

**Testimony to the Canadian National Administrative Office (NAO) – Public  
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Thank you for the invitation to provide testimony on this important matter concerning the implementation of the North American Agreement on Labor Cooperation (NAALC). The incidents which have occurred at the Tarrant Ajalpan factory during the past year are a good starting point for assessing Mexico's compliance with the agreement because the case so clearly illustrates a range of distressing ways in which Mexican labor laws are systematically flouted today. Indeed, while Tarrant, Ajalpan has violated a number of laws in an unusually brazen fashion, the actions the company has taken to deny workers' rights to associate freely, and the inadequate response on the part of Mexican authorities to address these violations, reflect a widespread pattern that pervades Mexican labor relations in the apparel industry and beyond.

This report begins by describing in some detail the events that have taken place at Tarrant, Ajalpan over the past year, then briefly surveys some noteworthy cases of labor abuse in other Mexican apparel factories, and finally draws some conclusions about reforms that could move Mexico towards compliance with its laws and obligations under NAFTA and NAALC.

**Tarrant Ajalpan**

The Tarrant Ajalpan factory is located in the town of Ajalpan in the southern Mexican state of Puebla. Prior to its closing in January of 2004, the factory produced denim clothing for numerous brand name retailers and manufacturers, such as Levi Strauss, Tommy Hilfiger, Federated Department Stores, The Limited, and Wet Seal, among others. It employed roughly 1,000 workers.

In August of 2003, the WRC received a complaint from workers at Tarrant Ajalpan, alleging illegal firings of union leaders and supporters and additional violations of worker rights, including forced and uncompensated overtime, verbal abuse of employees, and child labor. In response to this complaint, the WRC began a preliminary inquiry and conducted a fact-gathering mission in Puebla from August 20 through August 25. This fact-gathering involved interviews with twenty-four past and present employees of the factory, a review of documentary records, an interview with the General Secretary of the Junta Local de Conciliación y Arbitración (JLCA, or Local Government Conciliation and Arbitration Board) in the City of Puebla, an interview with a representative of Tarrant Ajalpan management, and review of relevant provisions of Mexican federal labor law.

Beginning in June of 2003, workers at Tarrant, Ajalpan had initiated efforts to improve working conditions in the factory and form an independent union. On July 16, the factory

summarily fired a group of eight worker leaders who were acknowledged by the company to be leaders of the reform effort. On August 5, the factory began to fire additional workers, firing at least 150 over the ensuing two week period.

***Illegal firing of the eight worker leaders.***

Based upon our initial investigation of Tarrant, Ajalpan and monitoring of subsequent events, the WRC concluded that the company fired the workers illegally for their organizing activity, and that in doing so the company violated laws designed specifically to protect against arbitrary and discriminatory firings. Further, in procedural terms, the company provided the eight workers with no explanation whatsoever justifying their termination, as the law requires (Articles 46 through 52 of the Mexican Federal Labor Law). On this basis alone, the firings should have been considered illegal by Mexican authorities.

The evidence that Tarrant Ajalpan fired the eight worker leaders because of their efforts to organize a union and associate freely - rights guaranteed and protected by Articles 133, 357 and 358 of the Federal Labor Law - is particularly compelling. The timing of these eight terminations (which occurred simultaneously on July 16), the identity of the workers terminated (the entire leadership of the work stoppage plus the Comisión Negociadora<sup>1</sup>) and Tarrant's failure to provide the workers with any justification for their termination, together constitute an overwhelming prima facie case that the dismissals were related to the workers' exercise of their associational rights. In addition, the WRC heard credible and mutually corroborative testimony from a series of workers that factory supervisors boasted after these dismissals that the fired group deserved punishment for its union activities.

***Illegal firing of 150 workers.***

In the case of firings of more than 150 workers, several days after the events of July 16, the WRC gathered overwhelming evidence that these dismissals also violated Mexican laws that protect workers' rights to associate freely. Workers testified that during and after the August dismissals, managers and supervisors made statements that these particular terminations were punishment for, and caused by, the workers' decision to form a union. Workers testified that such statements were made both to individual workers and during required group meetings with managers to the group as a whole. This testimony was consistent from each worker interviewed. It was highly specific and detailed as to the language used and the individual managers and supervisors making the statements. The statements cited in this testimony included the explicit and repeated assertion that workers were fired because of the union and that the workers who were fired "got what they deserved". This testimony, together with the timing of the events, constitutes convincing evidence that management's purpose in dismissing these workers was, partially or wholly, to punish past union activity and to discourage further unionization efforts. The firings were, therefore, illegal.

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<sup>1</sup> Negotiation Commission

***Violation of procedures for dismissals.***

The evidence that the factory acted illegally by dismissing workers as a direct consequence of their choice to exercise their associational rights, is further buttressed by the fact that in these cases the factory failed to follow legally mandated procedures for dismissals. Tarrant claimed the firings were due to economic pressures. Even if this had been the case, Tarrant fired workers outright rather than placing them on temporary suspension as Mexican law requires, neglected to follow seniority in the order of dismissals, also as the law requires, and did not request permission from the JLCA in Puebla to proceed with layoffs, as required by law. There is no question, therefore, that the firings were illegal in terms of the procedures employed. The Mexican government, to date, has remained silent on this issue.

***Voluntary resignations.***

It is important to note that Tarrant has sought to justify the firings by pointing to letters of “voluntary resignation” signed by some workers. In the case of both the eight workers leaders and the 150 additional workers fired, workers were told that, if they did not resign and accept severance, they would be fired and get nothing. Because workers signed these agreements under threat of illegal dismissal, rather than voluntarily, as the law requires, these documents are illegitimate and we return to the finding that the firings were illegal.

I highlight this issue because the practice of pressuring workers’ to sign voluntary agreements is one of the most common and potent ways in which employers are able to thwart workers’ attempts to freely associate and form independent trade unions. Because Mexican government authorities recognize these “voluntary” resignations as legitimate, employers are able to cite them as evidence in arguments justifying illegal worker firings and block potential sanction for their actions. Reforming the manner in which Mexican labor authorities treat such “voluntary” resignations is essential if Mexican labor law is to be enforced meaningfully.

***Denial of union’s registro.***

In addition to neglecting to protect the rights of workers by granting a swift hearing to address them, Mexican government authorities charged with enforcing labor law have, by their own actions, violated workers’ rights to associate freely. On August 7, workers at Tarrant Ajalpan filed a petition for recognition as a union with the JLCA in the city of Puebla. The JLCA denied the bid for formal recognition of the union, known as SUITTAR, on October 6<sup>th</sup>. The decision was based on minor technicalities and violated the JLCA’s own administrative protocols. The JCLA gave the following reasons as the sole justification for denying the workers’ petitions:

- The original copy of the petition plus one photocopy (“duplicate”) were provided, when Mexican Federal Labor Law (LFT), Article 365 states that the original must be filed with "duplicate copies”.
- Of the approximately 750 affiliated workers listed in SUITTAR's petition for registration, the name of one of the representatives of the executive committee

- (María Guadalupe Martínez Gonzáles) does not correspond with a name on the union's list of affiliates (Maura Guadalupe Martínez Gonzáles).
- The date that the independent union was formed was the same as the date of the election of its executive committee representatives. The JLCA stated these two events should have occurred on separate days. Neither Article 365 nor 366 of the Federal Labor Law, which together stipulate procedure for requesting and granting union registration, make this requisite.

According to Mexican law (LFT Articles 685 and 686), the JLCA holds a legal responsibility to review all submitted documents and notify the petitioners if elements are missing or in need of clarification before the petition is considered. In this instance, the JLCA never informed the workers of these problems in their petition before announcing the petition had been denied. The authorities also ignored documents showing that the vast majority of the factory's workforce – some 700 workers – had expressed in writing their support for the independent union. By depriving workers of their legal right to revise their petition, the JLCA violated its own obligations under Mexican federal law. Thus, the decision the JLCA rendered is itself illegal.

### ***Recognizing bogus unions.***

In contrast to its highly technical and seemingly arbitrary criteria for judging the merits of the independent union, some officials of the JLCA in Puebla recognized the existence of a separate union representing the workforce, known as the FROC-CROC, after the latter made statements to this end in the midst of the labor dispute. None of the employees interviewed by the WRC had known of this union's presence or collective bargaining agreement at Tarrant Ajalpan, until the public comments were made. Workers' pay receipts confirm that no union dues have ever been deducted.

It has been widely documented by labor historians, researchers of industrial relations, and other experts<sup>2</sup>, as well as confirmed by WRC factory assessments in the country, that it is not unusual in Mexico's system of government and company-controlled unions for workers to be officially "represented" by a union they have never heard of and whose officials they have never seen. Companies in some cases sign contracts with unions before factories open, contracts which generally provide no benefits or protections to workers beyond the minimum required by law. Although patently illegal according to Article 356 of the Federal Labor Law, such practices are rarely questioned by the JLCAs. Further, the national level union implicated, the Confederación Revolucionaria de Obreros y Campesinos (CROC, or Revolutionary Confederation of Workers and Peasants) has historically strong links to the Partido Revolucionario Institucional (PRI, or Institutional Revolutionary Party, PRI) which governed the state of Puebla at the time of these freedom of association violations.

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<sup>2</sup> Xelhuanzi López, M (2000) "Democracia Pendiente: la libertad de asociación sindical y los contratos de protección en México", STRM, México; Aguilar García, J (2001) "La Población Trabajadora y Sindicalizada en México en el Periodo de la Globalización", UNAM, IIS, FCE, México; Marco Antonio Torres (Centro de Investigación Laboral y Asesoría Sindical, CILAS), Luis Romero y Velásquez (Asociación Nacional de Abogados Democráticos, ANAD)

As we have seen in numerous recent cases, the government's bias in favor of such "protectionist" unions to the disadvantage of legitimate labor organizing initiatives is another area in which Mexican government requires deep and immediate reform.

It is important to note at this point that two national level union organizations, the It is widely acknowledged that these two institutions function as 'charro' or protection unions that collaborate with investors to guarantee what one CTM official described to us as 'labor peace' in the workplace. It is also widely acknowledged that CROC and CTM work closely together in their strategy to win workplace representation, trading between themselves losses in one shop for gains in another in the face of workers desires to organize an independent union.

Tarrant Ajalpan closed definitively in February 2004. The president of the JLCA in Puebla made this public in a radio interview broadcast throughout the state, reporting that 600 workers had been laid-off. The severance agreements, which amounted to 75% of the legally mandated package in such cases, were negotiated between the company and the FROC-CROC.

### **Kukdong International**

The Kukdong apparel factory, also in the State of Puebla, is another case involving many of the same elements as Tarrant Ajalpan. The WRC conducted a full investigation of the factory and participated extensively in the process of remediation throughout approximately 18 months in 2001 and 2002.

#### ***Use of state violence.***

In January of 2001, the majority of Kukdong's workers participated in a work stoppage and overnight picket to protest poor working conditions in their factory and the presence of a company-selected union, the FROC-CROC. On the third night of their protest in front of the factory, a battalion of riot police, called at the request of the Kukdong management, forcibly removed the protesting workers, causing 17 of them to require medical attention.

#### ***Voluntary resignations.***

In the weeks following the work stoppage, Kukdong selectively denied participants in the work stoppage reinstatement to the factory. As in the case of Tarrant Ajalpan, Kukdong management pressured numerous workers to accept voluntary resignations, threatening that if they refused to sign the resignations they would get nothing. As with Tarrant, Ajalpan, the Puebla JLCA sanctioned these resignations as legally binding.

#### ***Recognizing FROC-CROC.***

For roughly a month following the work stoppage, those workers whom the company did allow to return were forced to sign oaths of loyalty to the FROC-CROC and forgo their rights to seniority benefits. Only after unprecedented heavy pressure from WRC, FLA,

and brands such as Nike and Reebok, did Kukdong management finally agree to reinstate without reprisal all of the workers who had participated in the work stoppage. This decision was made independent of any request by the government authorities which, once again, remained silent.

As Kukdong, the FROC-CROC negotiated for workers a labor agreement which mandated the lowest wages and benefits allowed under Mexican law. Workers of Kukdong were not aware that the FROC-CROC “represented” them until more than six months after the agreement was signed. For this and other reasons, the WRC and other auditors found the contract to be in violation of Mexican federal laws concerning the negotiations of labor accords. Representatives of the FROC-CROC were allowed free access to the factory floor; in several documented instances, these representatives physically assaulted and sought to bribe worker leaders involved in the effort to form an independent union. Because authorities view such “sweetheart” labor agreements as legitimate, the FROC-CROC was able to intimidate and threaten workers under full shelter of the Mexican labor rights regime.

### ***Denial of Registro.***

As is evident, the workers at Kukdong have faced many of the same challenges as those at Tarrant Ajalpan in exercising their associational rights. For example, when workers sought to officially form their own union, they confronted a labor regime biased strongly against initiatives such as theirs to form an independent union. The workers of Kukdong submitted a petition in March of 2001 to register SITEKIM. Two months later, the labor board rejected the petition, arguing that because three of the twenty eight workers who signed the petition were absent on a day authorities visited the factory, these workers must not truly wish to join the union. Other line workers were disqualified on the grounds that they were “confidential” employees. In violation of Mexican law, as in the case of Tarrant, the workers of Kukdong were not provided an explanation of the technical requirements before or after the petition was submitted, nor granted an opportunity to clarify outstanding issues.

The labor board granted a second petition three months later after an enormous amount of pressure had been brought to bare on the authorities by manufactures, advocates, and Kukong management itself.

The arbitrary criteria employed by the labor board in this case is typical of instances in which workers seek to form independent trade unions. Meanwhile, official bogus “unions” are routinely granted recognition and negotiate contracts without the knowledge of the workers’ whom they nominally represent. As explained above, the CROC-FROC has an openly intimate relationship with the PRI, the ruling party of Mexico for most of the last century and governor of Puebla at the time of the violations at Kukdong.

## **Matamoros Garments**

### ***Denial of Registro.***

The Matamoros Garment factory, also in the state of Puebla, provides another example of this pattern. Workers in this factory launched a campaign to improve hazardous working conditions and form an independent union in January of 2002. Several months later, the JLCA formally rejected the workers' application for an independent union, citing familiar minor technicalities: the labor board was unable to clarify the name of the union; one union committee member's name was apparently written incorrectly; and a mechanic from a legally excluded 'confidential' position had signed the registration papers. The labor board refused to consider documents in which the majority of Matamoros Garment workers had declared in writing their support for the independent union.

This factory, similar to Kukdong and Tarrant, had the presence of a company-selected union section of the Confederation of Mexican Workers (CTM). On March 24, representatives of the CTM met with the JLCA and the company to determine how to end the conflict, which had crystallized in a series of worker-led work stoppages. Those at the meeting decided to call a "technical work stoppage" of 15 days at 50% salary, and to compensate workers for two weeks lost time. Soon thereafter, the factory closed.

## **Duro Bag**

### ***Unfair elections.***

The experience of the Duro Bag factory, located in Rio Bravo, Tamaulipas, illustrates what can happen in the event that a workers' petition to form an independent union is granted. In June of 2000 the company responded to a effort by workers to organize an independent union by firing those workers leading the effort. After more than a year of legal contests, the workers won their bid to register an independent union and a "recuento" was scheduled for March 2, 2001 to determine whether the independent union or the company-selected CROC would negotiate a collective bargaining agreement on behalf of the workforce.

Reports by lawyers and other observers described the union recuento, or election, as being fraught with the most extreme forms of intimidation, fraud, and illegal abuse of workers rights to associate. For example, CROC personnel escorted individual workers to speak their vote to factory managers. The doors and windows were blocked where the workers spoke their vote were blocked. Election observers were prohibited from communicating with each other and their objections went unheeded. When the final count was announced, only 4 workers had voted for the Duro Workers' Union and 498 votes for CROC were counted. That, despite the fact that only 502 workers were eligible to vote and many had not been allowed into the election room<sup>3</sup>.

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<sup>3</sup> Nov. 2002, Hennessey, R Duro Bag Workers Z Magazine

Mexican law does not call for a secret ballot for recuento. However, ILO Convention #87 on Freedom of Association makes explicit that the “law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for [worker freedom of association]” (Article 8 #2). Mexico has ratified this convention and is therefore obliged by its own Constitution to ensure its implementation. Government acquiescence to the voting process described above is therefore patently illegal.

### **Coahuila**

The WRC’s most recent factory assessment in Mexico concerns an apparel assembly facility in the northern state of Coahuila. While the plant is not located in the state of Puebla, the nature of the findings of the assessment reinforce the patterns of violations addressed above. Firstly, that the JLCA does not act to circumscribe and/or penalize collusion between companies and company-selected protection unions to prevent workers from exercising their constitutional right to join a union of their choice and to negotiate a collective bargaining and contract agreement. Secondly, that the JLCA willingly allows and intentionally participates in the summary dismissal of workers who are suspected of organizing independent unions.

### ***Intimidation***

At this point it is worth making a last reference to the use of intimidation as a tactic to guard against any disruption to the interest-based relationship between company-selected unions, companies, and the Mexican government. At the plant in Coahuila, intimidation is manifest in repeated threats of factory closure (made true in the cases of Tarrant and Matamoros), in illegal firings (seen in all of the above examples), and in the appointment of union thugs as worker ‘labor advisors’ at the factory. In an action of February 2004, representatives of the municipal government, the company and the union appeared together in state-level press articles denouncing a local worker rights NGO which is supporting workers at the facility in their efforts to organize an independent union, as a “subversive cell” funded by “terrorists”. This blatant act of public intimidation illustrates the close relationship between the local government, protection union, and company, and demonstrates the impunity with which local government assumes it can violate federal legislation designed to protect workers’ freedom to associate.

### **Conclusions**

The Tarrant, Ajalpan case illustrates a number of problems with Mexican labor enforcement that require immediate and far-reaching reform. The evidence from this case is supplemented from others in the state of Puebla and elsewhere in Mexico, and involve:

- Illegal firings of workers who have endeavored to exercise their associational rights. In these cases, the illegality of the firings is most often both procedural and causal.



- Illegal denial of a union's request for registration, also in direct contravention of codified guarantees and protections of worker's associational rights.
- Illegal recognition of bogus unions.
- Illegal sanctioning of unfair union elections.

In these cases, the most pressing reforms needed by the Mexican government are:

- An end to the practice of viewing "voluntary resignations" of workers as legitimate in instances in which workers have been told that, if they do not resign and accept severance, they will be fired and get nothing.
- Swift response by JLCA officials to complaints by workers of illegal firings so that irreparable harm to their associational rights is avoided.
- A clear and reliable process for workers to apply for union recognition that minimizes arbitrary and discriminatory treatment by JLCA officials.
- A stop to the systematic preference on the part of JLCA officials in favor of unions formed without worker knowledge of approval.
- A fair and safe union election process by means of secret ballot.