

Leo W. Gerard
International President

July 23, 2010

Via E-mail and Certified mail - javierlozano@stps.gob.mx

Javier Lozano Alarcón
Secretary of Labor and Social Welfare
Avenida de la Reforma 93, Col. Tabacalera
México, D.F., México

Dear Secretary Lozano:

I am in receipt of your letters of June 21 and June 22, 2010, in which you respond to two news releases issued by the United Steelworkers. While I read them carefully, your arguments have only reinforced my conviction that the points our news releases and in the joint declaration issued by the USW and the SNTMMSSRM on June 20 accurately describe the attitude and conduct of the Mexican government toward Los Mineros, and in general toward democratic unions in Mexico.

Your fundamental argument is that there is no political persecution during the past five years for “fabricated charges” or opinions that Mr. Gomez Urrutia may have expressed, as the press release affirms, but merely the strict application of the law for the probable commission of crimes against union members.

What your letter does not say is that the Mexican courts have consistently and repeatedly rejected the charges made by both federal and state prosecutors. All of these charges derive from a single criminal investigation carried out by the Federal Attorney General (UEIDFF/FINM02/64/2006), based on the accusation by Elias Morales and other former Union members that the termination of a Trust on February 22, 2005 and the transfer of its’ assets to the Union violated the rights of individual Union members who were the intended beneficiaries of the Trust.

You assert that, “A total of 6,494 mineworkers demand the return of \$55 million removed, presumably, in an improper manner from a trust in which they were beneficiaries. To avoid these demands from the workers, Mr. Gomez Urrutia is outside the country, for which reason the Government of Mexico has formally asked the Government of Canada for his extradition.” In fact, only three individuals (all former members of the Union who had been expelled in 2000 for treason) signed the criminal complaints against Gómez: Elias Morales, Jose Martin Perales Lozano, and Miguel Castilleja Mendiola. Moreover, while it is true that you have requested Gómez’s

extradition, it is evident that the Government of Canada is not convinced, as it has not acted on your request.

The statute requires that prior to filing charges the prosecutor must obtain a technical opinion from the National Banking and Securities Commission (CNBV). The Technical Opinion in this case, issued 10 March, 2006, *specifically stated that the termination of the Trust Agreement did not violate Section 113 bis*: “From the ministerial actions analyzed, and particularly in reference to the cancelation of the Trust Agreement already mentioned in numerous occasions and the transference of the resources part of the trust's patrimony, there is no existing conduct that represents any of the special types foreseen by the Law of Credit Institutions and specially in the dispositions foreseen in article 113 *bis*, as stated by the petitioner.”

Having failed to meet the requirements for a federal prosecution, the Federal Attorney General then referred the report of the criminal investigation to prosecutors in three states: San Luis Potosí, Sonora, and Nuevo León, each of whom charged Gómez with aggravated fraudulent administration.

Charges in San Luis Potosí against Gómez, Juan Linares and Gregorio Pérez Romo were transferred to the 18th Criminal Court in the DF (Causa 79/2007). The 18th Criminal Court dismissed the charges against Gómez on 13 March 2009. The Public Prosecutor appealed. The Second Chamber of the Supreme Tribunal of the Federal District (TSJDF) on 9 September 2009 confirmed the ruling of the 18th Criminal Court (Toca 550/2009). Based on this decision, the Attorney General of the Federal District concluded that no crime had been committed and declined to prosecute further. *This case is definitively closed, in Gómez's favor.*

The charges in Sonora were transferred to the 51st Criminal Court in the DF (Causa 90/2009). Gómez moved for dismissal which was denied. On appeal, the Ninth Chamber of the TSJDF held that no crime had been committed, stating: “*From the moment in which the money from the sale of the shares which made up the assets of the Trust in question were transferred to the interbank account Number 012180001465910354 of BBVA Bancomer, of which the owner was the National Union of Mine and Metal Workers of the Mexican Republic, the ownership of the transferred deposit passed to this Union.*” (Toca de Apelación 706/2009, 6 January 2010). Based on this ruling, the Attorney General of the Federal District concluded that no crime had been committed and declined any further prosecution. *This case is definitively closed, in Gómez's favor.*

Charges in Nuevo León were transferred to the 32nd Criminal Court in the DF on 3 September 2008 (Causa 149/2006). Gómez moved for dismissal which was denied on 20 April 2010. Gómez has appealed this denial to the Third Chamber of the TSJDF (Toca 736/2010). On 8 July 2010, the Third Chamber *reversed this denial and dismissed the arrest warrant against Gómez* based on the prior court decisions that he had committed no crime.

All of the charges filed against Gómez by state prosecutors have now been dismissed, and there are no outstanding charges against him.

In 2008, seeing that the strategy of shifting prosecution to the states was failing, the Federal Attorney General requested an arrest warrant on the federal banking charges (113 bis), despite the CNBV technical opinion that no violation of this statute had occurred. The First Federal Court of Criminal Procedure issued the warrant (Case No. 140/2008) in September 2008. Gómez appealed, arguing that Section 113 bis of the Federal Law of Credit Institutions is unconstitutionally vague. The 7th District Amparo Judge in the DF *ruled in Gomez's favor, granting an amparo (injunction) against the arrest warrant* on 17 June

2009, but did not rule that Section 113 bis is unconstitutional (Amparo Indirecto 866/2008 y sus acumulados).

The Attorney General has appealed the decision of the 7th District Amparo Judge to the Fourth Collegiate Tribunal. The Federal Attorney General also filed money laundering charges against Gómez under Article 400 of the Federal Law of Credit Institutions. In investigation PGR/SIEDO/UEIORP/FAM/028/2006, based on the original investigation UEIDFF/FINM02/64/2006, the Attorney General asked for an arrest warrant for Gómez based on “operations with resources of illicit origin” (Case 75/2006-II), based once again on the theory that the transfer of funds from the trust to the union was illegal (and therefore that the transferred funds had an illicit origin). The 9th Judge of Federal Criminal Procedures based in the Federal District *refused to issue the warrant* on 3 June 2006.

The government appealed this decision to the Fifth Unitary Tribunal for Criminal Matters of the First Circuit, which *confirmed the denial of the arrest warrant* on 31 July 2006, holding that, “*in this case, far from there being indications that these resources had an illicit origin, their legal source or origin is demonstrated . . . it must be affirmed that the facts show clearly that the resources are property of the National Union of Mine, Metal and Related Workers of the Mexican Republic.*” (Toca 265/2006, foja 601, 31 julio 2006).

After a lapse of more than two years, the Federal Attorney General re-filed the charge in December 2008, and the 9th Criminal Court in the Federal District granted the arrest warrant on 2 September 2009 (Case No. 105/2009). On 26 February 2010, the 10th District Judge of Amparo *ordered the Criminal Court to cancel the arrest warrant* (Amparo 807/2009). The Federal Attorney General appealed to the First Collegiate Tribunal for Criminal Matters of the First Circuit. This appeal is pending (Revisión Principal 99/2010).

In short, *every single state and federal charge filed against Napoleón Gómez Urrutia has now been dismissed by the courts*, with only the government’s appeals of the federal charges pending. The judicial branch, whose independence you repeatedly invoke, has concluded that your Government’s incessant prosecution of Napoleón Gómez is a sham.

With respect to Juan Linares, who was arrested on 3 December 2008 and is currently imprisoned in the Reclusorio Norte in the Federal District, the 18th Criminal Court of the Federal District (Case No. 79/2007) *ordered his release on 14 December 2008 on the grounds that no evidence of a crime had been presented*. The Public Ministry appealed, and the Second Chamber of the TSDF *confirmed the judge’s release order* on 8 May 2009. On 6 August 2009 the Public Ministry investigating agent proposed dropping the charges, and this proposal was approved by the Coordination of Agents of the Public Ministry on 17 August 2009. *The Public Ministry determined that, “the complainants were not beneficiaries of the Trust, that there was no injury to the Trust; that the assets of the Trust belonged to the Union and that the Union’s disposition of these assets was an exercise of its autonomy as defined by ILO Convention 87, which Mexico has ratified; that there is no complaint nor injury to any protected right; that the trust was legally extinguished.”*

Despite these court decisions, your government continues to prosecute Juan Linares on a charge of violating Section 113 bis of the Federal law of Credit Institutions, based on the original investigation (UEIDFF/FINM02/64/2006). For this reason I, and the international trade union movement, consider Juan Linares to be a political prisoner unjustly imprisoned by the Mexican government because of his defense of freedom of association and his refusal to betray his union.

Your Secretariat has now three times, without any legal basis, refused to provide a legal acknowledgement (“toma de nota”) of the election of Napoleón Gómez as General

Secretary of Los Mineros. You point out that, “As one more proof that this supposed political persecution for five years is totally false, it suffices to recall that, in April 2007, Mr. Gomez Urrutia publicly recognized the Federal Government for conforming to the law when, in compliance with a resolution of a Circuit Collegiate Tribunal of the Federal Judicial Power, the STPS re-established the validity and legal effects of the registration of Mr. Gomez Urrutia as the General Secretary of the Mineworkers Union.”

But it is poor evidence of the rule of law when the best evidence you can present is that, after illegally removing Gómez from office for over a year, you reinstated him only when ordered by a court and only after the Committee on Freedom of Association issued a report stating that it, “considers that the labor authorities engaged in conduct that is incompatible with Article 3 of Convention No. 87, which establishes the right of workers to elect their representatives in full freedom.” (Report No. 350, Case No. 2478 (June 2008), para. 1408).

And your evidence is even poorer because, having reluctantly returned Gómez to office in 2007, you withheld the *toma de nota* again in June 2008, citing the same baseless criminal charges discussed above, and a third time just last week. These actions clearly violate of the principle established by the ILO Committee on Freedom of Association that, “in order to avoid the danger of serious limitation on the right of workers to elect their representatives in full freedom, complaints brought before labor courts by an administrative authority challenging the results of trade union elections should not – pending the final outcome of the judicial proceedings – have the effect of suspending the validity of such elections.” (Digest of Decisions, para. 441). As you know, the 2008 denial is now being reviewed by the Mexican Supreme Court, but regardless of this decision the international trade union movement will continue to insist that under Convention 87 it is the members of Los Mineros, not the officials of your Secretariat, who have the right to democratically elect their leaders.

In the case of Cananea, the actions of your government again demonstrate a systematic disregard for the rule of law. First, despite your contention that, “The suspension of work for 34 months in the principal copper mine of our country, Cananea, resulted from more than strictly labor-related motives,” the facts are that Mexican Collegiate Tribunals three times rejected the efforts of the Federal Labor Board, which you control, to declare the Cananea strike illegal. The Labor Board declared the strike illegal on 7 August 2007. The Fifth District Judge for Labor Matters in the Federal District *granted a temporary restraining order in favor of the Union* on 8 August 2007, a preliminary injunction on 15 August 2007, and a permanent injunction on 8 October 2007 (Docket No. PRAL 1313/2007 VI). This injunction was *affirmed by the First Collegiate Tribunal of the First Circuit* on 13 December 2007 (Docket No. RT-2381/2007). The Labor Board again declared the strike illegal on 4 January 2008. The Sixth District Judge for Labor Matters in the Federal District *granted a temporary restraining order in favor of the Union* on 11 January 2008 (Docket No. PRAL 1313/2007 VI). However, the terms of the order allowed the company to continue operating the mine with non-striking workers. The Union appealed this order to the Tenth Collegiate Tribunal of the First Circuit, which issued an *order affirming the legality of the strike and overruling the District Judge on the issue of allowing the mine to operate* (Docket No. QT-04/2008). The Sixth District Judge then issued a preliminary injunction against the Labor Board’s declaration on 18 January 2008 and a permanent injunction on 13 February 2008. The Board then declared the strike illegal for the third time on 5 December 2008. The Fifth District Judge for Labor Matters in the Federal District *granted a temporary restraining order in favor of the Union* on 10 December 2008 and a preliminary injunction on 16 December 2008 (Docket No. PRAL 2144/2008 IV). *The Sixth Collegiate Tribunal of the First Circuit affirmed* on 19 March 2009 (Docket No. RT-20/2009).

And in fact, the strike has never been declared illegal by the courts, despite the Board order dissolving labor relations, based on grave and fundamental violation of due process, which is now the subject of an appeal to the Inter-American Commission on Human Rights. It is therefore clear that your repeated arguments that, "The Mineworkers' union conditioned the lifting of this and other strikes on the resolution of extra-labor issues, such as the withdrawal of criminal charges against Mr. Napoleón Gómez Urrutia for probable responsibility for the diversion of \$55 million to the detriment of the mineworkers, and the demand for \$100 million for alleged moral damages, among others," held little weight with your own courts. Indeed, it is remarkable that you continue to make these assertions after admitting in public testimony before a committee of the Mexican Senate on March 3 of this year that in fact Gómez had never made such a demand for moral damages. (Senadores encaran a Javier Lozano por "violar los derechos laborales," La Jornada, March 4, 2010).

The Steelworkers, like the rest of the democratic trade union movement around the world, continue to believe that governments should not have the freedom to arbitrarily restrict the scope of issues over which a union can legally strike, as the labor law reform proposals advanced by your government would do. But in this case it is not even necessary to make that argument, since, by depriving Gómez of the right to lead his union in collective bargaining on the basis of unfounded criminal charges, it is your government that has linked these accusations to the strike.


Mr. Secretary, trade unions around the world clearly understand that the Mexican government's campaign to break the Cananea strike has nothing to do with the rule of law and everything to do with the defense of a powerful corporation with many friends and former employees in positions of political power. Just as clearly, we understand that there was nothing peaceful or lawful about this operation carried out with 4,000 federal police, using helicopters and tear gas in the dead of night. The injuries, arbitrary arrests and violations of the rights of the civilian population were well documented in the press and in the complaints that have been filed with the Sonora Human Rights Commission, the National Human Rights Commission, and the Inter-American Human Rights Commission. They join the litany of abuses against union members and other civilians including the attack in Cananea on January 11, 2008; the brutal beating of union delegate Mario García Ortiz on May 23, 2010; the murder of Juventino Flores Salas in Zacatacas on June 10, 2009; the murder of Reynaldo Hernández in Nacoziari on November 15, 2008; and, the murder of Hector Alvarez Gómez and Mario Alberto Castillo in Lázaro Cárdenas on April 20, 2006. None of these crimes has been investigated, and none of the killers has been brought to justice by your government, despite its alleged commitment to upholding the rule of law.

Finally, with respect to the process of dialogue between you and representatives of the U.S. and Canadian trade union movements: as I stated in our two meetings, we have been and continue to be interested in seeking a peaceful, negotiated solution to the conflict between your government and Los Mineros, and remain willing to take the necessary steps to facilitate a direct dialogue between the parties. I was encouraged when, in your meeting in Canada, you offered to take concrete steps towards securing the liberty of Juan Linares and releasing the frozen union funds. I was disappointed when your representative, Dr. Castro, made it clear that liberty for Juan Linares would be conditional upon abandoning the legitimate grievances of the workers at Cananea. And I was dismayed when your response to our willingness to dialogue turned out to be helicopters and tear gas.

Mr. Secretary, every one of your government's actions in this conflict has clearly demonstrated to the world that, far from having the slightest interest in legality, you seek only to twist the law, the institutions of justice and the workers to serve your own thirst for power and control. While I have no doubt that you do so with the clear intention of keeping Mexican workers low-paid and voiceless – indeed, your boast that, "2009 was the year that

registered the lowest number of strikes in 27 years,” is the clearest proof of that intention – such systematic violation of democracy and legality would not be justified even by a nobler motive. Until this cynical policy is abandoned, you may be assured that the Steelworkers, and the rest of the international democratic trade union movement, will continue our defense of the legitimate aspirations of Mexican workers to democratic representation and a better future for their children and their communities, and our public condemnation of your government for denying them these opportunities.

Very truly yours,

A handwritten signature in black ink that reads "Leo W. Gerard". The signature is written in a cursive style with a large initial "L" and a distinct "W".

Leo W. Gerard
International President

c: Richard Trumka, President – AFL-CIO
Ken Georgetti, President – Canadian Labor Congress