

Public Version

UNITED STATES – ATENTO SERVICIOS, S.A. DE C.V.

(MEX-USA-2024-31A-01)

OPENING STATEMENT
OF THE UNITED STATES OF AMERICA

May 15, 2025

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TABLE OF ABBREVIATIONS

Abbreviation	Definition
Atento or Covered Facility	Atento Servicios, S.A. de C.V.
BPO	Business Process Outsourcing
CBA	Collective Bargaining Agreement
CRM	Customer Relationship Management
CROC	Confederación Revolucionaria de Obreros y Campesinos
Election Guidelines	General Guidelines for Trade Union Democracy Procedures
Federal Center or CFCRL	Federal Center for Conciliation and Labor Registration
FLL	Federal Labor Law
FOSRM or BJU or Benito Juárez union	Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana, part of the Federación Obrera Sindical de la República Mexicana
HR	Human Resources Department
ILO	International Labor Organization
Mexico	United Mexican States
NGE	Non-Governmental Entity
Progreso y Trabajo union	Sindicato “Progreso y Trabajo” del Transporte y Servicios de la República Mexicana
RRM	Facility-Specific Rapid Response Labor Mechanism
SEC	United States Securities and Exchange Commission
STRM	Sindicato de Telefonistas de la República Mexicana
STPS	Secretaría de Trabajo y Previsión Social
U.S.	United States of America
USMCA or Agreement	United States – Mexico – Canada Agreement
USMCA Implementation Act or the Act	United States – Mexico – Canada Agreement Implementation Act

1. Good morning, Mr. Chair and members of the Panel. On behalf of the U.S. delegation, I would like to begin by thanking the Panel members, the support staff assisting you, and the Mexican Section of the USMCA Secretariat for your work on this dispute.

I. INTRODUCTION

2. The Facility-Specific Rapid Response Labor Mechanism (Rapid Response Mechanism or RRM) set forth in Annex 31-A of the USMCA, is a groundbreaking enforcement mechanism aimed at ensuring the remediation of Denials of Rights to freedom of association and collective bargaining at specific facilities. At the end of 2023, an independent union organizing at Atento, which operates a call center in the Mexican state of Hidalgo, filed an RRM complaint with the United States alleging that Atento denied workers their rights.

3. After investigating the allegations in the complaint, the United States developed a good faith basis to believe that Atento violated its workers' rights to freedom of association and collective bargaining over the course of at least one year leading up to a union representation vote. The United States found that Atento's illegal actions included firing workers for supporting the independent union and threatening workers to support the organizing efforts of its favored union, they also included interfering with an election that resulted in Atento's favored union prevailing and becoming the workers' collective bargaining representative.

4. The United States requested, under Article 31-A.4.2 of the USMCA that Mexico conduct its own review of whether a Denial of Rights existed. In its report to the United States following its review, Mexico agreed that Atento denied its workers' rights. Mexico additionally determined that it took actions to remediate those Denials of Rights. However, the United States disagreed with Mexico's determination that remediation was complete and requested the establishment of this Panel accordingly. Specifically, the United States requested, under Article

31-A.7.4 of the USMCA, that the Panel determine whether the actions taken by Mexico and Atento were sufficient to remediate these Denials of Rights that occurred. The United States submits that this is the sole question before the Panel.

5. The United States has shown in its written Reply Submission and Rebuttal Submission that the actions taken were not sufficient to fully remediate the Denial of Rights. Specifically, Mexico’s failure to fully restore the rights of unlawfully fired workers, to address the tainted representation vote, and to penalize Atento for its illegal activity preclude a finding by the Panel that Mexico has remediated the Denial of Rights at the facility.

6. In this statement, we will first review the overwhelming evidence, collected by both the United States and Mexico, that demonstrates that Atento denied workers’ rights to freedom of association and collective bargaining. We will then explain why the actions taken by Mexico at the facility are insufficient to remediate Atento’s Denials of Rights, and what additional actions may be required to fully restore the workers’ rights.

II. THE EVIDENCE SHOWS THAT ATENTO DENIED ITS WORKERS’ RIGHTS TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

7. As explained in the U.S. Reply and Rebuttal Submissions, the evidence shows that Atento actively supported the Benito Juarez Union in its organizing efforts; threatened workers with specific and unspecific reprisals if they supported STRM; that they promised benefits to workers for supporting BJU; and interrogated workers about their union sympathies in the year leading up to the December 2023 representation vote. As Mexico concluded in its report to the United States, Atento failed to provide “any objective and suitable evidence... to demonstrate the non-existence of the acts of employer interference alleged by STRM – the Telefonistas.”

A. MEXICO FOUND THE SAME DENIALS OF RIGHTS AS THE UNITED STATES

8. Mexico’s report investigating the U.S. Request for Review makes clear that Mexico concluded that the same Denials of Rights the United States identified in fact occurred.

Although on certain occasions in its report, Mexico characterized its findings as based on “presumptions,” those characterizations do not change the nature of those findings.

9. Mexico’s present contention – that Mexico in fact did not find that a Denial of Rights occurred – is contrary not only to the findings set out in its Report to the United States but to its findings contained in a later report pertaining to subcontracting and other issues. The November 19, 2025 Inspection Report, which issued six days before Mexico filed its Rebuttal Submission, which was provided to the Panel on April 15, 2025, in this report they found that Atento failed to prove compliance with “actions that allow workers to join or withdraw from the union or group to which they belong, respecting their right to decide who will be their representative in collective negotiations or, if applicable, those workers who do not wish to join any union.” They cited in this finding to Article 133 Section IV of the FLL.¹ Nonetheless, Mexico’s Rebuttal Submission makes no mention of this finding by the Government of Mexico.

10. Mexico’s contention that it did not find a Denial of Rights is also contrary to the roles and responsibilities the USMCA assigns to Mexico. Article 31-A.4.2 of the USMCA requires that if the complaining party has a good faith basis to believe that workers are being denied their rights, it may request that the respondent party, in this case Mexico, conduct its own review of whether a Denial of Rights exists. That is, the respondent is requested to investigate, and must make a determination regarding the existence of a Denial of Rights. If the respondent

¹ November 19, 2024 report of the STPS General Inspection Delegate.

“determines that there *is* a Denial of Rights,” the Agreement requires that the respondent also attempt to remediate it.

11. In this case, Mexico did just that – they attempted to remediate the Denial of Rights. This was made explicit in Mexico’s report, where it stated that “The Government of Mexico, through the STPS, on the one hand, and ATENTO, on the other, agreed on the following measures *in order to remediate the denial of rights at ATENTO*, in accordance with the provisions of Annex 31-A of the USMCA.”² That is a quote from Mexico’s Report to the United States.

12. Having taken actions “in order to remediate the denial of rights” at Atento, it makes no sense that Mexico would now deny that it even made a finding of a Denial of Rights. In making such an argument, Mexico not only attempts to relieve itself of the obligation in the Agreement to make a determination regarding the existence of a Denial of Rights, but also attempts to burden the Panel with making that determination instead.

13. Rather than allowing the Panel to resolve the specific disagreement between the Parties, as the RRM panel process was designed to do – which in this case would be limited to whether the Denial of Rights was sufficiently remediated – Mexico would force the Panel and the Parties to essentially start over, as if Mexico’s investigation of the Covered Facility and its Report to the United States are irrelevant to the Panel’s work. They are not. In fact, the structure of the RRM process suggests that Mexico’s determination is actually the starting point for the Panel’s review.

14. Because the United States disagreed with Mexico’s claim that the Denial of Rights had been resolved, and because we were not able to reach a resolution, the United States requested this Panel pursuant to Article 31-A.7.4. This provision requires that, if the respondent “has

² MEX-03 (Internal Investigation Results) at 41-42 (emphasis added).

determined that there is a Denial of Rights” and alleges that the denial has been remediated, but the complainant disagrees, the respondent must submit a document explaining the actions it took against the Covered Facility as a result of the Request for Review.

15. In other words, the respondent’s explanations of its remediation actions is the Initial Written Submission in the proceedings, and the basis for the U.S. *Reply* Submission. This makes sense because nothing in the USMCA permits the complainant, the United States, to unilaterally make its own determination that a Denial of Rights exists and request a panel to verify after that determination. Instead, the USMCA reflects that the Panel’s task is to determine whether the complainant is right to disagree with the respondent’s determination, and in this case, with Mexico’s explanation of the actions it took to remedy the situation at the Covered Facility. In evaluating Mexico’s explanation of its remediation actions, the panel should be careful not to limit its analysis to whether Mexican law was correctly applied. Rather, even if the Panel determines that Mexico correctly applied its law, or that effective remediation could not be achieved by the application of Mexican law, the Panel could still find remediation was insufficient and make recommendations regarding what is needed, whether or not those measures fall within the constraints of Mexican law.

16. Therefore, Mexico’s explanations in these documents are key to the Panel’s determination. Mexico, not the United States, has the legal authority to conduct on-the-ground inspections pursuant to domestic law and, indeed, in its submissions has made much of the fact that its investigators conducted numerous on-site visits to determine whether Atento violated the law. Mexico based the detailed findings of Denials of Rights in its report on these on-site visits and on the information it obtained from Atento, among other fact-gathering efforts Mexico undertook. Practically then, it is Mexico, not the United States, who is in an ideal position to

conduct this kind of thorough investigation, consistent with Mexico’s responsibility to determine whether there is a Denial of Rights under the USMCA.

17. To agree with Mexico’s contention that it did not find a Denial of Rights in this case not only burdens the Panel and the Secretariat assisting it with proceedings that cover issues upon which there is no disagreement, but also allows Mexico to evade its fundamental obligation under the RRM to review the situation and to make a determination.

18. Consequently, the United States requests that the Panel confirm Mexico’s determination that Atento denied its workers’ rights to freedom of association and collective bargaining, and to focus its efforts on the issue of remediation, as was requested by the United States in its Panel Request. For completeness, however, we will briefly recall the evidence supporting a determination that Atento committed a Denial of Rights.

B. ATENTO DENIED WORKERS’ RIGHTS TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

1. Atento is a Covered Facility

19. As the United States has explained, Atento qualifies as a Covered Facility under both definitions set out in Article 31-A.15, because it supplies a service that is traded between the Parties, and because it supplies a service that competes in Mexico with U.S. services.

20. Here, the services in question can be referred to as Customer Relations Management (CRM) services, which are frequently provided by companies like Atento through call centers. The record indicates that Atento provides Customer Relationship Services in the Covered Facility at issue here. The November 19, 2024, STPS Inspection Report, to which I referred to earlier, which was provided to the Panel recently by Mexico on April 15th of this year, indicates that Atento provides “back office” business services, payroll and income services, and debt collection services, among other things. Workers participating in the verification stated that they

provide credit card services, as well as back office business services; and an Atento official told the Panel during the on-site verification visit that call center workers answer more general questions about banking services, such as answering calls regarding next steps after a credit card application process or mortgage questions, in addition to providing debt collection services.”³

21. The United States explained in its Reply Submission why Atento qualifies as a Covered Facility under both definitions of that term – because Atento supplies services of a kind that are exported by Mexican companies to the United States, and because numerous U.S. companies also supply similar services that compete in Mexico.

2. Consistent, credible evidence demonstrates that workers at Atento experienced a Denial of Rights

22. Regarding the actions Atento took to deny workers’ rights, in the interview notes the United States submitted to demonstrate these Denials of Rights, workers describe Atento’s misconduct in a detailed, consistent manner. The workers stated that Atento representatives explicitly told them that they were being dismissed because they support STRM and made a series of related threats, promises of benefits, and other coercive statements about workers’ union activities.⁴

23. Mexico argues that the interview notes lack probative value and impartiality on the grounds that they were prepared after the alleged Denials of Rights took place and were prepared by a single source, in other words, the United States. However, the interviews notes were prepared in December 2023 and January 2024, soon after STRM notified the United States of the alleged Denial of Rights as part of the RRM petitions it filed in both November and December 2023. Several Denials of Rights took place contemporaneously with those interviews, including

³ See also MEX-61 (Representation Certificate in favor of Benito Juárez Union, issued on March 27, 2024, by the Federal Center’s Division of Certificates) at 2.

⁴ See U.S. Reply Submission, paras. 68-76.

Atento's dismissal of workers because they supported STRM within just a few days of the December 2023 representation election and the irregularities that took place during and before that election itself.

24. And, importantly, the U.S. interview notes are consistent with the evidence on which Mexico relied in its own report to determine that Atento denied its workers' rights,⁵ as well as the testimony provided by workers during the Verification. Mexico's determination that Atento denied its workers' rights undermines its contention that the individuals employed by Atento who carried out the unlawful actions lack the authority to legally bind Atento as its agents.

25. In its submissions to the Panel, Mexico has failed to engage with the specific facts that workers described in the interviews as they relate to Atento's dismissals, threats, and other coercive conduct. Likewise, Atento, in its submission to the Panel, generally denies workers' allegations without engaging with the particular facts outlining its misconduct as described in the U.S. Submission. Although Mexico contends that Atento lacked sufficient context to rebut the allegations, our submission sets forth the dates of the misconduct, identifies the names of managers involved, and describes the misconduct, for example what the threatening statements were about. Moreover, Mexico itself discussed the misconduct with Atento itself, in the course of its review and attempted remediation of the Denial of Rights. This information therefore provided ample context to allow Atento as well as Mexico to respond to the US contentions. And Mexico itself has of course had the opportunity to review all of the underlying evidence – both during these proceedings, and in the course of its own investigation, upon which it determined in its report to the United States that there had been Denials of Rights.

⁵ See U.S. Reply Submission, paras 64-65.

26. Mexico also seeks to cast doubt on the validity of the United States’ August 2024 interview notes, in which workers recount being pressured by Atento to support the BJU in a CBA vote that took place that month. However, the United States is not arguing that those events themselves constitute a Denial of Rights as such. Rather, as described in our Reply Submission, that evidence demonstrates that Mexico’s actions were insufficient to remediate the Denials of Rights that occurred in 2023, given that Atento continued to favor the BJU and interfere in workers’ union activities long after any claimed remediation would have been accomplished. In other words, this evidence supports a finding that the Denial of Rights that already had occurred remained ongoing.

27. Mexico has failed to engage with other evidence the United States has submitted that demonstrates a Denial of Rights as well. This includes, notably, the questionnaire responses submitted to the Panel that workers provided to STPS itself, which outline Atento’s illegal activities. Mexico considered these questionnaires in concluding that there was a Denial of Rights in its report to the United States although, at this juncture, again, Mexico ignores this evidence.

28. In sum, the underlying evidence is credible and the Panel should rely on it in confirming that Atento denied its workers’ rights to freedom of association and collective bargaining.

III. THE ACTIONS TAKEN BY MEXICO AND ATENTO WERE NOT SUFFICIENT TO REMEDIATE THE DENIALS OF RIGHTS

29. The evidence presented to the Panel by the United States demonstrates that, as a result of Atento’s extensive interference, workers remain unable to freely exercise their right to freedom of association and collective bargaining, and that the actions Mexico took against Atento were insufficient to remediate the Denials of Rights.

30. Article 31-A.1 of the USMCA provides that the purpose of the RRM is to “ensure remediation of a Denial of Rights.” As the United States has explained in its written submissions, to remediate the Denial of Rights, Mexico would need to have taken actions against the company sufficient to set right, to repair, to rectify, to counteract, or to neutralize the effect of the company’s actions against its workers. The evidence on record shows that Mexico has clearly failed to do so.

31. Atento harassed, threatened and fired numerous workers as a result of their organizing activities and support for STRM, and in an attempt to coerce workers into supporting Atento’s preferred union, the BJU; BJU succeeded in becoming the representative union at the facility. To remediate this Denial of Rights, Mexico worked with the company to take certain remediative actions. But these actions fell far short of sufficient. The key point is not only that the effects of Atento’s Denials of Rights have lingered over time, though they certainly have. The key point is that what Mexico considers remediation actually preserves and even reinforces the harm inflicted on workers by Atento.

32. It cannot be that an employer can intend to install its favored union, take actions to accomplish that goal, in fact accomplish that goal, and have the remediation preserve, rather than repair or counteract, the accomplishment of that goal. Atento’s illegal actions tainted BJU’s election victory over a year ago and no steps were taken to address the outcome of that vote. This alone is sufficient to show that the Denial of Rights has not been remediated.

33. In addition, however, no meaningful actions were taken against the company as a result of their behavior in the form of fines or other sanctions. Equally troubling is the fact that many of the fired workers either were not reinstated, or were rehired without their full pay, seniority and benefits, which means they continue to be penalized for their union activities to this day.

Workers at the facility meanwhile continue to receive the message that they cannot freely exercise their rights to freedom of association and collective bargaining.

34. Because these issues have not been addressed in a timely or sufficient manner, workers at the facility have been unable to continue organizing for STRM as they previously had been, further eroding support for the independent union the longer time goes on.

35. It is critical that the Panel make clear that the Denials of Rights have not been remediated. If the Panel were to deem the limited remediation steps taken at the facility sufficient to comply with the requirements of the USMCA, then Atento could, again, fire anyone at the facility who attempts to organize for another independent union, make sure that union is not elected, and rehire or pay some money to illegally dismissed workers after the fact. Rather than remediating the Denial of Rights, such a finding would instead tell Atento and other companies how to successfully prevent workers from freely exercising their rights to freedom of association and collective bargaining.

IV. MEXICO’S FAILURE TO SUFFICIENTLY REMEDIATE THE DENIAL OF RIGHTS FALLS UNDER THE AUTHORITY OF AN RRM PANEL

36. Mexico claims that because the United States is challenging the actions taken by Mexican authorities as insufficient to remediate the Denial of Rights at the Atento facility, the United States is no longer addressing activity that is within the scope of the USMCA RRM. Specifically, Mexico claims that actions taken by the Government of Mexico are not within the scope of the Agreement, only actions taken by an employer. Mexico also claims that remediation measures taken under Mexican laws not falling under Annex 23-A of the USMCA cannot be examined by this Panel in the context of evaluating the sufficiency of Mexico’s remediation actions. Mexico is wrong on both claims.

37. First, nothing in Annex 31-A or Annex 23-A limits the scope of actions that can constitute a Denial of Rights to actions taken by an employer. However, this issue need not be addressed by this Panel, because the Denial of Rights at issue in this dispute *is* the result of actions taken by an employer – Atento.

38. Second, Mexico is also wrong that the United States cannot challenge Mexico’s claim that it has taken sufficient remediation action under the RRM, because a Denial of Rights covers employer actions only, not government actions. The United States is not claiming that the Government of Mexico has committed a Denial of Rights. Rather, the United States is challenging Mexico’s purported *remediation* of a Denial of Rights that does fall within the scope of Annex 23-A, as required under the USMCA.

39. Importantly, the USMCA does not prescribe how remediation must be accomplished under Mexican law; nor does it limit the Panel’s evaluation of whether remediation is sufficient to the mere application of existing Mexican law. The question before the Panel is whether the Denial of Rights has been remediated. Whether or not Mexico has acted consistently with its own law – and whether or not Mexico is required to take additional action under its own law – is not dispositive in determining whether the Denials of Rights was remediated.

40. If Mexico’s argument that its remediation actions complied with the FLL and therefore are *per se* sufficient to remediate the Denial of Rights were accepted, then it would be futile for the United States to request that Mexico review an alleged Denial of Rights, even though on-the-ground conditions preclude workers from effectuating their right to freedom of association and collective bargaining, as is the case here. Put differently, it would frustrate the operation of the RRM to presume that any application of Mexican law – however incomplete it might be – is necessarily sufficient to remediate a Denial of Rights.

41. Consequently, the United States requests that the Panel find that the situation at the facility reflects a failure to remediate workers’ rights to freedom of association and collective bargaining under the USMCA.

V. ADDITIONAL ACTIONS CAN BE TAKEN UNDER MEXICAN LAW TO REMEDIATE THE DENIAL OF RIGHTS

42. As we have stated, the only question before the Panel is yes or no: have the denials of Atento’s workers’ rights to freedom of association and collective bargaining been remediated? To resolve this question, it is not for the United States to also identify the particular remediation measures that must now be taken.

43. Article 31-A.8.4 of the Agreement provides that Mexico may “request” that the Panel include recommendations in its report regarding the remediation of any Denials of Rights found to exist at the facility. Mexico has not yet made that request. But assuming Mexico does so, and to assist the Panel in this task, the United States has attempted in its submissions to demonstrate how the Denials of Rights may be remediated.

44. Ideally, the violations of Mexican law that formed the basis for the Denial of Rights at Atento would have been addressed swiftly and comprehensively, so as to stop the harm that was occurring, as well as to prevent any additional harm from occurring. Because this was not done, remediation of the current situation at Atento may not be a simple matter.

45. The independent union, STRM, has not had a presence at the facility since the election. Atento and its favored union, BJU, have since signed a CBA. There is evidence that Atento engaged in similar threats against workers as recently as August. Several lead organizers and other workers who supported STRM have been frustrated by Atento’s actions impeding their ability to freely associate and obtain collective bargaining rights, and may be hesitant to engage in those activities even if they were now reinstated. In short, the situation presently facing

Atento's former and active workers is quite challenging. More than simply training workers on Atento's stated commitment to follow the law, it is necessary to repair the harm done to workers and fully restore their rights.

46. Mexico can take several actions under its domestic laws to attempt to remediate the situation at the facility. Specifically, Mexico can: 1) address the impact of Atento's misconduct on the union election; 2) fully compensate or reinstate all illegally fired workers; 3) provide STRM access to the facility; and 4) sanction Atento for its violations of Mexican law.

A. MEXICAN LAW EMPOWERS MEXICO TO ADDRESS THE IMPACT OF ATENTO'S MISCONDUCT ON THE UNION ELECTION

47. First, Mexican law empowers Mexico's Federal Center for Conciliation and Labor Registration to address the impact of an employer's illegal activity on a representation vote, as here. Pursuant to that law, including the Federal Center's Election Guidelines, the Federal Center has the authority to set aside the December 2023 election results.

48. Article 45 of the Election Guidelines defines an irregularity related to a representation vote to include any act that affects the right of workers to cast their vote freely. Article 52 provides that the Federal Center will certify the election results if it determines that irregularities, when "assessed as a whole," are not "decisive in affecting or modifying the majority decision of the voters." The corollary of this standard prohibits the Federal Center from certifying the results if the irregularities are decisive in affecting or modifying the majority decision of the voters.

49. The evidence strongly suggests that the existence of several, significant irregularities committed by Atento, when assessed as a whole, were decisive in affecting or modifying the majority decision of the voters. For over a year before the election, Atento substantially influenced the vote, first by ridding the facility of dozens of STRM members and then

threatening dozens of remaining workers to support BJU. Indeed, Mexico determined in its report to the United States that Atento repeatedly interfered with workers' attempts to support STRM in the lead-up to the election. For example, Mexico stated in its report that 14 workers told Mexico that they "felt intimidated at the time of exercising their vote in the election."

50. In January 2024, in concluding that the election results should stand, the Federal Center found that any irregularities were "minor" and that workers had no trouble completing their ballot—an analysis that appears to be contrary to the "affect the vote" standard in the Election Guidelines. Relying on both Mexican labor law and political election law, Mexico argues in its Rebuttal Submission that irregularities in a representation election must be "serious, decisive, and irreparable" to warrant setting aside the results, and the irregularities in this case do not meet that standard. This argument appears to improperly substitute the law surrounding political elections for the law safeguarding the right of workers to free association and collective bargaining, including the FLL and the Federal Center's Election Guidelines.

51. There are key differences between these election law regimes. For example, in union elections the company employs the participants of the election, unlike in political elections. A company's actions – including dismissing workers for supporting one union in the election, as happened here – could have a significant influence on which union workers will vote for.

52. Whatever legal regime applies, the evidence shows that Atento's year-long campaign to pressure workers to favor its chosen union, including the dismissal of dozens of workers because of their union sympathies soon before the election, "decisively, seriously, and irreparably" influenced the vote – the standard that Mexico, in its Rebuttal Submission, argues is the applicable one.

53. Mexico argues that the Federal Center cannot, in assessing whether to set aside the election, consider evidence that workers submitted as part of the RRM matter—including Mexico’s own finding of Denials of Rights that impact the election. According to Mexico, setting aside the election could only have been determined by the Federal Center and only using the evidence the Federal Center had before it at the time. However, the RRM has an important role to play precisely in these circumstances, by bringing to light evidence of a Denial of Rights that one Mexican agency, here the Federal Center, may not have discovered or fully considered—and creating the opportunity to remediate that Denial of Rights.

54. The Federal Center itself acknowledged in a decision it issued in February 2024 that it would consider this RRM proceeding in determining how to address the election. The Panel requested this document from Mexico and it was provided on December 16, 2024.

55. In particular, the Federal Center’s decision states that it would resolve the election proceeding once this RRM proceeding is resolved because employer interference that denies workers’ rights to freedom of association and collective bargaining “could have directly affected the will of the workers in the election.” The Federal Center explained that it “must avoid validating alleged conduct, which must be clarified - dismissed or confirmed - once the procedure related to the Rapid Response Labor Mechanism in question is concluded.”

56. The Federal Center’s decision to effectively hold in abeyance its decision on the election proceedings makes clear that the Federal Center considers the finding of a Denial of Rights relevant in resolving domestic law issues related to the election. The Federal Center’s decision to take into account RRM proceedings makes eminent sense and demonstrates that there remains an avenue through Mexico’s domestic processes to remediate the Denials of Rights.

57. Additionally, it appears Mexico may utilize its domestic amparo process to address the irregularities that influenced the election. Mexico states in its Rebuttal Submission that the filing of an amparo by two workers with respect to the election results is “still ongoing,” although the amparo did not have the effect of suspending the election results because the workers failed to request such relief. Given that the amparo proceeding is ongoing, the Mexican authorities could effectuate through that proceeding its own determinations regarding the violations of Mexican law at Atento, or a determination by this Panel, along with any corresponding recommendations, that the Denials of Rights have not been remediated.

B. ADDITIONAL ACTION CAN BE TAKEN TO RESTORE THE RIGHTS OF ILLEGALLY FIRED WORKERS

58. A second step Mexico can take to remediate the Denials of Rights is to fully restore the rights of illegally fired workers. Under Articles 55 and 48 of the Federal Labor Law, when a worker is wrongfully terminated, that worker has a right to request reinstatement with full backpay and seniority.

59. Mexico identifies three forms of relief that dismissed workers have received, but none are sufficient to remediate the Denials of Rights. First, Atento provided some of the dismissed workers with three months’ salary. Second, Atento and certain other workers consented to a conciliatory agreement before the Mexican authorities, through which, if compensation was provided, the worker lost the option of being reinstated. Third, Atento rehired another subset of workers who, as Mexico explains, received a “new” employment relationship, such that the worker’s “previous labor rights no longer exist.”

60. In none of these scenarios has Atento acknowledged that it unlawfully dismissed its workers, even though Mexico and the United States found that Atento’s dismissals denied workers’ rights. And in no scenario are the workers made whole in the way reinstatement with

full back pay and seniority makes them whole. In fact, each form of relief converted the unlawful dismissal to a voluntary resignation, and has the effect of allowing Atento to interfere in union activity with impunity. This result cannot stand if the USMCA is to have any meaningful effect—to remediate Denials of Rights—as opposed to pretending that the violations of Mexican law never happened. Mexico claims that, because workers who consent to a conciliation agreement retain the ability to file a lawsuit against Atento, they are still able to effectuate their right to freedom of association and collective bargaining. But private litigation does not guarantee that workers will be able to successfully obtain full reinstatement.

C. ATENTO CAN PROVIDE STRM ACCESS TO ITS FACILITY TO ENGAGE IN REPRESENTATIONAL ACTIVITIES

61. The third step Mexico can take is to facilitate STRM’s ability to organize again at the facility. The United States understands that Mexico and Atento have discussed providing STRM access to the facility to communicate with workers for the purpose of organizing and engaging in other representational activities. If such an arrangement can be reached, and in the absence of an opportunity to otherwise meaningfully address the results of the representational vote, the United States considers that such access could be helpful in remediating the Denials of Rights. For example, Atento could provide STRM access to meeting rooms to enable the union to quickly and effectively exercise its rights and perform its duties to represent its members in defense of their rights. Mexico points to no provision of Mexican law that would prohibit Atento from providing access to STRM in this manner. Although Mexico contends that STRM’s access to the facility could place Atento’s commercial information at risk, should such an issue arise it could be handled under applicable law.

**D. MEXICAN LAW AUTHORIZES MEXICO TO SANCTION ATENTO TO
DETER DENIALS OF WORKERS’ RIGHTS TO FREEDOM OF
ASSOCIATION AND COLLECTIVE BARGAINING**

62. Mexico can also impose appropriate sanctions on Atento for its misconduct under its domestic processes to remediate the Denials of Rights. In its investigation report, Mexico acknowledged that, according to general principles of the International Labor Organization, “it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment.” Article 992 of the FLL empowers Mexico to sanction employers who commit “violations of labor standards.” Sanctions are appropriate against Atento, an employer who repeatedly violated its workers’ rights to freedom of association and collective bargaining, both to penalize these past actions and to help prevent their recurrence.

63. Based on the foregoing, therefore, the Panel may make recommendations for additional remediation actions that could be accomplished under Mexican law, if so requested by Mexico.

VI. CONCLUSION

64. In conclusion, as we have demonstrated in the U.S. Reply Submission, the U.S. Rebuttal Submission, and this Opening Statement, Atento’s conduct at the call center represents ongoing Denials of Rights that have not been remediated within the meaning of the Rapid Response Mechanism and the USMCA. Accordingly, the United States continues to respectfully request that the Panel issue a determination that Denials of Rights occurred at the Atento facility and that the Denials of Rights have not been remediated.

65. Mr. Chair, members of the Panel, this concludes our Opening Statement. We thank you for your attention and look forward to answering your questions.