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**U.S. NATIONAL ADMINISTRATIVE OFFICE
NORTH AMERICAN AGREEMENT
ON LABOR COOPERATION**

PUBLIC REPORT OF REVIEW

**NAO SUBMISSION #940001
AND NAO SUBMISSION #940002**



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

October 12, 1994

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I. INTRODUCTION

One of the functions of the U.S. National Administrative Office (NAO or Office), established under the North American Agreement on Labor Cooperation (NAALC or Agreement), is to receive, accept for review, and review submissions on labor law matters arising in Canada or Mexico. This is consistent with Article 16(3) of the NAALC, which states as follows:

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

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

Pursuant to the procedural guidelines of the NAO, which became effective on April 1, 1994,² following a determination by the Secretary of the NAO to accept a submission for review, the Office shall conduct such further examination of the submission as may be

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

² 57 Fed. Reg. 16660-2 (1994).

appropriate to assist the Office to better understand and publicly report on the issues raised. Within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to 60 days, the Secretary of the NAO shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations.

II. SUBMISSIONS

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

A. SUMMARY: NAO SUBMISSION #940001

The submission by the IBT concerns allegations involving the operations of Honeywell Manufacturas de Chihuahua, S.A., in the city of Chihuahua, State of Chihuahua, Mexico. The plant manufactures electronics equipment, including thermostats, circuit boards, and heating and air purifier switches. It employs about 480 workers. The allegations of the submission relate principally to the right of freedom of association and the right to organize.

According to the submission, workers at the Honeywell plant until recently were paid 15 pesos a day or about \$45 or less a week in wages and bonuses. The IBT claims that these are depressed wages and are exceptionally low even in maquiladora plants. The

submission further alleges that to maintain these low wages, Honeywell has used illegal threats and firings to keep its employees from joining a union.

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

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

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

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

- the NAO conduct a prompt review of the charges under Article 16 of the NAALC;
- the NAO conduct a public hearing either in Chihuahua, Mexico, or in El Paso, Texas, to take evidence on the charges;
- the Government of Mexico require Honeywell to reinstate, with back pay, the 20 workers dismissed in late November;
- the Government of Mexico require Honeywell to comply with Mexican law and the labor law principles set out in the NAALC;
- absent the reinstatement of workers, with back pay, the U.S. Secretary of Labor request immediate consultations at the ministerial level pursuant to Article 22 of the NAALC;
- if the aforementioned consultations are not successful, the U.S. Secretary of Labor use all other available remedies to address the matters being complained of;
- the NAO request that the National Labor Relations Board begin appropriate rulemaking for whatever remedies may be needed to address the chilling effect of the alleged violations on the rights of IBT members and any injury to their economic interests;
- that the NAO develop standards and guidelines for determining when U.S. employers in Mexico violate the basic labor norms set out in Annex 1 of the NAALC and inform and publicize these standards or guidelines to U.S. companies by rulemaking or through other means; and
- the NAO develop a program of non-trade sanctions for U.S. companies operating in Mexico that violate the basic labor norms in Annex 1 of the NAALC, where these sanctions may include ordering employers to post notices in U.S. plants that they will comply with the basic norms in Annex 1 of the NAALC and to bargain in good faith with U.S. unions to ensure that they will comply with the basic labor norms set out in Annex 1 of the NAALC when doing business in Mexico.

B. SUMMARY: NAO SUBMISSION #940002

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

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

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

According to the submission, as many as 20 union activists were dismissed by the company. The submission states that under Mexican law, a dismissed employee has a right

to statutory severance pay based on length of service; in order to challenge a dismissal, however, an employee must agree to forgo the severance payment. The submission alleges that Compañía Armadora pressured workers into accepting the statutory severance pay and relinquishing claims for reinstatement.

The submission additionally charges Compañía Armadora with several health and safety violations, including failing to give light work to pregnant women, failing to provide adequate ventilation in work areas and suitable protective equipment, and failing to test properly employees for exposure to chemicals. The company is also charged with failing to pay overtime as prescribed by law.

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

- the NAO initiate a review pursuant to Article 16 of the NAALC;
- the NAO hold a public hearing in Juarez, Mexico, or in El Paso, Texas;
- Mexico require GE to comply with international and Mexican labor law, including by: respecting the rights of workers to communicate in furtherance of their interests; returning to the former practice of letting workers off the bus outside the company gates; instructing all management personnel that they stop snatching union leaflets out of the hands of workers; stopping discharging workers for union activity and without cause; ceasing pressuring workers into accepting statutory severance pay and relinquishing claims for reinstatement and immediately offering reinstatement with full back pay and lost benefits to workers who have been unjustly terminated; paying overtime properly; providing light work to pregnant women; complying with

requirements regarding health and safety; providing all workers with a copy of the work contract they signed with the company; providing any worker who may be discharged with a written statement of the reason for the discharge; posting notices at all U.S. and Mexican GE facilities setting forth in detail the corrective actions it is taking and stating its agreement to respect the labor and human rights of its employees in the future; and sending a copy of said notice to all individuals and organizations who wrote to GE inquiring about the fired workers and to whom the company responded stating that the matter had been resolved;

- in the event that the relief requested above of GE is not satisfactorily obtained, the NAO Secretary request that the Secretary of Labor request consultations at the ministerial level pursuant to Article 22 of the NAALC;
- if the relief requested above of GE is not satisfactorily obtained after the ministerial consultations, the NAO recommend that the Secretary of Labor request the establishment of an Evaluation Committee of Experts pursuant to Article 26 of the NAALC;
- if following the presentation of a final report by an Evaluation Committee of Experts the relief requested above of GE is not satisfactorily obtained, the NAO Secretary recommend dispute resolution under Part Five of the NAALC; and
- the NAO grant such further relief as it may deem just and proper.

III. CONDUCT OF THE REVIEWS

On April 15, 1994, within 60 days of their receipt, as required by its procedural guidelines, the NAO gave notice that Submissions #940001 and #940002 were accepted for review.³ In the notice announcing the initiation of the reviews, the NAO stated the rationale for initiation and the objectives of the reviews. The notice also indicated that acceptance for review of the submissions was not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submissions.

³ 59 Fed. Reg. 18832-4 (1994).

A. INITIATION OF THE REVIEWS

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

- The two submissions dealt primarily with freedom of association and the right to organize, issues that are clearly within the scope of labor law as defined by Article 49 of the NAALC.
- Reviews appeared to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the Agreement, among them freedom of association and the right to organize; promoting compliance with, and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of its labor law.

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

B. OBJECTIVE OF THE REVIEWS

Consistent with Section H.1 of the NAO guidelines, the stated objective of the reviews was to gather information to assist the NAO to better understand and publicly report on

the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC. In particular, the initiation notice stated that the reviews would focus on promotion of compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights.

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

C. INFORMATION FROM THE IBT AND UE

In addition to the submissions filed with the NAO, the IBT and UE submitted additional information to the NAO in support of their allegations, including affidavits from affected workers. Letters from the IBT were received by the NAO on July 14 and August 1, 1994, and from the UE on March 17, April 8, May 6 and 27, June 29, July 18 and 29, August 16 and 22, and September 2, 1994.

D. INFORMATION FROM COMPANIES

The NAO notified Honeywell and GE of the initiation of the reviews and invited them to provide information on the issues raised. They submitted written statements for the record.

Submission #940001: In a letter to the Secretary of the NAO dated May 24, 1994, a Honeywell official stated that the elimination of 23 positions that occurred in November 1993 at the company's City of Chihuahua facility was part of a downsizing of the operation; 22 workers were laid off and received full separation benefits, in accordance with Mexican law. The letter further stated that the 22 workers were considered good or satisfactory workers, and were informed that they would be eligible for rehire in the future if appropriate job openings became available; one of these workers was rehired when a factory opening occurred as a result of attrition and increased orders.

According to the Honeywell official, one worker was terminated due to violations in written workplace rules and did not receive severance pay. This worker contested her termination with the Chihuahua Conciliation and Arbitration Board. On March 28, 1994, the Chihuahua Conciliation and Arbitration Board approved a settlement between the worker and the company. A March 30, 1994 letter from Honeywell to the Secretary of the NAO included as attachments a copy of the settlement documents approved by the Chihuahua Conciliation and Arbitration Board and a press release issued by the company. The press release stated that although the worker was dismissed because of workplace rule violations, "the potential costs of continuing to pursue this case through administrative and legal processes under Mexican law clearly outweigh the costs of the settlement proposed by

[the worker's] ... attorney."

Submission #940002: In a letter to the Secretary of the NAO dated May 19, 1994, a GE official restated the company's position (presented in a letter to the Secretary of the NAO dated April 5, 1994) that the NAO did not have jurisdiction under the NAALC to initiate a review of Submission #940002. The grounds stated for the objections were the following: (1) the complaint did not deal with a pattern of non-enforcement by the Government of Mexico of Mexican labor law; (2) the complaint did not allege that the UE had made any attempt to resolve the complaint under Mexican law; and (3) the conduct in question predated the effective date of the NAALC. Without waiving its position that the NAO improperly granted review on the matter, the GE official nevertheless presented factual representations regarding the case.

According to the GE official, the following are the pertinent events:

- The terminations of workers that occurred between October 6, 1993, and December 2, 1993, were for various work rule violations. One worker was laid off on October 6, 1993.
- At the request of the UE, GE management reviewed the terminations in question in December 1993. Having taken into account the severity of the work rule violations and the totality of the circumstances, management concluded that six of the terminations were not warranted. Management offered reinstatement to the six workers despite having already reached termination agreements resolving all claims based on their employment with them. On or about December 20, 1993, management also offered additional severance pay to the six affected employees in the event they were not interested in reinstatement.
- The employees' representative responded to the company's attorney that they had elected the severance pay option. A formal agreement was signed and filed with the CAB and checks issued to all six workers. All six severance pay checks were cashed. Subsequently, the UE has asserted that the employees' representative never signed the settlement agreement although a likeness of his signature appears on documents certified by the CAB. Whether the

signature is a forgery is an issue that is currently before the CAB.

- Of the five terminated employees who did not receive reinstatement offers, three have signed settlement agreements with the company and two are contesting their terminations before the CAB. The employees claim that the terminations were motivated by their union activity while the Company contends that it had just cause for the terminations.

These events taken in their entirety, argued the GE letter, are not indicative of a pattern of non-enforcement of Mexican labor law since the law protects the right of employees to form or join unions and provides employees legal recourse for any instance of wrongful discharge. Thus, asserts GE, Mexican labor law allows employers and employees to resolve their differences by means of a settlement agreement. Finally, the GE letter stated that the cases of the two workers who chose not to accept a settlement will be resolved by the CAB in the ordinary course of business.

E. INFORMATION FROM THE MEXICAN NAO

In gathering information for this review, the U.S. NAO has consulted with its Mexican counterpart pursuant to Article 21 of the NAALC. On April 28, 1994, the Secretary of the NAO requested information from the Mexican NAO with regard to Mexican labor law and practice related to the matters raised by the two submissions. Specifically, the Secretary of the NAO requested the following information from its Mexican counterpart: (1) sources for public information on labor laws, regulations, and procedures, both State and Federal, including text and commentaries; (2) explanatory material on Federal/State jurisdiction issues in labor law generally, and regarding CABs specifically; (3) explanatory material on how the severance pay ("indemnización") system functions, including whether the government monitors for abuses; (4) CAB practice and procedure, at the State and

Federal levels, including statistics on the number of dismissal cases brought to the attention of the CABs resolved by severance pay settlements and by reinstatement; and (5) any publicly available information regarding the allegations made in the two submissions.

The Mexican NAO responded on July 5, 1994. The response consisted of written explanations accompanied by source materials, such as the Constitution of the Republic, the Federal Labor Law, and other labor laws and regulations currently in effect.

F. INFORMATION FROM EXPERTS

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

G. PUBLIC HEARING

On July 25, 1994, the NAO announced that a public hearing to gather information on matters related to the review of NAO Submission #940001 and NAO Submission #940002 would be held in Washington, D.C., on August 31, 1994.⁵ In the notice

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

⁵ 59 Fed. Reg. 38492-3 (1994).

announcing a public hearing, the Secretary of the NAO stated that the reviews of the two submissions would be consolidated for purposes of a public hearing since the subject matter of both submissions related principally to the right of freedom of association and the right to organize. Subsequently, the date of the public hearing was changed to September 12, 1994.⁶

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

Pre-hearing Statements: Prior to the hearing, the Honeywell Corporation, the General Electric Company, the U.S. Council for International Business, and Ms. Barbara Eastman, Recording Secretary, Local 1292, United Auto Workers, Grand Blanc, Michigan, submitted statements.

The statements from Honeywell and GE covered much of the same ground as earlier correspondence received from the companies. Honeywell explained its downsizing activities and the reductions in personnel that occurred. Honeywell further stated that the submitters have not presented evidence supporting the claim that there has been non-enforcement of labor law by the Government of Mexico. GE restated its view that the submissions did not present evidence of a pattern of non-enforcement by the Government of Mexico of its labor laws relating to freedom of association and the right to organize.

⁶ 59 Fed. Reg. 41511 (1994).

The U.S. Council for International Business stated its view that the NAO should not have accepted the two submissions for review and, moreover, should not hold a hearing on the matters raised by the submissions. The U.S. Council further wrote that allegations by the IBT and UE are directed at the behavior of individual companies; companies are not parties to the NAALC. At the time the submissions were filed, the disputes between workers and companies had either been settled under Mexican law or no charge or complaint for remedial relief had been filed under Mexican administrative or judicial procedures.

Ms. Eastman's statement was related to her participation in a demonstration held on May 20, 1994, in front of the GE plant in Ciudad Juarez to protest the firing of workers. She stated that GE management attempted to stop the passing of leaflets, and management detoured company buses inside the plant gates so that the organizers could not distribute literature. Her statement also refers generally to working conditions in maquiladora plants.

Statements were also filed by witnesses that appeared at the hearing; their views are summarized below.

Hearing: The September 12 hearing was divided into four panels. At the outset of the hearing, the NAO Secretary made it clear 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 proceeding.

The first panel consisted of representatives of the two submitters, namely, Ron Carey, General President of the IBT, and Amy Newell, General Secretary-Treasurer of the UE. The

focus of Mr. Carey's testimony was on broad issues of labor law enforcement in Mexico. Mr. Carey specifically requested that the NAO hold field hearings and ask for additional information from the Mexican government and companies involved in the dispute raised by the submission. Ms. Newell criticized the NAO for not holding a field hearing on the submissions, disallowing cameras in the hearing, and not accepting testimony on the recent election held at the GE plant in Ciudad Juarez.⁷

The second panel consisted of a representative of the UE, two Mexican workers, and a representative of the Mexican union STIMAHCS. The UE representative, Ms. Robin Alexander, summarized the major issues raised by the UE submission, including allegations of violations of the Mexican Constitution, Mexican Federal Labor Law, and international labor laws to which Mexico is a party. The violations related principally to freedom of association and the right to organize. Ms. Alexander also discussed what relief she thought should be obtained under the NAALC.

The second panelist, Mr. Fernando Castro Hernández, a former Compañía Armadora employee in Ciudad Juarez, discussed his experience of being dismissed from the Compañía Armadora plant because of organizing activities and for what he described as "causing problems." Among the acts that Mr. Castro said may have prompted the company to dismiss him were his insistence that workers be provided with proper protective equipment for dealing with chemicals and his desire not to be transferred from one department to another. Mr. Castro said he was still waiting for a decision from the CAB regarding his

⁷On August 24, 1994, a union representation election was held at Compañía Armadora. The election used a secret ballot procedure. The conduct of the election is the subject of a submission that was filed by the UE with the NAO on September 12, 1994.

dismissal from the company.

The third panelist, Ms. Ofelia Medrano, a former employee of the Honeywell plant in Chihuahua, discussed her experience of being dismissed from Honeywell for participating in union organizing attempts. Ms. Medrano, a production operator at the plant, stated that she started to organize meetings at her home after failing to resolve safety and health issues with company supervisors. After being fired by the company, Ms. Medrano said she filed a complaint with the CAB seeking reinstatement, but later accepted severance pay due to personal financial reasons.

The NAO Secretary inquired of Mr. Castro and Ms. Medrano whether they had contacted government officials about safety and health concerns at the plants where they worked. Both responded that they had not.

The fourth panelist, Mr. Benedicto Martínez, discussed some of his experiences as an organizer for STIMAHCS. He discussed the difficulties of forming an independent union in Mexico, and the alleged monopoly that official unions have over the system. He also discussed what he called "mechanisms" used by companies and Mexican authorities to intimidate workers who wish to form independent unions, including delaying the processing of complaints before the CABs so that workers will be forced for financial reasons to accept severance payments; accusing the employees of theft if they do not agree to resign; using "blank sheets," which are blank sheets of paper employees are forced to sign as a condition of employment, that can later be completed by management to support the dismissal of a worker or force a resignation; delaying the registration of independent unions by Mexican authorities; and using "black lists," i.e., lists containing the names of workers who have left

a plant because of a labor dispute, which are distributed to other companies to warn them about these workers.

The third panel was made up of four Mexican labor lawyers who testified about different aspects of the practice and enforcement of Mexican labor law. The first panelist, Mr. Arturo Alcalde, discussed the difference between the written Mexican labor law and how it is actually enforced, a concept he termed "simulation." One practice that he said takes place in companies is the formation of official unions before any workers request a union, so that any employee wishing to organize is forced to join the official union. Another practice is deliberate delays by Mexican authorities in registering independent unions.

The second panelist, Mr. Jesús Campos, discussed problems encountered by independent unions attempting to organize workers at a plant and government preference for and support of official unions. Mr. Campos described union registration procedures required by law, which although seem simple on their face to satisfy, in reality are difficult and cumbersome because Mexican authorities are linked to official unions. Thus, independent unions are often not registered.

The third panelist, Mr. Jorge Fernández, also discussed the differences between Mexican labor law and how it is enforced. Mr. Fernández cited several deliberate delaying techniques, often involving technicalities, used by Mexican authorities and official unions to thwart the formation of independent unions. He also discussed how Mexican authorities have decreased the use of strikes as a bargaining technique by declaring strikes "nonexistent" if the strike was not previously approved.

The fourth panelist, Mr. Gustavo de la Rosa, discussed the use of "black lists" and

"blank sheets" to intimidate workers who might otherwise complain to Mexican authorities. He also described the maquiladora culture in the state of Chihuahua and characterized it as being very anti-union.

The fourth panel was made up of three labor lawyers representing the IBT and a representative of the Ontario Federation of Labor. The first panelist, Ms. Judy Scott, presented several recommendations with regard to how the NAO should handle the submissions. The recommendations ranged from requiring the two companies involved in the submissions to reinstate workers, to asking companies to adhere to a code of conduct on worker rights for their operations in the maquiladora sector and elsewhere in Mexico that could serve as a model for companies engaged in NAFTA trade in the United States, Canada, and Mexico. In addition, Ms. Scott recommended sustained consultations among the NAOs to develop cooperative activities on associational and organizing rights. They include: conferences for employee representatives explaining the NAALC and its principles and educating them about the different labor laws that cover the principles; similar conferences for representatives of employers; joint conferences where representatives of labor and management can discuss these issues; consultations between representatives of labor organizations from the United States, Canada, and Mexico representing employees from the same multinational employer along with representatives from management; development of "plain language" guides to worker and employer rights and responsibilities for widespread distribution; and conferences for field agents and labor inspectors for education and the exchange of ideas on the enforcement of labor laws.

The second panelist, Mr. Earl Brown, recommended that the NAO communicate to

the companies involved in future submissions the importance of taking part in the hearings. The third panelist, Mr. Thomas Geoghegan, concentrated on whether the "evidence" presented at the hearings required the triggering of ministerial consultations under the NAALC. Mr. Geoghegan argued that the use of severance pay seriously limits the number of complaints brought before Mexican CABs regarding the right to organize. He argued that because the workers are not organized, they are not able to defend themselves from health and safety violations. For this reason, Mr. Geoghegan suggested that the NAO recommend ministerial consultations on health and safety issues in addition to freedom of association issues. The fourth panelist, Mr. Chris Schenck, described labor law in the Canadian province of Ontario, in an attempt to provide a comparative context for the current submissions.

Post-hearing Statements: A post-hearing statement by the IBT dated September 19 dealt in considerable detail with four issues: (1) rebutting the companies' interpretation of the NAALC concerning the scope of NAO review and of NAO-requested or NAO-recommended consultations; (2) drawing the attention of the NAO to key evidence elicited in the hearing regarding the enforcement issue; (3) arguing for giving greater weight to the oral testimony of witnesses than to written statements of the companies; and (4) pointing out the direct relevance of testimony on comparative information related to U.S. and Canadian labor law, and of suggested recommendations and cooperative consultations.

The UE post-hearing statement elaborated on the allegations with respect to the Government of Mexico's failure to protect the organizational and associational rights contained in Mexican and international law and on the more specific allegations of labor

law violations against the two companies. The statement also discussed the indemnification (severance pay) system, which the UE argues deprives the vast majority of Mexican workers of access to the legal system and to the protection of laws designed to safeguard their rights. The UE requested that the public report to be issued by the NAO reaffirm the importance of freedom of association and protection of the right to organize under the NAALC, as well as respect for, and compliance with, all Mexican and international labor laws and requirements. More specific requests of the NAO related to corrective actions that should be taken by the two companies, cooperative activities that should be undertaken with Mexico and Canada, and materials that should be prepared summarizing the rights accorded Mexican workers under Mexican and international law.

Finally, in a statement dated September 19, Honeywell stated that it supported passage of the NAFTA and has cooperated fully with the NAO in voluntarily providing factual information on the submission presented by the IBT. According to the statement, Honeywell has complied with all applicable Mexican laws in handling the downsizing of employment at its Chihuahua plant. The Honeywell statement set out that with respect to the one employee who was terminated, the settlement agreement that resolved her complaint before the CAB was proposed by the employee's attorney, not by the company. Finally, Honeywell argued that there are no matters pending before any Mexican governmental authority concerning the application or alleged violation of Mexican law in any matter relating to Honeywell. Honeywell concluded that since no Mexican labor law was violated and there are no unresolved complaints before Mexican authorities, there is no reason to conclude that there was any failure by the Government of Mexico to enforce its labor laws

in this matter.

H. OTHER SOURCES OF INFORMATION

The NAO has also relied on information from the available literature regarding Mexican law and practice related to freedom of association and the right to organize, including government reports,⁸ law review journals,⁹ and other sources of information.¹⁰

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

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

Article 2: Levels of Protection

⁸ E.g., A Primer on Mexican Labor Law (Washington: U.S. Department of Labor, Bureau of International Labor Affairs, 1991); A Comparison of Labor Law in the United States and Mexico (Washington: U.S. Department of Labor, 1992); and Country Reports on Human Rights Practices for 1993 (Washington: U.S. Department of State, 1994).

⁹ E.g., Ann M. Bartow, "The Rights of Workers in Mexico," Comparative Labor Law, Vol. 11 (Winter 1990); Amy H. Goldin, "Collective Bargaining in Mexico: Stifled by the Lack of Democracy in Trade Unions," Comparative Labor Law, Vol. 11 (Winter 1990); David L. Gregory, "The Right to Unionize in the United States, Canada, and Mexico: A Comparative Assessment," Hofstra Labor Law Journal, Vol. 10, no. 2 (Spring 1993); Oscar de la Vega Gomez, "Settlement of Labor Law Disputes in Mexico," Inter-American Law Review, Vol. 21, no. 1 (1989); Susanna Peters, "Labor Law for the Maquiladoras: Choosing Between Workers' Rights and Foreign Investment," Comparative Labor Law, Vol. 11 (Winter 1990); Mark Zelek and Oscar de la Vega, "An Outline of Mexican Labor Law," Labor Law Journal, Vol. 43, no. 7 (July 1992).

¹⁰ E.g., Francisco Breña Garduño, Mexican Labor Law Summary (Mexico City: Breña y Asociados, 1991); Néstor de Buen L., Derecho del Trabajo, Seventh Edition (México: Editorial Porrúa, 1989); Néstor de Buen L., Derecho Procesal del Trabajo (México: Editorial Porrúa, 1990); Dan LaBotz, Mask of Democracy: Labor Suppression in Mexico Today (Boston: South End Press, 1992).

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

Article 3: Government Enforcement Action

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

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- (c) seeking assurances of voluntary compliance;
- (d) requiring record keeping and reporting;
- (e) encouraging the establishment of worker-management committees to address labor regulation of the workplace;
- (f) providing or encouraging mediation, conciliation and arbitration services; or
- (g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

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

Thus, in accord with Article 3 of the NAALC, the issue at hand in the review of the two submissions is whether the Government of Mexico is enforcing its labor laws. A brief commentary on Mexican labor laws guaranteeing workers freedom of association and the

right to organize, and providing protections against dismissal of workers because of their exercise of the right to organize, is given in Appendix 1. A similar commentary on how the Government of Mexico implements its labor laws, particularly those laws relevant to the current review, is given in Appendix 2.

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

A. STATE CONCILIATION AND ARBITRATION BOARDS

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

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

judgment is 7.3 months. This is reportedly much shorter than with regard to other state CABs, where the time from filing of a complaint to a final judgment may be over one year (e.g., 1.4 years in the Hermosillo, Sonora, CAB).¹¹

The Ciudad Juarez CAB reportedly handles more complaints than the four other boards of the State of Chihuahua combined. Nevertheless, the Ciudad Juarez CAB has been able to reduce the average adjudication time to 8.0 months, compared to 7.3 months for the City of Chihuahua CAB. From January through May 1994, 1,249 complaints were filed with the Ciudad Juarez CAB. Unlike the City of Chihuahua CAB, the Ciudad Juarez CAB does not engage in conciliation activities because of lack of personnel. Nevertheless, 1,050 of the 1,249 complaints (84 percent) were settled by the Ciudad Juarez CAB.¹²

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

¹¹ Labor Law Enforcement in Mexico, *op. cit.*, pp. 38-39.

¹² Labor Law Enforcement in Mexico, *op. cit.*, p. 39.

¹³ Labor Law Enforcement in Mexico, *op. cit.*, p. 47.

¹⁴ Questions on Labor Law Enforcement in Mexico, *op. cit.*, p. 44.

generally, are biased in favor of companies, especially in matters of collective bargaining.¹⁵

B. NAO SUBMISSION #940001

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

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

On February 28, 1994, the worker and Honeywell presented to the City of Chihuahua CAB an agreement they had reached to settle the outstanding dispute; in return for a monetary settlement, the worker agreed to relinquish her claim for reinstatement. Subsequently, the worker testified at the September 12 hearing held by the NAO that

¹⁵ Testimony of Gustavo de la Rosa, NAO Hearing, September 12, 1994. Tr. at 70.

financial needs prompted the acceptance of the monetary settlement.¹⁶ No allegations have been made that the City of Chihuahua CAB acted improperly in approving the settlement of the dispute.

C. NAO SUBMISSION #940002

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

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

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

¹⁶ Testimony of Ofelia Medrano, NAO Hearing, September 12, 1994. Tr. at 38.

allegations that the Ciudad Juarez CAB acted improperly.

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

V. FINDINGS AND RECOMMENDATIONS

As stated in the Federal Register notice announcing the commencement of the review of Submissions #940001 and #940002, and restated at the beginning of this report, the NAO review has focused specifically on the Government of Mexico's promotion of compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights. As such, the NAO review has not been aimed primarily at determining whether or not the two companies named in the submissions may have acted in violation of Mexican labor law. Moreover, the NAO is not an appellate body, nor is it a substitute for pursuing domestic remedies. Rather, the purpose of the NAO review process, including the public hearing, is to gather as much information as possible to allow the NAO to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC.

The review of the two submissions reveals disagreements about the events at each of

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

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

Another such issue was the very high percentage of Mexican workers dismissed from their jobs who elect to take severance pay rather than seek reinstatement--which is their right under Mexican labor law. Apparently, workers generally do not have the financial resources to pursue reinstatement before the CABs, often opting for the settlement of their complaints in return for money. In a post-hearing brief, the UE asserts that the lack of an unemployment insurance system in Mexico contributes to the very high percentage of cash

settlements. Thus, according to this line of argument, the right of workers whose employment has been terminated because of their exercise of the right to organize is de facto limited by their inability to survive economically until the process of reinstatement works its course.

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

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

be reinstated and again accepted a larger cash severance. While such an about-face by one of the companies suggests that management may not have acted properly in the dismissals, the dismissed workers neither accepted reinstatement nor challenged management's actions before the CAB. The very few workers in the two submissions who chose to challenge their dismissals have availed themselves of due process under Mexican law and a judgment is pending.

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

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

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

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

programs regarding the NAALC.



Irásema Garza
Secretary, National Administrative Office

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



Robert B. Reich
Secretary of Labor

APPENDIX I

MEXICAN LABOR LAWS

Mexican labor law guaranteeing workers freedom of association and the right to organize and providing protections against dismissal of workers because of their exercise of the right to organize is based on Article 123 of the Political Constitution of the United Mexican States, adopted in 1917.¹⁷ These Constitutional rights are regulated by Title II and Title VII of the Federal Labor Law (Ley Federal del Trabajo).¹⁸ Mexico has ratified one of the basic Conventions of the International Labor Organization, Convention 87, which grants workers the freedom to associate and protects their right to organize.

A. CONSTITUTION

The legal framework of Mexican labor law is Article 123 of the Political Constitution of the United Mexican States. Section XVI of Article 123, which guarantees the right of workers to organize, states as follows:

Both employers and workers shall have the right to organize for the defense of their respective interests, by forming unions, professional associations, etc.

Section XXII of Article 123 provides protections against dismissal of workers because of their exercise of the right to organize. This Section states, in part:

¹⁷ "Artículo 123 Constitucional," reprinted in Secretaría del Trabajo y Previsión Social, Ley Federal del Trabajo, 9th Edition (México, 1992), pp. 9-20.

¹⁸ The first Federal Labor Law took effect in 1931; it was modified numerous times over a 30-year period and superseded by a new Federal Labor Law in 1970. The latter legislation has also been modified frequently. The most recent major revision of the FLL was done in 1980.

An employer who dismisses a worker without justifiable cause or because the worker has entered an association or union, or for having taken part in a lawful strike, shall be required, at the election of the worker, to either fulfill the contract or indemnify him in the amount of three months' wages. The law shall specify those cases in which the employer may be exempted from the obligations of fulfilling the contract by payment of an indemnity.

B. FEDERAL LABOR LAW

The Federal Labor Law (FLL) codifies Mexican labor law. Title II, which deals with labor law applicable to individuals, addresses, inter alia, the dismissal of workers. Title VII of the FLL deals with collective labor relations.

Freedom of Association and Right to Organize

Article 354 of the FLL recognizes the freedom of workers and employers to form associations. Article 357 provides that workers and employers are free to form unions without prior authorization. Article 358 states that no one can be forced to join or not to join a union.

Formation of Unions: Article 356 of the FLL defines a union as "the temporary association of workers or employers for the study, advancement and defense of their respective interests."

Since no prior authorization is needed to form a union (Article 357), the only requirements in the FLL regarding the formation of unions are those dealing with how many workers are needed to form one and who is eligible for membership.

- Article 364 states that the formation of a union requires twenty workers in active service.
- Article 363 states that workers occupying "positions of trust" may not join unions.

- Article 362 provides that only workers older than 14 years of age can join a union.

Recognition of Unions: In order to be officially recognized, unions must register with the Secretariat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, STPS) in instances where the Federal Government has jurisdiction, and with the local CAB in instances where local jurisdiction applies. Registration requires the presentation of the following documents: (1) a certified copy of the minutes of the general meeting at which the union was established; (2) a list of the names of the members and of their employers; (3) a certified copy of the by-laws; and (4) a certified copy of the minutes of the meeting at which the Board of Directors was elected (FLL, Article 365).

Once the required documents are presented to STPS or a CAB, registration occurs within 60 days unless the registering authority determines that: (1) the purposes of the union do not coincide with those set out in Article 356 ("the study, advancement and defense of the....[rights of workers]"); (2) the union does not have the minimum number of workers established by Article 364 (20 workers); or (3) the union has not submitted all of the documents required by Article 365 (FLL, Article 366).

Union by-laws must contain the following: (1) the name of the union; (2) its address; (3) its objectives; (4) the time period for which it was established; (5) conditions for membership; (6) obligations and rights of members; (7) causes and procedures for expulsion; (8) procedures for holding meetings; (9) procedures for the election of a board of officers; (10) length of tenure of officers; (11) regulations regarding the management of the assets of the union; (12) form of payment and amount of union dues; (13) dates for presentation of financial statements; (14) rules for liquidating union assets; and (15) other

rules approved by the membership (FLL, Article 371).

Dismissal of Workers

Under Mexican labor law, employment contracts may be for a specified job or period, or for an indefinite period; in the absence of express stipulations, the employment contract shall be for an indefinite period (FLL, Article 35).

Article 46 authorizes a worker or an employer to sever the work relationship for cause without incurring any further responsibility. Other articles of the FLL address specific causes whereby a worker may be subject to dismissal ("rescission") and remedies available to workers who are dismissed, including severance pay ("indemnification").

Dismissal for Cause: Article 47 sets out the specific conditions whereby a worker may be dismissed without further responsibility for the employer:

- If the worker, or the union which had proposed or recommended the worker, deceives the employer with false certificates or references showing that the employee has ability, competency and faculties that the worker does not possess. This cause for dismissal shall cease to have effect thirty days after the worker started rendering his services;
- If the worker, during working hours, commits dishonest or violent acts, makes threats, offends or mistreats the employer, the employer's family or the officers or administrative personnel of the enterprise or establishment, unless there is provocation or he acts in self-defense;
- If the worker commits any of the offenses listed in the preceding paragraph against co-workers and, as a result of such actions, the discipline in the place of employment is altered;
- If the worker, outside of working hours, commits any of the offenses referred to in the preceding paragraphs against the employer, the employer's family or the officers or administrative personnel, and the offense is of such serious nature that it makes the work relationship impossible;
- If, during the performance of his work or by reason of it, the worker intentionally causes material damage to the buildings, works, machinery,

instruments, raw materials and other things related to the work;

- **If the worker causes serious damage of the kind mentioned in the preceding paragraph, not wilfully but through negligence;**
- **If the worker, through negligence or inexcusable carelessness, jeopardizes the safety of the establishment or of the persons in it;**
- **If the worker commits immoral acts in the establishment or place of employment;**
- **If the worker reveals manufacturing secrets or confidential matters to the detriment of the enterprise;**
- **If the worker is absent more than three times within a thirty-day period, without permission from the employer or without reasonable cause;**
- **If the worker disobeys the employer or the employer's representative, without reasonable cause, in matters related to the work under contract;**
- **If the worker refuses to adopt preventive measures or to follow the established procedures indicated to avoid accidents or illnesses;**
- **If the worker comes to work in a state of drunkenness or under the influence of a narcotic or depressant drug, unless there is in the latter case a medical prescription. Before starting work, the worker shall make this fact known to the employer and present the prescription signed by the doctor;**
- **A final judgment imposing a prison sentence on the worker, which prevents the worker from fulfilling the employment contract; and**
- **Causes similar to those set forth in the preceding paragraphs, of equal seriousness and of similar consequences insofar as the work is concerned.**

Employers are required to give notice in writing to the worker of the date and cause of the dismissal.

Remedies: Article 48 of the FLL grants mandatory reinstatement to dismissed workers who hold permanent jobs. It states:

The worker may, at his election, request from the Conciliation and Arbitration Board to be reinstated in his job, or to receive

an indemnification equal to three months' salary. If the employer fails to show the cause for dismissal in the proceedings, the worker shall be entitled, in addition to whatever the action exercised might have been, to be paid the salaries accrued from dismissal to the effective date of the award.

According to Article 49, an employer may be exempt from the obligation to reinstate a worker, provided the appropriate indemnification pursuant to Article 50 has been paid, in the following cases: (1) when the worker has been employed for less than one year; (2) when the employer shows before the CAB that the worker, because of the work performed or the characteristics of the job, is in direct and permanent contact with the employer and the CAB considers that a normal relationship is not possible; (3) when the worker is a confidential employee; (4) when the worker is engaged in domestic service; and (5) when the worker is engaged in occasional work.

The indemnifications provided by Article 50 are: (1) an amount equal to salaries for one-half of the period of service rendered if the employment contract was for a definite period of less than one year; (2) an amount equal to salary for six months for the first year and for twenty days for each subsequent year of service if the employment contract exceeded one year; (3) the salary of twenty days for each year of service rendered if the employment contract was for an indefinite period; and (4) in addition to the indemnification referred to above, an amount equal to three months' salary, plus the salaries accrued from the date of dismissal until the indemnifications are paid.

C. INTERNATIONAL LAW

According to Mexican law, international conventions and agreements entered into by Mexico become part of Mexican law upon ratification by the Senate. This applies to

Conventions of the International Labor Organization (ILO), provided the conventions do not contravene the principles embodied in Article 123 of the Constitution.¹⁹ Article 6 of the FLL states:

The laws and treaties entered into and approved in the terms of Article 133 of the Constitution, shall be applicable to the employment relations in all aspects that are beneficial to workers from the effective date of such law or treaty.

As of June 1, 1993, Mexico had ratified 74 ILO Conventions.²⁰ In particular, Mexico has ratified Convention 87, "Freedom of Association and Protection of the Right to Organize." Convention 87 was adopted in 1948 by the International Labor Conference, a tripartite body composed of government, employers' and workers' delegates from member States of the ILO. The Mexican Senate's ratification of Convention 87 was published in the Diario Oficial de la Nación on October 16, 1950.²¹

The aim of Convention 87 is "the right, freely exercised, of workers and employers, without distinction, to organise for furthering and defending their interests."²² The key provisions of Convention 87 are:

- Workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing with a view to

¹⁹ Néstor de Buen L., Derecho del Trabajo, Seventh Edition (México: Editorial Porrúa, 1989), Volume 1, p. 416.

²⁰ International Labour Conference, 80th Session, 1993, Lists of Ratifications by Convention and by country (as at 31 December 1992), Report III (Geneva: International Labour Office, 1993), p. 241 and addendum updating the information through June 1, 1993.

²¹ Néstor de Buen L., Derecho del Trabajo, Seventh Edition (México: Editorial Porrúa, 1989), Volume 1, p. 418.

²² International Labour Office, Summaries of International Labour Standards, Second edition (Geneva: International Labour Office, 1991), p. 5.

furthering and defending their respective interests.

- **Such organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise of this right.**
- **The organizations shall not be liable to be dissolved or suspended by administrative authority.**
- **Organizations have the right to establish and join federations and confederations which shall enjoy the same rights and guarantees. The Convention also provides for the right to affiliate with international organizations.**
- **The acquisition of legal personality by all these organizations shall not be subject to restrictive conditions.**
- **In exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the law of the land. The law of the land and the way in which it is applied, however, shall not impair the guarantees provided for in the Convention.**

APPENDIX II

IMPLEMENTATION OF MEXICAN LABOR LAWS

Mexican labor law is of the competence of the federal government and applies throughout the entire nation. Neither the states nor the Federal District have the power to issue labor legislation.²³ Pursuant to Section XXXI of Article 123 of the Mexican Political Constitution, implementation of labor law is under the purview of state authorities in their respective jurisdiction. However, matters involving work arrangements related to conflicts that affect two or more states; collective contracts which are declared to be binding in more than one state; training; occupational safety and health; or the following industries fall exclusively within the federal jurisdiction:

- Textiles;
- Electricity;
- Cinematography;
- Rubber;
- Sugar;
- Mining;
- Metals and steel, including the mining, processing and smelting of basic minerals, and the production of iron and steel and finished products from iron and steel;
- Hydrocarbons;

²³ Francisco Breña Garduño, Mexican Labor Law Summary (México City: Breña y Asociados, 1991), p. iv.

- **Petrochemicals;**
- **Cement;**
- **Lime;**
- **Automobiles and parts;**
- **Chemicals, including pharmaceuticals and medications;**
- **Cellulose and paper;**
- **Oils and vegetable fats;**
- **Packed, canned or packaged foods;**
- **Bottled or canned beverages;**
- **Railroads;**
- **Wood products, including saw mill products, plywood and particle board;**
- **Flat glass and glass bottles; and**
- **Tobacco processing and manufacturing.**

Federal jurisdiction also applies to matters regarding the following enterprises:

- **Those that are under direct or indirect administration by the federal government;**
- **Those that operate pursuant to a federal contract or grant and related industries; and**
- **Those that operate in federal zones or areas under federal jurisdiction, in territorial waters or within the exclusive economic zone of the nation.**

A. CONCILIATION AND ARBITRATION BOARDS

Disputes between labor and management in Mexico are the purview of a system of Conciliation Boards (Juntas de Conciliación) and Conciliation and Arbitration Boards (Juntas de Conciliación y Arbitraje). Section XX of Article 123 of the Mexican Political

Constitution states:

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 from the government.

Among the labor-management disputes subject to the auspices of Conciliation Boards and Conciliation and Arbitration Boards are those related to freedom of association and dismissal of workers.

Section XXI of Article 123 compels employers to use the CABs to resolve disputes and to accept awards made by CABs. This Section states:

If an employer refuses to submit his differences to arbitration or to accept the decision rendered by the Board, the labor contract shall be considered terminated and he shall be obligated to indemnify the worker the amount of three months' salary in addition to any liability resulting from the dispute...

Conciliation Boards have limited scope and are not permitted to sit as adjudicative bodies. Jurisdiction between local and federal Conciliation Boards or Conciliation and Arbitration Boards is determined on the basis of subject matter (see above).

Federal Conciliation and Arbitration Boards

The Federal Conciliation Boards (Juntas Federales de Conciliación, FCBs) and Federal Conciliation and Arbitration Boards (Juntas Federales de Conciliación y Arbitraje, FCABs) are regulated, respectively, by Chapters X and XII, Title Eleven, of the FLL.

FCBs consist of three members: a representative from government, appointed by the Secretariat of Labor and Social Welfare, who will act as President; and a representative each from organized labor and from employers (FLL, Article 593). In addition to promoting the resolution of labor disputes, the main duties of the FCBs include receiving claims and

forwarding them to Special Boards or to FCABs; gathering evidence that workers or employers intend to bring before FCABs; acting as FCABs in instances where benefits involving less than three months' salary are involved; and assisting the FCABs in the performance of their duties (FLL, Article 600).

The FCAB consists of representatives from government and from workers and employers, with the latter representing different sectors of the economy (FLL, Article 605). The President of the FCAB is appointed by the President of the Republic (FLL, Article 612). According to Article 604, the FCAB "shall hear and resolve labor conflicts between workers and employers, or among workers only, or employers only, which derive from labor relations or from events closely associated with such relations." The FCAB may operate as a Committee of the Whole or establish Special Boards to deal with specific issues.

Local Conciliation and Arbitration Boards

Local Conciliation Boards (Juntas Locales de Conciliación, LCBs) and Local Conciliation and Arbitration Board (Juntas Locales de Conciliación y Arbitraje, LCABs) are regulated, respectively, by Chapters XI and XIII, Title Eleven, of the FLL.

LCBs operate in each state of the nation, as determined by the Governor of each state (FLL, Article 601). The functions of LCBs are the same as those of the Federal Conciliation Boards (FLL, Article 603). Similarly, LCABs function in each state of the nation to deal with labor conflicts that are not subject to federal jurisdiction (FLL, Article 621). LCABs are subject to the same rules, and have the same functions, as the Federal Conciliation and Arbitration Boards (FLL, Article 623). The President of the LCABs is appointed by the Governor of each state (FLL, Article 623).

B. PROCEDURES OF CABs

CABs do not intervene in labor disputes unless requested to do so by the complaint of a plaintiff. Workers seeking the intervention of CABs in complaints against an employer alleging denial of freedom of association and dismissal without cause must begin their case by filing a written document with the appropriate CAB (FLL, Article 871). In addition to laying out the facts of the case, the petition may be accompanied by supporting evidence (FLL, Article 872). Within 24 hours of receipt of a petition, the Full CAB or a Special CAB will announce the date and time for holding a conciliation hearing--which must be within 15 days of the filing of the petition--and notify all of the parties at least 10 days in advance of its occurrence; the CAB will also make available a copy of the petition to the defendant (FLL, Article 873).

Hearings before CABs consist of three stages: (1) conciliation; (2) arguments; and (3) presentation of evidence. All three stages take place consecutively, typically within the same business day.

Conciliation

The strong preference of the drafters of the FLL for conciliation and negotiated resolution of disputes is evident in this stage of the CAB hearings, which are conducted by Conciliation Boards (FLL, Article 876):

- parties are required to appear in person, "without attorneys, advisers, or proxies";
- the Board will promote dialogue between the parties and encourage them to reach a settlement;
- if the parties reach an agreement, the conflict is deemed to be terminated; after approved by the Board, the agreement shall have the legal force of an

award; and

- the parties are given the opportunity to request the suspension of the hearing in order to work out a settlement; the Board can grant the suspension only once and for up to eight days.

Only if these efforts at conciliation are unsuccessful will the hearing move into the next stage. Failure of one of the parties to attend the conciliation stage is deemed as an unwillingness to reach an agreement and the case is moved to the next stage.

Arguments

Upon being notified by the Conciliation Board that its efforts to reach an agreement have been unsuccessful and receiving documentation to this effect, the CAB summons the parties to a hearing to present their arguments (FLL, Article 877). At the hearing, the President of the CAB again urges the two parties to settle their differences; if this call for conciliation is unsuccessful, the two parties proceed to make their arguments (FLL, Article 878):

- the plaintiff has an opportunity to present his or her case, amending it as appropriate from the time the original complaint was filed;
- the defendant is similarly given the opportunity to reply to the plaintiff's arguments either orally or in writing; the defendant is instructed to address each of the allegations made by the plaintiff; and
- parties have a brief opportunity to cross-examine each other.

The conclusion of the arguments stage leads into the presentation of evidence stage. If the parties concur on the facts of the case and the only differences relate to matters of law, the process is ended without going through the presentation of evidence stage.

The arguments stage takes place even if one of the two parties is not in attendance. If the plaintiff is absent, his or her arguments are limited to those that were presented in

the original complaint. Failure of the defendant to appear is construed as acceptance of the facts contained in the plaintiff's complaint, although "without prejudice to showing during the presentation of evidence stage that the plaintiff was not a worker or an employer, that there was no dismissal, or that the facts alleged in the complaint are untrue" (FLL, Article 879).

Presentation of Evidence

The last stage in the hearing conducted by the CAB is the presentation of evidence. The plaintiff is first allowed the opportunity to present evidence supporting his or her complaint; the defendant is also allowed an opportunity to introduce evidence rebutting that presented by the plaintiff. Counter-arguments can occur (FLL, Article 880). Immediately following, the CAB rules on which evidence is admissible, the CAB hears the evidence and issues a ruling (laudo or award) (FLL, Article 889).

Decisions of CABs are final and are fully enforceable by them. The Presidents of the CABs act as enforcement authorities of CAB decisions and as such decide which are the best enforcement measures to ensure execution of their decisions (FLL, Article 940). Under some circumstances, the President of a CAB has the authority to garnish property of a defendant to guarantee payment of an award.

The constitutionality of CAB decisions is subject to review by the Federal District Courts, Federal Courts of Appeal, and the Mexican Supreme Court. The procedure for appealing an award requires that the appellant's brief be submitted to the CAB in question, with copies for members of the CAB and for each party involved in the conflict. The CAB, in turn, sends copies to the Federal Court of Appeals. If the Court considers that the

plaintiff-worker will not be able to support himself or his family needs while the appeal is proceeding, the defendant may be ordered to pay the plaintiff whatever the appellate court considers necessary as support during the appeal process. When the appellant is from labor, the Court of Appeals is bound by Article 76 of the Law of Appeals (*Ley de Amparo*) and must correct deficiencies in the appellants' brief including a review of the record and even possibly rewrite the appellant's arguments.²⁴

C. SETTLEMENT OF DISPUTES

The thrust of Mexico's system of labor-management relations is to seek resolution of disputes through conciliation. As has been described above, the system favors negotiated settlements between the parties rather than protracted procedures before CABs. Over the period from November 1, 1992 to October 31, 1993, 67,112 out of 72,557, or over 92 percent, of complaints accepted by FCABs were resolved through conciliation.²⁵

Role of CABs in Settlements

In principle, CABs do not intervene in a dispute unless requested to do so by a complaining party. The main responsibility of CABs in negotiated settlements regarding dismissals is to ensure that the proper severance is paid to the worker. In order for a settlement to be valid, it must be approved by a CAB.

The right of workers to severance payments cannot be renounced. Article 33 of the FLL states:

²⁴ Labor Law Enforcement in Mexico, *op. cit.*, pp. 31-32.

²⁵ Secretaría del Trabajo y Previsión Social, Informe de Labores, 1992-1993 (Mexico, STPS, 1993), p. 63.

D. OTHER AGENCIES

In addition to the CBs and CABs, other agencies of the Government of Mexico have responsibility for enforcing aspects of labor law. These agencies, and the area of responsibility of each, are:²⁷

- **Secretaría del Trabajo y Previsión Social (Secretariat of Labor and Social Welfare, STPS)**--Responsible for the application of Article 123 of the Constitution (including minimum wage, right to strike, etc.) through the FLL and its regulations. Supervises, from an administrative standpoint, the FCABs, the Labor Inspection Department, and the Office of the Labor Public Defenders.
- **Secretaría de Educación (Secretariat of Education)**--Responsible for enforcing laws and regulations related to employer obligations to train workers and, together with STPS, for training workers.
- **Secretaría de Hacienda y Crédito Público (Secretariat of Finance and Public Credit)**--Responsible for the administration of the mandatory profit sharing provisions of the FLL.
- **Procuraduría de la Defensa del Trabajo (Office of the Labor Public Defenders)**--Responsible for providing workers with counsel before any authority in matters related to the enforcement of labor law and regulations. They file for ordinary or special proceedings for the defense of individual workers or unions, propose to interested parties ways to solve disputes, and formalize settlements between workers and management.
- **Departamento de Inspección del Trabajo (Labor Inspection Department)**--Responsible for overseeing compliance with labor laws and regulations, including making workers and management aware of the laws and regulations, and giving notice regarding violations of labor law. In particular, the Labor Inspection Department is responsible for compliance with worker safety and health laws and regulations.
- **Servicio Nacional de Empleo, Capacitación y Adiestramiento (National Employment and Training Service)**--Responsible for analyzing labor markets, encouraging the employment of workers, and promoting and supervising the

²⁷ Labor Law Enforcement in Mexico, op. cit., pp. 22-23; and Questions on Labor Law Enforcement in Mexico, op. cit., pp. 26-29.

A workers' waiver of accrued salaries, indemnifications, and other benefits derived from services rendered is null and void, whatever its form or designation may be.

In order to be valid, every agreement or settlement of account shall be in writing and shall contain a detailed statement of the facts which give rise to it and of the rights included therein. It shall be ratified before the Conciliation and Arbitration Board, which shall approve it, provided that it does not contain an waiver of the rights of the workers.

Thus, the Presidents of the CABs are required to monitor severance payments, ensuring that the rights of workers are not being voided and workers receive, directly, the full amount of the severance payments that is due them. Article 949 of the FLL directs the President of the CAB to ensure that severance payments are made directly to the worker entitled to the payment.

Settlements in Dismissal Cases

In 1993, the FCABs (including special boards in the Federal District) handled 17,044 individual complaints, of which 8,068 (47 percent) involved charges of unjustified dismissal.²⁶ According to statistics provided by the Mexican NAO, the vast majority of disputes involving dismissal for cause that are resolved in favor of workers are settled through the payment of severance rather than through reinstatement. Specifically, the Federal Conciliation and Arbitration Boards of the Federal District ruled in favor of workers in 2,220 cases of dismissal for cause during the 17-month period from January 1993 through May 1994. Eighty-five percent of the workers opted for severance pay, while 15 percent chose to be reinstated.

²⁶ **Questions on Labor Law Enforcement in Mexico, op. cit., p. 26, based on information from STPS.**

training of the workforce.

- **Comisión Nacional de Salarios Mínimos (National Minimum Salaries Commission)**--Responsible for setting minimum salaries for different occupations and areas of the country.
- **Comisión Nacional para la Participación de los Trabajadores en las Utilidades de las Empresas (National Commission for the Distribution of Corporation Net Profits to Workers)**--Responsible for overseeing the allocation of net profits of corporations to workers, as required by the FLL.
- **Jurado de Responsabilidades (Jury of Responsibilities)**--Responsible for investigating and sanctioning members of the CABs for inefficiency or wrongdoing.

State Secretariats of Labor carry out the functions of the STPS for matters under state jurisdiction.