

REDACTED

BEFORE THE
UNITED STATES NATIONAL ADMINISTRATIVE OFFICE
BUREAU OF INTERNATIONAL LABOR AFFAIRS
UNITED STATES DEPARTMENT OF LABOR

Canadian Auto Workers; International)
Brotherhood of Teamsters, AFL-CIO (IBT);)
IBT Local 745; International Union, United)
Automobile, Aerospace & Agricultural Implement)
Workers of America (UAW) and UAW Locals 987,)
2049 and 428; UNITE, AFL-CIO; UNITE, AFL-CIO)
Midwest Regional Joint Board; UNITE Local 713;)
United Electrical, Radio and Machine)
Workers of America(UE); UE Local 1090; United)
Paperworkers International Union (UPIU);)
UPIU Local 1056; United Steelworkers of)
America, AFL-CIO/CLC (USWA); USWA Local 119A;)
USWA, Local 6363; USWA, Local 3950; USWA,)
Canadian National Office; et al.,)

Petitioners)

and)

Echlin, Inc., and its Mexican subsidiaries,)
ITAPSA and American Brakeblock;)
Confederacion de Trabajadores)
Mexicanos ("CTM"), and its Locals 15 and 3,)

Respondents.)

PUBLIC COMMUNICATION ON
LABOR LAW MATTERS ARISING IN MEXICO:
ELECTION CONTEST BETWEEN GOVERNMENT AND INDEPENDENT UNIONS

Introduction

In PART I below, North American labor unions and human rights organizations protest the failure of Mexican authorities to guarantee the rights of workers to freely organize an independent union at a plant in Ciudad de los Reyes, Mexico. The drive to organize this independent union and the representation election which followed were marred by threats of physical violence, rape and job loss; the retaliatory discharge of over approximately 50 workers; the use of numerous armed thugs to

intimidate voters during the election; the beating of an independent union representative during this election; and interference with the process of voting. Through these abuses, which were perpetrated by a U.S. corporate subsidiary in conjunction with Mexico's largest government-sanctioned labor union, the independent union campaign was crushed.

The abuses described above were conducted under the eye of Mexican authorities charged with guaranteeing the right of workers to freely organize and vote for the union of their choice. Rather than act to prevent the abuses or deny them legal effect, Mexican authorities participated in some of the challenged conduct, refused numerous requests to delay the elections, and later certified the representation election in favor of the government-sanctioned union.

By this Public Communication, Petitioners seek, inter alia, a full investigation into the events surrounding the representation election, and ministerial consultations to both redress the violations of workers' rights and prevent recurrence of similar violations.

In PART II below, Petitioners demonstrate that Mexican labor authorities have failed to enforce laws against Echlin and ITAPSA which are designed to protect employees against dangerous health and safety conditions on the job. In particular, these authorities have failed, in violation of both international and Mexican domestic law, to ensure that Echlin and ITAPSA provide proper equipment and ventilation to protect employees from

dangerous chemicals such as asbestos; to make adequate safety inspections of the plant; and have failed to give regular medical evaluations to employees exposed to dangerous chemicals.

To remedy this, Petitioners request that Mexico be ordered to comply with requirements regarding health and safety including protection from asbestos exposure, provision of adequate protective equipment, proper testing of all workers who may be exposed to toxic chemicals and provision of the results of their exams. Petitioners further request that the appropriate authorities conduct a plant inspection under conditions which ensure the impartiality, thoroughness and competence of the inspectors.

Jurisdiction

Jurisdiction over this matter is based upon Article 16(3) of the North American Agreement on Labor Cooperation ("NAALC") which provides that the NAO "shall review" submissions of public communications on labor law matters arising in the territory of another Party. This submission, by interested parties in the United States, Canada and Mexico is brought to challenge labor law matters, as that term is defined in Article 49 of the NAALC, arising in Mexico. In particular, the parties filing this submission challenge Respondents' failure to abide by labor laws guaranteeing "freedom of association and protection of the right to organize," "the right to bargain collectively," and "prevention of occupational injuries and illnesses," and the

failure of Mexico to enforce these laws against Respondents
(See, NAALC Articles 3(1) and 49(1)(2) and (9)).

Petitioners

A. The Echlin Unions

(1) The International Brotherhood of Teamsters, AFL-CIO ("IBT") is North America's largest labor organization, representing over 1.4 million workers throughout the United States and Canada. IBT represents people who work in the trucking, parcel delivery, warehouse, construction, health care, and numerous manufacturing industries, including several Echlin plants. IBT members of Local Unions 92 (Canton, OH), 279 (Decatur, IL), 364 (South Bend, IN), 391 (Winston-Salem & Vicinity, NC), 745 (Dallas, TX), 810 (New York, NY), and 851 (New York, NY) are United States citizens who are employed by Echlin, Inc. or its U.S. subsidiaries, and are directly affected by Echlin's international labor practices.

(2) The International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) represents a diverse work force with occupations ranging from automobile manufacturing to university workers. However, the UAW primarily represents automobile and auto-parts workers, including Local 985 Echlin Special Products (the Ace Electric Division) in Livonia, MI., Local 2049 Preferred Technical Group in Columbia City, IN and Local 428 American Electronic Components in Elkhart, Indiana. Because all three locals are subsidiaries of Echlin, Inc., the UAW has a particular interest in this matter.

(3) The National Automobile, Aerospace, Transportation and general Workers Union of Canada ("CAW-Canada") is the largest industrial union in Canada. It represents 210,000 workers in many sectors and in all parts of the country.

(4) UNITE, AFL-CIO represents industrial and textile workers in the U.S., Canada and Puerto Rico. In particular, UNITE, AFL-CIO Midwest Regional Joint Board and its Local 713 represent workers at Friction, a subsidiary of Echlin, Inc., located in Fredericksburg, Virginia.

(5) The United Electrical, Radio and Machine Workers of America ("UE") is a labor organization representing approximately 35,000 workers in diverse industries and occupations across 26 states. Its membership ranges from factory workers in the metalworking, plastics and various other manufacturing industries to employees in the public sector and in educational institutions. The UE has been on the forefront of the effort to establish meaningful relationships between U.S. and Mexican workers through its "Strategic Organizing Alliance" with Mexico's

Frente Auténtico del Trabajo. In particular, UE Local 1090 represents workers at Friction, a subsidiary of Echlin, Inc. in Irvine, California.

(6) The United Paperworkers International Union ("UPIU") is a labor organization representing 250,000 employees throughout the U.S. and Canada. The UPIU represents employees in the pulp, paper, and paper products industries; in auto parts and metal trades; in cement; and other industries. In particular, the UPIU and UPIU Local 7307 represent the production and maintenance employees at the Preferred Technical Group facility in Andrews, Indiana. In addition, the UPIU and UPIU Local 1056 represent the production employees at the Hermaseal Company, a subsidiary of Echlin, Inc., in Elkhart, Indiana.

(7) The United Steelworkers of America, AFL-CIO/CLC ("USWA") is a labor organization representing approximately 800,000 workers in the United States and Canada. The USWA represents workers in various industries, including the steel, rubber, aluminum, can and other industries. In particular, the USWA and United Steelworkers of America, Local 119 represent workers of the Preferred Technical Group, a subsidiary of Echlin, Inc., in Mitchell, Indiana.

(8) The USWA Canadian National Office is a diverse union which represents approximately 185,000 Canadian workers. While the Union had its origins in the steel and mining industries, today, members can be found in healthcare, hotels, department and grocery stores, manufacturing, security, taxis and other sectors of the Canadian economy. In particular, USWA, Local 6363 represents workers of Neelon Casting, Ltd., a subsidiary of Echlin, Inc., in Sudberry, Ontario. USWA, Local 3950 represents workers at Echlin Canada, Inc., a subsidiary of Echlin, Inc., in Mississagum, Ontario.

B. Other Concerned Organizations, Unions and Labor Federations

(1) Asociacion Nacional de Abogados Democraticos ("ANAD") (National Association of Democratic Lawyers) is an independent organization which includes in its membership approximately 500 lawyers who specialize in labor law and human rights in the Republic of Mexico.

(2) Casa de la Mujer - Grupo Factor X, A.C. is an organization that provides legal and organizational counsel to maquiladora workers in Tijuana, Mexico.

(3) Centro de Informacion, A.C. is an organization which provides legal advice and labor rights training, and research regarding the maquilas in Tijuana, Mexico.

(4) The Center for Constitutional Rights ("CCR") is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution, ILO Conventions and the Universal Declaration of Human Rights. CCR is committed to the use of law as a positive force for social change.

(5) Centro de Investigación y Solidaridad Obrera (Center for research and Worker Solidarity).

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

(7) Comité Independiente de Derechos Humanos (Cd. Juarez) (Independent Human Rights Committee);

(8) Frente Auténtico del Trabajo ("FAT") (Authentic Workers' Front) is an independent federation with 50,000 members in union, cooperative, peasant and popular urban sectors. The following affiliated national unions and related organizations are also in support of this Submission: Sindicato Industrial de Trabajadores Textiles y Similares "Belisario Dominguez" (Industrial Union of Textile and related Workers "Belisario Dominguez"), as well as the following locals: "Santa Julia," "Texoriente," and "Abetex"; Sindicato de Trabajadores de la Industria metalica, Hierro, Acero, Conexos y Similares (STIMAHCS) (Union of Workers in the Metal, Iron, Steel, and Related and Similar Industries), as well as the following locals: "Tuto di Oro" and "Sealed Power"; Sindicato Nacional de Trabajadores de la Industria del Hierro, el Acero, Productos derivados y Conexos de la Republica Mexicana ("SNTIHA") (National Union of Workers in the Iron, Steel, Derived and Related Products of the Republic of Mexico); Sindicato Nacional de Trabajadores de Elevadores OTIS (National Union of OTIS Elevator Workers); Sindicato Regional de de Choferes de Sitios y Rutas FOCEP (Regional Union of Drivers of FOCEP Sites and Routes); Sindicato "Ricardo Flores Magón" de Trabajadores de Hulera Industrial Leonsa S.A. de C.V. (Union of Industrial Rubber Workers "Ricardo Flores Magón" at Leonesa, S.A. de C.V.); Sindicato de Trabajadores del Instituto Nacional de Capacitación del Sector Agrepecuario (Union of Workers of the National Training Institute for the Agricultural Sector); Centro de Estudios y Taller Laboral, A.C. (Labor Workshop and Studies Center); Grupo Ocho de Marzo (Eighth of March Group); Organización Popular Independiente, A.C. (Popular Independent Organization, Inc.).

(9) Global Exchange is a non-profit education and action center dedicated to promoting people-to-people ties between the U.S. and developing countries. We support democratic struggles by working on international social issues such as labor rights, human rights, sustainable development, etc.

(10) IUE represents manufacturing workers across a wide spectrum of Electronic, Electrical Machinery, Transportation and Furniture Industries.

(11) Jobs with Justice is a national community, labor and religious coalition for workers' rights. Local Jobs with Justice Coalitions are active in over thirty communities across the United States.

(12) The National Interfaith Committee for Worker Justice educates and mobilizes the U.S. religious community on issues and campaigns to improve wages, benefits, and working conditions for workers, especially low-wage workers.

(13) The National Labor Committee is an independent, non-profit human rights organization that focuses on the issue of protecting the rights of workers producing products destined for the U.S. market.

(14) The National Lawyers Guild ("NLG") is an organization of U.S. lawyers, law students, legal workers, and jailhouse lawyers dedicated to the proposition that human rights shall be regarded as more sacred than property interests. The NLG's International Committee works to promote the human dignity and rights of workers in the context of the global economy. The Labor and Employment Committee provides legal and/or political support, where possible, for workers in their struggles for economic and social justice.

(15) The Maquiladora Health and Safety Support Network is a non-profit organization of 400 occupational health and safety professionals in Canada, Mexico and the United States. The Network provides information, training, and technical assistance to Mexican labor, community and professional groups working with workers in maquiladora plants on the U.S.-Mexico border.

(16) Red Mexicana de Acción Frente al Libre Comercio ("RMALC") (Mexican Action Network on Free Trade) is a coalition of more than one hundred environmental, labor, human rights, peasant and farmworker, debtor, and small and medium-sized business organizations which has evaluated the impact of NAFTA and developed alternative proposals regarding trade.

(17) Sindicato de Academicos del Instituto Nacional de Antropología e Historia (Union of Academics of the national Institute of Anthropology and History).

(18) Sindicato Gremial de Trabajadores del Volante, Similares y Conexos Region Lagunera (Union Guild of Taxi and Related and Similar Workers of the Lagunera Region).

(19) Sindicato Independiente de Trabajadores de la Universidad Autónoma Metropolitana ("SITUAM") (Independent Union of Workers of the Autonomous Metropolitan University) is an independent union which includes approximately 9,000 university workers and academics.

(20) Sindicato Nacional de Trabajadores Académicos del Colegio Nacional de Educación Profesional Técnica ("SINTACONALEP") (National Union of Academic Workers of the National College of Professional Technical Education) is a union which includes approximately 4,500 academics throughout the Republic of Mexico;

(21) Sindicato Nacional de Trabajadores de la Comisión Nacional Bancaria y de Valores (National Union of Workers of the National Bank and Valuables Commission) is a democratic union of federal workers covered by Section B of the Mexican labor code and has approximately 250 members.

(22) Sindicato Unico de Trabajadores de Ecotans y Sitios Conexos y Similares de la Región Lagunera del Estado de Durango (Sole Union of Workers of Ecotans and Related and Similar Sites of the Lagunera region of the State of Durango).

(23) Sindicato Nacional de Trabajadores de El Colegio de Mexico (National Union of Workers of the College of Mexico) is an independent union with approximately 250 members.

(24) Sindicato Nacional de Trabajadores del Instituto Mexicano del Petróleo ("SNTIMP") (National Union of Workers of the Petroleum Institute) is a union with approximately 1,250 members which recently succeeded in gaining the full rights to strike and to establish bi-lateral collective agreements instead of being considered an exception under Section B of the Mexican law which applies to workers who are federal employees.

(25) Sindicato de Trabajadores Académicos de la Universidad Autónoma Chapingo ("STAUACH") (Union of Academic Workers of the Autonomous University of Chapingo) is an independent union composed of approximately 1,000 academics.

(26) Sindicato de Trabajadores de Productos Pesqueros de salina Cruz, Oaxaca (Union of Workers of Fish Products of Salina Cruz, Oaxaca) is an affiliate of the CROC (the Revolutionary Confederation of Workers and Peasants, an official labor federation).

(27) Sindicato de Trabajadores de la Universidad Autónoma Chapingo ("STUACH") (Union of Workers of the Autonomous University of Chapingo) is an independent union composed of approximately 2,400 university workers.

(28) Sindicato Unico de Trabajadores de Calzado Sandak ("SUTCS") (Sole union of Workers of Sandak Shoes).

(29) Sindicato Unico de Trabajadores del Centro de Investigación y Estudios Superiores en Antropología Social ("SUTCIESAS") (Sole Union of Workers of the Center for research and Higher Studies in Social Anthropology).

(30) Sindicato Unico de Trabajadores de la Secretaría de Pesca (Sole Union of Workers of the Fisheries Secretariat) is a union of federal workers with approximately 800 members.

Part I: Violation of Organizational & Associational Rights

Facts

A. Background

Echlin, Inc. is a corporation based in Branford, Connecticut, and is engaged in the production and distribution of automobile replacement parts in the U.S., Canada and Mexico. Echlin, Inc., which engaged in \$3.6 billion in sales this year, employs about 32,000 employees throughout the world. In particular, it has ten plants in Mexico. ITAPSA manufactures parts for auto braking systems in Ciudad de los Reyes, a municipality in the State of Mexico ("Reyes plant"). ITAPSA employs approximately 350 people in the Reyes plant. ITAPSA exports the major part of its production to the U.S., Canada, Europe and South America, establishing the trade-relatedness of this complaint.

The production and maintenance workers at ITAPSA's Reyes plant are paid about 268 to 360 pesos (or US \$33 to \$45) per week (Velázquez Javier Aff. ¶5; Hernández Alanis Aff. ¶4). They are

presently unionized under Local 15 of the Confederacion de Trabajadores Mexicanos ("CTM"), translated as "Confederation of Mexican Workers" (██████████ Aff. ¶5). The CTM is the largest union confederation in Mexico, and, as the U.S. NAO Report on Ministerial Consultations, Submission #940003 at p. 9, notes, appears "closely linked to the Institutional Revolutionary Party (PRI), the dominant political party in Mexico." Though the workers at the Reyes Plant know that they had a union, none of them have a copy of their contract (██████████ Aff. ¶6). This is in part because there is no requirement public registry of unions or contracts in Mexico.

B. Retaliation in Response To The Organizing Campaign

In 1996, the Union of Workers in the Metallic, Steel, Iron, Connections & Similar Industries ("STIMAHCS"), an independent trade union affiliated with the Authentic Workers Front ("FAT"), began a union organizing drive at the Reyes plant. The chief concerns expressed by workers to STIMAHCS' General Secretary and organizers were problems in the plant such as contamination and unhealthy and unsafe working conditions. These workers were troubled by cases where fellow employees had died or become seriously ill, and by the fact that they are forced to handle asbestos without proper protections and ventilation (██████████ Aff. ¶4; ██████████ Aff. ¶6). As employee ██████████ explains,

"[t]he main issues we were dealing with were hygiene and worker safety. The machinery at the factory is old and in disrepair and there is a lot of [asbestos]

dust. There have been many accidents. About five years ago two brothers drowned in the large caustic soda containers. Several people have lost fingers, one man lost four of the five fingers on his left hand." [REDACTED] Aff. ¶6).

Other concerns of the workers included low wages, abusive supervisors, sexual harassment, and the failure of the CTM to respond to their problems [REDACTED] Aff. ¶4). According to [REDACTED] "...when they would tell the union representative at ITAPSA of problems such as abuse by supervisors he would just tell them that they should be thankful that they have jobs at all and that they shouldn't be complaining about such things." (Id. ¶5)

On May 26, 1997, STIMAHCS filed its Petition for the Right to Administer the Contract on behalf of the ITAPSA employees. This Petition was filed with the Junta Federal De Conciliacion y Arbitraje (Federal Conciliation and Arbitration Board) ("CAB") [REDACTED] Aff. ¶7). As [REDACTED], one of the top leaders of the FAT and Secretary General of STIMAHCS, explains, "[i]n effect we were asking the [CAB] to hold an election so that we could prove that the majority of the workers wanted to belong to STIMAHCS." (Id. ¶7).

The federal and state CABs are labor tribunals established pursuant to Article 123, Section XX of the Mexican Constitution to resolve labor conflicts and to register unions. The CABs are tripartite bodies, consisting of one worker, one employer and one government representative. As USNAO itself observes, "[t]he labor representative on the CAB generally represents the

incumbent or majority union -- in the instant case a CTM affiliate. Therefore, at least one member of the CAB had a competing interest with the independent union seeking registration." USNAO Report on Ministerial Consultations, Submission No. 940003 at 10.

Shortly after STIMAHCS filed its representation petition, agents of both ITAPSA and the CTM began a campaign of intimidation against the employees at the Reyes plant. Agents of these entities visited workers' homes and threatened their families. As one employee, [REDACTED], relates, two individuals in a green car which she saw drive in and out of the Reyes plant parked in front of her home for about an hour and a half on September 5, 1997 ([REDACTED] Aff. ¶9). [REDACTED] explains that she feared these individuals would hurt her ([REDACTED] Aff. ¶9). Individuals in this same car engaged in the surveillance of employees who were leafleting on behalf of STIMAHCS just before the election ([REDACTED] Aff. ¶9). Again, the employees being watched feared that they would be attacked by these individuals (Id.).

In addition, agents of ITAPSA and the CTM engaged in surveillance of employees at the plant. As [REDACTED] explains:

"They watched workers very closely, trying to determine which workers sympathized with the union. They questioned workers about their support for STIMAHCS, in some cases threatening and harassing workers. . . . In some cases they tried to intimidate workers and their families."
[REDACTED] Aff. ¶9).

STIMAHCS supporter [REDACTED], similarly relates, "[w]e knew we were being watched by supervisors and the CTM delegates in the plant. They knew who the supporters of the union were. The reason I knew that we were being watched is that every time we as workers who supported STIMAHCS would get together in the plant, one of the bosses would immediately come over to where we were." [REDACTED] Aff. ¶3) (see also, [REDACTED] Aff. ¶4; [REDACTED] Aff. ¶9). [REDACTED] also states that "we were being subjected to a more than normal level of surveillance in our jobs. A week before the elections I and other members felt placed under especially rigorous surveillance where if more than two or three people began to talk, the supervisor would come to see what we talked about." ([REDACTED] Aff. ¶4).

[REDACTED] confirms that after STIMAHCS filed its representation petition, "the factory was under strict surveillance." [REDACTED] Aff. ¶7). [REDACTED] relates that he was watched more closely than anyone because ITAPSA believed he was the head of STIMAHCS (Id. ¶¶7,10). [REDACTED] also explains that, right after the representation petition was filed by STIMAHCS, ITAPSA changed work shifts in order to punish STIMAHCS supporters and that it increased the workload of the Reyes plant employees (Id. ¶¶8,11) (see also, [REDACTED] Aff. ¶4; [REDACTED] Aff. ¶6). [REDACTED] confirms that "[t]hey . . . forced workers to work more quickly, to do harder work, or changed their shifts." [REDACTED] Aff. ¶9).

[REDACTED] explains that particular "departments were targeted for the speed up because the company suspected that many of these workers were involved in organizing support for STIMAHCS." ([REDACTED] Aff. ¶6). One worker explains that the work speed up led to more asbestos dust and thus more dangerous working conditions ([REDACTED] Aff. ¶6).

In addition, ITAPSA fired about fifty (50) employees who they suspected of being STIMAHCS supporters during the period between the time STIMAHCS filed its petition and the date of the representation election ([REDACTED] Aff. ¶9). Many of these workers were fired after Company and/or CTM officials threatened them in one-on-one conversations that they would be discharged if they supported STIMAHCS.

For example, [REDACTED] (a 1 ½ year employee with ITAPSA) was discharged shortly after ITAPSA personally threatened him with termination if he voted for STIMAHCS. As

[REDACTED] explains,

"Around 15 days before I was fired, I was called into the office of the Human Resource Director of the Company, Rosa Maria Bernal, who asked me who was going to vote for STIMAHCS, the independent union. I did not tell her how I was going to vote. She told me that if I voted for STIMAHCS I would lose my job at ITAPSA and that I would have a difficult time getting a job anywhere else because ITAPSA would advise other companies about my union activities." ([REDACTED] Aff. ¶6).

A CTM delegate in the plant had also told [REDACTED] and some other employees that ITAPSA would close the Reyes plant or

fire some of the workers involved in supporting STIMAHCS if the employees did not elect the CTM (Id. ¶7).

Similarly, [REDACTED], the CTM representative, told [REDACTED] that he "shouldn't get involved in problems with another union and that I should watch out for my job." He also told him that "people involved with STIMAHCS would end up fired." [REDACTED] was fired as threatened. [REDACTED] Aff. ¶¶5-8). [REDACTED] (a three-year employee of ITAPSA) was also threatened prior to his discharge. CTM Delegate Fortunado Rodriguez told [REDACTED] that he would be fired if he continued his activity with STIMAHCS [REDACTED] Aff. ¶4).

[REDACTED] was discharged on July 11, 1997 [REDACTED] Aff. ¶7). Upon being discharged, [REDACTED] was told by Human Resources Director Rosa Maria Bernal that she was being fired for her "contacts with STIMAHCS sympathizers." (Id.). Bernal then asked [REDACTED] why she got involved with STIMAHCS and how she would support her family now that she was fired (Id.). [REDACTED] refused an offer of severance by Bernal and went on to file a demand for reinstatement with the CAB (Id.).

[REDACTED] (a three-year employee of ITAPSA), upon being discharged on July 18, 1997, was explicitly told that his discharge was in retaliation for his activities with STIMAHCS:

"On about July 18th, I was called to the office by Luiz Espinoza, a representative of ITAPSA management. He told me I was fired. He told me there were orders from

the U.S. owners of ITAPSA that he must fire all of the people who were causing trouble here at ITAPSA and that my name was on the list." [REDACTED] Aff. ¶12) (emphasis added).

After [REDACTED] was discharged, he continued to hand out STIMAHCS flyers outside the Reyes plant gates (Id. ¶13). While engaged in this activity, [REDACTED] was told by ITAPSA surveillance agents and security guards that he shouldn't involve himself with the independent union because he would just end up hurting himself and losing his severance pay. ([REDACTED] Aff. ¶13).

Approximately twenty of the fifty workers who were discharged were fired on August 28, 1997 -- the day upon which the representation election between STIMAHCS and the CTM was originally scheduled ([REDACTED] Aff., ¶¶10-11,14). Just days prior to this date, ITAPSA and CTM representatives "told many workers that the workers should not come to the election because there would be trouble and violence." ([REDACTED] Aff. ¶12).

The CAB had postponed the election, upon request of the CTM, without informing STIMAHCS. ([REDACTED] Aff. ¶¶10-12). Therefore, the workers who showed up early to vote on August 28, 1997 -- employees who were filmed by men in a parked car in front of the Reyes plant and observed by a security guard -- were easily identified with STIMAHCS and were summarily discharged [REDACTED] Aff. ¶8; [REDACTED] Aff. ¶8; [REDACTED] Aff. ¶¶7-8).

[REDACTED] (a four-year employee of ITAPSA) was one such employee who was discharged on August 28, 1997:

"On August 28, 1997, when I went into a vote at 11:00 a.m. in the morning in the union election . . . I was told by the company guard that there was going to be no vote that day. When I returned to go to work on the second shift that same day, I was told by the guard that I could not go into work and that I was fired. The guard said that it was orders from the company. Just because I showed up to vote, I was identified by the company as a supporter of STIMAHCS." ([REDACTED] Aff. ¶4) (see also, [REDACTED] Aff. ¶5,6).

[REDACTED] corroborates this statement:

"On August 28, 1997, we thought we were going to vote in the union election. I arrived at the plant at about 11:00 a.m. However, the company guard would not let us in. When I came to work at my regular shift at 3:30 p.m. the same company guard would not let me and six other workers into the plant. The uniformed company guard told us it was the orders of the company that we were no longer permitted to work for ITAPSA. . . . Seven of us who were fired were standing outside the plant when Roberto, the CTM day shift delegate, came . . . and told us we were fired because we supported STIMAHCS and that the company fired us because of the problem between the two unions." ([REDACTED] Aff. ¶7) (see also, [REDACTED] Aff. ¶10).

Similarly, employee [REDACTED] (a five-year employee of ITAPSA) states that, after coming to the plant to vote on the morning of August 28, he was discharged. [REDACTED]

[REDACTED] explains that when he came back to work the afternoon of August 28, he was not allowed to enter the plant:

"I rang the bell at the factory door, a guard opened the door and I attempted to

enter as I usually do. One of the guards pushed me back outside of the factory door and told me that I was not allowed to enter by orders of the ITAPSA management. I asked the guards why I could not enter. They refused to reply and closed the door in my face . . . That afternoon they did not allow approximately 8 workers to enter. All of the fired workers were fellow members of STIMAHCS who had showed up to the election in the morning and later had met with STIMAHCS representatives." [REDACTED] ¶7).

[REDACTED] (a six-year employee of ITAPSA) was also turned away from the plant and discharged on August 28, 1997. [REDACTED], who had been previously told by a CTM delegate that he might be fired because he was on a list of STIMAHCS supporters which ITAPSA was keeping, arrived at the plant at 10:00 a.m. on August 28 [REDACTED] Aff. ¶¶6-7). [REDACTED] left that morning after being told that there would be no election (Id. ¶7). After returning for his shift in the afternoon, [REDACTED] was "met at the factory gate by three members of the company police force." (Id.). These individuals informed [REDACTED] that the company had fired him and that he was not permitted to enter the plant (Id.).

That the company was working hand in glove with the CTM in discharging STIMAHCS supporters is evident from CTM representative [REDACTED] remarks to [REDACTED]

[REDACTED]:
"On or about the 6th of September I talked with the CTM delegate Roberto Jiménez, at his house in order to ask him to help me get my job back. Roberto Jimenez told me that the ITAPSA management believed that I was involved with the union movement in

support of STIMAHCS and that it had been reported to the company that I had met with the union supporters on the morning of August 28th. He told me that therefore he would not be able to help me." [REDACTED] Aff. ¶9).

On September 5, 1997, the CAB held a hearing and set a new election date -- September 9, 1997 [REDACTED] Aff. ¶13).

Also on September 5, 1997, [REDACTED], a confidential employee of ITAPSA for almost 6 years, was discharged. [REDACTED] had been told on several occasions that he would lose his job if he was involved in the organizing efforts of the FAT:

"On July 21, 1997, one of the managers, Raul Arrega, ordered me to meet with him in his office. He told me that there were rumors that I was involved with the organizing efforts with the Authentic Workers Front (FAT) and that I should not involve myself in those problems. He said that the workers didn't know what they were doing. He said that if I was involved that I would be fired." [REDACTED] Aff. ¶6).

After this incident, [REDACTED] was continually told by Juan Ornelas, another manager, that because he was involved with the organizing campaign, he was hurting himself in relation to the company (Id. ¶8). Soon afterward, he was discharged:

"On Friday September 5th, 1997, Jose Luis de los Monteros, the head of industrial relations for the company, ordered me in person into his office. He told me that I was fired. He said I was fired because I had been seen talking with people from the STIMAHCS, and that if I didn't want to be fired that I had to tell him who these people were and that I had to name all the workers in the plant who were involved in organizing with the STIMAHCS. He said

that if I told them all that information I could save my job. I told him that I wasn't involved and I didn't know who the workers were. He presented me with a severance check and told me I was fired. I told him I didn't want the check and there was not a reason for me being fired." (██████████ Aff. ¶14).

2. The Election

On September 8, 1997 -- the day before the scheduled representation election -- Echlin Divisional Manager Guillermo Vela Reyna, held meetings with both first and second shift employees in which he informed them that they "should vote for the CTM and that if STIMAHCS should win they would suffer serious consequences." (██████████ Aff. ¶15)

Also on September 8, 1997, at approximately 7:00 p.m., a white Thunderbird with Mexico City license plate number 828GTH entered the plant (██████████ Aff. ¶16). The driver was identified by workers as an agent of the Judicial Police of the State of Mexico, who worked in the municipality of Los Reyes (Id.). Workers who were inside the plant at the time reported that arms were taken from the trunk of the car (Id.). Armed men who were unknown to the workers were subsequently seen patrolling the factory grounds. (Id.).

At approximately one in the morning on the 9th of September the company permitted two buses and a white truck to enter the plant, carrying approximately 170 people who were armed with sticks, chains, bars, tubes used for gas, and thin copper rods (██████████ Aff. ¶17). The buses were white and blue on top and silver below, manufactured by SOMEX, and had no license

plates (Id.). These "golpeadores," translated as "thugs," remained in and around the plant until the election was over, and did not leave until around 3:00 p.m. the following afternoon. (Id. ¶18). The conduct of these 170 individuals was coordinated by Marcelo Aragan, Industrial Relations Manager for ITAPSA, and Daniel Castillo of the CTM [REDACTED] Aff. ¶¶18,32). Castillo is well known as the head of a group called "los chiquiticos" which provides its services to intimidate workers who are trying to democratize their unions. (Id.; [REDACTED] Aff. ¶9).

These thugs prevented the third shift employees from leaving the plant upon the end of their shift at 6:00 a.m. on September 9 [REDACTED] Aff. ¶11; [REDACTED] Aff. ¶11; [REDACTED] Aff. ¶8; [REDACTED] Aff. ¶17).

Also at 6:00 a.m. on September 9, 1997, about 15 STIMAHCS, supporters, some of whom were wearing stickers reading, "Mi voto es para STIMAHCS," approached the Reyes plant [REDACTED] Aff. ¶6). As the STIMAHCS supporters came up to the plant, they were approached by Daniel Castillo and a large group of the thugs who surrounded them ([REDACTED] Aff. ¶8; [REDACTED] Aff. ¶6; [REDACTED] Aff. ¶10). The STIMAHCS supporters indicated that they had come to vote, whereupon Castillo stated that they would be beaten up if they remained on the premises (Id.). Succumbing to the threats, these employees left the premises (Id.).

The STIMAHCS supporters who were turned away as described

above returned at about 11:00 a.m. with about 100 other people [REDACTED] Aff. ¶6). The thugs were still manning the entrance to the plant and prevented these employees from entering (Id.). Some of the thugs appeared to be members of the judicial police force [REDACTED] Aff. ¶11). Meanwhile, these thugs permitted CTM supporters, as well as non-employees, to enter the plant to vote [REDACTED] Aff. ¶6; [REDACTED] Aff. ¶13; [REDACTED] Aff. ¶17). In addition, these thugs threw bottles and stones at the STIMAHCS supporters, as well as at the NGO observers present, while yelling at them ([REDACTED] Aff. ¶10; [REDACTED] Aff. ¶10-11; [REDACTED] Aff. ¶19). They also threatened some of the women that if they voted for STIMAHCS "they would wind up with big stomachs, obviously a threat that they would be raped." [REDACTED] Aff. ¶19).

Some 20 or so STIMAHCS supporters were never permitted to enter the plant to vote [REDACTED] Aff. ¶13). Instead, representatives of the CAB came to them outside to take their vote [REDACTED] Aff. ¶7). As these individuals' vote was being verbally taken, they were surrounded by a group of people, including CTM and ITAPSA representatives [REDACTED] Aff. ¶14; [REDACTED] Aff. ¶12).

Ultimately, only three (3) STIMAHCS representatives were permitted to enter the Reyes plant on September 9th: Arturo Alcalde, the lawyer for STIMAHCS, [REDACTED], one of the fired ITAPSA workers, and STIMAHCS General Secretary, Benedicto Martínez ([REDACTED] Aff. ¶21). These three representatives

were also subject to intimidation by the armed men, who all wore "CTM" stickers, who were manning the plant. Thus, as [REDACTED] relates:

"We entered the factory gate at approximately 10:30 a.m. and were immediately surrounded by a huge crowd of approximately 150 or 200 people armed with metal bars and other things I did not recognize anyone in this crowd as a worker in the factory.

We feared for our safety because the crowd was very threatening, and were yelling insults and making gestures that were gross and aggressive." [REDACTED] Aff. ¶21-22).

[REDACTED] explains that the STIMAHCS observers attempted to create a free environment for voting in spite of the presence of these thugs. As he explains, the STIMAHCS representatives met with representatives from the CTM, ITAPSA and the three representatives of the CAB who were present (Martínez Orozco Aff. ¶23). These parties initially agreed that there would be three observers from the CTM, ITAPSA and STIMAHCS in the voting room during the election (Id.). While these parties were discussing the procedure for voting, one of the larger men with a military style haircut who was present approached [REDACTED] (the fired ITAPSA worker who was acting as a STIMAHCS representative) and in a low voice said, "If you continue I'm gonna kick your ass" ("Sigue y te voy a romper la madre") [REDACTED] Aff. ¶24).

Only a few minutes after the parties agreed that there would be only three people from each side, the room filled with

approximately 20 representatives from the CTM ([REDACTED] Aff. ¶25). The STIMAHCS representatives voiced their objections to the CAB representatives present, but the latter responded that it was not up to them to enforce the rules established by the parties (Id.). And, when the STIMAHCS representatives asked the CAB authorities to suspend the election, they refused (Id.).

The voting inside the plant also took place in an atmosphere of intimidation and threats of physical violence. As an initial matter, the voting room itself was small, overcrowded, and filled with representatives of the CTM who created an imposing presence. As [REDACTED] explains:

"The voting room was extremely inadequate. The size of the room was approximately 5 meters by four meters, although it was wider at the far end. It was a regular office room and had five tables within this space. On one side of the room was a table with many of the representatives of the CTM, JFCA and ITAPSA and STIMAHCS. Another 15 people from the CTM were all around the room, and the passageway into the room was filled with the CTM men standing against the walls. On the side of the room through which workers were to enter and vote, there was a gauntlet of men wearing CTM stickers. The group of people practically reached the voting table." ([REDACTED] Aff. ¶26).

The workers entering the plant to vote were forced to walk this gauntlet of CTM representatives, armed with pipes and sticks, who verbally threatened them and their families ([REDACTED] Aff. ¶10). For example, as [REDACTED] explains, CTM representatives told employees "that if they did not vote for the CTM, they would not come out of the voting room alive. To the

women, the men threatened to rape them if they did not vote for the CTM." [REDACTED] Aff. ¶24) (emphasis added).

After the workers passed through this gauntlet, "two thugs wearing CTM stickers stood on either side of them and asked them for their identification and then accompanied them to the center of the room." [REDACTED] Aff. ¶28) The CTM representatives then delivered the credentials to the representatives of the CAB (Id.). The entire time the CTM adviser would be talking to them saying things like, "I'm going to work on the problem you've got" or "do you still want such and such changes in your department. We can work on that." (Id.) The workers were then asked by the representatives of the CAB how they wanted to vote (Id.). In particular, the workers were required to state out loud how they were voting, sign a sheet of paper confirming their vote and then leave the room through the door on the other side (Id.).

The very first worker who voted cast his vote for STIMAHCS and, as a result, was subject to implied threats by the CTM representatives present. Thus, when he cast his vote "the thugs from the CTM all began to call out, 'Did you see who that was? Take down his name.' Others were calling out, 'Do you know his name?' And 'Yes, take down his name. Take down his name.'"

[REDACTED] Aff. ¶29).

As a result of all of this, workers who came to vote were intimidated. Thus, [REDACTED] relates:

"The reactions on the part of the workers were often quite similar. First they seemed very surprised to see two men at their side from the CTM. When the authorities asked

them which union they voted for, first they looked around the room at all the thugs wearing CTM stickers, and then they looked back down at the ground and said 'With the CTM.' Mostly, the workers appeared genuinely afraid and, on one occasion, the worker was crying as she announced her vote. There was a mixture of resignation and fear on the part of the workers." [REDACTED] Aff. ¶28).

In addition to this blatant intimidation at the polling area, there were also irregularities with regard to who was permitted to vote and who controlled the voting process.

[REDACTED] continues:

"I was at the table during the election. I was supposed to verify voters as being on the list of employees. However, there were many people from the CTM at the table and they physically pushed me away from the list and forced me to the far end of the table. As a result I was unable to see the voting list. At the best of times I could only see what one of the representatives was doing, and once workers started coming through really fast, there was no way I could tell if they were on the list. In addition, the list itself contained both the employees who were entitled to vote as well as confidential employees, and we had no way of distinguishing between them." [REDACTED] Aff. ¶27).

STIMAHCS representatives were wholly prevented from confirming the credentials of the individuals voting as [REDACTED]

[REDACTED] confirms:

"It was impossible to really know if anybody voting was really a worker at ITAPSA. . . . [A]t no time did the JFCA representatives take responsibility for the impartiality of the election process, although we objected a number of times and asked that the election be suspended because we were unable to verify that the people who voted were entitled to do so." [REDACTED] Aff. ¶30).

The problem with identifying eligible voters was compounded, and the integrity of the voting process seriously compromised, by the fact that non-employees who were trucked in the night before were on the official voting list while some eligible employees were omitted from this list (██████████ Aff. ¶12). And, when the STIMAHCS representatives protested that certain people who entered were not workers, all the CTM representatives in the room would start screaming, "No, he is a worker here. Let him vote. Let him vote. How do you know he is not a worker here."

██████████ Aff. ¶33). In response to all of this, the CAB representative present would simply let the person vote (Id.).

At one point during the election process, people began voting very rapidly because they claimed that their credentials had already been checked before entering the room ██████████ ██████████ Aff. ¶31). In response, STIMAHCS representative ██████████ ██████████ went outside to investigate the process of checking people's credentials before they entered the voting room (Id.). Gonzalez was severely beaten by some of these thugs while he was doing this (Id.); ██████████ Aff. ¶10). The STIMAHCS representatives objected, saying that there was no possible way that the election could be held under these conditions ██████████ ██████████ Aff. ¶31). STIMAHCS Attorney Arturo Alcalde plead forcefully to the CAB authorities to suspend the voting, arguing that these conditions were unacceptable (Id.).

However, notwithstanding these irregularities as well as the intimidation of the ITAPSA workers, the CAB authorities refused

to suspend the election upon request [REDACTED] Aff. ¶36).

Moreover, while the CAB ultimately convened a hearing to review the results of the election and consider the allegations of illegal conduct, neither STIMAHCS, nor the Itapsa workers were given notice of that hearing. Instead, the CAB posted a notice of hearing within the CAB offices. STIMAHCS representatives and the workers learned of the hearing only after it had occurred, and details of what occurred at the hearing have not been made available.

Upon learning that a hearing had occurred, legal counsel for STIMAHCS brought a motion before the CAB to have the hearing declared void by reason of improper notice. The CAB found that proper notice, as set out in Mexican law, was not required because the CAB did not know the names and addresses of the numerous workers whose interests were affected by the hearing. No specific finding was made with respect to the failure to give notice to STIMAHCS, or with respect to the adequacy of the form of notice which was provided to the workers. To date, the CAB has not scheduled further hearing dates, and no findings have been issued regarding the outcome of the election, or the allegations of illegal conduct.

Meanwhile, representatives of STIMAHCS filed an appeal to the Federal Court, claiming that the CAB had violated the Itapsa workers' constitutional right to organize. The Court held that the appeal was premature, and declined to consider the matter until such time as the CAB issues a final decision. Similarly,

the CAB would decline to receive any new petition for a representation vote from STIMAHCS until the outcome of the current proceedings is determined. Therefore, as matters now stand, there are no legal avenues available through which STIMAHCS may assert its claim to represent Itapsa workers, or its allegations of violations of Mexican law.

C. Discharged Workers' Attempt To Be Reinstated

Many of the employees fired on August 28, 1997, refused to accept any severance pay from ITAPSA, and filed cases demanding reinstatement with the CAB [REDACTED] Aff. ¶5; [REDACTED] Aff. ¶8; [REDACTED] Aff. ¶9; [REDACTED] Aff. ¶15).

For example, [REDACTED] presented his demand for reinstatement to the CAB on September 2, 1997 ([REDACTED] Supp. Aff. ¶4). As he explains, on November 21, 1997 -- i.e., a month and a half after the representation election -- the CAB made the decision to order reinstatement of himself and nine (9) other ITAPSA employees (including [REDACTED] and [REDACTED]) who were discharged during STIMAHCS' organizing campaign (*Id.*). This order required ITAPSA to reinstate these employees to their former departments and shifts at their former salaries (*Id.* ¶5).

On December 2, 1997, these 10 workers presented themselves to ITAPSA management at the Reyes plant ([REDACTED] Supp. Aff. ¶5). Initially, ITAPSA management indicated its willing to abide by the CAB order and to put the employees back to work (*Id.*). However, when these employees actually attempted to enter the plant to work, they were barred by the guards (*Id.* ¶8). They

were soon told that the CTM had called ITAPSA management and stated that because these individuals voted for STIMAHCS, none of them would be permitted to work. (Id.; [REDACTED] Supp. Aff. ¶8; [REDACTED] Supp. Aff. ¶8). Thus, all of these workers were discharged again because of their support for STIMAHCS.

Meanwhile, [REDACTED] who had also been discharged, was reinstated by the CAB on October 7, 1997 -- almost one month after the representation election ([REDACTED] Supp. Aff. ¶6). [REDACTED] actually was reinstated by ITAPSA for a time, but ITAPSA refused to reinstate him to his former position (Id., ¶6). Rather, the Company isolated him from the other workers in retaliation for his union activity and in retaliation for his refusal to accept severance payment in return for giving up his right to reinstatement (Id.). On December 2, 1997, [REDACTED] suffered the fate of the other employees mentioned above and was discharged again because of his support for STIMAHCS (Id., ¶7).

D. The December 15th Violence

On December 15, 1997, eight (8) ITAPSA employees, along with two union organizers and two observers, went to the American Brakeblock ("American") factory in northern Mexico City, a plant wholly-owned by Echlin, to demonstrate and leaflet employees concerning Echlin's labor violations at the ITAPSA plant ([REDACTED] Supp. Aff. at ¶¶6,7). Shortly after these individuals began their demonstration and informational leafleting, a man came out to photograph them (Id., ¶9). In addition, CTM Representative Antonio Contreras Lara approached them and told them that if they

did not leave, they would be beaten up (*Id.* ¶10). Contreras was then heard saying into a cellular phone, "Alberto, send me the group" [REDACTED] Aff. at ¶5).

Soon thereafter, a group of seven men wearing t-shirts, jeans and cowboy boots drove up in front of the plant in a green and gray Volkswagen Beetle automobile ([REDACTED] Sup. Aff. at ¶13). These men began to ask some of the protesters, and an American management employee named José Mendoza Hernández to whom they were talking, "What the hell are you doing?" and "Who gave you permission to hand out leaflets here?" [REDACTED] Aff. at ¶8). Antonio Contreras Lara then came out, told the protesters not to move, and directed the men from the automobile to "[k]ick their asses!" (*Id.* ¶¶9-10). As directed, these men began to beat this group of protesters (including ITAPSA employees [REDACTED] and [REDACTED] Spanish observer [REDACTED] and [REDACTED]) as well as American employee [REDACTED] with brass knuckles [REDACTED] [REDACTED] Aff. at ¶10; [REDACTED] Sup. Aff. ¶¶15-16). Some of these individuals were beaten unconscious ([REDACTED] Aff. at ¶10). At the time this violence commenced, a second automobile drove up with another group of men ([REDACTED] Sup. Aff. at ¶17).

After the group of protesters that were beaten managed to run away toward their van, the both groups of thugs returned to the factory entrance to receive orders from CTM Representative Antonio Contreras Lara ([REDACTED] Sup. Aff. at ¶19). Contreras

directed these individuals to attack the remaining protesters (Id.).

With the exception of [REDACTED] who was weighed down by the megaphone he was carrying, the remaining protesters quickly ran to their van in the face of this threat [REDACTED] Sup. Aff. at ¶20). Some of the thugs chased after them and proceeded to hit and throw rocks at the van in which they had taken refuge (Id. at ¶23). The remaining thugs chased after [REDACTED] [REDACTED] who managed to run to two police patrol cars (Id. at ¶24).

While the police claimed that both these cars were disabled, they called for other police to come to the scene at the behest of [REDACTED] who explained what was happening [REDACTED] Sup. Aff. at ¶24). In response, five patrol cars showed up at the American factory (Id. at ¶25). However, upon the claim of Antonio Contreras Lara that it was the ITAPSA workers who were causing the violence, the police proceeded to arrest some of the protesters (Id.).

The police did not arrest any of the thugs in connection with these events [REDACTED] Sup. Aff. at ¶28). Indeed, they claimed that as public police they did not have authority to enter the factory to apprehend the thugs [REDACTED] Aff. at ¶17). Rather, they simply told the individuals who were beaten to file a report with the Ministerio Publico ([REDACTED] Sup. Aff. at ¶29). Some of these individuals did in fact file such a report (Id. ¶29).

After things settled down on December 15, the thugs who beat the protesters were seen talking in a friendly fashion with American management [REDACTED] Aff. at ¶14). As American employee [REDACTED] explains, American has hired thugs on other occasions to deal with independent unions (Id. ¶7). Thus, [REDACTED] states that on the day a union election was originally scheduled, he witnessed twenty or so individuals with sticks and pipes sitting in the office of his boss, Rubén Camacho (Id.). When [REDACTED] asked American Industrial Relations Director Luis Espinoza de Los Monteros about these individuals he was told, "[y]ou know, you shouldn't involve yourself in this." (Id.).

Moreover, shortly after he was beaten on December 15, 1997, [REDACTED] was approached by Luis Espinoza and American Director Joseph Truss ([REDACTED] Aff. at ¶13). Both of these individuals urged [REDACTED] not to file a complaint against the company (Id.). American Doctor Homero Martínez Valencia told [REDACTED] that he "shouldn't plan on doing anything against the company, that we could fix this amongst ourselves." (Id. at ¶12). Nonetheless, [REDACTED] did go ahead with filing a complaint against American and agents of the company in relation to the above-described events (Id. at ¶18). Soon thereafter, [REDACTED] was fired (Id. at ¶20). [REDACTED] was explicitly told that he was being fired because of the complaint he has filed (Id.).

Analysis

A. Mexico Failed To Uphold Its Labor Laws Guaranteeing The Right To Organize

As a NAFTA signatory, Mexico has agreed to "promote compliance with and effectively enforce its labor law through appropriate government action." NAALC Art. 3(1). In pertinent part, Mexico must comply with and enforce its labor laws relating to "freedom of association and protection of the right to organize" and "the right to bargain collectively." NAALC Art. 49(1) and (2).

The particular labor laws Mexico has committed itself to uphold include statutes and international treaties adopted or ratified by Mexico's federal legislature, together with Mexico's Constitution. Thus, as the Mexican Constitution provides:

"The Constitution, the laws of the Congress of the Union which emanate therefrom, and all treaties made, or which shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the Supreme Law throughout the Union."

Polit. Const. of Mex. Art. 133; see also USNAO Public Report of Review No. 9601 at 14 (January 27, 1997). Pertinent to the instant case, Mexico has asserted that Art. 133 effectively enacts all ratified conventions of the International Labor Organization ("ILO") into Mexican law, invalidating any national legislation to the contrary. Virginia A. Leary, International Labor Conventions & National Law at 25-26 (1982).

In the instant case, Mexico has wholly failed to promote compliance with and effectively enforce its domestic laws, and

the international laws it has adopted, guaranteeing workers the right to freely organize into the union of their choice. All of these laws expressly guarantee that "[w]orkers and employers shall each have the right to unite in defense of their respective interests, forming trade unions, professional associations, etc." Polit. Const. of Mexico Art. 123 § XVI; see also, Int'l Covenant on Civil and Polit. Rights Art. 22 ("[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."); Univ. Declaration of Human Rights Art.

23(4) ("Everyone has the right to form and to join trade unions for the protection of his interests"); Int'l Covenant on Economic, Social and Cultural Rights Art. 8(1) ("[t]he States Parties to the present Covenant undertake to ensure . . . the right of everyone to form trade unions and join the trade union of his choice")

More specifically, Mexico has failed to enforce and comply with the particular labor rights guaranteed in ILO Convention 87, Mexican Constitution Art. 123 §§ XVI and XXII, and Articles 133, 671, 892-899, and 931 of Mexico's Federal Labor Law ("FLL"). As Petitioners demonstrate below, Mexico failed to enforce these guarantees by (1) holding and certifying a union election in an atmosphere of physical intimidation; (2) requiring a voice vote in this atmosphere; (3) allowing the balloting process to be manipulated; (4) failing to prevent ITAPSA from affecting the outcome of the election through the use of discriminatory

discharges; and (5) condoning the violence perpetrated against ITAPSA employees who were protesting after the election.

1. Voters Were Placed in Fear
For their Physical Safety.

According to the sworn testimony submitted with this complaint, on September 9, 1997, over one hundred thugs patrolled the election site armed with guns and metal pipes.¹ Approximately twenty thugs crowded into the room where the actual voting took place, and threatened voters in the presence of the CAB officials, making overt threats of rapes and beatings. STIMAHCS Representative [REDACTED] was in fact beaten while the voting took place. Bottles and threats were hurled at STIMAHCS supporters and NGO observers outside the factory gate. And, while the CAB representatives present were aware of these unlawful activities and were in fact urged to suspend the election, these representatives neither attempted to put a halt to these activities nor did they suspend the election. Rather, they allowed the election to continue in the environment of intimidation created by these acts and certified the results of the election.

In such an atmosphere of physical intimidation, ITAPSA workers could not possibly "elect their representatives in full freedom" -- a right guaranteed by Article 3 of ILO Convention 87

¹And, as [REDACTED] points out, the presence of such thugs during union elections at Echlin plants is by no means an isolated event ([REDACTED] Aff., ¶7).

and by the laws of Mexico which incorporate this Convention. As the ILO emphasizes,

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

ILO, Freedom of Association: Digest of Decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO ¶ 70 (3d ed. 1985) (hereinafter "ILO Digest").

In this case, the Mexican labor authorities clearly failed to assure that this principle was respected by either ITAPSA and the CTM. Moreover, the Mexican police authorities, which appeared to be among the thugs physically intimidating voters, directly prevented voters from exercising their right to choose their labor representative in a climate free of violence.

In addition, the labor authorities failed to abide by Mexico's FLL Art. 133 which explicitly prohibits employers from

- "forcing workers through coercion or any other means to join or withdraw from a union, or to vote for a determined candidate;" and
- "carrying weapons in the interior of the workplace."

In this case, agents of ITAPSA carried weapons in the workplace at a time when the workplace was the site of a union election in an attempt to coerce employees to vote against STIMAHCS. Again, the CAB representatives witnessed this violation but did nothing to stop it or to prevent it from affecting the outcome of the election. And indeed, there is evidence that it was a judicial police officer that brought the weapons into the workplace to begin with, thereby overtly violating this prohibition.

2. Ballot Secrecy Was Nonexistent.

As described above, ITAPSA workers were forced to orally announce their votes in front of a crowd to CAB representatives in the presence of ITAPSA company officials, union representatives, and armed thugs. Generally, public voting introduces intimidation into an election because voters must consider whether they will suffer retaliation if they publicly make a choice in opposition to the wishes of the authorities, e.g., their employer. This dynamic was exacerbated in the ITAPSA election where voters were actually subject to threats and promises by individuals who they knew wanted them to vote a certain way and who attempted to influence their votes through threats of coercion.

This case illustrates precisely why international law, ratified by Mexico, condemns public voting. Thus, the International Covenant on Civil and Political Rights, Art. 25, provides that

"Every citizen shall have the right and the opportunity . . . without unreasonable restrictions . . . to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors
. . . ."

The USNAO itself has noted the importance of secret ballots to employees' free choice of union representatives, and expressed a general concern about whether voice votes comply with international norms guaranteeing free association. See NAO Report on Ministerial Consultations on NAO Submission No. 94003 at 13.

In this case, the absence of a secret ballot, coupled with the intimidation which surrounded the voting, guaranteed that the election would not be free and fair. The labor authorities are responsible for this unfair election because it was they who conducted the verbal election while doing nothing to shield voters from intimidation. And, the labor authorities certified the vote notwithstanding the fact that they knew it was coerced.

3. Access to Balloting Was Manipulated.

Labor authorities also failed to abide by FLL Articles 892-899 which set forth specific conditions for an election (*recuento*), such as the one at issue herein, for the right to administer the contract (*titularidad*).

FLL Article 895(III) specifies that in case of a *recuento*, the provisions of Article 931 shall apply. FLL Article 931 specifies that the CAB must give notice of the place, date and time of the election; that only company employees who present themselves at the voting site are eligible to vote; that non-employees are not permitted to vote; and that the CAB must undertake a hearing to take evidence about workers alleged during the vote to be non-employees.

CAB's obligation to notify creates a corresponding obligation to give notice of a cancellation or postponement of an election in a timely fashion. By failing to give notice of the postponement of the August 28 election to STIMAHCS supporters prior to this date, while at the same time giving such advance notice to ITAPSA and the CTM, the CAB not only failed to abide by the specific requirements of FLL Articles 895 and 931, but it also allowed the STIMAHCS supporters to be identified and targeted for retaliation when they presented themselves to vote.

Moreover, in the September 9 election, the CAB violated these requirements by failing to provide the election observers with an accurate list of eligible voters prior to the election; by failing to verify that voters were eligible ITAPSA employees; by permitting individuals to vote, without challenge or subsequent hearing, over the objections of STIMAHCS representatives who questioned their eligibility; and by permitting ITAPSA and the CTM agents to selectively admit employees and outsiders to vote.

The CAB also violated these requirements by holding a hearing to review the election irregularities without giving notice of this hearing to either STIMAHCS or ITAPSA employees and by certifying the election in spite of these irregularities.

4. Discharge Was The Penalty For STIMAHCS Support.

It is well-settled that discharges in retaliation for union support limit freedom of association and the right to organize by directly reducing the number of employees who support the

targeted union, and by instilling fear in remaining employees so that they are reluctant to support this union. Accordingly, the ILO condemns retaliatory discharges in Mexico:

"Governments should, where necessary, take measures to ensure that workers are protected against acts, including dismissal, which are likely to provoke, or have as their object, anti-union discrimination in respect of employment of workers."

ILO Digest ¶ 542 (Report No. 157, Case No. 827 (Mexico)). This prohibition against anti-union discrimination applies regardless of whether the targeted union represents the majority of the employer's employees. ILO Digest ¶ 552.

As a correlary to these general proscriptions, Mexican law requires that employers reinstate and compensate employees who are discriminatorily discharged:

"The employer who discharges a worker without just cause, or for having joined an association or a union . . . shall be obligated, at the worker's choice, to fulfill the employment contract [i.e. reinstate the worker] or to indemnify the worker"

Mex. Const. Art. 123 § XXII.

In this case, these laws and principles were violated by ITAPSA which, upon orders of Echlin, discharged approximately 50 employees during the STIMAHCS organizing campaign. These discharges were the fruition of numerous threats which ITAPSA agents made to employees during the course of this campaign. And, many of these employees were told upon discharge that they were being fired for their support of the independent union.

In response, the CAB did order reinstatement of eleven (11) of these discharged employees. However, this response was inadequate. Thus, all of these reinstatements were ordered well after the union election. And, the CAB allowed this election to take place notwithstanding these discharges and proceeded to certify the results of the election notwithstanding its ultimate finding that these discharges were discrimination. Indeed, as a policy, Mexico treats discharge cases as individual rights cases and, as such, will not consider them in deciding whether to certify an election or not. In other words, as the CAB did in this particular case, Mexico uniformly allows discharges to affect the results of union elections. Such a policy allows employers to use discharges, even if later remedied, to coerce employees into voting for a particular union. This policy, and the CAB's particular actions in this case, are therefore inconsistent with Mexico's own labor law, FLL Art. 133, which prohibits employers from "forcing workers through coercion or any other means to join or withdraw from a union, or to vote for a determined candidate."

Moreover, these employees were never reinstated as ordered. Rather, they were barred from entering the Reyes plant and told that they would not be permitted to work in retaliation for their support for STIMAHCS -- the very offense for which they were

discharged to begin with.² To this day, the CAB has not actually enforced its order of reinstatement.

Finally, there were about 30 out of the total 50 employees discharged in this case who did not even file a complaint to challenge their discharge because they waived this right in return for a small severance payment offered by ITAPSA in full accordance with Mexican law. Petitioners contend that the ability of employers under Mexican law to discharge employees for union activities and then be freed from liability for this action in return for a small monetary payment defeats the Mexican and international prohibitions against retaliatory discharges and against the use of coercion to affect the outcome of union elections. This is so because many employees are forced by their meager economic circumstances to accept the severance in return for this waiver. Their freedom of choice in this matter is therefore circumscribed. In light of this fact, an employer can

²While Echlin and ITAPSA may attempt to justify their failure to reinstate these employees based upon the exclusion clause of the labor agreement with the CTM, this attempt must fail. Thus, while unions and companies are certainly free to adopt union security clauses which require employees to pay dues to the certified union, these parties may not adopt or enforce clauses which prohibit employees, upon pain of discharge, from supporting and/or seeking recognition of an independent or minority union. Thus, the Committee on Freedom of Association of the ILO has made it clear that such a regime which "results . . . in the prohibition of other trade unions which workers would like to join" and which deprives minority unions "of the essential means for defending the occupational interests of their members" is in direct violation of Convention 87's guarantee of the right of employees to form and join organizations of their choosing. See, International Labour Conference, 81st Session, Report III (Part 4B), "Freedom of Association and Collective Bargaining" (Geneva, ILO 1994), ps. 44-45.

make the economic calculation that it will simply be cheaper to fire a number of employees, force most of them to accept a small severance payment, and thereby prevent union organization rather than to suffer an independent union in its midst. In short, this scheme actually encourages an employer to engage in the very conduct ITAPSA engaged in here and which Mexican and international law purports to prevent.

5. The Violence After The Election

If this were all not bad enough, Echlin, through its American Brakeblock plant in northern Mexico City, organized thugs to brutally attack ITAPSA employees who were demonstrating over the abuses committed during the independent election campaign at ITAPSA. As a result, these employees, and an American employee who was beaten up in the process, were gravely injured as the enclosed pictures demonstrate. When these employees complained to local police authorities, the police -- claiming that they did not even have the authority to enter company property -- not only failed to arrest the perpetrators, but instead arrested some of the beaten employees.

These beatings, and the Mexican authorities' response thereto will only further discourage and chill employee support for independent union organizing at ITAPSA, and indeed at other Echlin subsidiaries.

B. Pattern & Practice Suggesting Ineffective Enforcement

Mexican abrogation of associational rights is not limited to this case. Workers at maquiladoras controlled by Sony,

Honeywell, General Electric, and Han Young have complained of similar blatant interference with their rights to freely associate in labor unions of their choice and government indifference to the interference. See USNAO Report on Ministerial Consultations on NAO Submission No. 94003 at 10 (Employees attempting to organize an independent union were dismissed "as punishment and a warning to other Sony workers."). In fact the claims made against Sony Corp. in NAO Submission No. 94003 mirror the claims now asserted against Echlin/ITAPSA four years later:

"[The company] has interfered in union elections, fired dissident union activists, collaborated with police and union officials in harassment and violence against union members protesting the conduct of union elections"

NAO Submission No. 94003 (Sony Corp.) at 21; see also *id.* at 22 n.33 (listing similar cases).

Moreover, it is clear that Echlin's interference with employee rights at the ITAPSA plant is part of a pattern and practice at its other subsidiaries in Mexico. This fact can be seen by the beatings at the American Brakeblock plant described above and by the fact that thugs were also organized at the American plant to disrupt a scheduled union election.

The historic indifference of the Mexican government exhibited in all of these cases constitutes a "pattern of practice" under NAALC Art. 49, and directly contravenes the "effective enforcement" provision of NAALC Art. 3(1). This matter merits USNAO's prompt, careful attention.

C. Partiality of Labor Tribunals

As a NAFTA signatory, Mexico has also agreed to "ensure that tribunals that conduct or review proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter." NAALC Art. 5(4). One can judge a tribunal's impartiality by whether it prevents abuses by parties it has an obligation to police. As the ILO explains:

"A complaint against another organization, if couched in sufficiently precise terms to be capable of examination on its merits, may . . . bring the government of the country concerned into question, for example, if the acts of the organization complained against are wrongfully supported by the government or are of a nature which the government is under a duty to prevent (e.g.. by virtue of its having ratified an international labor Convention)."

ILO Digest ¶ 667 (3d ed. 1985).

In the instant case, the Mexican authorities charged with guaranteeing the rights of the workers to freely exercise their right to vote in an atmosphere free of the threat of violence and other forms of intimidation -- i.e., the CAB officials and the police -- ignored the acts of intimidation and the irregularities which took place in their very presence at the ITAPSA election; held a hearing to review the conduct of the election without giving notice to STIMAHCS or ITAPSA employees of this hearing; ratified the election which resulted from this intimidation over the objections of STIMAHCS; and, in the case of the police, actually participated in this intimidation. Similarly, the police failed to assist the employees beaten at the American

plant, and showed their partiality for the company by claiming that they did not even have the power to enter company property to arrest the perpetrators. In light of these facts and the reasoning of the ILO set forth above, one must conclude that these authorities were partial to Echlin ITAPSA and the CTM and to the outcome of the election at the Reyes plant.

Part II: Violation of Occupational Safety and Health Requirements

In Article 1 of the NAALC, the signatory nations agreed to several Objectives, which include "improv[ing] working conditions and living standards in each Party's territory, [Article 1(a)]" and "promot[ing], to the maximum extent possible, the labor principles set out in Annex 1", which specifically includes "prescribing and implementing standards to minimize the causes of occupational injuries and illnesses" [Article 1(b), Annex 1(9)].

In addition, signatory nations agreed to certain obligations, which include promoting compliance with and effectively enforcing their labor law through appropriate government action, including:

- ◆ "monitoring and verifying compliance with and investigating suspected violations of health and safety regulations, including on-site inspections [Article 3, 1(b)];
- ◆ "requiring record keeping and reporting;" [Article 3, 1(d);
- ◆ "encouraging the establishment of worker-management committees to address labor regulation in the workplace; [Article 3, 1(f);
- ◆ "initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" [Article 3, 1(g)]; and
- ◆ Publication and promotion of public awareness of labor law and enforcement and compliance procedures Articles 6 and 7).

As we shall demonstrate below, Mexico has violated these NAALC obligations by failing and refusing to abide by its own domestic laws, and the international laws to which it is a signatory, guaranteeing employees a safe and healthful workplace.

Relevant Law: International Conventions

The constitution of the International Labor Organization specifically assigns the ILO responsibility for protecting workers against sickness, disease and injury arising out of employment. Mexico is signatory to the following ILO conventions covering matters related to occupational health and safety which are of direct relevance here:

ILO Convention 155, entitled "Convention Concerning Occupational Safety and Health and the Working Environment," sets forth specific areas of concern, requires Member countries to take the necessary steps to implement the convention, including through the establishment of adequate and appropriate systems for inspections and penalties, and provides that employers shall be required to ensure that as far as reasonably practicable that work places are safe and without risk to health, that adequate protective clothing and equipment are provided, and that workers are provided with training.

ILO Convention 161, entitled "Occupational Health Services Convention," provides that member countries must establish occupational health services. Among other requirements, this convention specifies that workers shall be informed of health hazards involved in their work, (Article 13), that Occupational

health services be informed of "any known factors and any suspected factors in the working environment which may affect the workers' health;" (Article 14); and "of occurrences of ill health amongst workers and absence from work for health reasons, in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace." (Article 15). *ILO Convention 170*, entitled "Chemicals Convention," governs production, handling, storage and transport of chemicals as well as the disposal and treatment of waste chemicals, release of chemicals resulting from work activities, and maintenance, repair and cleaning of equipment and containers for chemicals. Among other things, it provides for classification systems, labeling and marking, and chemical safety data sheets which allow the employees to know what types of hazardous chemicals they are using. In particular, Article 11, provides that "Employers shall ensure that when chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to workers their identity, any hazards associated with their use and any safety precautions to be observed." Finally, Article 12, provides that employers shall "ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits" by, *inter alia*, providing adequate hygiene measures, proper health and safety training, and proper protective gear and clothing at no cost to the employee.

Mexican Law

Ley Federal del Trabajo

The Mexican Ley Federal del Trabajo (hereinafter LFT) defines principles intended to promote safe working conditions and to reduce the risk of accident and illness. Moreover, the LFT establishes procedures by which government authorities must ensure compliance with the law. Some of the principal articles are set forth below:

Article 133-VII:

It is prohibited of the owner: To perform any act which restricts the rights of workers established by law.

Article 509:

In each company or establishment, those health and safety commissions that are judged necessary will be organized, composed of equal numbers of representatives of workers and employers, in order to investigate the causes of accidents and illnesses, propose means by which to prevent them, and to ensure that they are enforced.

Article 511:

Labor Inspectors have the following special responsibilities and duties:

- I. To ensure compliance with the legal norms and regulations with respect to workplace hazards and the workers' safety and health.
- II. To make evident through special reports those violations which they discover.
- III. To work with employees and the employer in making known standards on the prevention of accidents and occupational illness, of workers safety and health.

Article 512:

In the regulations of this Law and in the instructions that the labor authorities issue based on these regulations, the necessary measures shall be established to prevent work place accidents and occupational illness and assure working

conditions to safeguard the life and health of workers.

Article 512-D:

The employers must make such modifications that are ordered by the labor authorities in order to adjust their establishments, installations, and equipment to the dispositions of this Law, of its regulations and of the corresponding instructions which have been issued by the competent authorities. If, during the period of time which has been granted in order to do so, the modifications have not been made, the Secretary of Labor and Social Welfare will proceed to sanction the employer in violation, with the imposition of a greater fine in the case that the order is not honored within the new compliance period that has been granted.

If the sanctions have been applied that were referred to above, and the irregularities persist, the Secretariat, taking into account the nature of the modifications that have been ordered and the severity of the accidents and occupational illness, has the authority to shut down part or all of the work center until the respective obligation is fulfilled, hearing before it does so the opinion of the corresponding Mixed Commission on Safety and Health will be heard, without preventing that the Secretariat itself adopt the pertinent measures so that the owner fulfills said obligation.

Reglamento Federal de Seguridad, Higiene y Ambiente del Trabajo

In addition to the LFT, the Secretaría del Trabajo y Previsión Social (hereinafter STPS) also enforces the Reglamento Federal de Seguridad, Higiene y Ambiente del Trabajo (hereinafter RFSHS) and the technical requirements set forth in the Normas Oficiales Mexicanas (hereinafter NOMS). Through application of regulations contained in the RFSH and the NOMs, the STPS addresses all aspects of workplace health and safety, including maximum exposure limits, workplace monitoring, hazard controls, employee training, personal protective equipment, medical evaluation, etc.

The RFSH, promulgated in January 1997 with an effective date

of April 1, 1997, consists of 168 articles. Of this total, 160 specify the obligations of employers and workers and set forth regulations for specific hazards and operations, and eight articles govern inspections by Labor Inspectors and penalties for violations of regulations and failure to abate such violations. Within the RFSHS are specific requirements that the employer establish:

- ◆ A plant Commission on Health and Safety which must be registered with the STPS (Title 4, Chapter Two, Section III);
- ◆ A written plant safety and health program which includes an evaluation of the existing health and safety conditions and provides for an employee training plan for instruction about workplace accidents and occupational illnesses and preventive measures on at least an annual basis. Workers who use equipment which may pose a danger to third persons or to the workplace and workers who use, transport or store chemical substances must be provided with special training in order to "carry out their activities under optimal health and safety conditions." (Title 4, Chapters Four and Five);
- ◆ Proper maintenance, health and safety protections, and training regarding the use and maintenance of machinery and tools (Title Two, Chapters Three and Five);
- ◆ Provide proper protective equipment where it is not possible for technical reasons to prevent or control exposure and provide training governing the proper use, maintenance, etc. of such equipment. (Title Three, Chapter 9 and Title Four, Chapter Five);
- ◆ Provide potable water, showers, changing areas, toilets, sinks, etc. (Title Three, Chapter Eleven);
- ◆ Establish a program to maintain a clean workplace which includes cleaning at least at the end of each shift, control of waste in a manner that does not affect the health of workers and training for those responsible for such labor (Title Three, Article Twelve);
- ◆ Meet certain standards governing electrical systems in the plant (Title Two, Chapter 4);

- ◆ Satisfy health and safety requirements for the use, transport and storage of hazardous chemicals, including controls to prevent dissemination of toxic materials, training, medical exams, the provision of written information to workers, and the establishment of a health and safety program to improve the work environment and reduce worker exposure to toxic chemicals (Title Two, Chapter six and Title Three, Chapter Three);
- ◆ A noise control program, including monitoring, employee audiograms and training (Title Three, Chapter One);
- ◆ Ensure sufficient temperature control, ventilation and light (Title Three, Chapters Six, Seven and Eight);
- ◆ A plan for the prevention of and to combat fire, including a risk assessment, procedures for the use, transport and storage of materials which pose a risk, systems for detection and extinction of fires, and fire drills on at least an annual basis to acquaint employees with evacuation procedures (Title Two, Chapter Two);
- ◆ Provide preventative occupational medical services (Title 4, Chapters 6 and 7);
- ◆ Advise the STPS of accidents, provide workers and the plant safety and health Commission with annual statistics regarding health and safety problems and their source (Title 4, Chapter Three); and
- ◆ Ensure that pregnant or nursing women are not exposed to mutagens or teratagens or work under other specified conditions that could harm either the woman or child (Title Five, Chapter One).

In addition, it is the responsibility of the Secretary to implement programs regarding the importance of adopting preventive health measures; to promote and disseminate statistics, studies, and technical investigations in order to prevent health risks at work; to establish commissions on health and safety at a variety of governmental levels, and to promote the establishment of health and safety commissions in workplaces (Title Four, Chapters One, Two and Four).

Normas Oficiales Mexicanas

The Reglamento Federal de Seguridad, Higiene y Ambiente de Trabajo for the most part is couched in general terms and contains repeated references to the more specific requirements set forth in the Normas Oficiales Mexicanas (hereinafter NOMS). There are over 100 NOMs, the first 22 of which set forth regulations for specific hazards and operations, and the more than 100 other Norms relate to technical specifications for protective and monitoring equipment, analytical methods, etc. Among those which are directly applicable here are:

NOM 10, revised May 31, 1989, expressly designates asbestos as a carcinogen and limits the asbestos fibers suspended in a labor environment to 2 fibers/cm³ long greater than 5 μ m and less than 100 μ m, less than 3 μ m.

NOM 125, specifically governs the use of dangerous substances, such as asbestos, by employers. In particular, this Article requires employers which use asbestos to inform the Department of Health about the location of the plant, production process, type and concentration of asbestos fibers, and the preventative and controls methods in effect to avoid emission into the environment. NOM 125 further provides that employers are responsible for the control and prevention of health risks associated with asbestos and that the employer must keep asbestos within permissible limits.

In particular, the employers must maintain a sanitation program to control asbestos exposure; wash all occupational

clothing exposes to asbestos fibers; establish specific measures for the use, storage and disposing of asbestos residues; and provide documentation to the sanitary authority about the levels of environmental and personal levels of concentration.

Under NOM 125, employers must also provide workers exposed to asbestos with annual medical examinations, including body x-rays every 6 months of employment and thorax x-rays every 2 months; protective equipment and clothing which employees must leave at work to prevent exposure to their families; and a training program to prevent respiratory diseases.

Finally, NOM 125 expressly acknowledges that is is not in compliance with international norms.

Discussion

The evidence in this case clearly demonstrates a callous disregard for worker health and safety by ITAPSA and Echlin management, and a failure of Mexican authorities to enforce the above laws and regulations to ensure a safe work environment at ITAPSA. The general situation at ITAPSA was described by [REDACTED]

[REDACTED]:

"There was dust everywhere, from asbestos and the other materials we worked with. We would sweep the dust up once at the end of the shift, but there was not time to do it during our shifts. In addition, there was water vapor that was constantly coming out of the steam heated machines. It made the floor wet, slippery and dangerous. In addition, there was oil and other vapors that always leaked. With the high level of noise in the shop and the mixture of vapors and dust where we could hardly see and concentrate. It was dangerous." ([REDACTED] Aff. Ph. 7).

"The buckets held about 19 liters and we filled them with mixes including glass fiber and asbestos. We ended up inhaling all the dust produced while we were putting the dust into the bucket because the masks would fill up with black dust very quickly and were not replaced nearly as often as they should be. We had to carry buckets full of dust up stairs to the top of the machine in order to dump them in. The buckets weighed a lot and the stairs were not well constructed so we risked falling. When we dumped the mix into the top of the machine, dust would fill the air and sometimes when we were using dark colored mixes I would have to turn my head and wait a little bit for it to settle in order to see how full the machine was. My face would be covered in dust from the mix of asbestos or whatever the materials we were using.

The masks were made of cotton and covered our noses and mouth. Sometimes they were gray, which were supposedly for solvents and white ones for dust, but I didn't notice any difference between them. Even when the masks were new and clean, they didn't work well at all. The company gave us about one mask per week. Some people didn't use the masks because we also used safety glasses while we were working and the mask would send our breath inside the safety glasses and steam them up and we couldn't see what we were working on. In the places where the masks were more necessary, and we used them, they would last for approximately 2 or 3 days before they were all blackened, coated in dust and no longer functional. We had to wait another 4 days or so until we got new ones.

After we complained a lot, the company began to give us two masks a week and said we could ask for another one if we needed it. But during this time the company was firing workers for being involved in the independent union campaign. They would fire workers who they said were making demands. Right now I can think of three people that I knew who were fired who had been asking for masks. Because of this I would not ask for another

mask even if I needed it." (██████████ Aff. Phs. 10-12).

The masks provided by the company were inappropriate.

According to ██████████:

"We were given cotton masks that did not make a seal. . . . Once a week, we were given these cotton masks. It actually did not afford us much protection especially when they cleaned the structure of the factory itself and all the dust would settle back in the air after this supposed cleaning. Because these masks did not have an effective seal around the mouth it meant that we were breathing in all the dust and chemicals in the plant as if we were not even wearing a mask." (██████████ Aff. Ph.8).

There was no plan regarding health and safety, nor was there a functioning Commission in the plant. Workers were not given any training in recognizing or avoiding health and safety hazards. They were not given chemical safety data sheets, nor were chemicals properly labeled or adequate signs posted. ██████████ knew he was working with asbestos because the bags he lifted

"had tickets or tags on them in Spanish that said that the material inside was asbestos and that it could cause lung cancer. The other chemicals either did not have any of these tags on them or they were in English, which none of us could read." (Nájera Aff., Ph. 2). (See, also ██████████ Aff. Phs. 15, 16, 20, 23, and 25, and ██████████ Aff. Phs. 15, 16, 17 and 19).

However, workers who received chemicals which had previously been mixed had no way of knowing what substances they were working with or what precautions to take. (██████████ Aff. Ph.19).

The company provided workers with a new uniform every six months, but no laundry service and inadequate shower facilities.

██████ states that "when we worked with the chemicals there was just too much dust in the shop and when we left work each day we were covered with this dust." ██████ Aff., Ph. 7). He would rarely shower due to insufficient showers and would take his uniforms home where they were generally washed by his sister. ██████ Aff., Ph. 7) (See, also, ██████ Aff. Ph. 10: uniform washed by his wife).

██████ confirms these inadequacies:

"Showers were provided, but not very close to the work area, rather in a separate building. Therefore, when we left our shift at 10:30 at night, most workers washed their face in the bathrooms of the work building itself and went home in their work clothes." (██████ Aff. Ph. 21).

Asbestos was also introduced into the surrounding community through inadequate cleaning and disposal procedures:

"At the end of every shift there was always a lot of dust that was made up of asbestos and other chemicals. This dust was so thick that by the end of the day it would get stuck on the bottom of our work boots. We swept up all this dust powder and put it in metal drum containers which were then taken to the side of the factory by fork lift. On the side of the factory is a cement mixer which then mixes the dust into a cement gravel. The company used to dump this asbestos cement into the city dump until 1993. Since then ITAPSA has been selling this cement mixture as land fill for new housing or commercial developments." ██████ Aff. Ph. 18).

Workers also were in danger of losing life or limb to malfunctioning machinery. These risks were exacerbated by the lack of a lockout/tagout program. ██████ recalled:

"When I was working in the drilling department, on my way to and from my machine

every day and when I went to the bathroom, I would pass workers using the machines that pressed the brake pads. There were six of these machines. These machines had a habit of going off spontaneously without the workers engaging them. I saw this happen twice. The machines are supposed to stay open automatically until the worker presses a button but the mechanism fails sometimes. The problem is that when workers place their hands in these machines they were in danger of piston engaging and catching their hands and maiming them. Workers had to stick their hands in the machine frequently. In addition to the normal placing and removing of material in the machine, sometimes a plate would get stuck in the presses, and workers would have to try to extract the plate by hand. This was a very dangerous situation. One of my co-workers lost four fingers in an accident at one of the presses. He was pulling a mold out after it had been cured when the top came down by itself and caught his hand in it. After the accident I saw his hand and he had no fingers, just his thumb."

[REDACTED] Aff., Ph. 9).

[REDACTED] describes two specific accidents of this sort:

"My friend [REDACTED] was seriously injured. . . . he was leaning down when the piston went off spontaneously and shot the piece of metal out of the press and it hit him in the forehead. They took him to the emergency room and he was in the hospital fifteen days after that. When [REDACTED] returned to work he had lost control of some of the muscles in his face, like he had had a stroke.

I also remember vividly another case that happened the first day I worked in the plant, July 7, 1994 when the same type of accident occurred. In this case I actually witnessed the accident. Again the piston shot up, and this time caught a worker's fingers in a vice between the piston and the metal in the machine. He lost four of his fingers and was not able to return to work until a year later. After he came back the company fired him after a couple of months." ([REDACTED] Aff. Phs. 13-14).

[REDACTED] was also required to clean machines while they were running:

"If I needed to clean the machine I would have to climb up into the top and get in up to my chest to brush it out. The machine would still be turned on, because when it was turned off the door at the bottom of the container would close automatically and the material I was cleaning out couldn't escape. I was concerned when I was doing this that if I dropped the cleaning brush into the bottom of the machine it would get caught in the stirring mechanism and shatter in my face, injuring me." ([REDACTED] Aff. Ph. 15).

[REDACTED] also describes working on defective machinery. When working on the machine which would fill the molds for the brake shoes and then press them, she states that in order to

"fix the top and bottom parts of the molds with screws... I had to put my entire arm into the machine, resting my shoulder on the outside. One time right after I had just finished attaching a mold, the hydraulic piston went off spontaneously. This happened although I had turned the machine off. If I had still had my arm in the machine I would have lost it. In general the machines did not function that well and it was not uncommon for the pistons to go off by themselves.

"This same machine had a sweeping mechanism to push out the finished mold forms. Sometimes the mechanism would get stuck because of the dust in it. The supervisors did not want us to turn the machine off when this happened. We had to stick one or two fingers into the machine to try to loosen the dust and get the machine run again, but at the same time remove our fingers before the sweeping metal arm caught them. One of my fellow workers [REDACTED] lost part of his middle finger trying to clean this mechanism once. There are other ways as well for people to lose fingers or other parts because the machinery does not function well." ([REDACTED] Aff. Ph. 8-9).

At another point in time, ██████'s job was to put Toluene and brake shoes that needed to be cleaned into a three-foot tall canister. She describes the process as follows:

"The canister was then placed in a machine that agitated it in order to clean the brake shoes.

In order to get into the machine, there was a mechanism to lift the canister into the entry doors, which were about chest-high. The problem was that the lifting mechanism did not function correctly and so the canister had to be loaded in with worker assistance. In order to accomplish this, I had to get on top of a metal table and push a button to start the canister entering the machine. We would strain our back and legs to help lift it up and then push it forward into the machine with our waist and stomach. The canister weighed approximately 80 to 90 kilos. Most of the workers who have this position are women who in general are less capable of handling that kind of weight. We risked damaging our back or waist trying to support it. They gave us leather belts but they didn't help because the weight was too much. We would have pain across our pelvic area because of having to push the heavy canisters into the washing machine with our front mid-section.

Once the canister is loaded into the machine, the worker presses a button to begin the brake shoe washing process. At this point a very strong odor of solvent comes out of the machine. The process takes about 15 minutes. . . . After the cleaning process is finished and the canister is being removed from the machine, a mechanism lowers the canister back to the table. But the pressure is inadequate to lower the canister to the table slowly. About 4 times a day the mechanism wouldn't work and the canister would crash down onto the table. We always worked with the threat that the canister might fall on us and break a foot or leg. . . .

The steel-toed shoes could help, but if

something dropped on the bridge of your foot they wouldn't protect you. Also, sometimes the company didn't have our size and they would give us shoes that were too big. Once they gave me a size 5 pair when I take a size 3. When I was wearing them a box fell on my foot once and injured my toe." [REDACTED] Aff. Phs. 5-6, 20).

Noise was also a constant problem in the plant, and obtaining earplugs was a problem:

"There is a lot of noise in the plant. In order to get earplugs, you have to demand and demand that they be given to you. The company always responded with excuses, saying that they didn't have them, asking us how we were going to be able to hear to do our work properly, etc." [REDACTED] Aff. Ph. 13).

[REDACTED] described the situation as follows:

"The machines were very loud. There was noise from the hydraulics and the removal of the molded material with metal pry bars, and in the top part of the machine where the mold was cured, steam escaped and was very loud. We would wear these cotton ear plugs that really did not do much to protect us from the deafening noise. However, just to replace these ear plugs, you had to request them from someone. It was difficult to get new earplugs from the company. They would always give excuses like that right supervising person was not around or that they were out of the ear plugs." [REDACTED] Aff. Ph.8).

[REDACTED] confirmed:

"Even to get the earplugs was difficult because there was a chain of command that the request had to go through and sometimes they still wouldn't give them to us." [REDACTED] Aff. Ph.8).

Fire was also a significant hazard in the plant, due to extensive solvent use and sparks from equipment. According to [REDACTED]

"In the plant we have had some trouble with machines that work at high velocity and produce sparks, causing small fires." (██████████ Aff. Ph. 23).

██████████ provides a specific example:

"One time last winter, one of the machines, a finishing machine, caught on fire. This machine would shoot sparks all the time. When it caught fire that time the company evacuated the plant. There were fire extinguishers in each area but some of them were empty or near-empty and in general they were not serviced very often. After the fire the company attention to the conditions of the fire-extinguishers and fire hazards but it only last a short time. There were a few workers who were part of fire fighters team who practiced a little, but there were no fire drills or training for the rest of the workers at the plant." (██████████ Aff., Ph. 10).

██████████ provides several examples of electrical fires caused by defective electrical wiring and inadequate maintenance:

"There were exposed wires in the shop. At one time one of the exposed wires burned, and instead of fixing the problem, the company just took out a light bulb. There was an especially bad electrical fire when all the electrical cables for a machine caught on fire because of a short circuit on the machine. That fire burned the motors of the machine and about 15 feet of cable and several people were sick from smoke inhalation afterward." (██████████ Aff. Ph. 12).

All three affidavits document extensive health problems suffered by workers at the plant. ██████████ speaks of loss of vision:

"I have a hard time reading and I didn't before, and my eyes hurt sometimes. It hurts to focus on some things, such as writing on a wall that is 10 or 15 feet away. My eyesight has gotten worse since I began working at the plant." (██████████ Aff. Ph. 11).

He adds:

"Many of my co-workers also have problems with their eyesight. Also, the consistent complaint in the plant is that many of the workers have a constant cough."
[REDACTED] Aff. Ph. 11).

[REDACTED] also suffered from acute exposure to solvents:

"They had an awful smell and a dizzying effect on us. I would feel like I was drugged sometimes, it would last for about 15 minutes at a time and I couldn't work as well. About five minutes after I would begin to work with the solvents, I would get a headache, sometimes a really bad one. It was worst during the first days working with the solvents, after that I got more used to the vapors.

"The company would give us plastic gloves to work with the solvents, but it was difficult to work while wearing them. The company didn't replace the gloves nearly often enough, they would be ripped and useless long before we got new ones. Our hands were always being exposed to the solvents, and I had problems with mine. I would get stains on them and would get tears in my skin. The solvents would also make my hands feel very strange and dry. My hands would feel cold after solvent would get on them, and then they would heat up a little but I couldn't move them as well as normal. Also, working with asbestos sometimes we would get fiber slivers stuck in our hands, and if you didn't get them out they would get infected. After I stopped working with the solvents and asbestos my hands began to heal and now I think they are all better, but it took several months." [REDACTED] Aff. Phs 14 and 15; See, also, [REDACTED] Aff. Ph. 21).

[REDACTED] also suffered from the noise in the plant and from exposure to solvents:

"The noise gave me headaches and brief periods of hearing loss. Also, after work sometimes my ears would ring. Since I stopped working in this environment my hearing has improved....

"Working with (a solvent called X 185) led to a burning sensation in my eyes and gradual blurring of my vision over time. I also had a chronic cough that lasted up until 6 months after I stopped working with that solvent when I was fired. We were given plastic gloves to work with these chemicals, one pair every 15 days. The gloves lasted about four days until they would have rips in them that we tried to repair with masking tape. When the gloves didn't work and the solvent touched the skin on my hands and forearms, white stains resulted as well as a rash that provoked itching. The skin on my hands would also peel, and they felt very dry and had a cold sensation. . . . I also had severe stomach pains while I worked at the plant--I didn't vomit but it was beyond nausea. This happened to me often and was a common complaint among my friends who worked there."
██████████ Aff. Phs. 13, 17).

██████████ describes the problems experienced by the workers in the department which molded material to make brake pads. In addition to heat and fumes, he speaks of the impact on workers' hands:

"To get the mold out I would use an iron bar and my hands. . . . [I]t was so hot with the steam and hot metal that working like this we would frequently wash our hands with cold water to cool them off. Some of my friends who worked in the department seemed to have a permanent arthritic condition in their hands from working like this every day. They couldn't open their hands all the way, their fingers seemed to be permanently bent inwards."

██████████ also describes hearing problems and his experience when he attempted to consult the company's doctor:

"...he never looked at my ears. He just gave me some pills to take and that did not solve the problem. To see this doctor in plant was very difficult. He seemed to be available only a couple of hours every day and those hours seemed to vary day by day. In order to

see doctors at the Seguro Social hospital, you had to get approval from the company doctor. He only gave approval to the most extreme cases like loss of fingers, broken bones and deep cuts." [REDACTED] Aff. Phs. 6, 11).

[REDACTED] confirms that this was standard practice at the plant:

"The doctor would send the worst cases to the Seguro Social Hospital, but if it was something like back problems or cutting off the tip of your finger he would treat it himself and send you back on the floor. Once I went to him after I hurt my back lifting a 50 kg bag of Baramin, a raw powder used in mixing material for brake pads. He gave me an injection, which I believe was a muscle relaxant, let me rest for 5 minutes and sent me back out on the floor to work. Since I left the plant I still have shooting back pains, especially at night when I am trying to sleep." [REDACTED] Aff. Ph.12).

[REDACTED] reports that the doctor was not present throughout her shift either, that medical exams were not given to new employees, were cursory at best, and that workers were never given the results:

"Supposedly the company was to provide workers with physical examinations twice a year. I worked at ITAPSA for six months and never received one. Other workers who had received them told me that the exams were fairly superficial. The workers never received the results from these physicals, and were afraid to ask for them. (Delgado Aff. Ph. 19; See, also Ruíz Aff. Ph. 20: Told by head of industrial relations that "the exams were not for the workers but were for the company and he refused to give us the results").

[REDACTED] believes that inspectors from two Mexican governmental agencies, SEDESOL and presumably STPS came on a

number of occasions to inspect the plant:

"There were two federal groups that came to investigate conditions in the plant. One from the Secretary of Social Development (SEDESOL) would come in to investigate the shop every four or five months. They were concerned about the increase in smog. They came and put stickers on certain machines that polluted the most so that the factory would stop using them or only use them on certain days. But the plant didn't respect the directions of SEDESOL. They continued to use the all the stickered machines everyday. They could have come in at other times, but I am not aware of that. They only looked around the shop. They never took air samples and when they would shut down a machine by putting a sticker on it the company would just make us use the same machine the next day without fixing the problems.

"Another federal group that came to the plant was concerned with health and hygiene. I am not sure what the name of the group is or how often they came because the company never told us anything. The workers began to figure it out after seeing a group of men in suits come around the factory floor four or five times. One time this group said that the company should move the dining room because of all the dust in the area. The company refused to do it. They eventually did move the dining room much later, last year, but I believe that it was because of all the union organizing happening at that time and not the federal agency. No one from these groups that would come in to investigate smog and the health and safety situation in the plant actually talked to the workers. There was no safety committee in the shop that I am aware of. Sometimes when the machines were functioning especially poorly I would complain to the supervisor but he told me to keep working until the machine fell apart." (██████████ Aff. Phs. 16 and 17; See, also, ██████████ Aff. Ph 25 and ██████████ Aff. Ph. 23).

The above evidence demonstrates grave deficiencies on the part of the Mexican government. There is no doubt that asbestos

poses an extremely serious and very well documented hazard to workers. This has been explicitly recognized by the Mexican government's Secretaría del Trabajo y Previsión Social in NOM 010 which treats asbestos as a special case, identifying it as a carcinogen, and setting a standard of 2 fibers/cm³.

A plant which poses a severe potential hazard to workers and to the community certainly deserves the careful attention of the Mexican labor authorities. Mexico was certainly aware of the ITAPSA plant and the fact that it utilizes asbestos given the fact that NOM 125 requires ITAPSA to inform the Health authorities, inter alia, about the plant location and the type and concentration of asbestos, and given the fact that SEDESOL and STPS inspectors visited the plant on various occasions. Yet the Mexican authorities permitted the plant to continue to operate under conditions that clearly violate both Mexican and international law. The attached affidavits from workers reveal extensive hazards including exceedingly high exposures to asbestos and solvents. No workplace health and safety program (including written text, periodic inspections, written procedures, hazard controls and employee training) was developed by the employer; chemicals were not adequately labeled; written safety information was not provided to workers; signs were inadequate; and, at best, the personal protective equipment which was provided was inadequate and at worst totally inappropriate. All of this is out of keeping with Mexico's own laws and regulations as set forth above.

The affidavits also describe equipment which posed a grave danger to workers due to chronic malfunctions and the lack of guards and lockout/tagout during cleaning and repairs. Other serious problems include the absence of a safety commission, excessive noise, lack of ventilation, lack of adequate medical services, defective electrical wiring and inadequate preparation for fire. Asbestos exposure was extended to workers' families due to inadequate change and shower facilities and the fact that asbestos-contaminated overalls were worn home for laundering. Moreover, asbestos waste was mixed to form a cement gravel which was used for landfill for new homes and commercial developments.

In addition, Article 512 of the LFT requires that the STPS establish requirements to prevent work place accidents and occupational illness and assure working conditions to safeguard the life and health of workers.

In the case of asbestos, NOM 010 itself mandates the re-assessment of the permissible exposure limits for asbestos every two years. To the best of our knowledge, this has not occurred. Had it complied with such requirements, the Mexican government would have seriously considered, inter alia, decreasing the permissible exposure limits for asbestos (for example the OSHA standard is more than ten times as protective as the current Mexican standard).

Petitioners have demonstrated extensive violations of international and domestic laws, regulations and norms by ITAPSA and Echlin management, and that there is a persistent pattern of

failure to enforce these laws and regulations by the Mexican government.

VII. Relief Requested

ACCORDINGLY, the Petitioners request the following relief:

1. That the U.S. National Administrative Office ("USNAO") initiate a review pursuant to Article 16 of the North American Agreement on Labor Cooperation (NAALC);
2. That the USNAO hold a public hearing in Mexico City Mexico, or should it not be able to do so, in the United States, having first made adequate arrangements for translation and visas for witnesses, and having provided adequate notice to Complainants, pursuant to Section (e)(3) of the Federal Register Notice of Establishment, F.R. Vol.58, No. 249, of December 30, 1993;
3. That the Mexican labor authorities require that Echlin, Inc., ITAPSA and the CTM comply with International and Mexican law, and that appropriate steps be taken to ensure that the Conciliation and Arbitration Board effectively protects the rights of Mexican workers. Petitioners specifically request:
 - A. The full reinstatement of all employees discharged since May of 1997 to their former jobs with full rights and benefits, and the compensation for monies lost as a result of these discharges;
 - B. That the associational rights of all ITAPSA employees must be fully respected by ITAPSA, Echlin, Inc. and the CTM, and that such workers shall be protected from further deprivation of their associational rights, harassment, intimidation, violence, threats, interrogation and surveillance;
 - C. Comply with requirements regarding health and safety including protection from asbestos exposure, provision of adequate protective equipment, proper testing of all workers who may be

exposed to toxic chemicals and provision of the results of their exams. Petitioners further request that the appropriate authorities conduct a plant inspection under conditions which ensure the impartiality, thoroughness and competence of the inspectors;

D. The development of specific guidelines and rules by the Mexican labor authorities to assure that employees in Mexico are able to exercise the right to organize into independent trade unions free of intimidation and the threat of loss of work. Such guidelines should specifically provide for secret ballot representational elections to be held at neutral locations, and for the suspension of elections and appropriate relief where violations of protected rights have occurred; for the neutrality of the Mexican labor authorities responsible for conducting such elections; for the parties to be provided with accurate lists of eligible voters prior to the election; and for procedures which guarantee that eligible voters shall be entitled to freely exercise their right to vote for the union of their choice and that voters who are ineligible shall not be permitted to vote.

E. The establishment of a public registry of unions and contracts;

F. A determination that application of a union exclusion clause to workers who have voted for a non-incumbent union is violative of the right of association under both Mexican and international law;

5. In the event that the relief requested in Paragraph 3 is not satisfactorily obtained, that the USNAO Secretary recommend that the Secretary of Labor request consultations at the ministerial level pursuant to Article 22 of the NAALC regarding all such matters that

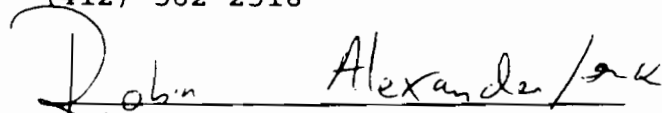
may properly be considered;

5. If, following such consultations, the relief requested in Paragraph C is not satisfactorily obtained, that the USNAO Secretary recommend that the Secretary of Labor request that an Evaluation Committee of Experts (ECE) be established under Article 23 of NAALC regarding all such matters that may properly be considered;
6. If, following presentation of a final Evaluation Committee of Experts report under Article 26(1) of NAALC, the relief requested in Paragraph C is not satisfactorily obtained, that the USNAO Secretary recommend dispute resolution under Part Five of NAALC regarding all such matters that may properly be considered;
7. That the USNAO Grant such further relief, including the convening of the Arbitral Panel and the levying of monetary enforcement, as it may deem just and proper.

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