

The North American Agreement Labor Cooperation – An Overview of the Institutions, Activity and Accomplishments

The Commission for Labor Cooperation is a new international organization created by Canada, Mexico, and the United States under the North American Agreement on Labor Cooperation (NAALC). Along with an agreement on environmental cooperation, the NAALC is one of two supplementary or "side" agreements to the North American Free Trade Agreement (NAFTA). The NAFTA and the two side agreements came into force on January 1, 1994. The NAALC is the first international labor agreement linked to a trade treaty. It creates an international discipline on enforcement of domestic labor law, a major innovation in international labor affairs.

A. The NAALC's Structure

The NAALC sets forth Objectives that include promoting 11 basic Labor Principles, promoting international cooperation in the labor arena, improving working conditions and living standards, and ensuring the effective enforcement and transparent administration of labor laws. Following these objectives, the NAALC countries agree to a set of six Obligations that relate specifically to the effective enforcement and transparent administration of labor law.

The NAALC's 11 Labor Principles and six Obligations define the scope of the agreement. These Principles and Obligations cover nearly all aspects of labor rights and labor standards. The key obligations are summarized immediately below (see box). The NAALC's Objectives, Obligations, definition of labor law, and Labor Principles are set out in full in Annex 1.

The countries commit themselves to the Obligations and undertake to promote the Principles, but they have not established common laws or standards. However, the countries do agree to open themselves up to reviews and consultations among themselves on all labor matters within the scope of the Agreement. In addition to review and consultation, the countries' obligations regarding the effective and transparent enforcement of many types of labor law are subject to an evaluation by an independent committee of experts and, in certain cases, to dispute resolution by an independent arbitral panel.

The Agreement establishes an organizational structure for implementation. It creates the Commission for Labor Cooperation, headed by a Council of Ministers made up of the cabinet level minister or secretary responsible for labor matters in each nation and an international Secretariat, located in Dallas, to support the Council. Each government has also established a National Administrative Office (NAO) within its department or ministry of labor to receive communications from the public in that country, to provide information, and generally to facilitate participation under the Agreement.

Summary of NAALC Obligations

Article 2: Levels of Protection

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

Each Party shall promote compliance with and effectively enforce its labor laws through appropriate government action.

Article 4: Private Action,

Each Party shall ensure that persons with a recognized interest under its laws have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.

Article 5: Procedural Guarantees

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.

Article 6: Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available.

Article 7: Public Information and Awareness

Each Party shall promote public awareness of its labor law.

Reliance on *Domestic* Laws versus *International* Standards

The obligations of the NAALC are to ensure the effective enforcement of domestic labor laws; there is no adoption of or reliance on international standards. In taking this approach the NAALC departs from the standard model of international labor rights set by the International Labor Organization, which has been in existence for over 75 years. The ILO has developed an extensive corpus of international labor standards, the ILO Conventions, which member states are encouraged to voluntarily ratify. The ILO monitors the performance of member states against their ratified Conventions, evaluating whether national legislation and practice is in conformity with the obligations of the Convention. No sanctions are attached to ILO monitoring. All three NAALC Parties are members of the ILO.

The NAALC does not replicate this structure. Instead its Obligations define what is meant in the Agreement by "effective enforcement of domestic legislation." The Parties themselves then hold each other accountable to their common obligations using the mechanisms of consultations, evaluations and dispute resolution. The NAALC takes as a given point of departure the bodies of labor law in each of the North American nations. It leaves the further evolution of that legislation to the democratic process in each country, in the sense that there is no NAALC requirement that domestic legislation be in conformity with international standards.

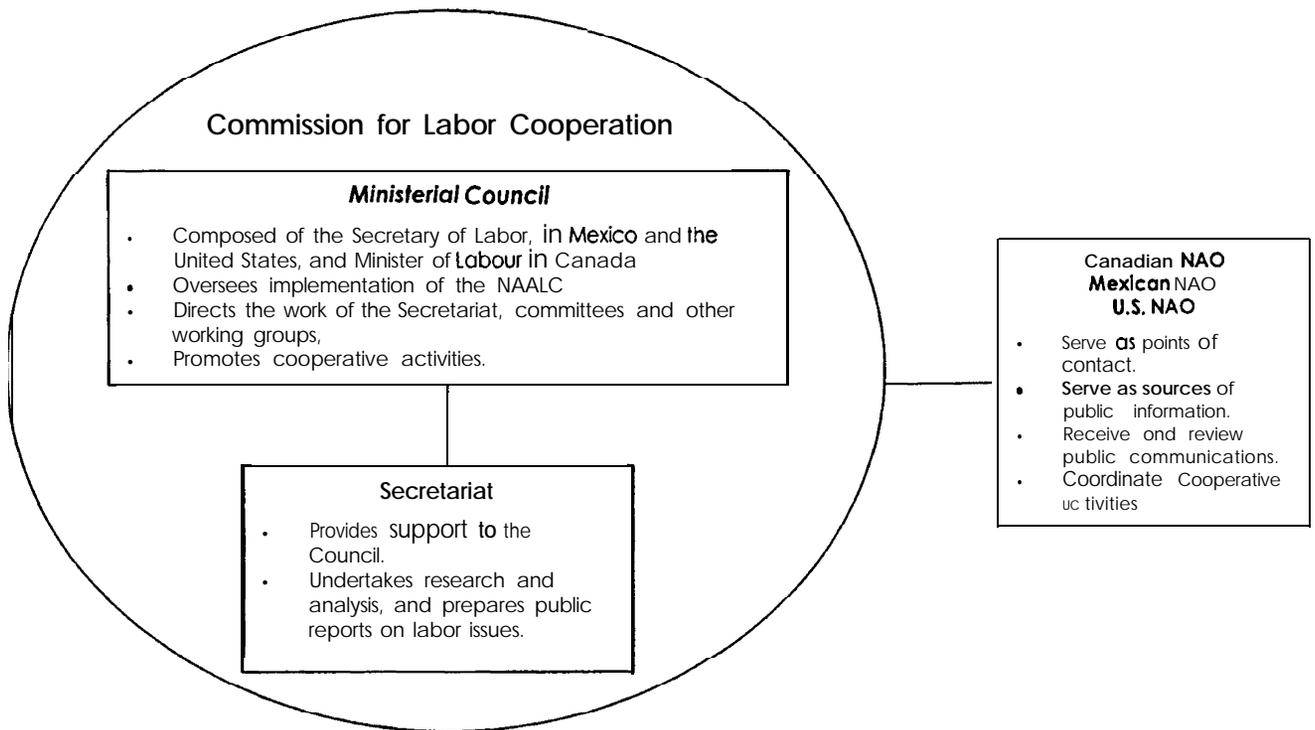
However, the NAALC Parties do undertake general commitments in the Agreement which are not limited to the specific provisions of existing legislation but are broader in nature. In Article 1: Objectives, the Parties agree to "promote, to the maximum extent possible, the labor principles set out in Annex 1." And in Article 2 each Party agrees to "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."

It is important to stress that, in the model of the ILO, adoption of international standards is voluntary for each state; i.e., governments choose the Conventions they ratify (ratifications by Mexico -76, by Canada - 29, by U.S. - 12). In the NAALC, on the other hand, the full range of labor laws of each Party are covered by the Obligations regarding effective enforcement, although different sets of laws are subject to different methods of review and follow-up. The NAALC's obligations are both non-voluntary (i.e., governments cannot choose the areas of law to which they will apply) and subject to sanctions in three important areas of law: child labor, occupational safety and health, and minimum wage. Each of these aspects constitutes a substantial departure from the traditional ILO model, and both separately and together they have important ramifications for the question of international standards.

B. NAALC 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 trilateral Labor Secretariat was established in Dallas, Texas, U.S.A., and was officially inaugurated on September 26 of that year. In June, 2000 that office will be relocated to Washington D.C..

NAALC institutions are both international [the Council and Secretariat] and domestic (NAOs). 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 trilateral labor cooperation.

a. 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 trilateral cooperative activities on a broad range of issues involving labor law, labor standards, labor relations and labor markets.

b. The Secretariat

The Secretariat is 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. 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 a maximum of 15 (subject to modification by the Council), with equitable proportions of the staff coming from each country. The annual budget of the Secretariat is currently approximately \$2.1 million.

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:

- o labor law and administrative procedures;
- o trends and administrative strategies related to the enforcement of labor law;
- o labor market conditions such as employment rates, average wages and labor productivity;
- o human resource development issues such as training and adjustment programs; and
- o 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 trilateral 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.

2. 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.

3. 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.

C. The NAALC as a Framework for International Cooperation

During the recent review of the NAALC by the Ministerial Council, the Agreement was evaluated as, among other things, a framework for international cooperation. These observations are drawn from that review and updated to reflect the ongoing work of the NAALC institutions.

The Review found that there is a broad consensus of opinion that the NAALC has established a much needed and important new institutional framework for international cooperation in the labor area. This need arises naturally out of the increasing integration of the North American economy and the mutual interdependency and transnational impacts that integration brings to the national labor markets and to the application of labor rights and labor regulation throughout the region.

Coordination and cooperation among governments is recognized as important for a number of purposes, at the least these:

- o the provision and improvement of basic information:
- o addressing issues of common concern; e.g., the improvement of analysis and understanding of the functioning of the region's labor markets as a totality, sharing best practices regarding labor market development and labor regulation, addressing transnational labor issues, such as migrant labor or the functioning of border labor markets;
- o the maintenance of consistently high standards of labor law enforcement throughout the region to underpin confidence in the trading system of the NAFTA.

Each of these purposes is discussed briefly below. While there is a strong consensus on the need and value of international cooperation for the above purposes, many commentators do not believe that the NAALC has yet achieved its potential in this regard or sufficiently met the need, even though important progress has been made.

Basic information

The NAALC contains a substantial number of important references to improving the availability of information (see, for example, Articles 1, 6, 7, 10, 11, 14, 21).

Basic information falls into several categories. First, information on the legal and regulatory systems in the labor area in each country, and here all parts of the NAALC have been found to make an important contribution, from the cooperative activities organized by the NAOs to the public communications processes and ensuing consultations, to the research work of the Secretariat.

Second, information regarding administrative and adjudicative procedures has also been identified as extremely important. Indeed, the information function in the sense of "transparency" and "sunshine" has been found by a number of observers to be one of the most important features of the Agreement, and one which should lead to real improvements in the quality of public administration of labor laws in all parts of North

America over the long term. The value of such information is recognized in Article 1 as one of the basic objectives of the NAALC: "[to] encourage publication and the exchange of information," and "[to] foster transparency in the administration of labor law."

Third, closely related to the above information is administrative data regarding the enforcement of labor laws. The need for more and better information of this type has been pointed out, and the fact that the NAALC makes provision for this information (for example, in the work of the Secretariat under Article 14) has been considered an important benefit of the Agreement. The Secretariat's study *Plant Closings and Labor Rights* (see "Secretariat Activities", below) has been found to be a good example.

Finally, basic information is also needed in regard to the performance of the labor markets. Here the importance of better internationally comparative information has been noted as well as the need for more information at the workplace level regarding such vital labor market development issues as training and work organization. Again the NAALC is seen as having the potential to achieve progress here, and the Secretariat's *North American Labor Markets: A Comparative Profile* has been recognized (see *Secretariat Activities*, below).

Issues of common concern

The need for basic information is an important example of, and is connected to the need for, collective attention of the governments of North America to issues of common concern, whether the interactions of the national labor markets and the ways in which they can affect each other, or addressing common challenges ranging from child labor to nonstandard work. Observers acknowledge that many (certainly not all) of these areas of common concern have been addressed cooperatively in some way over the past four years to some extent. Commentators have also pointed to a number of areas that have not been addressed, such as migrant workers, the implementation of employment standards, cross-border labor issues, or problems related to discrimination in employment. There appears to be wide recognition of relatively untapped potential in this area.

High standards in labor law administration

A major emphasis has been given to international cooperation in regard to the administration of legal protections related to occupational health and safety. The NAALC Parties have established a North American Occupational Health and Safety Week, and many conferences, seminars and workshops have been held to promote the exchange of information and discussion of topics of common concern. Again, observers see an area of potential here that has yet to be fully developed. For instance, it has been suggested that the Council should improve the availability of comparable data on enforcement, labor standards and labor market indicators in order to enable a better evaluation of the effectiveness of enforcement and to promote its improvement over time.

1. Cooperative Activities of the NAOs

During the past four years the NAALC has provided the basis for an extensive program of trilateral 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.

The three NAO's prepare a yearly Cooperative Work Program which is then 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 training 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 that, since the NAALC came into effect, a total of 46 activities were undertaken. 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 **trilateral** cooperative work program and participated in most of the activities organized over the past four years.

Table 1
LABOR COOPERATIVE ACTIVITIES UNDER NAALC 1994-1 998

1. Occupational Safety & Health

Date	Activities	Location
1994		
Feb. 21-25	Training Course on: "Sampling and Laboratory Analysis of Airborne Contaminants"	Mexico City.
Feb. 22-24	Course on: "Principles of Ergonomics"	Mexicali, Mexico
March	Training course on: "The use of Synthetic Fibers in the Workplace"	
April	Training course on: "Air Sampling Equipment+'	Mexico City
Jun. 13-16	"Technical Seminar on Safety and Health in the Electronics Industry"	Albuquerque, N M
Jun. 28-30	Course on: "Biohazards"	Mexico City
Aug. 23-25	Training session on: " Safety and Health in the Construction Indust "	Monterrey, Mexico
Aug 30- Sept 1	Training course on: "Industrial Hygiene"	Guadalajara, Mexico
Sept. 12-13	Seminar on : "Occupational Safety and Health Statistics"	Mexico City
Sept 13-15	Training Course on: "Accident Inspections"	Monterrey, Mexico
Sept. 20-22	Training course on: "Hazard Recognition for Industrial Hygienists"	Guadalajara, Mexico
Sept. 28-29	"Technical Seminar on Safety and Health in the Construction Industry"	Mexico City
Nov. 14-17	"Technical Seminar on Safety and Health in the Petrochemical Industry"	Edmonton, Canada
1995		
Jun. 5-8	Annual Meeting of: "Senior Occupational Safety and Health Officials in Canada"	Vancouver Canada
Jul. 13	Familiarization Seminar on OSH	Mexico City
Nov. 7-10	" Construction Study Tour "	Dallas, Texas
1996		
Mar. 25-24	"Occupational Safety and Health Planning Session'+	Mexico City
Oct. 27-3 1	NAALC Petrochemical Study Tour on: "Preventing Catastrophic Explosions in the Petrochemical Industry in North America"	Orlando, FL
1997		
Jun. 2-6	" 1997 North American OSH Week"	
1998		
May 18-22	"1998 North American OSH Week"	
1999		
May 17-21	"1999 North American OSH Week+'	
May 27-28	Conference on "Safety and Health in the Workplace in North America"	Monterrey, MX

Date	Activities	Location
May 27-28	Conference on "Safety and Health in the Bottling Industry in North America"	Mexico Cify, M X
Sept 22-24	Conference on "The Future Culture of Safety and Health in the Mining Industry in North America"	Winnipeg, CAN

2. Employment and Job Training

Date	Activities	Location
1994		
Jun. 2-3	Technical Seminar on: "Microenterprises and the Informal Sector"	Mexico City
Oct. 24-25	Workshop on: "Productivity Trends and Indicators"	Mexico City
1995		
Jun. 21-22	Workshop on: "Equality Issues in the Workplace"	Mexico City
1996		
Apr. 23-24	Workshop on: Continuous learning & Development in the Workplace"	Dallas, Texas
Oct. 3-4	Workshop on: "Income Security Programs"	Ottawa, Canada
Nov. 25-26	Tripartite seminar on: "Responding to the Growth of Non-Standard Work and Changing Work Time Patterns and Practices"	Ottawa, Canada
1997		
Feb. 24-25	International Conference on "Improving Children's Lives: Child and Youth Labor in North America"	Sun Diego, CA
Feb. 27-28	1997 North American Seminar on Incomes and Productivity (Secretariat)	Dallas, Texas
Apr. 23-25	Trinational Conference on: "Women and Work in the 21 st Century"	Querétaro, Mexico
Oct. 15-16	Follow-up Child Labor Conference "Protecting Working Children in North America: A Shared Responsibility"	Ottawa, Canada
1998		
Feb. 26-27	1998 North American Seminar on Incomes and Productivity (Secretariat)	Dallas, Texas
Apr. 1-2	Seminar on: "Labor Market Trends and the Role of Governments"	Guadalajara, Mexico

3. Labor Law and Workers Rights

Date	Activities	Location
1994		
Jun. 26-30	Workshop on: "Labor Law and Practice"	Sun Diego, CA
Sept. 19-20	Conference on: "Labor Law and Industrial Relations"	Washington, D.C.
1995		
Mar. 27-28	Government-to-Government Workshop on: "Labor Law and Freedom of Association"	Washington, D.C.
Sept. 20-21	Follow-up Workshop on: "The Right to Organize and	Washington,

Date	Activities	Location
	Freedom of Association"	D.C.
1994		
Mar. 18-20	Canada-USA-Mexico Tripartite Conference on: "Industrial Relations for the 21 st Century"	Montreal, Canada
1998		
Oct. 29	International Conference on: "Labor-Management Relations in North American Multinationals: Legal, Cultural and Economic Environments"	Washington, D.C.
Dec. 7-8	Labor Management Conference on: "Contracting Out, Outsourcing: New forms of work, new employment relationships"	Canada
2000		
Feb 7-9	Conference on "Agricultural Migrant Labor in North America"	Los Angeles, CA

4. Other

1998		
Jun 19-20	Conference on "The Role of the New NAFTA Institutions: Regional Economic Integration and Cooperation"	Los Angeles, CA

Table 2
COOPERATIVE ACTIVITIES BY SUBJECT

	1994	1995	1996	1997	1998	1999	2000	Total
Occupational Safety and Health	13	3	2	1	1	4		24
Employment and Training	2	1	4	4	2	0		13
Labor Law and Worker Rights	2	2	1	0	2	0	1	8
Other					1			1
Total	17	6	7	5	6	4	1	46

2. 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) (see "Evaluations and Dispute Resolutions", below).

a. Reports and Publications

Comparative Labor Market Study

The study North American Labor Markets: A Comparative Profile provides a comprehensive comparative analysis of trends in the labor markets of the three countries of North America during 1984-1995. It was published in 1997 and includes numerous charts and tables as well as explanatory text.

The report presents all major labor market statistics where reasonably comparable information exists for all three countries. Topics covered include employment, working time and nonstandard work, unemployment, unionization, earnings, productivity, income distribution and employment benefits. The report describes some of the important trends and major themes that have emerged in the three labor markets over the past decade.

A second edition of the Comparative Profile is currently under preparation. In addition to updating information contained in the first edition it will present a special chapter on contingent and informal sector work.

Comparative Labor Law Study

In December 1994 the Secretariat published, in the Commission's three official languages, a "Preliminary Report to the Ministerial Council: Labor and Industrial Relations Law in Canada, the United States and Mexico." A comprehensive comparative labor law report is being prepared by the Secretariat. **The purpose** of the report is to provide an analysis of the key features of labor law in the three countries organized under the 11 NAALC Labor Principles. The report also describes governmental administrative machinery in each country, organized according to the **NAALC's** six obligations. The first volume in this series of reports, covering collective labor relations laws, will be published in the spring of this year.

Plant Closings and Labor Rights

At the request of the Government of Mexico, Ministerial Consultations were undertaken with the United States on December 15, 1995, following the Mexican NAO report in the matter of Mexican NAO Submission 9501 (see Annex 2). On February 13, 1996, the Council announced the results of the Ministerial Consultation, which were endorsed and joined by Canada. One decision was to direct the Secretariat to conduct "a study on the effects of the sudden closing of a plant on the principle of freedom of association and right of workers to organize in the three countries." **NAALC Article 14(2)** provides that the Secretariat shall prepare a study on any matter as **the Council** may request.

The study describes how **the labor laws of each country** address the use of plant closures or threats of *closure* to prevent union organization; it then examines the experience with the administration of these laws over the past five to 10 year period. The study was published on June 9, 1997, **under** the title "Plant Closings and Labor Rights".

Standard and Advanced Practices in the North American Apparel Industry

The Secretariat prepared a study on production and employment practices in the North American apparel industry. This study **was** undertaken to identify and disseminate successful practices of firms, governments, unions and others in the industry to improve wages and working conditions while remaining competitive. It will be published in the next few months.

Short Reports

In order to analyze some of the topics covered by the labor market report in greater detail, the Secretariat has also **undertaken** short reports on specific labor market topics. A report on the employment of women in North America, published in 1998, was the first such report. It is designed to analyze female employment in the three NAFTA countries

and to outline the main characteristics of female labor in the three countries comprising the NAALC, while describing its evolution from 1984 to 1996.

A reference manual under preparation covers the main income security programs provided under the laws of Canada, Mexico and the United States. Some of the substantive programs covered in this manual include employment insurance, workers' compensation, disability insurance, severance payments, family support programs, maternity and sick leave, and income support programs delivered through the tax system. The report will be published in the next few months.

The Secretariat has also prepared a legal background paper on the rights of migrant agricultural workers in North America, to be distributed at the upcoming cooperative activity on agricultural migrant workers to be held in Los Angeles, February 7-9, 2000 (see above).

Other Publications

One of the primary functions of the Secretariat is to produce information that reaches a broad spectrum of the public interested in North American labor issues. Aside from the major studies, short reports and preliminary reports, the Secretariat's publications program for the first four years included the publication of four periodic bulletins, which provided information on research and activities sponsored by the Commission and the establishment of the Secretariat's World Wide Web site (www.naalc.org).

Working Group on Labor Market Data Comparability

In 1998, the Parties established a Working Group on Labor Market Data Comparability to assist the Secretariat in preparing labor market comparisons. The Working Group, comprising senior government labor market economists from the three countries, provides advice and liaison to Secretariat economists. The agenda of the Working Group includes:

- o Development of an understanding of the problems, methodologies and criteria used for the creation of labor market data in each country.
- o Preparation of a handbook on comparability issues for use by government statisticians and analysts researching labor markets in North America.
- o Comparison of the issues and approaches identified by the Secretariat with those used by analogous organizations, such as the International Labour Organization and the Organization for Economic Cooperation and Development.
- o Development of possible measures that could be used by the Parties to improve the comparability of labor market statistics in North America.

The Working Group began meeting in late 1998.

b. Council Initiatives

North American Seminar on Incomes and Productivity

The Secretariat has initiated a seminar series focusing on different perspectives on the central theme of incomes and productivity and the linkages between them within the

labor markets of the NAFTA partners. The seminars bring together leading experts from academia, government, labor and business groups to address this important topic. .

The first seminar, held in February, 1997, focused generally on two areas: a macroeconomic perspective on wages, productivity and competitiveness in North American labor markets; and a microeconomic perspective on the changing employment relationship in open economies. The 1998 seminar focused on a multisector analysis of earnings and productivity and a single-sector analysis of incomes and productivity in the auto industry in North America. The proceedings of these conferences have been published by the Secretariat. The next seminar in **the series** will be held in Mexico City in February 2000 and will focus directly on the relationship between productivity and income.

Working Group on Workers' *Compensation* in North *America*

At the request of administrators of several workers' compensation systems in North America, the Council decided on July 8, 1997, to establish a Working Group to consider the special challenges in administering workers' compensation programs for employees from one North American country working temporarily in another North American country. The Working Group consists of federal and state/provincial officials and is supported by the Secretariat. The group has conducted a survey of workers' compensation administrators designed to identify issues related to the cross-border movement of workers. A report including an analysis of survey results is available from the Secretariat.

D. Cooperative Consultations, Evaluations and Dispute Resolution

1. Public Communications

The NAALC is an intergovernmental Agreement, providing a set of government-to-government obligations, commitments and procedures and providing for a governmental Council of Ministers to both constitute, with the Secretariat, the Commission for Labor Cooperation and oversee the Agreement. Unlike the International Labor Office, for example, non-governmental representatives from business and labor do not have a governing body role in the Commission.

However, the NAALC does create a channel for direct public participation. Article 16 (3) instructs each National Administrative Office "to **provide** for the submission and receipt of public communications on labor law matters arising in the territory of another Party."

The public is thus invited by the Agreement to communicate with each government or Party concerning "labor law matters" in a different country. This is an important innovation in international relations in North America. It creates a formal mechanism for members of the public of one **country** to raise issues of concern to them, which exist or occur in another country. By implication it also creates a type of political **accountability** of each government to respond to the public communications which it receives and places a similar type of political onus on all the Parties to work together to respond to each other in the management of such communications.

The issues raised are problematic ones in the eyes of the public sponsors of the communications, and they are seeking the active participation of the government to which they submit their communication in obtaining more information about these

perceived problematic matters and in resolving underlying problems if they do indeed exist. Public communications have generated a great deal of public interest and a considerable attention by the media.

The NAALC does not create a mechanism for individuals to pursue private rights and seek individual remedies. The procedures of the NAALC are government to government in nature and relate strictly to the terms of the Agreement. The NAALC's own obligations, as well as its procedures of Evaluation Committees of Experts and dispute resolution, are systemic in nature; i.e., a government's general system of administration of labor law (as evidenced in patterns of practice) is what is under consideration.

Private rights must therefore be pursued under domestic law within the administrative mechanisms and tribunals available in each country. Under Article 4 the Parties accept the obligation to ensure that persons have appropriate access to such mechanisms and tribunals in order to ensure that their rights are enforced, and in Article 5 the Parties accept further obligations regarding procedural guarantees. But these obligations do not **create** any rights of private action or determine any specific procedures in themselves. To emphasize this point, the last paragraph of Article 5 adds that decisions and proceedings of a Party's labor authorities "shall not be subject to revision or reopened under the provisions of this Agreement." In other words, there is no appeal process created by the Agreement.

The NAALC was deliberately framed to leave the design of the public communication process to each Party to define for itself, in recognition of the fact that such processes will be judged in the light of different national and even cultural norms.

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

- o petitioners submit communications concerning labor matters occurring in the territory of another party to the National Administrative Office of their government;
- o the NAO determines the communication complies with its own requirements;
- o if accepted, **the** NAO initiates a review of the communication, normally including consultations with affected NAOs, as well as other forms of information gathering;
- o 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 21 public communications received by the NAOs. Thirteen of these **have** been received by the U.S. NAO, two of which relate to issues arising in Canada, the remainder relating to issues arising in Mexico.

The Mexican NAO have received five, all relating to labor law issues in the United States. The Canadian NAO has received three, one relating to issues arising in Mexico, and two relating to issues arising in the United States. A summary of activity relating to each public communication is found in Annex 2.

2. Ministerial Consultations

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. Article 22 has been invoked on a number of occasions (see Annex 2).

3. Evaluations and Dispute Resolution

The NAALC contains formal processes for independent analysis of the enforcement of labor laws (excluding laws related to the first three Labor Principles of the NAALC (see discussion below)) using Evaluation Committees of Experts (ECEs) and for the resolution of disputes related to three specific areas of labor law using Arbitral Panels. Neither of these processes or bodies has yet been initiated.

a. Evaluation Committee of Experts

If a matter has not been resolved through ministerial consultations, an Evaluation Committee of Experts (ECE) may be established at the request of any NAALC member country involved in those consultations, for the purpose of examining “patterns of practice by each Party in the enforcement of its technical labor standards”. Technical labor standards are defined under the NAALC so as to cover such matters as minimum employment standards, freedom from discrimination and occupational health and safety laws (see Annex 1). They do not include collective labor relations laws. The ECE performs an independent, non-adversarial analysis of and makes recommendations concerning all three NAALC countries’ labor law enforcement in the particular subject area raised in the request for an ECE. Matters subject to Evaluation must be trade-related or covered by mutually recognized labor laws.

b. Dispute Resolution by an Arbitral Panel

Following the presentation of an ECE report to the Council and subsequent required consultations, a party involved in the consultations may request the establishment of an Arbitral Panel. A Panel may only be established for the purpose of addressing “alleged persistent patterns of failure to effectively enforce occupational safety and health, child labor or minimum wage technical standards.” The establishment of a Panel requires a two-thirds vote of the Council. Matters subject to such dispute resolution must be both trade-related and covered by mutually recognized labor laws. If convened, the 5-member Arbitral Panel would be empowered to develop an action plan to remedy persistent patterns of failure to enforce the laws in question. Failure to implement the plan could result in fines or trade sanctions,

Annex 1

NAALC OBJECTIVES

Article 1

- 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.

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, such as:
 - 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.

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.
2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:
 - a. its labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and
 - b. collective agreements, can be enforced.

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;
 - c. the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
 - d. such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.
2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:
 - a. in writing and preferably state the reasons on which the decisions are based;
 - b. made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
 - c. based on information or evidence in respect of which the parties were offered the opportunity to be heard.
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.
4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.
5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

6. Each Party adopt or maintain ~~help or~~ ^{represent} or advise workers or their organizations,
7. **Nothing in** this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labor law distinct from its system for the enforcement of laws in **general**.
8. For greater certainty, decisions by each Party's administrative, quasi-judicial, **judicial** or labor tribunals, or pending decisions, as well **as** related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

Article 6: Publication

1. Each Party shall ensure that its laws, **regulations**, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.
2. When so established by its law, each Party shall:
 - a. **publish** in advance any such measure that it proposes to adopt; and
 - b. provide interested persons a reasonable opportunity to comment on such proposed measures.

Article 7: Public *Information and* Awareness

Each Party shall promote public awareness of its labor law, including by:

- a. ensuring that public information is available related to its labor **law** and enforcement and compliance procedures; and
- b. promoting public education regarding its labor law.

DEFINITIONS

Article 49: Definitions

"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;

“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;

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.

Annex 2

Summary of Activity Related to Public Communications

CANADIAN NATIONAL ADMINISTRATIVE OFFICE

Canadian **NAO 98-1**

On June 4, 1998, the Canadian NAO accepted for review a public communication alleging a failure by Mexican authorities to ensure freedom of association and the right to organize, and to effectively enforce laws protecting worker safety and health. The communication also alleged partiality on the part of the Mexican authorities during legal proceedings, **and** that the absence of certain procedural measures such as secret-ballot voting during union representation challenges constituted a failure to provide for the high labor standards culled for in Article 2 of the NAALC. The allegations relate to working conditions and a union representation challenge at the ITAPSA plant in Reyes La Paz, State of Mexico, Mexico, which is owned by Echlin Inc., a subsidiary of Dana Corp., and to legal proceedings in connection with that challenge. The communication was submitted on April 6, 1998, by United Steelworkers of America [Canadian National Office), the Canadian Labour Congress, AFL-CIO of the U.S., Frente Auténtico del Trabajo of Mexico, and a number of other trade unions and NGOs.

On September 14, 1998, and again on November 5, 1998, the Canadian NAO held public meetings to receive information from the **submitters** as well as other interested parties. On December 15, 1998, the Canadian NAO released a report dealing **with the** freedom of association and right to organize issues raised by the communication. The Canadian NAO recommended that Canadian Labour Minister Claudette Bradshaw seek consultations with Mexican Secretary of labor and Social Welfare José Antonio González once the NAO had released the second part of its report, dealing with occupational health and safety issues.

The Canadian NAO issued Part II of its review, dealing with occupational safety and health issues, on March 3, 1999. Part II contained follow-up questions related to the treatment of long-term occupational injuries and illnesses under the Mexican compensation system. On October 4, 1999, the Mexican Minister of Labor agreed to Ministerial Consultations.

For a related communication, see U.S. NAO 9703.

Canadian **NAO 98-2**

On September 29, 1998, the Canadian NAO received a public communication alleging that a Memorandum of Understanding between the US. Immigration and Naturalization Service (INS) and the US. Department of Labor (DOL) **deterred** immigrant workers from reporting violations of U.S. minimum employment standards laws. The Memorandum required DOL inspectors investigating wages and hours complaints to inspect employer records concerning the immigration status of **employees and to communicate** any information regarding unauthorized workers to the INS. The communication further alleged that, in the absence of worker complaints, U.S. DOL officials lacked the information necessary to enforce **federal wage** and hours laws, and that other means of enforcement were much less effective. The communication was submitted by the Yule

Law School Workers' Rights Project, the American Civil Liberties Union Foundation Immigrants Rights Project and a number of other civil rights organizations and trade unions.

On November 25, 1998, the U.S. NAO sent a copy to the Canadian NAO of a new Memorandum of Understanding between the Department of Labor and the Immigration and Naturalization Service, dated November 23, 1998, modifying and superseding the earlier one. On November 27, the Canadian NAO sent a letter to the U.S. NAO saying that it was extending **consideration** of the communication by 30 days in order to consider the implications of the new Memorandum of Understanding.

On April 27, 1999 the Canadian NAO informed the submitters that it had closed its file in view of the new Memorandum of Understanding.

For a related communication, see Mexican NAO 9804.

Canadian NAO 99-I

On April 14, 1999 the Canadian NAO received a public communication alleging that the U.S. National Labor Relations Board has interpreted and applied laws prohibiting employer domination of, or interference with, trade unions in such a way as to prevent effective "employee involvement" programs. The **communication** stated that this constituted a failure to provide for high labor standards, and to apply effectively and enforce laws relating to freedom of association and the right to organize unions. The submission also alleged unwarranted delays in National Labor Relations Board proceedings to resolve disputes over the legality of employee involvement plans. The U.S.-based Labor Policy Association (LPA, Inc.), and the EFCO Corporation, a U.S.-based manufacturer, filed the communication.

On June 15, 1999 the NAO wrote to the submitters and informed them that it had decided not to accept the communication for review. The NAO's letter stated **that** information provided by the U.S. NAO, the AFL-CIO and the communication did not indicate a failure to comply with the obligations of the NAALC, including enforcement of labor law. On June 15, 1999 the submitters wrote to the Canadian NAO to ask that **it** reconsider its decision.

MEXICAN NATIONAL ADMINISTRATIVE OFFICE

Mexican NAO 9501

On February 9, 1995 the Mexican NAO received a submission involving the sudden closing of a Spanish-language telemarketing facility of the Sprint Corporation in San Francisco, California, alleged to be motivated by anti-union bias. The Mexican NAO reviewed the submission and on May 31, 1995 released a report recommending Ministerial Consultations. The submission was filed by the Sindicato de Telefonistas de la República Mexicana (Telephone Workers Union of the Republic of Mexico).

On June 2, 1995, Mexican Labor Secretary Santiago Oñate requested Ministerial Consultations with his U.S. counterpart regarding the effects of the sudden closure of a workplace on the freedom of association and the right of workers to organize. The U.S. Secretary of Labor accepted the request for Ministerial Consultations. On December 15,

1995, the U.S. and Mexican governments reached an agreement spelling out a three-step plan to address the submission. The agreement signed by Secretary Reich and new Mexican Secretary of Labor, Javier Bonilla, stated that:

1. Secretary Reich would keep Secretary Bonilla informed of any further legal developments outside the Labor Department in the case;
2. The Secretariat of the Commission for Labor Cooperation would study the effects of sudden plant closings on the principle of freedom of association and the right of workers to organize in all three countries;
3. The U.S. Department of Labor would hold a public forum in San Francisco to allow interested parties an opportunity to convey to the public their concerns on the effects of the sudden closing of a plant on the principle of freedom of association and the right of workers to organize.

On February 27, 1996 the public forum called for by the ministers was held in San Francisco, California, with presentations by workers affected by the plant closing, by union representatives from Mexico, the U.S. and Europe, by a law professor speaking on behalf of the company, by academic analysts and by labor and business representatives in the Canadian and Mexican delegations.

In October 1996, the Secretariat submitted a draft report "Plant Closings and Labor Rights" to the Commission's Council. A revised draft, responding to comments from the Council, was submitted in December 1996. On June 9, 1997, the Secretariat released for public sale in English, French and Spanish its study, Plant Closings and Labor Rights, The Effects of Sudden Plant Closings on Freedom of Association and the Right to Organize in Canada, Mexico and the United States, Bernan Press.

In December 1996, the U.S. National Labor Relations Board (NLRB) ruled that the plant closing was motivated by anti-union animus, and ordered the employer to rehire affected workers into openings in other divisions of the company and to provide back pay for lost wages [LCF, Inc., d/b/a/ La Conexion Familiar and Sprint Corporation, 322 NLRB No. 137 (1996)]. The company filed an appeal against this decision in a federal court. On November 25, 1997 the U.S. Court of Appeals, District of Columbia, ruled that the enforcement order of the NLRB was based on findings that were "not supported by substantial evidence." The company's petition was granted and the NLRB's enforcement order was denied.

Mexican NAO 9801

On April 13, 1998, the Mexican NAO received a public communication alleging that delays in the U.S. National Labor Relations Board's labor law enforcement procedures resulted in a failure to protect workers' rights to organize unions and bargain collectively. The communication also alleged failure by the relevant authorities to protect workers from persistent violations of occupational health and safety laws, and persistent violations of California laws relating to overtime pay. The communication related to events that allegedly took place before and during an attempt to organize the workers at Solec International Inc., a manufacturer of solar panels located in Carson, California, a subsidiary of Sanyo and Sumitomo Bank. The communication was submitted by the Oil,

Chemical and Atomic Workers International Union, Local I-673, OCAW; the Sindicato de Trabajadores de **Industria y Comercio "6 de octubre"**; the **Unión de Defensa Laboral Comunitaria**; and the **Comité de Apoyo paralos Trabajadores de las Maquiladoras**.

On August 10, 1998, in response to this communication, the Mexican NAO wrote to the U.S. NAO to ask a series of questions relating to U.S. labor law and its administration. The Mexican NAO received a response to the questionnaire on October 2, 1998, and the U.S. NAO provided further, detailed responses on November 24, 1998.

The Mexican NAO issued its review of the communication on **August 30, 1999**. The review recommended Ministerial Consultations between the United States and Mexico on the issues of freedom of association, the right to bargain collectively, occupational safety and health, minimum labor standards, and racial discrimination in employment. Mexican Secretary of Labor **Mariano** Palacios Alcocer requested Ministerial Consultations with U.S. Secretary of Labor Alexis Herman on August 20, 1999. Secretary Herman agreed to Consultations on September 30, 1999.

Mexican NAO 9802

On November 23, 1998, the Mexican NAO accepted for review a public communication alleging systemic problems with U.S. labor law and its enforcement affecting workers in the Washington State apple picking and packing industries, including allegations of: failure of labor laws to cover agricultural workers; failure of labor laws to provide effective remedies against violations of the right to organize unions; unwarranted delays in the enforcement of rights to organize a union; decline in the real value of the minimum wage; failure to effectively enforce occupational health and safety laws and minimum wage laws; failure to adopt **occupational** health and safety standards relating to hazards prevalent in agricultural work; and failure to provide equal protection to migrant workers. The communication was submitted on May 27, 1998, by the **Unión Nacional de Trabajadores (UNT)**, **Frente Auténtico del Trabajo (FAT)**, **Frente Democrático Campesino (FDC)**, and the **Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares (STIMACHS)**, assisted by the International Labor Rights Fund. On **November 30, 1998**, the U.S. NAO provided the Mexican NAO with detailed responses to a series of questions concerning U.S. labor and employment law and its administration. On **December 2, 1998** the Mexican NAO met with the submitters in Mexico City.

On August 30, 1999, the Mexican NAO issued a report recommending Ministerial Consultations between the U.S. and Mexican Secretaries of Labor regarding the rights of workers in the agricultural sector, including freedom of association, the right to bargain collectively, minimum labor standards, effective compliance with occupational safety and health norms, and whether workers are entitled to the same protections as domestic workers. Mexico requested Ministerial Consultations with the United States on August 20, 1999. U.S. Labor **Secretary** Herman agreed to consultations on September 30, 1999.

Mexican NAO 9803

On August 10, 1998, the Mexican **NAO** accepted for review a public communication alleging failure of the U.S. government to ensure equal protection of migrant workers and failure to protect Mexican workers against violations of: (1) health and safety laws relating to living quarters, (2) laws protecting against breaches of employment contract terms, (3) laws prohibiting discrimination on the basis of national origin, and (4) rights to compensation for occupational injury and illness. The communication also alleged a

failure to disseminate information about laws so that the Mexican workers could be informed of their legal rights. The allegations related to the alleged treatment of Mexican workers at the **DeCoster Egg Farm in Maine, USA**, in response to which a group of workers, joined by the Mexican government as co-plaintiff, had **launched** a legal action. The communication was submitted on August 4, 1998, by **Confederación de Trabajadores de México (CTM)**.

The Mexican NAO notified the U.S. NAO on August 10, 1998 that it had accepted the communication for review. It requested information about the rights of agricultural workers in the United States and in the state of Maine in particular on August 11, 1998. The U.S. NAO responded to questions posed by the Mexican NAO on December 22, 1998. On December 2, 1999, the Mexican NAO issued a report recommending Ministerial Consultations between the United States and Mexico for the purpose of clarifying what means the United States has at its disposal to guarantee that Mexican migrant **agricultural** workers receive the same protections as nationals with respect to minimum labor standards, elimination of employment discrimination, and occupational safety and health. Mexican Labor Secretary **Palacios** requested Ministerial Consultations with U.S. Labor Secretary **Herman** on November 23, 1999.

Mexican NAO 9804

On September 22, 1998, the Mexican NAO received a public communication alleging that a Memorandum of Understanding between the U.S. **Immigration** and Naturalization Service (INS) and the U.S. Department of Labor (DOL) deterred immigrant workers from reporting violations of U.S. minimum employment standards laws. The Memorandum required DOL inspectors investigating wages and hours complaints to inspect employer records concerning the immigration status of employees and communicate any information regarding unauthorized workers to the INS. The communication further alleged that, in the absence of worker complaints, the U.S. DOL officials lacked the information necessary to enforce federal wage and hours laws, and that other means of enforcement were much less effective. The communication was submitted by the Yale Law School Workers' Rights Project, the American Civil Liberties Union Foundation Immigrants' Rights Project and a number of other civil rights organizations and trade unions.

Subsequently the Mexican NAO received from the U.S. NAO a new Memorandum of Understanding between the Department of Labor and the Immigration and Naturalization Service, dated November 23, 1998, modifying and superseding **the earlier** one.

For a related communication, see Canadian NAO 98-2.

UNITED STATES NATIONAL ADMINISTRATIVE OFFICE

U.S. NAO 940001 *and* U.S. NAO 940002

U.S. **NAO 940001** was filed by the International Brotherhood of Teamsters (**IBT**), AFL-CIO. It concerned allegations relating to the freedom of association and right to **organize** of workers at the Honeywell **Manufacturas de Chihuahua, S.A.**, in the City of Chihuahua, State of Chihuahua, Mexico.

USNAO 940002 was filled by the United Electrical, Radio and Machine Workers of America (UE) .

It, too, concerned allegations relating to freedom of association and the right to organize, specifically at a General Electric subsidiary, **Compañía Armudora, S.A.**, in **Ciudad Juarez**, State of Chihuahua, Mexico.

On April 15, 1994, the USNAO gave notice that both submissions were accepted for review. It held public hearings in Washington, D.C., on both submissions on September 12, 1994, and released a Public Report of Review on October 12, 1994. The Report did not recommend ministerial consultations but instead called for a series of cooperative activities by the Parties' NAOs relating to freedom of association and the right to organize.

As a result, the NAOs jointly held trilateral workshops on the topic by experts from the three countries in Washington, DC in March and September 1995. The transcripts and papers are available from USNAO. Also, the three NAOs joined with representatives of government, business and organized labor in Montreal, Quebec, Canada, in March 1996, at a trilateral conference on industrial relations in the 21st century.

U.S. NAO 940003

On October 13, 1994, the U.S. NAO accepted for review a public submission raising issues including freedom of association and the right to organize. It was alleged that workers at a Mexican subsidiary plant of the Sony Corporation located in Nuevo Laredo, Tamawlipas, Mexico, were intimidated, pressured, and eventually dismissed by the company when they attempted to organize a union; that the plant management colluded with the established union and local authorities to elect a union leadership that was compliant to the demands of management; that police used violence to break up a peaceful demonstration by workers; and that Mexican authorities improperly denied registration when the workers attempted to organize an independent union. Allegations pertaining to minimum employment standards were not accepted for review since appropriate relief had not been sought under the laws of Mexico. The submission was filed by the International Labor Rights Fund, the **Asociación Nacional de Abogados Democráticos** (National Association of Democratic Lawyers), the Coalition for Justice in the Maquiladoras and the American Friends Service Committee.

The U.S. NAO gathered information from a variety of sources including a public hearing held in San Antonio, Texas, on February 13, 1995, and a report of review was issued on April 11, 1995. In its Public Report of Review, the U.S. NAO recommended to the U.S. Secretary of Labor to request Ministerial Consultations with his Mexican counterpart on the matter of union registration, and also recommended additional joint cooperative activities on matters of internal union elections and democracy. Further, the U.S. NAO committed to undertake a study of Mexican Conciliation and Arbitration Board (CAB) cases involving allegations of unjustified dismissals, and requested information from the Mexican NAO on the allegations of the use of excessive force by the police in breaking up the workers' demonstration.

The Ministerial Consultations resulted in an agreement to conduct a series of three public seminars on union registration and certification, an internal study on union registration by the Mexican authorities, and a series of meetings between Mexican authorities and the

parties concerned. Canada endorsed the action plan agreed at the Ministerial Consultations, and participated in all resulting joint initiatives.

In compliance with the second part of the agreement, the Mexican Secretariat of Labor and Social Welfare designated a team of independent experts to conduct a study of labor law and practice related to the registration of unions.

Finally, in accordance with the third part of the agreement, officials of the Mexican Secretariat of Labor and Social Welfare met in Mexico City with management representatives of the company on June 26, 1995, and with the local labor authorities and a number of the workers directly involved in the case, in **Nuevo Laredo**, on August 21-24, 1995.

In addition, the U.S. NAO contracted a team of experts to conduct a study on selected Mexican CAB cases involving allegations of unjustified dismissals. This study was made available to the public early in 1996.

Seminar on Union Registration
and Certification Procedures
September 13-14, 1995
Mexico City, Mexico

This was the first of the three public seminars agreed to in the Ministerial Consultations agreement. Panels of government officials from the three countries discussed union registration and certification issues in Mexico, the U.S. and Canada. There was significant participation by the public, the interested parties and the workers involved in the submission, as well as considerable press coverage.

Seminar on Union Registration
and Certification Procedures
November 8-9, 1995
San Antonio, Texas, U.S.A

This was the second seminar arising from the Ministerial Consultations agreement. Panels of prominent independent experts from the three countries in the field of industrial relations were selected to discuss **union** certification and registration issues, as well as internal democracy and some of the other **industrial relations issues** raised in the submission. Again, there was public participation and considerable press coverage.

The third and final seminar agreed to in the Ministerial Consultations, took place in Monterrey, Mexico, in February 1996.

In February 1996, the Mexican NAO published documents related to the seminars, the special study by independent experts, and the meetings called for in the agreement on Ministerial Consultations.

In June 1996, the U.S. NAO released a report summarizing and analyzing the results of the seminars and other aspects of **the program resulting from Ministerial Consultations on Submission No. 94003**. The U.S. Secretary of Labor directed the U.S. NAO to monitor developments in Mexico regarding union registration, and to report on the implications of decisions by the Supreme Court of Mexico on constitutional issues involving union registration in the public sector.

In December 1996, the U.S. NAO delivered the follow-up report requested by the U.S. Secretary of Labor. It reported on the current status of Sony workers, initiatives in Mexico to change the federal labor law, and decisions of the Mexican Supreme Court. It concluded that "potentially significant developments continue to take place in Mexico on a wide range of labor matters, including labor legislation, labor-management relations, labor-government relations, and within labor organizations themselves."

The three NAO reports are available from all three NAOs.

A submission involving union registration and representation rights in a merged ministry of the federal government of Mexico was received by the U.S. NAO on June 13, 1996 and accepted for review on July 29, 1996. The merger consolidated three government ministries - fishing, social development, as well as agriculture and water resources - into a single ministry. The union representing former fisheries ministry employees, Sindicato Unico de Trabajadores de la Secretaria de Pesca (Single Trade Union of Workers of the Fishing Secretariat), lost its right to represent employees within the merged ministry. The submission raised issues concerning the federal labor law provisions requiring unions of government employees to be members of a specified central labor organization, and the participation in labor tribunals of union representatives who might have a conflict of interest in ruling on disputes with another union. It was filed by Human Rights Watch/America, the International Labor Rights Fund and the Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers).

As part of its review the U.S. NAO held a public hearing on December 3, 1996 with statements by representatives of the submitting organizations, by union representatives and counsel from the contending union organizations, by interested public citizens, and by a representative of Mexico's Secretariat of Labor and Social Welfare.

As part of its review, the U.S. NAO also commissioned special studies on labor law enforcement in the Mexican federal government sector. Extensive information was also supplied by the Mexican NAO. (A transcript of the public hearing and copies of special reports and information from the Mexican NAO are available from each NAO.)

The USNAO held a public hearing on December 3, 1996, as a part of its review process. It released its Public Report of Review on January 27, 1997. The Report called for ministerial consultations, and noted that the freedom of association issues raised in the submissions had been the subject of ongoing review and interpretation by the International Labor Organization and that conflicting views existed concerning the states of international treaties under Mexican law.

In accordance with the agreement reached in consultations between U.S. Secretary of Labor Alexis Herman and Mexican Secretary of Labor and Social Welfare Javier Bonilla, the NAOs of Mexico, Canada and the United States held a seminar on December 4, 1997, at the University of Maryland School of Law in Baltimore entitled Seminar on International Treaties and Constitutional Systems of the United States, Mexico and Canada.

Academic and governmental experts from all three countries attended the event to discuss international treaties, constitutional provisions, and each country's labor laws. Their considerations included: whether and how treaties are considered self-executing or require legislation; the difference between treaties and executive agreements; the legal

hierarchy of domestic laws and how international treaties and conventions fit within that hierarchy; what is required to make a treaty enforceable domestically and the actual experience with the domestic application of treaties; and the relationship of treaties to state and provincial laws. A transcript of the proceedings is available to the public from the U.S. NAO.

On December 3, 1997 the submitters filed a request that the USNAO reconsider its Report on the submission. Grounds for the request included allegations that the Report did not fully address the submitters concerns about enforcement of Mexican law, and new information on the application of court rulings subsequent to the initial submission. On April 20, 1998 the USNAO denied on the request for review, stating that Mexican appellate court decisions and secret ballot elections, among other things, had addressed matters that had been raised as concerns in the submission.

U. S. NAO 9602

On October 11, 1996, the U.S. NAO received a submission from the Communications Workers of America, AFL-CIO, involving alleged violations of workers' freedom of association in an attempt to form a union at the Maxi-Switch facility in Cananea, Sonora, Mexico. Maxi-Switch, a computer keyboard manufacturer, is a subsidiary of the Silitek Corporation of Taipei, Taiwan. The submission raised issues related to NAALC Part Two Obligations, including levels of protection, government enforcement action and procedural guarantees. On December 10, 1996 the U.S. NAO announced that it had accepted the submission for review and would issue a Public Report of Review within 120 days, as required under the NAALC.

On December 10, 1996 the U.S. NAO announced that it accepted the submission for review and would issue a Public Report of Review within 120 days, as required under the NAALC. The NAO scheduled public hearings for April 18, 1997. On April 16, 1998 the union in question was registered, workers who had allegedly been dismissed from employment for their union activities and had their reinstatement cases denied were granted new hearings, and the public communication was withdrawn. In view of the withdrawal of the communication, the Public Report of Review was not completed.

U.S. NAO 9701

On July 14, 1997, the U.S. NAO accepted for review a public communication raising the issue of alleged employment discrimination based on pregnancy in certain maquiladoras in Mexico. The public communication, which was filed on May 16, 1997, alleges that many employers require women to undergo pre-employment pregnancy screening as a condition of employment and that pregnant women are dismissed from or are pressured into resigning from their jobs. The public communication was filed by the International Labor Rights Fund, Human Rights Watch, and the National Association of Democratic Lawyers of Mexico (Asociación Nacional de Abogados Democráticos - ANAD).

As part of its review process, the U.S. NAO held a public hearing on November 19, 1997, in Brownsville, Texas.

On January 12, 1998, the U.S. NAO released a Public Report of Review on the communication, recommending that U.S. Labor Secretary Alexis M. Herman seek consultations with her Mexican counterpart, Javier Bonilla, then Mexico's Secretary of

Labor and Social Welfare. On January 13, 1998, Ms. Herman **wrote to** Mr. Bonilla to **request such** consultations. On February 24, 1998, Mr. **Bonilla** agreed.

As a result of the **October 8** consultations, on **October 21, 1998**, the three ministers signed an **agreement to** undertake an action plan in response to the communication, to be completed **by July 1999**. **First, the parties agreed to** hold meetings of officials of the **three** governments to: **(1)** discuss pregnancy discrimination in the workplace, legal avenues available to Mexican women workers to seek redress against pregnancy discrimination, and the enforcement of laws in all three countries dealing with gender discrimination; and **(2)** exchange opinions on the Report of Review. This meeting took **place on** November 30, 1998, in Mexico City.

Second, the Parties agreed that the **U.S.** and Mexico would hold seminars within their own territory to disseminate information on the rights and protections available to **female workers**. The seminars will be directed to *workers*, employers, government representatives, and women's organizations. Third, the three **NAOs** will organize a conference, open to the public, on mechanisms in each country to protect the rights of women workers, and on programs to ensure the observance of laws against employment discrimination. The Secretariat of the Commission for Labor Cooperation is to publish a report on these seminars and the conference.

The conference on the Rights of Women in North America was held in **Mérida**, Mexico on March 1-2, 1999. On August 17, 1999 the **U.S. NAO held** an outreach session on the rights of women workers under employment laws **and** protection from pregnancy discrimination in **McAllen**, Texas. On August **18, 1999**, the Mexican NAO held an outreach session *on* laws protecting women workers from discrimination in general and pregnancy discrimination in particular in Reynosa, Tamaulipas. Another pair of outreach sessions are tentatively scheduled to be held in Piedras Negras, Coahuila and Eagle Pass, Texas in March, 2000.

U.S. NAO 9702

On November 17, 1997, the **U.S. NAO** accepted for review a public communication raising issues of freedom of association, occupational safety and health, and minimum employment standards including wages. The public communication alleged that workers at the Han Young plant in Tijuana, Baja California, Mexico, which produces trailer platforms exclusively for Hywndai Precision of **America**, a subsidiary of the Hywndai **Corp.** of Korea, were dismissed and intimidated because of their support of an independent **union**. It also alleged that the local Conciliation and Arbitration Board (**Junta de Conciliación y Arbitraje - JCA**) did not enforce the appropriate provisions of Mexican **labor** law related to the process by which one union can challenge another for the right to represent workers in a workplace.

The public communication was filed by the Support Committee for Maquiladora Workers (SCMW), the National Association of Democratic Lawyers (**ANAD**), the International Labor Rights Fund (ILRF), and the Union of Metal, Steel, Iron, and Allied Workers (Sindicato de Trabajadores de la **Industria Metálica, Acero, Hierro, Conexos y Similares - STIMAHCS**).

On February 9, 1998, the submitters filed an addendum to their communication providing further information and allegations concerning occupational health and safety issues at the Hun Young plant.

Public hearings were held in San Diego California, on February 18, 1998.

On April 28, the U.S. NAO released a Public Report of **Review** concerning **the allegations** about freedom of association and the right to organize. The report advised US. Secretary of Labor Alexis **M. Herman** to seek consultations with **her Mexican counterpart** concerning these issues. On April 28, 1998, Secretary Herman requested consultations with then Mexican Secretary of Labor and Social Welfare Javier **Bonilla**.

On August 12, 1998, the U.S. NAO issued a Public Report of Review on the occupational health and safety **allegations** raised in the communication. The report advised Secretary Herman to seek ministerial consultations with her Mexican counterpart concerning these issues as well, which she did **on August 13, 1998**. On October 5 the Mexican Secretary of Labor and Social Welfare accepted the ministerial consultations.

U.S. **NAO** 9703

On December 15, 1997, the U.S. NAO received a public communication alleging violation of Mexican laws regarding freedom of association, right to organize, right to bargain collectively, **and** prevention of occupational injuries and illnesses at the **Echlin**-owned ITAPSA export processing plant near Mexico City. The public communication was filed by the International Brotherhood of Teamsters; AFL-CIO; United Electrical, Radio and Machine Workers of America; Canadian Auto Workers; Union of Needletrades, Industrial and Textile Employees; United Paperworkers International Union; United Steelworkers of America; and the Steelworkers' Canadian National Office.

On January 30, 1998, the US. NAO accepted the communication for review. On March 23, 1998, the U.S. NAO held a public hearing in Washington, DC. On July 31, 1998, the U.S. NAO issued its Public Report of Review recommending that U.S. Labor Secretary Alexis **M. Herman** seek consultations with **her Mexican counterpart**, which she did on August 7, 1998.

U.S. NAO 980 **I**

On August 17, 1998, the U.S. NAO received a public communication alleging a failure by the Mexican government to enforce laws concerning the right to strike. The communication related to an Executive Order by the President of Mexico that, according to the submitters, had the effect of ending a strike by the Association of Flight Attendants of Mexico against **AeroMéxico**. The Association of Flight Attendants, AFL-CIO, submitted this communication.

On October 19, 1998, the U.S. NAO delivered a letter to the petitioning union stating that the communication had not been accepted for review **on the grounds** that such a review would not further the objectives of the NAALC. The letter noted that the Executive Order in question cited legal provisions relating it to the economic security of the Mexican state, and that subsequent to the issuance of the Order the flight attendants had **returned to work** and negotiated an agreement with **AeroMéxico** settling the strike in question.

The submitters asked the US. NAO to reconsider its decision in a letter **dated November 9, 1998**. **On December 21, 1998**, the U.S. NAO informed the submitters that it would not reconsider **its decision**, but agreed to conduct a research project evaluating **how the**

three NAALC countries reconcile the issue of the right to strike in light of national interests of safety, security and general welfare.

U.S. NAO 9802

On September 28, 1998, the U.S. NAO received a public communication alleging illegal child labor practices on **vegetable** farms in Mexico. The submitter requested that the communication be held in abeyance pending additional information from the U.S. NAO on how to proceed. The communication was submitted by the Florida Tomato Exchange, a nonprofit agricultural cooperative association.

The U.S. NAO closed its file on communication 9802 on October 4, 1999 based on lack of sufficient information to proceed.

U.S. NAO 9803

On December 18, 1998, the U.S. NAO accepted for review a public communication alleging a failure by Quebec, Canada, to provide an effective remedy for plant closings with anti-union motivations, and unwarranted delays in union certification procedures. The communication also alleged that, by limiting union certifications to single employer bargaining units, Quebec labor law made it unduly difficult for workers in **nonstandard** employment (part-time, casual, contractual work) to organize unions. The allegations related to attempts to organize the employees at a McDonald's restaurant in St. Hubert, Quebec, Canada. The communication was submitted on October 21, 1998, by the International Brotherhood of Teamsters, Teamsters Canada, the Quebec Federation of Labor, Teamsters Local 973 [Montreal] and the International Labor Rights Fund.

On January 20, 1999 the U.S. NAO requested information from the Canadian NAO regarding plant closures with anti-union motivations in the province of Quebec. The Canadian NAO's response of January 29, 1999 extended an invitation from the Quebec labor department to officials of the U.S. NAO to meet regarding the issue. After a meeting between the U.S. NAO, Quebec labor officials and union representatives, it was agreed that a Quebec government council would commence a study of sudden anti-union plant closures. On April 21, 1999, the U.S. NAO issued a press release announcing that the labor groups submitting the communication had asked that the review end, and that the file be closed.

U.S. NAO 9804

On December 2, 1998, the U.S. NAO received a public communication raising the issue of whether legislation denying rural route mail carriers employed by the Canada Post Corporation the rights to unionize and bargain collectively and the protection of occupational health and safety laws was contrary to the NAALC. The communication also alleged that Canadian law failed to provide rural route mail carriers with access to compensation for industrial accidents and occupational diseases. In addition, it alleged that this treatment of rural route mail carriers violated the NAALC obligation to promote the elimination of employment discrimination. The communication **was** submitted by the Organization of Rural Route **Mail** Carriers and other labor organizations in the United States, Mexico and Canada.

The U.S. NAO requested information pertaining to the communication from the Canadian NAO on December 18, **1998**. The Canadian NAO responded on January **15**,

1999. The U.S. NAO declined to accept **the public communication** for review in a decision issued on February 1, 1999, on the basis that the rural route mail couriers **are mail** contractors, not employees entitled to collective bargaining rights under Canadian law. The submitters mailed two letters to the US. NAO requesting that it reconsider its decision on March 8, 1999 and March 17, 1999.

U.S. NAO 990 ¶

On November 10, 1999 the U.S. NAO received a public communication alleging failure by Mexican authorities to effectively enforce rights of freedom of association and to organize unions. The communication also alleged that authorities failed to effectively enforce laws **relating** to minimum labor standards [hours of work, overtime premium pay, and payroll deductions for social programs) and prevention of occupational injuries and illnesses [safety training, maximum hours of work, and conditions on board aircraft). Finally, the communication alleged partiality on the part of a Mexican labor tribunal and failure **on** its part to ensure that labor law proceedings did not entail unwarranted delays. The communication relates to events that allegedly took place before, during and following an attempt by the Association Sindical de Sobrecargos de **Aviacion** (Association of Flight Attendants of Mexico - ASSA) to obtain the right to represent the flight attendants at a privately owned Mexico-based airline, TAESA (Executive Air Transport **Inc.**), in collective contract negotiations. The Association of Flight Attendants, AFL-CIO and ASSA submitted this communication.

On January 7, 2000 the U.S. NAO accepted the communication for review.