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**RECIBIDO**

**MEX-USA-2023-31A-01**

**Rapid Response Labour Panel in the case of the San Martín Mine**

**Panelists**

Gary Cwitco – Chair

Lorenzo de Jesus Roel Hernandez – Member

Kevin P. Kolben – Member

**Background**

On July 16, 2023 the United States (the complainant Party) filed a petition in which it was alleged that a Denial of Rights was occurring at the San Martín mine (the Covered Facility) owned by Grupo Mexico and located in the state of Zacatecas, Mexico.

On July 31, 2023, Mexico (the respondent Party) sent a report to the United States in which it determined that no denial of rights exists.

On August 22, 2023 the United States disagreed with the determination made by Mexico and in accordance with Article 31-A.5.1(a) of the USMCA requested “the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility’s compliance with the law in question and determine whether there has been a Denial of Rights.”

In accordance with Article 31-A.5.3 the Secretariat established this panel on August 30, 2023.

On September 4, 2023, the Mexican Party, in accordance with article 31-A-6 initiated the requirement of the panel to confirm the petition.

## Analysis

**This analysis is based on the documentation available to the panel as of September 5, 2023.**

Article 31-A.6 requires that a panel

“shall have five business days after it is constituted to confirm that the petition:

- (a) Identifies a Covered Facility;
- (b) Identifies the respondent Party’s laws relevant to the alleged Denial of Rights; and
- (c) States the basis for the complainant Party’s good faith belief that there is a Denial of Rights.

Article 31-A.15 offers the definitions for the purposes for of the Annex.

“Covered Facility means a facility in the territory of a Party that:

- (i) Produces a good or supplies a service traded between the Parties; or
- (ii) Produces a good or supplies a service that competes in the territory of a Party with a good or service of the other Party,

And is a facility in a Priority Sector.”

“Priority Sector means a sector that produces manufactured good, supplies services or involves mining.”

The United States contends that the facility in question is one that “mines copper and other minerals [and] due to the significant bilateral trade between Mexico and the United States in copper and other minerals, the San Martín mine is a “Covered Facility.”

Mexico denies that the San Martín mine is a covered Facility within the meaning of Article 31-A.15. Mexico further contends that the possible Confirmation of the Petition should not be interpreted in the sense that the Panel has validated the existence of a “Covered Facility.” Rather that the Confirmation consists only of a *prima facie* analysis that does not prejudice any arguments that Mexico may make regarding the San Martín mine’s conformity with the definition of a “Covered Facility,” the substance of the disagreement between the Parties or the



jurisdictional objections that Mexico asserts with respect to the application of the Rapid Response Mechanism to the issue before us.

The Panel notes that the United States in its petition has specified four sections of the Mexican Federal Labour Law which it alleges give rise to the Denial of Rights at the San Martín mine.

- Article 449, which requires that “the court and the corresponding civil authorities will enforce the right to strike, granting workers the necessary guarantees and giving them the assistance that they request in order to suspend the work.”
- Article 935, which requires that “prior to the suspension of work, the court, with a hearing of the parties, will establish the indispensable number of workers who will continue working so that the work continues to be carried out, whose suspension seriously damages the safety and conservation of the premises, machinery and raw materials or the resumption of work. For this purpose, the court may order the performance of the proceedings it deems appropriate.”
- Article 133.IV, which prohibits employers or their representatives from “obligating workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that violates their right to decide who should represent them in the collective bargaining.”
- Article 133.VII, which prohibits employers or their representatives from “taking any action that restricts the rights of the workers granted to them by the laws.”

In the petition requesting the establishment of this panel the United States outlined its good faith belief that a Denial of Rights was taking place at the San Martín mine. Those reasons are set out below:

“The United States considers that workers at the Covered Facility are being denied the right of free association and collective bargaining. The Covered Facility appears to be engaging in normal operations during an ongoing strike without waiting for a lawful resolution and appropriate authorization from the Mexican courts. Grupo México, the employer operating the Covered Facility, also appears to be collectively bargaining with a different

labor organization not lawfully authorized to represent workers for the purposes of collective bargaining. The employer is applying the agreements negotiated with this organization to workers at the Covered Facility.

As the USMCA expressly recognizes, the right to strike is linked to the rights to freedom of association and collective bargaining, which cannot be realized without protecting the right to strike. Mexican laws complying with Annex 23-A of the USMCA prohibit an employer from continuing regular operations at a facility where the workers are participating in an ongoing strike, and from bargaining with a labor organization that is not the proper representative of the workers. Therefore, the situation at the San Martín mine represents an ongoing denial of workers' rights as outlined in the USMCA."

Mexico in the report sent to the United States on July 31, 2023 determined that no denial of rights had taken place and that the situation at the San Martín mine was not covered by Annex 31-A of the USMCA "because: (1) the alleged Denial of Rights at the Covered Facility occurred prior to entry into force of the USMCA and did not implicate legislation that complies with Annex 23-A of the USMCA; and (2) the San Martín mine is not a "Covered Facility" within the meaning of Article 31-A.15."

## Decision

The panel finds that the petition of the United States meets the *prima facie* requirements of Article 31-A.6 and the petition is hereby confirmed.

The panel also notes that nothing in this confirmation prejudices arguments that the Parties may make with respect to any issue before the panel including but not limited to:

- (1) Whether or not the San Matín Mine is a covered facility within the meaning of Article 31-A.15;
  - (2) Whether or not the alleged Denial of Rights is covered by the USMCA;
  - and
  - (3) The substance of the allegations.
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