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Unions File First Labor Rights Petition Under New U.S. Mexico Canada Agreement

5.11.2021

The AFL-CIO has filed the first labor rights petition under the U.S. Mexico Canada Agreement (USMCA) claiming that Mexican company Tridonex, located in the border town of Matamoros has blocked free union elections guaranteed under the USMCA labor provisions. The company, which makes auto parts is owned by a U.S. company, Cardone Industries and a Canadian company Brookfield Asset Management. The plant has a current union known as SPITME but some workers felt that the union had not been adequately representing their demands and wanted to switch to a new union that is lead by Mexican labor leader Susana Prieto called SNITIS. The SNITIS union should be entitled to a union election under Mexico's new labor laws that were passed in conjunction with the new USMCA on May 1, 2019, but they claim that their request has not been acted upon. The new Mexican labor laws, supported by U.S. unions were an important element for U.S. support of the new USMCA and designed to protect labor unions' rights to organize much like the laws that now exist in the U.S. The law was designed to combat the frequent practice of employer sponsored unions that workers often felt did not truly represent their interests (also known as "protection contracts"). Prieto claims that some of her union members were fired due to their efforts to switch unions.

Under the USMCA the U.S. may enforce labor reforms in Mexico through country to country dispute resolution and through a "Rapid Response Mechanism" that allowed petitions to be filed against a particular facility in Mexico that is accused of denying Mexican workers the right to organize unions and have free elections and collective bargaining rights. The U.S. Congress established a Mexican Labor Expert Board to monitor Mexico's labor enforcement. The new Rapid Response Mechanism is contained in an annex to Chapter 31, designated as 31-A to the USMCA. Specific timetables and procedures for the resolution of complaints are set out with strict timetables and established

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dispute settlement panels. The provisions have strong enforcement mechanisms allowing for various remedies including:

“2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility”. See section 31.A.10 Remedies. Thus, USMCA duty free benefits may be suspended for a company that violates these labor law provisions.

The Department of Labor Office of Trade and Labor Affairs has 30 days to review the AFL-CIO complaint and determine whether to bring the complaint to the Mexican government for further action. The head of the existing union at the Mexican plant has denied the charges. The Mexican government may agree with the complaint and take action to impose sanctions or refer it to a panel for further review and determination.

The Biden administration has indicated its support for strict enforcement of the USMCA. New U.S. Trade Representative Katherine Tai, told a Senate hearing on April 28, 2021, “I am very committed, I am not afraid to use the enforcement tools...”

U.S. companies with plants in Mexico should be reviewing their labor relations at their Mexican plants to ascertain if they follow the new USMCA and are compliant with Mexico’s labor laws. Expect increased worker participation and activism in the negotiation of collective bargaining agreements. Some Mexican firms fear this enforcement mechanism might be weaponized. Butzel long attorneys are available to assist.

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