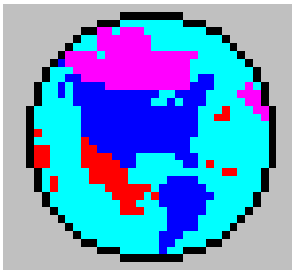
THE LAW OF
REGIONAL ECONOMIC INTEGRATION
IN THE AMERICAN HEMISPHERE



J.H.H. Weiler
University Professor, NYU
Joseph Straus Professor of Law and European Union Jean Monnet Chair,
NYU School of Law

AND

Sungjoon Cho
Assistant Professor of Law,
Chicago-Kent College of Law,
Illinois Institute of Technology

Unit XIII

Labor Cooperation

Table of Contents

Guiding Questions

1. In General --- There is a harsh criticism that NAALC is merely a product of a reluctant political compromise from both the US and Mexico. Remember that there was strong opposition from the labor unions in the US and Canada fearing the so-called "social dumping" when NAFTA was signed. Comment.

2. Dispute Settlement Mechanism --- What is the NAO's role in labor dispute resolution? Is it a screening mechanism? What is the role of ECE (Evaluation Committee of Experts)? Is it a panel?

3. Honeywell / GE case --- Please pay due attention to the nuance of the US NAO's findings and recommendations. Do you think such NAO's Report has any practical utility? Why did the NAO detail the complicated procedures in the Report?

I. Overview

* From the Official NAFTA Commission for Labor Cooperation Website
http://www.naalc.org/english/publications/review_part3.htm

Overview of Operation

The following is a description of the key elements and structures of the NAALC, as well as a brief summary of operations and activities (…). Information is organized under the headings of the NAALC itself: Parts One and Two of the Agreement contain its objectives, obligations and principles; Part Three establishes the institutional framework: the Commission for Labor Cooperation (Council of Ministers and Secretariat), and the National Administrative Offices. Parts Four and Five set out the procedural aspects of the Agreement: Cooperative Consultations and Evaluations and Dispute Resolution.

A.Parts One and Two of the NAALC: Objectives, Obligations and Principles

1.NAALC Objectives

The seven objectives of this Agreement are to:

a. improve working conditions and living standards in each Party's territory;
b. promote, to the maximum extent possible, the Labor Principles set out in Annex 1;
c. encourage cooperation to promote innovation and rising levels of productivity and quality;
d. encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;
e. pursue cooperative labor-related activities on the basis of mutual benefit;
f. promote compliance with and effective enforcement by each Party of its labor law; and
g. foster transparency in the administration of labor law.

2. NAALC Obligations

The six obligations undertaken by the Parties under the NAALC are:

Levels of Protection: affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its laws and regulations provide for high labor standards and shall strive to improve those standards;

Government Enforcement Action: each Party shall promote compliance with and effectively enforce its labor law through appropriate government actions;

Private Action: each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law;

Procedural Guarantees: each Party shall ensure that its proceedings for the enforcement of its labor law are fair, equitable and transparent;

Publication: each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application are made available; and

Public Information and Awareness: each Party shall promote public awareness of its labor law.

3. NAALC Principles

The core of the Agreement is its 11 Labor Principles, which define the scope of labor law coverage under the NAALC. These principles, which the Parties agree "to promote to the maximum extent possible," are the following (detailed descriptions are contained in NAALC Annex 1):

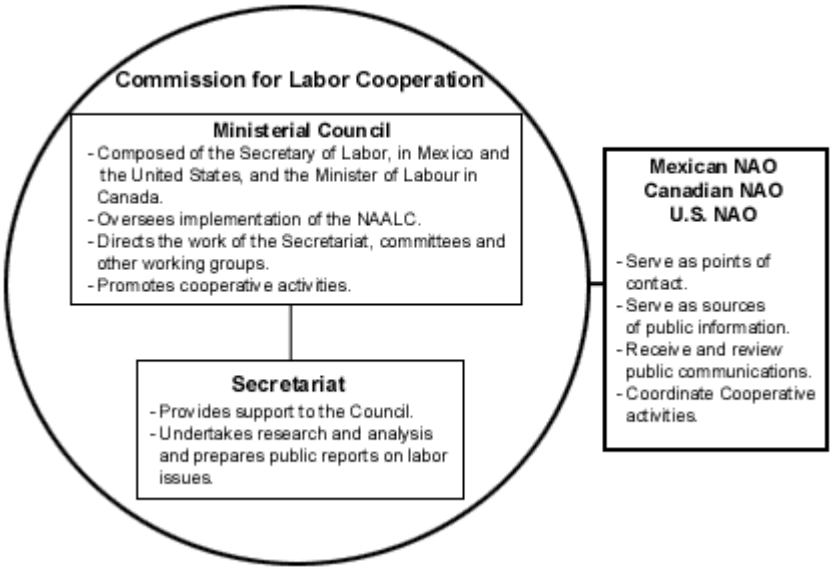
1.Freedom of association and protection of the right to organize.
2.The right to bargain collectively.
3.The right to strike.
4.Prohibition of forced labor.
5.Labor protections for children and young persons.
6.Minimum employment standards.
7.Elimination of employment discrimination.
8.Equal pay for women and men.
9.Prevention of occupational injuries and illnesses.
10.Compensation in cases of occupational injuries and illnesses.
11.Protection of migrant workers.

B. Part Three of the NAALC: Commission for Labor Cooperation

Institutions

In 1994, the first year of operation of the NAALC, the three countries focused on setting up and making operational two NAALC institutions. The national offices to be established by each government within its labor ministry, known as a National Administrative Office (NAO), and the ministerial-level Council. In 1995, the trinational Labor Secretariat was established in Dallas, Texas, U.S.A., and was officially inaugurated on September 26 of that year.

NAALC institutions are both international (the Council and Secretariat) and domestic (NAOs) in scope. Together, they provide an intergovernmental framework for the interaction of the full range of organizations and individuals involved in labor matters in the NAFTA countries: policy makers, administrators, employers, labor organizations, researchers and academics, legal practitioners, worker rights groups, and individuals.



1.The Commission for Labor Cooperation

The Commission for Labor Cooperation consists of a Ministerial Council and a Secretariat and is assisted by the NAO of each Party. Created by Article 8 of the NAALC, the Commission is the institutional framework of the NAALC and the focal point of trinational labor cooperation.

2.The Council of Ministers

The Council is composed of the cabinet-level Secretary (in Mexico and the United States) and Minister (in Canada) responsible for labor issues in each of the three NAFTA countries. Acting as a single entity, the Council is the governing body of the Commission and directs the activities of the Secretariat. The Council also promotes trinational cooperative activities on

a broad range of issues involving labor law, labor standards, labor relations and labor markets.

3.The Secretariat

The Secretariat is created to be the administrative arm of the Council. Its staff is drawn from the three NAFTA countries and includes labor economists, labor lawyers and other professionals with wide experience in labor affairs in their respective countries. They work in the three languages of North America - English, French and Spanish - in a unique multinational institution. The NAALC provides that the Secretariat shall be headed by an Executive Director, chosen for a three-year term, which may be renewed once. The Executive Director appoints, defines the responsibilities of, and supervises the Secretariat staff. The number of staff positions was initially set at 15 (subject to modification by the Council), with equitable proportions of the staff coming from each country.

Secretariat Functions

The Commission's Secretariat has three principal functions, the first of which is devoted to information. Under Article 14 of the Agreement, it undertakes research and analysis and prepares public reports and studies on:

h. labor law and administrative procedures;
i. trends and administrative strategies related to the enforcement of labor law;
j. labor market conditions such as employment rates, average wages and labor productivity;
k. human resource development issues such as training and adjustment programs; and
l. other matters as the Council may direct.

Second, the Secretariat provides support to Evaluation Committees of Experts (ECEs) and Arbitral Panels established by the Council. ECEs conduct trinational reviews, with findings and recommendations, on labor law enforcement in specified subject areas. Arbitral Panels resolve disputes among the governments, if any should arise, in connection with the specific obligations in the NAALC. The Secretariat publishes a list of matters resolved in consultations and evaluations carried out under the Agreement.

Third, the Secretariat serves as the general administrative arm of the Commission, assists the Council in exercising its functions, and provides such other support as the Council may direct. The Secretariat is meant to

enable the Council to carry out a wide variety of initiatives for which general provision is made under the NAALC.

4.The National Administrative Offices

The NAALC also requires each government to establish and maintain a National Administrative Office (NAO) within its labor ministry. The NAOs serve as points of contact and sources of information among themselves and with other government agencies, the Secretariat and the public.

The NAOs coordinate the cooperative activities of the Commission. These include seminars, conferences, joint research projects and technical assistance on matters covered by the 11 NAALC Labor Principles, as well as labor statistics, productivity and related matters. The NAOs can also engage in direct bilateral cooperative activities.

Another NAO function is to receive and respond to public communications regarding labor law matters arising in the territory of another Party. Each Party establishes its own domestic procedures for reviewing public communications and deciding what actions to take in response to requests made of them.

5.National Advisory and Governmental Committees

Articles 17 and 18 provide for the formation of National Advisory Committees and Governmental Committees to advise each Party on the implementation and further elaboration of the Agreement. The National Advisory Committee may comprise members of the public including representatives from labor and business organizations. The Governmental Committee may comprise representatives of federal and state or provincial governments.

All three countries have established a National Advisory Committee and a Governmental Committee.

Cooperative Activities of the NAOs

During the past four years the NAALC has provided the basis for an extensive program of trinational cooperative activities organized primarily by the National Administrative Offices. Under Article 11 of the NAALC, these activities have the purpose of improving the administration of labor laws, promoting greater understanding of each country's laws, policies and practices, and facilitating the exchange of information related to labor issues.

Each year since 1994 a Cooperative Work Program has been agreed upon by the three NAOs and approved by the Council. The annual programs have included meetings between labor officials of the three countries, joint sponsorship of public conferences and seminars, and specific agreements for sharing technical assistance and training.

The activities to date have addressed three broad issue areas: a) workplace safety and health; b) employment and training; and c) labor legislation and workers' rights. Article 11 also authorizes the Council to address other matters, whenever the Parties so agree. In the occupational safety and health area, activities have ranged from large-scale public conferences on topics such as high-hazard industries to smaller meetings of government officials, exchanges of technical information and expertise, and raining for inspectors. Labor law and worker rights have been the subjects of activities each year, including major conferences such as the one held in 1996 on Industrial Relations in the 21st Century. In regard to employment and training, a wide variety of programs have focused on issues such as women in the workforce, the growth of nonstandard employment, and child labor, which was the subject of two major events in 1997.

Cooperative activities have been carried out in two ways. The majority have been organized by the NAOs, either jointly or separately. Others have been directly assigned to the Secretariat by the Council.

Tables 1 and 2 below demonstrate, since the NAALC came into effect a total of 40 activities were undertaken. Many activities were large-scale events such as trinational conferences (three on occupational safety and health and one on labor law). The early cooperative activities concentrated primarily on occupational safety and health, in part because of the high level of interest among the Parties.

After the first year of implementation, the pace of cooperative activities slowed somewhat, and the focus became more diverse. The nature of the activities also changed, from training sessions and workshops, which dominated the 1994 cooperative program, to government-to-government meetings and large public conferences. From 1995-1997, an average of seven activities per year were organized. Among these were seminars linked to public communications received by the U.S. NAO, covering freedom of association and the right to organize.

In 1996 and 1997 other issues such as child labor and women in the workforce were incorporated more extensively into the cooperative activities work program.

Beginning in 1997 the Secretariat organized an annual conference on incomes and productivity in North America. This has been the primary

cooperative activity organized solely by the Secretariat, although it has supported the trinational cooperative work program and participated in most of the activities organized over the past four years.

(…)

Secretariat Activities

Since its official inauguration in September 1995, the Secretariat has undertaken a substantial program of publications intended to develop a new comparative information base for the public covering the fields of labor markets and labor law. It also conducted more specific studies related to various labor matters in North America (listed below) and provided support to a trilateral working group on rules of procedure for Evaluation Committees of Experts (ECEs).

(…)

C.Part Four of the NAALC: Cooperative Consultations and Evaluations

Public Communications

The NAALC provides in Article 16 that, "each NAO shall provide for the submission and receipt of public communications on labor law matters arising in the territory of another Party." Each Party has in fact established its own rules and procedures for receiving and reviewing public communications.

In general terms, the different national processes for reviewing public communications contain a number of common elements:

- petitioners submit communications concerning labor matters occurring in the territory of another party to the National Administrative Office of their government;
- the NAO determines the communication complies with its own requirements;
- if accepted, the NAO initiates a review of the communication, normally including consultations with affected NAOs, as well as other forms of information gathering;
- the NAO issues a public report, which may include a recommendation to its Minister of Labor regarding a request for Ministerial Consultations, as well as any other action to further the goals of the NAALC.

There are, however, also significant variations in the procedures. The Mexican review process, for instance, must be carried out "within a reasonable period of time," while the U.S. and Canadian procedures specify fixed time frames (60 days

to decide to accept a communication and 120 days to prepare a public report). There are also differences in how information is gathered. The Mexican process may involve "information sessions"; the Canadian process may involve a "public meeting or consultation." The U.S. process calls for a public hearing in every case "unless the Secretary determines that a hearing would not be a suitable method for carrying out the Office's [NAO's] responsibilities."

Since the Agreement came into force, there have been 14 submissions received by the NAOs (as of August 21, 1998). Nine of these have been received by the U.S. NAO related to issues arising in Mexico. Four communications were received by the Mexican NAO and related to labor law issues in the United States. One public communication was received by the Canadian NAO related to issues arising in Mexico. The specific issues raised in the public communication received by Canada were the subject of a previous submission to the U.S. NAO.

Article 22 of the NAALC allows any Party to request consultations with another Party at the ministerial level "regarding any matter within the scope of the Agreement." These consultations aim to resolve issues in a mutually beneficial manner in the cooperative spirit of the Agreement. As of June 1998, Article 22 was invoked on four occasions, three times by the United States and once by Mexico. Three of these cases involved freedom of association and/or the right to organize, and the other involved gender discrimination. On all four occasions, Canada endorsed the action plan agreed to at the Ministerial Consultations and participated in all resulting joint initiatives. Tables 3 and 4 provide a summary of communications received by the NAOs to date.

(…)

II. NAALC Text (Edited Version)

To download a full text, visit http://www.sice.oas.org/trade/nafta/naftatce.asp#labor

**NORTH AMERICAN AGREEMENT ON LABOR COOPERATION BETWEEN THE GOVERNMENT OF CANADA,
THE GOVERNMENT OF THE UNITED MEXICAN STATES AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

The Government of the United States of America, the Government of Canada and the Government of the United Mexican States:

RECALLING their resolve in the North American Free Trade Agreement (NAFTA) to:

- create an expanded and secure market for the goods and services produced in their territories,
- enhance the competitiveness of their firms in global markets,
- create new employment opportunities and improve working conditions and living standards in their respective territories, and
- protect, enhance and enforce basic workers' rights;

AFFIRMING their continuing respect for each Party's constitution and law;

DESIRING to build on their respective international commitments and to strengthen their cooperation on labor matters;

RECOGNIZING that their mutual prosperity depends on the promotion of competition based on innovation and rising levels of productivity and quality;

SEEKING to complement the economic opportunities created by the NAFTA with the human resource development, labor-management cooperation and continuous learning that characterize high-productivity economies;

ACKNOWLEDGING that protecting basic workers' rights will encourage firms to adopt high-productivity competitive strategies;

RESOLVED to promote, in accordance with their respective laws, high-skill, high-productivity economic development in North America by:

- investing in continuous human resource development, including for entry into the workforce and during periods of unemployment;
- promoting employment security and career opportunities for all workers through referral and other employment services;

- strengthening labor-management cooperation to promote greater dialogue between worker organizations and employers and to foster creativity and productivity in the workplace;
- promoting higher living standards as productivity increases;
- encouraging consultation and dialogue between labor, business and government both in each country and in North America;
- fostering investment with due regard for the importance of labor laws and principles;
- encouraging employers and employees in each country to comply with labor laws and to work together in maintaining a progressive, fair, safe and healthy working environment;

BUILDING on existing institutions and mechanisms in Canada, Mexico and the United States to achieve the preceding economic and social goals; and
CONVINCED of the benefits to be gained from further cooperation between them on labor matters;

HAVE AGREED AS FOLLOWS:

PART ONE

OBJECTIVES

Article 1: Objectives

The objectives of this Agreement are to:

(a) improve working conditions and living standards in each Party's territory;
(b) promote, to the maximum extent possible, the labor principles set out in Annex 1;
(c) encourage cooperation to promote innovation and rising levels of productivity and quality;
(d) encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;
(e) pursue cooperative labor-related activities on the basis of mutual benefit;
(f) promote compliance with, and effective enforcement by each Party of, its labor law; and
(g) foster transparency in the administration of labor law.

PART TWO

OBLIGATIONS

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, (…)

Article 4: Private Action

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law. (…)

Article 5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

(a) such proceedings comply with due process of law;
(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires; (…)

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.
(…)

Article 6: Publication

(…)

Article 7: Public Information and Awareness

(…)

PART THREE

COMMISSION FOR LABOR COOPERATION

Article 8: The Commission

1. The Parties hereby establish the Commission for Labor Cooperation.

2. The Commission shall comprise a ministerial Council and a Secretariat. The Commission shall be assisted by the National Administrative Office of each Party.

Section A: The Council

Article 9: Council Structure and Procedures

1. The Council shall comprise labor ministers of the Parties or their designees.

(…)

6. All decisions and recommendations of the Council shall be taken by consensus, except as the Council may otherwise decide or as otherwise provided in this Agreement.

Article 10: Council Functions

1. The Council shall be the governing body of the Commission and shall:

(a) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;
(b) direct the work and activities of the Secretariat and of any committees or working groups convened by the Council;
(c) establish priorities for cooperative action and, as appropriate, develop technical assistance programs on the matters set out in Article 11;
(d) approve the annual plan of activities and budget of the Commission;
(e) approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by the Secretariat, independent experts or working groups;
(f) facilitate Party-to-Party consultations, including through the exchange of information;
(g) address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement; and
(h) promote the collection and publication of comparable data on enforcement, labor standards and labor market indicators.

2. The Council may consider any other matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may agree.

(…)

Section B: The Secretariat

Article 12: Secretariat Structure and Procedures

1. The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term. The position of Executive Director shall rotate consecutively between nationals of each Party. The Council may remove the Executive Director solely for cause.

(…)

Article 13: Secretariat Functions

1. The Secretariat shall assist the Council in exercising its functions and shall provide such other support as the Council may direct.

2. The Executive Director shall submit for the approval of the Council the annual plan of activities and budget for the Commission, including provision for contingencies and proposed cooperative activities.

(…)

Article 14: Secretariat Reports and Studies

(…)

Section C: National Administrative Offices

Article 15: National Administrative Office Structure

1. Each Party shall establish a National Administrative Office (NAO) at the federal government level and notify the Secretariat and the other Parties of its location.

2. Each Party shall designate a Secretary for its NAO, who shall be responsible for its administration and management.

3. Each Party shall be responsible for the operation and costs of its NAO.

Article 16: NAO Functions

1. Each NAO shall serve as a point of contact with:
    (a) governmental agencies of that Party;
    (b) NAOs of the other Parties; and
    (c) the Secretariat.

2. Each NAO shall promptly provide publicly available information requested by:
    (a) the Secretariat for reports under Article 14(1);

(b) the Secretariat for studies under Article 14(2);
(c) a NAO of another Party; and
(d) an ECE.

3. Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures.

(…)

PART FOUR

COOPERATIVE CONSULTATIONS AND EVALUATIONS

Article 20: Cooperation

(…)

Section A: Cooperative Consultations

Article 21: Consultations between NAOs

1. A NAO may request consultations, to be conducted in accordance with the procedures set out in paragraph 2, with another NAO in relation to the other Party's labor law, its administration, or labor market conditions in its territory. The requesting NAO shall notify the NAOs of the other Parties and the Secretariat of its request.

2. In such consultations, the requested NAO shall promptly provide such publicly available data or information, including:

(a) descriptions of its laws, regulations, procedures, policies or practices,

(b) proposed changes to such procedures, policies or practices, and

(c) such clarifications and explanations related to such matters,

as may assist the consulting NAOs to better understand and respond to the issues raised.

3. Any other NAO shall be entitled to participate in the consultations on notice to the other NAOs and the Secretariat.

Article 22: Ministerial Consultations

1. Any Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond.

2. The requesting Party shall promptly notify the other Parties of the request. A third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on notice to the other Parties.

3. The consulting Parties shall make every attempt to resolve the matter through consultations under this Article, including through the exchange of sufficient publicly available information to enable a full examination of the matter.

Section B: Evaluations

Article 23: Evaluation Committee of Experts

1. If a matter has not been resolved after ministerial consultations pursuant to Article 22, any consulting Party may request in writing the establishment of an Evaluation Committee of Experts (ECE). The requesting Party shall deliver the request to the other Parties and to the Secretariat. Subject to paragraphs 3 and 4, the Council shall establish an ECE on delivery of the request.

2. The ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice by each Party in the enforcement of its occupational safety and health or other technical labor standards as they apply to the particular matter considered by the Parties under Article 22.

3. No ECE may be convened if a Party obtains a ruling under Annex 23 that the matter:

(a) is not trade-related; or

(b) is not covered by mutually recognized labor laws.

4. No ECE may be convened regarding any matter that was previously the subject of an ECE report in the absence of such new information as would warrant a further report.

(…)

Article 25: Draft Evaluation Reports

1. Within 120 days after it is established, or such other period as the Council may decide, the ECE shall present a draft report for consideration by the Council, which shall contain:

(a) a comparative assessment of the matter under consideration;

(b) its conclusions; and

(c) where appropriate, practical recommendations that may assist the Parties in respect of the matter.

2. Each Party may submit written views to the ECE on its draft report. The ECE shall take such views into account in preparing its final report.

Article 26: Final Evaluation Reports

1. The ECE shall present a final report to the Council within 60 days after presentation of the draft report, unless the Council otherwise decides.

2. The final report shall be published within 30 days after its presentation to the Council, unless the Council otherwise decides.

3. The Parties shall provide to each other and the Secretariat written responses to the recommendations contained in the ECE report within 90 days of its publication.

4. The final report and such written responses shall be tabled for consideration at the next regular session of the Council.

The Council may keep the matter under review.

PART FIVE

RESOLUTION OF DISPUTES

Article 27: Consultations

1. Following presentation to the Council under Article 26(1) of an ECE final report that addresses the enforcement of a Party's occupational safety and health, child labor or minimum wage technical labor standards, any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce such standards in respect of the general subject matter addressed in the report.

2. The requesting Party shall deliver the request to the other Parties and to the Secretariat.

3. Unless the Council otherwise provides in its rules and procedures established under Article 9(2), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to the Secretariat.

4. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

Article 28: Initiation of Procedures

1. If the consulting Parties fail to resolve the matter pursuant to Article 27 within 60 days of delivery of a request for consultations, or such other period as the consulting Parties may agree, any such Party may request in writing a special session of the Council.

2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Parties and to the Secretariat.

3. Unless it decides otherwise, the Council shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.

4. The Council may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council, by a two-thirds vote, so decides.

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the consulting Parties are party, it shall refer the matter to those Parties for appropriate action in accordance with such other agreement or arrangement.

Article 29: Request for an Arbitral Panel

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 28, the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards is:

(a) trade-related; and

(b) covered by mutually recognized labor laws.

2. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and the Secretariat. The notice shall be delivered at the earliest

possible time, and in any event no later than seven days after the date of the vote of the Council to convene a panel.

3. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Article 30: Roster

1. The Council shall establish and maintain a roster of up to 45 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party or the Secretariat; and

(d) comply with a code of conduct to be established by the Council.

Article 31: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 30.

2. Individuals may not serve as panelists for a dispute where:

(a) they have participated pursuant to Article 28(4) or participated as members of an ECE that addressed the matter; or

(b) they have, or a person or organization with which they are affiliated has, an interest in the matter, as set out in the code of conduct established under Article 30(2)(d).

Article 32: Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are

unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days a chair who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 30 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 30 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

(…)

Article 36: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the disputing Parties and on any information before it pursuant to Article 35.

2. Unless the disputing Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the disputing Parties an initial report containing:

(a) findings of fact;

(b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards in a matter that is trade-related and covered by mutually recognized labor laws, or any other determination requested in the terms of reference; and

(c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

(a) request the views of any participating Party;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article 37: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. The disputing Parties shall transmit to the Council the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

3. The final report of the panel shall be published five days after it is transmitted to the Council.

Article 38: Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, the disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

Article 39: Review of Implementation

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, and:

> (a) the disputing Parties have not agreed on an action plan under Article 38 within 60 days of the date of the final report, or
>
> (b) the disputing Parties cannot agree on whether the Party complained against is fully implementing
>
> > (i) an action plan agreed under Article 38,
> >
> > (ii) an action plan deemed to have been established by a panel under paragraph 2, or
> >
> > (iii) an action plan approved or established by a panel under paragraph 4,

any disputing Party may request that the panel be reconvened. The requesting Party shall deliver the request in writing to the other Parties and to the Secretariat. The Council shall reconvene the panel on delivery of the request to the Secretariat.

2. No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the disputing Parties have not agreed to an action plan and if no request was made under paragraph 1(a), the last action plan, if any, submitted by the Party complained against to the complaining Party or Parties within 60 days of the date of the final report, or such other period as the disputing Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

> (a) agreed under Article 38,
>
> (b) deemed to have been established by a panel under paragraph 2, or

(c) approved or established by a panel under paragraph 4, and only during the term of any such action plan.

4. Where a panel has been reconvened under paragraph 1(a), it:

(a) shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and

(i) if so, shall approve the plan, or

(ii) if not, shall establish such a plan consistent with the law of the Party complained against, and

(b) may, where warranted, impose a monetary enforcement assessment in accordance with Annex 39, within 90 days after the panel has been reconvened or such other period as the disputing Parties may agree.

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:

(a) the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

(b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 39, within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

Article 40: Further Proceeding

A complaining Party may, at any time beginning 180 days after a panel determination under Article 39(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Parties and the Secretariat, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

Article 41: Suspension of Benefits

1. Subject to Annex 41A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel:

(a) under Article 39(4)(b), or

(b) under Article 39(5)(b), except where benefits may be suspended under paragraph 2(a),

any complaining Party or Parties may suspend, in accordance with Annex 41B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.

2. Subject to Annex 41A, where a panel has made a determination under Article 39(5)(b) and the panel:

(a) has previously imposed a monetary enforcement assessment under Article 39(4)(b) or established an action plan under Article 39(4)(a)(ii), or

(b) has subsequently determined under Article 40 that a Party is not fully implementing an action plan,

the complaining Party or Parties may, in accordance with Annex 41B, suspend annually the application to the Party complained against of NAFTA benefits in an amount no greater than the monetary enforcement assessment imposed by the panel under Article 39(5)(b).

3. Where more than one complaining Party suspends benefits under paragraph 1 or 2, the combined suspension shall be no greater than the amount of the monetary enforcement assessment.

4. Where a Party has suspended benefits under paragraph 1 or 2, the Council shall, on the delivery of a written request by the Party complained against to the other Parties and the Secretariat, reconvene the panel to determine whether the monetary enforcement assessment has been paid or collected, or whether the Party complained against is fully implementing the action plan, as the case may be. The panel shall submit its report within 45 days after it has been reconvened. If the panel determines that the assessment has been paid or collected, or that the Party complained against is fully implementing the action plan, the suspension of benefits under paragraph 1 or 2, as the case may be, shall be terminated.

5. On the written request of the Party complained against, delivered to the other Parties and the Secretariat, the Council shall reconvene the panel to determine whether the suspension of benefits by the complaining Party or Parties pursuant to paragraph 1 or 2 is manifestly excessive. Within 45 days of the request, the panel shall present a report to the disputing Parties containing its determination.

PART SIX

GENERAL PROVISIONS

Article 42: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Article 43: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

(…)

Article 45: Cooperation with the ILO

The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 24(1).

(…)

Article 49: Definitions

1. For purposes of this Agreement:

A Party has not failed to "effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards" or comply with Article 3(1) in a particular case where the action or inaction by agencies or officials of that Party:

> (a) reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or
>
> (b) results from bona fide decisions to allocate resources to enforcement in respect of other labor matters determined to have higher priorities;

"**labor law**" means laws and regulations, or provisions thereof, that are directly related to:

> (a) freedom of association and protection of the right to organize;
>
> (b) the right to bargain collectively;
>
> (c) the right to strike;
>
> (d) prohibition of forced labor;
>
> (e) labor protections for children and young persons;

(f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;

(g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;

(h) equal pay for men and women;

(i) prevention of occupational injuries and illnesses;

(j) compensation in cases of occupational injuries and illnesses;

(k) protection of migrant workers;

"**mutually recognized labor laws**" means laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations under Article 22 that address the same general subject matter in a manner that provides enforceable rights, protections or standards;

"**pattern of practice**" means a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case;

"**persistent pattern**" means a sustained or recurring pattern of practice;

"**province**" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors;

"**publicly available information**" means information to which the public has a legal right under the statutory laws of the Party;

"**technical labor standards**" means laws and regulations, or specific provisions thereof, that are directly related to subparagraphs (d) through (k) of the definition of labor law. For greater certainty and consistent with the provisions of this Agreement, the setting of all standards and levels in respect of minimum wages and labor protections for children and young persons by each Party shall not be subject to obligations under this Agreement. Each Party's obligations under this Agreement pertain to enforcing the level of the general minimum wage and child labor age limits established by that Party;

"**territory**" means for a Party the territory of that Party as set out in Annex 49; and

"**trade-related**" means related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

(a) traded between the territories of the Parties; or

(b) that compete, in the territory of the Party whose labor law was the subject of ministerial consultations under Article 22, with goods or services produced or provided by persons of another Party.

(…)

PART SEVEN

FINAL PROVISIONS

Article 50: Annexes

The Annexes to this Agreement constitute an integral part of the Agreement.

(…)

ANNEX 1

LABOR PRINCIPLES

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the Parties, such as

compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

9. Prevention of occupational injuries and illnesses

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

10. Compensation in cases of occupational injuries and illnesses

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

11. Protection of migrant workers

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

(…)

III. NAO Status of Submissions

http://www.dol.gov/ILAB/programs/nao/status.htm
(From the U.S. Department of Labor Website)

STATUS OF SUBMISSIONS UNDER THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION (NAALC)

Updated July, 2006

TABLE OF CONTENTS

OVERVIEW

Thirty-four submissions have been filed under the North American Agreement on Labor Cooperation (NAALC). Twenty-one were filed with the U.S. NAO of which nineteen involved allegations against Mexico and two against Canada. Eight were filed with the Mexican NAO and involved allegations against the United States. Five submissions have been filed in Canada, three raising allegations against Mexico and two raising allegations against the United States.

Sixteen of the twenty submissions filed with the U.S. NAO involved issues of freedom of association and eight of them also involved issues of the right to bargain collectively. Two submissions (9802) (2005-03) concerned the use of child labor, one (9701) raised issues of pregnancy-based gender discrimination; three (9801, 2005-01, 2005-03) concerned the right to strike; five (9403, 9901, 2003-01, 2004-01, 2005-03) concerned minimum employment standards; and seven (9702, 9703, 9901, 2000-01, 2003-01, 2004-01, 2005-03) raised issues of occupational safety and health.

Of the submissions filed to date with the U.S. NAO, four (940004, 9602, 9803, and 2004-01) were withdrawn by the submitters before hearings were held or the review process completed. Hearings were held on ten (940001, 940002, 940003, 9601, 9701, 9702, 9703, 9901, 2000-01, 2003-01). Eight of the U.S. submissions (940003, 9601, 9701, 9702, 9703, 9901, 2000-01, 2003-01) have gone to ministerial-level consultations. The U.S. NAO declined to accept submissions 9801, 9802, 9804, 2001-01, 2005-01, and 2005-02 for review.

Mexican NAO submissions 9501, 9801, 9802, 9803, 9804 resulted in ministerial consultations. Canadian NAO submission CAN 98-1 resulted in ministerial consultations. Canada declined to accept submissions CAN 98-2, CAN 99-1, and CAN 05-01 for review.

SUBMISSIONS

UNITED STATES

U.S. NAO Submissions No. 940001 and 940002 (HONEYWELL & GENERAL ELECTRIC) were submitted on February 14, 1994, by the International Brotherhood of Teamsters (IBT) and the United Electrical, Radio, and Machine Workers of America (UE) respectively. The submissions concerned the operations of subsidiaries of the Honeywell Corporation and the General Electric Corporation in Mexico. Both submissions alleged that workers had been deprived of their freedom of association insofar as they had not been permitted to organize into the unions of their choice. Both cases were accepted for review by the NAO on April 15, 1994.

Information was collected and a joint hearing was conducted by the NAO on the two submissions was conducted on September 12, 1994. In its Public Report issued on October 12, 1994, the NAO concluded that the information was insufficient to establish that the Government of Mexico failed to enforce its labor laws. Accordingly, the NAO did not recommend ministerial consultations. Nevertheless, acknowledging the strong concerns raised in the allegations with regard to the freedom of association and the right to organize of workers, the NAO recommended that the U.S., Mexico, and Canada, develop joint cooperative programs to address these issues.

U. S. NAO Submission 940003 (SONY) was filed on August 16, 1994, by four workers' rights and human rights organizations, headed by the International Labor Rights Education and Research Fund (ILRERF). The submission concerned the operations of a subsidiary of the Sony Corporation in Mexico and involved allegations concerning freedom of association and the right to organize. Following the information gathering process and the conduct of a public hearing on February 13, 1995, the NAO issued a report on April 11, 1995, recommending ministerial consultations on the issue of union registration in Mexico. The ministers reached an agreement on implementation of ministerial consultations which included a series of programs designed to publicly address these concerns in all three countries and these were completed during 1995 and 1996.

The submitters in the case subsequently requested that the Ministerial Consultations be reopened, arguing that the problems raised in the original submission continued. The Secretary of Labor directed the NAO to conduct a follow-up review of the issues raised in the submission, and a related Mexican Supreme Court Decision, and submit a report to him. The NAO conducted the follow-up review as directed and a report was issued on December 4, 1996.

U.S. NAO Submission 940004 (GENERAL ELECTRIC) was filed by the United Electrical, Radio, and machine Workers (UE) against a subsidiary of the General Electric Corporation in Mexico. The UE withdrew the submission on January 25, 1995, prior to the completion of the review process.

U.S. NAO Submission 9601 (SUTSP) was filed with the U.S. NAO on June 13, 1996. It was submitted by three labor rights/human rights groups: the International Labor Rights Fund (ILRF), Human Rights Watch/Americas (HRW), and the Mexican National Association of Democratic Lawyers (ANAD). The submission raised issues of freedom of association for federal workers and questioned the impartiality of the labor tribunals reviewing these issues.

U.S. NAO Submission 9601 was accepted for review on July 29. A hearing was conducted on December 3, 1996, at the Department of Labor in Washington, D.C. A report, recommending ministerial consultations on the status of international treaties and constitutional provisions protecting freedom of association, was issued on January 27, 1997. Pursuant to the consultations, the Departments of Labor of Mexico, Canada, and the U.S. agreed to exchange sufficient publicly available information to permit a full examination of the issues raised in the submission. This included a seminar, open to the public, which was held in Baltimore, Maryland, on December 4, 1997.

On December 3, 1997, the submitters filed a request for reconsideration on the ground that some of the issues raised in the original submission were not adequately addressed by the NAO in its report. The NAO declined this request on the ground that the issues raised had been adequately reviewed.

U.S. NAO Submission 9602 (MAXI-SWITCH) was filed with the U.S. NAO by the Communications Workers of America (CWA), the Union of Telephone Workers of Mexico (STRM), and the Federation of Goods and Services Companies (FESEBS) of Mexico on October 11, 1996. This submission raised issues of freedom of association for workers attempting to organize a union at a facility owned by Maxi-Switch, S.A. de C.V., in Cananea, Sonora, Mexico. The company produces and markets high-tech keyboards for computers and computer games and is owned by Silitek Corporation of Taiwan.

The NAO accepted this submission for review on December 10, 1996. A hearing was scheduled to be held in Tucson, Arizona, on April 18, 1997. On April 16 the submitters informed the NAO that the issues raised in the submission had come to a favorable resolution and that they were withdrawing the submission.

U.S. NAO Submission No. 9701 (GENDER DISCRIMINATION) was filed on May 16, 1997, by Human Rights Watch, the International Labor Rights Fund (ILRF), and the National Association of Democratic Lawyers (ANAD) of Mexico. The submission raised issues of gender-based discrimination in Mexico's export processing (maquiladora) industry. The submission contained allegations that the companies, many of which are subsidiaries of U.S. companies, regularly require female job applicants to verify their pregnancy status as a condition of employment and deny employment to pregnant women. Additionally, the submission included allegations that some maquiladora employers mistreat and/or discharge pregnant employees in order to avoid payment of maternity benefits. The U.S. NAO accepted the submission for review on July 14, 1997 and a public hearing was conducted in Brownsville, Texas, on November 19, 1997.

The NAO issued its Public Report of Review on the submission on January 12, 1998, recommending ministerial level consultations for the purpose of ascertaining the extent of the protections against pregnancy-based gender discrimination afforded by Mexico's laws and their effective enforcement by the appropriate authorities.

A Ministerial Consultations Implementation Agreement was signed on October 21, 1998, and the three parties agreed to meet and confer on the issues raised in submission 9701 as well as coordinate a conference. As part of the agreement, Mexico and the United States also agreed to conduct outreach sessions to educate workers close to the U.S.-Mexico border.

Pursuant to the Ministerial Consultations Implementation Agreement, on March 1-2, 1999, the *Protecting the Labor Rights of Working Women* conference was held in Mérida, Yucatán, Mexico. This conference served as a forum to discuss the laws and programs that protect the employment rights of women in Mexico, Canada, and the United States. Representatives from the Mexican Department of Labor stated that federal labor law in Mexico prohibits employers from denying workers employment for reasons of age or sex. Mexican officials announced that employment discrimination, both pre- and post-hire, on the basis of gender and pregnancy is illegal under Mexican law.

As follow-up to this conference, on August 17-18, 1999, the United States and Mexico held individual outreach sessions in McAllen, Texas and Reynosa, Tamaulipas to educate women workers about their rights in the workplace. These events along the U.S. - Mexico border provided women workers and employers the opportunity to learn about workers' legal protections and employer obligations in the workplace. Mexico held a second outreach session in Puebla, Mexico on May 30, 2000.

As part of the 9701 Ministerial Agreement, the Secretariat is compiling a comprehensive public report for the Ministers that reflects the issues raised at the outreach sessions and the conference held in Mérida.

U.S. NAO Submission No. 9702 (HAN YOUNG) was filed on October 30, 1997 by the Support Committee for Maquiladora Workers (SCMW), the International Labor Rights Fund (ILRF), the National Association of Democratic Lawyers (ANAD) of Mexico, and the Union of Metal, Steel, Iron, and Allied Workers (*Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares - STIHMACS*) of Mexico. An amendment detailing safety and health issues was submitted on February 9, 1998. The amendment was filed by the Maquiladora Health and Safety Support Network, Worksafe! Southern California, the United Steelworkers of America (USWA), the United Auto Workers (UAW), and the Canadian Auto Workers (CAW).

Submission 9702 raised primarily freedom of association issues involving workers at the Han Young export processing (*maquiladora*) plant in Tijuana, Baja California, Mexico. The submitters alleged that workers at the plant who attempted to organize a union were intimidated and threatened by the company and some of the workers were fired. Han Young has since transferred its operations to another location.

The NAO accepted the submission for review on November 17, 1997. A public hearing was held in San Diego, California, on February 18, 1998. The U.S. NAO issued a public report on April 28, 1998 recommending ministerial level consultations to discuss strategies being considered by the Government of Mexico to ensure that workers' freedom of association and right to bargain collectively are protected.

Submission 9702 also raised issues of the health and safety of the workers employed at the Han Young plant. These issues were addressed in a separate report issued on August 6, 1998. In this report, the NAO recommended ministerial level consultations on the safety and health issues raised.

The U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare signed a ministerial agreement for U.S. NAO Submission Nos. 9702 and 9703 on May 18, 2000. Under this agreement, the Government of Mexico held a public seminar on June 23, 2000, in Tijuana on the principles of freedom of association and the right to bargain collectively.

As part of the ministerial agreement, the Mexican Department of Labor and Social Welfare will continue promoting the registry of collective bargaining contracts in conformity with established labor legislation. Mexico also has agreed to conduct a trilateral seminar to discuss law and practice governing Mexican labor boards, including the rules and procedures to assure their impartiality. In addition, U.S. and Mexican experts will participate in a government-to-government meeting concerning the occupational safety and health issues raised in the two submissions.

U.S. NAO Submission No. 9703 (ITAPSA) was filed on December 15, 1997, by the Echlin Workers Alliance, a group of unions from the United States and Canada, which

includes the Teamsters; the United Auto workers; the Canadian Auto Workers; UNITE; the United Electrical, Radio and Machine Workers of America; the Paperworkers; and the Steelworkers. Twenty-four additional organizations, including non-governmental organizations, human rights groups and labor unions from the three NAFTA countries, are cited as concerned organizations in the submission. Subsequently, the AFL-CIO, the CLC (of Canada), and the UNT (of Mexico) joined the submission.

The submission alleged violation of freedom of association at the Itapsa export processing plant in Ciudad de los Reyes, in the State of Mexico. The submitters alleged that when workers at the facility attempted to organize an independent union, they faced intimidation and harassment from the company and the existing union, the Confederation of Mexican Workers (CTM), including threats of physical violence and job loss. The submitters alleged that Mexican government authorities are aware of the situation and have taken no remedial action.

In terms of occupational safety and health, the submission alleged that workers were exposed to asbestos and other toxic substances without adequate personal protective equipment (PPE).

The NAO accepted this submission for review on January 30, 1998. A public hearing was held in Washington, D.C. on March 23, 1998. The NAO issued its public report on this submission on July 31, 1998, recommending ministerial level consultations on the freedom of association and the safety and health issues raised.

On May 18, 2000, the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare signed a ministerial agreement for U.S. NAO Submission Nos. 9702 and 9703. As part of the agreement, Mexico will make efforts to promote that workers be provided information pertaining to collective bargaining agreements existing in their place of employment and to promote the use of eligible voter lists and secret ballot elections in disputes over the right to hold the collective bargaining contract.

Under the ministerial agreement, the Government of Mexico held a public seminar on June 23, 2000, in Tijuana on the principles of freedom of association and the right to bargain collectively. Mexico also has agreed to conduct a trilateral seminar to discuss law and practice governing Mexican labor boards, including the rules and procedures to assure their impartiality. In addition, U.S. and Mexican experts will participate in a government-to-government meeting concerning the occupational safety and health issues raised in the two submissions.

U.S. NAO Submission No. 9801 (FLIGHT ATTENDANTS) was filed on August 17, 1998, by the Association of Flight Attendants, AFL-CIO. The submission raised issues of freedom of association related to a strike by flight attendants employed by Aerovías de México, S.A. de C.V. (Aeroméxico) on May 31-June 1, 1998. The submitter argued that the Government of Mexico took over operations of that company when the union began a

legal strike, therefore compelling the workers to return to work or face possible replacement.

In accordance with its procedural guidelines, the NAO declined to accept the submission for review on October 19, 1998, however it agreed to undertake a research project to evaluate how the three NAALC countries reconcile the issue of the right to strike with national interests of safety, security, and general welfare.

U.S. NAO Submission No. 9802 (TOMATO/CHILD LABOR) was filed by the Florida Tomato Exchange on September 28, 1998, and raised the issue of the use of child labor in the production of fruit and vegetables in Mexico. In accordance with its procedural guidelines, the NAO held this submission in abeyance for a year for the submitters to provide further information. No additional information was provided and the case was closed as of October 4, 1999.

U.S. NAO Submission No. 9803 (MCDONALD'S) was filed on October 19, 1998 by the International Brotherhood of Teamsters, Teamsters Canada, the Quebec Federation of Labor, Teamsters Local 973 (Montreal), and the International Labor Rights Fund.

Submission 9803 raised issues of anti-union motivated plant closing; delays in the union certification procedure; and problems related to the certification process in cases involving multiple employers or multiple business locations based on the franchise system of corporate ownership. The issues arose from efforts to organize employees of a McDonald’s restaurant in the city of St.-Hubert, Quebec, Canada.

The NAO accepted the submission for review on December 18, 1998. Pursuant to the request of the submitters, the NAO ended its review on April 21, 1999 after consultations with the Canadian NAO and the government of Quebec. The submitting labor organizations reached an agreement with the government of Quebec to have the issues of sudden and anti-union motivated plant closings raised in the submission studied by a provincial council.

U.S. NAO Submission 9804 (RURAL MAIL COURIERS) was filed on December 2, 1998 with the U.S. NAO by the Organization of Rural Route Mail Couriers, Canadian Union of Postal Workers, National Association of Letter Carriers, and several other labor organizations in the United States, Mexico, and Canada.

The submission raised concerns about the *Canada Post Corporation Act*, which includes a provision that denies rural route mail couriers the right to bargain collectively. The submitters alleged that rural route mail couriers do not have adequate protection for

occupational injuries and illnesses and protection against employment discrimination.

In accordance with procedural guidelines, on February 1, 1999 the NAO declined to accept the submission for review.

U.S. NAO Submission 9901 (TAESA) was filed on November 10, 1999 by the Association of Flight Attendants (AFA) and the Association of Flight Attendants of Mexico (ASSA).

The submission raises concerns about freedom of association, minimum employment standards, and occupational safety and health at the privately owned Mexican airline company, Executive Air Transport, Inc. (TAESA). Specifically, the submitters allege that the union election process at TAESA inhibited flight attendants' right to organize and bargain collectively and in the end, led to the dismissal of those workers who voted for ASSA. The submitters also allege that the Mexican government failed to enforce compliance of minimum labor standards, including payment of overtime and mandatory contributions for social security, pensions, and housing. In terms of occupational safety and health, the submitters allege that TAESA provided inadequate safety training, unsafe flight conditions, and forced flight attendants to work more than the maximum number of permitted hours in flight.

On January 7, 2000, the NAO accepted the submission for review. A public hearing was held in Washington, D.C. on March 23, 2000. The NAO issued its public report on this submission on July 7, 2000, recommending ministerial consultations. The U.S. Secretary of Labor formally requested ministerial consultations on July 17, 2000. The Mexican Secretary of Labor formally accepted the request for ministerial consultations on July 24, 2001.

Consistent with the Ministerial Consultations Joint Declaration signed June 11, 2002 by Secretaries Chao and Abascal, the U.S. and Mexico will undertake a series of efforts to address the issues raised in U.S. Submission 9901. This will include a public seminar to be held in Mexico regarding the different types of unions in each country (e.g. craft or guild unions, company-wide unions, sector or industry unions) and their relevant rights related to freedom of association and collective bargaining, in a public seminar.

U.S. NAO Submission 2000-01 (AUTO TRIM/CUSTOM TRIM) was filed on July 3, 2000, by the Coalition for Justice in the Maquiladoras, current and former workers, and 22 other unions and non-governmental organizations. The submission raises concerns about occupational safety and health and compensation in cases of occupational injuries and illnesses at Auto Trim of Mexico in Matamoros, Tamaulipas, and at Custom Trim/Breed Mexicana at Valle Hermoso, Tamaulipas. The U.S. NAO accepted the submission for review on September 1, 2000. A public hearing was conducted in San

Antonio, TX on December 12, 2000 and a site visit was conducted January 22-24, 2001 during which a team composed of NAO staff and industrial hygienists visited the Breed facilities and met with workers.

The NAO issued its Public Report of Review on April 6, 2001, recommending ministerial-level consultations. The U.S. Secretary of Labor formally requested ministerial consultations on June 25, 2001. The Mexican Secretary of Labor formally accepted the request for ministerial consultations on July 24, 2001.

Consistent with the Ministerial Consultations Joint Declaration signed June 11, 2002 by Secretaries Chao and Abascal, the U.S. and Mexico will address the issues raised in Submission 2000-01, through the establishment of a bilateral working group of government experts on occupational safety and health issues, who are to be tasked with discussion and review of issues raised in the public communications, the formulation of technical recommendations for consideration by governments, the development and evaluation of technical cooperation projects on occupational safety and health for improving occupational safety and health in the workplace, and the identification of other occupational safety and health issues appropriate for bilateral collaboration. Cooperative activities may emphasize, among other things, best practices in the prevention of occupational injuries and illnesses specifically related to handling hazardous substances, labor-management cooperation mechanisms and ergonomics. To date, the working group has focused on Occupational Safety and Health Management Systems and Voluntary Protection Programs (VPP), Handling of Hazardous Substances, Inspector and Technical Assistance Staff Training, and the development of the Tri-national Web Page.

U.S. NAO Submission 2001-01 (DURO BAG) was filed on June 29, 2001 by the AFL-CIO and PACE. The submission raises concerns about a union representation election at a Duro Bag Manufacturing Corporation facility in Rio Bravo, Tamaulipas, Mexico. Duro Bag is a producer of premium shopping bags for retail sales and is based in Ludlow, Kentucky. The submission alleges that Mexico violated the right of workers to a free, fair election of their bargaining representative by rejecting a request for a secret ballot election at a neutral location and under conditions free of management coercion. After consideration of the submission, the U.S. NAO determined that a review would not further the objectives of the NAALC and, on February 22, 2002, declined to accept it for review.

U.S. NAO Submission 2003-01 (PUEBLA) was filed on September 30, 2003 by the United Students Against Sweatshops (USAS) and the Centro de Apoyo al Trabajador concerning conditions at a garment factory in the State of Puebla, México. Amendments filed on November 10, 2003 (Amendment to U.S. Submission No. 2003-01) and on February 13, 2004 raised similar enforcement issues concerning another garment factory also located in the State of Puebla. The submission and the amendment allege violations

under the NAALC concerning freedom of association and the right to organize, collective bargaining, occupational safety and health, minimum employment standards (minimum wage and overtime pay) and access to fair and transparent labor tribunal proceedings. The National Administrative Office accepted the submission for review on February 5, 2004 and held a hearing on April 1, 2004. On August 3, 2004 the U.S. NAO issued a public Report of Review [Text] [PDF] recommending ministerial-level consultations. The U.S. Secretary of Labor formally requested ministerial consultations on October 29, 2004. On November 8, 2004, the Mexican Secretary of Labor agreed to hold ministerial consultations. Subsequently, all three countries Parties to the NAALC agreed to hold trilateral ministerial consultations. Currently, the three countries are defining the scope of the trilateral consultations, which will be undertaken throughout 2006.

U.S. NAO Submission 2004-01 (YUCATAN) was filed on July 12, 2004 by UNITE-HERE and Centro de Apoyo a los Trabajadores de Yucatán. The submission alleged workers' rights violations concerning minimum employment standards and safety and health standards. The submission concerns two companies, operating one plant each, in the apparel industry in the city of Merida, Yucatán. The submission was withdrawn by the submitters on August 26, 2004 without prejudice in order to gather and provide further information.

U.S. NAO Submission 2005-01 (LABOR LAW REFORM) was filed on February 17, 2005, by the Washington Office on Latin America (WOLA) and 22 labor unions from Mexico, Canada and the United States. The submission deals with a labor law reform proposal presented to the Mexican Chamber of Deputies on December 12, 2002. The submission alleges that the labor law reform proposal would substantially weaken existing labor protections, thereby codifying systemic violations of the right of free association, the right to organize a bargain collectively, the right to strike, and core labor rights protected by the Mexican Constitution, International Labor Organization (ILO) Conventions ratified by Mexico, and the North American Agreement on Labor Cooperation (NAALC). After consideration of the submission, the U.S. OTAI determined that a review would not further the objectives of the NAALC and, on February 21, 2006, declined to accept it for review.

U.S. NAO Submission No. 2005-02 (MEXICAN PILOTS - ASPA) was filed on May 27, 2005, by the Airline Pilot's Association of Mexico. The submission deals with allegations of sustained and recurring actions of non-enforcement of labor law by the Mexican government over a five-year period. The submission alleges that the government of Mexico has failed to enforce its laws with regard to freedom of association and protection of the right to organize, and the right to bargain collectively. The submitter alleges that the government of Mexico is in violation of the Mexican Constitution,

International Labor Organization Conventions ratified by Mexico, and the North American Agreement on Labor Cooperation.

Based on a thorough examination of the issues in this case, the U.S. NAO determined that the information provided by the submitters did not substantiate the allegations concerning the failure by the Mexican government to enforce its laws regarding the establishment of a craft union, especially in light of the Mexican Supreme Court's decision on November 25, 2005, which let stand a lower-court's ruling that ASPA was not entitled to establish a pilots-only union. As to the improper dismissal of workers, the submitters had substantially resolved their outstanding claims. Therefore, in accordance with its Procedural Guidelines, on July 7, 2006 the U.S. NAO's determined that a review of the submission would not further the objectives of the NAALC, and accordingly, declined the submission.

U.S. NAO Submission No. 2005-03 (HIDALGO) was filed on October 14 by The Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabric and Garments in General and Related and Similar Industries in the Mexican Republic, a member of the "Vanguardia Obrera" Workers Federation of the Revolutionary Confederation of Workers and Peasants (FTVO-CROC), with the support of the U.S. Labor Education in the Americas Project, and the Washington Office on Latin America under the NAALC concerning the enforcement of labor laws by the Government of Mexico. The submission focuses on events at a textile plant operated by Rubie's de Mexico, S. de R.L. de C.V., in the municipality of Tepeji del Rio, State of Hidalgo, Mexico.

The submitters allege that the Government of Mexico has failed to fulfill its obligations under the NAALC to effectively enforce its labor law under Article 3 in connection with freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protections for children and young persons, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, and compensation in cases of occupational injuries and illnesses, and under Article 5 with respect to fair, equitable and transparent labor tribunal proceedings.

The submission focuses on the submitter's attempts to organize a union at a plant operated by Rubie's de Mexico, S. de R.L. de C.V., in the municipality of Tepeji del Rio, State of Hidalgo, alleging that Mexico's Federal Conciliation and Arbitration Board No. 6 and Local Conciliation and Arbitration Board No. 51 failed to provide workers with fair, equitable and transparent proceedings to enforce their right to form a union to represent the workers in collective bargaining. Allegations also include failure on the part of state and federal authorities to provide effective onsite inspections and remedies for labor law violations concerning forced labor, minimum wage, overtime pay, prevention of discrimination, occupational safety and health, and child labor. Finally, the submitters assert that the actions and/or inaction by the Government of Mexico represent a pattern of

non-enforcement of its labor laws. The submission was accepted for review on January 6, 2006. In accordance with its procedural guidelines, OTAI is expected to issue a report of review 120 days from the day of acceptance.

MEXICO

Mexico NAO Submission 9501 (SPRINT) was filed with the Mexican NAO on February 9,1995, by the Mexican Telephone Workers Union and concerned the closure of a subsidiary of the Sprint Corporation in San Francisco shortly before a union representation election was scheduled to take place. About 240 workers lost their jobs. The Communications Workers of America (CWA) filed an unfair labor practice case with the National Labor Relations Board (NLRB). The Mexican NAO reviewed the submission and issued a public report on May 31, 1995, requesting ministerial consultations on the effects of such a plant closure on union organizing efforts.

As part of the Ministerial Consultations Agreement between the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare, the U.S. Department of Labor held a public forum in San Francisco, California to allow interested persons an opportunity to convey their concerns about the effects of sudden plant closings. The Labor Secretaries further instructed the trinational Labor Secretariat to conduct a study on the effects of sudden plant closing on the principle of freedom of association and the right of workers to organize in the three countries. The study was completed and released on June 9, 1997.

On December 27, 1996, the NLRB ordered Sprint to reinstate the dismissed workers and awarded them back pay. The Sprint Corp. appealed this decision to the Federal Courts. On November 25, 1997, the U.S. Court of Appeals for the District of Columbia reversed the NLRB and ruled that Sprint closed the facility for legitimate financial reasons.

Mexico NAO Submission No. 9801 (SOLEC) was filed with the Mexican NAO on April 13, 1998 by Local 1-675 of the Oil, Chemical and Atomic Workers International Union (OCAW); the “October 6" Industrial and Commercial Workers Union (“October 6"); the Labor Community Defense Union (UDLC); and the Support Committee for Maquiladora Workers (SCMW).

Mexican submission 9801 raises issues of freedom of association, minimum employment standards, employment discrimination, and safety and health at Solec, Inc., located in Carson, California. Solec manufactures solar panels.

The Mexican NAO accepted this submission for review on July 10, 1998. On August 31, 1999, the Mexican NAO issued a public report requesting ministerial consultations to

gain further information concerning the issues raised in this submission.

On May 18, 2000, the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare signed a ministerial agreement for Mexican NAO Submission Nos. 9801, 9802, and 9803. As part of the agreement, the U.S. Department of Labor will host a government-to-government meeting to discuss the application of U.S. law focusing on the issues raised in the three submissions. Topics of discussion will include union organizing and bargaining rights, the elimination of employment discrimination, minimum conditions of employment, and occupational safety and health.

Mexico NAO Submission No. 9802 (APPLE GROWERS) was filed with the Mexican NAO on May 27, 1998. The submission concerns migrant workers in the State of Washington employed in the apple industry and raises issues of freedom of association, safety and health, employment discrimination, minimum employment standards, protection of migrant workers, and compensation in cases of occupational injuries and illnesses.

The submission was filed by the National Union of Workers (UNT), the Authentic Workers' Front (FAT), the Metal, Steel, Iron and Allied Industrial Workers Union (STIMAHCS), and the Democratic Farm Workers Front (FDC). The Mexican NAO accepted this submission for review on July 10, 1998 and met with submitters and workers on December 2, 1998. The Mexican NAO reviewed the submission and issued a public report on August 31, 1999, recommending ministerial consultations to gain further information on the following rights of agricultural sector workers: freedom of association and the right to organize, minimum conditions of work, work discrimination, prevention of occupational injuries and illnesses, and protection of migrant workers.

On May 18, 2000, the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare signed a ministerial agreement for Mexican NAO Submissions Nos. 9801, 9802, and 9803. Under this agreement, a public outreach session was held in Yakima, Washington, on August 8, 2001. This event provided women migrant farm workers and their employers the opportunity to learn about the workers' legal protections and employer obligations concerning minimum conditions of employment, occupational safety and health, and the elimination of gender and ethnic discrimination.

Additionally, the U.S. Department of Labor and the Mexican Department of Labor and Social Welfare held a government-to-government meeting to discuss the application of U.S. law on the following topics: union organizing and bargaining rights; elimination of employment discrimination; minimum conditions of employment, including inspection programs and systems for determining violations of employment conditions for migrant workers; occupational safety and health, including inspection of migrant worker camps; and protection of migrant workers' rights. The United States also conducted a public forum in Maine with migrant workers, community groups, and government officials regarding migrant agricultural issues. All activities agreed to under the consultations have

been completed.

Mexico NAO Submission No. 9803 (DECOSTER EGG) was filed on August 4, 1998, by the Mexican Confederation of Labor (CTM). The submission raises issues of freedom of association, protection for migrant workers, employment discrimination, safety and health, and worker's compensation.

The submission was accepted for review by the Mexican NAO on August 5, 1998. On December 3, 1999 the Mexican NAO issued its public report of review and recommended ministerial consultations to gain further information on the steps the U.S. Government is taking to ensure that migrant agricultural workers enjoy the same legal protections as its nationals and that they enjoy the respect of their rights in matters of minimum employment standards, elimination of employment discrimination, and prevention and compensation for job-related accidents and illnesses.

A ministerial agreement for Mexican NAO Submission Nos. 9801, 9802, and 9803 was signed by the U.S. Labor Secretary and the Mexican Secretary of Labor and Social Welfare on May 18, 2000. Under the agreement, the U.S. Department of Labor agreed to host a public forum on June 5, 2002 in Augusta, Maine, which was co-sponsored by the State on Maine Department of Labor. Government officials, employer representatives, educators, legal counselors, advocates and other service providers in Maine discussed working conditions and treatment of migrant and agricultural workers in the state of Maine. Consistent with the ministerial agreement, U.S. and Mexican labor officials explored ways of promoting and protecting the rights of migrant and agricultural workers in the United States.

Mexico NAO Submission No. 9804 (YALE/INS) was filed with the Mexican NAO on September 22, 1998 and accepted for review on November 23, 1998. The submission was filed by a group of immigration rights and union organizations headed by the Yale Law School Workers' Rights Project. The submission argues that the U.S. fails to enforce its existing minimum wage and overtime protections in workplaces employing foreign nationals due to the Memorandum of Understanding between the U.S. Department of Labor and the Immigration and Naturalization Service, which delineated enforcement responsibilities and provided for sharing of information.

The U.S. Department of Labor and the Immigration and Naturalization Service issued a revised Memorandum of Understanding on November 23, 1998 to more clearly delineate the enforcement roles and responsibilities of the departments. The Mexican NAO issued its Public Report of Review and formally requested ministerial consultations on October 30, 2000. The U.S. Secretary of Labor formally accepted the request for ministerial consultations on January 30, 2002.

Consistent with the Ministerial Consultations Joint Declaration signed June 11, 2002 by Secretaries Chao and Abascal, the U.S. and Mexico agreed to undertake a series of efforts to address the issues raised in Mexico NAO Submission 9804, which include:

Development of informational materials by DOL addressing workplace rights of migrant workers in the United States. Materials such as brochures, pamphlets, and videos are to be produced in Spanish and are to be disseminated in areas of highest concentration of migrant workers in the United States.

Promotion of ongoing collaboration between the governments for the replication throughout the United States of model efforts to promote the protection of labor rights of migrant workers.

Mexico NAO Submission No. 2001-01 (NEW YORK STATE) was filed with the Mexican NAO on October 24, 2001 and accepted for review on November 15, 2001. The submission was filed by the Chinese Staff and Workers' Association (CSWA), National Mobilization Against SweatShops (NMASS), Workers' Awaaz, Asociación Tepeyac, and several named individuals. The submission raises concerns regarding the prevention of and compensation for occupational injuries and illnesses in the state of New York, and labor protections for migrant workers. The submitters allege that the state workers' compensation system subjects workers to unwarranted delays and in cases where compensation is awarded, it is often inadequate.

The Mexican NAO issued a Public Report of Review on the submission on November 8, 2002, requesting further consultations with the U.S. NAO under Article 21 of the NAALC on progress being made with regards to issues raised in the submission. On November 19, 2004, the Mexican NAO issued a Second Report of Review and recommended ministerial consultations. On December 7, 20004, the Mexican Secretary of Labor formally requested ministerial consultations. On the basis of initiatives undertaken by New York State authorities and related to the issues raised in the submission, DOL has recommended that consultations on remaining issues or concerns be undertaken at the Council Designee or NAO level.

Mexico NAO Submission 2003-1 (NORTH CAROLINA) was filed by the Farmworker Justice Fund, Inc., and Mexico's Independent Agricultural Workers Central (CIOAC) with the Mexican Government on February 11, 2003, and accepted for review on September 5, 2003. The submission raises issues concerning rights of migrant workers under the H-2A program in North Carolina including freedom of association, the right to organize and bargain collectively, the right to strike, the right to minimum employment standards, freedom from employment discrimination on the basis of age, sex, and other improper factors, freedom from occupational injuries and illnesses, compensation in case of occupational injuries and illnesses, and the protection of migrant workers required by

law. The Mexican NAO has yet to issue a report of review on the submission.

In July 2004, the DOL and Mexico's Foreign Relations Secretariat (SRE) signed a Joint Declaration and two Letters of Agreement aimed at protecting and promoting the rights of Mexican migrant workers in the United States. DOL's collaborative efforts with Mexico's consulates in the U.S. focus on specific initiatives to improve compliance with and awareness of workplace laws and regulations protecting Mexican workers in North Carolina and other areas in the United States. DOL and the resident Mexican consulate in Raleigh, North Carolina are corroborating to ensure that specific issues associated with Mexican workers in North Carolina are addressed fully and satisfactorily.

Mexico NAO Submission 2005-1 (H-2B VISA WORKERS) [Petition] [Memorandum In Support of Petition] was filed on April 13, 2005, with the Mexican Government by the Northwest Workers' Justice Project, the Brennan Center for Justice at New York University School of Law, and Andrade Law Office. The submission raises issues concerning rights of migrant workers under the H-2B Visa program in Idaho including prohibition of forced labor, minimum employment standards, elimination of employment discrimination, equal pay for women and men, prevention of occupational injuries and adequate compensation in such cases, and protection of migrant workers.

CANADA

Canadian NAO Submission No. CAN 98-1 (ITAPSA) was filed with the Canadian NAO on April 6, 1998. The submission raises concerns about the enforcement of labor legislation covering occupational safety and health and freedom of association of workers at the Itapsa export processing plant in Ciudad de los Reyes, in the State of Mexico. The submission was filed by the Canadian Office of the United Steelworkers of America, in concert with eleven other unions and 31 concerned organizations from the three NAFTA countries. The issues raised in the submission are substantially the same raised in U.S. NAO Submission 9703.

The Canadian NAO accepted this submission for review on June 4, 1998, and held two public meetings to obtain information on September 14, 1998 and November 5. 1998. On December 11, 1998 the Canadian NAO issued the first part of their report addressing specifically the freedom of association issues raised in the submission. The second report addressing occupational safety and health issues was released on March 12, 1999. Canada formally requested ministerial consultations with Mexico on both issues on March 31, 1999. Ministerial consultations are pending.

Canadian NAO Submission No. CAN 98-2 (YALE/INS) was filed with the Canadian

NAO on September 28, 1998 and replicates Mexican NAO Submission 9804. In light of the new U.S. Department of Labor and Naturalization Service Memorandum of Understanding issued on November 25, 1998, the Canadian NAO considered a review inappropriate and closed its file on April 27, 1999.

Canadian NAO Submission No. CAN 99-1 (LPA) was filed with the Canadian NAO on April 14, 1999 by the Labor Policy Association and EFCO Corporation. The submission concerns the United States and its enforcement of section 8(a)(2) of the National Labor Relations Act. On June 15, 1999 the Canadian NAO declined to accept the submission for review. The submitters filed an appeal on June 15, 1999.

Canadian NAO Submission 2003-1 (PUEBLA) was filed on October 3, 2003 by the United Students Against Sweatshops (USAS) and the Centro de Apoyo al Trabajador. The submission was also filed with the U.S. NAO and includes the same allegations of worker rights violations at two different garment factories located in Puebla, Mexico (for additional details, see U.S. NAO Submission 2003–01 summary). The Government of Canada accepted the submission for review on March 12, 2004. On May 11, 2005, the Canadian NAO issued a report recommending ministerial consultations and suggested that the three countries Parties to the NAALC undertake trilateral consultations in this case. The U.S., Mexico, and Canada are currently defining the scope of the consultations and continuing their dialogue to address and resolve the issues raised.

Canadian NAO Submission 2005-1 (MEXICAN PILOTS - ASPA) was filed on May 31, 2005. The submitters are 35 pilots who are supported by the Mexican Airlines Pilots Union (ASPA). The submission alleges failure on the part of the Government of Mexico to enforce its labor laws on freedom of association and the rights to organize and bargain collectively. It further alleges the failure to provide access to fair, equitable, and transparent labor tribunal proceedings. Canada formally rejected the submission for review on January 23, 2005.

IV. NAO Public Report

** A full text of this report can be obtained from*

http://www.dol.gov/ILAB/media/reports/nao/940001.htm

NAO SUBMISSION #940001 (Honeywell) and NAO SUBMISSION #940002 (GE)

BUREAU OF INTERNATIONAL LABOR AFFAIRS U.S. DEPARTMENT OF LABOR

** Other reports of the U.S. NAO can be also obtained by mail directly from the NAO (Department of Labor). Tel. (202) 501- 6653*

October 12, 1994

Table of Contents

* * *

I. INTRODUCTION

One of the functions of the U.S. National Administrative Office (NAO or Office), established under the North American Agreement on Labor Cooperation (NAALC or Agreement), is to receive, accept for review, and review submissions on labor law matters arising in Canada or Mexico. This is consistent with Article 16(3) of the NAALC, which states as follows:
Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures.

According to Article 49 of the NAALC, "labor law" means laws and regulations, or provisions thereof, that are directly related to, inter alia, freedom of association and the right to organize.[1]

Pursuant to the procedural guidelines of the NAO, which became effective on April 1, 1994,[2] following a determination by the Secretary of the NAO to accept a submission for review, the Office shall conduct such further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised. Within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to 60 days, the Secretary of the NAO shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations.

II. SUBMISSIONS

On February 14, 1994, the International Brotherhood of Teamsters (IBT) filed a submission with the NAO (Submission #940001) concerning allegations involving the operation of an employer in Chihuahua, Mexico. On the same date, the United Electrical, Radio, and Machine Workers of America (UE) also filed a submission with the NAO (Submission #940002) concerning the operations of an employer in Ciudad Juarez, Mexico.

A. SUMMARY: NAO SUBMISSION #940001

The submission by the IBT concerns allegations involving the operations of Honeywell Manufacturas de Chihuahua, S.A., in the city of Chihuahua, State of Chihuahua, Mexico. The plant manufactures electronics equipment, including thermostats, circuit boards, and heating and

[1] Article 49 of the NAALC states: "`[L]abor law' means laws and regulations, or provisions thereof, that are directly related to: (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young persons; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; (k) protection of migrant workers.

[2] 59 Fed. Reg. 16660-2 (1994).

air purifier switches. It employs about 480 workers. The allegations of the submission relate principally to the right of freedom of association and the right to organize.

According to the submission, workers at the Honeywell plant until recently were paid 15 pesos a day or about $45 or less a week in wages and bonuses. The IBT claims that these are depressed wages and are exceptionally low even in maquiladora plants. The submission further alleges that to maintain these low wages, Honeywell has used illegal threats and firings to keep its employees from joining a union.

The submission specifically alleges that on November 12, 1993, an officer of the Union of Workers of the Steel, Metal, Iron and Related Industries (Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares, STIMAHCS), a union that is part of the Authentic Labor Front (Frente Auténtico del Trabajo, FAT), an independent labor organization, held an organizing meeting in Chihuahua attended by twelve Honeywell workers. The meeting was not open to the public. One of the workers who attended the meeting was allegedly the leading supporter of the FAT at the plant.

The submission alleges that in late November, Honeywell fired approximately 20 production workers, nearly all of whom had expressed an interest in joining an independent union. The submission further alleges that the employees were told that they were being fired for their union activities and that they had to sign resignation forms to collect their severance pay, thus waiving their ability to file claims against their former employer protesting their dismissal. The submission also states that in connection with the firing of the employee who was the leading advocate for FAT in the plant, coercive measures were used to attempt to gain information about other pro-union employees.

Finally, the submission states that one of the fired workers instituted a complaint against Honeywell before a Mexican Conciliation and Arbitration Board (Junta de Conciliación y Arbitraje, CAB), which was pending at the time the submission was filed. According to the submission, CABs have a reputation for refusing to reinstate workers fired for supporting independent unions like the FAT.

The IBT submission claims that actions by Honeywell are in violation of Article 123 of the Constitution of Mexico and that the company has violated the labor principles set out in Annex 1 of the NAALC. The relief requested in the submission is that:

- the NAO conduct a prompt review of the charges under Article 16 of the NAALC;

- the NAO conduct a public hearing either in Chihuahua, Mexico, or in El Paso, Texas, to take evidence on the charges;

- the Government of Mexico require Honeywell to reinstate, with back pay, the 20 workers dismissed in late November;

- the Government of Mexico require Honeywell to comply with Mexican law and the labor law principles set out in the NAALC;

- absent the reinstatement of workers, with back pay, the U.S. Secretary of Labor request immediate consultations at the ministerial level pursuant to Article 22 of the NAALC;

- if the aforementioned consultations are not successful, the U.S. Secretary of Labor use all other available remedies to address the matters being complained of;

- the NAO request that the National Labor Relations Board begin appropriate rulemaking for whatever remedies may be needed to address the chilling effect of the alleged violations on the rights of IBT members and any injury to their economic interests;

- that the NAO develop standards and guidelines for determining when U.S. employers in Mexico violate the basic labor norms set out in Annex 1 of the NAALC and inform and publicize these standards or guidelines to U.S. companies by rulemaking or through other means; and

- the NAO develop a program of non-trade sanctions for U.S. companies operating in Mexico that violate the basic labor norms in Annex 1 of the NAALC, where these sanctions may include ordering employers to post notices in U.S. plants that they will comply with the basic norms in Annex 1 of the NAALC and to bargain in good faith with U.S. unions to ensure that they will comply with the basic labor norms set out in Annex 1 of the NAALC when doing business in Mexico.

B. SUMMARY: NAO SUBMISSION #940002

The submission by the UE concerns allegations involving the operations of the Compañía Armadora, S.A., a subsidiary of the General Electric Company (GE), in Ciudad Juarez, State of Chihuahua, Mexico. Six affidavits from employees of the company were attached to and supported the submission. The allegations relate principally to the right of freedom of association and the right to organize.

The submission notes that approximately two years ago, the UE formed a Strategic Organizing Alliance with the FAT. In order to develop closer ties between workers in the United States and Mexico, UE representatives travelled to Mexico in November 1993 to meet with Mexican workers.

According to the submission, at a meeting on November 6, 1993, between employees of the Juarez facility who were attempting to organize an independent union at the plant and the delegation from the UE, the Mexican workers described the company's alleged efforts to suppress their union activity. Subsequent to the meeting, the submission asserts, Compañía Armadora continued to engage in activities to curtail the organizing campaign and punish employees who had become involved. The submission states that the company's efforts included altering the established practice of plant entry to prevent employee organizers from distributing campaign literature, taking campaign literature from employees, and dismissing several employees, some of whom had taken part in discussions with the UE delegation.

According to the submission, as many as 20 union activists were dismissed by the company. The submission states that under Mexican law, a dismissed employee has a right to statutory severance pay based on length of service; in order to challenge a dismissal, however, an employee must agree to forgo the severance payment. The submission alleges that Compañía Armadora pressured workers into accepting the statutory severance pay and relinquishing claims for reinstatement.

The submission additionally charges Compañía Armadora with several health and safety violations, including failing to give light work to pregnant women, failing to provide adequate ventilation in work areas and suitable protective equipment, and failing to test properly

employees for exposure to chemicals. The company is also charged with failing to pay overtime as prescribed by law.

These allegations demonstrate, according to the submitter, that Compañía Armadora has violated several provisions of Mexican law, including Articles 6, 7, and 123 of the Constitution, corresponding provisions of the Federal Labor Law, international law, and the labor principles set out in Annex 1 of the NAALC. The UE further asserts that the Government of Mexico has failed to enforce its labor law. The relief sought in the submission is that:

- the NAO initiate a review pursuant to Article 16 of the NAALC;

- the NAO hold a public hearing in Juarez, Mexico, or in El Paso, Texas;

- Mexico require GE to comply with international and Mexican labor law, including by: respecting the rights of workers to communicate in furtherance of their interests; returning to the former practice of letting workers off the bus outside the company gates; instructing all management personnel that they stop snatching union leaflets out of the hands of workers; stopping discharging workers for union activity and without cause; ceasing pressuring workers into accepting statutory severance pay and relinquishing claims for reinstatement and immediately offering reinstatement with full back pay and lost benefits to workers who have been unjustly terminated; paying overtime properly; providing light work to pregnant women; complying with requirements regarding health and safety; providing all workers with a copy of the work contract they signed with the company; providing any worker who may be discharged with a written statement of the reason for the discharge; posting notices at all U.S. and Mexican GE facilities setting forth in detail the corrective actions it is taking and stating its agreement to respect the labor and human rights of its employees in the future; and sending a copy of said notice to all individuals and organizations who wrote to GE inquiring about the fired workers and to whom the company responded stating that the matter had been resolved;

- in the event that the relief requested above of GE is not satisfactorily obtained, the NAO Secretary request that the Secretary of Labor request consultations at the ministerial level pursuant to Article 22 of the NAALC;

- if the relief requested above of GE is not satisfactorily obtained after the ministerial consultations, the NAO recommend that the Secretary of Labor request the establishment of an Evaluation Committee of Experts pursuant to Article 26 of the NAALC;

- if following the presentation of a final report by an Evaluation Committee of Experts the relief requested above of GE is not satisfactorily obtained, the NAO Secretary recommend dispute resolution under Part Five of the NAALC; and

- the NAO grant such further relief as it may deem just and proper.

III. CONDUCT OF THE REVIEWS

On April 15, 1994, within 60 days of their receipt, as required by its procedural guidelines, the NAO gave notice that Submissions #940001 and #940002 were accepted for review.[3] In the

[3] 59 Fed. Reg. 18832-4 (1994).

notice announcing the initiation of the reviews, the NAO stated the rationale for initiation and the objectives of the reviews. The notice also indicated that acceptance for review of the submissions was not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submissions.

A. INITIATION OF THE REVIEWS

The NAO notice stated that initiation of the reviews was warranted because the submissions met the criteria for acceptance in Section G.2 of the NAO guidelines, i.e., they raised issues relevant to labor law matters in Mexico and a review would further the objectives of the NAALC.

- The two submissions dealt primarily with freedom of association and the right to organize, issues that are clearly within the scope of labor law as defined by Article 49 of the NAALC.

- Reviews appeared to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the Agreement, among them freedom of association and the right to organize; promoting compliance with, and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of its labor law.

Although the specific events (dismissals) raised in the submissions occurred in 1993, prior to the entry into force of the NAALC, some of the workers were still pursuing their reinstatement through the CABs at the time of the submissions. Moreover, under the NAALC, the date that an event occurred is determinative only in considering whether there exists a "pattern of practice" required for establishing an Evaluation Committee of Experts. The labor law matters raised by the submissions (freedom of association and protections against dismissal because of efforts to organize) are not the basis for the establishment of an Evaluation Committee of Experts pursuant to Article 23 of the NAALC.

B. OBJECTIVE OF THE REVIEWS

Consistent with Section H.1 of the NAO guidelines, the stated objective of the reviews was to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC. In particular, the initiation notice stated that the reviews would focus on promotion of compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights.

In conducting the reviews, the NAO gathered information from a variety of sources, including materials submitted by the IBT and UE, each of the companies named in the submissions, and the public at large in the context of a public hearing conducted by the NAO for the specific purpose of gathering information on the two submissions. In addition, the NAO has used information provided by the Mexican NAO in response to a request it made for information, reports prepared by expert consultants, and the available literature on the relevant topics. As stated above, the focus of the reviews has been on enforcement by the Government of Mexico of its domestic labor law with respect to the allegations raised by the submitters rather than on the conduct of individual companies. Moreover, the NAO is not an appellate body, nor is it a substitute for pursuing domestic remedies.

C. INFORMATION FROM THE IBT AND UE

* * *

D. INFORMATION FROM COMPANIES

* * *

E. INFORMATION FROM THE MEXICAN NAO

In gathering information for this review, the U.S. NAO has consulted with its Mexican counterpart pursuant to Article 21 of the NAALC. On April 28, 1994, the Secretary of the NAO requested information from the Mexican NAO with regard to Mexican labor law and practice related to the matters raised by the two submissions. (…)

F. INFORMATION FROM EXPERTS

The NAO also sought information and analyses from expert consultants on the matters raised by the two submissions. In particular, the NAO presented a list of questions to two sets of experts on Mexican labor law in the United States and contracted with these experts to provide information on labor law enforcement in Mexico and the role of the Federal and State CABs.[4] The reports prepared by these experts were used in the preparation of this report.

G. PUBLIC HEARING

On July 25, 1994, the NAO announced that a public hearing to gather information on matters related to the review of NAO Submission #940001 and NAO Submission #940002 would be held in Washington, D.C., on August 31, 1994.[5] In the notice announcing a public hearing, the Secretary of the NAO stated that the reviews of the two submissions would be consolidated for purposes of a public hearing since the subject matter of both submissions related principally to the right of freedom of association and the right to organize. Subsequently, the date of the public hearing was changed to September 12, 1994.[6]

At the September 12 hearing, which was conducted by the Secretary of the NAO, 14 individuals presented public testimony. In addition, statements were received from four individuals or organizations prior to the hearing and from three individuals or organizations after the hearing. Testimony presented at the public hearings, as well as pre- and post-hearing statements, were made part of the record. (…)

---

[4] National Law Center for Inter-American Free Trade, Labor Law Enforcement in Mexico and the Role of the Federal and State Conciliation and Arbitration Boards, Report Submitted to the United States Department of Labor, U.S. National Administrative Office, North American Agreement on Labor Cooperation (July 26, 1994), henceforth Labor Law Enforcement in Mexico; Paul A. Curtis, Esq., Questions on Labor Law Enforcement in Mexico and the Role of the Arbitration and Conciliation Boards (September 7, 1994), henceforth Questions on Labor Law Enforcement in Mexico.

[5] 59 Fed. Reg. 38492-3 (1994).

[6] 59 Fed. Reg. 41511 (1994).

H.OTHER SOURCES OF INFORMATION

The NAO has also relied on information from the available literature regarding Mexican law and practice related to freedom of association and the right to organize, including government reports,[7] law review journals,[8] and other sources of information.[9]

IV. ENFORCEMENT BY THE GOVERNMENT OF MEXICO OF LABOR LAWS RELEVANT TO SUBMISSIONS

Part II of the NAALC sets out the obligations that Parties to the Agreement undertake. Two key obligations relate to levels of protection (Article 2) and government enforcement action (Article 3). These articles state:

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:

---

[7] E.g., A Primer on Mexican Labor Law (Washington: U.S. Department of Labor, Bureau of International Labor Affairs, 1991); A Comparison of Labor Law in the United States and Mexico (Washington: U.S. Department of Labor, 1992); and Country Reports on Human Rights Practices for 1993 (Washington: U.S. Department of State, 1994).

[8] E.g., Ann M. Bartow, "The Rights of Workers in Mexico," Comparative Labor Law, Vol. 11 (Winter 1990); Amy H. Goldin, "Collective Bargaining in Mexico: Stifled by the Lack of Democracy in Trade Unions," Comparative Labor Law, Vol. 11 (Winter 1990); David L. Gregory, "The Right to Unionize in the United States, Canada, and Mexico: A Comparative Assessment," Hofstra Labor Law Journal, Vol. 10, no. 2 (Spring 1993); Oscar de la Vega Gomez, "Settlement of Labor Law Disputes in Mexico," Inter-American Law Review, Vol. 21, no. 1 (1989); Susanna Peters, "Labor Law for the Maquiladoras: Choosing Between Workers' Rights and Foreign Investment," Comparative Labor Law, Vol. 11 (Winter 1990); Mark Zelek and Oscar de la Vega, "An Outline of Mexican Labor Law," Labor Law Journal, Vol. 43, no. 7 (July 1992).

[9] E.g., Francisco Breña Garduño, Mexican Labor Law Summary (Mexico City: Breña y Asociados, 1991); Néstor de Buen L., Derecho del Trabajo, Seventh Edition (México: Editorial Porrúa, 1989); Néstor de Buen L., Derecho Procesal del Trabajo (México: Editorial Porrúa, 1990); Dan LaBotz, Mask of Democracy: Labor Suppression in Mexico Today (Boston: South End Press, 1992).

(a) appointing and training inspectors;

(b) monitoring compliance and investigating suspected violations, including through on-site inspections;

(c) seeking assurances of voluntary compliance;

(d) requiring record keeping and reporting;

(e) encouraging the establishment of worker-management committees to address labor regulation of the workplace;

(f) providing or encouraging mediation, conciliation and arbitration services; or

(g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.

Thus, in accord with Article 3 of the NAALC, the issue at hand in the review of the two submissions is whether the Government of Mexico is enforcing its labor laws. A brief commentary on Mexican labor laws guaranteeing workers freedom of association and the right to organize, and providing protections against dismissal of workers because of their exercise of the right to organize, is given in Appendix 1. A similar commentary on how the Government of Mexico implements its labor laws, particularly those laws relevant to the current review, is given in Appendix 2.

The two submissions that are the subject of this review are based on alleged incidents that occurred at maquiladora plants located in the State of Chihuahua. Under the Mexican system of labor law administration, jurisdiction for the enforcement of labor laws in maquiladoras rests with state labor authorities. Thus, the CABs of the City and State of Chihuahua--rather than the Federal CABs--are the proper authorities with jurisdiction for enforcement of the applicable labor law.

A. STATE CONCILIATION AND ARBITRATION BOARDS

The State of Chihuahua has a state CAB; in addition, there are five other state CABs in the major cities of the State of Chihuahua. A claim can be brought by a plaintiff either where he or she works, where the contract was executed, or where the defendant is domiciled (Federal Labor Law, Article 700). The relevant board for the case involving workers at the Honeywell plant is the City of Chihuahua CAB; the corresponding board for Compañía Armadora workers is the Ciudad Juarez CAB.

According to a consultant's report, over the period June 1993 to June 1994, the City of Chihuahua CAB reportedly handled 1,862 complaints, resolving all but 173 (9 percent) through conciliation. Over the same time period, the City of Chihuahua CAB decided 650 pending cases, thereby significantly reducing its workload. The average length of time in the City of Chihuahua CAB

between the filing of a complaint and the rendering of a judgment is 7.3 months. This is reportedly much shorter than with regard to other state CABs, where the time from filing of a complaint to a final judgment may be over one year (e.g., 1.4 years in the Hermosillo, Sonora, CAB).[10]

The Ciudad Juarez CAB reportedly handles more complaints than the four other boards of the State of Chihuahua combined. Nevertheless, the Ciudad Juarez CAB has been able to reduce the average adjudication time to 8.0 months, compared to 7.3 months for the City of Chihuahua CAB. From January through May 1994, 1,249 complaints were filed with the Ciudad Juarez CAB. Unlike the City of Chihuahua CAB, the Ciudad Juarez CAB does not engage in conciliation activities because of lack of personnel. Nevertheless, 1,050 of the 1,249 complaints (84 percent) were settled by the Ciudad Juarez CAB.[11]

According to a consultant's report, the Chihuahua CABs have been effective in improving the quality of decision making and reducing the time of handling cases.[12] Another consultant's report concluded that CABs generally, including the Chihuahua CABs, are known to be fair, impartial and unbiased, especially regarding their role in matters dealing with the rights of individuals; in collective matters, however, their activity is deemed to be more controversial.[13] One of the labor attorneys who participated in the NAO hearing stated, however, that the labor courts in Ciudad Juarez specifically, and in Mexico generally, are biased in favor of companies, especially in matters of collective bargaining.[14]

B. NAO SUBMISSION #940001

The sources that the NAO consulted regarding the submission filed by the IBT are in agreement that, in November 1993, Honeywell Corporation terminated 23 workers from its Chihuahua plant. Twenty-two of the workers--laid off from their jobs because of a company cost reduction plan, according to Honeywell; fired because of union activities, according to the UE--accepted full severance pay pursuant to applicable Mexican law and terminated their relationship with the company. There are no claims of improprieties in the City of Chihuahua CAB's approval of these severance arrangements.

Also in November 1993, Honeywell dismissed one worker claiming that the dismissal was justified because the worker had repeatedly broken work rules. The IBT claims that this worker was fired because she was one of the leaders of the drive to unionize the plant. The worker in question filed a complaint with the City of Chihuahua CAB disputing the dismissal and requesting reinstatement. The City of Chihuahua CAB accepted her complaint and began the appropriate proceedings. This case was pending before the City of Chihuahua CAB at the time the submission was filed by the IBT.

---

[10] Labor Law Enforcement in Mexico, op. cit., pp. 38-39.

[11] Labor Law Enforcement in Mexico, op. cit., p. 39.

[12] Labor Law Enforcement in Mexico, op. cit., p. 47.

[13] Questions on Labor Law Enforcement in Mexico, op. cit., p. 44.

[14] Testimony of Gustavo de la Rosa, NAO Hearing, September 12, 1994. Tr. at 70.

On February 28, 1994, the worker and Honeywell presented to the City of Chihuahua CAB an agreement they had reached to settle the outstanding dispute; in return for a monetary settlement, the worker agreed to relinquish her claim for reinstatement. Subsequently, the worker testified at the September 12 hearing held by the NAO that financial needs prompted the acceptance of the monetary settlement.[15] No allegations have been made that the City of Chihuahua CAB acted improperly in approving the settlement of the dispute.

C. NAO SUBMISSION #940002

The sources that the NAO consulted regarding the submission filed by the UE are in agreement that, between October 6, 1993 and December 2, 1993, Compañía Armadora, S.A., a subsidiary of the General Electric Corporation, terminated several workers from its Ciudad Juarez plant. Apparently, 11 workers were dismissed; the company claims that the dismissals were for work rule violations, while the UE alleges that they were motivated by activities of the workers in trying to establish a union at the plant.

Six of the workers accepted full severance pay pursuant to applicable Mexican law and terminated their relationship with the company. Subsequently, GE offered these workers the opportunity to be reinstated in their jobs, but the workers elected not to be reinstated and accepted an additional monetary settlement. The agreement between the company and the employees was filed with the Ciudad Juarez CAB and accepted by the latter.

Five other workers were not offered reinstatement by the company. Three of these workers have reached settlement agreements with GE and two have filed a petition with the Ciudad Juarez CAB seeking their reinstatement. The latter two cases are pending before the Ciudad Juarez CAB. In all of the cases where settlements were approved, there are no allegations that the Ciudad Juarez CAB acted improperly.

The UE submission also raised allegations of violations of Mexican health and safety laws and regulations by the company. At the September 12 hearing, when asked directly by the NAO Secretary, a former Compañía Armadora worker who had voiced such complaints indicated that the alleged violations had not been brought to the attention of Government of Mexico authorities with jurisdiction over safety and health laws.

V. FINDINGS AND RECOMMENDATIONS

As stated in the Federal Register notice announcing the commencement of the review of Submissions #940001 and #940002, and restated at the beginning of this report, the NAO review has focused specifically on the Government of Mexico's promotion of compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights. As such, the NAO review has not been aimed primarily at determining whether or not the two companies named in the submissions may have acted in violation of Mexican labor law. Moreover, the NAO is not an appellate body, nor is it a substitute for pursuing domestic remedies. Rather, the purpose of the NAO review process, including the public hearing, is to gather as much information as possible to allow the NAO to better understand and publicly report

[15] Testimony of Ofelia Medrano, NAO Hearing, September 12, 1994. Tr. at 38.

on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC.

The review of the two submissions reveals disagreements about the events at each of the plants. On the one hand, the two unions filing the submissions, as well as witnesses who testified at the September 12 hearing, suggest that the separations were motivated by the desire of the companies to impede the formation of unions. The two unions further allege that workers were dismissed for these activities. Moreover, in their view, workers were coerced by the employers or compelled by personal economic hardships to accept settlement payments, rather than seek reinstatement. On the other hand, statements by the two companies suggest that the separations (terminations or layoffs) of workers that occurred were the result of either company downsizing or failure on the part of workers to perform their duties according to established rules. Further, the companies assert that they complied with Mexican labor law in the separations and paid the required severance payments.

During the review, a number of other relevant issues regarding enforcement of labor law in Mexico, particularly in the maquiladora sector, were brought to the attention of the NAO. They include the difficulties in establishing unions in Mexico, the hurdles faced by independent unions in attaining legal recognition, company black listing of union activists, the use of blank sheets, and government preference for and support of official unions.

Another such issue was the very high percentage of Mexican workers dismissed from their jobs who elect to take severance pay rather than seek reinstatement--which is their right under Mexican labor law. Apparently, workers generally do not have the financial resources to pursue reinstatement before the CABs, often opting for the settlement of their complaints in return for money. In a post-hearing brief, the UE asserts that the lack of an unemployment insurance system in Mexico contributes to the very high percentage of cash settlements. Thus, according to this line of argument, the right of workers whose employment has been terminated because of their exercise of the right to organize is de facto limited by their inability to survive economically until the process of reinstatement works its course.

A related problem articulated by the workers who provided information to the NAO is their perception of impediments in obtaining legal remedies. These impediments include the delays that are common in receiving decisions from CABs and the related economic hardship caused by having to wait while not earning an income. It appears, however, that dismissed workers were aware of their options under the law and chose to take severance over reinstatement. Therefore, it is very difficult to ascertain whether there has been a violation of freedom of association when severance is preferred over a review of the case by a CAB. However, the NAO notes that the timing of the dismissals appears to coincide with organizing drives by independent unions at both plants.

The NAO acknowledges and understands that the economic realities facing these Mexican workers may have made it very difficult to engage the proper Mexican authorities in addressing labor law violations. However, since workers for personal financial reasons accepted severance, thereby preempting Mexican authorities from establishing whether the dismissals were for cause or in retribution for union organizing, the NAO is not in a position to make a finding that the Government of Mexico failed to enforce the relevant labor laws. Even in those instances where one of the companies publicly admitted that its local managers went too far in dismissing certain workers and offered them reinstatement, the workers (who had already accepted a cash severance to settle their cases) chose not to be reinstated and again accepted a larger cash severance. While such an about-face by one of the companies suggests that management may not have acted

properly in the dismissals, the dismissed workers neither accepted reinstatement nor challenged management's actions before the CAB. The very few workers in the two submissions who chose to challenge their dismissals have availed themselves of due process under Mexican law and a judgment is pending.

The NAO also finds that there is a dearth of practical knowledge in each of the three signatory countries to the NAALC about legislation in the other countries that guarantees the right of freedom of association and the right to organize. The practical availability of these rights is an issue of concern to Mexican workers, as demonstrated by the two submissions. Freedom of association and protection of the right to organize, the right to bargain collectively, and the right to strike are among the labor principles that each of the signatories to the NAALC has committed to promote, subject to each Party's domestic law.

In this regard, the NAO recommends that the three countries work together to develop cooperative programs regarding freedom of association and the right to organize pursuant to Article 11 of NAALC. For example, the three countries might initially consider a government-to-government trinational seminar or conference on freedom of association issues (law, enforcement authorities, enforcement record) with participation from state/provincial authorities. This could be followed-up in the future with other events that involve the business and labor communities in each of the three countries.

Finally, the NAO finds that there could be improved efforts to communicate to the public details about the NAALC and its operation: the labor principles that it covers; the laws in each country that concern these rights; the obligations undertaken by the signatories; the mechanisms to provide oversight of enforcement; and the role of the NAOs. For this reason, the NAO recommends that each of the three countries undertake a public information and education program to make their public aware of the Agreement, how it works, the institutions it creates, the oversight mechanisms that it provides, and the remedies that are available. Along this line, the three countries might consider holding one or more conferences for worker and employer organizations regarding the NAALC and additional conferences bringing together individual workers and employers. The Secretariat of the Commission for Labor Cooperation, once that institution is operational, should be requested to prepare explanatory materials on the NAALC, its institutions and its implementation, for wide distribution in the three countries.

In conclusion, the NAO does not recommend ministerial consultations on these matters under Article 22 of the NAALC. The information available to the NAO does not establish that the Government of Mexico failed to promote compliance with or enforce the specific laws involved. However, the NAO shares the submitters' concerns about the vital importance of freedom of association and right to organize and the implications for workers of the failure of governments to protect such rights. Accordingly, the report makes several suggestions for cooperative activities under Article 11 of the NAALC on the issues of freedom of association and the right to organize and for public information and education programs regarding the NAALC.

_____

Irasema Garza
Secretary, National Administrative Office

* * *

Based on the foregoing report, I accept the NAO's recommendation not to request ministerial consultations under Article 22 of the NAALC on NAO Submission #940001 or NAO Submission #940002.

_____

Robert B. Reich
Secretary of Labor

V. Ministerial Implementation Agreements

http://www.dol.gov/ILAB/media/reports/nao/minagreemt9801-9802-9803.htm

Ministerial Consultations - Mexico Submissions 9801, 9802 and 9803

JOINT DECLARATION

The Department of Labor of the United States of America and the Department of Labor and Social Welfare of Mexico, in accordance with the provisions of the North American Agreement on Labor Cooperation (NAALC), and in order to address matters raised by submissions MX 9801, MX 9802, and MX 9803, agreed to carry out ministerial consultations in a spirit of cooperation and complete respect for the sovereignty of each country regarding labor law and practice on the principles of freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers.

Acknowledging the commitment of our Governments under the NAALC to ensure the effective enforcement and promotion of our labor laws and regulations;

Recognizing that the NAALC has led to greater levels of cooperation on labor matters between our two countries and pledging to continue and enhance that cooperative spirit;

Understanding that an integral part of the Agreement is a commitment to review public submissions and engage in cooperative consultations on labor matters;

Reaffirming our commitment to the Agreement's eleven labor principles;

Recognizing the need to devote adequate resources for the inspection of workplaces, continued effective and speedy enforcement of safety and health laws and regulations, and promotion of and education about safe and healthy work place practices, as well as to ensure that persons with a legally recognized interest under the law in a particular matter have access to administrative and judicial proceedings for the impartial enforcement of labor laws; and

In conformity with the principles of the NAALC and in efforts to strengthen our commitment under that Agreement to cooperate on labor issues of mutual concern and promote the rights of migrant workers, and in order to promote the principles of freedom of association and the protection of the right to organize, the right to bargain collectively, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and

illnesses, and protection of migrant workers, the U.S. Department of Labor and the Mexican Department of Labor and Social Welfare agree to the following:

ACTION PLAN

The U.S. Department of Labor and the Mexican Department of Labor and Social Welfare agree to work individually through our Departments and other governmental agencies, and jointly and cooperatively through our respective National Administrative Offices (NAOs), to address the specific concerns and the broad labor rights raised by submissions MX 9801, MX 9802, and MX 9803. We agree to cooperate to assure respect for freedom of association and the protection of the right to organize, which would benefit workers throughout North America. We agree to seek safe and healthy working environments for all workers and the enforcement of minimum employment standards. We agree to work together to eliminate employment discrimination and assure that migrant workers are accorded full protection under the laws.

A follow-up to the conference on agricultural migrant labor in North America will be held. The conference examined the legal, social, and economic issues facing agricultural migrant workers and their families. Participants included representatives of government, labor organizations, business, and non-governmental organizations. As a follow-up to the Conference, officials of the Governments of the United States and Mexico will meet to further exchange information with respect to the role of federal and state agencies in the protection and promotion of the rights of migrant workers in the United States and to explore potential avenues of cooperation regarding the protection of migrant workers. This information exchange will include the participation of labor department officials, Mexican Consular officials who have responsibility of aiding Mexican migrant workers abroad, and representatives of the Office for the Legal Defense of Workers (PROFEDET).

The U.S. Department of Labor will host a government-to-government session in Washington, D.C. to provide Mexican government officials information about the application of U.S. law focusing on the issues raised in submissions MX 9801, MX 9802, and MX 9803. Topics of discussion will include union organizing and bargaining rights, elimination of employment discrimination, minimum conditions of employment, including inspection programs and systems for determining violations of employment conditions for migrant workers, occupational safety and health, including inspection of migrant worker camps and overall working conditions in the agricultural sector, and protection of migrant workers' rights. Participants will include officials from the U.S. Occupational Safety and Health Administration, the U.S. Employment Standards Administration/Wage and Hour Division, the Office of the Solicitor of the Department of Labor, the Equal Employment Opportunity Commission, the National Labor Relations Board and officials from the Mexican Department of Labor and Social Welfare and Mexican consular officials in the United States.

The U.S. Department of Labor will conduct public outreach sessions at various sites within the United States to educate migrant agricultural workers about their rights in the

work place. Topics to be discussed at the outreach sessions include elimination of employment discrimination (gender and ethnic discrimination, processes available to women to challenge discrimination and how to file a formal complaint, sexual harassment, and maternity benefits), minimum conditions of employment, occupational safety and health, union organizing, and other related issues. Representatives from the Department of Labor's Women's Bureau, the Employment Standards Administration's Wage and Hour Division, and Employment Training Administration, the Equal Employment Opportunity Commission, as well as other local and federal agencies and organizations will brief participants on state and federal laws that protect migrant workers' employment rights.

The U.S. Department of Labor will conduct a public forum in the state of Washington regarding agricultural workers issues to allow interested persons to convey their views and recommendations directly to public officials on freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers. Federal and state officials will address the concerns and encourage the participation of members of the public, including workers, labor organizations, community-based organizations, growers, and grower organizations, on these issues.

The U.S. Department of Labor will conduct a public forum in the state of Maine where government officials will address migrant agricultural occupational issues and respond to questions of workers, employers, and their representatives. Such a forum will address freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers, including presentation of compliance information, discussion of employment practices to ensure compliance with applicable U.S. laws and explanation of workers rights, and information on how to file complaints.

The Secretariat will produce a trilingual guide describing law and procedures covering labor rights and protections granted to migrant workers in the United States, Mexico, and Canada. The guide will be made available to workers, individuals, businesses, and organizations.

The U.S. Department of Labor and the Mexican Department of Labor and Social Welfare will continue cooperative consultations and exchange of information at the NAO level on these issues during the implementation of this declaration; and, at the end of the prescribed term, review the activities and commitments made pursuant to this Joint Declaration.

The NAOs shall develop a work plan for carrying out the programs called for under this declaration within 90 days. The program called for under this declaration should be

completed within 15 months of the date of its signing.

The U.S. Department of Labor and the Mexican Department of Labor and Social Welfare will make available public information shared under the activities conducted pursuant to this Joint Declaration.

Agreed to this 18th day of May 2000, in English and Spanish texts, both of which are equally authentic.

Alexis M. Herman
Secretary of Labor
United States

Mariano Palacios Alcocer
Secretary of Labor and Social Welfare
Mexico

Additional Resources and References (Optional Reading)

Different Perspectives on Labor and Trade

Pro-NAFTA (National Center for Policy Analysis)

The "Joblessness" Ruse Against NAFTA

http://www.ncpa.org/pd/trade/pdtrade/feb98d.html

Opinion: Jobs Not Lost

http://www.ncpa.org/pd/trade/pdtrade/pdtrade2.html

Opinion: Job Losses Wrongly Blamed on NAFTA

http://www.ncpa.org/pd/trade/pdtrade/pdtrade3.html

Anti-NAFTA (UNITE)

The NAFTA Scam

http://www.uniteunion.org/reclaim/politicalarchive/nafta/nafta.html

Raúl Hinojosa Ojeda et al., North American Integration Three Years After NAFTA: A Framework for Tracking, Modeling and Internet Accessing the National and Regional Labor Market Impacts, December 1996

http://naid.sppsr.ucla.edu/NAFTA96/

"Most previous studies on NAFTA have significantly over-estimated job displacements due to imports from Mexico and, to a lesser extent, the numbers of jobs supported by exports."

Roy J. Adams & Parbudyal Singh, Early Experience with NAFTA'S Labor Side Accord, 18 COMP. LAB. L.J. 161 (1997)

David Lopez, Dispute Resolution under NAFTA: Lessons from the Early Experience, 32 TEX. INT'L L.J. 163 (1997)