

Review Report from the National Administrative Office of Mexico (MEX NAO)

Public Communication MEX 2015-1 (Labor Discrimination at the Department of Labor)

I. Executive Summary

In accordance with the provisions of the North American Agreement on Labor Cooperation (NAALC), the Governments of Canada, Mexico, and the United States of America (hereinafter “U.S.”) agreed, among other objectives, to improve working conditions and living standards in their territories; to promote, to the maximum extent possible, the established labor principles;¹ and to promote compliance with, and effective enforcement of their respective labor laws.

The NAALC establishes the mechanism of public communications via which any person may call the attention of the Governments to matters regarding the effective enforcement of labor laws within the territory of any of the Parties.

This review report evaluates Public Communication MEX 2015-1, received on May 26, 2015 by the National Administrative Office (NAO) of Mexico, which is part of the International Affairs Unit of the Secretariat of Labor and Social Welfare.

When drafting this report, MEX NAO requested cooperative consultations from the U.S. NAO on November 12, 2015, pursuant to Article 21 of the NAALC. In so doing, MEX NAO was seeking further information to better understand the issues raised by the petitioners in the Public Communication in question.

¹ The principles established in Annex 1 of the NAALC are as follows: (1) freedom of association and protection of the right to organize; (2) the right to bargain collectively; (3) the right to strike; (4) prohibition of forced labor; (5) labor protections for children and young persons; (6) minimum employment standards; (7) elimination of employment discrimination; (8) equal pay for women and men; (9) prevention of occupational illnesses and injuries; (10) compensation in cases of occupational illnesses and injuries; and (11) protection of migrant workers.

In general terms, Public Communication MEX 2015-1 discusses the U.S. Government's alleged failure to effectively enforce its domestic labor laws, to promote minimum employment standards, and to protect minority group workers. It also makes reference to a failure to promote the effective compliance and enforcement of laws to eliminate labor discrimination.

In specific terms, the petitioners argue that U.S. labor authorities have failed to comply with their obligations, as established in Article 1 of the NAALC, "Objectives," subparagraph (a): "to improve working conditions and living standards in each Party's territory;" and subparagraph (b): "to promote, to the maximum extent possible, compliance with the labor principles set out in Annex I."

With regard to the above, the Public Communication cites a failure to comply with Labor Principle No. 7, which refers to the elimination of employment discrimination on such grounds as race, sex, religion, age, or other grounds, subject to certain reasonable exceptions, such as, where applicable, occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

The petitioners also alluded to a failure to comply with other articles of the NAALC, including Articles 2 and 3, which establish the Parties' commitment to ensure that their laws and regulations provide for high labor standards consistent with high quality and productivity workplaces; and the commitment to promote compliance with and effectively enforce its labor law through appropriate government action.

They also allege failure to comply with Articles 4 and 7 of the NAALC, concerning appropriate access to administrative, quasi-judicial, judicial, or labor tribunals for the enforcement of, and the promotion of public awareness of, the Party's labor law.

Under the NAALC, the U.S. Government is obligated to ensure that its labor laws and regulations provide for high labor standards; to effectively enforce U.S. labor laws; to ensure that individuals have access to proceedings that are fair, equitable, and transparent; to publish its laws, regulations and procedures; and to promote public information and knowledge about its labor laws in order to protect labor Principle No. 7, as indicated by the petitioners.

MEX NAO considered the arguments presented by the petitioners and by the U.S. NAO, and conducted its review based on the NAALC and on Article 9 of the MEX NAO regulations concerning public communications.

This review is not intended to establish supra-national mechanisms inasmuch as, pursuant to the NAALC, the role of the NAO is not to judge or modify the laws of the other Parties. In accordance with the NAALC, the purpose of a MEX-NAO review report is to call the attention of U.S. labor authorities to matters regarding an alleged failure to comply with labor laws, as described in Public Communication MEX 2015-1.

In compliance with the provisions of Article 5(8) of the NAALC, MEX NAO sought to gather information related to matters that could still be pending decision and omitted from this report matters currently under judicial consideration.

Following is a summary made by MEX NAO of the primary points set forth by the petitioners in their public communication with regard to the alleged omissions on the part of the U.S. Government in relation to NAALC Labor Principle No. 7:

- The petitioners in Public Communication MEX 2015-1 state that their employer, the U.S. Department of Labor (DOL), with the knowledge of its high-ranking officials, not only permitted a system that discriminates against Hispanic, African-American, Arab-American, and other minority groups to remain in place, but also encouraged it.

- They maintain that officials at the International Labor Affairs Bureau (ILAB) violated, on an ongoing basis, the Merit System Principles of Title 5 of the United States Code. In particular, they denounce ILAB for discriminatory hiring and promotion practices and for giving preference or advantages to certain applicants who were selected.
- The petitioners state that certain individuals and U.S. Government public servants were hired or promoted to positions at ILAB even though they did not meet the requirements in the job profiles for experience in various areas of international affairs or foreign languages.
- The petitioners further point out that, despite their efforts, they have been unable to obtain any positive results through the legal/administrative processes provided for under U.S. law. They also state that the labor rights violations that the petitioners have experienced continue to take place at the DOL.

The petitioners submitted 16 cases in which they discuss and highlight the alleged hiring and promotion irregularities at DOL's ILAB, as previously indicated.

Below are U.S. DOL's response statements to Public Communication MEX 2015-1, which MEX NAO received on September 23, 2016, following the request for cooperative consultations made to the U.S. NAO on November 12, 2015. These cooperative consultations were conducted in the form of a series of questions, the purpose of which was to better understand the matters put forth in the public communication in question.

- In the United States, the right to be free from discrimination is protected by federal, state, and local laws; executive orders (presidential policy directives that implement or interpret a federal statute, a constitutional provision, or a treaty); collective bargaining agreements; and social policies.

- According to the information provided by the U.S. NAO, these laws protect private and public sector job applicants and federal employees and contractors from workplace discrimination. The prohibited discriminatory bases covered by these laws include: race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, age, disability, and genetic information. Many of the laws apply to discrimination in a variety of aspects of employment, including, but not limited to, hiring and firing; compensation, assignment, or classification of employees, including the provision of benefits; transfer, promotion, layoff, or recall; job advertisements; and recruitment.
- In addition to these laws which establish and protect the right to non-discrimination, the U.S. NAO provided information about various federal agencies, commissions, special advisers, specialized offices, and protection boards for workers and petitioners that provide assistance from the time of submission of a complaint to the time the case possibly reaches the stage of review by a court of law. The goal is to enforce the laws that prohibit specific types of labor discrimination.
- The U.S. NAO stated ILAB has hiring records dating back to 1995, and ILAB has confirmed that it has not had a single finding against its hiring or any Equal Employment Opportunity (EEO) complaint process since 1995.

Recommendation

1. In view of the petitioners' arguments in Public Communication MEX 2015-1 and those made by the U.S. Government through its NAO, and taking into account the regulations of MEX NAO regarding Public Communications, as referenced in Article 16(3) of the

NAALC, this review report is brought to the attention of the U.S. DOL, so that the latter can determine, in accordance with its rules and internal practices, how to address the petitioners' arguments concerning violation of Labor Principle No. 7 on elimination of employment discrimination, as well as the alleged violation of U.S. domestic law concerning compliance with the Merit System Principles and regulations of the U.S. Federal Government on Prohibited Personnel Practices.

2. MEX NAO reiterates its respect for the NAALC and for the general commitment established in Article 2 thereof, which recognizes the right of each of the Parties to “establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations” and it is not making any judgments about the provisions that, according to the petitioners, limit workers' rights not to be subjected to labor discrimination at the DOL.
3. Based on the foregoing, MEX NAO calls the attention of the U.S. Government to the arguments that the petitioners make in their public communication, regarding labor discrimination, to which they claim to have been subjected in hiring and promotion decisions at the U.S. Department of Labor.
4. Accordingly, MEX NAO will continue to monitor the effective enforcement of labor discrimination laws at workplaces in the United States, in both the public and private sectors, and reconfirms its commitment and willingness collaborate with the U.S. Government in cooperative actions within the framework of the NAALC.