

**Testimony to the US National Administrative Office (NAO) – Public
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Thanks very much for the opportunity to provide testimony on this important matter concerning implementation of the North American Agreement on Labor Cooperation. I'm the Executive Director of an organization called the Worker Rights Consortium and I want to give you one quick moment of background as an explanation of why we have information to offer you with respect to this complaint.

The Worker Rights Consortium is a labor rights monitoring organization created by colleges and universities and representing 121 colleges and universities who license their names and logos to apparel companies who then produce and sell clothing with the colleges' and universities' names. All of these educational institutions have adopted codes of conduct that are designed to insure that the rights of workers are respected in any factory around the world engaged in the production of this university clothing.

Our organization exists for the purpose of assessing conditions in these factories and providing information to the colleges and universities and the public about those conditions so that colleges and universities can take whatever action is necessary to bring about full and faithful enforcement of their codes. In this particular case, the case of the factory Tarrant Ajalpan our organization received a complaint alleging a range of violations in the factory and as a result of that complaint, we conducted an intensive investigation in August of 2003 and produced a report the following month with respect to our conclusions concerning those issues having to do with freedom of association and allegations of illegal dismissals at the factor.

And we have also conducted in response to other complaints, three other investigations of apparel factories in Mexico and I'm going to comment to a lesser degree on those in particular the case of a factory that at the time we conducted our investigation was known as Kukdong and is now known as MexMode.

The case of Tarrant Ajalpan is not only of course, the subject of the complaint but also an excellent starting point for gaining a sense of the problems with enforcement of federal labor law in Mexico because the case illustrates a number of the most significant ways in which Mexican labor is being flouted systematically today. While Tarrant Ajalpan has violated federal labor law in Mexico in a brazen fashion, the reality is that the actions the company has taken to deny workers' rights to associate freely and the inadequate response on the part of Mexican authorities to these violations unfortunately reflect a widespread pattern in Mexican labor relations in the apparel industry.

I want to begin with a bit of background on Tarrant Ajalpan and I'll try not to cover ground that's already been covered. The complaint the WRC received made a number of allegations and our investigation concentrated -- the investigation of August 2003, on two related allegations; that the factory had taken actions that prevented workers from fully exercising their legally protected associational rights and that workers had been illegally dismissed from the factory for exercising their associational rights.

We also looked at several issues having to do with conditions inside the factory but I want to mostly focus on those two related issues. The WRC, in its investigation in 2003, interviewed 24 workers at Tarrant Ajalpan, the staff of the Labor Board in Tehuacan Puebla and a representative of Tarrant Ajalpan. And we focused first on the case of eight workers who were fired from the factory on the 16th of July after having -- as you've just heard, after representing workers at the factory in the negotiation of an agreement in the presence of the Tehuacan Labor Board with the management of Tarrant Ajalpan. Eight days after the conclusion of the agreement, the workers were dismissed and we looked at two questions; why were the workers dismissed and how were they dismissed?

Because it's very important to bear in mind that in addition to protecting workers' associational rights, the federal labor law in Mexico provides strong protections for workers from arbitrary dismissals of all kinds and in that sense, on paper, it's fair to say that Mexican labor law is much stronger than U.S. labor law.

And I want to quote briefly from Article 48 of the Federal Labor Law which sets forth one of the two basic reasons for which a worker can be legally fired, for which the employment contract with an individual worker can be legally terminated in Mexico and that is for cause. And this article sets forth examples of the legitimate causes for which a worker can be dismissed, various kinds of misbehavior, absenteeism, et cetera and the article concludes by saying this: "The employer must inform the worker in writing of the date and cause or causes of the termination. This document must be brought to the attention of the worker and if he refuses to accept it, the employer within five days following the termination must bring it to the attention of the respective board."

In other words, whenever a worker is dismissed for cause in a factory in Mexico, the employer, prior to the act of dismissal, must provide the worker with a written explanation of the cause. In the case of the eight workers fired on July 16th from Tarrant Ajalpan, there was no provision of written explanation of the reasons behind the termination and thus, we concluded on that basis alone these were illegal dismissals.

There was also very strong evidence that the dismissal of these eight workers was motivated by anti-union animus on the part of the factory, the most obvious point being that these were the eight workers who had represented other workers in protesting labor conditions and negotiating the agreement of July 8th. And it's also important to note that in addition to providing protection for union rights, Mexican law also gives workers the right to form what the law calls coalitions, which is an informal organization of workers represented by leaders to advocate on behalf of workers' interests and it's quite clear that the eight leaders at Tarrant Ajalpan were, in fact, representing a coalition and thus, all of

their activities, including the negotiation of the agreement of July 8th were protected activities under Mexican law.

So we concluded both that the workers were fired for an illegal reason which is to say the anti-union animus of Tarrant Ajalpan management, but also that the process through which they were fired was illegal. We then looked at roughly 150 terminations that took place in the month of August, a substantial portion of the Tarrant Ajalpan workforce, and based on extensive interviews with workers, based on our discussion with factory management, we reached the same two conclusions, vis-a-vis, those terminations as we did with respect to the initial eight terminations, which is that these workers were fired because they supported the union and one of the interesting pieces of evidence in support of that were -- was mutually corroborated testimony from a number of workers who were still working at Tarrant Ajalpan at that point in time that they had heard explicit statements from managers to the effect that the firings that were then underway were the fault of the union, were exactly what workers can expect to get when they support a union and similar comments.

We also concluded that again, the factory had failed to follow the requisite legal procedures for dismissing an employee and I want to focus on that point for one moment more. As the workers who testified on the previous panel noted, when they were called in to be dismissed, they were told -- they were not given a written explanation for why they were being fired; thus, the factory was violating the law. They were simply presented with a voluntary resignation agreement. And they were told, in effect, you can either sign this agreement and we will give you some money, or you cannot sign the agreement and you're fired anyway and you will get nothing. And this is a common method used by employers in Mexico. It's taking place in all four of the factories that we've investigated in depth for getting rid of workers who are engaged in independent union activities.

Because Mexican law does protect workers from being fired arbitrarily and because there are occasions when through great effort and pressure, the local labor boards will take action with respect to a particular illegal dismissal, and because increasingly factories in Mexico are subject to inspections by labor rights monitors employed by the buyers in U.S. and Europe who are the customers of these factories, the managers like to have in their files an explanation for what happened, that at least on its surface seems to be appropriate. And that is why factory managers like to have in their file when a worker is dismissed, a voluntary resignation agreement.

At one factory investigated, workers were actually asked to sign a voluntary resignation agreement on the day they were hired in the event that the factory should ever need to make use of this. In the case of Tarrant Ajalpan, the workers were asked to sign this voluntary resignation agreement at the time of their dismissal.

Now, of course, since the workers were being fired and being told that if they refuse to sign the voluntary agreement, they would get nothing and be fired anyway, the decision of some workers at Tarrant Ajalpan to sign the agreement so that they would, knowing that they would be fired anyway, at least leave with some money, is a coerced decision

and it is the kind of coerced decision coerced agreement to resign and relinquish rights that is the primary tactic employed by managers who wish to dismiss workers engaged in independent unionism.

And we have yet to see in our four in-depth investigations a single instance of a local labor board despite the lodging of numerous complaints, a single instance of a local labor board taking action to achieve the reinstatement of a worker fired through this process. And in discussions with representatives of the local labor boards, there is also an unwillingness to acknowledge that there is anything inherently troubling about the employment of coercion to compel workers to sign voluntary resignation agreements. So it is not merely that the local labor boards do not take action to protect workers' associational rights with respect, for example, to the granting of registros to independent unions, it is the fact that the local labor boards do not, in accordance with Mexican law, protect workers who are illegally terminated because they have sought registros because they had taken other actions in support of independent unionism.

In the case of Tarrant, the local labor board, as you've heard, did not, in fact, take action to correct the violations committed by the factory and of particular note, in dismissing a number of the complaints that some workers brought about these illegal dismissals, the labor board in Tehuacan cited the fact that some of these workers had accepted severance and resigned as creating a circumstance in which the workers no longer had standing to complain that they had relinquished their rights. And so you see the beauty of the method.

Managers coerce workers into signing voluntary resignation agreements. The local labor boards can then use the presence of these coerced agreements to justify a refusal to take appropriate action to bring about reinstatement and unfortunately this is a common pattern of collusion between factory managers and representatives of local labor boards.

Secretary Karesh asks if workers are given an opportunity before the board members or before the judges in court to assert that, in fact, they were coerced.

Workers can file a complaint after being terminated. But if the worker has already signed a voluntary resignation agreement, while the worker can make that representation to the labor board, I've never heard of a case in which the labor board responded by acknowledging the coerced nature of the resignation and acting in an appropriate fashion as a result. So the worker can lodge a complaint but the likelihood of success, I think it's fair to say is minimal and of course, it's also important to understand that in the moment when a worker has been brought into the human resources office and yelled at and threatened and told, "You're out of here", the worker is unlikely to either possess the knowledge or the moments for reflection that will be necessary to make a studied legal determination as to what the legal consequences might be or might not be of signing the document and, of course, this is why it works. Workers are being told, "You're fired, you're fired, you're fired today, you're going to have no income as of today. You can take several hundred dollars and at least have some money to support your family or you can refuse to sign this document and you'll get nothing". And for obvious reasons many

workers sign under the circumstances and then those documents are used as a legal tool by the factory and by their contemporaries at the local labor boards to justify a failure to take action to reinstate workers.

Secretary Karesh asks if, in the case of Tarrant and Matamoros Garment, we know some of the workers have filed complaints. Have they -- has this idea of coercion in severance agreements been any part of any of those complaints.

I actually have to say just two points really quickly. In the case of Tarrant, I believe most of the complaints that were brought, were brought on behalf of workers who did no, in fact, resign but our investigation which focused on the events of July, August and September of 2003, did not include a focus on the subsequent legal process after that point in time. So unfortunately, I'm not in a position to offer you much useful information in response to that particular set of questions.

So let me not take too much more of your time but talk briefly about the case of Kukdong, which the Worker Rights Consortium investigated in-depth in the early part of 2001 after mass firings resulting from an effort by workers to protest conditions and assert their associational rights and in so doing to try to find some way to overcome the efforts of an existing union which in no way represented the workers' rights or interests to prevent workers from taking any action that -- either that union or management viewed as problematic or difficult or troublesome.

And I want to talk about in the context of Kukdong, the process through which registros are granted and the process through which unions in Mexico come to legally represent workers at a factory and come to be in a position to negotiate a contract. In the case of Kukdong, we were trying to figure out it had gotten to a point in 2001 where workers were so angry and frustrated with the legally constituted union in the factory that they organized a massive strike and protest of that union's refusal to represent them and in protest of certain conditions in the factory that that union was tolerating and I think it is unfortunately richly symbolic of the situation in Mexico that when that strike was broken up outside the factory by local police, and state police, that according to credible worker testimony, the person leading the charge for the police who beat many of the workers, 17 of whom needed medical treatment, the person leading the charge was the head of the state union, the FROC-CROC that, in fact, in theory represented workers at the factory.

So it was the workers' own legally constituted union, the leader of this legally constituted union, that led the violent assault upon them and their expulsion from the factory grounds. So we looked in-depth at how the FROC-CROC came to represent the workers at Kukdong. And we conducted extensive interviews of the local labor board in Quaplia, the leadership of the FROC-CROC and the management of the factory to discuss the process through which the CROC came to hold the title that is to say came to have the right to negotiate a collective bargaining agreement on behalf of the workers at Kukdong.

What was very interesting was that those three parties gave us three entirely different and mutually contradictory stories as to how the FROC-CROC came to be in this position. The junta locale (ph) claimed that it happened because the FROC-CROC has been able to present factory management with credible evidence that they in fact, represented a substantial number of workers at the factory and on the basis of that evidence, the factory would be able to negotiate a contract with them.

The FROC-CROC leadership claimed that, in fact, management had refused to negotiate a contract with them and they had, therefore, filed a strike notice which under Mexican law, unions may do if management refuses to negotiate a contract. The management of the factory said no, there had not been a strike notice and there had never been evidence presented that the CROC represented a substantial portion of the workers, that the factory had simply chosen to negotiate with the CROC because they were a far-known company with limited experience in Mexico and they were told that that was what you do when you open a factory. We received testimony from a large number of workers at Kukdong that the vast majority of the workers did not even know that they had a union until about six months into their term of employment and we were unable to find an individual worker who was not a union delegate who stated in confidential testimony that they did, in fact, support FROC-CROC as their representative.

It became quite clear that not only had the legal procedures of the establishment been violated in the case of the FROC-CROC in Kukdong but that to the day of the events of the strike, that the FROC-CROC had made no successful attempt to actually win the support of any of the workers inside the factory. Instead the FROC-CROC had signed a collective bargaining agreement which contained no benefits, privileges or rights beyond those mandated by Mexican federal labor law, which is a typical contract in a Mexican factory or workers represented by the FROC-CROC or the CTM or one of the other corporatist unions.

Just two more quick points; the workers at Kukdong had never seen their contract and this is a phenomenon that we've witnessed at several factories, where workers may work for a period of years under the terms of a collective bargaining agreement, which management commonly cites as a justification for certain disciplinary actions, certain actions with respect to paying benefits without ever having actually laid eyes on the document and workers will go to their union leadership who will refuse to supply it. Workers will then go to the local labor board who will say, "Well, we can't give it to you because that's the job of your union leadership". Nor will management assist workers in finding the contract.

In the case of one factory we investigated in the state of Qualpila, the name which I don't want to mention because we haven't published a report yet, but we will supply that information to you later, we were able to obtain a copy of the contract after a long discussion with the local labor board, and therefore, we were able to provide the workers, for the first time after having worked under the contract for nearly five years, with a copy of the document that defined all of the rules under which they were working and I think the inability of workers even to see the contract under which they were working says a

great deal about the actual nature of representation that is done by unions like the FROC-CROC and the CTM.

The process of registros, you've heard testimony about. I don't want to cover that same ground again except to say that we have seen in multiple cases, in addition to Tarrant, exactly the process that occurred at Tarrant where workers will file clearly legitimate petition in what is supposed to be a pro forma process that will be denied on the basis of pretexts on the last possible day under the law on which the junta locale can respond.

And one point I want to note is there are specific provisions of Mexican federal labor law that require the local labor boards when a petition of any kind is submitted, to assist the petitioning party with a correction of any technical problems in the petition. So, in fact, in all of these cases, most prominently in Tarrant by refusing to correct the technical problems that become the junta locale's pretext for denying the registros, the junta locale is, in fact, breaking the law. And I want to mention only a couple of issues not related to freedom of association.

We did a document in the case of Tarrant illegal forced overtime beyond the three hours per day and nine hours per week that are allowed under Mexican law and we have not investigated a factory in Mexico where there was not to some degree illegal forced overtime. We also have seen, although we did not look at this at Tarrant, significant violations of minimum wage law in the apparel industry. Usually in that Mexican minimum wage law sets not just a general minimum wage, but higher minimums for various professions. And commonly we have seen workers who should be earning the higher minimum that the law provides to people who work on sewing lines in an apparel factory that many of these workers are not, in fact, receiving the higher minimum, either because the factory isn't paying it to anyone or because the factory is arbitrarily classifying some sewing machine operators into other job classifications so as to avoid paying the wage.

And finally, we have -- you talked briefly before about the issue of health and safety committees. In the factories we have investigated in-depth and also in others that we've looked at less in -depth, we have yet to see an actual functioning health and safety committee which is doing the work that a health and safety committee is supposed to do. All we've seen is either nothing in place or health and safety committees that are obviously going through the motions and not doing any of the real work that legally their obligated to do. So I will conclude there and answer any questions you may have.