the JLCA of Puebla	August 7, 2003
SUITTAR files with the JLCA a reinstatement demand for five leaders fired.	August 7, 2003

Over 500 additional workers are laid off	September-December 2003
SUITTAR files a reinstatement demand with the JLCA for a second group of 22 workers	September 4, 2003
Many Mondays, the plant is closed	October 2003 - January 2004
Decision by the JLCA to deny SUITTAR union registration	October 6, 2003
Reinstatement hearing for the first group of five workers dismissed July 16: company makes a severance offer but workers ask to postpone the hearing	October 15, 2003
Reinstatement hearing for first group: company's lawyer does not show up and hearing is postponed	October 22, 2003
Reinstatement hearing for the second group of 22 workers: 20 of them accept the company's severance offer	October 23, 2003
SUITTAR files an appeal of the JLCA's decision to deny the union registration. The appeal is assigned to the Third District Court of Puebla	October 27, 2003
Four of the five leaders from the first group accept the company's severance offer and desist from the appeal of the JLCA's registration denial	October 27, 2003
The Third District Court accepts for review SUITTAR's appeal	November 4, 2003
SUITTAR files an appeal addendum with the Federal Court designating the remaining member of first group to represent SUITTAR's common interests in the appeal process	November 7, 2003
SUITTAR files a reinstatement demand for a third group of two workers	November 13, 2003
Hearing of SUITTAR's appeal: the hearing is postponed because the JLCA has not yet delivered its report on the case	November 21, 2003
Fifth and last member of first group accepts the company's severance offer and desists from the appeal of the JLCA's registration denial on behalf of SUITTAR	November 28, 2003
Five workers from first group receive their severance cheques 20 workers from the second group negotiate their severance amount	December 2-3, 2003
Third District Court Judge dismisses SUITTAR's appeal because the appellants have desisted from their case	December 8, 2003
Plant is closed	December 20, 2003 - January 19, 2004
20 workers from the 2nd group agree on their severance amount 2 other workers from 2nd group negotiate their reinstatement/severance pay Reinstatement hearing for 3rd group of two workers: one accepts the company's severance offer and hearing of the second one is postponed	January 9, 2004
Announcement that the plant will close for five to six months. Factory lays off all but 110 employees who will stay to finish remaining production	January 26, 2004
Tarrant México plant, now known as AZT International, officially closes All workers receive their severance payment	February 3, 2004

Reinstatement hearing for remaining two workers from 2nd group: they ask to postpone the hearing	March 2, 2004
Reinstatement hearing for remaining 2 workers from 2nd group: they accept the company's severance offer Reinstatement hearing for remaining worker from 3rd group: worker accepts the company's severance offer	March 22, 2004

3.1.b Issues Raised by the Communication

Article 1 of the NAALC lists the Agreement's objectives, which include promoting eleven basic labour principles, four of which are particularly relevant to the allegations reviewed in Public Communication CAN 2003-1:

- freedom of association and protection of the right to organize;
- the right to bargain collectively;
- minimum employment standards, particularly minimum wages and overtime laws; and
- prevention of occupational injuries and illnesses.

To further these objectives, each signatory country commits to a series of obligations listed in Part Two of the NAALC. The submitters allege that Mexico has failed to meet the following obligations in respect of the above-noted principles:

- ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and continue to strive to improve those standards in that light (art. 2);
- promote compliance with and effectively enforce its labour law through appropriate government action such as: appointing and training inspectors; monitoring compliance and investigating suspected violations, including through on-site inspections; requiring record keeping and reporting; encouraging the establishment of worker-management committees; and providing or encouraging mediation and conciliation services (art. 3.1);
- ensure that its competent authorities give due consideration to any request for an investigation of an alleged violation of its labour law (art. 3.2);
- ensure that persons have appropriate access to administrative, quasijudicial, judicial or labour tribunals (art. 4);
- ensure that tribunal proceedings for the enforcement of its labour law are fair, equitable and transparent and to provide that such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted limits (art. 5.1);
- provide that tribunal final decisions are made in writing without undue delay to the parties to the proceedings (art. 5.2);
- provide that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions (art.5.3);

- ensure that tribunals are impartial and independent and do not have any substantial interest in the outcomes of the matter (art 5.4); and
- promote public awareness of its labour law (art. 7).

3.1.1 Freedom of Association

3.1.1.a Matamoros Garment

Matamoros Garment S.A. de C.V. is located in Izúcar de Matamoros, Puebla. It opened for business in 1999.

At the outset, workers in the plant were represented by a union affiliated with one of the largest and oldest union confederations in Mexico: *The Confederación Revolucionario de Obreros y Campesinos* (CROC). In November 2000, workers staged a work stoppage, demanding two weeks' back wages and removal of the CROC-affiliated union. That union was replaced soon thereafter by the *Sindicato Francisco Villa de la Industria Textil, Similares y Conexos* (SFV), an affiliate of the *Confederación de Trabajadores de México* (CTM), the largest trade union confederation in Mexico.

According to the Communication, workers in the plant did not know how SFV came to represent them. Moreover, SFV signed a collective contract with the employer without the prior consent or knowledge of the workers. Workers nonetheless had dues to SFV deducted from their pay checks. When workers asked the union to produce a copy of their collective agreement, their request was refused.

On January 13, 2003, 190 out of the approximately 250 workers employed at Matamoros Garment went on strike to protest poor working conditions (including forced overtime, being locked in the factory, verbal harassment, and unhealthy conditions in the cafeteria), and the failure of the employer to pay back wages owing. They also protested against the incumbent union, which they felt did not represent them or protect their interests, and the fact that they never had the choice to be part or not of the CTM-affiliated union.

That day, a representative of the *Junta Local de Conciliación y Arbitraje* (JLCA) of the state of Puebla came to the plant to speak to the workers, who gave him a list of demands regarding their complaints. He urged them to return to work and said that getting an agreement on back wages was more important than their other complaints.

The same day, 162 workers signed documents to form an independent union, the *Sindicato Independiente de Trabajadores de la Empresa Matamoros Garment S.A. de C.V.* (SITEMAG). SITEMAG filed its registration petition (*registro*) with the JLCA on January 20, 2003.

The submitters claim that the move to organize SITEMAG prompted retaliation and intimidation on the part of the employer. In the days leading up to the filing of SITEMAG's petition for registration, it is alleged that workers were told by management to stop organizing or they would lose their jobs. Similar threats were made before the

visit of a representative of PUMA, one of Matamoros Garment's customers, on January 18, 2003.

On January 21, 2003, the director of the plant and five workers' representatives signed an agreement addressing the issues of freedom of association, unhealthy cafeteria conditions, forced overtime, and workers being locked in the factory. The agreement stated that workers were free to form a union and the company had no authority to choose the union representing the workers. Submitters claim that workers' representatives were taken against their will to the management office and were intimidated into signing the agreement, even though they believed that it was not favourable to them. It is also alleged that a JLCA representative witnessed the signing of the agreement but did not mediate the labour dispute.

According to the submitters, the climate at the factory worsened in the following weeks. The plant was losing business. On many occasions managers blamed the workers' attempt to organize an independent union for the loss of business, and said that if their efforts continued the factory would lose contracts, which would result in less work at the plant. Managers asked workers to publicly retract their grievances and told them not to tell auditors about problems at the plant when licensees came to conduct on-site inspections.

In addition, the incumbent union allegedly tried to intimidate SITEMAG supporters. On February 12, 2003, SFV representatives delivered a two-hour speech to workers in the factory, during work hours, urging workers to stop their efforts to form an independent union. SFV representatives told workers that if they continued to seek an independent union, PUMA, a key client, would withdraw its business from the factory permanently. Workers were required by the employer to remain at their workstations during the speech so that they would have to listen to it.

In February 2003, SITEMAG leaders noticed they were being followed by 12 men conducting surveillance and taking photos. They believed that SFV was responsible for the surveillance. They filed a complaint on February 25th with the office of the Puebla State Attorney General's Public Prosecutor in Izúcar de Matamoros. They also met with municipal authorities and requested increased police protection. However, workers did not notice any increase in police protection other than a few police cars patrolling outside of the plant premises when workers were leaving at closing time, and only for a few days after they filed their complaint. No further action was taken on the complaint.

Starting on February 26, 2003, management began sending workers home due to a lack of production. The submitters allege that some workers were targeted for layoff because of their union activism.

On March 19, 2003, the JLCA rendered its decision on SITEMAG's petition for registration. It denied the petition on four grounds:

(1) The petitioners had failed to submit two authorized copies of the list of those attending the union's constituent assembly in accordance with the requirements of Article 365 of Mexico's Federal Labour Law (LFT). More specifically, the second typed copy of the attendance list submitted by the petitioners had to be disregarded because it purported to be authorized by a Ricarda Vasquez Martinez, who signed as Organizing Secretary of the union (one of three union officers required by law to authorize the list), while the second attendance list itself does not include a Ricarda Vasquez Martinez, but rather a Ricarda Vasquez Hernandez. Thus, the JLCA concluded, Ricarda Vasquez Martinez could not have authorized the list. While the first, handwritten list may have contained the signature of Ricarda Vasquez Martinez, this is of little relevance because it is different from the second one, and thus there are not two authorized copies, and in any event it does not state the purposes of the union, as the second one does. Similarly, the other documents shown could not have been duly authorized either, because Ricarda Vasquez Hernandez could not have authorized them.

(2)The petitioners had not provided proof that all workers who signed the assembly list were 14 years old or older.

(3)One worker whose name appeared on the attendance list submitted by the petitioners later appeared before the JLCA and stated that he had not signed the list.

(4)The factory was closed and thus the legal requirement that there be at least 20 active service employees to form the type of union in question could not be met.

The submitters argue that the JLCA's decision to deny registration to SITEMAG was based on technicalities and lacked legal foundations. The difference between the handwritten and the typed attendance list was plainly the result of a typographical error. The JLCA should have told SITEMAG about this technical deficiency in the petition and allowed the union to correct it. The other grounds cited by the JLCA were either incorrect or technical matters that should also have been brought to SITEMAG's attention for correction.

The submitters also argue that the JLCA was not impartial in the matter. The JLCA is a tripartite organization which includes representatives of business and labour. The submitters say that the labour representative who participated in the JLCA's decision on the SITEMAG registration petition is affiliated with the CROC, a union confederation whose member unions often operate as "*sindicatos blancos*", that is, unions that sign protection contracts with employers that do more to safeguard employer interests than to protect employees. The labour representative thus had a common interest with a union like the SFV in ensuring that new independent unions like SITEMAG did not get organized. Thus the labour representative on the JLCA could not be seen as impartial.

The JLCA's decision was mailed to the wrong address and as a result did not reach SITEMAG representatives until it was retrieved from a neighbouring house on March 27,

2003. This happened despite the fact that SITEMAG had provided the proper address in a letter delivered to the JLCA on February 12, 2003.

SITEMAG representatives did not appeal the JLCA's denial of registration. They say that they did not have sufficient time to do so within the 15-day period to file such an appeal, because such appeals require the assistance of specialized lawyers whose services are not available in the surrounding area, and they would not have been able to obtain such assistance and ensure that the required documents were drafted and filed within legal deadlines.

On March 24, 2003, Matamoros Garment ceased operations. Representatives of the factory announced to the workers, in the presence of representatives of the SFV and the JLCA, the implementation of a *paro tecnico*, a temporary work stoppage, due to financial difficulties encountered by the factory. Employees were told that they would be paid 50% of their salaries for the next two weeks. On April 8, 2003, the president of the JLCA announced another *paro tecnico* to last until May 2, 2003. During this period, workers continued receiving 50% of their regular wages. Workers did not receive any further notice about whether the factory had permanently closed or if the *paro tecnico* remains ongoing. Even though it is assumed that Matamoros Garment is now closed, workers never received any severance payment because the closure was only temporary.

Many SITEMAG supporters have since had difficulty finding work. The submitters believe that a blacklist of independent union supporters or union activists has been circulated among employers within the area. Workers told the NAO that when they show up at a factory looking for work, they are asked about their previous employment and then are told that there is no work for them. Some have been told that employers don't want them because they are considered "agitators".

3.1.1.b Tarrant México

The sewing facility Confecciones Jamil S.A. de C.V. was built in 1999 in the municipality of Ajalpan, near Tehuacán, in the state of Puebla. It began operations in 2000 with a workforce of approximately 2,000 employees.

During that year, negotiations took place in which the Los Angeles-based Tarrant Apparel Group (TAG) sought to buy the factory. On March 29, 2001, TAG completed the acquisition of Confecciones Jamil, which then became Tarrant México S. De R.L. De C.V..

On June 10, 2003, about 800 workers at Tarrant México, out of a workforce that then numbered about 1,100, began work stoppages to seek improvements in their working conditions.

The following day, workers in the plant formed a coalition comprised of seven representatives who sought to negotiate improvements in working conditions with plant management.

On June 12, coalition representatives met with legal counsel for Tarrant in front of the *Junta Local de Conciliación de Tehuacán* (JLC). The workers presented their demands to the employer through the JLC in a 14-point *Pliego Petitorio*. It was agreed that the company's lawyer would ask the plant manager to recognize the coalition and to discuss the workers' demands. However, it is alleged that when the coalition returned to the factory, the plant manager again refused to negotiate and threatened the workers by telling them that they would regret their actions.

The coalition persisted in its efforts, and a further meeting at the JLC was scheduled for July 8, 2003. On that day the coalition agreed with the employer to a 16-point settlement of their demands. The agreement was reached with the assistance of the JLC.

However, soon afterwards workers found that the settlement was unsatisfactory from their perspective. Of particular concern was that one clause agreed upon stipulated that the coalition would end its representation of the workers in negotiations and stop interfering in the company's affairs. At the NAO public meeting, workers explained that they had signed the agreement under pressure and did not have sufficient time to study its implications.

At the beginning of July, Tarrant management began a reduced work week. Every Monday during July and August, the plant was closed. According to plant management, this was due to lack of business.

On July 12, 2003, approximately 400 workers attended an assembly to form a union to represent workers in the Tarrant México plant, the *Sindicato Unico Independiente de Trabajadores de la Empresa Tarrant México S. de R.L. de C.V.* (SUITTAR). More than 300 other workers joined this union during the following weeks.

On July 16, 2003, seven SUITTAR leaders were summarily dismissed and escorted out of the factory. Two immediately accepted severance payments in settlement of any claims against Tarrant.

On August 4, 2003, Tarrant workers marched to protest the firing of the SUITTAR leaders, the weekly plant closures, as well as possible future lay-offs that had been reported in the local media.

On August 7, 2003, SUITTAR representatives filed a petition with the Puebla JLCA to register the union. The petition was signed by 736 workers, or approximately 75% of the Tarrant workforce. August 7 was the earliest opportunity to present the petition, since the JLCA was closed for vacation during the last two weeks of July.

That same day, SUITTAR representatives also presented to the JLCA a formal demand for the reinstatement of the five SUITTAR leaders dismissed on July 16th whose cases had not been resolved. This was the first of several such demands, the outcome of which will be discussed below.

Company management changed in August 2003. Between August 5 and 20, 2003, close to 230 additional SUITTAR supporters were dismissed. Tarrant management stated that the reason for the layoffs was insufficient demand for the company's products.

On August 18th, some Tarrant workers and their lawyer went to the JLC to meet with the company to seek an end to the dismissals of SUITTAR members, but plant representatives did not show up.

The submitters say that these lay-offs targeted SUITTAR supporters for anti-union reasons, and that Tarrant did not follow legally required processes for instituting layoffs due to economic reasons. They say that JLCA representatives themselves confirmed that Tarrant had not sought the legally required authorization before laying off employees for economic reasons.

On September 4, 2003, SUITTAR filed a demand for reinstatement on behalf of a second group of 22 fired leaders.

From September to December 2003, over 500 additional workers were laid off. Again the company explained the lay-offs on the basis of lack of work. However, the submitters say that during this period, the company also hired new employees on short-term, renewable individual employment contracts. Between October 2003 and January 2004, there were also regular plant closings on Mondays.

The submitters say that**,** during this period**,** workers at Tarrant were frequently subjected to threats by management that the factory would close or lose contracts if they continued to seek to organize a union. Some workers reported that factory supervisors had said to them that dismissed union leaders deserved to be dismissed for their union activism. Some of the workers were also told that their dismissal was due to their union activities.

On the other hand, an article from the local media, provided by the submitters, shows that by October 2003, Tarrant had closed four of its eight plants in Mexico and was planning to close three more by the end of November 2003. Directors of the company stated that only the Ajalpan plant would be kept open. The article also reported that the company started firing employees at three other plants in June 2003, when labour conflicts at those plants started.

On October 6, 2003, the JLCA rendered a decision rejecting SUITTAR's petition for registration. The reasons for the decision were the following:

(1) SUITTAR had failed to present in duplicate the legally required documents, as required by Mexico's Federal Labour Law (LFT). Specifically, it had failed to present two copies in addition to the original versions of each document.

(2) SUITTAR members had failed to submit separate documents recording (1) the formation of the union and (2) the election of its executive committee in separate legal acts. These separate legal acts must take place at separate assemblies and must be recorded in separate documents.
(3) SUITTAR's by-laws are deficient in that they fail to clearly mention the administration and disposition of the goods owned by the union, and they fail to clearly mention what sanctions may be applied to union members under union disciplinary procedures.

(4) SUITTAR named a person as a union officer with respect to whom no evidence was presented to establish that she was either a member of the union or an employee of Tarrant. Since SUITTAR was an enterprise level union, she could not be a member of the union unless she was a Tarrant employee. Therefore she could not assume an office under which she is charged with protecting the interests of the members of the union.

The submitters argue that the decision lacks any foundation in Mexican law. Specifically, they submitted a legal opinion to the effect that:

(1) The original documents count as one of the legally required two copies of the relevant documents.

(2) There is nothing in Mexican law that requires that the acts of forming a union and electing its executive committee take place at different assemblies and be recorded in separate documents.

(3) The union's by-laws do in fact provide detailed provisions governing the administration and disposition of goods owned by the union, and do spell out in detail the sanctions that may be applied to union members in the case of union disciplinary action.

(4) The union officer in question was on the membership list of the union, but her name was misspelled where she was identified in the documents as an officer of the union. This was a minor typographical error affecting only one of her four given and family names. In any event, even if she was not eligible to serve as an officer of the union, the proper course of action on the part of the JLCA would have been to warn the union or to deny her the right to serve as a union officer. There is no basis in Mexican labour law to deny the registration of the union simply because one of its officers is not eligible to serve in her post.

(5) Each of the deficiencies in the registration application that the JLCA purports to find is in fact a technical error that should have been brought to the attention of the applicants so that it could be corrected.

With respect to point number 5, it is to be noted that SUITTAR representatives met with the president or secretary general of the JLCA on August 27, September 15, 18, 24 and

25, 2003, to discuss the issue of legal recognition of the independent union, and thus there was ample opportunity to address technical deficiencies had the JLCA chosen to raise such matters.

SUITTAR filed an appeal of the JLCA's decision on October 27, 2003, with the Federal Court in the State of Puebla. The Court assigned the case to the Third District Court of Puebla.

Five workers signed the appeal documents. The appellants were the five SUITTAR executive committee members who had sought reinstatement after having been dismissed on July 16, 2003. Four of them desisted from the appeal on October 27th, accepting severance payments in settlement of all of their claims against Tarrant. SUITTAR filed an appeal addendum on November 7th designating the remaining SUITTAR executive committee member as the representative of its common interests in the appeal.

On November 4, 2003, the Third District Court scheduled a hearing for November 21, 2003.

On November 13, 2003, a third reinstatement demand was filed with the JLCA on behalf of two other workers.

On November 21st, a judge of the Third District Court deferred the hearing on SUITTAR's appeal to December 8th. The judge did this because the JLCA had not yet provided to the Court a report on the registration decision. According to Mexican law, this report is required in the appeal process and had been due at the Court by November 13th, at the latest (see section 4.2.1.f below).

On November 28th, the last appellant resigned from employment at Tarrant and desisted from the appeal on behalf of SUITTAR, allegedly accepting in return a severance package equal to the amount that was legally required.

On December 8th, the Third District Court Judge dismissed SUITTAR's appeal because all of the appellants had desisted from it, leaving no interested party to pursue the matter. On December 8 and 12, 2003, respectively, the two remaining SUITTAR leaders still employed at the factory were laid off.

In December 2003, Limited Brands, a client of Tarrant Apparel Group, insisted that Tarrant México reinstate the four remaining fired leaders or pay their full severance. Limited Brands did this on the basis of an independent investigation of alleged labour and human rights violations at the factory that it had conducted between November 6 and 10, 2003. Eventually, Limited Brands withdrew its business from the Ajalpan factory because of the factory's refusal to act upon the labour violations identified in the course of its investigation.

On December 20th, the factory closed for four weeks. When employees returned to work on January 19, 2004, they were sent back home due to a lack of production. At this point, there were between 350 and 450 workers still employed at the plant.

On January 26, 2004, factory management informed workers that the plant would close for a period of five to six months and that 110 employees would be kept for another two weeks to finish remaining production requirements. The workers laid off were given severance payments. They also learned that day that the ownership of the plant had changed and the factory would from then on be known as AZT International.

The factory publicly announced its closure on February 3rd.

On February 5, 2004, the President of the JLCA stated that the factory had closed down and workers would receive 75% of their legally-entitled severance pay. He said that these severance agreements had been negotiated between the company and an incumbent union already representing workers in the plant, the *Sindicato Juvenil de Trabajadores y Empleados de la Industria Textil en General con sus Derivados, Corte, Confección, Bordados y Similares de la República Mexicana* (SJT). The submitters say that workers were unaware of these negotiations and had no say over the decision of the established union.

The Tarrant México plant has remained closed since that time.

Workers told the Canadian NAO that their names and photos had been placed on a blacklist distributed to all businesses in the Tehuacán area. Workers and submitters said that some SUITTAR supporters could not find work in other plants and gave specific examples of what workers were being told where they were denied work. One worker said that he was dismissed from subsequent employment in the area because of his previous participation in the Tarrant workers' movement.

Workers also told the Canadian NAO that the settlements of their claims for reinstatement and their withdrawal of the appeal of the JLCA's registration decision were procured by intimidation on the part of Tarrant representatives. Specifically, they said that company representatives repeatedly threatened workers that if they did not accept the severance payments that the company was offering to settle their claims they would end up receiving nothing. As time wore on, these threats became more compelling. Once laid off, workers often lacked any source of income. There is no unemployment insurance program in Mexico, and new jobs often take a long time to find, either due to their scarcity, to blacklisting, or both. This directly impacted workers' families. For example, a Worker Rights Consortium investigation in August 2003, a copy of which was presented to the NAO, indicated that the children of some workers would be unable to attend school because they had no money to pay fees and other costs. After three or four months without wages, workers were under tremendous pressure from their family to accept any settlement money. Most workers in the end accepted less severance pay than they were entitled to under Mexican labour law.

Workers also told the NAO that Tarrant representative used aggressive tactics to secure settlements. Workers accused the lawyer for Tarrant of manipulating the hearing schedule in order to increase pressure on workers to settle, in one case by failing to show up at a set of hearings on October 22, 2003, so that it would have to be rescheduled, and in another one by dragging out negotiations to finalize settlement amounts, agreed to in principle on October 23, 2003, until early January 2004.

On January 5, 2004, Tarrant representatives arrived at the home of one of the SUITTAR leaders and began to pressure her to accept a severance offer, and to take the initiative herself to convince the two other leaders waiting for their reinstatement hearings to accept Tarrant's severance offers. On February 16, 2004, the plant manager sent representatives to these three SUITTAR leaders' homes to bring them to the plant to speak with her. There she offered them severance cheques and threatened that they would lose their severance unless they accepted those cheques. Tarrant's lawyer also met directly with each of the five workers who signed the appeal of the registration decision to try to persuade them to drop their appeal and reinstatement claims, notwithstanding that each of these workers was represented by a lawyer in both matters. In the case of the last appellant, Tarrant's lawyer drove him personally to the court house to sign and file the paperwork required to desist from the appeal and then took him to the JLCA's office to sign his voluntary resignation and severance settlement agreement.

A chronological table of events for each of the reinstatement claims mentioned above is set out below.

Table 3 - Chronology of Events for Reinstatement of Five Leaders

Events	Date
7 SUITTAR leaders are fired	July 16, 2003
A reinstatement demand for five of the seven leaders is filed with the JLCA	August 7, 2003
Reinstatement hearing: the company makes an offer but SUITTAR decides to postpone the hearing until October 22, 2003	October 15, 2003
Company's lawyer does not show up and the hearing is postponed until December 2, 2003	October 22, 2003
Company's lawyer meets at the JLC of Tehuacán with four of the five leaders, who accept a severance offer that is above what is legally required and desist from the registration appeal	October 27, 2003
The fifth leader accepts a severance offer from the company and withdraws from the registration appeal on behalf of SUITTAR	November 28, 2003
Severance payments take place	December 2-3, 2003

Table 4 - Chronology of Events for Reinstatement of 22 Leaders

Events	Date
A reinstatement demand for 22 fired leaders is filed with the JLCA	September 4, 2003
Reinstatement hearing: 20 of the 22 workers accept in principle a severance offer between 60% and 80% of what they are legally entitled to	October 23, 2003
The 20 workers who have agreed to resign continue to negotiate their severance amount but cannot come to an agreement with the employer	December 2-3, 2003
The group of 20 workers finalize the amount of their severance The other 2 workers negotiate their reinstatement and a follow-up hearing is scheduled for March 2, 2004	January 9, 2004
The 2 remaining workers ask to postpone their hearing until March 22, 2004	March 2, 2004
The 2 workers agree to a severance payment between 80% and 100% of their legally entitled severance	March 22, 2004

Table 5 - Chronology of Events for Reinstatement of Two Leaders

Events	Date
A reinstatement demand for two leaders is filed with the JLCA	November 13, 2003
Reinstatement hearing: one worker has withdrawn his demand. The other one asks to postpone until March 22, 2004	January 9, 2004
The remaining worker agrees to a severance payment between 80% and 100% of his legally entitled severance	March 22, 2004

Finally, workers explained that there was considerable confusion about which union, if any, had rights to represent the workers at Tarrant México at the time that SUITTAR was organized. When the president of the JLC of Tehuacán met with the protesters during their march of August 4, 2003, he told them that there was no union at the Ajalpan plant. Two days later, the local media reported that Tarrant México had a collective agreement signed with a union affiliated with the *Federación Revolucionaria de Obreros y Campesinos* (FROC), in turn affiliated with the CROC. On September 25th, the President of the JLCA told SUITTAR representatives that workers at Tarrant México were represented by the CTM-affiliated *Sindicato Nacional de la Industria de la Confección, Similares y Conexos "Belisario Dominguez"*, and that this union had signed a collective contract with Tarrant on June 4, 2002. However, soon afterwards, workers learned through the local media that according to the Secretary General of the JLCA they were represented by the *Sindicato Juvenil de Trabajadores y Empleados de la Industria Textil en General con sus Derivados, Corte, Confección, Bordados y Similares de la República Mexicana* (SJT). It later turned out that in fact it was the SJT that had signed a collective contract with Tarrant México on June 4, 2002. The submitters say that workers in the plant seem to have been unaware of this, that no union dues were ever deducted from

their pay, and that workers were unable to obtain a copy of the collective contract from the SJT despite having directly requested it. The submitters argue that the SJT did not represent the interests of workers in the plant.

3.1.2 Minimum Employment Standards

3.1.2.a Matamoros Garment

The communication raises five minimum employment standards issues: (1) timely payment of wages; (2) payment of minimum wages; (3) involuntary overtime; (4) compliance with legal requirements for initiating layoffs; and (5) severance payments on layoff.

Timely Payment of Wages

The timeliness of wage payments was a recurring issue at Matamoros Garment. Workers had earlier staged a work stoppage in November 2000 demanding the payment of two weeks' back wages.

In October 2002, problems started for employees who had opted for direct bank deposits to pay their wages. On October 25th, wages were not deposited in employees' bank accounts. Deposits only became available the following Tuesday, on October 29th. Moreover, as workers soon realized, the deposits amounted to only 50% of their wages. The remainder would only be paid on January 14, 2003, following a work stoppage.

Again**,** on November 1st, the employer failed to deposit wages into workers' bank accounts on time. In the first week of December, no employees were paid for their week's work. Some workers were only paid half of their wages for the week of December 16-20, 2002. Workers receiving direct deposits again did not receive them on December 20, 2002. Then workers were not paid for the weeks of December 23 and 30, 2002.

The failure to make wage payments was one of the main reasons motivating the strike of January 13, 2003. The next day, workers did receive their three weeks' back pay in the form of backdated deposit slips or cash payments. These back payments were handed out at the plant by the SFV and witnessed by JLCA representatives.

As the submitters point out, the JLCA was thus aware that there had been more than two months of irregular pay at Matamoros Garment, including three weeks' work without pay.

Workers were again not paid for the week of March 10 to 17, 2003. On March 17, 2003, Matamoros Garment told its workers that the plant would be closing, and that they should pick up their last paycheques on March 20th. That day, management informed the workers that their cheques were not available, and that they should return on March 24th to pick them up.

On March 18th, SITEMAG wrote a letter to the President of the Municipal Office of Izúcar de Matamoros, Profesor Melitón Lozano Pérez, claiming unpaid wages and occupational safety and health (OSH) violations at Matamoros Garment. Workers were asking Profesor Lozano's support for the workers in their efforts to resolve these issues.

On March 24, 2003, a group of 59 workers filed a claim against Matamoros Garment with the State of Puebla Attorney General's Office for theft of wages in connection with the failure to pay all the workers their legally entitled wages. Later on that day, the employer gave workers backdated cheques paying them for the weeks of March 10 to 16, and March 17 to 24. Again, these payments were overseen by the JLCA.

The submitters said in their original submission that no action has been taken by these authorities regarding this lawsuit. However, they informed the Canadian NAO at the public meeting that no further action was expected on this matter because workers were in fact paid by the end of the day on March 24, 2003.

A letter from the Municipal Office to the U.S. Labor Exchange in the Americas Project (LEAP) dated March 25, 2003, confirms that municipal authorities were aware of the dispute at Matamoros Garment between the workers and the employer and of the complaints brought forward by workers regarding unpaid wages and poor working conditions. However, the letter also states that back wages owed to workers were paid the previous day, on March 24th.

Failure to pay the minimum wage

When the payments for back wages were handed out on January 14, 2003, many workers were not paid the minimum wage of 52.10 pesos per day for sewers and seamstresses applicable at that time for Zone C (Puebla) factories. It is not clear from the pay stubs appended to the Communication whether the workers in question fell within those occupational categories. However, it appears that some workers were not even paid the lowest minimum wage of 40.30 pesos per day for general workers in Zone C, as some received a salary as low as 39.00 pesos for a ten-hour day. The Puebla JLCA witnessed these payments, and, the submitters say, knew or should have known that they were below minimum wage levels. At the public meeting, a worker told the Canadian NAO that she saw one of her co-workers ask the JLCA representative why she was being paid lower than what she should be paid for her professional group (professional seamstress) and he told her to see her personnel manager to fix this.

Involuntary Overtime

Workers were called in to work on November 20, 2002, which is national holiday in Mexico. The employer told the workers it would only be for a half day, but they were forced to stay until the evening.

The practice of exerting pressure on workers to stay past the usual closing time of 5:00 p.m., sometimes by not providing transportation before 7:00 p.m., was repeated on several occasions during November and December 2002.

It is also alleged that on some occasions workers were forced to work on Sundays or late into the night. Witnesses said that managers kept workers late to meet production goals/quotas. Workers also complained that on several occasions they were locked in the factory.

The agreement reached between plant management and workers on January 21, 2003, listed steps to be followed when workers would be required to work overtime, including giving notice to workers at least one day ahead. In addition, workers would have the right to decide whether they wanted to work overtime. This was also intended to take care of the issue of being locked in the factory. However, the agreement did not resolve the lack of transportation issue.

It should be noted that the Communication contains contradictory evidence in regard to workers being locked in the factory. Some workers say in their statements that the doors of the plant were locked. Others say that doors were not locked but that guards from the company prevented employees from leaving. Others say that the gate of the compound was guarded or locked. Still others told the Canadian NAO that a way of coercing workers was for supervisors and managers to take the workers' attendance cards so they could not check out and claim the number of hours worked that day if they refused to stay past the regular hours. In addition, these workers could not punch in the next morning and managers would use this tactic to deduct a day or more from the wages of the workers who had refused to work overtime.

The difference between being locked in the factory and being prevented to leave or coerced is important. Being locked in the factory clearly imposes a greater degree of compulsion, and poses serious health and safety risks. On the other hand, under Mexican law, employers may insist that workers work overtime, on account of exceptional circumstances, up to three hours a day, no more than three times a week, for a maximum of nine hours of overtime per week.

Answers to questions from the Canadian NAO regarding these apparent contradictions in the information presented by the submitters did not resolve them.

Layoff Procedures

Mexican law requires that employers make an application to the relevant authorities, in this case the Puebla JLCA, in the case of a temporary or permanent plant closure for economic reasons. Such application must generally be made prior to initiating layoffs (these procedures are discussed in more detail in section 4 below). The submitters claim that workers had no notice of any such procedures or their outcome. Even though the

Puebla JLCA supervised the distribution of the last pay cheques to workers on March 24, 2003, the submitters say that the JLCA itself admitted that Matamoros Garment never filed such an application.

Severance Payments on Layoff

Following the closure of the Matamoros Garment plant on March 24, 2003, workers received 50% of their regular salary for the next 6 weeks. This amount is considerably less than what workers are entitled to under Mexican law upon the permanent closure of a plant. The submitters point out that the sewing machines were removed from the factory on the evening of March 25, 2003, and that the plant has never reopened. While the JLCA declared a temporary closure on March 24th, and again on April 8th, it has never taken steps to recognize that the plant is permanently closed and to ensure that workers receive the severance pay to which they are entitled upon a permanent plant closure.

3.1.2.b Tarrant México

The Communication says that the following minimum employment standards breaches took place at Tarrant México: (1) failure to make timely wage payments, (2) excessive overtime hours, (3) failure to follow legally required layoff procedures, and (4) failure to make the legally required severance payments upon the closure of the plant in February 2004.

Wages and hours of work

In May 2003, Levi Strauss & Company (Levi's), one of Tarrant' clients, audited the plant and identified violations including non payment of proper overtime wages and excessive overtime hours. However, on a follow-up visit in June 2003, Levi's auditors confirmed that workers had received back wages owed to them, an unsatisfactory manager had been replaced, and employees were no longer working excessive overtime.

During their work stoppage of June 10-12, 2003, workers sought, among other things, payment of profit-sharing benefits for 2000 and 2001, payment of proper overtime wages, and a commitment from plant management to abide by an 8-hour work day and to respect legal holidays.

These demands were presented to the JLC of Tehuacán on June 12, 2003 and again on July 8, 2003 when the workers' coalition sought the JLC's assistance in conciliating an agreement with the company. As noted above, workers were not satisfied with the agreement signed on July 8th and eventually sought to deal with issues of wages, hours of work and overtime by forming a new independent union. They also contacted the President and the Secretary General of the JLCA, the U.S. Embassy's Labor Attaché in Mexico City, the State Governor of Puebla and the Secretary of the STPS to voice their complaints. However no formal complaint regarding hours of work, wage payment or overtime was ever filed.

Layoff procedures

As explained above, companies must obtain an authorization prior to closing, temporarily or permanently, and laying off workers. The Ajalpan plant closed every Monday in July and August 2003, and many times, on Mondays again, from October 2003 to January 2004, due to, according to the company, lack of work. Furthermore, approximately 730 workers were laid off between August and December 2003.

The submitters say that the factory did not follow due process or receive any authorization from the JLCA before suspending employees for economic reasons.

With respect to the permanent closure, the plant announced the closure officially on February 3, 2004, which was publicly confirmed by the president of the JLCA two days later.

Severance payments

Regarding the employees dismissed from August to December 2003, it appears that most of them opted for severance payments rather than demanding reinstatement, even though the submitters allege that workers agreed to settle for a severance that was only 60%-65% of what they were legally entitled to.

As for the plant closure, the submitters say that the President of the JLCA confirmed in a radio interview that, on February 5, 2004, the factory had closed down and stated that workers would receive 75% of their legally-entitled severance pay.

3.1.3 Occupational Health and Safety

3.1.3.a Matamoros Garment

The Communication describes a series of occupational safety and health (OSH) problems at Matamoros Garment. Complaints include verbal and physical abuse by supervisors of workers, lack of protective equipment and first aid supplies, an unsanitary cafeteria, lack of drinking water, and unsanitary rest rooms. Compulsory overtime also posed a safety issue for female workers having to travel long distances late at night. Finally, as noted above, the Communication contains allegations that workers were at times locked in the factory until production targets were met, though the various statements on this point appear to be at odds with each other.

The Communication provides particulars with respect to some of these matters. Protective gear was unavailable and sewing machines were not well maintained. On March 6, 2003, a sewing machine needle punctured a worker's finger. When this employee sought medical treatment, she discovered that there was no first aid kit and no medical staff to help her.

In August 2002, there was flooding in an adjacent agricultural field causing water to seep into the plant's cafeteria, which created a large, deep and mouldy puddle on the dirt floor. Because of these unsanitary conditions, the cafeteria remained inaccessible to the employees for several weeks. Workers were not happy with the quality of the cafeteria's food which they found unsanitary and rotten at times.

During the work stoppage of January 13, 2003, workers presented a list of their grievances, including occupational safety and health issues, to a representative of the JLCA. However, their list of demands included only the unhealthy cafeteria and the verbal abuse issues. On January 21st, workers and their employer signed an agreement that stated that the parties could not come to an agreement on the issue of verbal abuse and that the cafeteria issue had been resolved.

Submitters also say that workers could not recall any occupational health and safety inspections by government inspectors having taken place at Matamoros Garment.

No formal complaint was filed with Mexican authorities regarding any of the OSH issues. However, while not an official complaint, SITEMAG made Matamoros municipal authorities aware, in a letter dated March 18, 2003, as noted above, of alleged OSH violations such as no drinking water provided to workers for more than two days, lack of safety and first aid kits, and harassment on the part of managers and the established union.

3.1.3.b Tarrant México

The work stoppage of June 10-12, 2003, was also about occupational safety and health conditions at the Ajalpan plant. Specifically, the workers demanded better medical services at the plant, an end to verbal and sexual harassment by supervisors, and one hour for lunch. They also complained about excessive work load, which they claimed was the cause of accidents and injuries, and asked for a lowering of the quotas of production expected from workers.

At the Canadian NAO public meeting, witnesses said that the plant was very hot and the ventilation not sufficient, so that workers inhaled fabric fibers and vapors from the chemicals used in the bleaching of denims, and thus put their health at risk. Submitters testified that due to the exposure of workers to the toxic substances used in jeans laundering and the failure on the part of the employer to provide appropriate face masks, many workers suffered respiratory problems and sore throats. One former Tarrant worker said at the public meeting that he now has asthma and other respiratory problems because of his exposure to colorants used in the jeans manufacturing. But the workers could not provide medical evidence that they suffered such problems as a result of exposure to these chemicals.

Witnesses also said that there was not enough drinking water; that there were insufficient bathrooms; that the bathrooms were filthy; that workers did not have proper protective

equipment, notably gloves for handling the chemicals used in the dying process of denims, and soap to wash off the chemicals; and that there were no medical staff on site.

On June 12, 2003, and again on July 8, 2003, workers presented these complaints to the JLCA through the coalition seeking to negotiate a resolution to their grievances with the employer. However, workers took no further steps to seek to enforce health and safety protections in the plant, even after it became clear that the July 8, 2003, settlement was not satisfactory to them. They did not notify the enforcement or inspection agencies mandated to ensure safe and healthy working conditions. At the American and Canadian public meetings, workers said that they sought to deal with health and safety issues by registering an independent union that would have allowed workers to collectively file complaints without the risk of retaliation against individuals. As at Matamoros Garment, workers said they could not recall any occupational health and safety inspection by government inspectors having taken place at Tarrant México.

3.1.4 The Reluctance of Workers to Seek the Assistance of Mexican Authorities

One point that struck the NAO during the review is the use by workers of both plants of strikes, work stoppages, protests and lobbying rather than the legal remedies at their disposal.

The submission shows that workers used a range of other means to demand respect for their rights and obtain recognition for their independent union, including making their demands known publicly and lobbying at the local, national and international level. At Matomoros Garment, SITEMAG wrote letters to the Governor of the State of Puebla, PUMA, a client company of the factory, and international solidarity organizations. Workers at Tarrant México staged many protests and held press conferences. They sent letters to international organizations and the Puebla Governor. They pursued a strong lobbying campaign by meeting with the state Governor, the U.S Embassy's Labor Attaché in Mexico, personnel at the Mexican consulate in Los Angeles, U.S., and representatives from the JLCA of Puebla, the STPS, and Levi's, a client company of Tarrant.

However, there are many issues that were mentioned in the submission or at the public meeting with respect to which the workers did not file an official complaint. The NAO asked workers a number of times why they did not file formal complaints with the proper authorities. They consistently answered that they did not trust the labour or other governmental authorities because they believed that the authorities were working in collusion with their employers and the unions established in their workplace. According to the workers, the denial of the registration petitions on technicalities, the lack of cooperation from labour authorities in helping independent unions to obtain legal recognition, and the passive role played by the JLCA when witnessing what submitters allege were violations of their rights, created this perception on their part.

The Mexican constitution and labour legislation seek to counter the unequal balance of power between employers and employees in their employment relationships. Mexican

labour law offers a wide range of protection and remedies to workers. However, the effectiveness of such protections will inevitably be compromised if workers, rightly or wrongly, believe that it is pointless to avail themselves of these legal tools, whether it is because of lack of information or lack of trust.

3.1.5 Evidence of a Persistent Pattern

The submitters claim that the labour law violations that occurred at Tarrant México and Matamoros Garment are part of a persistent pattern of non-enforcement on the part of the Mexican government, and are the effects of systemic problems within Mexico's enforcement system.

In order to support this claim, the submitters make reference to a report by the Worker Rights Consortium (WRC) detailing events at another plant in the state of Puebla, Kukdong International México S.A. de C.V., and to issues raised in and review findings from previous public communications.

3.1.5.a Kukdong International México

Kukdong International, an apparel factory located in Atlixco, Puebla, started operating in November 1999. Workers were only notified in May 2000 that they had been represented since December 1999 by a union affiliated with the *Confederación Revolucionario de Obreros y Campesinos* (CROC).

Following a boycott in December 2000, five leaders were laid off in January 2001. The workers responded with work stoppages to demand the reinstatement of these leaders. Protests continued for a few days until the police, on January 11, surrounded the facility and charged the protesters under the direction of CROC leaders, injuring many workers.

Following these incidents, many supporters of the fired leaders were themselves laid off and those who were taken back at the factory suffered harassment from the plant management.

On March 18, 2001, workers held an assembly to form their own union, the *Sindicato de los Trabajadores de la Empresa Kukdong International México* (SITEKIM). Twenty-eight workers signed the registration petition that was filed with the JLCA of Puebla on April 19, 2001.

On May 30, 2001, the company started signing certain SITEKIM petitioners to contracts as confidential employees. In addition, six workers later withdrew their names from the registration petition, on May 28th, in front of the JLCA. It is alleged that the CROC pressured these workers and offered them money to convince them to desist from the registration petition.

On June 5, 2001, representatives of the JLCA went to the plant in order to verify that signatories of the petition were eligible workers and to ascertain their intention to join an

independent union. It as alleged that the JLCA only gave one day's notice and that workers never received such notice. Three of the 28 signatories were absent that day and the JLCA concluded that they could not verify that these workers in fact still supported the establishment of SITEKIM.

On June 8, 2001, the JLCA denied the SITEKIM registration petition based on the evidence that it did not meet the minimum of 20 active workers as required under Article 364 of the LFT. SITEKIM filed an indirect *amparo* action in June 2001, challenging the decision of the Puebla JLCA to deny the union registration. On September 3rd, the Sixth district Court dismissed the case because those filing the indirect *amparo* had abandoned the appeal for constitutional guarantees.

During that period, Kukdong International became Mexmode. The workers of Mexmode organized another independent union, the *Sindicato Independiente de Trabajadores de la Empresa Mexmode* (SITEMEX), to which union registration was granted by the JLCA of Puebla on September 17, 2001. The Mexican NAO explained that two different applications for union registration at two different companies (different legal entities) were involved. The NAO pointed out that there were two different and separate legal proceeding and thus the JLCA did not reverse its original decision of denying registration to SITEKIM.

The submitters use this case to show that, as they claim happened at Tarrant México and Matamoros Garment, the established union failed to represent the workers and engaged in a pattern of threats and coercion against the workers who did not support it. In addition, they allege that the government did not enforce its law with respect to minimum wages.

The Worker Rights Consortium (WRC) conducted an extensive field investigation of alleged violations of labour rights at Kukdong International following complaints from the workers. It issued an interim report on January 24, 2001, and its final report on June 20, 2001. The panel of seven experts concluded that:

- the CROC-affiliated union did not have the support of a majority of Kukdong workers when the collective contract with the employer was signed;
- the incumbent union has not performed the most basic functions expected of a legitimate collective bargaining representative. To the contrary, the CROC has engaged in a pattern of threats and coercion against workers who did not support the established union;
- after the work stoppage that ended on January 11, 2001, agents of Kukdong and the CROC coercively required many workers to sign pledges of loyalty to the CROC as a precondition to their reinstatement;
- the company and the CROC-affiliated union coercively induced some workers to sign letters of resignation, and have subjected those reinstated to penalties;
- Kukdong supervisors and security personnel committed acts of physical violence and verbal abuse against workers;
- the wages paid by the company to some garment sewers were below the legal minimum professional wage for that group; and

- the company occasionally failed to provide potable drinking water and clean bathroom facilities with running water.

3.1.5.b Previous Public Communications

The submitters make reference to five previous public communications that were accepted for review and led to Ministerial Consultations. This section outlines the issues and findings from these public communications that are relevant to those raised in CAN 2003-1.

US 94-03
Following its review of Public Communication US 94-03, the US NAO found that workers did not have access to their collective agreement nor to their union by-laws. The established union at the plant in question was a CTM affiliate. Workers sought to challenge the current leadership of their union to obtain more democratic representation and to criticize the collaboration that they saw between management of the company and CTM leaders.

A union delegate election was called and the submitters allege that a campaign of intimidation by the company and the CTM, before and after the election, was directed at workers organizing an alternate dissident slate of delegates, including threats of being fired, demotions and dismissals.

The NAO found plausible the allegations that workers were dismissed for their participation in union organizing activities. Management and the incumbent union pressured and intimidated workers into signing "voluntary resignations" so as not to risk losing their severance and/or to avoid being blacklisted. The NAO concluded that the economic realities facing these workers make it very difficult for them to seek redress from Mexican authorities for violations of their rights.

Following their unsuccessful union delegate election campaign, the dissident workers tried to establish their own independent union and filed a registration petition with the JLCA in Ciudad Victoria, in the state of Tamaulipas. The petition was denied and the NAO concluded that the reasons provided were mostly technicalities. The workers filed an appeal (*amparo*) to seek a reversal of the JLCA's denial decision, but the Federal District Court upheld the JLCA's decision. The NAO concluded that the submission raised serious questions concerning the workers' ability to obtain recognition of an independent union through the local labour board. It also added that a registration process thwarted by technicalities serves as a disincentive for engaging in union activity.

Finally, of concern to the NAO was the time consumed by these decisions, which had caused the interested workers irreparable harm in that many who signed the registration petition had been laid off and accepted their severance.

US 97-02
This case also raised issues about a lack of representation from the established union, an affiliate of the CROC. Workers complained about occupational health and safety (OSH) issues, profit-sharing and the absence of a company doctor on site at the plant. Many workers professed to be unaware of the existence of a union at the plant and maintained that they never had seen their collective bargaining agreement.

The submitters alleged that the company had initiated reprisals against workers for their organizing efforts, including harassment, threats, shift changes and dismissals. It was alleged that this was done in complicity with the established union at the plant.

Workers filed a demand for a representation vote with the JLCA. Submitters claimed that there were many irregularities in the conduct of the eventual vote. While workers were waiting for the validation of the results of the vote that the established union lost, four supporters of the new union (STIMAHCS) were fired.

In its findings, the US NAO found that serious questions had been raised as to the legal decisions of the JLCA of Tijuana, irregularities in the conduct of the first representation vote, the delay in informing the parties of its decisions and the rationale for not certifying the first representation election. In addition, the NAO found that the JLCA has applied inconsistent and imprecise criteria and standards for union registration and for determining union representation.

With respect to OSH, the review concluded that there had been numerous "violations and omissions of minimum safety and health standards". Even though there had been many inspections and substantial fines had been assessed against the company, the NAO was unable to ascertain that they were collected. A major concern to the US NAO was regarding the effectiveness of the inspection and sanction process. It concluded by stating that the "deterrent effect of inspections and financial penalties is lost if they are not enforced".

US 97-03
This submission raised issues similar to the previous one. Workers tried to organize a union to address problems of workplace health and safety as well as economic issues. According to the submitters, once the union organizing effort began, workers faced retaliation from the employer and the established union such as threats of dismissals, surveillance, increases in the workload of selected employees and other forms of harassment. About 50 supporters of the independent union were laid off. Workers sought a vote to determine the most representative union. The Public Communication raised concerns about the fairness of the vote and the conduct of the ensuing hearing on objections to it raised by the independent union. The review of the Public Communication raised questions about the impartiality of the federal labour board (JFCA) and the fairness of its proceedings and decisions, particularly when viewed in the context of the composition of labour boards and the interest of the CTM in the outcome of the proceedings before the tribunal.

The main issues relating to OSH were exposure to toxic substances and the lack of adequate personal protective equipment. The review concluded that the plant suffered serious health and safety deficiencies, that the fines imposed by inspectors were minimal and that the NAO was unable to verify whether they were collected. The NAO concluded that this submission raised serious questions as to the efficacy of the inspections themselves.

CAN 98-1
The events reported in this public communication related to the same plant as did Public Communication US 97-03. This communication was presented to the Canadian NAO four months later than the American one. The issues reported were essentially the same but CAN 98-1 also raised additional issues of lack of responsiveness on the part of the established union, low wages, abusive supervisors and sexual harassment.

The Canadian NAO found that union by-laws and the collective contract were not disseminated to the workers. It found coercive conduct on the part of the established union and the employer, including intimidation and dismissals.

The NAO also had concerns about the government of Mexico ensuring the impartiality and independence of labour boards in relation to the selection procedures of representatives who serve on these boards. It concluded that it was uncertain that provisions of the LFT could ensure that labour boards are impartial and independent.

The information obtained during the review also raised concerns about the effective application by labour boards of provisions of the LFT designed to ensure procedural protection and timely decisions. It was concluded that unnecessary delays may put one party at a disadvantage, compromising the efficacy of the procedural protection provided for under the NAALC.

The OSH issues raised by the submitters were the lack of adequate protective equipment, exposure to hazardous substances and noise, little or no training of workers and no proper medical examinations. The joint OSH committee was operational but not all workers were aware of it. Of concern to the NAO were the adequacy of dissemination of information to workers and of protective equipment, and the efficacy of inspections when advance notice is given to the employer. It also raised the issue of whether fines are effectively collected.

US 99-01
This public communication was related to the efforts of flight attendants to join a craft union when a company-wide collective contract was already in place. The submitters asserted that workers supporting the craft union were subject to threats and intimidation prior to and during the representation election, by both the employer and the incumbent union. They also claimed that afterwards, some workers were fired for having participated in the union organizing campaign. The US NAO concluded that "the timing

of the dismissals, the particular workers dismissed, and the lack of notification of the basis for the dismissals have the appearance of being related to the workers' union representation votes".

The US NAO found that there was credible evidence of the non payment of overtime and the health and safety hazards alleged by the submitters.

The events surrounding a representation election and the proceedings that ensued raised concerns with respect to irregularities in the conduct of the representation election allowed by the labour board, and the hearing on the craft union's objections to the election. The US NAO concluded that there was "substantive evidence to question whether the representation election process conducted […] was in conformity with Mexico's labor law and its obligations under the NAALC".

Of concern was also the issue of how the Mexican government assures that labour boards are impartial and independent and do not have a substantial interest in the outcome of a matter, particularly when labour board members ruling in a case are representatives of competing unions.

The US NAO stated that an issue raised by this submission was whether a craft union had any legal opportunity to seek representation of workers at a firm if there already was an existing company-wide agreement. The NAO added that "this issue is even more significant given the historical practice in Mexico of collective bargaining agreements being signed with employers at the inception of the company and routinely renewed". In this case, the Mexican legal precedent of not permitting the fragmentation of an existing contract limited the craft union's ability to represent potential members, depriving some workers the opportunity to join the union of their choice.

3.2 Information from Other Parties

Information was gathered from the Mexican NAO, Tarrant, clients of Matamoros Garment and Tarrant México, the Worker Rights Consortium, and the Canadian office of the United Steelworkers of America.

3.2.1 Mexican NAO

On July 30, 2004, the Canadian NAO engaged in consultations with its Mexican counterpart pursuant to Article 21 of the NAALC, sending a series of questions in writing on Mexican labour law, enforcement procedures, and their application in the specific cases of Matamoros Garment and Tarrant México. The Mexican NAO responded on October 22, 2004.

The Mexican NAO also forwarded to the Canadian NAO a copy of the answers that it provided to questions posed by the U.S. NAO in its review of Public Communication US

2003-01, which is substantially identical to CAN 2003-1. Those answers are clearly relevant to this review.

The Mexican NAO did not comment on the specific events that took place at either the Matamoros Garment or Tarrant México plants. Instead, it mainly provided information and clarification on Mexican labour law and its enforcement. This information is reflected in section 4, which discusses the relevant aspects of Mexican labour law.

The JLCA of Puebla has informed the Mexican NAO that it has granted 29 union registrations from 1999 to March 16, 2004, of which 35% were to unions independent of the major trade union federations.

On the question of whether there had been an election for union representation at Matamoros Garment and Tarrant México, the Mexican NAO answered that the free election of union representatives is a union right that is implemented internally within unions. The Government of Mexico is respectful of such union's internal affairs and therefore does not know whether elections for union representation were held within unions at the said plants.

The Mexican NAO also provided more specific information on actions taken by Mexican authorities in relation to events at Matamoros Garment and Tarrant México. The following subsections present this information.

3.2.1.a Matamoros Garment

With respect to the JLCA's decision to deny SITEMAG's application for union registration, the Mexican NAO stated that the JLCA had indicated "that it was not able to grant registration to SITEMAG because the requirements of Article 366 of the LFT were not met".

Regarding the submitters disagreeing with the reasons provided by the labour board for denying SITEMAG's registration, the Mexican NAO said that "a union that disagrees with the registration denial may file an administrative appeal for review". The NAO added that SITEMAG did not file an indirect *amparo* action, even when this remedy was available to it to challenge the decision made by the authority.

The Mexican NAO informed the Canadian NAO that the Federal Inspection Directorate (DGIFT) conducted a special OSH inspection at Matamoros Garment on February 21, 2003, at which point it put in place technical measures to address various health and safety conditions in the workplace.

3.2.1.b Tarrant México

The Mexican NAO explained that in June 2003, the JLC of Tehuacán summoned Tarrant México's legal representatives to address different labour problems and scheduled conciliation talks to be held on June 12, 2003. On that day, the workers sent to the

company's representative a list of demands stating their disagreement regarding various irregularities that allegedly existed in the workplace.

By mutual agreement, the parties reviewed the list of demands and held conciliation talks on June 18 and 30, 2003. Based on those talks, on July 8th, the workers and the company reached an agreement before the JLC of Tehuacán on the company's obligations and their compliance with regard to: profit-sharing; respect for production work; non-aggression toward workers; fair and dignified treatment of female employees; "the right to eat [edible] food"; provision of efficient transportation services; the length of the workday; the manner in which employees work overtime; respect for compulsory days off; improved medical and health services; provision of containers with water; payment of wages at the company's automated banking machine; failure to make allocations for punctuality premiums, attendance and grocery bonuses; and the negotiating committee's non interference in the company's internal affairs.

With the signing of this agreement, the labour conflict was deemed concluded.

With respect to SUITTAR' appeal of the JLCA's decision to deny the union registration petition, the Third District Court in Puebla proceeded to dismiss the action for *amparo*. In accordance with the *Ley de Amparo*, dismissal is appropriate when the injured party expressly abandons the action.

Regarding the reinstatement of dismissed workers, the Puebla JLCA received and recorded the request of six workers in August 2003. The interested parties were notified regarding the convening of a conciliation hearing but the hearing was eventually suspended at the request of the parties as mutually agreed for purposes of a settlement. Between October and November 2003, the company and the workers reached agreements "fully satisfying the workers' demands for benefits found in their initial complaint petition", and the filing in the case was abandoned. As a result, the Board ordered that the case be set aside and considered closed as it lacked the legal grounds on which to proceed.

Twenty-five other individual complaints were filed before the Puebla JLCA alleging wrongful dismissal. At the time its response was provided, the NAO said that fifteen cases had been settled or dismissed, while the remaining nine cases were still under consideration.

The DGIFT informed the Mexican NAO that it had conducted five inspections in 2003 at Tarrant México: three initial inspections to give the company the authorization to start its operations; one special inspection about OSH; and another special inspection about profit-sharing.

3.2.2 Matamoros Garment

The Canadian NAO sent the director of the plant and his business partner an invitation to attend or to present a written submission at the Canadian public meeting, which was held

on May 28, 2004. A letter requesting consultations was also sent to both individuals on August 23rd. The NAO has not received any response in either case.

However, the submitters provided the NAO with an exchange of correspondence between the plant director and a representative of the CAT between March 19 and May 26, 2003. It appears from this correspondence that Matamoros Garment was in serious financial difficulties due to that fact that its major client had declared bankruptcy while owing significant amounts to Matamoros. Workers were not paid on March 20, 2003, as reported by the submitters, because of credit problems at Matamoros Garment. This was not the first time that Matamoros Garment had encountered serious financial problems. In August 2002, the Mexican Social Security Department (IMSS) seized 300 machines from the plant as security for moneys owing in respect of social security contributions. The director also said that eight different government agencies had conducted inspections at Matamoros including three visits from the Immigration Department. He did not mention whether any of these inspections pertained to the application of labour laws.

3.2.3 Sindicato Francisco Villa

The Canadian NAO sent a list of questions to the Secretary General of the SFV, to which he answered in a conference call on August 19, 2004.

The Secretary General did not agree with the version of the facts as presented by the submitters. He said that SFV had done a lot to represent the workers and to improve their working conditions, especially in comparison with the previous union. He claimed that the previous management was very abusive of its workers. SFV fought for the workers' rights and eventually managed to get rid of the previous operators of the plant. The collective contract that SFV negotiated was available to all workers at Matamoros Garment.

According to the Secretary General, the SITEMAG constituting assembly never took place. The signatures on the petition for registration of SITEMAG were obtained by fraud. The sheet that workers signed was in fact a petition to claim unpaid wages. These signatures were then taken by an organizer of the independent union and attached to the registration petition. The majority of workers in fact preferred to keep the incumbent union.

The Secretary General agreed with the JLCA's decision to deny SITEMAG's registration, because there was no constituting assembly. Nonetheless, he admitted that the local government authorities had made mistakes, but did not give any further details.

3.2.4 PUMA AG

Two companies outsourcing to Matamoros Garment as a production facility were mentioned in the submission: Angelica Corporation and PUMA AG. These companies were invited to attend the Canadian public meeting and to present, in person or in writing, any additional information relevant to the allegations made in the submission. Only

PUMA responded, by sending a letter, on May 26, 2004, with attached documents. The submitters also provided the NAO with correspondence between PUMA and Matamoros Garment representatives during the course of events at Matamoros.

PUMA is a global company that markets and distributes sports footwear and apparel to an international market. PUMA is not a producer of these items and relies solely on contract production in approximately 28 countries to fulfill its production needs.

On July 29, 2002, PUMA and World Cat America (WCA), its sourcing agent, engaged in a contractual relationship with Matamoros Garment for the production of PUMA apparel. PUMA was only a minor customer of this factory.

The Matamoros plant was audited on September 11, 2002, to ensure that the factory complied with PUMA's social and environmental policies. The results of the audit, which covered working conditions and employee treatment, found the factory to be satisfactory. Specifically, the audit found that: health and safety conditions in the plant were in accordance with international and company standards; no child labour was detected; and salary levels were above the required minimum wage.

PUMA notes that delays in wage payments occurred as a result of the factory's financial situation. In September 2002, Matamoros' largest client filed for bankruptcy and defaulted on payments for approximately 500,000 pieces already delivered. These problems resulted in considerable product delays for PUMA. Subsequent discussions with the factory owner and the sourcing agent confirmed that it would no longer be able to finish and deliver the required PUMA goods on time. It was then agreed that PUMA would stop placing new orders with Matamoros Garment because the factory's ongoing financial constraints jeopardized its ability to produce on time.

From the middle of October 2002 to January 2003, PUMA's sourcing agent made payments beyond its contractual obligations to Matamoros Garment to help the company cover its payroll costs. These outlays, which amounted to approximately $15,000 per week, were intended to help cover the labour costs associated with finishing the production of PUMA's products already in progress.

In January 2003, allegations brought forth by CAT, USAS and other international organizations of non-payment of wages, unhealthy working conditions, forced overtime and denial of freedom of association prompted PUMA to conduct an additional investigation of the facility. A PUMA representative visited the plant on January 18, 2003, and requested that all PUMA labels be removed from the plant.

On January 24, 2003, PUMA released a corporate statement reiterating that it had terminated its production contract with Matamoros Garment on October 8, 2002, due to the factory's financial difficulties, not because of the workers' demands or their efforts to form an independent union.

On February 2, 2003, PUMA's Global Head of Environmental and Social Affairs, a representative of WCA and a Mexican technician arrived in Puebla to investigate the situation at Matamoros and meet with workers, management and CAT representatives. Over the next two days, they interviewed 22 randomly selected workers.

On freedom of association, the interviews revealed that workers knew they were members of the SFV and said that they had freedom of association because they were allowed to join the SFV or any other union of their choice. However, PUMA claims that their representatives found out from interviewing the workers that the incumbent union was what is called a "yellow union", which means a management-sponsored organization with a conflict of interest.

On working conditions, workers: denied that physical or verbal abuse occurred; categorically denied being forced, required or strongly encouraged to work overtime; and said that they were never locked in the factory. Although workers were paid up to one week late, they were paid their full wages and the payments were witnessed by the JLCA. The investigation confirmed that the cafeteria's problems stemmed from the flooding of a surrounding agricultural field, but PUMA's representatives were told that a professional contractor was hired by the company to construct proper flood prevention barriers to solve the problem. Furthermore, a cleaning crew used to sweep out the cafeteria prior to employees' lunch breaks on days where flooding did occur.

On February 12, 2003, PUMA indicated that it would consider re-establishing normal business relationships with Matamoros Garment. In a letter dated February 13, 2003, PUMA stated that "preliminary indications from the workers point to the fact that the current union is the union of choice; said union is supported by an overwhelming percentage of the factory's employees". It also recognized that although "payments were made below the appropriate classification of the respective workers, matters to correct this discrepancy have already been initiated".

One of the submitters, the CAT, disagreed with the conclusions of the fact-finding mission and released a public document, on February 19th, rebutting most of its findings. They also criticized the conditions under which this investigation was conducted, saying that workers were not able to speak freely to their interviewers because they had been intimidated by company representatives, that workers did not have any assurance that their answers would be treated as confidential, and that in fact those interviews that were taped were handed to the factory management.

On February 25th, WCA sent an official letter to the factory's owner mentioning that new orders would be placed once all financial and union-related problems were resolved, and on the condition that the factory would agree to independent monitoring. PUMA received a response on February 27th stating that the plant director was not at that time in a position to become a partner of PUMA. On March 11th, PUMA tried to re-establish contact with Matamoros by offering its assistance and cooperation, but did not receive any response.

3.2.5 Tarrant Apparel Group (TAG)

Tarrant Apparel Group (TAG) was invited to attend the Canadian public meeting and to submit any evidence regarding events taking place at Tarrant México relevant to understanding the issues under review. Its Chief Financial Officer responded by letter dated June 1, 2004, stating that the submission was inaccurate and replete with unsubstantiated accusations regarding Tarrant México.

With respect to freedom of association, neither TAG nor Tarrant México had ever been involved in SUITTAR's proceedings before the JLCA. The factory did not prevent employees from lawfully expressing their association rights and workers were never penalized for their participation in any organization, SUITTAR or otherwise.

On the issue of working conditions and occupational health and safety, plant management always treated its employees fairly and in compliance with Mexican law. Continuous health and safety training was provided to employees as part of the plant's Safety and Health Program. Tarrant México also cooperated in inspections and investigations undertaken by the Mexican government and several U.S. customers and no issues arose from these various on-site inspections. In addition, following the agreement of July 8, 2003, the factory took the responsibility to ensure that the cafeteria was a clean and sanitary environment. Furthermore, labour disputes were fairly negotiated between management and elected employee representatives.

On August 12, 2004, the NAO sent a letter to consult with TAG regarding specific allegations and events mentioned in the submission. Due to a change in personnel, the new Chief Financial Officer was in no position to provide the NAO with additional information but reiterated that his company was not aware of any violations of Mexican labour law at the Tarrant México plant.

3.2.6 Levi Strauss & Company

Levi Strauss & Company (Levi’s) was a client of TAG from June to October 2003. Prior to placing production at Tarrant México, Levi's conducted an assessment of the facility, in May 2003. The company identified as part of its review a number of violations of its ethical code of conduct, including non-payment of proper overtime wages and excessive overtime hours. Plant management agreed to address the issues that were identified. In June 2003, Levi's conducted a follow-up visit to the factory and confirmed that employees had received back wages owed to them, an unsatisfactory manager had been replaced, and employees were no longer working excessive overtime.

In July 2003, Tarrant advised that it wanted to terminate its business relationship with Levi's for business reasons. In August 2003, Levi's became aware of allegations regarding factory workers' right to freedom of association. It began to arrange for its own independent investigation and contacted the plant management and TAG to obtain the company's cooperation. Levi's then learned that the management of the factory had

changed. On September 8, 2003, TAG informed Levi's that it would not be willing to cooperate in an investigation and confirmed that it would bring the business relationship with Levi's to an end. Tarrant México stopped producing for Levi's on October 12, 2003.

3.2.7 Tommy Hilfiger

Tommy Hilfiger sent a letter to Tarrant on September 9, 2003, informing Tarrant that it would terminate its relationship with TAG. It informed the NAO by letter dated May 26, 2004, that this termination was due to business and production considerations, not due to labour issues.

3.2.8 The Worker Rights Consortium

The Worker Rights Consortium (WRC) is a non-profit labour rights monitoring organization representing 121 colleges and universities in the United States that license their names and logos to apparel companies which then produce and sell clothing with these institutions' names. The WRC assesses conditions in the factories producing such apparel and provides information to the colleges, universities and the public about those conditions.

Following a complaint the WRC received from Tarrant México workers, WRC conducted fact gathering in Puebla from August 20 through 25, 2003. It interviewed 24 employees, some recently fired and some still working at the facility, the Secretary General of the JLCA and the attorney for Tarrant México, and reviewed relevant documentary records. The investigation focused on the allegations concerning illegal firings and related violations of associational rights.

The WRC report was released on September 15, 2003. It concludes that evidence identified to date was more than sufficient to warrant the conclusion that violations had occurred. WRC's report states that eight SUITTAR leaders were fired on July 16, 2003. It finds that the firings violated Mexican law concerning termination of employment and reasons and procedures under which such terminations can occur. The investigation revealed that Tarrant México did not try to justify the dismissals for economic reasons and no written notification or explanation was provided to any of these dismissed workers. The company offered severance payments in exchange for an agreement to resign voluntarily. Three leaders accepted this offer and the other five refused to resign.

Several workers still working at the plant at that time testified to WRC investigators that factory supervisors boasted that the dismissals were deserved punishment for the fired workers' union activities. Tarrant's attorney alleged that workers' misbehaviour was the justification for their dismissal. WRC claims that the justifications that were given would not have constituted grounds for dismissal or were not supported by any evidence.

The WRC came to the same conclusions regarding the firing of roughly 150 additional workers from August 5, 2003, to the time of the investigation. Tarrant México's official justification was an excess of production relative to demand and management's desire to

trim the workforce. All workers still employed testified that managers and supervisors made statements to the effect that these dismissals were a punishment for, and were caused by, the workers' decision to form an independent union. These statements were made either to individual workers or in group meetings that workers were required to attend. Workers also testified that threats were made prior to these dismissals, specifically that workers who participated in the union assembly would be fired.

WRC also verified whether the dismissals were carried out in order of seniority. After reviewing employment records, they found out that Tarrant México did not follow this order. With respect to the procedures that a business must follow if it wishes to suspend workers for economic reasons, the JLCA confirmed that Tarrant neither requested nor received such approval.

Another finding was that none of the employees interviewed had ever heard of a union or a collective agreement at Tarrant México "until recent comments made by the FROC-CROC in the midst of the current labour dispute". In addition, workers' pay receipts confirmed that no union dues had ever been deducted.

Finally, the report adds that such dismissals have a severe chilling effect on the entire workforce, sending a clear message that workers who exercise their associational rights are jeopardizing their jobs and the well-being of their families.

3.2.9 The United Steelworkers of America

The United Steelworkers of America (USWA) presented a written submission and oral testimony at the Canadian public hearing of May 28, 2004. USWA was the lead organization among those that submitted Public Communication CAN 98-1 to the Canadian NAO.

The USWA did not seek to provide new evidence on the case under review, except to note that “it has been estimated that 80% of the collective agreements in Mexico are signed without the knowledge or support of the workers covered by that agreement”. In support of this figure, the USWA cited an article by Dan La Botz and Robin Alexander entitled *Mexico's Labor Law Reform*.[1]

The main point of the USWA was to emphasize that, in their view, the current Public Communication is proof that there exists in Mexico a persistent pattern of non-enforcement by the Mexican government of core labour rights and non-respect of its

[1] Alexander, Robert, and Dan La Botz. "Mexico's Labor Law Reform", *Mexican Labor News and Analysis*, vol. 8, no.4 (April 2003).

obligations under the NAALC. The USWA argued that the same problems that were identified eight years ago persist. They called into question the efficacy of the NAALC as an instrument for addressing labour standards issues in the territory of the Parties. The USWA submission summarizes the issues raised in CAN 98-1 and findings from the Canadian NAO's review. It draws a parallel between this previous public communication and the current one, and provides an overall evaluation of the results of CAN 98-1. Its main conclusion is that "there has been no progress on the issues identified in that public communication".

4. MEXICAN LABOUR LAW

This section reviews the law that is relevant to the issues raised by Public Communication CAN 2003-1. To do so, it draws upon comparative labour law studies by the Commission for Labour Cooperation, including a study by the Secretariat of the Commission entitled *Labour Relations Law in North America*, and a tri-national study entitled *Occupational Safety and Health Law in the United States, Mexico and Canada – an Overview.* This section also includes information supplied by the Mexican National Administrative Office, and two well known Mexican labour law experts.

4.1 Overview

"Article 133 of the Mexican Constitution establishes a hierarchy among different types of law. The Constitution itself, followed by laws which emanate from the Constitution and duly ratified treaties, form the supreme law of the land. […]The law governing the labour relations of private sector workers in Mexico is found in several legal instruments."[1]

The Political Constitution of the United Mexican States constitutes the country's basic charter and contains general labour principles. These principles are expanded on in the Federal Labour Law (LFT – *Ley Federal del Trabajo*), which is the key labour relations legislation in Mexico. International conventions and treaties are incorporated into domestic law after having been approved by the Senate and signed by the President of the Republic as provided for by Article 133 of the Constitution and Article 6 of the LFT. Court decisions can also affect labour law. Regulations, issued by the executive branch of the government, and procedures of labour agencies serve to implement particular statutes.

A legal framework for labour legislation is included in Article 123 of the Constitution, which aims to achieve a balance between labour and management interests. The LFT is the regulatory statute that implements the constitutional provisions of Article 123. It defines the individual and collective employment relationship and regulates organizing, collective bargaining and strikes. It also governs the makeup and functioning of the tripartite boards that administer labour justice and provide conciliation, mediation and arbitration services. In addition, the LFT covers minimum wages, hours of work and overtime, vacations, child labour, protection for working women, workplace safety and health, profit sharing, job training and other labour matters.

Mexico is a signatory to numerous international conventions and treaties. Those relevant to labour rights include: the International Labour Organization (ILO) Convention 87 on Freedom of Association and Protection of the Right to Organize; the *International Covenant on Civil and Political Rights*; the *American Convention on Human Rights*; and the *International Covenant on Economic, Social and Cultural Rights.*

[1] Commission for Labor Cooperation, *Labor Relations Law in North America* (Washington, D.C.: Secretariat of the Commission for Labor Cooperation, 2000), p. 100.

The Mexican system of labour law is based on a series of fundamental principles, the most relevant of which are:

- "Labour standards provide a balance and social justice in the relations between employees and employers;
- Work is a right and a social duty;
- Work is not an article of commerce;
- Work must be performed under a system of freedom and dignity for the persons providing it;
- Work must guarantee life, health, and a decent economic level of living for employees and their families;
- There may not be differences among employees on the basis of race, sex, age, religious or political beliefs, or social standing;
- There is freedom to work in legal activities;
- Labour standards are mandatory in nature and workers' rights are irrevocable;
- The scope of a labour standard is construed in favour of the employee when there is doubt;
- It is presumed that a work relationship exists between the person providing a personal service and the person receiving it;
- There is no time limit on the length of the work relationship, unless it is explicitly defined as being for a set time or for a specific job."[2]

Regarding the last two principles, a particularity of Mexican labour law is that every employee is covered by an individual and permanent employment contract based on the minimum work conditions stipulated in the Constitution and the LFT, whether or not the contract is written and whether or not the employee is also covered by a collective agreement.

While the federal government enacts labour legislation, the responsibility for its enforcement is shared, as provided for in Section XXXI of Article 123 of the Constitution, between the federal government and local governments, that is, the 31 states and the Federal District (D.F.). Except in key industries or sectors reserved by the Constitution for the federal jurisdiction, all enterprises fall within the enforcement jurisdiction of local authorities.

The Mexican Constitution establishes a system of state and federal tribunals and conciliation boards to resolve labour disputes. They are termed *Juntas de Conciliación y Arbitraje* (JCA) and *Juntas de Conciliación* (JC), and are located in the executive branch of government. They are charged with interpreting and enforcing the labour laws to resolve disputes arising out of labour relationships between workers and/or employers. At the federal level, they are called *Juntas Federales* (JF) and at the state level, *Juntas Locales* (JL).

[2] Dr. Nestor de Buen Lozano, and Lic. Carlos E. de Buen Unna, *A Primer on Mexican Labor Law* (Washington, D.C.: U.S. Department of Labor, Bureau of International Labor Affairs, 1991), p. 5.

The responsibilities of conciliation boards (JCs) are: bringing about conciliation in labour disputes, receiving claims, gathering evidence for JCA proceedings, and assisting the JCAs in the performance of their duties. Generally speaking, JCs are not adjudicative bodies. In addition, Mexican legislation establishes systems of government inspection to secure compliance with minimum employment standards and occupational safety and health.

The government of Mexico also helps workers assert their labour rights by providing guidance and advisory services, conciliation and representation in lawsuits by the Federal Office of the Labour Public Defender (PROFEDET – *Procuraduria Federal de la Defensa del Trabajo*). PROFEDET is a decentralized agency of the labour ministry (STPS - *Secretaría del Trabajo y Previsión Social*), with technical and administrative autonomy. Articles 530 to 536 of the LFT outline the functions, responsibilities and powers of this Office. One of its services is a communication program that provides information through internet, radio, television and written media, to labour and business community regarding labour rights. Its main objective is the prevention and conciliation of labour conflicts. Its services are free of charge. PROFEDET only handles cases in the industrial branches under federal jurisdiction. The state of Puebla has a similar office, called the *Procuradoria de la Defensa del Trabajo*, which covers the industries within that state's enforcement jurisdiction.

4.2 Freedom of Association

Freedom of association and the right to organize are embodied in the Mexican Constitution, as well as in the provisions of international treaties and Mexican federal law, both of which enjoy status as sources of law secondary only to the Constitution itself. The statements of basic rights all seem to be consistent with each other and there are cross references which suggest that they are expected to reinforce each other.

Section XVI of Article 123 of the Mexican Constitution states that "both employers and workers shall have the right to organize for the defence of their respective interests, by forming unions, professional associations, etc." Furthermore, the introductory clause of Article 123 has been construed to protect the right to bargain collectively. Article 9 of the Constitution, although it does not pertain to workers as such, is also of relevance to labour rights as it establishes the right of all citizens to freely associate for lawful purposes.

Articles 354 to 358 of the LFT define a trade union and recognize freedom of association of workers and employers, as well as their right to form and belong to a trade union or to abstain from joining one.

In addition, a number of principles from international covenants and treaties adopted by the Mexican Government protect workers' freedom of association. Articles 2 and 3 of ILO Convention 87 as well as Article 22 of the *International Covenant on Civil and Political Rights* guarantee workers the right to establish and join organizations of their

own choosing and prevent interference from public authorities. Mexico has also ratified the *American Convention on Human Rights* which in Article 16 states that everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes within the limits imposed by legal restrictions in the interest of national security, public safety, order, health, and morals or freedom of others.

4.2.1 Registration of Unions

Under the LFT, any group of 20 or more workers in active employment may form a trade union without the need for previous authorization. However, in Mexico, a trade union requires a public act of state called *registro* to obtain the status needed to engage in most legal, contractual or commercial activities on behalf of its members. Articles 374 and 375 of the LFT ensure that trade unions enjoy full legal personality and are recognized as representative of groups of workers, though workers may choose to defend their own rights themselves in some cases. Without registration, unions can still hold meetings, elect officers, make demands on employers, issue public statements and the like, in keeping with the principle of freedom of association. However, other parties need not respond to their actions since unregistered unions are treated as lacking the required legal capacity. Therefore, union registration is the key to collective bargaining.

4.2.1.a Procedures

Under Article 365 of the LFT, unions within the federal jurisdiction are to register with the STPS and unions within local (state or Federal District) jurisdiction are to register with the local-level JCA (JLCA).

The legal requirements for obtaining registration are minimal and the granting of registration should be a purely administrative act.

Article 365 lists the documents the unions must submit in duplicate, which are:

- an authorized copy of the formative assembly proceedings;
- a list showing the number of union members with their names and addresses, and the name and address of the employer, company or establishment in which they are employed;
- an authorized copy of the union by-laws; and
- an authorized copy of the assembly proceedings where the executive committee was elected.

These documents must be authenticated by the union's General Secretary, the Organizing Secretary and the Recording Secretary.

4.2.1.b Timeliness of Decision

Article 366 notes that authorities must resolve registration applications within 60 days. If the authority does not render a decision within a period of sixty days, the applicants may request that it issues a decision; if it fails to do so within three days of the request being submitted, registration shall be considered to have been effected for all legal purposes,

thereby requiring the authority to issue the respective documentation within the next three days. These requirements are consistent with and reinforced by those of ILO Convention 87. The Freedom of Association Committee of the Governing Body of the ILO has repeatedly interpreted Convention 87's protection of freedom of association as requiring that the formalities prescribed by law for the establishment of a union should not be applied in such a way as to delay the setting up of the organization.

4.2.1.c Notification of Decision

Articles 741 and 742 require that personal notifications of a decision be at the domicile stipulated in the files. Such notifications must be carried out within five days following their date (Article 750) and the Clerk commits a fault if he fails to make a notification in accordance with the provisions of the LFT or within the required time period (Article 640).

4.2.1.d Grounds upon which Registration Can Be Denied

Article 366 states that union registration may be refused only if:

- the union does not have the objectives and purposes required by Article 356;
- the union does not have the number of constituent members required by Article 364; or
- the documents listed in Article 365 are not submitted.

Article 364 states that "in determining the number of workers, those whose labour relationship was terminated or in whose case notice of dismissal was given at any time during the thirty days preceding the date on which the application for registration of the trade union is made and the date on which such registration is granted shall be taken into account".

If the above-noted requirements are fulfilled, Article 366 states that "the competent authorities shall not refuse registration".

Article 366 of the LFT is consistent with and reinforced by ILO Convention 87. The Freedom of Association Committee of the Governing Body of the ILO has emphasized that a discretionary approval process for registration of unions is inconsistent with the freedom of association protections of Convention 87, and that the precise legal requirements for registration should be clearly defined.

4.2.1.e Correction of Technical Errors in Applications for Registration

There is some disagreement among authorities and experts in Mexico on the question of whether the government of authority handling a registration petition has an obligation to notify petitioners of technical discrepancies in a petition so that they may be corrected. Article 685 of the LFT mentions that "if a worker's petition is incomplete, in that it does not cover all the matters on which an award could be made", the competent Board shall correct the petition when it is submitted. Article 873 further states that when the plaintiff

is a worker or his beneficiaries, the JCA shall note any irregularities or "anything which might lead to contradictory suits […] which would allow the defendant to set forth defects or omissions incurred therein and thus prevent the suit", and allow that such deficiencies or omissions be corrected within a term of three days.

However, the above articles refer to labour dispute proceedings and do not specify whether they apply to union registrations. Union registration is an administrative procedure. Some would therefore argue that under the LFT, there is no legal provision requiring JCAs to remedy deficiencies or omissions in the documentation submitted in a *registro* petition. This is the position described by the Mexican NAO. On the other hand, some jurists have argued that in the absence of provisions in the law regulating the handling of technical deficiencies in administrative procedures, the law should be interpreted by analogy to provisions in the Constitution, the LFT and relevant international treaties regulating similar matters, and thus the requirement to permit an opportunity to correct technical deficiencies should be applied to union registration procedures. In any event, it appears that nothing in Mexican law would prevent an authority handling a registration application from drawing technical deficiencies to the attention of a registration applicant so that those deficiencies could be corrected.

4.2.1.f Appeal Process

If a union seeking registration disagrees with a decision denying registration, it may seek judicial review of the decision by filing an indirect *amparo* action, which is an appeal based on alleged violations of constitutional guarantees, under the terms of Articles 114 and 116 of the *Ley de Amparo* (LA).

An *amparo* is a special recourse authorized under Articles 103 and 107 of the Constitution. It is an appeal for judicial review based on the claim that a government authority has violated constitutional rights through the application of a law or by judicial or administrative decision. An *amparo* action must be filed before the given federal District Court on Labour Matters that has jurisdiction. A decision handed down by a federal District Court may be appealed to a Federal Court of Appeal and then to the Mexican Supreme Court on constitutional and due process grounds.

An *amparo* action must be brought within 15 business days of the decision with respect to which *amparo* is sought. Article 21 of the LA specifies that this 15-day period to file an appeal starts the day after the petitioner is notified of the decision. Where the petitioner has provided an address at which notification is to be given, notification must be delivered in person to that address. A petitioner who does not receive notification in that manner may have any other form of notification declared null and obtain an order that proper notification be given.

Article 148 of the LA states that the Court receiving a request must decide within 24 hours whether to admit or reject a petition filed before it. Article 147 indicates that when the District Court does not find any cause of inadmissibility, the judge admits it, requests

a report of justification (*informe con justificación*) from the authorities responsible for the alleged violation, and schedules the hearing within 30 days.

Article 149 relates to the report of justification. The authority whose decision is challenged must submit their report within five days, but this period can be extended for an extra five days when this is justified. In any case, the report must be submitted at least eight days before the hearing. When the relevant authority does not submit such report within the time limit, the petitioner or an affected third party can request the postponement or suspension of the hearing. Otherwise, Article 149 allows the Court judge to accept the appellant's claims as true if no justification is provided. Fines can be imposed on an authority not submitting its justification report.

4.2.2 Workers' Choice of Union Representative

Mexican law protects workers' choice of union representative through provisions that entitle workers to form unions with minimal formality and without state interference, provisions that entitle them to change their union representative, prohibitions against interference in such choices, and recognition of workers' freedom not to associate with a union, as set out in Article 358 of the LFT.

4.2.2.a Forming a Union and Engaging in Collective Bargaining

Workers have the right to form trade unions without need for previous authorization. Unions have the right to adopt their own constitution and by-laws, to elect their representatives and to organize their administration and activities.

Articles 386 to 439 of the LFT set out the main provisions relevant to collective bargaining on Mexico. The LFT definition of a collective contract establishes that only trade unions can enter into such an agreement. The union that signs a collective contract is considered to hold title to the agreement.

A union that holds title to a collective agreement has the exclusive right to administer, enforce and renegotiate its terms. Moreover, a collective contract must be extended to cover all workers in a given enterprise, whether or not they are members of that union. Article 388 outlines the rules about who holds the right to bargain and sign a collective agreement when there are several unions in the same enterprise.

In Mexico, a union may be formed and registered, bargain collectively, and obtain title to a collective agreement without an election or presenting other evidence to a public authority that it has the support of a majority of the workers that it seeks to represent. This lack of direct regulation reflects the principle of non interference in union affairs.

4.2.2.b Changing Union Representative

"Any union of a type appropriate to the workers in question can at any time seek support from workers covered by a collective contract and file with the relevant CAB [JCA] a

challenge to the incumbent union's title to that contract. The CAB will then hold hearings into the challenge. If the incumbent union does not prove its majority support during such proceedings, it will lose title to the collective contract, and thus lose the right to administer and negotiate revisions to it. The union that demonstrates majority support obtains or maintains title to the contract, as the case may be. In deciding such challenges, a CAB may supervise a vote by the workers, known as a *recuento*, in order to obtain evidence of which union enjoys majority support. A *recuento* will not necessarily be conducted if other evidence is sufficient to prove majority support."[3]

4.2.3 Union Self-Governance and Accountability to Union Members

"Under Mexican labor law, unions are free to act within the mandate of their constitution and bylaws under the direction of their own leadership. This principle of trade union autonomy is an important element of Mexican labour law. Except for the intervention of the authorities with respect to union registration, government interventions are not contemplated in the FLL [LFT]. As already noted, Article 359 of the FLL grants unions the right to establish their constitution and bylaws, to freely elect their representatives, to organize their administration and activities, and to formulate their program of action." [4]

"Article 371 of the FLL [LFT] sets out a list of subjects which a union's bylaws must address, including such matters as the rights and obligations of members; the mode of payment and amount of union dues; and rules for the administration, acquisition and alienation of property constituting the assets of the union. A union member has a legal right to ensure that these bylaws are followed and may file a complaint with the relevant CAB [JCA] to do so." [5]

"Article 373 of the FLL [LFT] requires the board of directors of a union to provide a complete and detailed account of the administration of the union's assets to a general meeting of the union at least once every six months. Unions must report to the relevant CAB [JCA] the makeup of their leadership, as well as registering new union members and any changes in leadership. The CABs treat union membership lists as confidential. Unions also must report any change in their constitution or bylaws and respond to inquiries from the authorities about any union-related actions." [6]

4.2.3.a Access to Collective Contracts

Under the LFT, the parties to a collective contract are the employer and the union. Article 390 provides that every collective agreement must be in writing, produced in triplicate, one copy thereof being retained by each party and the third deposited with the appropriate JCA. However, no specific provision exists requiring workers to ratify or receive a copy of the collective agreement.

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[3] Commission for Labor Cooperation, *Labor Relations Law in North America*, p. 120-121.
[4] Ibid., p. 115.
[5] Ibid., p. 117.
[6] Ibid., p. 118.

4.2.4 Protection against Interference in the Exercise of Freedom of Association

Mexican labour law protects against interference in the exercise of freedom of association by prohibiting dismissals except for just cause, by regulating collective layoffs and terminations so that they take place in order of reverse seniority, and by directly prohibiting many forms of interference.

4.2.4.a Just Cause Protection

Article 123, Section XXII, of the Constitution "provides that an employer who dismisses a worker without justifiable cause or because he has entered an association or union, […] shall be required, at the election of the worker, either to fulfill the contract or to indemnify him in the amount of three months' wages".[7]

Article 46 of the LFT states that the labour relationship may be cancelled at any time by a worker or an employer having just cause, without incurring liability. Article 47 defines 15 "just causes" for discharge and makes unlawful a dismissal that is not based on one or more of the permissible reasons spelled out in the law. Union activity is not among those reasons.

The recourse opened to a worker alleging an improper dismissal is to make a claim to the relevant JCA on the ground that the dismissal was improper. Under Article 784 of the LFT, the burden of proof is on the employer to show that there was legal cause for the termination of employment. Thus, a discharged Mexican worker does not have to show that antiunion motivation was a factor in the dismissal; the burden always rests with the employer to prove that the reason for the discharge falls within the statutory definition of just cause for discharge. Under general principles of Mexican labour law, any ambiguities in the evidence with respect to whether just cause existed must be resolved in favour of the worker.

Article 48 of the LFT gives the worker who is discharged for union activity a choice between seeking a reinstatement or accepting a compensation in the form of three months' wages. In addition, if the employer fails to prove just cause of dismissal at the hearing, the worker shall be furthermore entitled to payment of his wages in arrears from the day of dismissal until the day on which the award is granted.

4.2.4.b Regulation of Collective Layoffs and Dismissals

The LFT regulates collective layoffs and dismissals in a similar manner to individual terminations of employment, providing a specific list of reasons under which layoffs and dismissals may actually take place.

"In articles 427 through 439, the LFT provides a mechanism by which an employer may suspend or terminate collective labour relations in certain cases of economic necessity. Suspension of collective labour relations is somewhat analogous to a temporary layoff

[7] Ibid., p. 141.

under Canadian or U.S. labour law, and a termination is analogous to a permanent layoff or plant closure. Articles 427 and 434 stipulate the legally recognized grounds for such measures.[8] Suspension or termination of collective labour relations is subject to CAB [JCA] approval. Except in cases falling under Article 427, Part I, or Article 434, Part I or V,[9] CAB authorization must be obtained prior to the suspension or termination. Suspension or reduction of the work hours of particular workers takes place in reverse seniority order."[10] The JLCA must also ensure that legal requirements for severance and other payment to workers are met.

4.2.4.c Prohibitions against Coercion

The right of workers to organize trade unions is reinforced by the prohibitions contained in Article 133 against certain conduct on the part of employers such as coercing employees to join or withdraw from a trade union, intervening in the internal activities of a union, and performing any act in restraint of the rights granted to employees by law.

Article 133 of the LFT provides that employers shall not "compel an employee by coercion or any other means to join or withdraw from the union or association of which he or she is a member, or to vote for a specified candidate". This could be interpreted to cover condoning or knowingly permitting coercion or interference by third parties. Article 133 also prohibits employers from performing any act "in restraint of the rights granted to employees by law". The system of blacklisting employees, on the part on employers, with a view to prevent workers from future employment is also prohibited by Article 133.

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[8] Article 427. Temporary suspension of labour relationships. The following shall be deemed to be grounds for the temporary suspension of the labour relationships in an enterprise or establishment:

I. "force majeure" or any unforeseen event not attributable to the employer, or the employer's physical incapacity or death, shall entail the suspension of work as an inevitable, immediate and direct consequence;

II. lack of raw materials not attributable to the employer;

III. over-production in relation to the enterprise's economic situation and the state of the market;

IV. the known and obvious inability, of a temporary nature, of the enterprise to pay its way;

V. lack of money and the impossibility of obtaining it for the normal continuance of work, on condition that these facts are adequately proved by the employer.

Article 434. Grounds for termination of labour relations. The following shall be grounds for terminating the labour relationship:

I. "force majeure" or any unforeseen event not attributable to the employer, or the employer's physical incapacity or death, shall entail the suspension of work as an inevitable, immediate and direct consequence;

II. the known and obvious inability of the enterprise to pay its way;

III. the exhaustion of the substance being extracted by a mining enterprise;

IV. the cases referred to in Article 38;

V. statutory declaration of insolvency proceedings or bankruptcy, if the competent authority or the creditors decide on the permanent closing down of the enterprise or the permanent retrenchment of production.

[9] Ibid.

[10] Commission for Labor Cooperation, *Labor Relations Law in North America*, p. 127-128.

Mexican labour law does not specifically address other forms of employer interference with freedom of association and the right to organize, or such interference by trade unions. However, ILO Convention 87 applies to labour relations in Mexico. The ILO's Committee of Experts on the Application of Conventions and Recommendations has stated that "the protection afforded to workers and trade union officials against acts of antiunion discrimination constitutes an essential aspect of freedom of association, since such acts may result in practice in denial of the guarantees laid down in Convention No. 87".[11] Similarly, Mexico has ratified ILO Convention 135, Article 1 of which states that "workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representative or on union membership or participation in union activities."

While the LFT itself does not specifically prohibit coercive conduct on the part of trade unions, Article 135 prohibits workers from "carry[ing] out propaganda of any kind within the establishment during working hours".

Finally, unions and their members are entitled to full protection of the criminal laws that prohibit physical assaults and damage to property and to the same police protection from such harms as other Mexican residents.

4.2.5 Enforcement

JCAs have jurisdiction to enforce rights to freedom of association. Such proceedings can be initiated by filing a complaint with the appropriate JCA.

4.3 Employment Standards

Minimum employment standards fall mostly under Title III of the LFT, which regulates the hours of work and overtime; rest days and vacation; minimum wage, bonuses and benefits; pay equity; and profit-sharing.

4.3.1 Minimum Wage

A minimum wage may be set at a general level for a geographic area, or specifically for occupational groups. The general minimum wage is valid for all the workers in a given geographic area while the minimum occupational wages apply to the workers in specific branches of activity, occupations, trade or special work, which are determined within one or more geographic areas. Minimum wages are established each year by the Council of Representatives (*Consejo de Representantes*) of the National Minimum Wage Committee (*Comisión Nacional de los Salarios Minimos*), which is composed of workers', employers' and government representatives (Articles 94, 95, 554 and 573 of the LFT). Minimum wages come into force on January 1st of each year (LFT, Article 570).

[11] See International Labour Organization, *Freedom of Association and Collective Bargaining* (Geneva: I.L.O., 1994), at p. 92, paragraph 202.

Wages can be fixed according to unit of time or on a piecework basis. If it is fixed on a piecework basis, the remuneration shall be such that the amount paid shall be equal at least to the minimum wage for regular work during a normal work day.

Article 132 of the LFT states that employers are required to pay the workers the wages and benefits to which they are entitled. Wages include remuneration at the daily rate, tips, housing, bonuses, commissions, benefits in kind and any other sum of money or benefit given to the worker on account of his or her work, such as punctuality and performance premiums. Article 85 adds that in no case can an employer pay less than the amounts fixed by law as a minimum. Article 99 establishes workers' right to payment of wages and states that this right cannot be waived.

In addition, the LFT prescribes that workers are entitled to an annual Christmas bonus equal to no less than 15 days' wages or a proportional amount for those who have not completed one year of service. The LFT also provides for annual profit sharing at a rate fixed by the National Committee for Workers' Profit-Sharing in Enterprises (*Comisión Nacional para la Participación de los Trabajadores en las Utilidades de las Empresas*), as provided by Articles 117-131.

4.3.2 Payment of Wages

The LFT provides that intervals between pay days shall in no case exceed one week for manual workers (Article 88). Articles 108 and 109 of the LFT stipulate that payments must be made in the place where workers perform their work, on a working day, and during working hours or immediately thereafter.

4.3.3 Hours of Work and Overtime

Article 422 and 423 of the LFT provide for internal employment regulations that should specify the hours of arrival and departure, the time at which work will begin and end on a regular workday, the mealtimes, the rest periods during the day, and the days and place for the payment of wages. However, the LFT also sets minimum standards regarding work schedules and rest periods.

Under the LFT, the maximum length of the working day is eight hours per day with a rest period of at least half an hour every day. One rest day with full pay is required every six days, usually Sunday (Articles 60, 61, 63 and 69). Article 64 notes that if a worker is unable to leave his workplace during the rest periods and meal times, such periods are deemed to be hours actually worked and must be included in the daily hours of work.

A normal week is understood as six days, which is the equivalent of 48 hours per week. These hours may also be distributed over 5½ days or 5 days, which means in the latter case, days of approximately 10 hours of work, and 9 hours daily if employees work 4 hours on Saturday.

A regular work day may be extended up to a maximum of three hours a day, a maximum of three times a week, for a maximum of nine hours of overtime per week, in exceptional circumstances (LFT, Article 66). No worker can be compelled to work overtime exceeding nine hours weekly (LFT, Article 68).

Article 74 of the LFT lists compulsory rest days for all workers, which include November 20th. On such compulsory holidays, the workers and their employer must decide how many shall be obliged to work, and if no agreement can be reached, the matter must be submitted to the relevant JC or JCA (Article 75).

4.3.4 Layoffs and Severance Pay

As noted above, the LFT requires prior approval by the JCA before layoffs or collective terminations of employment for economic reasons. "In approving a suspension, the CAB [JCA] awards compensation to the workers in question of up to one month's salary. Workers whose employment is terminated are entitled to receive at least three months' pay plus a seniority allowance […]. Suspended workers maintain rights to be recalled to their former positions. In the event that a terminated undertaking is started up again, the hiring preference clauses in the collective contract will apply."[12]

Under Article 431 of the LFT, a union or workers can request that the JCA verify every six months whether the causes of a collective layoff still apply. If the JCA determines that they do not, it will order that workers be returned to their jobs within 30 days. If the employer refuses to do so, workers are entitled to severance pay in accordance with Article 50 of the LFT.

4.3.5 Waivers of Rights

"In Mexico every employee works under an individual contract of employment incorporating minimal terms specified in the Constitution and the FLL [LFT], whether or not the contract is written and whether or not the employee is also covered by a collective agreement. Individuals can negotiate for terms or conditions superior, but not inferior, to those required by law for all individual contracts of employment."[13]

Section XXVII of Article 123 of the Constitution stipulates that parts of an agreement that constitute a waiver by the worker of indemnification to which he is entitled due to, among others, being discharged, or of any right designed to favour the worker, "shall be considered null and void and not binding on the contracting parties, even if expressed in the contract". Similarly, Article 33 of the LFT states that "any waiver by a worker of the remuneration payable to him or any wage supplements or other payments arising out of the services performed by him, irrespective of their form or what they are called, shall be null and void". Article 33 adds that the JCA shall approve an agreement between an employer and a worker unless there is a clause under which the worker waives his rights. Furthermore, Article 5 of the LFT provides that any written or verbal stipulation

[12] Commission for Labor Cooperation, *Labor Relations Law in North America*, p. 128.
[13] Ibid., p. 104.

providing for the worker's waiver of any of his rights or prerogatives established by labour norms shall be devoid of legal effect and shall not hinder enjoyment and exercise of the rights concerned.

This seems to support the claim by certain experts that Mexican labour law does not allow for workers waiving their rights and benefits. However, many within the Mexican system act on the understanding that a right, such as a right to severance pay upon termination of employment, does not crystallize in the hands of a worker until it is recognized as such by the appropriate adjudicating authority. On this understanding, for example, prior to the adjudication of a claim, a worker and an employer may settle that claim for an amount less than the severance pay amounts provided for in the law.

4.3.6 Enforcement

Minimum employment standards are enforced through inspection systems and through complaint-driven adjudication. In Puebla, inspection-based enforcement of minimum employment standards in state-regulated industries falls to the state-level authorities. Inspections are nonetheless governed by the federal General Regulation on Inspection, discussed in the section on occupational safety and health, below.

Under Article 1003 of the LFT, any worker or trade union may report violations of the labour norms to the authorities. Title XVI of the LFT provides for penalties to be imposed on employers who fail to observe any of the labour norms prescribed by this Law. The same applies to employers who fail to observe the internal employment rules set for a particular workplace. Generally, employers are subject to fines based on the daily amount of the general minimum wage in force at the place where the violation occurred.

Labour authorities have special obligations in the case of non-payment of wages. Under the LFT, Chairpersons of JCAs and labour inspectors "have the obligation to advise the Public Ministry concerning an employer […] who has delayed paying or has paid his workers a lesser amount of salary than the general minimum wage" (Article 547). An employer who has paid one or more workers salaries less than the minimum general wage is subject to prison sentences in addition to fines (Article 1004). Furthermore, Articles 547 and 548 state that labour inspectors are liable to a reprimand, suspension or dismissal if they do not advise the Public Minister concerning an employer who has omitted or delayed paying the general minimum salary to any of his workers.

4.4 Occupational Safety and Health

Article 123 of the Constitution requires each employer to ensure occupational safety and health (OSH) in the workplace and to instruct and train workers. All employers are required to observe regulations on hygiene and health, to adopt measures for the prevention of accidents, and to ensure the greatest possible guarantee for the health and safety of workers.

Title IX of the LFT implements the constitutional provisions of Article 123 with respect to OSH. It addresses issues such as the employer's liability, compensation for death and injuries, and prevention of occupational injuries and illnesses. It also contains a list of occupational diseases and tables prescribing degrees of permanent incapacity.

Furthermore, Mexico has ratified several International Labour Organization (ILO) conventions pertinent to OSH issues. The most important ones are Convention 150 on Labour Administration, Convention 155 on Occupational Safety and Health, Convention 161 on Occupational Health Services and Convention 170 on Chemicals.

Convention 155 requires governments to "formulate, implement and periodically review a coherent national policy on occupational safety and health [...] and the working environment". The objective of such policy must be to prevent injuries and illnesses (Article 4).

Convention 161 on Occupational Health Services calls for the creation of preventive Health Services to promote, on a cooperative basis, the well-being of workers. It requires that all workers be informed of health hazards involved in their work. Occupational health services are also to be informed of any factor that is or could be detrimental to workers' health and of any occurrences of health problems among workers.

Finally, Convention 170 on Chemicals calls for detailed regulations on the safe use of chemical products in workplaces. In particular, it requires signatories to formulate, implement and periodically review a coherent policy on safety in the use of chemicals at work. In addition to imposing obligations on government authorities and employers with respect to proper labelling of chemicals, it requires that workers be adequately informed and trained about the risks associated with handling these chemicals and the necessary precautions to be taken when they are used. On the issue of exposure, employers must ensure that workers are not exposed to chemicals to an extent which exceeds the exposure limits established by the competent authority.

4.4.1 Occupational Safety and Health Legislation and Regulations

Mexican labour law related to occupational safety and health (OSH) is detailed and comprehensive and the regulations have been updated in recent years. The legislation contains many cross-references (including to international conventions) which are expected to reinforce one another. Its holistic approach clearly aims at protecting workers and, to a large degree, places the responsibility of achieving this goal on employers with supervision by labour authorities.

In content, Mexico's workplace safety and health law is entirely federal. The obligations and rules related to OSH in Mexico contained in various laws and regulations are enforced by different government departments and agencies. The main laws are the LFT and the *Ley del Seguro Social* (Social Security Law - LSS). The *Codigo Fiscal* (Federal Fiscal Code), the *Ley Federal de Procedimiento Administrativo* (Federal Law on Administrative Procedure) for sectors under federal jurisdiction and their equivalents at

the state level for industries under state jurisdictions, and the *Ley de Amparo,* play roles in the sanction and review/appeal process.

The LFT places upon employers duties to ensure workplace safety and health, maintain compliance verification systems, and provide workers with training and information about risks; and it provides the labour authorities "with responsibility to issue regulations, to establish tripartite advisory commissions, to study problems and recommend solutions, to facilitate operation of enterprise joint committees, and to conduct inspections and ensure compliance".[14] The LSS "provides a system of financial protection, including workers' compensation benefits, administered by the Mexican Institute of Social Security"[15] (IMSS - *Instituto Mexicano del Seguro Social*).

The Federal Regulation for Occupational Safety and Sanitation and the Environment (RFSHMAT - *Reglamento federal de seguridad, higiene y medio ambiente de trabajo*), promulgated in 1997, "details employer and employee duties, sets out various safety and health rules, and enacts several new or special initiatives [such as the] promotion of private "verification units"."[16]

Under the authority of the Federal Measures and Standards Act (LFMN – *Ley federal sobre metrología y normalización*), technical standards on particular hazards and particular types of work are issued as Official Mexican Standards (NOM – *Normas oficiales mexicanas*). The LFMN promotes transparency and effectiveness in the elaboration and observance of NOMs. Its field of application includes the certification, verification and inspection of products, processes, methods, installations, services or activities to ensure they are in conformity with NOMs.

Key agencies are the *Secretaría del Trabajo y Previsión Social* (STPS), the IMSS, and the National Advisory Commission on OSH (CCNSHT - *Comisión consultiva nacional de seguridad e higiene en el trabajo).* Each state has its own State Commission on OSH (CCESHT). The purpose of these commissions is to study and propose adoption of prevention measures, and to review drafts standards. They are presided over by the Governors of the State and are made up of representatives from the STPS, the IMSS, employer organizations and trade unions (Article 512.B of the LFT). IMSS administers the chief worker compensation program and coordinates with STPS in carrying out prevention programs.

The STPS drafts technical safety and health standards, performs inspections, sets penalties, promotes operation of joint OSH committees, maintains hazard statistics, promotes research, and disseminates information. The Internal Regulation of the Department of Labour and Social Welfare (RISTPS – *Reglamento interior de la STPS*) lays out the internal procedures to be followed by STPS in carrying out its

[14] U.S. Department of Labor, *Occupational Safety and Health Laws in the United States, Mexico and Canada* (Washington D.C.: U.S. Department of Labor, Occupational Safety and Health Administration, 1999), p. 67.
[15] Ibid., p. 69.
[16] Ibid., p. 68.

responsibilities. Its General Directorate for Federal Labour Inspection (DGIFT – *Dirección general de inspección federal del trabajo*) is responsible for workplace inspections, while the promotion of OSH is the responsibility of the General Directorate for Workplace Safety and Health (DGSHT – *Dirección general de seguridad e higiene en el trabajo*).

4.4.1.a Prevention of Occupational Injuries and Illnesses

Article 512 of the LFT states that the regulations under the Law are intended to prevent "employment injuries and to ensure that the work is performed under conditions guaranteeing the workers' safety and life". Under Article 132, an employer has the obligation to prevent job-related harm to the worker. Article 133 also requires employers to ensure that tools, equipment and working material are of good quality and in good condition. Moreover, they are required to distribute and post in conspicuous places where work is performed, pertinent provisions of the health and safety rules and instructions.

Article 504 of the LFT requires employers to report to the appropriate JC, JCA or Inspectorate of Labour, any accidents which may occur within the 72 hours immediately following their occurrence. On the other hand, workers have an obligation, under Article 134, to observe the prevention and health measures prescribed by the employer or ordered by the competent authorities. Employers are also to provide appropriate training to workers. Article 153 lists the kind of training that employers must offer, including, among others, training intended to help prevent work accidents.

Furthermore, clauses relative to an employer's obligation to provide job training to workers must be included in collective contracts. Within 15 days following the conclusion of a collective contract, employers must present the plans and programs for training that the parties have agreed to establish to STPS for its approval. An employer who does not submit such plans and programs or does not implement them is liable to be fined in accordance with the LFT.

4.4.1.b Medical Services

Article 132 of the LFT requires employers to keep proper medications and therapeutic materials in the workplace. Article 504 of the LFT requires each employer of more than 300 workers to establish a sick bay with the necessary medical and auxiliary competent personnel under the supervision of a medical practitioner trained in surgery. Under Article 487, a worker who suffers a work-related injury is entitled to medical attention and hospitalization, if necessary. Even in a situation where the employer is exempt from any liabilities for reasons provided under Article 488, the employer is still bound to provide first aid and to ensure the worker's transport to a medical center or to his home.

4.4.1.c Other Norms

NOMs establish conditions of health, safety and hygiene that must be observed in workplaces. Articles 52 and 56 of the LFMN require that installations and activities be in conformity with established NOMs. Employers must maintain systems of quality control compatible with the applicable standards.

"NOMs on workplace safety and health fall into three major categories: (1) safety standards […]; (2) health standards, addressing chronic or acute risks from factors like noise, light, temperature, poor air quality, toxins, [and] carcinogens […]; and (3) structural standards, addressing institutions and procedures such as medical care, joint committees, information management, and hazard reporting."[17]

The following standards relate to OSH issues pertinent to Public Communication CAN 2003-1:

- NOM-001-STPS-1994 establishes OSH conditions in workplace areas;
- NOM-004-STPS-1999 establishes protection systems and safety devices on machinery and equipment;
- NOM-005-STPS-1998 establishes conditions for the handling of toxic substances in workplaces;
- NOM-010-STPS-1999 establishes maximum permissible levels of exposure to chemical substances and requires employers to maintain up-to-date records of concentration levels of chemical substances and show them to the competent authorities. Employers are also responsible for informing and training workers, and for posting appropriate safety notices in visible locations;
- NOM-011-STPS-2001 establishes maximum permissible levels of noise and exposure times per day;
- NOM-015-STPS-2001 establishes preventive measures to protect workers from high thermal conditions as well as the determination of the fatigue index and exposure limits;
- NOM-017-STPS-2001 establishes the requirements for the selection and use of personal protective equipment. It imposes on employers the obligation to conduct appropriate risks analyses and to provide them to labour authorities on request;
- NOM-018-STPS-2000 establishes a system for the identification and communication of risks related to chemical substances;
- NOM-019-STPS-1993 establishes guidelines for the composition and operation of OSH committees that must be set up in all enterprises or establishments, in accordance with the LFT; and
- NOM-116-STPS-1994 establishes the characteristics and minimum requirements that must be met by air purifying respirators against harmful particles present in the work environment.

The RFSHMAT also contains a series of employer obligations and responsibilities related specifically to these workplaces conditions. Article 17 obliges employers to: keep

[17] Ibid., p. 71.

contaminants within permissible limits in the workplace environment; develop and circulate safety data sheets for dangerous materials and chemical substances; provide workers with adequate protective equipment; and provide medical examinations to workers exposed to contaminating chemical substances. Employers are also required to adopt measures to prevent accidents occurring while using machinery and equipment as well as occupational illnesses resulting from exposure to chemical agents, and to inform and train workers about OSH risks and prevention measures.

Articles 99 and 100 of the RFSHMAT stipulate that in workplaces where conditions or contaminants may affect the health of workers, adequate ventilation must be in place. Article 101 relates to the selection of personal protective equipment. Articles 103 to 107 state that employers must provide, at the worksite, sinks, toilets, showers, change rooms and lockers, a clean place for the consumption of food as well as potable water. Sanitary facilities for the use of workers must always be kept in hygienic conditions and be available for use. Employers must establish a program for the tidiness and the cleanliness of the premises. Housekeeping of the plant must be done at least once after every work shift. Violations of the RFSHMAT are subject to fines based on the general minimum daily wage in effect in the economic area where the workplace is located, fines that are doubled if violations have not been corrected within the allotted time. More pertinent to the allegations about the cafeteria at Matamoros Garment, article 8 states that all areas of the workplace must be kept clean and, more specifically, floors must have a system preventing stagnation of fluids.

Finally, Article 132 of the LFT requires that employers behave towards the workers with proper consideration and abstain from ill treatment. This would relate to the allegations of verbal and physical abuse.

4.4.2 Enforcement Procedures

"Compliance policy [in Mexico] features three approaches: government inspection; private sector verification units which may inspect and report on compliance; and joint committees charged with monitoring compliance, assisting inspectors, and improving risk prevention."[18] The role and functions of verification units are not relevant to this public communication.

ILO Convention 150 stipulates that the competent bodies within the labour administration system must give notice of deficiencies in working conditions, propose corrective measures, and "make technical advice available". The Convention also specifies that labour administration staff must be suitably qualified and independent of improper external influences as well as possess the necessary means to perform their duties.

ILO Convention 155 requires that an adequate and appropriate system of inspection accompanied by adequate penalties for violations, and measures to provide guidance to employers and workers should be established in order to ensure compliance with a country's national policy on OSH.

[18] Ibid., p. VII.

Articles 511 and 540 to 548 of the LFT stipulate the functions, duties, obligations and liabilities of labour inspectors. They have a compliance monitoring, reporting, and information disseminating role. That is, they must ensure compliance with labour standards, including those concerning OSH, through periodic inspections of workplaces and of relevant company documents. They must report any violations of labour standards and require that corrective measures be put in place. Finally, they are responsible for informing workers and management about relevant OSH laws and regulations.

In performing these duties, labour inspectors are obligated to conduct periodic inspections of employer premises, to conduct special inspections when asked by their superiors or whenever a complaint is received regarding the non-observance of labour standards, and to file a report after each inspection, a copy of which must be provided to the interested parties. They also have an obligation to report to the proper authorities any failure to observe or violations of the labour norms in an establishment or enterprise.

Labour inspectors are subject to liability (up to dismissal) if they commit prohibited actions such as failing to carry out periodic or special inspections, including false information in their reports, and accepting direct or indirect bribes.

Article 512.D of the LFT stipulates that whenever corrective measures ordered by labour inspectors are not implemented by an employer, the STPS will impose a fine. Fines are increased if the measures are not implemented before the end of a specified deadline. If problems persist, the STPS, taking into account the gravity of the risk and the extent of the required modifications, may order a partial or complete closure of the workplace until the violation has been eliminated.

JCAs can hear workplace disputes involving OSH and worker compensation payments, and the federal courts hear enforcement appeals and constitutional challenges (*amparo*).

4.4.2.a Inspection Procedures

The General Regulation for Inspection and Penalties for Violations of Labour Legislation (RGIASVLL – *Reglamento general para la inspección y application de sanciones por violaciones a la legislación laboral*), which came into effect in August 1998, establishes rules of workplace inspections and the imposition of penalties.

The RGIASVLL governs inspections and penalties regarding workplace safety and health throughout Mexico, whether enforcement lies with federal or state authorities. The RGIASVLL outlines the obligations of inspectors, which include: monitoring the application of labour provisions; issuing and monitoring compliance orders; proposing complete or partial workplace closure; and forwarding appropriate reports to the public prosecutor, where appropriate. In addition to ensuring basic regulatory compliance, inspectors are responsible to monitor legally required workplace permits along with employee ability certificates, and ensuring that OSH committees are established in each

workplace and function properly. They are also charged with providing workers and employers with safety and health advice.[19]

Workplaces are subject to three types of regular inspection. Initial inspections occur when a workplace opens, expands or is modified. Periodic inspections are normally performed once a year. The frequency of periodic inspections can vary depending on the results of previous inspections and taking into account the industrial sector, the nature of the activities, the degree of risk, the number of workers, and the geographic location. Verification inspections are performed to monitor compliance with OSH-related measures or orders previously issued by labour authorities.[20]

Articles 17-20, 23 and 26 of the RGIASVLL establish guidelines on how to conduct an inspection. For instance, the inspector must provide the employer with a written inspection order specifying the kind of inspection to be conducted and the list of documents to be presented to the inspector. Notice must be given at least 24 hours in advance along with a statement of employer rights and obligations. However, the practice has usually been to give such notice at least three days in advance. Representatives of both employer and employees should be present.[21] Employees have the right to be present and speak freely during inspections. Complete collaboration from the employer, the workers and the OSH committee, as well as access to facilities and documents must be provided. The inspector is authorized to interview workers and the employer (or its representatives) separately to avoid the possible influence of one party on the other, if necessary.

If, during an OSH-related inspection, an inspector finds deficiencies that involve an imminent danger to the safety of the workplace or its workers or their health, the inspector must order corrective measures to be implemented immediately and, if necessary, recommend the partial or complete closure of the workplace to the competent STPS authorities.

Following each inspection, inspectors must submit reports and have them signed by the various parties. Employees are entitled to obtain copies of inspection results.

Inspections and inspection policy are handled by the DGIFT, a special STPS bureau. It is also responsible for the training and certification of inspectors. Inspectors must abide by specified standards of diligence and integrity, on risk of penalty. Specifically, they cannot inspect workplaces in which they have a financial or personal interest, whether direct or indirect, nor receive gifts or donations from employers, workers or their representatives.[22] Article 26 of the RGIASVLL stipulates that the work of inspectors will be supervised by competent labour authorities through verification visits of inspected workplaces and verification of facts noted in inspection reports. Randomly selected inspection reports will also be verified by an internal control unit.

[19] Ibid., p. 76.
[20] Ibid., p. 74.
[21] Ibid., p. 75-76.
[22] Ibid., p. 75.

Penalty recommendations are forwarded from inspection authorities to another special STPS bureau, the General Division of Legal Affairs (DGAJ – *Dirección general de asuntos juridicos*). The DGAS sets penalties, even where the inspection authority is non federal.[23] Mexico rarely imposes first-violation penalties. Failure to respect the provisions of LFMN can be sanctioned by fines or temporary or permanent closure of the production facility. These fines are higher than those related to violations of RFSHMAT. Penalties normally are imposed only for failure to prevent "imminent dangers or failure to abate problems previously highlighted by inspectors or OSH committees. Sanctions range from fines to partial or full closing of a facility. Size of fines legally turns on gravity of the offense, on intentional or repeated nature of violations, and on company['s] financial capacity […]. Administrative fines do not preclude criminal penalties."[24]

"Workplaces are also subject to special inspections, which can be ordered at any time if authorities have knowledge of [possible] violations, accidents, mishaps or imminent dangers, or if they detect irregularities, falsehood or dishonesty in employer acts, reports or documentation."[25] Under Article 1003 of the LFT, any worker, employer or trade union may report violations of labour norms, including OSH-related violations, to the authorities. "Workers may complain individually or through a union about unsafe work, inaccurate reports, and joint committee failures to identify hazards or secure abatements."[26]

Authorities must review complaints along with incident reports and other information to determine whether special inspections are warranted, depending on the seriousness of the hazard, the employer's compliance history and the size of the firm.[27] The same obligations and procedures as for the regular inspections apply except that these inspections are unannounced.

4.4.2.b Health and Safety Committees

Under Article 509 of the LFT, OSH committees consisting of an equal number of workers' and employer's representatives must be established where it is "found necessary". Joint committees are actually found mainly in workplaces with more than ten workers. Their purposes are to investigate the causes of accidents and diseases, to propose preventive measures and enable compliance therewith. They are also charged with assisting government inspections and preparing reports, performing follow-up inspections, and reporting on abatement failures. Employees have the right to have their OSH committee inform them of the workplace safety and health record. In addition, collective labour agreements may confer additional duties and decision-making power to such committees.[28]

[23] Ibid., p. 78.
[24] Ibid., p. 79.
[25] Ibid., p. 74.
[26] Ibid., p. 75.
[27] Ibid., p. 75.
[28] Ibid., p. 78.

Additional relevant norms can be found in the regulations. One of the technical standards established under the LFMN relates to the constitution and functioning of workplace OSH committees. NOM-019-STPS-1993 establishes guidelines for the composition and operation of OSH committees. Article 126 of the RFSHMAT, the federal Regulation on OSH in the workplace, specifies the tasks to be performed by OSH committees, including: investigating OSH accidents and illnesses; monitoring the application of the RFHSMAT provisions and applicable OSH-related standards; reporting any violations; and proposing preventive measures to the employer. Article 125 determines the range of the fine to be imposed if an employer fails to establish an OSH committee within 30 days of the beginning of operations at a plant.

4.4.2.c Information Systems and Experience Rating

Other components of the compliance system in Mexico are information systems and experience-related workers' compensation premiums.

"Employers must give notice of accidents and work-related illnesses to STPS, to the pertinent inspection authority, to IMSS and to the federal CAB [JCA]."[29] These institutions collect data from employers. "IMSS analyzes statistics and uses them to develop prevention strategies for reducing accidents and illnesses."[30]

"Information is [also] used for experience-rating of workers' compensation premiums, for targeting compliance inspections, and for identifying workplaces needing hazard reduction assistance."[31] The premiums paid by employers to IMSS "vary with job risk and with number and seriousness of prior accidents and illnesses. They are adjusted to reward good safety and health performance and to punish poor performance".[32] The rate-setting policy in Mexico "places less emphasis on sector risk classifications, [and] more on a particular firm's individual performance".[33] Firms may move among fee categories, depending on risk factors. Emphasis on the employer's record enhances performance incentives, but may encourage firms not to report accidents and illnesses, particularly minor ones.[34]

4.5 Due Process

4.5.1 Procedural Protections

Article 14 of the Constitution provides a general guarantee of due process of law in the legal system. Due process requires that the parties be properly notified, represented and heard by a tribunal and that the proceedings be fair, unbiased and unaffected by coercion,

[29] Ibid., p. 81.
[30] Ibid., p. 81.
[31] Ibid., p. 82.
[32] Ibid., p. 84.
[33] Ibid., p. 84.
[34] Ibid., p. 84.

intimidation and fraud. In addition, Titles 14 and 15 of the LFT contain extensive provisions that apply due process guarantees in proceedings before the JCAs.

Article 685 of the LFT provides for key elements of due process guarantees, which require that JCA labour proceedings be: open to the public; free of charge (that is no filing fees or other procedural costs); immediate, in the sense that the members of the tribunal must be in personal contact with the parties; expeditious; and predominantly oral and short. Proceedings must also be "conducted with a maximum of economy, concentration and simplicity".

Article 692 indicates that parties have the right to be represented by an attorney during JCA proceedings but that they may also appear in person. At the outset of proceedings, a JCA seeks to settle through conciliation the cases that come before them. If a settlement is not reached, the case moves to the hearing stage where the JCA receives the evidence offered by both parties and hears their arguments

"Mexican labour law assumes that employers have inherent advantage over workers in the employment relationship and in the intricacies of legal proceedings."[35] Therefore, the labour law is expressly protective of workers' rights. For example, the burden of proof always rests with the employer.

With respect to ordinary JLCA proceedings such as reinstatement hearings, Article 879 of the LFT provides that a hearing "shall be held, even when the parties do not attend. […] If the defendant does not attend, the petition shall be considered as affirmatively confirmed."

4.5.2 Independence and Impartiality of Decision Maker

As provided by Article 605 of the LFT, as it relates to Article 623, local conciliation and arbitration boards (JLCAs), which are established on a tripartite basis, are made up of a chairperson, one representative from workers and one from employers. Chairpersons are government representatives appointed every six years by the State Governor. Workers' and employers' representatives are designated according to branches of industrial or other economic sectors.

Pursuant to Article 648 of the LFT, workers' and employers' representatives must be elected at conventions to be organized and held every six years, in accordance with the provisions of Title XIII, Chapter 1 of the LFT. Article 652 of the LFT stipulates the procedures by which workers' representatives are elected. Said article provides that duly registered unions and unaffiliated workers rendering services to an employer are entitled to appoint delegates to the conventions. Notice is given of an open convention to elect representatives and the convention goes forward whatever the number of worker delegates present from a particular industrial sector may be. Representatives are elected by a majority of the votes cast.

[35] Commission for Labor Cooperation, *Labor Relations Law in North America*, p. 151.

There is provision in Article 652 of the LFT for worker delegates who are not affiliated with trade unions in workplaces where there is no registered trade union to attend such conventions. However, where there is a registered trade union representing the employees, the delegates must be union members. Therefore, if there is already a union in place, it is not possible for a group of workers to represent themselves at such conventions.

The JLCA of Puebla is comprised of six Special Boards that sit in the State capital and four Permanent JLCs headquartered in the municipalities of Atlixco, Huauchinango, Tehuacán and Teziutlán. On December 5, 2000, workers and employers held their respective conventions to elect representatives. Accredited delegates representing their respective organizations participated in the election of workers' and employers' representatives. Representatives and alternates were elected for the 2001-2006 term.

The impartiality of JCAs in matters of union registration and other actions has been the subject of extensive debate in Mexico. Article 841 of the LFT states that JCAs are required to make their awards in good faith, on the basis of well-informed truth and an appraisal of the facts made in good conscience. "Article 707 of the FLL [LFT] sets out the grounds upon which CAB [JCA] members may be legally disqualified from conciliating or hearing a particular case. These grounds include: a direct personal interest in the case; a relationship of economic dependence on one of the parties; a family, debtor/creditor, heir or legatee or business partnership relationship with a party. A CAB member may not conciliate or hear a case in which he or she has acted as an attorney for a party, or upon which he or she has issued an opinion. There is some disagreement among Mexican jurists over whether a CAB member who is assigned to adjudicate a case and who is a member of a union, union confederation, or employers' organization that is a party to that case [or whose interests are directly affected by that case] can be disqualified from adjudicating the case on that ground."[36]

"Articles 708 to 711 [of the LFT] set out disqualification procedures. Article 708 requires any representative of the government, employers or workers to withdraw from a case upon finding himself or herself involved in one of the circumstances described in Article 707. Under Article 710, a party to a case who believes that a CAB [JCA] member should be disqualified from hearing that case may file an application to have that member disqualified. In the case of worker or employer representatives, […] the president of the relevant CAB decides the application. Where the application seeks to disqualify the president of the CAB, it is brought to […] the governor of the state or chief of the government of the Federal District, as the case may be, where a local CAB is concerned. Workers' or employers' representatives are replaced by their respective alternates on the CAB."[37]

[36] Ibid., p. 152.
[37] Ibid., p. 152-153.

5. ANALYSIS AND FINDINGS

Under the NAALC, governments accept obligations to maintain high labour standards and to fairly, effectively and transparently enforce their labour laws. Accordingly, these conclusions focus on the overall pattern of actions by Mexican authorities in administering and enforcing Mexican labour law. Moreover, this report seeks to understand the requirements of Mexican law for the purpose of determining whether NAALC obligations were met; it does not attempt to adjudicate matters arising between Mexican workers and employers.

5.1 Freedom of Association

Freedom of association and the corresponding right to organize a union are constitutional rights in Mexico that are reinforced by federal legislation and provisions of international treaties incorporated into domestic law. Mexican workers have the right to join unions of their own choosing in an atmosphere free of outside interference. Of course, the enjoyment of that right depends in large measure upon the work of labour authorities, including providing timely and predictable union registration procedures, effective legal protection against interference, and the impartial application of labour laws.

5.1.1 Union Registration Procedures

In Mexico, the registration of a union is a first and key step enabling workers to create an organization of their choosing. Without registration, a union lacks the capacity to engage in most legal activities on behalf of its members. In particular, registration is required before a union can conclude and enforce a collective contract with an employer.

Mexican labour legislation and the international treaties to which Mexico is a party reinforce each other in requiring that union registration procedures operate in a timely and predictable manner. Under Mexican law, union registration is a purely administrative procedure. Article 366 of the LFT lists in precise terms the only reasons for which a union may be denied registration. It appears to exclude any discretion to deny registration for other reasons. The LFT also requires that registration be granted automatically to a union in the event that registration procedures take longer than 60 days to complete. This suggests that a 60-day period to complete the registration is not a normal delay, but rather one that is so excessive that it requires an automatic remedy. This is consistent with ILO Convention 87, to which Mexico is a party. The Freedom of Association Committee of the International Labour Organization has repeatedly emphasized that the freedom to organize a union without prior authorization requires that union registration procedures operate without delay and not be at the discretion of the registering authority.

Timely and predictable registration procedures are also of particular importance within the Mexican system of legal protections. By limiting the discretion of the registering authority, they underpin the principle, well-established in Mexican law, of non-

interference by the state in internal union affairs. They also provide an important means through which workers can initiate a change of union representative. This is a key check and balance within a system that, in accordance with the principle of non-interference, allows unions to be formed, registered and to negotiate collective contracts without an election or without presenting other evidence to a public authority that they have the support of a majority of the workers that they seek to represent.

Official documents presented to the Canadian NAO in the context of this public communication raise concerns that the JLCA sought to exercise a discretion to deny registration inconsistent with the constraints imposed upon it by Mexican law.

In the light of Article 366 of the LFT and ILO Convention 87, the following observations concerning the grounds for decision denying registration to SUITTAR and SITEMAG are in order:

With respect to the SUITTAR decision (see section 3.1.1.b):

1) Article 366 simply requires that documents be filed in duplicate, not that two copies in addition to originals be filed.

2) The LFT does not require that the formation of the union and the election of its executive committee take place in separate assemblies or that they be recorded in separate documents, and Article 366 does not authorize authorities to deny registration on these grounds.

3) While Article 366 may empower the registering authority to review the contents of the by-laws of a union seeking registration, it could only do so for the purpose of verifying that the contents listed in Article 371 are present, and not to make judgments about the clarity or adequacy of by-law provisions. A review by the Canadian NAO of SUITTAR's by-laws confirms that they do contain provisions governing the administration and disposition of goods owned by the union, as well as disciplinary actions that may be applied to union members.

4) Article 366 does not empower a registering authority to require that, in the case of an enterprise level union such as SUITTAR, an applicant for registration establish that each of its officers is an employee of the enterprise in question. While this may be a legal requirement to hold union office, there is no legal basis upon which failure to comply with it may result in denying registration.

With respect to the SITEMAG decision (see section 3.1.1.a):

1) Article 366 does not require that a petitioner for registration prove that all workers who sign an assembly list are over 14 years of age. To be registered, a union simply requires 20 persons in active employment. If an employer has hired a worker, the ordinary inference to be drawn is that this person is of legal age of employment. If the authorities have reason to suspect that the union has not

presented a list of 20 workers validly engaged in active employment, it may enquire into the matter and seek further information from the applicant. However, requiring that the applicant prove that all of those on its union assembly list are above the age of 14 as a condition for registration amounts to imposing a requirement of proof not found in Article 366.

2) The fact that one worker whose name appeared on the attendance list submitted by the petitioners later appeared before the JCLA and stated that he had not signed the list could not provide grounds to deny registration, since there remained a sufficient number of workers who had signed the list.

3) Determining that an applicant for registration has not shown 20 workers in active service by ruling that as of the date of the registration decision the enterprise in question had ceased operations, and thus there could not be 20 workers in active service, is clearly contrary to the rules for making such calculations set out in Article 364.

In the case of the SUITTAR petition, three of the four grounds cited by the JLCA for denying the petition have no apparent basis in Article 366 of the LFT. The fourth ground either rests on an apparent oversight in reviewing the documents submitted by the applicants for registration, since the key elements said by the JLCA to be missing from the union's constitution appear to have been included in other parts of the document not referred to by the JLCA in its decision, or is without basis in Article 366 as it would constitute a judgment about the adequacy of the union's by-laws rather than a determination of whether they contain the items required by law.

In the case of the SITEMAG petition, again three of the four grounds for decision were without any apparent basis in Article 366. The fourth ground resulted from a fairly obvious typographical error and other minor technical differences between copies of documents that could easily have been corrected. While the JCLA may not be legally obligated in every case to draw such errors to the attention of an applicant for registration, there is nothing in Mexican law that would have prevented it from doing so. In this case, such steps would have avoided delays that were inconsistent with ensuring the timely and predictable registration process contemplated by Mexican law. Instead the JLCA appears to have taken a highly technical approach that inevitably had the opposite result.

Union registration is a matter in which time is clearly of the essence. The pattern of events surrounding the two petitions for registration filed by SITEMAG and SUITTAR raises concerns that the labour authorities caused significant delays in the registration of those unions without appropriate justification. The decisions in the SITEMAG and SUITTAR applications took 58 and 60 days respectively to render. No explanation of this delay was available in the course of this review. When SUITTAR representatives sought *amparo* with respect to the JCLA's decision to deny registration, the JLCA failed to deliver its report on the decision to the District Court within the statutory deadline, which had the effect of delaying the *amparo* hearing.

It should not generally be necessary for workers to use appeal procedures when seeking to register a union. Moreover, such appeal processes may often be unable to fully remedy a legally unjustified decision to deny registration simply because the time required to complete such processes will cause union organizing efforts to stall while the union waits for legal authority to act on workers' behalf.

As noted above, NAALC procedures are not designed to substitute for national appeal procedures. It is troubling that the SITEMAG petitioners did not seek *amparo* remedies with respect to the decision to deny registration to their union. The reasons provided by the submitters for not pursuing this recourse in the SITEMAG case appear doubtful, as the deadline for filing an *amparo* action would not have begun to run until SITEMAG representatives had received the JCLA's decision. It is also troubling that the SUITTAR petitioners did not pursue their *amparo* case to its conclusion, though more understandable in light of the financial pressures faced by the workers who were parties to the *amparo* petition.

Nonetheless, the overall pattern of events raises concerns about whether Mexico is in conformity with NAALC obligations to promote compliance with and effectively enforce national labour laws (Article 3), and to ensure that administrative proceedings for the enforcement of labour laws are not unnecessarily complicated and do not entail unwarranted delays (Article 5.1(d)). It should be noted that similar concerns with respect to registration procedures were identified in the report of the US NAO on Public Communication US 94-03, and in the report of the Worker Rights Consortium on the registration application by the *Sindicato Independiente de los Trabajadores de la Empresa Kukdong Internacional de México* (SITEKIM) in June 2001. This strongly indicates that the problems faced by independent unions with regard to the administration of union registration procedures in Mexico continue to be unresolved.

5.1.2 Impartiality

The effective application and enforcement of labour law rests to a large extent on fair and equitable labour tribunals and processes.

The Puebla JLCA is organized as a tripartite body. The arguments presented in the communication suggest that the institutional affiliations and connections of the worker representatives on the JCLA may in some cases create an apprehension of bias or conflict of interest in dealing with petitions for registration on behalf of unions not affiliated with established trade union confederations.

The LFT allows a party to a proceeding to challenge the participation of a JCLA member on the basis of bias or conflict of interest. It appears that the workers in this case did not avail themselves of this right. In any case, it is not clear whether a JLCA member who is a member of a union or union confederation the interests of which are opposed to those of the applicant can be disqualified by virtue of that affiliation. Nor is it clear that the disqualification rules of the LFT apply to administrative processes such as union registration. Further, if the conflict of interest provisions of the LFT do apply, it is not

clear that they can provide an adequate remedy. When a JLCA worker representative is disqualified from participating in a proceeding, an alternate is selected from among its other worker representatives. However, the majority rule system for electing worker representatives appears likely to ensure that the list of alternates will often be comprised of workers affiliated with established union federations or confederations.

This raises a concern about whether there is some way, without abandoning the principles of tripartism, of addressing the possibility that members of the JLCA can be influenced by the fact that the organization or organizations that supported their election to the JLCA have a stake in the outcome of registration decisions. As noted in Public Communication CAN 98-1, it is uncertain that the current provisions of the LFT can ensure that the JLCA is impartial and independent and does not have any substantial interest in the outcome of proceedings as required by Article 5.4 of the NAALC. Similar concerns were raised in the reports on Public Communications US 97-03 and US 99-01.

5.1.3 Protections against Interference

Protections against interference are obviously key measures in promoting compliance with and effectively enforcing rights to associate freely and organize a union.

The Public Communication alleges numerous instances in which employers or competing established trade unions sought to intimidate workers seeking to organize new unions in the Matamoros Garment and Tarrant México facilities. It also alleges numerous instances in which workers were coerced by employer representatives into settling claims that they had been wrongfully dismissed because of their union activities, often for amounts of severance pay less than those prescribed by law.

Mexican law contains prohibitions against many forms of intimidation and coercion. These prohibitions can be enforced by filing a complaint with the JLCA. Yet the workers filed no complaints to remedy the intimidation and coercion that they allege. As a general matter, it is not appropriate to draw conclusions with respect to obligations to effectively enforce labour laws where enforcement is complaint-driven and complaints are not filed, unless some cogent explanation can be provided for why those mechanisms were effectively unavailable.

The reluctance of workers to seek the assistance of the authorities was evident across a range of different issues, including not only alleged anti-union discrimination, but also alleged occupational safety and health and minimum employment standards violations. Indeed, they appear in many cases to have preferred political protest and lobbying the authorities over using legal complaint procedures. Workers repeatedly told the Canadian NAO that the main reason for not seeking legal remedies from the authorities was that they had no confidence in the JLCA because it had, unfairly in their view, denied their petition for registration. This is understandable given the conclusions reached above with regards to the registration process in the SITEMAG and SUITTAR cases. However, in both cases the registration decision came relatively late in the sequence of events.

Workers at both Tarrant México and Matamoros Garment also explained that they were disheartened by the passivity of the authorities in various instances, for example when the JLCA allegedly supervised back wage payments made at below minimum wage rates. Nonetheless, in the absence of a direct refusal by the authorities to act upon a complaint, some onus to make use of available legal complaint processes must rest upon workers making a claim that legal protections were not properly enforced.

Nonetheless, four concerns should be noted.

First, the JLCA appears to have witnessed, at Matamoros Garment, the distribution of cheques to workers being laid off for economic reasons, and to have been aware of the regular and massive layoffs at Tarrant México. Yet the information available suggests that appropriate layoff procedures, including the requirement that layoffs take place in reverse seniority order, appear not to have been followed. The seniority provisions of the LFT are an important safeguard against interference in union organizing rights, since they effectively prohibit anti-union considerations from influencing the order of layoffs. Moreover, as noted above, this apparent inaction on the part of the JLCA appears to have affected the confidence of workers in its willingness to enforce other worker protections found in Mexican law.

Second, as we noted in the report on Public Communication CAN 98-1, it is not clear whether provisions of the LFT concerning the protection of workers from coercion and intimidation on the part of a union are sufficient to ensure that Mexico's obligations under NAALC Article 2 are met. The LFT protects workers from coercion on the part of an employer, but protection from coercion on the part of a union is not as well delineated. In the absence of labour law protection it would appear that the only appropriate avenue to seek redress for such intimidation or coercion would be the criminal justice system and the intervention of police authorities.

Third, where workers seek a remedy for unjust dismissal, including anti-union dismissal, time is of the essence. Workers told the NAO that once they were laid off, they often had no source of income. The more time passed the more they needed the money that opting for severance pay instead of reinstatement would provide them, and the more vulnerable they became to the risk that they would not receive any severance pay if they persisted in their claims. Yet the JLCA appears to have been willing to grant adjournments in many cases without inquiring into the reasons for such adjournments or into whether workers were coming under undue pressure to adjourn or settle their cases on disadvantageous terms. The pertinent NAALC provisions related to the effective and timely enforcement of labour legislation through appropriate government action contemplate that authorities like the JLCA are under a positive obligation to make sure legal recourses are timely enough to be effective. A more proactive approach on the part of the JLCA would likely have made an important contribution effectively enforcing protections that are key to countering anti-union dismissals, and to building the confidence of workers in the JLCA itself.

Finally, the Canadian NAO has no evidence that the Puebla State Attorney General's Office took any action on the harassment complaint filed with it by SITEMAG supporters on February 25, 2003.

5.1.4 Information Available to Workers Represented by a Union

As noted above, in accordance with the principle of non-interference by the state in internal union affairs, Mexican labour law allows unions to be formed, registered and to negotiate collective contracts without an election or presenting other evidence to a public authority that they have the support of a majority of the workers that they seek to represent. This absence of regulation creates a risk that those who are represented by a union or covered by a collective contract may have little information about either. This in turn creates a risk that lack of information may impair the ability of workers to ensure that their union is acting on their behalf, to participate in its activities, and to exercise their right under Mexican law to personally enforce their rights under a collective contract. It may also impact on the freedom of workers not to associate with a union, which is protected by Article 358 of the LFT.

At both Matamoros Garment and Tarrant México there appears to have been confusion among workers about whether there was an established union in the plant and the identity of that union. Workers also said that they were unable to obtain a copy of their collective agreement from the union that had negotiated it, despite having requested it.

There appears to be no legal obligations on unions to provide workers with a copy of a collective contract that covers them. Under Article 390 of the LFT, unions are required to file with the relevant JCA a copy of any collective contract to which they are party. It is unclear however whether workers can obtain a copy of the collective contract that governs their terms and conditions of employment by requesting it from the JCA. This raises concerns about whether Mexico is meeting its obligations to maintain high labour standards under NAALC Article 2, and its obligations under NAALC Article 4.2 to ensure that persons with a legally recognized interest have recourse to procedures by which they can enforce their rights under a collective contract. Similar concerns were raised in the reports on Public Communications US 94-03 and US 99-01.

5.2 Occupational Safety and Health

The Communication contains numerous allegations of violations of occupational safety and health (OSH) legislation and regulations at both Matamoros Garment and Tarrant México. Yet, workers do not appear even once to have filed a complaint with the relevant authorities to seek the intervention of inspection services to enforce OSH laws. While workers explained that they lacked confidence in the willingness of authorities to enforce labour laws, it should be noted that in the case of OSH, the enforcement authority is not the Puebla JLCA, with which they had already interacted, but rather the federal *Secretaría del Trabajo y Previsión Social* (STPS).

As noted above, there is some onus upon workers to make use of available complaint procedures. In the case of Matamoros Garment, workers did not bring their concerns about occupational safety and health violations to the attention of the enforcement authorities until the JLCA attended at the plant on January 13, 2003, in response to their work stoppage. At that time, according to the submitters, workers complained informally about working conditions to a representative of the JLCA, and the JLCA representative responded that such issues were of less concern than getting the employer to pay back wages owing and returning to work. Such a response would be troubling as it appears to prejudge the seriousness of workers' occupational safety and health concerns without investigating them. However, the workers did not have to accept it. They could have filed a formal complaint either with the JCLA or with the STPS. In the case of Tarrant México, workers brought their occupational safety and health concerns to the attention of the authorities only when they sought the assistance of the JLC to obtain a negotiated settlement with the employer. Since the function of the JLC is to conciliate disputes, it is reasonable that the JLC considered the matter closed when, on July 8, 2003, the workers' coalition representatives agreed to the 16-point settlement of their demands.

On the other hand, under Mexican law, the STPS has an obligation to conduct regular OSH inspections of workplaces. The Mexican NAO provided the Canadian NAO with specific dates upon which STPS officials carried out inspections at both Matamoros Garment and Tarrant México. It is appropriate to ask what steps STPS inspectors may have taken to address any health and safety hazards in the two plants. The submitters have alleged a series of matters that an inspector might have been expected to notice and deal with on a regular inspection. The information before the Canadian NAO suggests that there was no operating joint OSH committee in either plant. Other occupational safety and health issues might also have merited investigation: specifically at Matamoros Garment, the alleged: lack of protective equipment on sewing machines, first aid supplies, medical services and clean drinking water, and unsanitary rest rooms and cafeteria; in the case of the Tarrant México plant, the alleged: lack of appropriate ventilation, insufficient drinking water, insufficient and unsanitary washrooms, lack of protective gloves and soap to protect against the hazards of chemical dyes, and lack of medical services on site. It would be important to know what matters SPTS inspectors examined in each plant, what if any violations they found, and what if any steps were taken to remedy such violations.

The Canadian NAO has yet to receive any information on whether inspectors identified or sought to address such concerns in the course of their inspections or inspection follow-up processes. The Canadian NAO will continue to seek relevant information from the Mexican NAO, such as copies of the reports by STPS inspectors on their inspections at Matamoros Garment and Tarrant México, in order to formulate an appropriate recommendation to the Minister of Labour.

5.3 Minimum Employment Standards

In Puebla, minimum employment standards in workplaces falling within state enforcement jurisdiction can be enforced through complaint-driven inspection processes. They can also be enforced by filing a complaint with the JLCA. Other than in the one instance discussed below, it appears that at no time did workers seek to enforce their minimum standards rights by making a formal complaint to the relevant authorities. In the absence of such complaints, there is little basis upon which to draw conclusions about the effectiveness of enforcement processes with regards to matters, such as involuntary overtime, that likely would only come to the attention of an inspector or other authority if a complaint were filed.

In the case of Matamoros Garment, workers did not bring their concerns about minimum standards violations to the attention of the enforcement authorities until the JLCA attended at the plant on January 13, 2003 in response to their work stoppage. At that time, the JLCA took action to resolve the issue of unpaid wages. However, the submitters have argued that the JLCA failed to ensure that back wage payments complied with minimum wage norms even when such concerns were brought to its attention. The information before the Canadian NAO suggests that the response of the JLCA to these concerns was passive and discouraging to the workers. Further, as noted above, the workers' allegations that the JLCA representative appeared unconcerned about issues beyond non-payment of wages are troubling. On the other hand, if workers believed that the JLCA's response was inadequate on minimum wage or other issues, they could have pursued the matter by filing a formal complaint with the appropriate inspectors' office or with the JLCA itself. The main concern from the point of view of NAALC obligations is that the informal interactions of the JLCA with workers, combined with other factors discussed above, may be discouraging workers from using appropriate enforcement procedures.

Matamoros Garment workers did file a complaint of theft of wages with the State of Puebla Attorney General's office on March 24, 2003. The information before the Canadian NAO shows that at least some of those who filed this complaint had in fact received their wages by the end of the day on March 24, 2003, and workers at the Canadian NAO public meeting indicated that because wages were paid at that time no further action was expected with respect to that complaint.

In the case of Tarrant México, workers brought their concerns about minimum standards violations to the attention of the authorities only when they sought the assistance of the JLC to obtain a negotiated settlement with the employer. As noted above, since the function of the JLC is to conciliate disputes, it is reasonable that the JLC considered the matter closed when on July 8, 2003, the workers' coalition agreed to the 16-point settlement of their demands.

On the other hand, as also noted above, the Canadian NAO has concerns about the lack of evidence of action on the part of the JLCA to ensure that the procedures called for by the LFT were followed during the collective suspensions of employment at Matamoros

Garment and at Tarrant México that preceded the eventual shut down of each plant. In the case of Matamoros Garment, the JLCA must have been fully aware that economically motivated layoffs were taking place, since it supervised the distribution of the last pay cheques to workers on March 24, 2003. There appears to have been evidence at the outset that the closure was permanent, which would entitle workers to statutory minimum severance payments, and it is not clear why the closure was treated as temporary. The Canadian NAO is also concerned that the relatively passive approach by the JLCA to wrongful dismissal claims may have left workers vulnerable to pressure to abandon or unduly compromise their rights.

The Canadian NAO has yet to receive any information concerning regular minimum standards inspections at either plant. Such inspections might reasonably be expected to detect problems like failures to make timely wage payments or to pay the minimum wage. The Canadian NAO will continue to seek such information with a view to formulating an appropriate recommendation to the Minister. The LFT also requires that the JLCA and JLC notify the appropriate public prosecutor's office when an employer has ceased paying wages to its workers. The Canadian NAO will also continue to enquire into whether such notification was given at the appropriate time, and if so, what action or decision was taken.

6. RECOMMENDATION

The NAO makes the following recommendation in the spirit of Cooperative Consultations and in a desire to build on our comparative knowledge and understanding of labour law and its enforcement in North America.

Pursuant to Article 22 of the NAALC, which provides that a Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of the Agreement, the NAO recommends that the Minister of Labour seek consultations with the Mexican Secretary of Labour and Social Welfare on the following issues related to freedom of association:

a) ensuring timely and predictable union registration procedures;

b) how the requirement of the Agreement that labour boards (*Juntas de Conciliación y Arbitraje* in Mexico) be impartial and independent and not have any substantial interest in the outcome of decisions is respected in deciding upon union registration applications;

c) the enforcement of protections against interference in workers' rights to organize a union of their choosing, including layoff procedures and remedies to unjust dismissals; and

d) the dissemination of information on the content of collective bargaining agreements to union members and other interested parties.

The Canadian NAO may provide further recommendations to the Minister upon receipt of the following additional information from the Mexican NAO, or within 30 days, whichever is sooner, with respect to enforcement of occupational safety and health and minimum employment standards:

a) copies of the occupational safety and health STPS inspection reports;

b) OSH matters that were examined by inspectors, any violations found, and any steps taken to address these violations;

c) information regarding minimum employment standards inspections at either plant, and if any, copies of the inspectors' reports;

d) the actions taken by the JLCA with respect to the collective suspension of employment at both plants; and

e) whether notification to the public prosecutor' office was given when employers at both plants failed to make timely payment of wages to their workers.

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April 12, 2005