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# The North American Free Trade Agreement and the Mexican Worker

by Heidi Drost
May 2, 1997
Plan B

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This Plan B Paper was written to meet the requirements for the Master of Urban and Regional Planning and Urban Affairs degree at Michigan State University.


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## Abstract

The North American Free Trade Agreement (NAFTA) has provided an opportunity for international influence on the labor laws of Mexico, Canada, and the United States. As a subagreement of NAFTA, the North American Agreement on Labor Cooperation (NAALC) has been established to promote cooperation on labor issues in the three countries and to improve working conditions for labor. The issue of improved working conditions is especially important for Mexico, as workers there have suffered many exploitations in recent years. However, it seems, as the first labor violations submissions under the NAALC illustrate, that the labor side agreement has done little more than provide the hope that labor conditions may improve. There have been some cooperative efforts among the countries; however, there have been no strides toward improving current laws. The laws are only (weakly) enforced under than NAALC, and this does little when the laws themselves are inadequate.

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# I. Introduction

## Purpose of the Study

The purpose of this analysis is to determine whether the North American Free Trade Agreement (NAFTA) adequately addressed the problem of exploitation of Mexican labor in free trade zones which existed pre-NAFTA and to determine whether NAFTA made progress toward eliminating this exploitation of Mexican labor. Although much research has been conducted to establish that Mexican workers have been exploited, as well as to show the various ways in which they have been exploited, no comprehensive analysis has been completed on how NAFTA actually addressed these problems. Further, it has been established that many of these exploitations are continuing under NAFTA, but no analysis has been conducted on whether NAFTA has made progress toward reducing or eliminating these exploitations. The focus of this paper will be on how NAFTA has addressed labor and what the outcomes of the NAFTA for labor have been.

## Relevance to Urban Planning/Urban Affairs

The subject of the exploitation of Mexican workers is distinctly an issue of labor. However, planners need to take note of the issue as it greatly and directly affects their work. Because the world is becoming more "global," such as NAFTA illustrates, what happens in other countries directly affects the United States. Further, labor issues directly affect economic development initiatives, which are a focus for planners in many cities. If a multinational corporation decides not to locate in a community in Michigan because it has

found greater incentive (through flexibility with labor laws) to locate in Mexico, the planning field has been affected. Thus, it is important that planners know and understand labor issues on a global scale.

## Statement of Problem

The NAFTA has arguably created the largest world market, with 370 million consumers (Los Pequeños 1993, 5; U.S. President 1993, 3). Including Canada, the United States and Mexico, the expectation of the agreement was to integrate the economies to the benefit of all three nations; however, many problems have developed in the formation of NAFTA.

Although it may be argued that there are many balancing, positive attributes of NAFTA, such as its potential to create U.S. jobs and increased exports (U.S. President 1993, 3), there are many violations of labor that have continued to occur since NAFTA began, as will be the shown in, and the focus of, the next section. Although both U.S. and Mexican workers have stories to tell of the ways in which NAFTA has negatively affected their lives, the focus of this analysis will be on labor violations and exploitations of workers in Mexico.

On the U.S. side, workers have mostly been faced with job loss due to migration of U.S. multinational corporations to Mexico. Although this is a major problem, it hardly compares with what has been taking place in Mexico. Mexican workers have faced numerous exploitations by U.S. multinationals including poor working conditions, substandard wages and health risks. These types of exploitation existed before the

legislation for NAFTA was ever written. Since the birth of the maquiladora, U.S. multinationals have taken advantage of Mexican workers.

Thus, the questions which must be answered in this analysis are 1) Did NAFTA adequately address the problems of exploitation of Mexican labor in free trade zones of Mexico which existed pre-NAFTA; and 2) Did NAFTA make progress toward eliminating the exploitation? This analysis will argue that NAFTA did not adequately address the exploitation and that much more needs to be endoctrined and implemented before significant resolution to exploitation and labor violations will occur.

## Methodology

This analysis will attempt to establish, through various means, how well NAFTA's mechanisms for labor deal with the many exploitations of Mexican workers. First, past research will be examined showing the exploitation of Mexican labor pre-NAFTA under free trade, and continuing through NAFTA. Next, the labor side agreement to NAFTA, the North American Agreement on Labor Cooperation (NAALC) will be analyzed in terms of both its objectives and major provisions for dealing with labor violations under NAFTA.

Next, actual labor cases which resulted from allegations by Mexican laborers or on behalf of Mexican laborers will be explored and analyzed in terms of how they were handled by the U.S. National Administrative Offices (NAO), the agency formed under NAALC to hear labor violations claims. The objective in exploring these cases is to put the NAALC and the NAO to the test - to examine the outcomes of the NAFTA provisions

for labor. The analysis will attempt to determine whether the NAFTA supplemental labor agreement ensures that cases are adequately and fairly heard, in addition to whether the mechanisms for dealing with violations under NAFTA are adequate in themselves.

Since there have been only six cases filed with the U.S. NAO alleging labor violations in Mexico, all six cases will be explored to varying degrees. Four of the six cases have made it through the review process, one was withdrawn, and the latest case is still pending with a final report anticipated by June 6 of this year. This review of the NAALC and the violations submissions will be the focus of this paper. Conclusions and recommendations will be offered about the effectiveness of the NAALC in general, and in dealing with the submissions. Finally, an assessment will be made as to whether NAFTA, as the sum of all its parts, adequately addressed the issue of exploitation of Mexican labor and how well, if at all, it has sought to reduce or eliminate exploitations and violations.

## II. Exploitation of Mexican Workers

There were many arguments for the creation of NAFTA. In addition to creating the largest market in the world, NAFTA was expected to level trade barriers among the countries, create higher-wage jobs for U.S. workers, increase export opportunities to Mexico, enhance environmental protection, and, most relevant to this analysis, improve labor conditions and enforcement of labor law in all three countries (U.S. President 1993, 3). But much of the literature assessing the labor situation in Mexico under NAFTA shows that many violations and exploitations are still taking place.

There is no question that NAFTA highly benefits the efforts of U.S. multinational corporations located in Mexico. What the multinationals do not tell the general public is about the negative consequences suffered by Mexican workers who are making the success of the U.S. multinationals possible.

## Pre-NAFTA

Prior to NAFTA, evidence of such exploitation was clear in the maquiladoras along the U.S.-Mexican border. In the maquiladora, or free trade, zones of Mexico women were sought out to be the factory workers in multinational corporations. Multinational industries sought out young, Mexican women because they could, and still can, legally be paid less than men. It is believed that they could be easily made to do any job at whatever cost (Ehrenreich & Fuentes 1984, 283). The industries helped to intensify the sexual division of labor.

Mexican women working in the maquiladoras can be paid less than men because the multinationals recruit women with little education and few skills. In addition to the low pay they receive, Mexican women work long hours with few health standards and little protection (Ehrenreich & Fuentes 1984, 283). And it seems the multinationals planned for it to be this way, for this is the very nature of the "free trade" zone.

Industries that locate in Mexico can expect "low wages, low transport costs, a hospitable attitude toward foreign capital, friendly relations with the U.S. government, and (after NAFTA) privileged access to the huge U.S. market (Koechlin and Larudee 1992, 23)." Free trade zones, and ultimately free trade agreements emerge as nothing more than

areas of legal, international exploitation when the economies and labor standards of the involved countries are not on equal ground.

In these zones, women are not the only group of Mexicans that suffers from this exploitation. Mexican men, who have primarily agricultural rather than manufacturing skills based on the traditional highly agrarian economy, lose jobs to the industrial sector because they lack these types of skills (Koechlin and Larudee 1992, 24). Although many of the manufacturing jobs are concentrated in unskilled and semi-skilled labor, men are believed to lack the preferred traits for the tasks. It is this type of mentality that has caused male resentment toward working women and causes tension in many Mexican families (Ehrenreich & Fuentes 1984, 281).

More than 80 percent of manufacturing jobs in the "Third World" are occupied by women (Ehrenreich & Fuentes 1984, 281). Many Mexican men who have lost their jobs and cannot find replacements may have a tendency to associate their job loss with working women rather than with international exploitation. They may think the women have "stolen" their jobs and may assert hostility toward them. In reality, these women were forced to take the jobs.

If, in a family situation, the man cannot find work, the woman must work for the mere survival of the unit. She is not exerting power over the man, rather she is making up for his joblessness which is a result of the international economy, not an innate inadequacy as a provider (Ehrenreich and Fuentes 1984, 282).

This joblessness, besides causing tension, may effectively destroy many families. When men can no longer find work in Mexico, many migrate to the U.S. in search of

employment, leaving their families behind. In their essay, "Life on the Global Assembly Line," Barbara Ehrenreich and Annette Fuentes give an example of this type of situation:

> In Ciudad Juarez, Mexico, Anna M. rises at 5 a.m. to feed her son before starting on the two-hour bus trip to the maquiladora (factory). He will spend the day along with four other children in a neighbor's one-room house. Anna's husband, frustrated by being unable to find work for himself, left for the United States six months ago. She wonders, as she carefully applies her new lip gloss, whether she ought to consider herself still married. It might be good to take a night course, become a secretary. But she seldom gets home before eight at night, and the factory, where she stitches brassieres that will be sold in the United States through J.C. Penney, pays only $48 a week (1984, 279).

This situation is not uncommon. In fact, maquiladoras may even draw men from the interior of Mexico to the border region, and when they are unable to find employment they then move on to the United States (Davila and Saenz 1990, 97).

There are also health implications associated to free trade pre-NAFTA. Since the inception of the maquiladoras, companies have released toxic chemicals into drainage ditches which have severely threatened, and even completely contaminated, the drinking water for many villages. The toxins have been associated with cases of bone marrow cancer and a disease which causes the immune system to attack the body, lupas (Shields 1995, 22).

There are many other examples of exploitations which occurred prior to NAFTA. The few given here are offered only to establish that there have been exploitations and that an investigation of the effectiveness of NAFTA in dealing with these problems is warranted.

**Continuing Exploitation Under NAFTA**

Particularly since the start of NAFTA in January 1994, the situation of labor in Mexico has changed, but not necessarily for the better. Working conditions in the maquiladoras have improved little, and the hope of adequate union representation has been marred by corruption. Union representatives often work to ensure there is no labor unrest, rather than encourage positive organization (Shields 1995, 20). In fact, as will be illustrated further in the cases, union representation, specifically the freedom of association and the right to organize, are the largest issues emerging since the dawn of NAFTA.

Many labor activists in Mexico have filed lawsuits against the U.S. multinationals for alleged labor violations, but to little or no avail. National Administrative Offices (NAOs), organizations formed in Mexico, the U.S., and Canada, were set up to hear complaints about labor violations. However, the very first cases (reported to the U.S. office), in which U.S. and Mexican unions teamed up to file suit against two multinationals for the alleged illegal firing of 150 Mexican workers, ended with the NAO stating it was not in the position to find the Mexican government at fault for not enforcing labor laws. The result: no action taken against the companies in question (Shields 1995, 21). In fact, as will be shown in detail in the next section, no mechanisms are even in place under NAFTA for any direct action to be taken against any company in violation of labor laws.

Other data show an increased shift in auto jobs from the U.S. to Mexico. Only a year after NAFTA's inception, the U.S. was caught in a half a billion dollar trade deficit with Mexico, which translates into U.S. job loss. The number of jobs forfeited at this time was about 30,000. This same period saw an increase in investment in Mexican factories

by U.S. manufacturers (Koechlin 1995, 26). The entrepreneurs saw this investment as an opportunity for increased profit due to low wages, increased market shares and fixed prices. Whether or not this created new jobs in Mexico was irrelevant, because the jobs were anything but sufficient.

At that time, Mexican workers received, on an average, $2 per hour compared to an average $15 an hour for U.S. workers. Further, these wages did not increase because Mexico has a great deal of unemployed and underemployed workers that need these jobs, however menial they may be (Burke 1993, 7). Additionally, in December 1994, less than a year into NAFTA, the Mexican government was forced to devalue the peso due to a balance of payments crisis (Dropsy 1995, 361). This devaluation was followed by a sharp drop in Mexican wages and put the entire cross-border trade situation in jeopardy (Seybold 1995, 45).

The U.S. manufacturers want the public to believe that there will be a great redistribution of wealth because of the agreement, but they do not mention that the redistribution will be in their favor. Multinationals are increasing investments while striving to decrease accountability in the agreement. In 1994, U.S. multinationals invested upwards of $4 billion in Mexico, compared to just under $600 million in 1988. These numbers support that multinationals are not afraid to use the agreement to relocate from the U.S. to Mexico, especially if U.S. workers become too demanding (Koechlin 1995, 26). This is not to say that Mexican workers are not demanding more from the multinationals themselves, but it may be saying that the multinationals are more confident in ignoring the demands of Mexicans than they are workers in the U.S.

The effects of NAFTA on the working class are great. Workers in the United States face unemployment as they watch their jobs being moved to Mexico. Mexican workers may have more jobs, but they are exploitive and stagnant. Workers in both countries are bearing the burden of change.

As stated earlier, NAFTA has been disproportionately vile to women who are highly represented in certain industries, especially textiles and apparel (Koechlin 1995, 27). These industries particularly are sighted for leaving the U.S. for the cheaper labor of Mexico. A phenomenon called "807 Sourcing" is prevalent in the industry. It is the cutting of material in the United States for assembly in other nations, including Mexico (Murray 1995, 66). The American Apparel Manufacturers Association and the U.S. Department of Commerce claim that sourcing is necessary to keep the industry from going out of business and causing even more job loss. However, considering many manufacturers in the industry have chosen to take advantage of the cheap labor, this calls for a more impartial source to determine the actual effects complete domestic manufacturing would have on the industry.

In the midst of all of this exploitation, an important question arises: why has the Mexican government not stepped in to protect its workers? The answer is actually quite simple. Mexican leaders have every reason to comply with NAFTA. Major corporations are moving into its territory and it is reaping many benefits. The Mexican government is protecting its interests through extortion and physical assaults on its citizens. Economic reform is taking precedence over social justice on both sides of the border (Cárdenas 1990, 121).

In summary, Mexican workers have been exploited in a variety of ways. They are exploited on a gender basis, with different problems affecting men and women. Women often face poor working conditions and low wages while, in many cases, the men are barely able to find work at all. And the industries are reaping enormous profits at the expense of the workers - that is U.S. industries and Mexican workers. The next section will detail exactly what NAFTA has endoctrined to contend with these exploitations and violations of workers.

## III. NAFTA and the Protection of Labor

The purpose of this section is to explicitly show how NAFTA addresses labor and labor violations issues in all three NAFTA countries, with a focus on cases alleging labor violations in Mexico. It has been shown up to this point that there are many reasons why NAFTA needs to directly address labor in its provisions, but it still remains to be shown whether NAFTA fully addressed these problems. Further, it must be discovered whether NAFTA has made progress toward eliminating any of the exploitation which still exists.

To begin, a description of the NAFTA supplemental document which deals with labor, the North American Agreement on Labor Cooperation (NAALC), must be given, detailing the parts of the document relevant to labor violations claims (resulting from alleged exploitation and other violations) and the procedure for determining their validity. Second, a presentation and analysis of actual submissions of labor violations will be completed. Finally, an analysis of the NAALC must be conducted, paying special attention to what remedies are available for labor violations claims and with whom. A

determination will be made as to the effectiveness of the NAALC in resolving labor violations and digging to the root of the problem of exploitation of Mexican labor. This determination will be based upon whether the process of hearing the claims is fair and adequate, whether the process targets the responsible parties for the violations, and whether the outcomes insure that labor violations are effectively being handled so as to diminish the number of (alleged) violations and better the work environment for Mexican laborers.

## NAFTA Provisions for Labor

Implicit in the NAFTA document itself are no provisions which address labor. The labor side of the NAFTA is handled by a supplemental document - The North American Agreement on Labor Cooperation (NAALC). Drafted in September 1993, it became effective simultaneously with the NAFTA on January 1, 1994.

As stated in the preambles of both the NAFTA and the NAALC, under both agreements the U.S., Mexico and Canada pledge to "*create* new employment opportunities and improve working conditions and living standards in their respective territories" and "*protect*, enhance and enforce basic workers' rights." These are the main objectives of the labor side agreement. The approach taken by the three countries to promote these elements is cooperation, as explicitly stated in the title of the supplemental agreement (U.S. DOL 1995b, 1).

Further, the NAALC explicitly states the "Levels of Protection (Article 2)" to be given to workers under the agreement:

> 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.

Essentially, the NAALC is establishing the responsibility of each country to ensure that its labor laws are adequate and enforced.

Under the NAALC, international and domestic institutions have been created to oversee that labor laws in each country are being enforced by their respective governments. On the international side, the Commission for Labor Cooperation has been established. The Commission is governed by a Council and given technical support through a Secretariat lead by an Executive Director. The Council is a synthesis of the three Cabinet-level labor officials from each of the NAFTA countries with the mandate to work cooperatively on a range of labor issues. The Secretariat reports directly to the Council on the specifics of a number of labor issues like average wages, labor productivity, labor laws, etc. (U.S. DOL 1995b, 1).

Of particular importance to the enforcement of the labor laws of each country under NAFTA are the domestic institutions. National Administrative Offices (NAOs) have been established in each of the three countries as the primary administrators of the labor agreement and primary contacts among the national governments (U.S. DOL 1995b, 2). Each NAO must receive and review submissions on matters of labor law in the other

two countries (U.S. DOL 1995b, 1). The NAALC does not specifically state to which country a labor violation charge must be submitted.

After receipt of a submission, the NAO must issue a notice of acceptance or declination for review within 60 days. Basic guidelines for determining whether a submission will be accepted for review are if the issues it raises are relevant to the labor law in the territory in question, and if it "furthers the objective of the agreement (as stated earlier) (U.S. DOL 1995b, 5)." If accepted, within 120 days from that point a public report must be issued. The report should summarize the submission, review the testimony in the cases, and make recommendations for further action, if necessary.

In order to aid an NAO in making sound decisions about cases for publication in the public report, consultations with the NAO of the territory in question may be requested. The NAO of the requested territory must provide "(a) descriptions of its laws, regulations, procedures, policies or practices; (b) proposed changes to such procedures, policies or practices; and (c) such clarifications and explanations related to such matters, as may assist the consulting NAOs to better understand and respond to the issues raised (NAALC 1993, Article 21(2))."

Additionally, it is assumed in the review process that public hearings are necessary to obtain complete information about a submission. In such hearings, no witnesses are examined as it is not a judicial proceeding. The Secretary of the reviewing NAO presides over the hearings and is the only body allowed to question participants. Anyone wishing to present testimony must submit a written notice of intent as well as a manuscript of the anticipated testimony (U.S. DOL 1995b, 6).

If such procedures (consultations and public hearings at the NAO level) are not sufficient to provide clarity and resolution to the matter at hand, then ministerial consultations may be requested (NAALC 1993, Article 22). If the matter is still not resolved, an Evaluation Committee of Experts (ECE) may be requested. The ECE's job is to analyze the ways in which each Party is enforcing its labor laws in application to the matter at hand (NAALC 1993, Article 23). The ECE is to be comprised of three members who should be objective, experts in labor matters, not affiliated with any Party or the Secretariat, and comply with a set code of conduct (NAALC 1993, Article 24). Within 120 days, the ECE must a render a report assessing the matter and making conclusions and recommendations (NAALC 1993, Article 25). The report is issued to the Council for consideration (NAALC 1993, Article 26).

There are even more bureaucratic levels to the dispute resolution process; however, of the cases which have been submitted thus far, none have reached even the level of the ECE. The continuing procedure basically outlines the process for dealing with a situation in which a Party has allegedly not actively enforced its labor laws on an ongoing basis.

To date, as mentioned earlier, six submissions of labor law violations in Mexico have been recorded with the U.S. NAO (one has been filed with the Mexican NAO; none have been filed with the NAO of Canada). The job of the NAO in the matters is to determine whether the Mexican government enforced its labor law effectively, not whether the party (company) against whom the claim was made is at fault (NAALC 1993, Article 1(f)). Thus, in reviewing the cases, the NAO focused on the role the Mexican government

took in remedying the situations and enforcing its own laws. The next subsection details the Mexican cases which have been submitted to the U.S. NAO thus far.

In reviewing the submissions, a few things are important to note. As previously mentioned, the objective of the submission review process is to determine whether the Mexican government enforced its labor laws. Even though many of the cases charge certain unions and companies with committing injustices, these entities are not under investigation in these NAO submissions. They are addressed in the submissions only to establish the case that the Mexican government has allegedly not enforced its labor laws - as evidence.

Charges against non-governmental parties are not addressed under the NAFTA and the NAALC; they are handled under domestic law. The issues raised by the submitters are presented to the NAO to show that they were not handled correctly within Mexico, according to Mexican labor law, as enforced by the Mexican government. Submissions are only accepted by the U.S. NAO if all domestic remedies of Mexico have been exhausted without avail to the submitters and there is still grounds for investigation (U.S DOL 1995b, 6).

The main vehicle for remedying labor violations claims in Mexico is the Conciliation and Arbitration Board or Junta de Conciliación y Arbitraje (CAB) (U.S DOL 1994b, 3). Jurisdiction for claims regarding maquiladoras is with the state CAB, not the Federal CAB. All of these things will be discussed in the subsection on the analysis of the cases.

## Submissions to U.S. NAO of Alleged Labor Violations in Mexico

### NAO Submissions #940001 and #940002

As the issues raised in these two submissions are similar, and their dates of submission coincide, the Secretary of the NAO ruled that the reviews of the submissions would be consolidated (U.S. DOL 1994b, 14). Although the specific allegations and information given by the submitters and the companies in question varies for each case, a joint public hearing was held regarding freedom of association and right to organize, as will be later noted. Additionally, the NAO produced joint findings and recommendations for the cases.

The first case brought to the U.S. NAO was submitted by the International Brotherhood of Teamsters (IBT), a labor union, in February 1994 regarding the operations of a Honeywell Corporation subsidiary in Mexico. One allegation was that workers at the plant were not permitted by the company to organize into the unions they so chose - a freedom of association and right to organize issue. The company allegedly used threats and firings to discourage employees from unionizing. Honeywell is charged with firing 20 production workers in late November for wanting to join a union. Further, the submission alleges that the employees were explicitly told this was why they were being dismissed and that they each must sign resignation forms to be able to collect severance pay. Coincidentally, this waives the employees' rights to file claims against their former employer (U.S. DOL 1994b, 3). It appears, if these allegations are true, that coercion is an issue. This is also an issue in later cases.

The submission further alleges that coercion was used to solicit information about other employees seeking union membership. Also, one of the fired workers issued a complaint to the CAB which was still pending at the time of this submission.

The second case brought to the U.S. NAO alleged the same charge - that workers were not permitted their right to freely organize into their chosen unions by the company, a General Electric Company (GE) subsidiary in Ciudad Juarez. The case was submitted by the United Electrical, Radio, and Machine Workers of America (UE), a labor union, also in February 1994. The main charge is that attempts to form an independent union with the help of U.S. UE delegates were suppressed. Specific allegations include preventing the distribution of union campaign literature, confiscating the literature from employees, and actual firings of employees, some who had been in conversation with the UE delegation (U.S. DOL 1994b, 5).

Additional charges center around health and safety violations. Specifically, the charges are "failing to give light work to pregnant women, failing to provide adequate ventilation in work areas and suitable protective equipment, and failing to test properly employees for exposure to chemicals (U.S. DOL 1994b, 6).

After receiving information from the labor unions, the companies, the Mexican NAO, expert consultants, and a public hearing by the NAO in September, a public report was submitted the following October with the conclusion by the NAO that the information submitted by the two labor unions was insufficient to determine that the Mexican government did not enforce its labor laws in either case (U.S. DOL 1994b, 32). Essentially, the NAO ruled that the unions were not able to *prove* a lack of enforcement

on the part of the government - this does not mean that violations had not actually occurred. These two cases raise many issues which will be addressed in the analysis.

**NAO Submission #940003**

The third submission (#940003) was filed by four human rights and worker's rights organizations in August 1994. The issues raised in this submission deal with "freedom of association, protection of the right to organize, and minimum employment standards relating to hours of work and holiday work (U.S. DOL 1995a, 3)." The freedom of association/protection of the right to organize allegation was that Magneticos de Mexico (MDM), a Sony Corporation subsidiary in Nuevo Laredo, Tamaulipas, Mexico, and the Confederacion de Trabajadores Mexicanos (CTM), the official Mexican labor confederation, jointly interfered in an internal union dispute and in an election. They allegedly acted in violation of Mexican labor law by joining forces against independent union opposition (U.S. DOL 1995a, 3). The minimum employment standards allegations were denied review by the Secretary of the U.S. NAO based on the reason that appropriate relief had not been sought under Mexican domestic laws. However, it was noted that this current denial of review does not preclude that these allegations will not be reviewed in the future if efforts to seek relief under Mexican law fail (U.S. DOL 1994a, 52992).

There are more specific allegations stemming from the one accepted for review. First, there are allegations of improper suspensions or dismissals by the company. One woman was allegedly suspended because she was complaining about work rule changes. More severe charges are that a "campaign of intimidation" was geared at the workers for

organizing against the official union, CTM. Seven alternative-union delegates were allegedly fired (U.S. DOL 1995a, 4-5).

Additionally, there are charges that the delegate election itself was contaminated. According to the submitters, some workers were not notified of the election and there was no secret ballot vote - both are allegedly methods of coercion to determine who was aligned with the dissident slate. Further, there are allegations that a work stoppage and demonstration by the workers was violently suppressed by police resulting in several workers being injured (U.S. DOL 1995a, 5).

One specific charge is of particular importance as it will emerge again in a later submission to the U.S. NAO. The submitters allege "that the *Mexican government*[1] has thwarted attempts by the workers to resister an independent union (U.S. DOL 1995a, 5)."[2] Not only are the submitters saying Mexico did not enforce its labor laws, it is being charged with actually interfering with the rights of workers to organize as they so chose. Subsequently, the submission further "charges the Mexican government with violating its obligations under the NAALC, and under ILO Conventions 87 and 98, which guarantee freedom of association and the right to bargain collectively (6)." Among other types of relief, the submitters ask that the Sony Corporation be required to comply with Mexican labor law by the Mexican government (U.S. DOL 1995a, 6).

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[1] My italics

[2] From the Federal Labor Law (FLL) of Mexico: "In order to be officially recognized, unions must register with the Secretariat of Labor and Social Welfare (Secretaría Del Trabajo y Previsión Social, STPS) in instances where the Federal Government has jurisdiction, and with the local CAB in instances where local jurisdiction applies (U.S. DOL 1995a, A-4)." Further, "implementation of labor law is under the purview of state authorities in their respective jurisdiction" with specific industry exceptions like the electricity industry (Submissions #940001 and #940002) and the exception of "those that are under direct of indirect administration by the federal government (Submission #9601) (U.S. DOL 1994b, A-9-A-10)."

After receiving information from the submitters, the company, the Mexican NAO, an expert legal consultant, and a public hearing, the U.S. NAO offered many conclusions and recommendations. Again, it should be noted that these conclusions are directed at the Mexico's enforcement of labor laws (or lack of), not at the company in question. Concerning the dismissals, the NAO noted the similarities between this case and the first two in terms of coercion. Experts have testified that intimidation is a factor in getting maquiladora workers to offer voluntary resignations that are essentially firings. The NAO found that the discharges did occur because of their organizing affiliations, which is illegal. And because of the economic need for steady income on the part of the workers, many opted for severance pay rather than protest the dismissals and possibly get nothing (U.S. DOL 1995a, 27).

The NAO recommended that it "continue to pursue trinational programs under the NAALC which emphasize exchanges on laws and procedures to protect workers from dismissal for exercising their rights to organize and to freedom of association, and proposes specific follow-up activities to the recently concluded trinational program on industrial relations issues (U.S. DOL 1995a, 27-28). Further, the U.S. NAO will conduct a study to explore the practices and findings of the local CABs with respect to workers' complaints of unjustified dismissals (U.S. DOL 1995a, 28).

Concerning the union elections, the NAO found that it is unclear what recourse workers have in such cases and if there are any applicable laws in place at all. Thus, the NAO recommends this issue be place on the trinational exchange program agenda.

The work stoppage issue of violence remained unclear to the NAO at the time of the report. It asked that the Mexican NAO offer information on the role of the police in the incident. The union registration issue was more clear to the NAO, and it found the issue to be serious enough that it recommended ministerial consultations "to further address the union registration process (U.S. DOL 1995a, 32)."

**NAO Submission #940004**

The United Electrical, Radio, and Machine Workers of America (UE), like in the second case, filed this submission against a GE subsidiary in Mexico. There is no public report available for this case as the submission was withdrawn by the UE before the review process was completed (U.S. DOL, 1/28/97, 2).

**NAO Submission #9601**

This submission was filed by Human Rights Watch/Americas (HRW), the International Labor Rights Fund (IRLF), and the National Association of Democratic Lawyers (Asociación Nactional de Abogados Democraticos, ANAD) on June 13, 1996. The issues raised are freedom of association, procedural guarantees of the NAALC regarding impartial labor tribunals, and Mexico's compliance as a signatory with international conventions (U.S. DOL 1997b, 2). Because of the complexity of the case under domestic remedy prior to the NAO submission, some background information is warranted.

The submission originated from a dispute over what labor union would represent the federal employees of the Ministry of the Environment, Natural Resources, and Fishing (Secretaría de Medio Ambiente, Recursos Naturales y Pesca, SEMARNAP): the Single

Trade Union Workers of the Fishing Ministry (Sindicato Unico de Trabajadores de la Secretaría de Pesca, SUTSP) or the National Union of Workers of the Ministry of the Environment, Natural Resources and Fishing (Sindicato Nacional de Trabajadores de la Secretaria de Medio Ambiente, SNTSMARNAP) (U.S. DOL 1997b, 2).

The story begins with the consolidation of parts of the Ministry of Agriculture and Water Resources (Secretaría de Agricultura y Recursos Hidraulicos) and the Ministry of Development (Secretaría del Desarollo). This consolidation was part of a larger reorganization plan for federal ministries. The new ministry became SEMARNAP which consisted of 2,300 Fishing Ministry workers (under SUTSP), 20,000 Agriculture Ministry workers, and 3,000 Development Ministry workers. In response to this change, SUTSP asked for a name change of the union to represent the new consolidation. The appropriate governmental body they petitioned was the Federal Conciliation and Arbitration Tribunal (Tribunal Federal de Conciliacion y Arbitraje, FCAT). The request for a name change was denied because the Fishing Ministry for which SUTSP was established no longer remained; however, SUTSP was still registered and operational as a union (U.S. DOL 1997b, 3).

A few weeks after the request for a name change, the Federation of Unions of Workers in the Service of the State (Federacion de Sindicatos de Trabajadores al Servicio del Estado, FSTSE)[3] called for a new union to represent the newly consolidated SEMARNAP. The new union would be SNTSMARNAP. After union elections, SNTSMARNAP became registered with the FCAT (March 20, 1995). Noting that

[3] FSTSE is the only legal federal sector union federation.

SUTSP was still registered, SNTSMARNAP filed with the FCAT for SUTSP's de-registration. SUTSP was canceled on June 27, 1995 (U.S. DOL 1997b, 4).

SUTSP appealed to the Seventh Collegiate Labor Court of the First District for being canceled without a hearing and it won. SUTSP was reinstated on January 22, 1996 (U.S. DOL 1997b, 4). This reinstatement forms the basis for one of the allegations in the case. According to the submitters, SEMARNAP (the new ministry) was not immediately made aware of the reinstatement, thus prohibiting SUTSP from participating in "union representation functions (U.S. DOL 1997b, 4)."

SUTSP then petitioned the FCAT to acknowledge its executive committee, but it only granted restricted recognition which did not allow union representation. It only allowed representation of the committee to FCAT and the courts in its disputes. In April 1996, the Second District Labor Court ruled that SUTSP's registration was illegally restricted by the FCAT (U.S. DOL 1997b, 5).

SUTSP also fought the recognition of SNTSMARNAP without SUTSP being granted a hearing. Subsequently, in May 1996, FCAT was order by the Second Collegiate Labor Tribunal to cancel the new union's registration. According to the submitters of the case to the NAO, the new ministry still conducted business with SNTSMARNAP as if it were registered (U.S. DOL 1997b, 5).

There was another union election in October 1996 and SNTSMARNAP won. The following month it was registered and SUTSP was de-registered once again. The main reason the SUTSP then decided to submit this case to the U.S. NAO is because it claims SNTSMARNAP was given preferential treatment in and prior to the election through

"access to government facilities, paid time off for union business, and control of union finances" even though in was not in power (U.S. DOL 1997b, 5-6).

Based on this background, the first specific allegation of the submission is that FCAT was in violation of federal labor laws when it de-registered SUTSP.[4] It also states that Mexico failed to revise the Federal Law of Workers in the Service of the State (Ley Federal de Trabajadores al Servicio del Estado, LFTSE) in accordance with its engaged international treaties. The submitters assert that international treaties take precedence over domestic law according to the Mexican Constitution and this mandates Mexico to revise its domestic law accordingly (U.S. DOL 1997b, 6). The second specific allegation is that the FCAT is biased in that its sole labor representation comes from FSTSE (the union federation) which renders it all but impartial in ruling on cases in which FSTSE has an interest (U.S. DOL 1997b, 7).

The submission was accepted for review on July 29, 1996. After receiving information from the submitters, the Mexican NAO, legal experts, and a public hearing on December 3, 1996, the NAO was able to make some specific remarks on each of the specific allegations, as well as general recommendations about the submission as a whole. First, it confirmed that the Mexican Constitution recognizes treaties as the supreme law of the land.[5] Mexico is a party to Convention 87 of the International Labor Organization ILO), the International Covenant on Civil and Political Rights, and the American

[4] This refers to the first de-registration of SUTSP as the case was filed with the NAO before the second de-registration occurred.
[5] Article 133 of the Mexican Constitution.

Convention on Human Rights. All three treaties provide for freedom of association (U.S. DOL 1997b, 16).

Further, the issue of freedom of association in Mexico regarding SUTSP was brought before an international body once before, the Committee on Freedom of Association (CFA). The CFA found that the Mexican federal labor law policy of only one union per workplace was problematic (U.S. DOL 1997b, 24), as this case brought to the NAO seems to prove. The ILO also has pointed out in the past that there must be a distinction made between government-forced unions (monopolies) and voluntary groupings of laborers (U.S. DOL 1997b, 27). The ILO Committee of Experts on the Application of Conventions and Recommendations 1991 Report noted that "the imposition by law of a system of trade union unity at the level of federations is incompatible with the right of workers' organizations to establish federations and confederations (U.S. DOL 1997b, 28)."

The ultimate findings by the NAO in the submission are that the facts presented "are not in dispute" and that they "raise questions not subject to a clear interpretation by the NAO (U.S. DOL 1997b, 31;32)." Thus, concerning the enforcement of labor laws, the NAO suggests further consultations to understand the legalities of the case better. Concerning the FCAT's rulings against SUTSP, the NAO found that the outcomes of the union election was not affected be the makeup of the FCAT. Its reasoning is that both unions were affiliated to FSTSE, the official union federation which provides the labor representation of the FCAT (U.S. DOL 1997b, 32). Overall recommendations by the NAO are that the U.S. Secretary of Labor call for Ministerial Consultations with the

Mexican Secretary of Labor and Social Welfare to examine the relationship of international treaties to domestic labor law and to review the constitutional provisions for freedom of association on the labor law (U.S. DOL 1997b, 33).

**NAO Submission #9602**

This submission was filed by the Communication Workers of America (CWA), the Union of Telephone Workers of Mexico, and the Federation of Goods and Services Companies (FESBS) regarding freedom of association for organizing workers. The company in question is Maxi-Switch, a Taiwanese company, located in Cananea, Sonora, Mexico. The submission was filed on October 11, 1996 and was accepted for review on December 10, 1996.

At the time of this paper, no public report has yet been issued. The report is due for issuance on June 6, 1997, 120 days after its acceptance for review (U.S.DOL, 1/28/97, 2).

## General Analysis of the NAALC and Review of Submissions

### Analysis of the NAALC

As stated previously, the NAALC, and NAFTA as a whole, seek to better working conditions and living standards and to guard workers' rights. What is rather unclear and somewhat confusing is that there seems to be no actual article or part of the NAALC which allows these goals to be realized.

The provisions of the NAALC do not set out to improve anything. The basis of the document is *enforcement* of the labor laws which already exist in each country - this is

all the NAALC enables. It does not establish the ability of one government to say the labor law itself is inadequate.

Further, the NAALC does not allow any action to be taken toward a particular company for alleged labor violations. Even if the NAO finds that the Mexican government did not enforce its labor laws, meaning that a labor violation has occurred at a particular company, no action can be taken against the company under NAFTA and NAALC. It is up to the Mexican government to deal with the company according to its own laws; however, the rule of enforcement does allow the U.S. and Canada to fine the Mexican government, or in the extreme impose trade sanctions, so that Mexico does fully enforce its labor laws (U.S. DOL 1995b, 4), although no fines have been imposed in any of the first six cases. Nevertheless, the U.S and Canada have no direct control over the labor situation in Mexico. Inevitably, if the Mexican government chooses not to enforce its laws and simply accepts fines and trade sanctions rather than having to deal with a situation, violations and exploitations may continue to occur.

Another possible downfall to the way the NAALC violations submission process has been established is the fact that the U.S NAO is hearing violations claims made against U.S. corporations. Three of the six submissions to the U.S. NAO were alleged against U.S. corporations (#940001, #940002, #940004). This is potentially a conflict of interests. In fact, as will be detailed in the case analyses, there is suspicion of this occurring in one of the first two cases reported to the NAO.

**Review of Submissions**

The first two cases were classified under freedom of association and the right to organize, but there were many more areas involved in the second allegation. In the GE case, there were several charges of health and safety violations, which is covered by the NAALC in its definition of labor law (1993, Article 49(i)). The charges again are "failing to give light work to pregnant women, failing to provide adequate ventilation in work areas and suitable protective equipment, and failing to test properly employees for exposure to chemicals (U.S. DOL 1994b, 6)." Additionally, GE is charged with not paying overtime according to Mexican law. This is covered in Article 49(f) of the NAALC.

In essence, the allegations pertaining to these two elements of labor law were overshadowed by the organizing claims. This also occurred in #940003 with the issue of minimum employment standards. However, as was detailed in a previous section of this paper, violations against or exploitations of Mexican labor in terms of health, safety and wages are major issues that should not be placed on the back burner.

Additionally, the following question could be posed: would *any* information have been sufficient enough to prove a lack of enforcement? Janice Shields, author of the article "'Social Dumping'" in Mexico under NAFTA," seems to believe that the answer to this question would be no. She sites the hearings of the first two cases stating that testimony by Mexican labor lawyers seems to establish that Mexican government officials would not necessarily enforce the labor law because they are trying to please U.S. companies (1995, 21). If this is valid, that the government purposely did not enforce labor

laws, then it seems that an associated governmental agency like the U.S. NAO may have reason to conclude "insufficient information" to protect Honeywell, a U.S. company. This explicitly goes against a major tenant of the NAALC. Article 5 (4) states that "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 (1993)." In this scenario, the U.S. NAO could potentially be faulted for breaching the NAALC, if an investigation were to prove the scenario true.

Further, Shields notes that no action was afforded against either company (1995, 21). While the major point here is that something should have been done and someone made accountable, it must be noted that, from a U.S. government standpoint there were no entreated options within the NAFTA and the NAALC that could be taken against corporations. Again, only the government enforcement of the labor laws is at issue for ruling in the NAO submissions. NAO Submission #940003 raises similar issues.

In the Sony case, the same types of issues emerge as with Honeywell and GE. First, the NAO outright declined to review the charge regarding minimum employment standards in the Sony case (U.S. DOL 1995a, 3). This is slightly different from the GE situation because, in that case, the health and safety violations charges were accepted for review; however, the NAO did not actually include the health and safety violations in its "Findings and Recommendations" (Section V) (U.S. DOL 1994b, 28-32).

And, as stated earlier, the minimum employment standards charge in the Sony case was declined review based on the fact that all domestic remedies had not been exhausted (U.S. DOL 1994a, 52992). This rejection seems inappropriate based on the prior

discussion that international treaties are the supreme law of the land. It is understood that the NAO was only following the provisions of the NAALC when it declined this tenant of the submission; however, this says something about the NAALC itself and its lack of authority to deal with important labor issues. In this sense, the NAALC (and subsequently NAFTA) does not come across as an overriding legal doctrine when it has so little jurisdiction in matters and only has authority "after the fact." The NAO submission process only comes into play after all domestic remedies have failed, but in many cases this may be too late to achieve justice.

One of the main themes emerging throughout the cases is the dismissal of workers and their receipt of severance pay. In three of the four cases for which public reports of review were available (#940001, #940002, #940003), the issue of receiving severance pay versus bringing a dismissal charge against the company before the presiding CAB was prevalent. In the first two cases, the NAO noted "workers generally do not have the financial resources to pursue reinstatement before the CABs, often opting for the settlement of their complaints in return for money (U.S. DOL 1994b, 29)."

Further, the UE asserted in #940002 that a main reason for this need for settlement is the lack of unemployment insurance in Mexico. The NAO added to this statement with the interpretation that "the right of workers whose employment has been terminated because of their exercise of the right to organize is de facto limited by their inability to survive economically until the process of reinstatement works its course (U.S. DOL 1994b, 30)." In #940003, a woman testified at the public hearing that workers often feel pressure to resign and receive the severance pay offered or risk receiving no compensation

by disputing it (U.S. DOL 1995a, 16). Thus, the economic situations of many workers demand that something be resolved immediately - the CAB process is not immediate.

## V. Discussion/Analysis/Conclusion

As was witnessed in this analysis, NAFTA did take the initiative to encourage improvement of working conditions and labor standards in all three NAFTA countries, and to ensure the enforcement of the present labor laws. But it did not even begin to prevent or remedy the full scope of exploitation that exists toward workers in Mexico. As the NAO submissions demonstrated, there are still many violations of labor law and many exploitations resulting from poor working conditions and issues of wages. Thus, it must be concluded that NAFTA did not adequately address the problem of the exploitation of Mexican labor and, subsequently, has made little progress toward reducing or eliminating these exploitations and violations.

There are a number of reasons why NAFTA needs to have more endoctrined power to control the labor situation in Mexico. The NAFTA, through the NAALC, does not provide any direct redress toward companies in violation of labor law. It does not even address companies as its focus, rather it addresses the government, specifically that agency of the government having jurisdiction over a particular case. The NAALC leaves all retribution toward companies in Mexico in the hands of Mexico. This quite obviously does not take into account that the Mexican government may have a vested interest in the companies operating there and thus may not take action for that reason.

Conversely, the U.S. government, as the recipient of labor violations submissions on behalf of Mexican workers through its NAO, may also have a vested interest if a U.S. multinational is in question. It seems the only clear solution is for some mechanism for dealing with *companies* to be in the NAALC so it is evident that some retribution must occur, and not be left to the government within whose boundaries the company falls. This may also help to ensure that domestic laws are fully enforced in the first place, especially if the NAALC provides for stricter action to be taken than mere governmental consultations.

The NAALC does need to become a more powerful tool on the international scene. It seems it is the best mechanism to strengthen NAFTA's control over labor laws in the three countries, Mexico in particular. Each of the cases reviewed displayed the inherent weakness of the NAALC and NAFTA to actually *change* anything for the better. The doctrines basically allow only for encouragement of cooperation among the countries and enforcement of present laws. But there is no mandate and this is needed. The NAALC needs to include *specific* goals and objectives for accomplishing its main purpose of improving working conditions and living standards because its present format is not even close to achieving this end.

## Works Cited


Burke, Melvin. "The Human Costs of NAFTA." *The Humanist* 53 (Sept./Oct. 1993): 3-9.

Cárdenas, Cuauhtémoc. "Misunderstanding Mexico." *Foreign Policy* (Spring 1990).

Davila, Alberto and Rogelio Saenz. "The Effect of Maquiladora Employment on the Monthly flow of Mexican Undocumented Immigration to the U.S., 1978-1982." *International Migration Review* 24 (Spring 1990): 96-107.

Dropsy, Vincent. "NAFTA and the Mexican Economic Crisis: Causality or Coincidence?" *The Social Science Journal* 32 (October 1995): 361-372.

Ehrenreich , Barbara and Annette Fuentes. "Life on the Global Assembly Line." In *Feminist Frameworks*, ed. Alison M. Jagger and Paula S. Rothenberg, 279-291. New York: McGraw-Hill, Inc., 1984.

The Global Assembly Line (Film)

Friedman, Sheldon. "NAFTA as Social Dumping." *Challenge* 35 (Sept./Oct. 1992): 27-32.

Koechlin, Tim. "NAFTA's Footloose Plants Abandon Workers." *Multinational Monitor* 16 (April 1995): 25-27.

Koechlin, Timothy and Mehrene Larudee. "The High Cost of NAFTA." *Challenge* 35 (Sept/Oct 1992): 19-26.

"Los pequeños negocios se benefician del NAFTA y los acuerdos paralelos," *El Mundo* 29 (8/25/93).

Murray, Lauren A. "Unraveling Employment Trends in Textiles and Apparel." *Monthly Labor Review* 118 (August 1995): 62-71.

Poole, Dennis L. "NAFTA, American Health, and Mexican Health: They Tie Together." *Health & Social Work* 21 (February 1996): 3-7.

Seybold, Peter. "The Politics of Free Trade: The Global Marketplace as Closet Dictator." *Monthly Review* 47 (December 1995): 43-48.

Shields, Janice. "'Social Dumping' in Mexico Under NAFTA." *Multinational Monitor* (April 1995): 20-24.

Tamanaha, Brian Z. "The Lessons of Law and Development Studies." *The American Journal of International Law* 89 (1995): 470-486.

United States of America, The Government of the, The Government of Canada and the 'Government of the United Mexican States. *North American Agreement on Labor Cooperation*. September 13, 1993.

United States of America, The Government of the, The Government of Canada and the Government of the United Mexican States. *North American Free Trade Agreement*. December 17, 1992.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *Status of Submissions Under the North American Agreement on Labor Cooperation (NAALC)*. Washington, D.C., January 28, 1997.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *NAO Submission #9601*. Washington, D.C., January 27, 1997.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *NAO Submission #940003*. Washington, D.C., April 11, 1995.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *North American Agreement on Labor Cooperation: A Guide*. Washington, D.C., February 1995.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *Annual Report*. Washington, D.C., January 1995.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. Notice of Determination Regarding Review of Submission #940003. *Federal Register* 59, no. 202 (20 October 1994): 52992.

U.S. Department of Labor. Bureau of International Labor Affairs. U.S. National Administrative Office. *NAO Submission #940001 and NAO Submission #940002*. Washington, D.C., October 12, 1994.

U.S. President. Clinton Administration Statement on the North American Free Trade Agreement. *The NAFTA: Expanding U.S. Exports, Jobs and Growth*. Washington, D.C., November 1993.

Valenzuela, J. Samuel and Arturo. "Modernization and Dependency." *Comparative Politics* 10 (July 1978): 535-557.

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