SUBMISSION TO
THE UNITED STATES NATIONAL ADMINISTRATIVE OFFICE (NAO)
REGARDING PERSISTENT PATTERN OF FAILURE TO ENFORCE AND DISCRIMINATION IN THE ADMINISTRATION OF MEXICAN LABOR LAW:

THE CASE OF MAXI-SWITCH, Inc.

in

CANANEA, MÉXICO

Submitted by

Communications Workers of America, AFL-CIO (CWA)
Sindicato de Telefonistas de la República Mexicana, FESEBS (STRM)
Federación de Sindicatos de Empresas de Bienes y Servicios (FESEBS)

October 11, 1996

TABLE OF CONTENTS

TABLE OF CONTENTS (cont'd)

SUBMISSION TO THE U.S. NATIONAL ADMINISTRATIVE OFFICE (NAO) REGARDING PERSISTENT PATTERN OF FAILURE TO ENFORCE AND DISCRIMINATION IN THE ADMINISTRATION OF MEXICAN LABOR LAW: THE CASE OF MAXI-SWITCH, CANANEA

Submitted by the Communications Workers of America, AFL-CIO (CWA), the Sindicato de Telefonistas de la República Mexicana (STRM, or Union of Telephone Workers of México), and the Federación de Sindicatos de Bienes y Servicios (FESEBS, or Federation of Unions in Goods and Services Companies of México. October 10, 1996

I. The Petitioners

1. COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (CWA), Morton Bahr, President, headquartered at 501 Third Street, N.W. Washington, D.C. 20001-2797, telephone: (202) 434-1110, fax: (202) 434-1139. The CWA signed an alliance with the Mexican and Canadian telephone workers' unions on February 15, 1992, to jointly support each other on issues of common concern. The CWA is an affiliate of the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO), and of the Postal, Telegraph and Telephone International (PTTI).

2. FEDERACIÓN DE SINDICATOS DE EMPRESAS DE BIENES Y SERVICIOS (FESEBS), Benito Bahena Lome, Secretary General of the National Executive Committee, headquartered at number 16 Calle Río Neva, Colonia Cuauhtémoc, México, Federal District, telephone: (52) (5) 705-3964 and fax: 705-5176

3. SINDICATO DE TELEFONISTAS DE LA REPÚBLICA MEXICANA-STRM (Union of Telephone Workers' of Mexico), Francisco Hernández-Juárez, Secretary General of the National Executive Committee, headquartered at number 16 Calle Rio Neva, Colonia Cuauhtémoc, México, Federal District, telephone: (52) (5) 705-4653, 702-2100, fax: 703-2583. The STRM is an affiliate of the FESEBS, and of the Postal, Telegraph and Telephone International (PTTI).

II. Compliance with guidelines for minimum standards required by the NAO

(a) The matters described in this complaint demonstrate action inconsistent with México's obligations under Part II of the agreement in four ways: First, the Mexican government has failed to "ensure that tribunals that conduct or review [labor] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter" [Article 5.4]; second, it has failed to "ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent" [Article 5.1]; third, it has failed to "effectively enforce its labor law" regarding protection of workers against illegal dismissals and other forms of retaliation against legitimate union organizing activities "through appropriate

government action such as initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" [Article 3.1(g)] , and fourth, it has failed to "effectively enforce its laws" related to minimum employment standards, and overtime pay, "through monitoring compliance and investigating suspected violations, including through on-site inspections ... and through encouraging the establishment of worker-management committees to address labor regulation of the workplace" Article 3.1 (b) and (e).

(b) Such actions have significantly harmed the workers involved, both individually and collectively, by denying them their rights under the law to freedom of association, impartial treatment by the labor authorities, fair enforcement of labor standards regarding working conditions, protection from retaliation against legitimate union organizing activities, and in some cases their physical well-being.

(c) The actions described in this complaint, along with accompanying commentaries, demonstrate a persistent pattern of non-enforcement of labor law by Mexican labor authorities. Specifically, the laws not being enforced include:

Article 123 of the Mexican Constitution and International Labor Organization Conventions 87 and 98, which México has ratified and thus incorporated into its national laws, guaranteeing freedom of association and the right to collective bargaining;

Articles of the Mexican Federal Labor Law (FLL) outlining the requirements for accepting or rejecting applications for legal recognition of trade unions;

Articles of the FLL outlining the procedures to be followed in cases where more than one trade union exists in a factory;

[These relevant provisions of the Constitution, laws and international conventions are included in Annex 1.]

(d) Relief has been properly sought under Mexican domestic law; specifically through four complaints requesting reinstatement for illegally fired workers and one appeal to the 3rd District Court requesting an injunction against a decision to deny union registration. However, the outcome of these legal actions have not resulted in adequate remedies that require proper enforcement of the law as required under the North American Agreement on Labor Cooperation (NAALC).

(e) The matters described in the complaint are not currently pending before any international body.

III. Organizations and agencies involved in this case

1. MAXI SWITCH, S.A. DE C.V. (hereinafter called Maxi-Switch), a maquila factory headquartered in the industrial part of the city of Cananea, State of Sonora, México. Maxi-Switch produces and markets high-technology keyboards for computers and game sets. Maxi-switch is a subsidiary of the Silitek corporation headquartered Taipei, Taiwan, and has its main office at 2901 E. Elvira Rd., Tucson, Arizona, 85706 Tel. (602) 294-5450, Fax (602) 294-6890. Maxi-Switch owns other factories in Caborca, Sonora, in Penang, Malaysia, in Keeluin, Taiwan and Shen Zhen, Shanghai, China. It has its Distribution Center in Cork, Ireland and other establishments as follows:

--Maxi-Switch Elektronik, Talweg 31 D-91257-Pegnitz, Germany, Tel. 49-(0) 9241-91151, Fax 49 (0) 9241-91152

--Computer Brokers of Canada, 57 Adesso Drive, Concord, ON L4K 3C7 (416) 660-1616

--AddTech, 14 East World Fair Drive, Sommerset, N.J. (908) 805-0900

--Asia Source, Inc., 147 Ethel Rd. West, Piscataway, N.J. (214) 241-2744

--Asia Source Inc., 1371 Glenville Drive, Richardson, TX (214) 238-8899

--Asia Source, Inc., 3790 Westchase Drive, Houston, TX 88042 (713) 782-8899

--American Pro Image, 13017 East 166th Street, Cerritos, CA 90701 (310) 926-6667

--Ingram Micro Distributors, 1600 E. St. Andrew Place, Santa Ana, CA 92799 (800) 456-8000

--Asia Source, Inc. 46820 Fremont Blvd., Fremont, CA 94538 (800) 200-0ASI;

--Ingram Micro Distributors, 2128 Elmwood Avenue, Buffalo, N.Y., 14207 (800) 456-8000

--PC Wholesale, 472 Fox Court, Bloomingdale, IL 60108 (708) 307-1700

--Asia Source, Inc. 6115B North Belt Dr., Norcross, GA 30071 (404) 246-9000

2. The Union of Workers of Maxi Switch, affiliated to the Federation of Unions of Goods and Services Companies (FESEBS), founded by 56 workers of the Maxi Switch company who signed the incorporation papers on November 22, 1995, filed for legal registration on November 24, 1995, and was denied legal registration on January 23, 1996. Hereafter called the "Maxi-Switch Union."

3. The local Conciliation and Arbitration Board (CAB) of the State of Sonora, México, headquartered in the state capital of Hermosillo, México.

4. The Union of Workers of Contract Manufacturing Companies, Shoe Stores, Garment Stores and Industries and Commercial Establishments in General of the State of Sonora, affiliated to the Confederación de Trabajadores de México, (CTM, or Mexican Confederation of Workers).

IV. Facts of the Case

Beginning in August 1995, a group of workers at Maxi-switch began to organize a union, with the assistance of the Federation of Unions of Goods and Services Companies (FESEBS). The major concerns of the workers included: excessively low salaries of $22.60 Mexican pesos per each eight-hour work period (approximately U.S.$3.00 per day as per the exchange rate on September, 1996) and minimum benefits, causing the exploitation of such workers; and also that the Mexican Federal Labor Law clearly provides a framework under which an employer is required to enter into a collective contract with a legally organized union.

Prior to seeking registration of the union in November of 1995, the leaders of the Maxi-Switch union and representatives of FESEBS met with the Factory Director, engineer Salvador Talamantes, to explain that a collective contract would not only serve as in instrument for representing workers, but would also, through training and dialogue, lead to productivity increases and harmonious conditions that would be advantageous to the company as well. However, the company's management ignored the proposal.

As soon as workers stepped up their open campaign to organize the union, Maxi-Switch's management illegally began to use threats and intimidation to persuade workers to abandon their effort. The person in charge of Labor Relations, Marcia Zuly Ramos, told workers they would be fired if they joined the union, while promising other workers they would benefit if they resigned from the union. On November 14, 1995, union activist Sergio Rafael Dávila Elías Gonzáles, an employee working on Game-boy equipment, was fired from his job by supervisor Marcos Monarréz. He was later told by Pilar Tapia from the Maxi-Switch personnel office that he was being fired because he was trying to organize a union. (He filed a suit for reinstatement on December 7, 1995, a copy of which is attached).

About that same time workers began to hear a rumor that the Company had surreptitiously

signed a collective contract with another union in an attempt to avoid having to bargain collectively with the one in formation. As with other such "protection contracts" with "phantom unions," as they are called in México, the workers had no information about the identity of the alleged union, the provisions of its bylaws, or the content of the alleged collective contract.

Despite illegal pressures and threats by the Company, workers continued to organize. The Organizing Commission of the union in formation issued a formal call to hold an assembly to incorporate the union, which was duly constituted on November 22, 1995. At the assembly, workers elected their officers, adopted bylaws, voted to affiliate to FESEBS, and completed the other required procedures for union recognition.

Immediately afterward, on November 24, 1995, the new union's officers presented all the documents required by Article 365 of the Federal Labor Law (FLL) to the competent authority, the Sonora Conciliation and Arbitration Board (CAB), headquartered in the State Capital of Hermosillo. **In this case it is important to note that the Board's government representative and chairman, appointed by the Governor of the State of Sonora, is also a member of a rival union confederation, the Confederation of Mexican Workers (CTM), as is its labor representative. The officer in charge of the State Labor and Social Provision Department also belongs to the CTM.**

Shortly after the submission of the application for registration of the Maxi-Switch Union, on November 28, 1995, a supervisor named Angel Soto, also known as "Willie," approached the newly elected 18-year-old Secretary General of the Union, Alicia Pérez-García, and began pushing her to remove her from the factory. When Ms. Pérez-García tried to remove Mr. Soto's (or "Willie") hands from her shoulders, he brutally punched her twice in the back. Despite Alicia's screams for help, neither her immediate supervisor, José Luis Cota, nor another supervisor named Eduardo, intervened. The other workers were afraid to intervene.

After punching Alicia, Willie continued to verbally abuse and threaten her. She was then taken to the administrative office where a representative of the Company, Marcos Monarréz, reportedly the Warehouse Supervisor, gave her resignation papers and threatened to accuse her of robbery if she refused to sign. Mr. Monarréz also warned her against taking any legal action against Willie, since he was carrying out the orders of the Company. Deeply shaken and fearful of further reprisals, Alicia signed the resignation papers.

After being advised that any resignation obtained under such duress was invalid under Mexican law, Alicia filed for reinstatement with the Cananea Conciliation and Arbitration Board on December 8, 1995 (file 269/95); Alicia also refused to accept any severance pay. Alicia also filed a criminal complaint with the Attorney General's office in Cananea. As of this filing, neither complaint has been acted upon. In the meantime, Ms. Pérez-García continued to serve as General Secretary of the union in formation.

After the forced dismissal of Alicia Pérez-García, two more union officials were fired. Dora Ayde Acuña-Rodríguez, a member of the union's Commission of Honor and Justice, was fired, and Martin Chávez-Aguayo, Secretary of Organization and an operator in the "Proform Area," was fired on February 27, 1996, by Zuly Ramos. These workers refused to accept severance pay and filed complaints requesting reinstatement with the local Conciliation and Arbitration Board, based on dismissal without just cause (copies are attached). As of this filing, none of these complaints have been acted upon.

In addition to these dismissals, the company has repeatedly threatened workers with massive layoffs and even the closing of the factory if they persist in their efforts to form a union.

On January 23, 1995, the Sonora Conciliation and Arbitration Board handed down a decision denying legal recognition to the union on the sole grounds that "MAXI SWITCH, S.A. DE C.V. already has a Collective Labor Contract signed with a state union which the workers must observe as provided in the aforementioned Collective Contract, based on Article 366, item I, of the Federal Labor Law." [File No. 234.4"96"1(377). The full text of the CAB ruling is attached, page 67 of this submission].

Although the CAB refused to divulge the name of the supposed union or a copy of the contract, it was later found out from sources inside the CAB that the alleged contract was signed on September 20, 1995, under file number 376/95, shortly after company management became aware that a union organizing drive was under way at Maxi-Switch. It was also found out that the alleged union is called the "Union of Workers of Contract Manufacturing Companies, Shoe Stores, Garment Stores and Industries and Commercial Establishments in General of the State of Sonora", and that it is affiliated to the Mexican Confederation of Workers (CTM), the same confederation to which both the Chairman and the labor representative of the Sonora CAB belong.

By denying recognition to the Maxi Switch union, the CAB deprived its members of their legal right of association under paragraph XVI of Section A of Article 123 of the Constitution of México, and deprived its newly elected union officers of the legal standing to conduct union business, including internal union activities under Article 359, establish an office and purchase equipment and furniture under Article 374, represent individual members in grievance procedures or legal complaints under Article 375, negotiate a collective contract with the company under Articles 386-389, and conduct representational activities before government authorities under Article 368, except for the privilege of maintaining legal standing to appeal the decision through the injunction (*Amparo*) process, as provided for by a Supreme Court ruling No. 15/91, issued in October, 1991.

Using this sole remaining privilege, attorneys for the FESEBS-affiliated Maxi-Switch Union filed for an injunction (*amparo # P/0109/96*) with the 3rd District Court of Hermosillo on February 14, 1996, against the Sonora CAB on the grounds that in addition to violating the

provisions of the Mexican Constitution, and Article 366 of the FLL, the CAB's decision to deny registration was technically flawed because it contained only one illegible signature, that of Mr. Javier Obregón-Vega, the Secretary General for Collective Matters of said Board, instead of the three signatures clearly required under Article 839 of the Federal Labor Code. On March 26, 1996, the district judge granted the injunction on technical grounds, annulling the CAB's decision and forcing the CAB to issue a new decision. However, the district judge issued no opinion on the legal matters in the case, and the CAB has so far abstained from issuing a new decision, either denying or granting the registration sought by the FESEBS-affiliated Maxi-Switch union.

V. Persistent pattern of failure to enforce Mexican Labor Law.

The facts of the Maxi-Switch case illustrate four ways in which the Mexican government persistently fails to enforce its laws protecting workers:

First, the Mexican government has failed to "ensure that tribunals that conduct or review [labor] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter" [Article 5.4];

Second, it has failed to "ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent" [Article 5.1];

Third, it has failed to "effectively enforce its labor law" regarding protection of workers against illegal dismissals and other forms of retaliation against legitimate union organizing activities "through appropriate government action such as initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" [Article 3.1(g)] , and;

Fourth, it has failed to "effectively enforce its laws" related to freedom of association, minimum employment standards, and overtime pay, "through monitoring compliance and investigating suspected violations, including through on-site inspections ... and through encouraging the establishment of worker management committees to address labor regulation of the workplace" Article 3.1 (b) and (e). If these problems are not quickly remedied through good faith efforts, the Mexican government will clearly continue to be in non-compliance with its obligations under the NAALC.

In analyzing Mexican law, it is important to remember that international treaties signed and ratified by México also take on the force of law, and in cases where legal provisions may conflict with international treaty obligations, it is the latter that apply. Article 133 of the Constitution states:

> "This Constitution, the Laws of the Congress of the Union derived thereof and all treaties that agree with same, that are presently or further signed by the President of the Republic with the approval by the Senate, shall constitute the Supreme Law for the entire Union. The judges of each State shall observe said Constitution, laws and treaties regardless of provisions contrariwise that may exist in the constitutions or laws of the States".

In addition, the Federal Labor Law in Article 6 provides that "the respective laws and treaties signed and approved under the terms of Article 133 of the Constitution shall apply to labor relations in all matters that benefit workers, as of the their valid date."

Thus the conventions of the International Labor Organization ratified by México, and the obligations of the NAALC, are fully enforceable legal provisions under Mexican law.

1) Lack of impartiality in the recognition of unions and certification of bargaining rights

Ironically the legal provision cited as justification for the Sonora CAB's rejection of the Maxi-Switch union's application clearly obliges it to reach the opposite decision:

Article 366 of the FLL states that a union's "registration may only be denied: (I) if the union does not have the purpose provided for in article 356; (II) if it was not organized with the number of members provided in article 364; and (III) if the documents referred to in the preceding article are not exhibited." Even more pointedly, Article 366 goes on to stipulate that "having satisfied the requirements established to register unions, none of the corresponding authorities can refuse it, (our emphasis added)" and that "if the authorities fail to act within 60 days, the registration becomes automatic (our emphasis added)" (See Appendix I for the full text of these laws).

There appears to be no question on the part of the CAB that the FESEBS-affiliated Maxi-Switch union met the formal legal requirements for union registration:

In meeting the first requirement as set forth in Article 356, that a union's purpose must be to "study, improve and defend their [members] interests," the Maxi Switch union's bylaws, in Article 3, state that its purpose is "to study, improve and defend the legal and historical interests of the workers who form it and to fight to raise their living and working conditions and to fortify their class democratic consciousness and practice" The second requirement, that the union in formation be supported by "at least 20 workers in active service" as provided in Article 364, was more than met by the Maxi-Switch union, which attached a list of 56 duly authorized signatures to its application form (a copy of the petition is attached) . The third requirement, that certain documents be submitted with the application as set forth in Article 365, was also met by the FESEBS-affiliated Maxi Switch union with the help of competent legal advisors.

Instead of questioning whether the FESEBS-affiliated Maxi-Switch union met these formal requirements, **the Sonora CAB based its decision solely on the existence of previously signed labor contract with another union in the factory**. Yet, nowhere does Article 366, or any other provision of the FLL, state that a union's registration may be denied if another union is already recognized in the enterprise whether or not it has signed a collective contract. Furthermore, ILO Conventions 87 and 98, which México has ratified, clearly require that any group of workers have the right to form a union without prior authorization, regardless of whether other unions may exist in the enterprise or industry. In addition, **Mexican law does not prohibit the existence of more than one union in the workplace, nor workers of a company from belonging to several unions.**

Legal precedent supports FESEBS-affiliated Maxi-Switch union*

Legal precedent for this view may be found in a ruling by the Sixth Collegiate Labor Court of the First Circuit of "Amparo" (Constitutional Lawsuit for the protection of private guarantees), which must be enforced, according to the Mexican "Amparo" Law, by *all authorities of the Country*: The ruling states:

> **UNION, REGISTRATION OF; THERE EXISTS NO REASON FOR DENIAL ON THE GROUNDS THAT ITS MEMBERS FORM PART OF ANOTHER UNION ORGANIZATION.**
>
> The fact that the members of the plaintiff association appear as forming part of another union already registered for the same purpose is not a reason to deny the registration; in the first place, because Article 366 of the Federal Labor Law does not provide this as a reason for rejection; rather in paragraph I it states merely that registration may be denied in cases where precisely the proposed union fails to state that its purpose is to study, improve and defend the interests of its members; and in the second place, as upheld in the referenced ruling, the law does not prohibit workers of a company from belonging to several unions.
>
> ["Amparo" under review 1086/89.- Benedicto Martínez-Orozco and others. March 9, 1990.- Unanimous votes.- Lecturer, María del Rosario Mota-Cienfuegos.- Secretary: Idalia Peña Cristo".]
>
> * **Note:** An expanded analysis of the application of the Amparo case will be introduced by the petitioners at a later date.

Existence of a collective labor contract is not a reason to deny certification of a new union

Nor does the existence of a previous collective labor contract provide any legal grounds for *rejecting the registration* of a new union. It may indeed restrict the new union from negotiating another contract or from gaining the right to administer the existing contract

(*titularidad*), but *only* if the new union has *fewer* members than the existing one with which the contract was signed. If the new union has *more* members than the old, it may gain the legal right to bargain and administer the collective contract. The FLL provides for this transfer of *titularidad* in Articles 388 and 389, where it states that "if there are several unions in the same company... the collective contract shall be signed with the one that has the highest number of workers in the company," and that "loss of the majority referred to in the preceding article declared by the Board of Arbitrage produces the loss of the legal right (*titularidad*) over the collective labor contract." Although the law does not specify a method to by used by a CAB in determining which union has the most members, presumably this could be done by the simple procedure of comparing the membership lists of the two unions to find out which has more (see Annex 1 for the full text of these articles.)

Sonora CAB failed to enforce Mexican labor law

It is thus clear that in rejecting the union's application for registration on the grounds stated, the Sonora CAB failed to properly enforce Mexican labor law, as well as ratified ILO conventions. **Furthermore, by favoring one union over another, the Sonora CAB violated the Mexican government's obligations under the NAALC Article 5(4) to guarantee that its labor laws are administered in an impartial and independent manner by authorities without a substantial interest in the outcome.** Since two of the CAB members are affiliated to the same union confederation favored by the CAB, it cannot be ruled out that they lack a "substantial interest" in the outcome. To avoid such a conflict of interest, the Mexican government should adopt regulations that instruct the CAB's to automatically grant legal recognition to all unions that properly apply meet the formal requirements, regardless of whether other unions exist in the enterprise, as already provided in its labor law and ILO conventions.

What the Sonora CAB should have done under Mexican law was to first recognize the new FESEBS-affiliated Maxi Switch union, and then, if another union existed with a collective contract, make a determination as to which union had the most members by comparing their respective membership lists. In that way, Maxi Switch workers could choose their own union, rather than having the government and the company choose it for them.

The favoritism shown by the Sonora CAB in denying recognition to union supported by workers while hastily certifying a contract with a pro-government union unknown to the workers is common practice in Mexico. Such actions have been reported in other cases to come before the NAO, such as the Sony and Honeywell cases, and have been documented in publications commissioned by the NAO. For example, Paul Curtis and Alfredo Gutiérrez report that in the State of Chihuahua,

> approximately 25 years ago the governor of Chihuahua, Oscar Flores, struck a deal with the official confederation of labor unions, the CTM. He would support them as

> the principal force if they did not enter the maquiladora industry. However the past governor, Fernando Baeza, changed that agreement permitting the CTM to register unions and collective contracts in the maquiladora industry, in many cases without the knowledge of the workers. ...The government allowed the CTM to register unions and collective contracts with the Local Board in Chihuahua when radical unions such as the FAT [Authentic Workers Front] union tried to organize the workers. This was done without the knowledge of many of the workers.
>
> [Curtis, Paul A., and Gutiérrez Kirchner, Alfredo. *Questions on Labor Law Enforcement in Mexico and the Role of the Federal and State Conciliation and Arbitration Boards*. Prepared for U.S. Department of Labor, National Administrative Office, August 8, 1994. pp. 42, 43, 45]

The same authors report that in Monterrey, Nuevo León, "the unions are promoted and formed by the companies," who register and sign collective contracts deposited with the local CAB. When any other union tries to organize, the existence of the contract is made known and the organizing attempt is thwarted. "The collective contracts signed under this arrangement are usually called protection contracts because they prevent others from coming into the area." [Ibid., p. 48]

It is important to clarify that the purpose of this petition is to ensure that Mexican workers are afforded a free choice in deciding which union they prefer, in accordance with Mexican law and ratified ILO conventions, without fear of retaliation by company or government authorities. The choice of union must be made by the workers involved, not the company or the government.

2. Failure to guarantee procedures that are fair, equitable and transparent.

The Sonora CAB violated the rights of the Maxi-Switch union members in another important respect; namely by failing to guarantee that its administrative proceedings are "fair, equitable and transparent," as required in Article 5 Section 1 of the NAALC.

The Sonora CAB **refused to disclose** the name of the alleged previously existing union in the factory, its date of incorporation, the names of its officers, a copy of its bylaws, a copy of the alleged previously existing contract, or its date of signature. Nor did it provide any opportunity for a hearing or any other procedure by which the Maxi Switch union representatives might obtain this information.

Workers at Maxi Switch thus have no formal or official communication regarding the contents of any valid labor contract or union bylaws, and are thus unable to determine their rights and obligations under these instruments. Although copies of the union statutes and the collective contract are on file with the CAB, no one except for the officially recognized

union and the company management may have access to them.

According to attorneys for the FESEBS-affiliated Maxi-Switch union, and in line with other attorneys interviewed regarding this matter, the withholding of collective contracts and union bylaws from workers is common practice in México. Without access to the collective contract, workers have no idea whether management is living up to the terms of that contract. Without access to the union bylaws, the workers lack the essential information they need about how they might participate in the union's decision-making procedure and elections. Withholding this vital information is neither sanctioned under Mexican law, nor is it fair, reasonable or transparent, as required by the NAALC.

To meet its obligations under the NAALC, the Mexican government should develop regulations which allow workers of any enterprise where there exists a recognized union and a registered collective contract, access to copies of the union bylaws and the collective contract.

3. Failure to enforce laws protecting workers from illegal dismissals or other retaliation.

In firing four union leaders at Maxi-Switch, the company violated the procedures set forth in Chapter IV of the FLL governing dismissals, which require an employer to provide written notification for dismissal and which allow for dismissals only in cases of "just cause." If there is no just cause, the employee may request that the CAB for either reinstatement or severance pay, at the choice of the employee. Article 48 also provides for back pay, stating that "if the employer fails to show the cause for dismissal in the proceedings, the workers shall be entitled, in addition to whatever the action exercised might have been, to be paid the salaries accrued from dismissal to the effective date of the award."

In addition to violating the laws governing dismissals, the company clearly violated:

Article 133(IV) of México's labor code, which states that "employers are forbidden to ...oblige workers through coercion or any other means, to affiliate or withdraw from the union or association to which they belong, or to vote for a specific candidacy."

Article 133(V) prohibits employers from "intervening in any way in the internal affairs of a union."

Section XXII of Article 123 of the Constitution states in part: "An employer who dismisses a worker without just cause or because the worker has entered an association or union, or for having taken part in a lawful strike, shall be required, at the election of the worker, to either fulfill the contract or indemnify him in the amount of three months wages."

Finally, convention 135 of the International Labor Organization (ILO), which México

ratified on January 21, 1975 and thereby made part of its legally enforceable body of law, states that "representatives of workers in a company must have efficient protection against any act that could injure them, including being fired because of their condition as representatives of workers, for their activities as such, for their membership in the union, or for participating in union activities, as long as said representatives proceed according to the law, collective contracts or another common agreement in effect."

In the case of the four Maxi-Switch workers fired for their union activity, despite having filed for reinstatement between six to nine months ago as of the date of this submission, the Mexican authorities responsible for enforcing these laws have not acted to enforce them, and the four workers in question remain without a job. This is a common occurrence in México, as evidenced in other submissions to the NAO.

To be in compliance with its obligations under the NAALC, especially Article 3.1(g), which requires that the signatory governments **"effectively enforce its labor law through appropriate government action ... such as initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law,"** and Article 5.1(d), which obliges the signatory governments to *ensure* that its labor proceedings "are not necessarily complicated and to not entail unreasonable charges or time limits or unwarranted delays," the Mexican government must reform its labor complaint procedure to ensure that workers who are illegally fired for legitimate union activities are promptly reinstated in their jobs.

VI. Actions Requested of the U.S. NAO

The petitioners request the U.S. NAO to:

1. Hold public hearings on this case in a location, preferably in Cananea or Hermosillo, that would allow the maximum number of workers and other participants and expert witnesses involved to provide testimony and additional information to the NAO without incurring undue personal expense or hardship.

2. Through appropriate means urge that the Sonora CAB grant immediate legal recognition to the FESEBS-affiliated Maxi-Switch Union, determine whether it has bargaining rights by reason of having more members than other unions that may exist in the enterprise, and vigorously enforce all other Mexican laws that would ensure full protection for the Maxi-Switch workers regarding their rights to organize and bargain collectively, to engage in legitimate union activity without interference or retaliation by the employer, and to work under conditions that meet the legal requirements under Mexican law.

3. Engage the government of México in a process designed to end the favoritism and

political discrimination exhibited by national and local conciliation and arbitration boards (CAB) in granting legal recognition and bargaining rights to unions, in order that México come into compliance with its obligations under the NAALC to:

"ensure that tribunals that conduct or review [administrative, quasi-judicial, judicial and labor tribunal] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter."

It is the petitioners' view that such a process must go beyond the "consultation" stage provided under Part 4 of the NAALC, because the obligation in question is not merely to "promote" compliance with labor laws through certain limited actions as explained in Article 3, but rather to **"ensure"** that procedural guarantees are met as contained in Article 5. The language in this section-- "obligation to ensure" -- clearly entails a stronger commitment than that contained in other parts of the NAALC dealing with questions of freedom of association and the right to collective bargaining, and must thus be enforced by stronger measures than the consultative mechanisms reserved for these other matters.

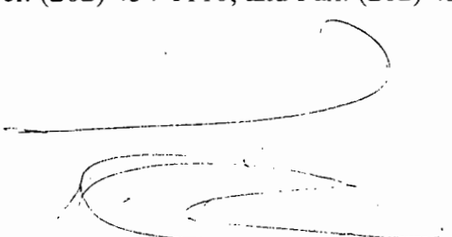
4. Engage the government of México in a process designed to end the lack of transparency evident in the withholding copies of union statutes and collective contracts from workers whose workplace rights and responsibilities they are supposed to govern. Once again, since this matter involves an **"obligation to ensure"** that labor law proceedings are "fair, equitable and transparent" as described in Article 5.1 of the NAALC, the petitioners believe that such a process must go beyond the consultation stage described in Part 4.

5. Engage the government of México in a process designed to effectively **enforce** its labor laws related to illegal firings of workers in retaliation against legitimate union activity by initiating, in a timely manner, inspections and proceedings to seek sanctions for violations of its labor law.

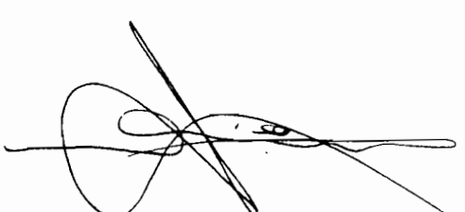
6. Engage the government of México in a process designed to effectively **enforce** its labor laws related to minimum employment standards, overtime pay, and occupational health and safety, by initiating, in a timely manner, inspections and proceedings to seek sanctions for violations of its labor law.

SIGNATURES

Morton Bahr, President
Communications Workers of America, AFL-CIO
501 Third Street, N.W.
Washington, D.C. 20001-2797
Tel: (202) 434-1110, and Fax: (202) 434-1139



Francisco Hernández-Juárez, Secretary General
Union of Telephone Workers' of Mexico (STRM)
16 Calle Río Neva, Colonia Cuauhtémoc,
México, Federal District
Tel: (52-5) 705-4653, 702-2100 and Fax: 703-2583



Benito Bahena Lomé, Secretary General
Federation of Unions of Goods and Services Companies (FESEBS)
16 Calle Río Neva, Colonia Cuauhtémoc,
México, Federal District
Tel: (52-5) 705-3964, and Fax: 705-5176

ANNEX 1: LEGAL PROVISIONS RELEVANT TO THIS CASE

POLITICAL CONSTITUTION OF MEXICO

"ARTICLE 14.- No law shall be given carry-back effect in injury of any party whatsoever.

No one may be deprived of his freedom, of liberty or of his property, possessions or rights, except through lawsuit followed before the previously established courts, where the essential formalities of the proceeding are fulfilled and according to the laws proclaimed before the fact...

... At civil lawsuits the definite sentence must be exactly observed or have the juridical interpretation of the Law, and in the absence of same, shall be based on general principles of law".

ARTICLE 16.- No one can be harassed personally, in his family, domicile, documents or possessions, except through written order by the competent authority, providing the grounds and reason of the legal cause for the proceeding"...

ARTICLE 123.- Any person has the right to dignified and socially useful work; for such end, creation of jobs and social organization for work shall be promoted according to the Law.

Without violating the following bases, the Congress of the Union must enact labor laws, which shall govern":

A. Workers, day-workers, employees, domestic servants, craftsmen and in general, any labor contract:

Article 123 (B) (10) -- "Workers will have the right to association to defend their common interests."

XVI.- Both workers and employers shall have the right to coalition in defense of their respective interests, forming unions, professional associations, etcetera; ...

FEDERAL LABOR LAW (FLL) - MÉXICO

ARTICLE 48.- A worker may file a request with the Board of Arbitrage of its choice in order to be restored to his former job, or that he be indemnified with three months of his salary.

If at the corresponding lawsuit the employer does not prove the reason for rescission the worker shall also be entitled, whatever the action attempted, to receive salaries due since the date he was fired until the decision is executed.

ARTICLE 133.- Employers are forbidden to:

IV.- Oblige workers by means of coaction or any other to affiliate or withdraw from the union or association to which they belong, or to vote for a specific candidacy.

V.- To in any form intrude in the union's internal government;

VII.- To execute any act that restricts workers' the rights they are granted by the law;

ARTICLE 354.- The law recognizes the freedom of coalition of workers and employers.

ARTICLE 355.- Coalition is the temporary agreement of a group of workers or of employers in defense of common interests.

ARTICLE 356.- A union is an association of workers or employers, formed to study, improve and defend their respective interests.

ARTICLE 357.- Workers and employers have the right to form unions without need of prior authorization.

ARTICLE 358.- No one can be obliged to belong to a union or not to belong to it.

ARTICLE 381.- Unions may form federations and confederations, which where applicable shall be governed by the provisions of this chapter.

Article 386.- A collective labor contract is an agreement executed between one or several unions of workers and one or several employers, or one or several unions of employers, in order to establish the conditions that will govern work rendered at one or more corporations or establishments.

Article 387.- An employer who employs workers members of a union shall be obliged to sign a collective contract with the latter, when it so requests. Should the employer

refuse to sign the contract the workers may exercise the right to strike provided in article 450.

ARTICLE 356.- A union is an association of workers or employers, formed to study, improve and defend their respective interests.

ARTICLE 358.- No one can be obliged to belong to a union or not to belong to it.

ARTICLE 359.- Unions have the right to draw up their by-laws and regulations, to freely elect their representatives, to organize their administration and activities and to prepare their program of action.

Article 360.- Labor unions can be:

I.- Trade unions formed by workers of a same profession, craft or specialty;

II.- For corporations, formed by workers who render their services at a same company;

III.- Industrial, formed by workers who render their services in two or more companies of the same field of industry;

IV.- Domestic industrial, formed by workers in one or several companies of the same field of industry, installed in two or more states; and

V.- For several crafts, formed by workers of different professions. These unions may only be organized if there are less than twenty workers of a same profession in the municipality.

ARTICLE 364.- Unions must be formed with twenty workers in active service or three employers, at least. In determining the minimum number of workers, those workers shall be considered whose labor relation was rescinded or terminated within a thirty-day period before the date when the request for registration of the union was submitted and that whereby it was granted.

ARTICLE 365.- Unions must register with the Secretariat of Labor and Social Provision in cases of federal competence and with the Boards of Arbitration in cases of local competence, for which they must provide the following in duplicate form:

I.- An authorized copy of the minutes on the meeting of incorporation;

II.- A list with the number, names and domiciles of its members and with the name and domicile of the employers, companies or establishments where they render their services.

III.- An authorized copy of the by-laws; and

IV.- An authorized copy of the minutes on the meeting that elected the board of directors.

The above-mentioned documents shall be authorized by the Secretary General, the Organization Secretary and by the Minutes Secretary, unless otherwise provided for in the by-laws.

ARTICLE 366.- Registration may only be denied:

I.- If the union does not have the purpose provided for in article 356;

II.- If it was not organized with the number of members provided in article 364; and

III.- If the documents referred to in the preceding article are not exhibited.

Having satisfied the requirements established to register unions, none of the corresponding authorities can refuse it.

If the authority before whom the application for registration was presented does not issue a resolution within a sixty-day term, the applicants may require it to issue a resolution, and if not pronounced during the first three days after presenting the application, the registration shall be considered as made for all legal purposes, and the authority shall be obliged to issue the respective evidence within the next three days.

ARTICLE 374.- Unions legally organized are corporations and have the legal capacity to:

I.- Acquire movables;

II.- Acquire real estate assigned immediately and directly to the purpose of their incorporation; and

III.- To defend their rights and to exercise the corresponding action before all authorities.

ARTICLE 375.- Unions represent their members in defending their corresponding individual rights, without prejudice of the right of workers to act or directly interfere and then, at the worker's request, the union's interference will end.

ARTICLE 376.- The union shall be represented by its Secretary General or by whoever its board of directors designates, unless the by-laws contain a special provision.

The members of the board of directors who are discharged by the employer or who leave their work for reasons chargeable to the latter shall continue to exercise their duties unless otherwise provided for in the by-laws.

Article 386.- A collective labor contract is an agreement executed between one or several unions of workers and one or several employers, or one or several unions of employers, in order to establish the conditions according to which the work must be rendered at one or more corporations or establishments.

Article 387.- An employer who employs workers members of a union shall be obliged to execute a collective contract with the latter, when it so requests.

If the employer refuses to sign the contract the workers may exercise the right to strike provided in article 450.

ARTICLE 388.- The following norms shall be observed if there are several unions in the same company:

I.- If there are unions of a company or industrial unions or one and the other, the collective contract shall be signed with the one that has the highest number of workers in the company:

II.- If there are trade unions, the collective contract shall be signed with the group of majority unions who represent the professions, as long as they agree. Otherwise, each union shall sign a collective contract for its profession; and

III.- If there are trade unions and company or industry unions, the first may sign a collective contract for their profession, as long as the number of their members is higher than the number of workers of the same profession forming part of the company or industry union.

ARTICLE 389.- Loss of the majority referred to in the preceding article declared by the Board of Arbitration produces the legal right over the collective labor contract.

INTERNATIONAL TREATIES

ARTICLE 133.- This Constitution, the Laws of the Congress of the Union derived thereof and all treaties that agree with same, that are presently or further signed by the President of the Republic with the approval by the Senate, shall constitute the Supreme Law for the entire Union. The judges of each State shall observe said Constitution, laws and treaties regardless of provisions contrariwise that may exist in the constitutions or laws of the States.

And the Federal Labor Law provides:

ARTICLE 6.- The respective laws and treaties signed and approved under the terms of article 133 of the Constitution shall apply to labor relations in all matters that benefit workers, as of the their valid date.

NOTE: México has ratified the following Conventions of the International Labor Organization: Convention 87 on Union Freedom, Protection of Union Rights and Protection and Facilities Which Must be Granted to the Representatives of Workers of a Company.

CONVENTION NUMBER 87, REGARDING LABOR FREEDOM AND PROTECTION OF UNION RIGHTS, adopted July 9, 1948 by the Thirty-first International Labor Conference held in San Francisco, California, signed by México and enforced through decree proclaimed and published in its Official Gazette on October 16, 1950, whereby the following is established:

PART I

UNION FREEDOM

ARTICLE 1.- Any member of the International Labor Organization for whom this agreement is valid, binds itself to put the following provisions into practice.

ARTICLE 2.- Workers and employees, without any distinction and without prior authorization, have the right to establish the organizations of their choice, and to join said organizations, with the sole condition of observing their by-laws.

ARTICLE 3.-

1. - Organizations of workers and employees have the right to draw up their by-laws and administrative regulations, to freely elect their representatives, to organize their administration and their activities and to prepare their program of action.

2.- Public authorities must refrain from any interference that tends to limit this right or to hinder its legal action.

ARTICLE 4.- Worker and employee organizations cannot be dissolved or suspended through administrative means.

ARTICLE 5.- Worker and employee organizations have the right to organize federations and confederations, as well as to join same, and any organization, federation or confederation has the right to join international worker and employee organizations.

ARTICLE 6.- The provisions of articles 2, 3 and 4 of this agreement apply to worker and employee federations and confederations.

ARTICLE 7.- Obtainment of juridical capacity by worker and employee organizations, their federations and confederations, cannot be subordinated to such conditions that limit the application of the provisions of articles 2, 3 and 4 of this agreement.

ARTICLE 8.-

1.- In exercising the rights established in this agreement, workers, employees and their respective organizations, as well as other parties or organized groups are obliged to observe legality.

2.- National legislation shall not underestimate nor shall be applied in such manner that it underestimates the guarantees provided in this agreement.

ARTICLE 10.- The term "organization" in this agreement means any organization of workers or employees that has as its purpose to promote or defend the interests or workers or of employees.

PART II

PROTECTION OF UNION RIGHTS

ARTICLE 11.- Any member of the International Labor Organization for which this agreement is in effect binds itself to adopt the necessary and appropriate measures to assure workers and their employees free exercise of union rights.

CONVENTION NUMBER 135, CONCERNING PROTECTION AND FACILITIES THAT THE REPRESENTATIVES OF WORKERS OF A COMPANY MUST BE GRANTED, adopted June 23, 1971 by the Fifty-sixth Meeting of the International Labor Conference held in Geneva, Switzerland, signed by México and enforced through decree proclaimed and published in its Official Gazette on January 21, 1975, whereby the following is established:

ARTICLE 1.- Representatives of workers in a company must have efficient protection against any act that could injure them, including being fired because of their condition as representatives of workers, for their activities as such, for their membership in the union, or for participating in union activities, as long as said representatives proceed according to the law, collective contracts or another common agreement in effect.

ARTICLE 3.- For the purposes of this agreement, the term "representatives of workers" means persons recognized as such in virtue of the laws or national practice, whether they are:

a).- representatives of unions, that is, representatives appointed or elected by unions or by members of these; or

b).- elected representatives, that is, representatives freely elected by the workers of the company, according to the provisions of national legislation or of collective contracts, and whose duties do not include activities recognized in this country as exclusive prerogatives of the unions.

ARTICLE 4.- National legislation, collective contracts, arbitration or judicial decisions may determine what class or classes of representatives of workers shall be entitled to protection and to the facilities provided for in this agreement.

USE OF THE "AMPARO LAW" - MÉXICO

Jurisprudence 15/91 by Honorable: Room Four of the Supreme Court of Justice of the Nation, published in Bulletin number 46 of the Weekly Gazette of the Federation on October 1991, page 19:

"Unions. Those legitimized to initiate the "amparo" lawsuit against denial of registration of their representatives, not specifically of their members. Article 374, item III, of the Federal Labor Law, by establishing that legally organized unions are corporations with legal capacity to defend their rights before any authority and to exercise the corresponding action, attributes juridical capacity to those who fulfill the requirements of incorporation provided for in article 364 of the Labor Law. Through the registration referred to in article 365 of said ordinance, the corresponding authority attests that the act of incorporation fulfills the requirements of depth provided by the Law, but does not invest the Union with existence nor new juridical capacity; therefore, the unions themselves are legitimized through their legal representatives to initiate the "amparo" lawsuit against the rejection of their union registration, and not of their members in particular, as those directly affected by this determination are not those individually, but the corporation which they organized, which has proper and independent juridical capacity of its members".

THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

Introduction

The Government of the United Mexican States, the Government of Canada and the Government of the United States of America:

IN CONSIDERATION OF its determination expressed in the North American Free Trade Agreement (NAFTA), to:

create new employment opportunities, in order to improve the working and living standards in their respective territories, and

protect, extend and enforce worker's basic rights, and

WITH THE INTENTION OF advancing in their respective international commitments and to strengthen their cooperation in labor matters;

HAVE DECIDED, within the framework of their own laws, to promote economic development based on high levels of training and productivity in North America, by:

--promoting job stability and career opportunities for all workers, through labor exchange and other services for employment;

--strengthening worker-employer cooperation in order to encourage greater dialogue between worker and employer organizations, and induce creativity and productivity at work centers;

--promote higher living standards in the means that productivity is increased;

--encourage consultation and dialogue among labor, business and government organizations in each country and in North America;

--promote investment duly focusing on the importance of the laws and labor principles;

--encourage employers and workers in each country to observe labor laws and to work jointly in order to sustain a progressive, fair, safe and healthy labor environment;

BASED on the systems and institutions that exist in Mexico, Canada and the United States of America, in order to achieve the aforementioned economic and social goals,

CONVINCED of the benefits that will result from a greater cooperation between them in labor matters,

THEY HAVE AGREED on the following:

ARTICLE 1: Objectives. The objectives of this Agreement are:

a) to improve the working conditions and living standards in each party's territory;

b) to promote the labor principles established in Attachment I to the maximum extent;

e) to continue cooperation activities regarding labor under terms of mutual benefit;

f) to promote observance and effective application of labor legislation by each party; and

g) to promote transparency in administration of labor legislation.

ARTICLE 2: General Commitment

Ratifying full respect for each Party's constitution and recognizing each Party's right to internally establish its own labor rules and to adopt or modify, or to consequently modify their laws and labor regulations, each Party shall guarantee that its laws and regulations provide high labor norms congruent with the high quality and productivity working locations and continue striving to improve said norms within this context.

ARTICLE 3: Government measures in order to effectively apply labor legislation.

1. Each Party shall promote observance of its labor legislation and shall effectively apply it through the adequate government measures, subject to the provisions of Article 42, such as:

f) provide and encourage the use of mediation, conciliation and arbitrage services; or

2. Each party shall guarantee that its competent authorities give due consideration, according to their legislation, to any request from employees, workers or their representatives, as well as from other interested parties, so that any presumed violation of the Party's labor legislation be investigated.

ARTICLE 5: Procedural guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor

tribunal proceedings for the enforcement of its labor laws are fair, equitable and transparent....

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

ARTICLE 50: Exhibits

The exhibits of this Agreement form an integral part of same

EXHIBIT 1

LABOR PRINCIPLES

The following are guidelines which the Parties bind themselves to promote, under the conditions established in their internal legislation, without constituting minimum common norms for said legislation. Their purpose is to define wide areas of focus where the Parties have each in their own way developed laws, regulations, procedures and practice that protect the rights and interests of their respective labor forces.

1. Freedom of association and protection of the right to organize

The right of workers, freely exercised without impediment, to create organizations and join them on their own free will, in order to promote and defend their interests.

2. The right to collective negotiation

Protection of organized workers' rights to freely and collectively negotiate employment terms and conditions.

3. Right to strike

Protection of workers' right to strike, in order to defend their collective interests....