

Bazar, Is the North American Agreement on Labor Cooperation Working for  
**IS THE NORTH AMERICAN AGREEMENT ON LABOR  
COOPERATION WORKING FOR WORKERS' RIGHTS?**

The North American Agreement on Labor Cooperation (NAALC)<sup>1</sup>, is the product of labor concerns<sup>2</sup> arising out of the ratification of the North American Free Trade Agreement (NAFTA).<sup>3</sup> This side agreement to NAFTA addresses the concerns of all three Parties to the agreement ("Parties"): the United States, Canada, and Mexico.<sup>4</sup> These concerns include: the export of jobs from the United States,<sup>5</sup> inadequate health and safety conditions for workers in Mexico,<sup>6</sup> lower Mexican labor standards,<sup>7</sup> and lack of enforcement of Mexican labor laws.<sup>8</sup> Signing the NAALC on September 13, 1993, the three Parties set forth goals to alleviate these concerns.<sup>9</sup> More significantly, the agreement establishes methods to both discourage their realization and to resolve them, should such matters nevertheless arise.<sup>10</sup>

The NAALC Parties pledged to encourage compliance with and enforcement of their respective labor laws.<sup>11</sup> They also pledged to promote eleven "Labor Principles," subject to each Party's domestic law.<sup>12</sup> These principles include freedom of association and protection of the right to organize, the right to bargain collectively, and the right to strike.<sup>13</sup> The labor

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1. North American Agreement on Labor Cooperation, U.S.-Mex.-Can., Sept. 13, 1993, 32 I.L.M. 1499 (1993) [hereinafter NAALC].

2. Elizabeth C. Crandall, Comment, *Will NAFTA's North American Agreement on Labor Cooperation Improve Enforcement of Mexican Labor Laws?*, 7 TRANSNAT'L LAW. 165, 167 (1994).

3. North American Free Trade Agreement, U.S.-Mex.-Can., Sept. 17, 1993, 32 I.L.M. 296 (1993). The treaty was approved by Congress on November 17, 1993, and according to article 2203 entered into force on January 1, 1994.

4. NAALC, *supra* note 1, pmb., 32 I.L.M. at 1502.

5. Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POL'Y INT'L BUS. 391, 427 (1993).

6. *Id.*

7. *Id.*

8. *Id.* at 431.

9. NAALC, *supra* note 1, art. 1, 32 I.L.M. at 1503.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* Annex 1, 32 I.L.M. at 1515. The Annex provides:

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

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2. the right to bargain collectively

.....

3. the right to strike

principles engender controversy because of the manner by which the agreement divides them.

All labor matters encompassed by the principles of freedom of association and protection of the right to organize, the right to bargain collectively and the right to strike may be referred to as industrial relations matters.<sup>14</sup> The NAALC regards all other labor principles as "technical labor standards."<sup>15</sup> Although both types of matters are initially addressed by the same enforcement mechanisms, greater dispute resolution options exist under the NAALC for technical labor issues than for violations of industrial relations principles.<sup>16</sup> Technical labor principle violations are subject to the full extent of the dispute settlement procedures outlined in the NAALC.<sup>17</sup> On the other hand, the industrial relations principle violations are restricted to more limited resolution procedures.<sup>18</sup> Significant among these limitations is the lack of a monetary penalty option which is available for technical labor violations.<sup>19</sup> These limitations on enforcement of industrial relations principles show the most significant weakness of the NAALC.

The labor agreement also establishes the trinational Commission for Labor Cooperation<sup>20</sup> to promote information exchange and cooperative

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4. prohibition of forced labor

5. labor protections for children and young persons

6. minimum employment standards

7. elimination of employment discrimination

8. equal pay for women and men

9. prevention of occupational injuries and illnesses

10. compensation in cases of occupational injuries and illnesses

11. protection of migrant workers.

14. Crandall, *supra* note 2, at 186 n.181.

15. NAALC, *supra* note 1, art. 49, 32 I.L.M. at 1513.

16. Ronald W. Kleinman & Joel M. Shapiro, *NAFTA's Proposed Tri-Lateral Commissions on the Environment and Labor*, 2 U.S.-MEX. L.J. 25, 28 (1994).

17. *See infra* notes 28-63 (discussing the resolution of alleged technical labor principle violations).

18. *See infra* part I.A. (discussing the limitations on resolution of alleged industrial relations matters).

19. NAALC, *supra* note 1, art. 39, 32 I.L.M. at 1511, 1512.

20. *Id.* pt. 3, 32 I.L.M. at 1504-07. The Commission is comprised of and supported by four major bodies. The Council consists of the three Parties' labor ministers. The Secretariat, which supports the Council, is headed by an Executive Director who serves a three year term. The position rotates between a national from each Party. The National Administrative Offices are established by each federal government and serve as the point of contact in each country for information and submissions of labor matters arising in the territory of another Party. Finally, articles 17 and 18 establish the right of each Party to form National Advisory Committees and Governmental Committees respectively, and to advise on the implementation and elaboration of this agreement. *Id.*

activities and to serve as the dispute resolution mechanism between Parties.<sup>21</sup> It is this labor dispute settlement procedure, in the context of industrial relations matters, that is the focus of this comment.<sup>22</sup>

On February 14, 1994, only one and a half months after the NAALC came into effect, two complaints for alleged labor violations in Mexico were submitted to the United States National Administrative Office.<sup>23</sup> One was filed by the United Electrical, Radio and Machine Workers of America (UE) alleging labor principle violations by General Electric (GE) in Mexico.<sup>24</sup> The other complaint was filed by the International Brotherhood of Teamsters (IBT) alleging violations of principles by Honeywell, Inc. (Honeywell) in one of its Mexican factories.<sup>25</sup> The unions' complaints primarily concerned the right to organize and freedom of association.<sup>26</sup>

This comment discusses the NAALC's procedures for settling labor disputes, in light of their first application, emphasizing industrial relations matters and the role of the National Administrative Office (NAO). Part I discusses the NAALC procedures for resolution of alleged labor principle violations by a Party. Part II presents the facts and circumstances leading to the submissions of the first two complaints. Part III describes the NAO's decisions based on its review of the two unions' submissions. Part IV analyzes that review and its impact on the credibility of the NAALC. Finally, Part V discusses the role of the NAO in future industrial relations disputes.

## I. NAALC PROCEDURES FOR THE RESOLUTION OF LABOR DISPUTES

### A. *General Procedures*

Each Party's labor law enforcement obligations under the NAALC are best described by former Acting Secretary of the U.S. NAO, Jorge F. Perez-Lopez:

[T]he obligation undertaken in Article 3 by each signatory is to "promote compliance with and effectively enforce" its own labor law. That is, the Agreement requires each signatory to enforce all of the labor laws that it

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21. *Id.* arts. 10-11, 32 I.L.M. at 1505-06.

22. For additional background of its evolution and specific articles of the NAALC see generally Crandall, *supra* note 2.

23. *NAFTA Labor Protections Put to Test as Mexican Workers Testify Before NAO*, Int'l Trade Daily (BNA) (Sept. 14, 1994).

24. National Administrative Office, Submission #940002, Feb. 14, 1994 [hereinafter Submission 2]. Submissions of complaints filed with the National Administrative Office are available under the Freedom of Information Act from the U.S. National Administrative Office, Department of Labor, Bureau of International Labor Affairs, 200 Constitution Ave., NW, Rm. C-4322, Washington, D.C. 20210.

25. National Administrative Office, Submission #940001, Feb. 14, 1994 [hereinafter Submission 1].

26. *Id.*; Submission 2, *supra* note 24.

has in place, but this obligation does not extend to enforcing the laws of another Party.<sup>27</sup>

Any individual may submit for NAO review concerns as to possible labor principle violations, whether technical labor standards or industrial relations matters.<sup>28</sup> The submission must allege a violation in another Party's territory.<sup>29</sup> A citizen of a Party country may not submit a complaint to his or her own country's NAO alleging a domestic labor violation. Such matters are more appropriately addressed by domestic labor authorities. After filing, that country's NAO Secretary determines whether the issues raised are "relevant to labor law matters in the territory of another Party and if a review would further the objectives of the Agreement."<sup>30</sup> Based on this standard, if the NAO decides to review the matter it will begin gathering information from various sources,<sup>31</sup> including possible exchanges of information between the Parties' NAOs.<sup>32</sup> Generally, the NAO holds a hearing and issues a subsequent report.<sup>33</sup> The report includes a summary of the proceedings as well as the NAO's findings and recommendations.<sup>34</sup>

If the Secretary of the NAO finds the accused Party has not resolved the dispute after the NAO publishes its report, she may recommend that the Secretary of Labor request ministerial consultations with his counterpart in the country where the matter arose.<sup>35</sup> The Parties will then attempt to resolve the matter by consultation and exchange of publicly available information.<sup>36</sup>

If ministerial consultations prove unsuccessful for resolving the dispute, any consulting Party may request the establishment of an Evaluation

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27. Jorge F. Perez-Lopez, Remarks at the United States - Mexico Law Institute Conference, Santa Fe, New Mexico (Sept. 15-17, 1994) [hereinafter Perez-Lopez Remarks].

28. Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16,660, 16,661 (1994) [hereinafter Revised Notice].

29. *Id.* at 16,661.

30. *Id.* This broad standard, established by the U.S. NAO, is its only specified guideline for determining appropriate subject matter for review. It appears that nearly any fact supported submission alleging nonenforcement by a Party of its labor laws would satisfy the standard.

31. *Id.* at 16,662. "[T]he Office shall conduct such further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised." *Id.*

32. NAALC, *supra* note 1, art. 21, 32 I.L.M. at 1507-08. This article allows the investigating NAO to obtain information from its counterpart in the country where an issue has been raised. Information as to that country's labor laws, their administration, or labor market conditions in the area may be requested. Furthermore, any NAO may participate in the consultations if proper notice is provided to the other NAOs and the Secretariat.

33. Revised Notice, *supra* note 28, at 16,662. "The Secretary shall hold promptly a hearing on the submission, unless the Secretary determines that a hearing would not be a suitable method for carrying out the Office's responsibilities. . . ." *Id.*

34. *Id.*

35. *Id.*

36. NAALC, *supra* note 1, art. 22, 32 I.L.M. at 1508.

Committee of Experts (ECE).<sup>37</sup> However, an ECE may only be established if the matter is trade-related<sup>38</sup> or the matter is encompassed by mutually recognized labor laws.<sup>39</sup>

The ECE analyzes, in a non-adversarial manner, patterns of a Party's enforcement of its technical labor laws.<sup>40</sup> It may receive information for review from any Party's NAO, the Secretariat, organizations with relevant expertise and even the general public.<sup>41</sup> The NAALC provision on ECEs only addresses technical labor matters. Therefore, industrial relations concerns, such as the right to organize and bargain collectively, cannot be reviewed by an ECE.<sup>42</sup>

An ECE usually consists of three labor experts.<sup>43</sup> The chair of the committee is selected by the Council from a roster of experts developed in conjunction with the International Labor Organization.<sup>44</sup> The other members are selected, when possible, from lists developed by the Parties.<sup>45</sup> All ECE members are experts on labor or any field related to the matter.<sup>46</sup> They are selected on a "basis of objectivity, reliability and sound judgment."<sup>47</sup> The experts must be independent from the Parties and the Secretariat.<sup>48</sup> Finally, the ECE reviews the issue pursuant to a code of conduct established by the Council.<sup>49</sup>

If the dispute pertains to technical labor standards, the ECE will issue

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37. *Id.* art. 23, 32 I.L.M. at 1508.

38. Trade-related is defined as:

[R]elated to a situation involving workplaces, firms, companies or sectors that produce goods or provide services: (a) traded between the territories of the Parties; or (b) that compete in the territory of the Party whose labor law was the subject of ministerial consultations under Article 22, with goods or services produced or provided by persons of another Party.

*Id.* art. 49, 32 I.L.M. at 1513-14.

39. *Id.* art. 23, 32 I.L.M. at 1508.

40. *Id.* The nature of the NAALC encourages cooperation and negotiation rather than confrontational methods of resolving disputes. This need for cooperative activities arises from an inability to enforce the domestic labor laws of another Party. See Perez-Lopez Remarks, *supra* note 27. See also *supra* notes 14-16 and accompanying text (discussing the difference between industrial relations matters and technical labor standards).

41. NAALC, *supra* note 1, art. 24, 32 I.L.M. at 1058.

42. Crandall, *supra* note 2, at 186.

43. NAALC, *supra* note 1, art. 24, 32 I.L.M. at 1508.

44. *Id.* The Parties develop this roster with the International Labor Organization pursuant to article 45 of the NAALC, which states, "The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 24(1)." *Id.* art. 45, 32 I.L.M. at 1513.

45. Perez-Lopez Remarks, *supra* note 27.

46. NAALC, *supra* note 1, art. 24, 32 I.L.M. at 1508.

47. *Id.*

48. *Id.*

49. *Id.*

a Draft Evaluation Report.<sup>50</sup> This report is delivered to the NAALC-established Council.<sup>51</sup> Each Party involved in the matter may then respond to the recommendations made in the report.<sup>52</sup> The ECE considers this input, then develops its Final Evaluation Report.<sup>53</sup> The recommendations in this report are made available to the Council and the Parties involved in the matter. The Parties then meet for consultations and, using this report, attempt to arrive at a “mutually satisfactory resolution of the matter.”<sup>54</sup>

If these consultations do not result in a successful resolution, a Party may request a special session of the Council.<sup>55</sup> In this special session the Council may make recommendations to the Parties, suggest other forms of dispute resolution, such as mediation, consult technical advisers, or create working groups of experts.<sup>56</sup>

If the technical labor matter remains unresolved a Party may request that the Council establish an Arbitral Panel.<sup>57</sup> This panel of labor law experts, selected from a Council-maintained roster,<sup>58</sup> reviews the dispute and issues a Final Report.<sup>59</sup> The panel determines if a persistent pattern<sup>60</sup> of labor violations has occurred and may coordinate a plan to remedy the inappropriate activities, if the Parties cannot establish such a plan themselves.<sup>61</sup> If a Party does not comply with the plan, a monetary enforcement assessment may be implemented under Annex 39.<sup>62</sup> Failure to pay a monetary enforcement assessment entitles the other interested Party or Parties to suspend NAFTA benefits in an amount no greater than the monetary enforcement

50. *Id.* arts. 23-25, 32 I.L.M. at 1508-09.

51. *Id.* art. 26, 32 I.L.M. at 1509. The Council convenes regularly once a year and in special sessions at the request of a Party. *Id.* art. 9, 32 I.L.M. at 1505. *See also supra* note 20 and accompanying text (discussing the organizational bodies within the Commission for Labor Cooperation).

52. *Id.* art. 25, 32 I.L.M. at 1508-09.

53. *Id.* art. 26, 32 I.L.M. at 1509.

54. *Id.* art. 27, 32 I.L.M. at 1509.

55. Perez-Lopez Remarks, *supra* note 27.

56. NAALC, *supra* note 1, art. 28, 32 I.L.M. at 1509.

57. *Id.* art. 29, 32 I.L.M. at 1509-10.

58. *Id.* art. 30, 32 I.L.M. at 1510.

59. *Id.* art. 37, 32 I.L.M. at 1511.

60. *Id.* art. 49, 32 I.L.M. at 1513-14. Pattern of practice is defined as “a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case.” *Id.*

61. *Id.* art. 39, 32 I.L.M. at 1511-12.

62. *Id.* Annex 39 contains three provisions related to monetary enforcement assessments. The first provision sets a maximum amount which is twenty million dollars for 1994, and no greater than .007 percent of total trade in goods between the Parties during all subsequent years. The second provision lists considerations to be used by the panel in establishing the assessment amount. These considerations include: the pervasiveness and duration of the persistent pattern of violation, the reasonably expected level of enforcement, reasons for not implementing the action plan, efforts to remedy patterns of violations and any other relevant factors. The last provision establishes that the paid assessment shall be expended at the Council’s direction to improve labor law enforcement in the violating country. *Id.* Annex 39, 32 I.L.M. at 1516.

assessment.<sup>63</sup>

Dispute resolution procedures for industrial relations matters do not extend beyond the ministerial consultations<sup>64</sup> of the NAALC's article 22.<sup>65</sup> Because of this more limited procedure, the NAO assumes a more significant role as a dispute settlement mechanism for industrial relations concerns. The NAO's recommendations to its respective labor ministers will generally be the only source of resolution when another Party has allegedly failed to enforce the principles of freedom to associate and the right to organize, the right to bargain collectively, or the right to strike.

Each Party's NAO shares a close relationship with its labor minister. The NAO's recommendations to its respective minister will establish a foundation for consultations. The Secretary of the NAO, in fact, makes the recommendation to the minister as to whether consultations are appropriate.<sup>66</sup> Lacking further dispute resolution procedures, such as the ECEs and the monetary enforcement assessment, the NAO's effectiveness and creativity are crucial to the resolution of these industrial relations disputes.

### *B. The Role of the NAO*

Each Party's NAO establishes its own guidelines for submission of labor matters arising in another Party's territory.<sup>67</sup> This Party-individualized system for receipt and review of submissions ensures that the procedure is consistent with each Party's domestic procedures.<sup>68</sup> The U.S. NAO established its policies in the *Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines*.<sup>69</sup> These rules state that any person may file a submission regarding labor law matters arising in the territory of another Party.<sup>70</sup> The rules require that the submitter be clearly identified, and that the complaint be signed and dated.<sup>71</sup> The submitter must state with specificity the matters to be considered and provide any supporting information available.<sup>72</sup>

The guidelines also establish certain elements that the submitter should address in the complaint. First, the matters complained of should demon-

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63. *Id.* art. 41, 32 I.L.M. at 1512-13.

64. *NAO Decides to Review Union Charges Against Honeywell, General Electric*, Daily Lab. Rep. (BNA) No. 75, at D-14 (Apr. 20, 1994) [hereinafter *NAO Decides to Review*].

65. The subsequent articles dealing with "Cooperative Consultations and Evaluations" as well as "Resolution of Disputes" specify that they address only technical labor standards. See generally arts. 23, 27, 29 and 39, 32 I.L.M. at 1508-12.

66. Revised Notice, *supra* note 28, at 16,662.

67. NAALC, *supra* note 1, art. 16, 32 I.L.M. at 1507.

68. Perez-Lopez Remarks, *supra* note 27.

69. Revised Notice, *supra* note 28, at 16,660.

70. *Id.* at 16,661.

71. *Id.*

72. *Id.*

strate action inconsistent with the Parties obligations under the NAALC.<sup>73</sup> Second, there should be harm to the submitter or another as a result of the labor law violation.<sup>74</sup> Third, the complaint should “demonstrate a pattern of non-enforcement of labor law by another Party.”<sup>75</sup> Fourth, the complaint should indicate whether relief has been sought under the domestic laws of the Party accused of violations and, the status of those legal proceedings.<sup>76</sup> Finally, the submitter should indicate if the matter is pending before an international body.<sup>77</sup>

The Secretary of the NAO determines within sixty days whether the matter should be reviewed.<sup>78</sup> The general standard is whether the issues raised are “relevant to labor law matters in the territory of another Party and if a review would further the objectives of the Agreement.”<sup>79</sup> The request for review may be rejected if the submission requirements are not met.<sup>80</sup> The request may also be rejected if the allegations do not constitute a violation of Part Two of the NAALC.<sup>81</sup> Finally, a request may be rejected if appropriate relief has not been pursued under domestic laws of another Party, if the complaint is pending before an international body, or if the request is substantially similar to another recent submission and provides no new significant information.<sup>82</sup>

If the NAO determines review is appropriate, the Secretary notifies the Parties and publishes the rationale for the review in the *Federal Register*.<sup>83</sup> If the NAO decides not to review the matter, it promptly provides a reason for its decision.<sup>84</sup>

The NAALC establishes an extensive procedure for resolving labor matters that arise in a Party country. Under this procedure disputes may be resolved in an orderly and cooperative manner. However, it remains unclear

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73. *Id.* The NAALC’s Part Two “Obligations,” consists of articles 2-7 of the agreement. They establish the obligations of each Party, including: the obligation to set and promptly publish high labor standards, ensure their enforcement, allow private rights of action for their enforcement, maintain fair procedures for enforcement and promote public awareness of the labor laws. NAALC, *supra* note 1, arts. 2-7, 32 I.L.M. at 1503-04.

74. Revised Notice, *supra* note 28, at 16,661.

75. *Id.* For a definition of “pattern” see *supra* note 60 (discussing the definition of “pattern of practice”).

76. *Id.* The Guidelines do not specify that all local remedies must necessarily be exhausted but, merely request that the submitter indicate the status of such domestic proceedings in the complaint.

77. *Id.*

78. *Id.*

79. *Id.* See *supra* notes 11-13 and accompanying text (discussing the goals and objectives of the NAALC).

80. Revised Notice, *supra* note 28, at 16,661.

81. *Id.* at 16,661-62. Part Two of the NAALC is titled “Obligations,” and consists of articles 2-7 of the agreement. NAALC, *supra* note 1, arts. 2-7, 32 I.L.M. at 1503-04.

82. Revised Notice, *supra* note 28, at 16,662.

83. *Id.*

84. *Id.*

whether the NAALC can effectively resolve industrial relations matters, which do not qualify for the majority of the extensive resolution procedures.<sup>85</sup>

## II. FACTS AND CIRCUMSTANCES LEADING TO THE FIRST COMPLAINTS SUBMITTED TO THE NAO

Both the UE and the IBT submitted complaints to the NAO on February 14, 1994.<sup>86</sup> The complaints were directed at Mexican subsidiaries of U.S. corporations, General Electric and Honeywell, Inc., respectively.<sup>87</sup> Both submissions alleged violations of industrial relations matters by each subsidiary's management.<sup>88</sup> Although the complaints were fact specific to the two companies, they asserted the companies' actions resulted in nonenforcement of labor laws by the Mexican government.<sup>89</sup> In its decision to review the complaints, the NAO stated its purpose was, "to gather information to assist the U.S. National Administrative Office to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action."<sup>90</sup>

### A. *United Electrical, Radio and Machine Workers of America v. Compañía Armadora, S.A. (General Electric)*

The UE alleged in its complaint that the Compañía Armadora, a subsidiary of General Electric in Juarez, Mexico, violated an extensive number of labor laws,<sup>91</sup> emphasizing a disregard for the right to organize.<sup>92</sup> These alleged violations included violations of the Labor Principles in Annex 1 of the NAALC,<sup>93</sup> various articles of the Mexican Constitu-

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85. See *supra* notes 64-66 and accompanying text (discussing the resolution of industrial relations disputes).

86. *NAO Decides to Review*, *supra* note 64, at D-14.

87. *Id.*

88. *Id.*

89. *Id.*

90. The North American Agreement on Labor Cooperation; Notice of Determination Regarding review of Submissions, #940001 and #940002, 59 Fed. Reg. No. 217 at 18, 832 (Apr. 15, 1994).

91. Submission 2, *supra* note 24, at 10.

92. *NAO Decides to Review*, *supra* note 64, at D-14.

93. See *supra* note 13 and accompanying text (listing the eleven Labor Principles addressed in Annex 1 of the NAALC). The specific principles allegedly violated by Compañía Armadora were freedom of association and protection of the right to organize, minimum employment standards, and prevention of occupational injuries and illnesses. Submission 2, *supra* note 24, at 14.

tion<sup>94</sup> and Mexican Federal labor laws.<sup>95</sup> The complaint further alleged violations of International Labour Organisation Conventions,<sup>96</sup> the Universal Declaration of Human Rights,<sup>97</sup> and the United Nations Covenants on Civil and Political Rights,<sup>98</sup> and Economic, Social and Cultural Rights.<sup>99</sup>

Although UE alleged that Compañía Armadora violated several labor laws and principles, the most prevalent allegations regarded freedom of association and the right to organize.<sup>100</sup> This is evidenced by assertions that the company restricted workers from furthering their collective interests by surveying union meetings, interfering with distribution of union leaflets, and illegally discharging employees for union activity.<sup>101</sup>

The allegations were based primarily on a series of firings that took place at the company.<sup>102</sup> The UE asserted that over 100 employees were fired, at least twenty of whom were actively supporting a union organization at the plant.<sup>103</sup> The UE believed that the termination of these twenty employees was based solely on their union activity.<sup>104</sup> The union further alleged that the GE subsidiary fired four employees following their appearance in a photograph in a union newsletter.<sup>105</sup> These terminations occurred within days of the newsletter's publication, shortly after the first union organizational meeting.<sup>106</sup> The firings commenced in November 1993, and continued through early December of that year.<sup>107</sup>

The UE noted that the employees were virtually forced to accept severance pay following termination due to the economic hardships of the

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94. Articles of the Mexican Constitution allegedly violated, which pertain to industrial relations, include: article 6, which guarantees freedom of expression and the right to information; article 7, which guarantees freedom of writing and publishing; and article 123, which establishes Mexico's labor and social securities laws, including the right to organize. *See CONSTITUCIÓN POLÍTICA* [Constitution] arts. 6, 7 and 123 (Mex.), *translated in* [1995 Binder XIII] 12 Const. Countries World (Oceana Pub. Inc.) (Gisbert H. Flanz ed., 1988) [hereinafter CONSTITUTIONS].

95. Title Seven, ch. II, art. 357 of the Federal Labor Law of Mexico, allegedly violated, grants workers and employers the right to establish unions without prior authorization. *See* [1983 Binder 1], *Com. Bus. & Trade L. Mexico*, Louise Moreno, Mexico 11, 14 100 Labor Law 105 (Oceana Pub., Inc.) (Michael W. Gordon ed., 1983).

96. International Labor Organization Conventions allegedly violated include: Conventions 87 on freedom of association, 98 and 170.

97. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

98. *Done Dec.* 16, 1966, 999 U.N.T.S. 171.

99. *Done Dec.* 16, 1966, 993 U.N.T.S. 3.

100. *NAO Decides to Review*, *supra* note 64.

101. Submission 2, *supra* note 24, at 10-12.

102. *Id.* at 6.

103. *Id.*

104. *NAO Decides to Review*, *supra* note 64, at D-14.

105. Submission 2, *supra* note 24, at 6. The photograph appeared in the *UE News* published November 9, 1993.

106. *Id.*

107. *Id.* at 6 and 9.

region.<sup>108</sup> Mexican law forbids workers from contesting terminations once they accept severance pay.<sup>109</sup> The UE complained directly to Compañía Armadora following the terminations of eleven of the employees.<sup>110</sup> The company offered reinstatement to six employees who then chose severance pay instead.<sup>111</sup> The company did not offer reinstatement to the others, asserting that those terminations were justified under Mexican law for work violations.<sup>112</sup>

### *B. International Brotherhood of Teamsters v. Honeywell*

The IBT asserted in its complaint that Honeywell's Chihuahua, Mexico subsidiary committed abusive interrogations and fired union employees without cause.<sup>113</sup> Furthermore, the company allegedly stated the reason for termination was support of union organization.<sup>114</sup> Subsequently, Honeywell pressured terminated employees to accept severance pay and relinquish their right to claims for reinstatement.<sup>115</sup> Such allegations constitute violations of article 123 of the Mexican Constitution<sup>116</sup> and the principles listed in the NAALC's Annex 1.<sup>117</sup>

The IBT's allegations are based on the termination of approximately twenty factory employees in November, 1993.<sup>118</sup> The IBT asserted that nearly all of these employees supported joining an independent union.<sup>119</sup> Prior to their termination, the IBT claimed that the employees voiced a desire to join STIMAHCS,<sup>120</sup> a union affiliated with the independent Mexican labor federation, Frente Autentico Del Trabajo (F.A.T.).<sup>121</sup> This labor federation is neither affiliated with nor supported by the Mexican govern-

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108. *Id.* at 6.

109. *Id.* at 11 and 12. The laws regarding severance pay in Mexico are found in article 123, Section XXII of the Mexican Constitution and articles 47 of the Federal Labor Law of Mexico.

110. *Id.* at 9.

111. *Id.*

112. Position Statement of the General Electric Company, Submitted to the National Administrative Office 2 (Aug. 17, 1994) [hereinafter GE Position].

113. Submission 1, *supra* note 25, at 4.

114. *Id.*

115. *Id.* at 5.

116. *See supra* notes 94 and 110 and accompanying text (referring to article 123 of the Mexican Constitution).

117. Submission 1, *supra* note 25, at 5. The complaint does not specifically list the Labor Principles violated other than mentioning the right to join unions, which obviously refers to the first principle "freedom of association and protection of the right to organize." The industrial relations nature of this reference is sufficient for the focus of this discussion and inquiries as to other principle violations, while meaningful, are beyond the scope of this comment.

118. *Id.* at 2.

119. *Id.*

120. Submission 1, *supra* note 25, at 2. STIMAHCS is a Mexican metal workers' union.

121. *Id.* Frente Autentico Del Trabajo is referred to in English as the Authentic Labor Front.

ment.<sup>122</sup> These employees, who were subsequently fired, were allegedly held in offices and interrogated as to which employees were union supporters.<sup>123</sup> The IBT claimed the management told the workers the factory would close before allowing a union such as STIMAHCS to organize.<sup>124</sup> Furthermore, the employees interrogated were told they must sign resignation forms in order to receive severance pay, thereby waiving any claims against Honeywell.<sup>125</sup>

Honeywell asserted that it was merely downsizing operations due to business conditions.<sup>126</sup> The company pointed out that the terminations complied with Mexican law and the purpose for those terminations was reducing the workforce and costs at the facility.<sup>127</sup> Furthermore, all employees discharged received full severance benefits and notice that they would be eligible for rehiring if positions became available.<sup>128</sup> One employee was rehired in May, 1994.<sup>129</sup> The company did state, however, that one employee was fired for repeated work rules violations.<sup>130</sup> The management indicated that, despite warnings to cease, the employee constantly left her work area and bothered other employees.<sup>131</sup> She refused to accept severance benefits and contested the termination before the Chihuahua Labor Conciliation and Arbitration Board.<sup>132</sup> Although the employee initially requested reinstatement, she later agreed to a settlement with the company.<sup>133</sup> Honeywell states firmly that no employees were questioned about union activity and that the management is supportive of any such activity.<sup>134</sup>

### C. Attempts at Relief Under Mexican Law

According to the UE's complaint, of those former employees discharged by General Electric, two did not accept severance pay and contested their terminations.<sup>135</sup> Furthermore, the IBT's complaint indicated that one

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122. *Id.*

123. *Id.* at 3.

124. *Id.*

125. *Id.*

126. Honeywell's 1993 Downsizing Actions in Chihuahua: Comments on NAO Submission #940001, Submitted to the National Administrative Office 1 (Aug. 31, 1994) [hereinafter Honeywell Position].

127. *Id.* at 1, 3.

128. *Id.* at 3.

129. *Id.*

130. *Id.* at 4.

131. *Id.*

132. *Id.* at 5. This adjudicatory body, established by Mexican law, and its counterparts in other jurisdictions review alleged labor law violations. See Crandall, *supra* note 2, at 177.

133. Honeywell Position, *supra* note 126, at 5.

134. *Id.* at 2 and 4.

135. GE Position, *supra* note 112, at 2 and 3.

former Honeywell employee contested her termination before a Mexican mediation and conciliation board.<sup>136</sup> Honeywell settled this claim with compensation to the former employee rather than reinstatement.<sup>137</sup>

Based on submissions from all parties, these three individuals' complaints represent the extent of relief pursued under Mexican domestic law.<sup>138</sup> General Electric Senior Counsel for Employment and Labor Law, Arthur Joyce, indicated in a letter to the NAO on April 5, 1994, that the UE had not pursued any relief through the Mexican legal system.<sup>139</sup>

The UE stated in its complaint that the NAO should review the allegations regardless of whether Mexican domestic relief had been pursued.<sup>140</sup> This request was based on several grounds. First, the International Labor Organization's Committee of Experts issued an opinion in 1993, stating that Mexico had repeatedly violated ILO Convention 87.<sup>141</sup> Second, the union cited a U.S. Congressional study of Mexican labor law enforcement.<sup>142</sup> The study stated that the Mexican government and recognized unions used their influence to deter the development of other unions.<sup>143</sup> Third, the UE referenced opinions of various Mexican labor lawyers<sup>144</sup> that the Mexican government has a history of suppressing the right to organize in Mexico.<sup>145</sup> Finally, the union cited an article in *U.S. News and World Report* showing the Mexican government's influence in preventing the organization of independent labor unions.<sup>146</sup> Using these arguments, the UE attempted to show that Mexico's lack of labor law enforcement would make resorting to Mexican domestic remedies futile. The union asserted that

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136. Submission 1, *supra* note 25, at 3. See also *supra* notes 130-133 and accompanying text (discussing this employee's termination).

137. Honeywell Position, *supra* note 128, at 5. Following a March 28, 1994, Labor Board meeting an approved agreement was made between the former employee and Honeywell acknowledging that she was justifiably fired for work rules violations. Subsequently to this acknowledgement she received severance compensation.

138. U.S. Department of Labor, U.S. National Administrative Office North American Agreement on Labor Cooperation Public Report of Review: NAO Submission #940001 and NAO Submission #940002 (Oct. 12, 1994), at 26 and 27 [hereinafter NAO Report]. Available through the NAO, see *supra* note 24; see also U.S. National Administrative Office's Public Report of Review on Submissions No. 940001 and No. 940002, 197 Daily Lab. Rep. (BNA) No. 197, at D-23.

139. Letter from Arthur E. Joyce, Senior Counsel Labor and Employment Law, General Electric, to Jorge F. Perez-Lopez, Acting Secretary, United States National Administrative Office (April 5, 1994). On file with the *California Western International Law Journal*.

140. Submission 2, *supra* note 24, at 12.

141. *Id.* International Labor Organization Convention 87 deals with freedom of association and protection of the right to organize. Mexico ratified this convention making it part of its labor law.

142. *Id.* at 12, 13. See U.S. Congress, Office of Technology Assessment, *U.S.-Mexico Trade: Pulling Together or Pulling Apart* (1992).

143. *Id.*

144. *Id.* at 13

145. *Id.*

146. *Id.* (citing Linda Robinson, *Reaching to the South: Free Trade Alone Cannot Bring Mexico and the United States Together*, U.S. NEWS & WORLD REP., Mar. 1, 1993, at 43).

it was necessary for the NAO to review the allegations and Mexico's failure to enforce its labor laws.<sup>147</sup>

The unions' allegations against the companies raised the first opportunity to test the NAALC procedures for labor principle violations.<sup>148</sup> The emphasis on freedom of association and the right to organize meant that attention would focus on industrial relations. The more limited approach to resolving these matters<sup>149</sup> placed a great deal of significance on the U.S. NAO in this initial test of its review authority.

### III. THE NAO'S REVIEW AND REPORT

#### A. *The Review*

Pursuant to the *Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines*,<sup>150</sup> once the submissions from the unions were accepted for review an inquiry and hearing were planned.<sup>151</sup> The NAO stated that the issues raised were, "relevant to labor law matters in Mexico and a review would further the objectives of the NAALC."<sup>152</sup> It elaborated that the review would focus on the alleged violations of the principles of freedom of association and protection of the right to organize as well as the prohibition on dismissing workers for exercising those rights.<sup>153</sup>

The purpose of the review was to understand and report on Mexico's "promotion of compliance with, and effective enforcement of, its labor law through appropriate government action."<sup>154</sup> By articulating this objective,

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147. *Id.* at 12.

148. *NAFTA Labor Protections Put to First Test as Mexican Workers Tell U.S. About Firings*, Int'l Trade Daily (BNA) (Sept. 14, 1994) [hereinafter *NAFTA Labor Protections Put to First Test*].

149. *See supra* notes 64-66 and accompanying text (discussing the resolution of industrial relations disputes).

150. Revised Notice, *supra* note 28, at 16,662.

151. The North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submissions #940001 and #940002, 59 Fed. Reg. at 18,832 (1994). The planned inquiry and hearing were in compliance with the NAO guidelines established in Revised Notice, *supra* note 28, at 16,662.

152. NAO Report, *supra* note 138, at 8.

153. *Id.*

154. *Id.* at 8, 9. This standard of review is established in NAALC article 3, which states:

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.

the NAO reiterated that its purpose was not to determine whether the two companies violated Mexican labor laws, but rather, to understand and report on the Mexican government's promotion and enforcement activities.<sup>155</sup>

In conformity with the NAO guidelines, the NAO committed itself to produce a public report summarizing its investigations findings and recommendations.<sup>156</sup> Prior to the issuing of the report, the NAO conducted its review by collecting information from a number of sources. Subsequent to receiving the complaints from the two unions, and the position statements from the two companies, the NAO began collecting additional information.<sup>157</sup> The IBT and the UE submitted supplemental information in the form of affidavits from workers affected by the alleged labor law violations.<sup>158</sup>

The U.S. NAO also consulted with the Mexican NAO, as permitted under NAALC article 21.<sup>159</sup> The U.S. NAO requested from its Mexican counterpart any public information on the complaints filed as well as information on Mexican labor laws. Specifically, the NAO desired information on Mexico's system of Conciliation and Arbitration Boards (CABs).<sup>160</sup> CABs enforce labor laws and settle disputes between labor and management.<sup>161</sup> They have the authority to review matters related to freedom of association and dismissal of workers.<sup>162</sup> The NAO requested statistics on CABs' effectiveness in wrongful termination disputes.<sup>163</sup> These statistics

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NAALC, *supra* note 1, art 3, 32 I.L.M. at 1503.

155. *NAO Closes Book on Union NAFTA Charges Against Honeywell and General Electric*, Daily Lab. Rep. (BNA) No. 197, at D-3 (Oct. 14, 1994) [hereinafter *NAO Closes Book*].

156. Revised Notice, *supra* note 28, at 16,662. Section G.8 states, "within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to 60 additional days, the Secretary shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations." *Id.*

157. *Id.* Section H.1 at 16,662. These information collection activities include consultations with other NAOs, the public hearing and any "further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised."

158. NAO Report, *supra* note 138, at 9.

159. *Id.* at 12. See *supra* note 32 (discussing NAALC article 21).

160. *Id.*

161. CONSTITUCIÓN POLÍTICA [Constitution], art. 123, § XX: "Differences or disputes between capital and labor shall be subject to the decisions of a Conciliation and Arbitration Board, consisting of an equal number of representatives of workers and employers, with one (representative) from the government." Translation from CONSTITUTION, *supra* note 94, at 101.

162. NAO Report, *supra* note 138, app. II at A-10 and A-11.

163. *Id.* at 24, 25. A consultant's report regarding the period from June 1993, to June 1994, stated that the City of Chihuahua CAB (the Honeywell plant's jurisdiction) resolved all but 173 of the 1,862 cases submitted during that period (91% resolved). During that same time the CAB decided 650 cases that had been pending. The average time between filing of a complaint and settlement is 7.3 months. This is significantly faster than many other state CABs where the period is over a year. *Id.*

The Ciudad Juarez CAB (the Compañía Armadora plant's jurisdiction) managed to achieve an average adjudication period of 8 months despite having 1,249 complaints filed between the period from January to May 1994. This CAB lacks the personnel to offer conciliation proceedings, but still managed to settle 1,050 of the complaints (84% resolved). *Id.* at 25.

The information on CABs generally stated that they were effective in handling cases

would indicate wrongful termination actions settled with reinstatement compared to those settled with severance.<sup>164</sup> Finally, the Mexican NAO provided information on the severance pay system and its role in place of reinstatement proceedings under the CAB system.<sup>165</sup>

The NAO next held a public hearing,<sup>166</sup> as required by procedural guidelines,<sup>167</sup> to obtain information related to the allegations. Prior to the hearing's commencement, statements were made by GE, Honeywell, the U.S. Council for International Business and Ms. Barbara Eastman of the United Auto Workers.<sup>168</sup>

The company statements reiterated much of their earlier correspondence with the NAO. GE emphasized that there was no evidence the Mexican government had displayed a pattern of non-enforcement of its labor laws related to freedom of association and the right to organize.<sup>169</sup> Honeywell again explained its reduction in personnel and reiterated that there was a lack of evidence supporting the allegation that the Mexican government was not enforcing its labor laws.<sup>170</sup>

To support the companies' arguments the U.S. Council for International Business argued that the NAO should not have reviewed the complaints because they focused on companies rather than Parties to the NAALC.<sup>171</sup> It further argued that when the unions filed the complaints, the disputes had either been resolved or the proper Mexican domestic legal procedures for relief had not been pursued.<sup>172</sup> This point emphasized the inappropriateness of the decision to review the matters. Finally, Ms. Eastman's pre-hearing statement discussed her visit to the Compañía Armadora plant, where she witnessed management interfering with the distribution of union literature in and outside of the plant.<sup>173</sup>

The actual hearing consisted of four panels of testimony in Washington D.C.<sup>174</sup> From the outset of the hearing, NAO Secretary Irasema Garza emphasized that "the hearing was being conducted to gather information to assist the NAO in preparing its public report, that the purpose of the hearing was not to adjudicate individual rights, and that it was not an adversarial

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effectively. One report did indicate that these boards were more unbiased and impartial on matters regarding individual rights as opposed to those regarding collective matters. *Id.*

164. *Id.* at 12, 13.

165. *Id.* at 13.

166. The NAO public hearing regarding Submissions #940001 and #940002 were held in Washington, D.C. on September 12, 1994. *Id.* at 13, 14.

167. Revised Notice, *supra* note 28, at 16,662.

168. NAO Report, *supra* note 138, at 14.

169. *Id.*

170. *Id.*

171. *Id.* at 15.

172. *Id.*

173. *Id.*

174. *Id.*

proceeding.”<sup>175</sup>

The first panel consisted of two union representatives, one from the UE and the other from the IBT.<sup>176</sup> Each addressed the allegations and demanded that these labor principle violations cease.<sup>177</sup> Mr. Ron Carey also voiced the IBT’s dissatisfaction with the extent of information the NAO received from the Mexican government and the companies in question.<sup>178</sup> He also complained that the hearing was not held in a location more convenient for the Mexican testifiers<sup>179</sup> and that cameras should have been permitted in the hearing.<sup>180</sup> Finally, he argued that the hearing should have allowed testimony regarding union elections held on August 24, 1994, at the *Compañía Armadora* plant.<sup>181</sup>

The second panel consisted of testimony from another UE representative, a former employee of *Compañía Armadora*, a former employee of Honeywell and a STIMAHCS representative.<sup>182</sup> The UE representative summarized the allegations.<sup>183</sup> The workers testified as to their experiences and that they had not contacted government officials regarding their health and safety concerns in the factories.<sup>184</sup> This indicates that Mexican laborers, at least in these factories, believed they were unable to make effective use of their domestic outlets for labor concerns. Finally, the STIMAHCS representative, Mr. Benedicto Martínez, testified as to the difficulty of establishing independent unions in Mexico.<sup>185</sup> He claimed that this difficulty was due to official union domination and company tactics used to prevent protests and hamper union organization plans.<sup>186</sup> These tactics include delaying the processing of CAB hearing complaints to induce financial hardship.<sup>187</sup> This, in turn, forces acceptance of severance compensation. Another tactic is mandatory signing of “blank sheets” by employees, which the employer may later fill in as the employee’s resignation.<sup>188</sup>

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175. *Id.*

176. *Id.* The panel members were Mr. Ron Carey, General President of the IBT and Ms. Amy Newell, General Secretary-Treasurer of the UE.

177. *NAFTA Labor Protections Put to First Test*, *supra* note 148.

178. NAO Report, *supra* note 138, at 16.

179. *NAFTA Labor Protections Put to First Test*, *supra* note 148.

180. NAO Report, *supra* note 138, at 16.

181. *Id.* These elections were the subject of another complaint submitted to the NAO by the UE on September 12, 1994. *See infra* note 335 and accompanying text.

182. *Id.* The panel members were Ms. Robin Alexander of the UE; Mr. Fernando Castro Hernández, formerly of *Compañía Armadora*; Ms. Ofelia Medrano, formerly of Honeywell; and Mr. Benedicto Martínez of STIMAHCS.

183. *Id.* *See supra* notes 100-12 and accompanying text (discussing the UE allegations against *Compañía Armadora*).

184. *Id.* at 16, 17.

185. *Id.* at 17, 18.

186. *Id.*

187. *Id.* at 17.

188. *Id.*

The third panel was comprised of four Mexican labor lawyers.<sup>189</sup> They testified as to the content and enforcement of Mexican labor laws.<sup>190</sup> They elaborated on the government and company tactics used to prevent organization of independent unions at the *maquiladoras*.<sup>191</sup> These tactics included difficult union registration procedures, complex approval requirements to strike, and “black lists” of union-supporting employees.<sup>192</sup>

Finally, the fourth panel consisted of three IBT lawyers and a representative from the Ontario Federation of Labor.<sup>193</sup> The Canadian representative described Canadian labor law in Ontario in order to provide the benefit of a comparative perspective.<sup>194</sup> The IBT representatives all gave recommendations regarding the hearings. Ms. Judy Scott’s suggestions ranged from forced reinstatement of the workers to the establishment of a code of conduct for *maquiladoras*.<sup>195</sup> Ms. Scott also recommended consultations among the NAOs to develop cooperative activities on industrial relations matters and joint conferences for labor and management.<sup>196</sup> She further suggested the publication of a “plain language” guide to labor and management rights for widespread distribution and increased awareness.<sup>197</sup> Mr. Earl Brown testified that in the future, companies involved with submissions should be required to participate in the hearing.<sup>198</sup> Mr. Thomas Geoghegan recommended that ministerial consultations be implemented because the Mexican severance pay system discourages the use of CABs, and because the inability of workers to organize prevents them from protecting themselves from health and safety violations.<sup>199</sup>

Honeywell and GE both chose not to participate in the hearing.<sup>200</sup> The companies referred to the unions’ allegations as “another effort to undermine NAFTA.”<sup>201</sup> Organized labor’s long-standing opposition to NAFTA<sup>202</sup>

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189. *Id.* at 18. The panel members were Mr. Arturo Alcalde, Mr. Jesús Campos, Mr. Jorge Fernández and Mr. Gustavo de la Rosa.

190. *Id.* at 18, 19.

191. *Id.* *Maquiladoras* are Mexican factories, often owned by U.S. parent companies, that enjoy the benefit of a reduced import tariff to the U.S. based solely on the value added to the product at the *maquiladora* rather than its full value. See Michael Connor, *Maquiladoras and the Border Environment: Prospects for Moving from Agreements to Solutions*, 3 COLO. J. INT’L ENVTL. L. & POL’Y 683, 683-86 (1992).

192. NAO Report, *supra* note 138, at 18-19.

193. *Id.* at 19. The panel members were Ms. Judy Scott, Mr. Earl Brown, and Mr. Thomas Geoghegan, all representing the IBT, and Mr. Chris Schenck of the Ontario Federation of Labor.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.* at 20.

200. *NAFTA Labor Protections Put to Test as Mexican Workers Testify Before NAO*, *supra* note 23, at 1391.

201. *Id.*

may lend credence to this statement. It is, therefore, plausible for the companies to argue that these allegations were nothing more than union efforts to publicly increase anti-NAFTA sentiment.<sup>203</sup>

The IBT, the UE, and Honeywell all made post-hearing statements.<sup>204</sup> The IBT statement responded to the companies' interpretations of NAALC guidelines for NAO review and recommendations, rebutting their assertion that the NAO lacked authority to review these matters.<sup>205</sup> The statement also pointed out key facts from the hearing, emphasized that greater weight should be placed on oral testimony than on the written company statements, and emphasized the significance of the comparison to U.S. and Canadian labor law.<sup>206</sup>

The UE's statement reiterated the allegations that the Mexican government had failed to protect organizational and associational rights.<sup>207</sup> It also noted the specific wrongful actions of the two companies and addressed the unfair severance system which denied workers access to the legal system.<sup>208</sup> The UE also requested that the NAO report reaffirm the importance of the freedom of association and protection of the right to organize, as well as all other labor laws.<sup>209</sup> More specifically, the UE requested that the companies be required to take corrective actions, that the governments participate in cooperative activities, and a summary of Mexican workers rights be prepared.<sup>210</sup>

Finally, Honeywell again argued that it violated no Mexican laws.<sup>211</sup> It reiterated that the one employee terminated for work violations subsequently came to a CAB-approved settlement agreement.<sup>212</sup> Honeywell stated that the former employee's attorney, not the company, suggested the settlement.<sup>213</sup> In conclusion, the company stated that because no Mexican labor law was violated and no complaints remained unresolved, there was no basis to conclude that the Mexican government failed to enforce its labor laws.<sup>214</sup>

In addition to the submissions, the NAO consultations and the hearing, the NAO obtained information from Mexican labor law experts and other

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202. Katherine A. Hagen, *Fundamentals of Labor Issues and NAFTA*, 27 U.C. DAVIS L. REV. 917, 918 (1994)

203. GE Position, *supra* note 112, at 5 and Honeywell Position, *supra* note 126, at 6.

204. NAO Report, *supra* note 138, at 20-22.

205. *Id.* at 20.

206. *Id.*

207. *Id.*

208. *Id.* at 20-21.

209. *Id.* at 21.

210. *Id.*

211. *Id.*

212. See *supra* notes 130-134 and accompanying text (discussing the Honeywell employee fired for repeated work rules violations).

213. NAO Report, *supra* note 138, at 21.

214. *Id.* at 21-22.

printed sources.<sup>215</sup> These sources included, among others, government reports and law review journals.<sup>216</sup> The NAO then prepared the final report presenting its findings and recommendations.<sup>217</sup>

### B. The Report

The NAO issued its final report on October 12, 1994.<sup>218</sup> In addition to a background of the review, the report stated the U.S. NAO's conclusions and recommendations regarding the complaints.<sup>219</sup> The NAO stated that based on the evidence available, it did not find "that the Government of Mexico failed to promote compliance with or enforce," the labor laws at issue.<sup>220</sup>

The report reiterated several points before stating its findings. First, it stressed that the review focused on the labor laws related to the freedom of association and the right to organize as well as the prohibition of dismissal of workers for the exercise of those rights.<sup>221</sup> Second, the NAO emphasized that the review focused on the actions of the Mexican government and not the specific actions of the companies accused of labor law violations.<sup>222</sup> Finally, the report addressed its role in the dispute by pointing out that the NAO is not an appellate body, nor a substitute for Mexican domestic remedies.<sup>223</sup>

The NAO found that the workers acceptance of severance pay precluded Mexican authorities from determining if the terminations were wrongful.<sup>224</sup> This prevented a conclusion that Mexico failed to promote or enforce its relevant labor laws.<sup>225</sup> Even in cases where the companies admitted making mistakes, the workers offered reinstatement chose a larger severance pay instead.<sup>226</sup> The few workers who did not accept severance pay and challenged their dismissals availed themselves of Mexican law and awaited

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215. *Id.* at 13. The NAO presented a series of questions to two sets of U.S. experts on Mexican labor law. The questionnaires inquired specifically on the topics of enforcement of labor laws and the role of the CABs. *Id.*

216. *Id.* at 22. A sample listing of these sources include: *A Primer on Mexican Labor Law*, U.S. Department of Labor, Bureau of International Labor Affairs (1991); Ann M. Bartow, *The Rights of Workers in Mexico*, 11 COMP. LAB. L. (1990); and Mark Zelek & Oscar de la Vega, *An Outline of Mexican Labor Law*, 43 LAB. L.J. 466 (1992).

217. Revised Notice, *supra* note 28, at 16662.

218. NAO Report, *supra* note 138.

219. *Id.*

220. *Id.* at 32.

221. *Id.* at 28.

222. *Id.* See also *supra* notes 73-75 and accompanying text (discussing that a complaint filed with an NAO must allege inappropriate activity by a Party to the NAALC).

223. *Id.*

224. *Id.* at 30. See also *supra* note 109 and accompanying text.

225. NAO Report, *supra* note 138, at 30.

226. *Id.* at 30, 31. See also *supra* note 111 and accompanying text.

the judgment pending.<sup>227</sup> The report also pointed out that neither complaint alleged that the settlements arranged and approved by the respective CABs were the result of any improprieties.<sup>228</sup>

On the other hand, the NAO did note a concern that workers appeared to have a perception that legal remedies would not be successful.<sup>229</sup> There was also the frequent concern that financial hardship in the region and lack of unemployment insurance programs encouraged settlements.<sup>230</sup> This could arguably be interpreted as a realization that the Mexican workers' right to organize is limited by the economic hardship of the region.<sup>231</sup> This does not, however, preclude the fact that the workers were aware of their legal right to challenge their dismissal, but chose settlement instead.<sup>232</sup> The NAO also acknowledged that the timing of the dismissals appeared to coincide with independent union organizing drives at the factories.<sup>233</sup>

Based on the conclusion that the Mexican government did not fail to promote compliance with or enforcement of its labor laws, the NAO report announced that it would not recommend the ministerial consultations permitted under article 22 of the NAALC.<sup>234</sup> The NAO did voice a number of concerns and made several recommendations pursuant to article 11 of the NAALC.<sup>235</sup>

The report showed a concern for enforcement of labor laws regarding the establishing of recognized unions in Mexico.<sup>236</sup> Related to this was the issue of company policies against union-supporting workers and the preferential treatment granted to official government supported unions.<sup>237</sup> The report noted that there was a lack of practical knowledge among the Parties to the NAALC regarding each countries' industrial relations labor laws.<sup>238</sup>

In response to these concerns the NAO made several recommendations.<sup>239</sup> First, it recommended that the countries develop and participate in cooperative programs regarding the freedom of association and the right

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227. *Id.* at 31. See also *supra* notes 135-139 and accompanying text.

228. *Id.* at 26-28.

229. *Id.* at 30.

230. *Id.* at 29, 30.

231. *Id.* at 30.

232. *Id.*

233. *Id.*

234. *Id.* at 32. See also Allen R. Myerson, *U.S. Backs Mexico Law, Vexing Labor*, N.Y. TIMES, Oct. 13, 1994, at D-1. For a discussion of article 22 of the NAALC see *supra* notes 36 & 37 and accompanying text.

235. *Id.* at 32. Article 11 of the NAALC establishes that the Council shall promote cooperative activities between the Parties regarding various labor matters. NAALC, *supra* note 1, art. 11, 32 I.L.M. at 1505-06.

236. *Id.* at 29.

237. *Id.*

238. *Id.* at 31.

239. See, e.g., *U.S. Backs Mexico Law, Vexing Labor*, *supra* note 234, at D-1.

to organize.<sup>240</sup> An example given was a “government-to-government trilateral seminar,” with participation from state and/or provincial labor authorities.<sup>241</sup> This would ideally be followed by related local events.<sup>242</sup> These recommendations spotlight the ability of the NAO to urge the evolution and progress of labor law policy and enforcement.

The report also concluded that public awareness of the NAALC was lacking.<sup>243</sup> It recommended that each country commence a public information program.<sup>244</sup> Examples of such activities include conferences for worker and employer organizations regarding the NAALC. Also, conferences for individual employers and workers could be pursued.<sup>245</sup> Furthermore, the Secretariat,<sup>246</sup> once established,<sup>247</sup> should prepare informational materials for widespread distribution.<sup>248</sup>

These cooperative programs represent the extent of activities recommended as a result of the review by the NAO. Although ministerial consultations were the only dispute resolution procedures available to these industrial relations matters,<sup>249</sup> the NAO deemed them inappropriate.<sup>250</sup> The result of these findings and recommendations bring a new opportunity for criticism and analysis.

#### IV. THE NAO REVIEW AND ITS IMPACT

##### A. *The Appropriateness of the Review*

An appropriate point to begin looking at the NAO review is whether it should have been conducted at all. Although the unions involved believed a review was in accordance with the NAALC, from the moment the NAO announced its plans to review the unions’ allegations the corporations questioned whether the NAO had such authority.<sup>251</sup>

GE argued in its position statement to the NAO that the only allegation

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240. NAO Report, *supra* note 138, at 31.

241. *Id.*

242. *Id.*

243. *Id.* at 32.

244. *Id.*

245. *Id.*

246. *See supra* note 20 (discussing the four major bodies of the Commission established by the NAALC).

247. John McKennirey, the Canadian selected as Executive Director, is currently establishing the Secretariat in Dallas, Texas. *See, e.g., Canadian Named to Head NAFTA-Related Panel*, Daily Lab Rep. (BNA) No. 40, at D-28 (March 1, 1995).

248. NAO Report, *supra* note 138, at 32. The report does not elaborate on what is meant by the term “widespread” other than to say that the distribution should take place in all three countries that are Parties to the agreement.

249. *See supra* notes 64-66 and accompanying text (discussing the limitations on resolution of industrial relations matters).

250. NAO Report, *supra* note 138, at 32.

251. *NAO Decides to Review*, *supra* note 64, at D-14.

raised in the UE's complaint that the NAO was authorized to review was whether there was a pattern of nonenforcement by the Mexican government of its industrial relations labor laws.<sup>252</sup> The company then elaborated that all post-dismissal activities by the parties were settled or were following Mexican domestic procedures.<sup>253</sup> Thus, GE stated that there could be no showing of nonenforcement of applicable labor laws by the Mexican government.<sup>254</sup> This argument coincided with the conclusion of the NAO's report.<sup>255</sup>

One critic argues that the standard for determining whether a review is appropriate is too broad.<sup>256</sup> The standard merely asks whether the complaint raises labor law issues in the territory of another Party and if a review would further the objectives of the NAALC.<sup>257</sup> It would arguably be more appropriate to set a standard that more effectively eliminates the complaints lacking legal substance, regardless of the sympathy they evoke.<sup>258</sup>

GE's position statement raised several other points of controversy regarding the NAO decision to review.<sup>259</sup> First, the statement pointed out that all employee dismissals by Compañía Armadora addressed in the UE submission, occurred prior to the effective date of the NAALC.<sup>260</sup> Article 49 of the NAALC states that a "pattern of practice means a course of action or inaction beginning after the date of entry into force of the Agreement."<sup>261</sup> Relying on this text, GE argued that the timing of the dismissals prevented an NAO review.<sup>262</sup>

Although this appeared to be a strong argument, the NAO refuted it early in its final report.<sup>263</sup> First, the NAO stated that several of the dismissed employees pursued their reinstatement into 1994.<sup>264</sup> More significantly, the report indicated that the date or an event is only relevant to determine a "pattern of practice," which is necessary to establish an ECE.<sup>265</sup> Therefore, GE's argument that the timing of the dismissals prevented a review was not valid.

252. GE Position, *supra* note 112, at 1.

253. *Id.* at 3.

254. *Id.*

255. See *supra* notes 224-228 and accompanying text (discussing the findings of the NAO).

256. Marshall J. Breger, *Hitting Mexican Industry with NAFTA Rules*, THE RECORDER, Nov. 23, 1994, at 6 [hereinafter *Hitting Mexican Industry*].

257. See *supra* note 30 and accompanying text (discussing the NAO standard of review).

258. *Hitting Mexican Industry*, *supra* note 256, at 6.

259. GE Position, *supra* note 112, at 3 and 4.

260. *Id.* at 3. The NAALC went into effect, as mandated by article 51, on January 1, 1994. NAALC, *supra* note 1, art. 51, 32 I.L.M. at 1514. See, e.g., *supra* notes 102-107 and accompanying text (discussing the dismissals of the employees at the GE plant).

261. NAALC, *supra* note 1, art. 49, 32 I.L.M. at 1513-14.

262. GE Position, *supra* note 112, at 4, 32 I.L.M. at 1513-1514.

263. NAO Report, *supra* note 138, at 8.

264. *Id.*

265. *Id.*

GE's argument may have warranted greater consideration. Although the "pattern of practice" issue did not apply (because no ECE was needed), only two former employees of Compañía Armadora had not settled their dispute with the factory.<sup>266</sup> Furthermore, these two former employees continued to fight for reinstatement by pursuing domestic remedies at the time the complaint was submitted to the NAO.<sup>267</sup> As such, the employees had not yet exhausted domestic remedies available. All other aspects of the dismissals, which occurred prior to the NAALC's effective date were settled before the NAO's decision to review.<sup>268</sup> All of these facts were stated in the UE's complaint.<sup>269</sup> Relying on this information alone, supplied by the complainant, it appears that a full investigative review was unnecessary. GE's first argument (that there was no valid allegation of government nonenforcement of labor laws), which coincided with the NAO's final decision, supports its second argument, that the timing of the events made the review inappropriate.<sup>270</sup>

Next, in its position statement GE argued that the UE failed to pursue domestic remedies for the allegations in the complaint.<sup>271</sup> The UE complaint offered support as to why pursuit of domestic relief would be futile,<sup>272</sup> but gave no evidence of its attempts to confirm that futility. The pursuit of a domestic remedy is a consideration of such significance that the U.S. NAO made it an issue that must be addressed in any complaint filed.<sup>273</sup>

This argument, that a domestic remedy was not pursued by the unions was supported by the Industrial Relations Committee of the U.S. Council for International Business.<sup>274</sup> This organization sent a statement to the NAO, endorsed by the international labor affairs group of the National Association of Manufacturers,<sup>275</sup> stating its position on the NAO's review of the unions' submissions.<sup>276</sup> In the statement, Edward Potter of the Council stated that acceptance for review of these submissions, "effectively rendered

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266. Submission 2, *supra* note 24, at 10.

267. *Id.* at 6 and 10.

268. The NAO announced its decision to review the submissions on April 20, 1994. Each submission was filed by its respective union on February 14, 1994. See, *NAFTA Labor Protections Put to Test as Mexican Workers Testify Before NAO*, *supra* note 23, at 1391.

269. Submission 2, *supra* note 24, at 5-10.

270. For GE's first two arguments see *supra* notes 252-255 and 260-262 and accompanying texts.

271. GE Position, *supra* note 112, at 4.

272. Submission 2, *supra* note 24, at 12 and 13. For a discussion of these arguments against the pursuit of domestic remedies. See *supra* notes 140-147 and accompanying text.

273. Revised Notice, *supra* note 28, at 16,661.

274. Letter from Mr. Edward E. Potter, International Labor Counsel, U.S. Council for International Business, to Ms. Irasema T. Garza, Secretary, NAO Bureau of International Labor Affairs 3-5 (Aug. 31, 1994) on file with *California Western International Law Journal*.

275. *Id.* at 1.

276. *Id.*

meaningless," the submission criteria established by the NAO.<sup>277</sup>

It is difficult to establish that a government did not promote compliance with or enforcement of its laws when was not given the opportunity to do so. Those individuals who had not settled with the companies were pursuing domestic remedies.<sup>278</sup> No first hand allegations of impropriety on the part of the Mexican authorities were made.<sup>279</sup> The unions possibly recognized the opportunity to bring greater awareness of the incidents at the two plants by means of an NAO review, rather than through the more appropriate Mexican domestic review.<sup>280</sup> The question remains, however, whether an impression of ineffectiveness and an opportunity for public awareness of labor issues warrants ignoring Mexican CAB proceedings for an NAALC proceeding.

GE argued that the UE submission was an attempt to use the NAO to review the actions of corporations, which is not permitted under the NAALC.<sup>281</sup> In support of this argument, the company pointed to UE requests that the NAO "make findings of fact and credibility determinations."<sup>282</sup> Furthermore, GE stated that the complaint inappropriately requested that Compañía Armadora be instructed to take specific actions.<sup>283</sup> These requests did not fit into the NAALC mandated-guideline that Parties to the agreement shall not undertake labor law enforcement activities in another Party's territory.<sup>284</sup> The issue must be whether the Mexican government has failed to promote compliance with or enforcement of its applicable labor laws.

This argument, although meritorious, fails to consider that not promoting compliance could be construed as an allegation against the government. After all, one of the objectives agreed to by the three countries was to, "promote, to the maximum extent possible, the labor principles," set forth in the agreement.<sup>285</sup> So long as the complaint made allegations against the government and all NAO submission criteria were met,<sup>286</sup> the NAO could merely disregard requests for relief that it was not empowered to address.

Honeywell's position statement did not directly challenge the NAO review authority as did GE's.<sup>287</sup> Rather, it chose to stand firmly by its

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277. *Id.* at 3.

278. *See supra* note 267 and accompanying text.

279. NAO Report, *supra* note 138, at 26 and 27.

280. GE Position, *supra* note 112, at 5.

281. *Id.* at 4.

282. *Id.* at 5.

283. *Id.* For a listing of the requested actions see Submission 2, *supra* note 24, at 15, 16.

284. *Id.* This guideline is established in article 42 of the NAALC. NAALC, *supra* note 1, art. 42, 32 I.L.M. at 1513.

285. NAALC, *supra* note 1, art. 1, 32 I.L.M. at 1503.

286. *See supra* notes 72-76 and accompanying text (discussing criteria for filing a submission with the U.S. NAO).

287. *See generally* Honeywell Position, *supra* note 126.

argument that it violated no Mexican labor laws and that there was no instance of non-enforcement by the Mexican government.<sup>288</sup> The facts and circumstances, however, regarding timing of dismissals, timing of settlements, domestic relief pursued and relief requested by the IBT, all permit the application of GE's arguments to the IBT submission against Honeywell.<sup>289</sup>

All of these arguments warranted some consideration, but the NAO chose to accept the submissions filed by the unions.<sup>290</sup> The fact that the review produced no strikingly different conclusions may be further evidence that it was inappropriate or unnecessary.

### B. *The Review and its Impact*

The conclusions of the NAO drew applause and criticism of the reviewing body's methods, all of which raised issues as to the NAO's effectiveness in this review process.<sup>291</sup> Honeywell's Glen Scovholt stated, "We're pleased that the NAO's six-month inquiry vindicates Honeywell."<sup>292</sup> GE simply stated that the issue was, "not a company-specific matter," referring to its position statement sent to the NAO.<sup>293</sup>

The unions' comments were more critical. Amy Newell of the UE, who testified<sup>294</sup> at the NAO hearing, stated, "[t]he NAO report confirms what labor has maintained all along, that the NAFTA side agreements were toothless and ineffective."<sup>295</sup> She added, "[w]orkers' rights are trampled by U.S. corporations like GE and Honeywell, protected by the lack of any action on the part of the government."<sup>296</sup>

Criticism of the decision came from outside sources as well. The director of the A.F.L.-C.I.O.'s task force on trade said, "[w]e're quite disappointed. The Administration has decided against making the most of even a limited labor accord."<sup>297</sup>

Criticism could arguably arise from NAO procedures or the NAALC itself. As discussed previously, the NAO of each country establishes its own procedural guidelines for review of labor law matters arising in another Party's territory.<sup>298</sup> This is mandated by article 16 of the NAALC.<sup>299</sup>

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288. *Id.* at 6.

289. For the general facts regarding the IBT submission see *supra* part II.B.

290. See *supra* notes 151-153 and accompanying text.

291. *NAO Closes Book on Union NAFTA Charges Against Honeywell and General Electric*, Daily Lab. Rep. (BNA), at D3 (Oct. 14, 1994) [hereinafter *NAO Closes Book*].

292. Richard Alm, *Union Leaders Upset After Labor Complaints on Mexico Shunned*, Dallas Morning News, Oct. 14, 1994, at 1-D [hereinafter *Union Leaders Upset*].

293. *NAO Closes Book*, *supra* note 291.

294. See, e.g., *supra* notes 176-181 and accompanying text (discussing the first panel of testimony at the September 12, 1994, NAO hearing).

295. *Union Leaders Upset*, *supra* note 292.

296. *Id.*

297. *U.S. Backs Mexico Law, Vexing Labor*, *supra* note 234.

298. NAALC, *supra* note 1, art. 16, 32 I.L.M. at 1507.

The rationale that this allows each country to make its guidelines comply with domestic procedure is significant because it emphasizes the priority of each country's domestic law.<sup>300</sup> However, independence in reviewing matters could lead to inconsistency among the various NAOs. The NAALC establishes the broad framework requiring the matter to concern labor law matters in another territory.<sup>301</sup> Beyond this, however, each NAO has considerable discretion. For example, the U.S. standard requires that the matter arise in another territory and that "a review would further the objectives of the Agreement."<sup>302</sup>

This degree of discretion has both positive and negative aspects. When dealing with concerns of labor law violations in another Party country, this discretion allows greater opportunity for review. Such discretion, however, may encourage the review of meritless matters. Also consider the time involved in the review of the submissions filed by the unions on February 14, 1994.<sup>303</sup> The final NAO report was not issued until October 12, 1994.<sup>304</sup> After eight months the report established that there was no government enforcement violation. Yet the NAO could have made this determination based on little more than the facts in the complaints.<sup>305</sup> Conducting the review was not necessarily wrong, but the NAO might have saved time and resources if there were stricter guidelines as to what warrants a review.

In addition to determining what matters to review, the NAO also establishes the guidelines by which it conducts its review.<sup>306</sup> Unions criticized the NAO's examination of the matter as not extensive enough.<sup>307</sup> Specifically, the unions asserted that more information should have been obtained from the Mexican government and the companies involved.<sup>308</sup>

The guidelines call for an examination of all information that is relevant to the matter and will assist with the duty to publicly report.<sup>309</sup> This includes any publicly available information from the NAO of the government Party in question.<sup>310</sup> The guidelines also call for a hearing to be conducted.<sup>311</sup> The U.S. NAO guidelines do not limit the investigation methods

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299. See *supra* notes 67-69 and accompanying text (discussing this article of the NAALC).

300. See *supra* note 68 and accompanying text.

301. NAALC, *supra* note 1, art. 16, 32 I.L.M. at 1507.

302. Revised Notice, *supra* note 28, at 16661.

303. *NAFTA Labor Protections Put To Test as Mexican Workers Testify Before the NAO*, *supra* note 23, at 1391.

304. NAO Report, *supra* note 138.

305. See, e.g., *supra* notes 267-269 and accompanying text.

306. NAALC, *supra* note 1, art. 16, 32 I.L.M. at 1507.

307. NAO Report, *supra* note 138, at 16.

308. *Id.*

309. Revised Notice, *supra* note 28, at 16,662.

310. NAALC, *supra* note 1, art. 16, 32 I.L.M. at 1507.

311. Revised Notice, *supra* note 28, at 16,662.

that may be used.<sup>312</sup> Furthermore, the report issued by the NAO discussed extensively the submissions filed, the Mexican NAO's support of the investigation, and the hearing and expert testimony.<sup>313</sup> The NAO appears to have complied with its self-established guideline of obtaining information, and was able to effectively report on the matter. As such, it is questionable whether alternative methods would have provided additional useful information.

A significant flaw in the NAO review was rooted in the unions' submissions themselves. As noted by GE in its position statement, the complaints focused extensively on the actions of the companies.<sup>314</sup> In fact, the relief requested largely focused on actions demanded of the companies.<sup>315</sup> Although this inappropriate focus would not necessarily prevent a review,<sup>316</sup> the more appropriate focus on the Mexican government's activities might have benefitted the unions' goals. Had the allegations centered on the Mexican governments' lack of promotion of compliance with or enforcement of its labor laws, the unions might have had a stronger case for the dismissed workers. On the other hand, this more appropriate focus might have alerted the unions that their case against the government was unwarranted or inappropriate based on the circumstances.<sup>317</sup>

### C. Effectiveness of the NAO

The NAALC as a whole may also be criticized. The industrial relations matters raised in the submissions would, at best, only receive the benefit of ministerial consultations.<sup>318</sup> Why should the technical labor principle violations receive the benefit of extensive dispute resolution procedures,<sup>319</sup> while the review of industrial relations principle violations remains so limited?

U.S. Trade Representative Mickey Kantor stated that the reason for limiting the means of resolution of these matters was to avoid interference in labor/management negotiations.<sup>320</sup> Furthermore, both Mexico and Canada opposed the imposition of sanctions for labor principle violations during the

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312. See generally *id.* at 16,662.

313. NAO Report, *supra* note 138, at 9-22.

314. GE Position, *supra* note 112, at 4 n.25.

315. Submission 1, *supra* note 25, at 5, 6; Submission 2, *supra* note 24, at 15, 16.

316. See, e.g., *supra* notes 283-284 and accompanying text (discussing this GE argument).

317. NAO Report, *supra* note 138, at 32 and also see, e.g., *supra* notes 253-254 and accompanying text.

318. See *supra* notes 64-66 and accompanying text.

319. See *supra* notes 31-63 and accompanying text (discussing the dispute resolution procedures the NAALC establishes for technical labor matters).

320. Crandall, *supra* note 2, at 186-87.

NAALC negotiations.<sup>321</sup> However, mere public exposure of labor principle violations may encourage the Mexican government to respond to and remedy the problem.<sup>322</sup>

Critics of the limited options for resolving industrial relations matters regard the accord as weak and the result of corporate pressure on the government negotiators.<sup>323</sup> Jerome Levinson, formerly of the Inter-American Bank, "[by] not addressing the labor relations issue, the United States is, in effect, sanctioning a system in which abuses are endemic."<sup>324</sup> Regarding the limited resolution procedures for industrial relations matters he later added, "[t]he U.S. side is satisfied with a cosmetic solution."<sup>325</sup>

The criticism of the NAALC's limited resolution procedures on these matters is highly debated. However, in the case of the UE and the IBT submissions it is not an effective argument. Based on the findings of the NAO, the fact that the matters regarding the workers' right to organize could not go beyond ministerial consultations is irrelevant. The NAO did not even deem the consultations necessary, precluding an argument, at least in this case, that the NAALC is ineffective in the resolution of these matters.

An alternative criticism may be the result of what could be considered NAO's "politically friendly" decision. Mexico's sensitivity to impositions on its sovereignty could have influenced the conclusions of the review.<sup>326</sup> The Mexican concern regarding infringement on its sovereignty dates back to the negotiations for the NAALC.<sup>327</sup> During negotiations for the NAALC, one critic warned President Clinton that pushing for enforcement sanctions threatened Mexican sovereignty and jeopardized the prospects for NAFTA as a whole.<sup>328</sup> The timing of the review may also have been too early in the life of NAFTA, as well as the NAALC, to start pushing governments for changes in policies.<sup>329</sup> Conversely, a strong stand in the

321. *NAFTA Threat: Clinton Should Drop Idea of Enforcement Sanctions*, HOUSTON CHRON., Aug. 5, 1993, at A-28.

322. Jerome I. Levinson, *The Labor Side Accord to the North American Free Trade Agreement: An Endorsement of Abuse of Worker Rights in Mexico*, ECON. POL'Y INST. BRIEFING PAPER (Economic Policy Institute, Washington D.C.) Sept. 1993, at 11.

323. *Union Leaders Upset*, *supra* note 292.

324. Jerome I. Levinson, *Give Mexican Workers Their Due: U.S. Firms are Already Taking Advantage of Poor Labor Protections; the Treaty Must be Amended to Prevent Further Abuse*, L.A. TIMES, Sept. 29, 1992, at B-7.

325. Levinson, *supra* note 322, at 11.

326. *Union Leaders Upset*, *supra* note 292.

327. Benjamin Rozwood and Andrew R. Walker, Comment, *Side Agreements, Sidesteps, and Sideshowes: Protecting Labor from Free Trade in North America*, 34 HARV. INT'L L.J. 333, 335 (1993).

328. *NAFTA Threat: Clinton Should Drop Idea of Enforcement Sanctions*, *supra* note 321, at A-28.

329. After losing the battle over NAFTA, U.S. organized labor turned to the NAALC as its source of defending member's jobs. *Hitting Mexican Industry*, *supra* note 256, at 6. Allowing the unions' public outcries and influence to persuade the NAO's findings could have been a politically disastrous decision. This is especially a concern when many Mexican officials believe the NAALC was nothing more than a U.S. social agenda inappropriately forced on them

initially might have been an effective means of gaining credibility for the NAALC.

Have organized labor's fears been realized? Is the NAALC merely "cosmetic?" During the NAFTA debates the U.S. public's main concern was the loss of jobs of U.S. workers.<sup>330</sup> This concern is not relevant here, but the fear of continued repression of Mexican workers' rights was clearly raised. One NAO review is insufficient evidence to judge the effectiveness of the process.

The NAO review established a number of significant accomplishments. First, recognizing the lack of awareness regarding the NAALC, recommendations were made to implement programs promoting awareness of the agreement throughout all three countries.<sup>331</sup> Probably even more significant to the unions was the NAO recommendation that the Parties establish cooperative programs encouraging awareness of the rights encompassed by the industrial relations label.<sup>332</sup> These recommendations, although probably not the unions' ideal decision, surely represent a step in the direction of progress. These cooperative programs embody the spirit of the NAALC. They will be the means by which the Parties can amicably, "promote, to the maximum extent possible, the labor principles and improve working conditions and living standards in each Party's territory."<sup>333</sup>

## V. THE FUTURE

In the aftermath of the initial hearing, the NAO faced two new disputes. Each alleged labor law violations in Mexico, but one was a follow-up action by the UE against GE.<sup>334</sup> Each stands to play a significant part in refining the role of the NAO, now that the initial review is complete. These subsequent reviews will likely be subject to greater scrutiny.

The UE complaint<sup>335</sup> did not become the second test of the NAO's review procedures. The union withdrew the submission stating that the

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during trade negotiations. See *NAFTA Can't Force Mexico to Improve*, SACRAMENTO BEE, Feb. 25, 1995, at B7.

330. Hagen, *supra* note 202, at 919.

331. NAO Report, *supra* note 138, at 32.

332. *Id.* at 31.

333. NAALC, *supra* note 1, art. 1, 32 I.L.M. at 1503. This quotation encompasses only two of the objectives of the agreement listed in this article (objectives a and b). In one respect or another all of the objectives are supported by these cooperative programs.

334. *Labor Department to Review UE Charges of Violations by GE at Mexican Plant*, Daily Lab. Rep. (BNA) at D-8 (Nov. 10, 1994) [hereinafter *Labor Department to Review*].

335. This complaint, submitted by the UE, National Administrative Office, Submission, #940004, September 12, 1994 [hereinafter Submission 4] was accepted for review by the NAO on November 4, 1994. See North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #940004, 59 Fed. Reg., at 56,094 (Nov. 10, 1994).

ineffectiveness of the first review made subsequent attempts not worthwhile.<sup>336</sup> The complaint alleged fraudulent action by GE in a secret ballot election for representation by the independent metalworkers' union, STIMAHCS, at the Compañía Armadora plant.<sup>337</sup> The workers voted against representation, but the UE, who represents many of the Mexican workers' U.S. counterparts, alleges the company manipulated the results.<sup>338</sup>

Claiming a hearing would not provide a "full and fair consideration," of the charges the UE decided it would not make use of NAALC procedures.<sup>339</sup> Irasema Garza, Secretary of the NAO, responded with an assertion that the union apparently misunderstood the role and authority of the NAO.<sup>340</sup> She pointed out that the NAALC only provides authority to ensure that each Party enforces their own domestic labor laws.<sup>341</sup>

The other submission<sup>342</sup> was brought by four U.S. and Mexican human rights organizations alleging labor law violations by the Sony Corporation and the Mexican government.<sup>343</sup> In the extensive and detailed submission, the complainants alleged work hours violations as well as infringements on the right to organize and the freedom of association.<sup>344</sup> In deciding to review these allegations, the NAO, apparently looking back to the first hearing, determined that the work hours allegations had not been pursued sufficiently through Mexican domestic law to warrant review.<sup>345</sup> In its announcement, the office agreed to review the industrial relations allegations and stated that the work hours matter would be open for reconsideration provided further evidence is supplied that domestic remedies were sought.<sup>346</sup>

336. *NAFTA: Electrical Workers Drop Petition; Lambastes NAO for "White Wash" Probe*, Daily Lab. Rep. (BNA) No. 22, at D-14 (Feb. 2, 1995) [hereinafter *Electrical Workers Drop Petition*].

337. *Labor Department to Review*, *supra* note 334, at D-8. In this election, possibly the first secret ballot union election in Mexican labor history, the workers voted 914 to 159 against STIMAHCS representation. *Id.*

338. *Id.*

339. *Electrical Workers Drop Petition*, *supra* note 336, at D-14.

340. *Id.*

341. *Id.* See also NAALC, *supra* note 1, art. 1, 32 I.L.M. at 1503 which states: "The objectives of this Agreement are to: . . . (f) promote compliance with, and effective enforcement by each Party of, its labor law."

342. National Administrative Office, Submission #940003, Aug. 16, 1994 [hereinafter Submission 3]. This complaint was submitted to the NAO by the International Labor Rights Education and Research Fund, the Asociación Nacional de Abogados Democraticos (the Mexican National Association of Democratic Lawyers), the American Friends Service Committee and the Coalition for Justice in the Maquiladoras. See North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #940003, 59 Fed. Reg., at 52,992 (Oct. 20, 1994).

343. *Sony, Mexican Government Charged With NAFTA Labor Law Violations*, 11 Int'l Trade Rep. (BNA), No. 34, at 1307 (Aug. 24, 1994).

344. Submission #3, *supra* note 342, at 12 and 13.

345. *NAO Refuses to Review Charges that Sony's Work Shifts Violate Mexican Labor Standards*, Daily Lab. Rep. (BNA) No. 201, at D-4 (Oct. 20, 1994).

346. *Id.*

The Sony complaint, apparently took into consideration the lessons learned from the first two submissions reviewed. Although a company's activities were the basis of the allegations, a heavier emphasis was placed on the allegations against the Mexican government.<sup>347</sup> If the desired ministerial consultations were to be recommended such a recommendation would be based on these allegations. The Mexican government's compliance and enforcement are the matters of concern in the NAO review.<sup>348</sup>

This more appropriately directed submission apparently used the approach necessary to obtain an NAO recommendation that the Parties' labor ministers meet for consultations. On April 11, 1995, the NAO recommended such a meeting.<sup>349</sup> The NAO concluded that the Mexican government failed to adequately enforce its labor laws and that Sony workers were probably fired as a result of their union organizing activities.<sup>350</sup> This strikingly different conclusion may well be a result of political pressure following the previous decisions<sup>351</sup> or simply the result of a more properly directed complaint.

Next, through consultations the labor ministers will attempt to resolve the dispute. Furthermore, the NAO announced recommendations for cooperative programs on union elections and plans for a study on the effectiveness of the Mexican CAB system.<sup>352</sup> Based on these recommendations, the NAO appears to be making the most of its limited authority, especially regarding industrial relations matters.

It is apparent from the recent submissions that industrial relations will remain a focus of controversy under the NAALC—ironic, considering the more limited methods of resolution available for NAO's matters. Ideally, industrial relations increased exposure of these issues will encourage reform.<sup>353</sup>

Shortly after the first hearing, congressional leaders began debating the presidential "fast-track authority"<sup>354</sup> that played a vital role in the passing

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347. Specifically the submission states a number of labor law violations by the Mexican government. See generally Submission 3, *supra* note 342, at 15-21. Among these allegations is that the Mexican government violated the Mexican Constitution's right to free association by denying an independent union's registration, and that the government violated fundamental principles of international labor law and the principles of the NAALC. Submission 3, *supra* note 342, at 13-21.

348. NAO Report, *supra* note 138, at 32.

349. *Mexico Union Registration Process Faulted in U.S. NAO Report on Sony Charges*, Daily Lab. Rep. (BNA), No. 73, at D-3 (Apr. 12, 1995).

350. *Groups Satisfied with U.S. NAO Report; Garza Says Findings Show NAFTA Working*, Daily Lab. Rep. (BNA), No. 71, at D-16 (Apr. 13, 1995).

351. *Id.*

352. *Id.*

353. See, e.g., *supra* note 322 and accompanying text (discussing the idea that exposure of violations may encourage reform).

354. "Fast-track authority" is authority granted to the President allowing negotiation of trade agreements that cannot be changed in Congress. The congress may only vote for or against the agreement once submitted for approval. This gives the President greater negotiating

of NAFTA and the NAALC. The debate centered on whether the fast-track authority would be renewed for future trade agreements and if matters such as labor and the environment could be included.<sup>355</sup> Many leaders are urging the inappropriateness of including these non-trade related issues and asserting that fast-track authority will not be renewed unless they are excluded.<sup>356</sup> Congressional leaders are not alone on this issue. Negotiations within the newly formed World Trade Organization are debating whether labor rights should even be discussed in future trade agreements.<sup>357</sup> Based on these debates there appears to be criticism of the NAALC and similar agreements from all sides of the political spectrum.

## VI. CONCLUSION

In evaluating the effectiveness of the NAO reviews of union allegations it is important to consider the context in which the reviews occur. The goal of the review process is to further the objectives of the NAALC, whenever possible through cooperation and consultation.<sup>358</sup> Any attempt to better the conditions for workers of all three Parties to the agreement is a step in that direction. The issue is not a matter of labor against management but, rather an opportunity to cooperatively improve labor standards. This perspective is more reflective of the objectives set forth in the NAALC.<sup>359</sup>

The NAO report established conclusions and recommendations that, although not necessarily pleasing to the complainants, complied with its mandated procedural guidelines.<sup>360</sup> The cooperative programs recommended cannot harm the prospects for improved labor standards in Mexico. The decision, which established that no violation by the Mexican government occurred, did address areas that could stand improvement. Responding to these needs, the decision provided an opportunity for affirmative action following a decision that did not necessarily require such a response.

Although obviously subject to some criticism, the NAO reviews show attempts at progress, especially in light of the limited power it possesses. If

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abilities without threat of congressional alterations. Mark August, *Trade, Not Democracy in Spotlight*, THE TAMPA TRIB., Dec. 5, 1994, at 10.

355. David R. Sands, *Labor, Environment Out of Trade Picture*, WASH. TIMES, Dec. 29, 1994, at B7.

356. *Id.*

357. *Id.* The World Trade Organization is comprised of approximately 120 nations and evolved out of the Uruguay Round of General Agreement of Trade and Tariffs (GATT) negotiations.

358. Revised Notice, *supra* note 28, at 16,661.

359. NAALC, *supra* note 1, art. 1, 32 I.L.M. at 1503.

360. NAO Report, *supra* note 138, at 1, 2 and 7-9.

nothing more, the NAO served the spirit of the NAALC in a diplomatic but positive manner.

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