

**Testimony to the US National Administrative Office (NAO) – Public  
Communication U.S. 2003-1 (Puebla)**

**Alejandra Constanza Anchieta Pagaza**  
**Lawyer, Mexico**  
**April 1, 2004**  
**Washington D.C.**

Thank you. Good afternoon. My name is Alejandra Constanza Anchieta Pagaza. I'm a lawyer. I graduated from the Metropolitan Autonomous University. I'm accredited by the General Professions Administration, Professional ID Number 3773657. My experience in the field of human and workers rights comes from the year 1999 when I was working with an NGO, Center for Labor Reflection and Action, CEREAL, an organization devoted to promoting and defending the human rights of workers in Mexico. And I am now part of a comprehensive defense program by the Center for Human Rights, Miguel Agusin Pro Juarez and I participated independently as a legal advisor of the workers of Tarrant Mexico, SDRL in Ajalpan Puebla and I participated in that starting July 1st, 2003.

While the workers were organizing themselves, I was their advisor in this process for organizing their union SUITTAR. This took place July 12th, 2003 in the municipality of San Francisco, Altepexi, Tehuacan as has been said in the previous document. This took place through an assembly in which after verifying that they had legal quorum for the constitution of the union the participants became associated by unanimous vote and they established their union statutes and these were, again approved unanimously and they named their first group of leaders and their attributions, everything according to what is established in Article 371 of our Federal Labor Law.

Then on August 7th, 2003, { }, { } and { } as the Secretary General, Secretary of Organization, Recording Secretary and Secretary of Agreements respectively and myself went to the Board of Conciliation and Arbitration of the State of Puebla to request a registration of the previously mentioned union. This application was done complying with each and every one of the requirements established in Article 365 of our Labor Law.

It was submitted in writing with a duplicate copy, an original and the copy of the incorporation papers and the election of the first leaders signed on July 12th, 2003 and the list with the name, number and address of the members as well as the number of -- and address of the employer, the company or establishment in which they worked, the union statutes, which have been approved and the proof of the elections in which the leaders were elected. These are established by our law for registration.

The authorities of the local Conciliation and Arbitration Board of Puebla had a 60-day period to issue a resolution on this application for registration as established in Article 366 of the Labor Law, Federal Labor Law. At that time I had an opportunity to attend different -- on different occasions meetings held at the board while we were asking for information about the resolution and on two occasions I talked to Mr. { }, Secretary

General of the Board and Mr. { } who is the President of the Board on August 27th of 2003 and September 18th, 2003.

At both meetings the workers and myself saw that the labor authorities had an attitude of not taking into account the workers and their needs since they only told them that they were still studying the application and if they did not receive their registration it would be due to ineffective legal advice not taking into account the rights of the workers which are established in Article 18 of our Labor Legislation which says that in case of any doubts, the authorities are to interpret labor regulations in way that is favorable to the workers.

Also assuming, without saying that this was the case, if there was any omission in terms of the requirements, the labor authorities ignore their obligations under Article 685 and 873 of our Labor Law, the obligations, as I was saying, to warn the workers if there was any irregularity or omission in their application. Another example of the inefficient performance of the labor authorities in Puebla is what we saw on August 18th of 2003. On that day a group of approximately 20 workers of Tarrant Mexico and myself went to the Conciliation Board in Tehuacan Puebla with the purpose of meeting with representatives of the company in the presence of the labor authorities in order to reach an agreement so that the dismissals would stop as this was a means of exercising pressure due to the union that was being formed.

The representatives of the company of Tarrant did not attend and the labor authorities only took -- made a record of the lack of will of the company in participating in this process and showed no intention of taking measures to protect the rights of the workers who had been fired. Later on October 6th, 2003, Special Board Member Two which is part of the Local Board of Conciliation and Arbitration of Puebla issued a resolution that was negative to the workers even though the workers fulfilled all the requirements established by Article 365 of the Federal Labor Law, thus violating the guarantees of legality and legal security that they should have. And these are in Articles 14 and 16 of the constitution.

Similarly with this negative decision by the local board and this is an agency that is directly under -- directly reporting to the executive power, they failed to comply with their obligation to apply any government measures that are necessary for effective enforcement of labor legislation which is something that was agreed to under the NAALC. And it says that each one of the parties will promote observants of its labor legislation and will enforce them effectively through government -- the adequate government measures.

Also it will guarantee that its authorities will give due consideration to any request that any alleged violation be investigated. For this reason, on October 27th, 2003 a document for an amparo judgment was submitted to the Federal Court of the State of Puebla and this was referred to the Third District Court of the State of Puebla. It was told to study these violations. After a month of pressures by the company and due to emotional exhaustion and economic exhaustion of the workers, in November 28th, 2003, the members of the -- the leaders of the union decide to not continue with this legal

proceeding and they received their severance. In Article 53, Paragraph 1 of our Federal Law, this was under that article their severance.

And as has been said in previous documents, the denial of the registration had no reason and shows that there was a partial bias behavior by the Board of Conciliation and Arbitration. There has been proof of this that has been documented by Human Rights Watch in their report on the Free Trade Agreement and Human Rights in Mexico where they record cases of violations of their right to form unions, the workers' rights to form unions in Mexico due to unethical behavior by labor authorities and here we have to point out that the governments had signed the NAALC made the commitment to comply with the following obligations.

They have a certain level of protection that they need to grant and, of course, all the countries are responsible, but the main issue is in the hands of the Mexican Government. And as I was saying, the obligations are regarding levels of protection to respect the constitution for each one of the parties and all of them must guarantee that laws and regulations in the field of labor will be consistent with the highest quality and productivity and that they will continue to improve these regulations in this context.

Government measures or each party will promote their respect of their labor laws and we'll effectively apply through government measures. It will also guarantee its pertinent authorities to take into consideration any request to investigate any alleged violation of the labor law.

Third, access to proceedings. Each one of the parties will guarantee the persons will have the right to have access to tribunals for the application of the labor law of the party in question. The legislation of each one of the parties will guarantee that these persons will have access to the proceedings through which of their rights established in the law will be respected and in the collective agreements as well. Procedural guarantees, each one of the parties will guarantee that the proceedings for the application of its labor law will be just, equitable and transparent. Each one of the parties will have the definite resolution, will be submitted in writing and they will be based on information and evidence and it will be published quickly.

Each one of the parties will be able to review the final resolution. Each one of the parties will guarantee that the tribunals will be impartial and independent and each one of the parties will have access to different resources so that the labor rights are respected. Each one of the parties will, through appropriate means, establish or maintain offices for the defense of the worker that will represent or advise the workers or its organizations. Faith Publication (ph) as one of the parties, will make sure that the laws, rulings and proceedings and administrative resolutions will be published as soon as possible or will be sent to the interested party. Finally, six, that talks about information and public knowledge, each one of the parties will promote the public announcement of these labor legislation guaranteeing its publication. Based on all of the above, the Mexican Government has not fulfilled these obligations and, therefore, the result has effected negatively the right of the Mexican workers and it has not respected the 11 labor

principles established by NAALC but it should be mentioned that it doesn't matter what NAALC establishes and the signatory parties agreed upon, international law of human right has established that the states have the following obligations; to respect, prevent, guarantee, and protect human rights of all people and therefore, the flagrant violation of labor human rights of the workers, whether female or male, will be a constant practice without any sort of sanction and effect negatively the right of development that all the Mexicans have.

In conclusion, I would say that according to my opinion and as defender of labor rights, the Mexican Government is violating the first level of protection related to NAFTA and the freedom of association and the tribunals are not just. Regarding the workers of Tarrant Mexican SRLCV it's clear evidence of this. However the workers of Matamoros Garments and its testimony show that according to these 11 principles of NAACL have to be revised, for example, the minimum working conditions and the restriction on hiring minors.

Likewise, we could say that in the cases of Kukdong, when the registry for a union was denied, new violations are seen here. The situation of the Tarrant workers SRL and CV show the extractor that the special repertoire of the United Nations has qualified is something that has to be dealt with by the Mexican Government. The Junta of Conciliation and Arbitration of Puebla is partial and does not take into account the rights of the workers but the employers is not something that happens here or there but it's something that is seen throughout the country and when the workers try to use the competent authorities to resolve their problems.

Thank you.