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on

Labor Law Matters Arising in the United States

submitted to the

National Administrative Office (NAO) of Mexico

under the

North American Agreement on Labor Cooperation (NAALC)

VIOLATIONS OF NAALC LABOR PRINCIPLES AND OBLIGATIONS IN THE WASHINGTON STATE APPLE INDUSTRY

submitted by:

National Union of Workers (UNT)
Authentic Workers Front (FAT)
Metal, Steel, Iron and Allied Industrial Workers Union (STIHMACS)
Democratic Farmworkers Front (FDC)

I. STATEMENT OF VIOLATIONS

1. Employers in the Washington State apple industry violate the rights of Mexican and U.S. workers under Labor Principles that the United States is committed to promote pursuant to Annex 1 of the North American Agreement on Labor Cooperation (NAALC). In particular, employers violate workers' freedom of association and right to organize, the right to bargain collectively, minimum employment standards, non-discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers.

2. Violations of Mexican and U.S. workers' rights in the Washington State apple industry continue because the United States has failed to develop laws, regulations, procedures and practices that protect the rights and interests of the workers, contrary to its commitment under the Labor Principles of the NAALC.

3. Regarding protection of migrant workers, the United States is not providing migrant workers in its territory with the same legal protection as U.S. nationals in respect of working conditions, in direct violation of Labor Principle 11.

4. Regarding labor law matters related to the Washington State apple industry, the United States is not fulfilling its obligations under Articles 2, 3, and 5 of the NAALC to:

*ensure that its labor laws and regulations provide for high labor standards;

*continue to strive to improve those standards;

*promote compliance with and effectively enforce its labor law through appropriate government action;

*ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings are not unnecessarily complicated and do not entail unreasonable time limits or unwarranted delays;

*provide that parties to administrative, quasi-judicial, judicial and labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights.

II. STATEMENT OF JURISDICTION

NAO Jurisdiction

NAO jurisdiction to review this submission is provided by Article 16(3) of the NAALC authorizing each NAO to review public communications on labor law matters arising in the territory of another Party, in accordance with domestic procedures. This submission involves labor law matters, as defined in Article 49 of the NAALC, arising in the territory of the United States. The NAO of Mexico has adopted procedures for such reviews under a Regulation published in the *Diario Oficial de la Federación* of April 28, 1995.

Ministerial Review Jurisdiction

Jurisdiction lies with the Secretary of Labor and Social Welfare of Mexico under Article 22 of the NAALC to request consultations with the Secretary of Labor of the United States regarding any matter within the scope of this Agreement. The matters raised in this submission are within the scope of the Agreement.

Evaluation Committee of Experts Jurisdiction

Under Article 23 of the NAALC, jurisdiction lies with an Evaluation Committee of Experts (ECE), at the request of any consulting party, to analyze patterns of practice by the United States in the enforcement of its technical labor standards in matters that are trade-related and covered by mutually recognized labor laws. This submission includes technical labor standards as defined in Article 49 of the NAALC, and the matters are trade-related and covered by mutually recognized labor laws.

Dispute Resolution Jurisdiction

Under Article 29 of the NAALC, jurisdiction lies with an Arbitral Panel, by a two-thirds vote of the Council, to consider the matter where the persistent pattern of failure by the United States to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards is trade-related and covered by mutually recognized labor laws. This submission includes such matters.

III. STATEMENT OF TRADE-RELATEDNESS AND

MUTUALLY RECOGNIZED LABOR LAWS

Trade-Relatedness

The situation addressed in this submission involves workplaces, firms, companies or sectors that produce goods traded between the territories of the Parties or that compete with goods produced or provided by persons of another Party.

Mutually Recognized Labor Laws

The United States and Mexico both have laws that address the same general subject matters raised in this submission in a manner that provides enforceable rights, protections or standards.

IV. BACKGROUND

Industry Scope and Structure

The Washington State apple industry is a multi-billion dollar business that supplies 60 per cent of the U.S. market for fresh apples. New York state, the second-largest producer, fills just 10 percent of the U.S. domestic market.

Employers in the Washington State apple industry have explicitly targeted Mexico as a principal export market for Washington State apples. According to an industry newspaper, *"Mexico has become the core of the U.S. apple industry's export strategy."* [1] The U.S. government provides millions of dollars in marketing subsidies to the Washington State apple industry to help it penetrate the market in Mexico, placing increasing pressure on domestic apple producers in Mexico.

Apples exports have risen more than 500 percent in the past decade, and the Washington Apple Commission, the industry's advertising, promotional and publicity arm, predicts *"steadily climbing export sales."* A 1997 report by Washington State apple growers and shippers put exports of apples at 28.6 million boxes, compared with 20.1 million boxes the same time a year ago. The report found that Mexico retained its position as the state's largest foreign customer for apples at 4.4 million boxes last year, ahead of Taiwan and Hong Kong.[2]

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[1] See The Packer, September 8, 1997, at 1.

[2] *See* Stephen H. Dunphy, *Newsletter* feature, Seattle Times, July 16, 1997, at C1.

Washington state apples are handpicked by 45,000 workers during the harvest from late August to November. The majority of the labor force comes from Mexico, most from the states of Michoacán and Oaxaca.

The apples are transported to packing, shipping and warehousing centers, where they are prepared for immediate shipment or stored for extended periods in controlled atmosphere facilities to be shipped later. Some 10,000 workers are employed in the industry's packing, shipping and storage operations. A majority of these warehouse workers also are Mexican or Mexican-American.

The Washington State apple industry includes more than 3,500 growers throughout the state. Warehouse operations are conducted by approximately 125 companies. Many of the larger growers and packing companies are aggressively pursuing a vertical integration strategy. Growers have set up large-scale warehousing operations, and large warehouse companies have bought orchards or converted other farmland to apple orchards.

Seven percent of the growers control 53 percent of the orchards, and the owners of giant warehouse operations like Stemilt Growers, Washington Fruit and Produce, Dovex, Zirkle Fruit, Borton and Sons, and the Evans Fruit Company have planted thousands of new acres to supply themselves with fresh produce. According to the New York Times, the industry is using *"advanced technology and economies of scale that may make the family-run orchard a thing of the past"* as *"corporate farmers are reaping increased profits from huge orchards."* [3]

Three-quarters of the total Washington State apple crop come from two regions, the Yakima and Wenatchee Valleys. Nearly all their production is packed and shipped through just 33 large warehouses in these valleys.

Wages and Working Conditions

Industry revenues have almost tripled in a decade, and sales per worker have almost doubled. However, wages of warehouse and field workers have fallen below poverty levels as defined by federal and state authorities. Year-around field workers' average wages are estimated at less than $10,000 per year, and the average wage for warehouse workers is $12,000. The official poverty wage for a family of three is $13,330 per year.

Most workers in the Washington State apple industry do not have health insurance coverage for themselves and their families. Workers face high exposure to dangerous chemicals, safety hazards, and unsanitary conditions in fields and warehouses. Repetitive motion and back injuries are widespread. Housing conditions are substandard.

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[3] See New York Times News Service, Technology Takes Bite Out of Apples, New York Times, October 28, 1996, at A13.

Migrant workers face unequal protection under the labor laws, threats about their legal status, and discriminatory cuts in benefits under immigration and welfare reform laws. Unfair discharges are common as supervisors exercise arbitrary power over workers' lives. Workers who try to stand up for their rights are often suspended or discharged.

Conditions in the Communities

The suppression of wages and working conditions has impoverished the communities of Washington State apple industry workers. The average wage in the Yakima and Wenatchee areas is 30 percent below the statewide average, and the unemployment rate is more than twice the statewide average. Over 20 percent of the Yakima County population, and more than 30 percent of its children, live below the official poverty level. More than 40 percent relies on public assistance from the state Department of Social and Health Services.

Overall, conditions in the Washington State apple industry bear out the conclusion of a study prepared for the U.S. Department of Labor, which found that

> *Most migrant farmworkers live a marginal existence, even after they stop migrating and settle in one location. The majority of migrants live in poverty, endure poor working conditions, and receive no government assistance. . . The poor living and working conditions of migrant farmworkers are the result of farm labor practices that shift production costs to workers [and] reduce employer costs at the expense of worker earnings. As a result, migrant workers, their families and communities, rather than producers, tax-payers and consumers, bear the high costs of agriculture's endemic labor market instability.*[4]

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[4] *See* U.S. Department of Labor, *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market* (Research Report No. 5, May 1994).

V. VIOLATIONS OF LABOR RIGHTS AND FAILURE TO FULFILL OBLIGATIONS UNDER PART TWO OF THE NAALC

LABOR PRINCIPLE 1: FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

NAALC Article 2 Obligation: Levels of Protection

Each Party shall ensure that its labor laws and regulations provide for high labor standards . . . and shall continue to strive to improve those standards.

A. Exclusion of Agricultural Workers from Labor Law Protection

Agricultural workers in the United States have no protection under U.S. labor law of the right to organize. The National Labor Relations Act (NLRA) excludes "any individual employed as an agricultural laborer" from the definition of "employee" covered under the Act.[5] Agricultural workers cannot file an unfair labor practice charge with the National Labor Relations Board (NLRB) if they are discharged for union activity. The Washington State courts have determined that agricultural workers may organize unions. However, there is no agency or legal mechanism protecting or enforcing this right if employers retaliate against workers who seek to organize. Agricultural workers have no recourse and no remedy for acts of anti-union discrimination under state or federal law. [6]

Only four states in the United States have enacted state-level labor relations acts containing unfair labor practice provisions covering agricultural workers. Washington State is not among them. Excluded from legal protection, Washington State apple workers live in fear of employer retaliation if they seek to organize. In a recent anti-union seminar, the consultant told how a strawberry grower in California plowed the crop underground after workers voted in favor of union representation. The consultant called this *"a winning strategy, leading farm workers to link unionization with the loss of jobs."* [7]

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[5] *See* Section 2(3) of the National Labor Relations Act, 29 U.S.C. Secs. 151-69.

[6] See Bravo v. Dolssen Companies, 125 Wn.2d 745, 888 P.2d 147 (1995).

[7] See Fred Krissman, Washington State Farm Bureau's Efforts to Replicate the Anti-Union Practices of California's Agribusiness Sector (Report on Farm Bureau Workshop "Union Activity in the Workplace," Yakima, Washington, May 28, 1997).

B. Warehouse Workers' Lack of Protection of the Right to Organize

In contrast to orchard workers, Washington State apple warehouse workers are defined as "employees" covered by the NLRA. However, the Act does not provide for high standards, and the United States is not continuing to strive to improve standards protecting the right to organize.

The NLRA's Section 8(c) permits employers to campaign aggressively against union organization. Employers have wide latitude to threaten job losses, plant closings, and other forms of retaliation if workers unionize.[8]

Employers can delay a union representation election by several weeks or several months. This provides extra time for employers to develop an anti-union fear campaign to destroy the union's majority support.

Employers commonly commit unfair labor practices such as threats, intimidation, coercion, interrogation, surveillance and illegal discharges to prevent workers from voting in favor of union representation. If the workers lose the election because of employer misconduct, the most common remedy is simply a new election. However, the effects of the employer's misconduct remain. The vote still takes place in an atmosphere of fear among workers. The NLRB election system has ceased to be a test of workers' free choice of union representation. Instead, it has become a vehicle for employers' campaigns of intimidation and coercion against workers.[9]

The Elections at Washington Fruit and Stemilt

In the weeks leading up to union elections on January 8, 1998, two large apple industry warehouse employers, Washington Fruit Corp. and Stemilt Growers Corp. unleashed a campaign of intimidation and coercion against their employees. These companies' anti-union campaign included the following tactics:

*illegal discrimination against workers from Mexico;

*illegal threats to call the Immigration and Naturalization Service (INS) to deport

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[8] *See* Secretariat of the Commission for Labor Cooperation, *Plant Closings and Labor Rights* (1997), at 23-31, 63-74.

[9] See Paul Weiler, Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA, 96 Harvard Law Review 1769 (1983); Robert LaLonde and Bernard Meltzer, Hard Times for Unions: Another Look at the Significance of Employer Illegalities, 58 University of Chicago Law Review 953 (1991).

workers if the union won the election;

*illegal threats to discharge and blacklist workers who support the union;

*illegal threats to lay off workers or to close the plant if the union won the election;
*illegal bribes and promises to workers for voting against the union;

*illegal interrogation of workers about their union sentiments;

*illegal threats to freeze wages and to force workers on strike, and to permanently replace workers who exercise the right to strike.

In addition to these tactics, the companies committed dozens of other unfair labor practices such as pressuring workers to wear anti-union buttons, spying on workers engaged in organizing activity, holding captive audience meetings within the last 24 hours before the election, threatening violence if the union won the election, and other violations.

The Teamsters union has requested the NLRB to order Stemilt and Washington Fruit to bargain with the union because their massive unfair labor practices destroyed the union's majority support and make a fair election impossible.

C. Lack of Deterrence

U.S. labor law enforcement has no deterrent effect. Unfair labor practice charges against employers have risen from fewer than 5,000 per year in the 1950s to more than 20,000 per year in the 1990s, and more than 26,000 in fiscal 1995.

Illegal discharges for union activity were measured in the hundreds in the 1950s. In 1995 more than 6,600 workers were ordered reinstated to their jobs after a discriminatory discharge. The incidence of illegal discharge increased from one in every 20 NLRB elections in the 1950s to one in every four elections in the 1990s.[10]

Workers' confidence in the protection of the right to organize has collapsed. A 1991 national poll found that nearly 60 percent of all workers said that they would lose favor with their employer if they supported a union organizing drive. An even higher 79 percent agreed that nonunion workers will get discharged if they try to organize a union. Looking at their personal situation, over 40 percent believed "it is likely that I will lose my job if I tried to form a union."[11]

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[10] See U.S. Department of Labor, U.S. Department of Commerce, Commission on the Future of Worker-Management Relations, Fact Finding Report (May, 1994), at 83; 1995 Annual Report of the NLRB, at 122,128.

[11] Id., Fact-Finding Report, at 75.

D. Failure to Strive to Improve Labor Standards Protecting the Right to Organize

The United States has not striven to improve labor standards protecting the right to organize. There has been no substantive improvement in laws protecting workers' right to organize since the NLRA was adopted in 1935. Nearly every substantive change in the law since then, beginning with the Taft-Hartley Act of 1947, has expanded the power of employers to combat worker organizing.

In 1978 and again in 1994, majorities in both houses of Congress voted in favor of substantive changes in U.S. labor law that would have improved labor standards protecting the right to organize. However, parliamentary maneuvering by the pro-employer minority prevented final passage of the bills.[12]

Since 1948, the United States has not ratified Convention No. 87 of the International Labor Organization on Freedom of Association and Protection of the Right to Organize. Both Mexico and Canada have ratified ILO Convention 87.

NAALC Article 3 Obligation: Government Enforcement Action

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

A. NLRB Budget and Staff Cuts

The United States does not promote compliance with and effectively enforce its labor law through government enforcement action. The budget of the NLRB has suffered successive cuts for years -- close to 20 percent in real terms since 1985. The staff has been reduced by more than one-fourth in that period. The staffing level for fiscal 1996 was at the lowest point since 1962, yet the number of cases filed has risen by 56 percent.

At the beginning of the current fiscal year, the number of cases at the initial investigative stage (7,498) was 44 percent higher than a year earlier (5,219), and more than double the number 5 years earlier (3,325). By the end of April, 1997 there were approximately 7,680 unfair labor

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[12] *See* James A. Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy 1947-1994* (Philadelphia, Temple University Press, 1995).

practice cases awaiting investigation, nearly double the number three years earlier. Cases decided by the Board sometimes wait months for the initiation of court enforcement because of a shortage of attorneys to handle them.[13]

NAALC Article 5 Obligation: Procedural Guarantees

Each Party shall ensure that proceedings for the enforcement of its labor law . . . are not unnecessarily complicated and do not entail unwarranted delays [and] that parties may seek remedies to ensure the enforcement of their labor rights.

A. Unnecessary Complications and Unwarranted Delays

Workers who are threatened or discharged for union activity face a complex, multi-stage legal proceeding that can be delayed for years by an employer determined to punish them. All along, the employer knows that if the workers ultimately win the case, the remedy is almost meaningless (see **Lack of Remedies**, below).

If an employer is determined to threaten and discharge workers, a case must pass through lengthy stages of investigation, trial, review by the NLRB, and review by the federal courts.[14] As a result of these unnecessarily complicated proceedings and unwarranted delays, workers can wait more than three years before a final decision is made in the case. Meanwhile, the organizing effort has usually collapsed, as co-workers see the long and difficult path to reinstatement that a union activist must endure. At the end, many workers do not accept reinstatement even if they win their case, because they are still fearful of employer hostility if they return to work.[15]

B. Lack of Remedies

U.S. labor law does not provide that parties to labor law proceedings may seek remedies to ensure the enforcement of their labor rights. Fundamental problems with NLRB remedies have been noted by the Chairman of the NLRB himself, who states:

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[13] See testimony of NLRB officials before the Government Operations subcommittee, June 27, 1997. In contrast, President Clinton reported that Mexico's labor department increased funding for the enforcement of labor laws by almost 250 percent between 1993 and 1996. See President of the United States, Study on the Operation and Effect of the North American Free Trade Agreement (NAFTA) (report to the Congress), July, 1997.

[14] See Secretariat of the Commission for Labor Cooperation, supra note 8, at 30 ("Unfair Labor Practice Proceedings Under U.S. Law").

[15] See U.S. Department of Labor, supra note 10, at 71-72.

"The rights have been ignored far too frequently because of the remedial limitations in our statute . . . employers found it possible to exploit loopholes for delay, knowing that only relatively limited remedies would sanction misconduct at the end of the day." [16]

U.S. employers can act with impunity to threaten and discharge workers who lead organizing efforts. There is no penalty against the employer who commits an unfair labor practice. If the worker ultimately wins the case after two or three years, the only available remedy is for the employer to post a notice in the workplace promising not to repeat the illegal conduct, and to offer reinstatement to an illegally discharged worker with back pay *minus* any interim earnings. For low-paid workers like those in the Washington State apple industry, this means virtually no back pay, since any job they might have found while their case is being processed would pay the same low wages. This leaves the employer with no financial liability for breaking the law.

These remedies are a small price for an employer to pay to destroy a union's organizing campaign by committing unfair labor practices. More than 60 years after passage of the NLRA, employers' continued, systematic, and increasing violations of the law demonstrate that legal remedies in the United States do not ensure the enforcement of the right to organize. And as noted above, agricultural workers have *no* remedies for violation of the right to organize.

C. Lack of Effective Enforcement and Remedies in the Washington State Apple Industry

Warehouse workers have sought recourse under the NLRA for many years, but with scant results. Workers won NLRB representation elections at four warehouse facilities in the 1970s, but never succeeded in obtaining collective agreements. Teamsters Local 760 recently secured representation for workers at an apple warehouse operation in Quincy, Washington, but the employer responded by closing the plant and moving operations to Yakima.[17]

The recent unfair labor practices involving illegal threats, intimidation, discrimination and other violations by Stemilt Growers and Washington Fruit are further evidence of a lack of effective labor law enforcement. If the employers exploit all the delays and appeals available to them, they can continue to violate workers' rights for 3-4 years without an effective remedy. And even if the union wins its request for an order compelling the companies to bargain with the union (called a ***Gissel*** bargaining order based on the Supreme Court case that allows the remedy), research has shown that only 20 percent of unions that win a ***Gissel*** bargaining order succeed in obtaining a

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[16] See William B. Gould IV, remarks to San Francisco Commonwealth Club, August 4, 1997, available at NLRB website, Press Release No. 2245.

[17] *See* J.R. Simplot Co. v. NLRB, 33 F.3rd 58 (1994).

collective agreement.[18] This is further evidence of failure to effectively enforce U.S. labor law.

LABOR PRINCIPLE 6: MINIMUM EMPLOYMENT STANDARDS

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

NAALC Article 2 Obligation: Levels of Protection

A. Declining Value of the Minimum Wage

When it was originally enacted in 1938, the value of the U.S. minimum wage was approximately one-half the average wage in the economy. For many years the minimum wage was raised in line with the average national wage. However, the failure of U.S. law to maintain the buying power of the minimum wage led to a severe decline in its value, which has dropped below one-third of the average wage. Even with recent increases in the minimum wage, it is still less than 40 percent of the average wage in the economy. Today's minimum wage is more than 25 percent lower than the value of the minimum wage 30 years ago.[19]

B. Minimum Employment Standards and Farmworkers

The Fair Labor Standards Act (FLSA) which sets the minimum wage applies to less than 50 percent of all agricultural workers due to exemptions in the laws that specifically remove protection for farmworkers. In several states, agricultural workers have been found not to be employed by growers, but by independent contractors, effectively removing them from coverage of the FLSA. Most agricultural workers are not entitled to overtime pay. Employers can require long hours without overtime compensation, and discharge workers who do not accept unlimited hours.

Combined with low wages, the lack of year-round or full-time work relegates almost two-thirds of migrant farmworkers to living below the poverty line. When paid by the hour, as 66 percent of

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[18] See Terry A. Bethel and Catherine Melfi, The Failure of Gissel Bargaining Orders, 14 Hofstra Labor L.J. 423 (1997)

[19] See U.S. Department of Labor Website, Information on the Minimum Wage (1997).

migrants are paid, they average $4.47 per hour. When paid under a piecework system based on productivity, they average $6.94 per hour. Despite their efforts to constantly find one job after another as they follow the migrant trail of seasonal harvests from South to North, migrants work an average of only 29 weeks per year. This provides a median income of $5,000 per year, or less than $2.50 per hour on an annualized basis.

The net effects of farmworker poverty extend beyond the 670,000 workers who migrate. Together, there are more than a million individuals who rely on earnings from migrant farm workers. More than 400,000 dependents travel with migrants or live in the United States while they migrate. Of these, 83 percent are children under the age of 14, and 73 percent of those live in poverty.[20]

C. Minimum Wage and Productivity

The low level of the U.S. minimum wage and the poverty level wages in the Washington State apple industry and in the agricultural sector generally contrast with the rapid growth in productivity in those sectors. Output per worker has more than doubled in the past few years as companies introduce new technology and vertically integrate their operations.

As the New York Times describes it, *"Absentee corporate owners send in migrant crews from Mexico to pick the trees with assembly line efficiency . . . decisions are made with the help of computers, satellite dishes and Internet communications that connect shippers with global markets."* [21]

In pushing through the NAFTA in 1993, President Clinton extracted from Mexico an assurance that the minimum wage in Mexico would rise in line with productivity.[22] The United States should be held to no less a goal in setting its own labor standards in compliance with its obligations under the NAALC.

NAALC Article 3 Obligation: Government Enforcement Action

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[20] *See* U.S. Department of Labor, *supra* note 4, at 31.

[21] *See supra*, note 3.

[22] *See Weekly Compilation of Presidential Documents*, 1993, at 1640.

In 1980 there were more than 1,000 wage & hour inspectors in the U.S. Department of Labor (DOL). This was reduced to slightly more than 700 in 1994.[23] The nation's leading employment law textbook states *"It is open to question whether the Department of Labor is enforcing the Fair Labor Standards Act effectively,"* citing reports by the U.S. General Accounting Office (GAO) concluding that *"noncompliance with minimum wage, overtime and record-keeping provisions of the FLSA was a serious and continuing problem . . . personnel shortages make it unlikely that major shifts in enforcement will be forthcoming."* [24]

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[23] *See* U.S. Department of Labor, Commission on the Future of Worker-Management Relations, *Report and Recommendations* (December 1994), at 54.

[24] See Mark A. Rothstein and Lance Leibman, Employment Law: Cases and Materials, 3rd Edition (Foundation Press, 1994).

LABOR PRINCIPLE 9: PREVENTION OF OCCUPATIONAL INJURIES AND ILLNESSES

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

NAALC Article 2 Obligation: Levels of Protection

U.S. law does not provide for high health and safety standards and the United States is not continuing to strive to improve those standards. On an average day in U.S. workplaces, 17 workers are killed in accidents, 137 die from occupational disease, and 16,000 are injured.[25]

According to the U.S. Bureau of Labor Statistics, farmworkers suffer the highest rate of chemical-related illness of any occupational group: 5.5 per 1,000 workers. The Environmental Protection Agency (EPA) estimates that up to 300,000 farmworkers suffer acute illnesses from pesticide poisoning each year. Occupational exposures to pesticides can also cause chronic illnesses such as cancer, birth defects, and neurological damage.[26]

A. Lack of Standards for Dangerous Chemicals

Of more than 70,000 hazardous chemicals used by industry, the Occupational Safety and Health Administration (OSHA) has set standards for only 27 — an average of one standard per year since OSHA's creation in 1970. It takes 5-10 years for OSHA to adopt a standard.[27]

B. Lack of Ergonomics Standard

Injuries and illnesses related to workplace ergonomic hazards are the largest safety and health problem facing workers in the United States today, and they are increasing at epidemic rates. Despite longstanding demands from workers, unions, and public health professionals, U.S. law does not provide an ergonomics standard to protect workers against "repetitive strain" injuries suffered by workers in many industries, including the Washington State apple industry. Of workdays lost to work-related injuries and illnesses in 1994 in Washington State, 32 percent

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25 *See* comments of former Labor Secretary Robert B. Reich, cited in Dean Scott, Jennifer Combs, and Ellen Byerrum, *OSHA's Effectiveness Pondered at 25th Anniversary*, BNA Daily Labor Report, April 25, 1996, at C-1.

26 See 52 Fed. Reg. 16,050, 16,059 (1987); U.S. General Accounting Office, Hired Farm Workers: Health and Well-Being At Risk (1992).

27 *See AFL-CIO, Safe Jobs: Promises Kept, Promises Broken (April 1996), at 67.*

involved ergonomic-related cases.[28] For a time, at the behest of employer groups, Congress has even forbidden OSHA from expending any effort to develop an ergonomics standard.[29]

C. Lack of Standards on Right to Know, Medical Monitoring and Closed Handling Systems

Federal and state authorities have not adopted a standard to require farmworkers' "right to know" the hazards of the pesticides they use. Authorities also have not adopted a standard to require mandatory blood monitoring for workers who handle highly toxic pesticides. Workers have no idea if they are approaching dangerous levels or not. Regular medical monitoring is an important health protective measure that prevents acute and chronic illnesses.[30]

Federal and state authorities have also not adopted a standard requiring a closed system for mixing and loading pesticides. Workers perform this task by hand-pouring highly concentrated toxic materials between open containers. They face a high degree of risk from spilling, splashing, and leaking. This danger would be eliminated by requiring a closed system.

D. Weakening of Standards

EPA has jurisdiction over agricultural pesticides. EPA has actually ***reduced*** levels of protection for farmworkers. In 1995, EPA made regulatory changes that place farmworkers at increased risk of poisoning and death. For more than 100 pesticides, the "re-entry" period that workers must wait before entering a field after pesticide spraying was shortened from 12 to 4 hours. EPA also weakened the rule requiring employers to provide hazard training for workers before entering work areas exposed to toxic chemicals. Under the new rule, employers can send workers into such areas for up to 5 days *before* training is required.

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[28] *See Bureau of Labor Statistics, Characteristics of Workplace Injuries and Illnesses Resulting in Absences from Work (1994).*

29 See David Maraniss and Michael Weisskopf, OSHA's Enemies Find Themselves in High Places, Washington Post, July 24, 1995, at A1.

30 See R. Ames et.al., Protecting Agricultural Applicators from Over-Exposure to Cholinesterase-Inhibiting Pesticides, 38 Journal of Occupational Medicine 85 (1989).

E. Washington State: 4th in Injuries and Illnesses, 41st in Penalties

Health and safety conditions in Washington State are at crisis levels. Washington State ranks 4th among the 50 states in the rate of workplace injuries and illnesses, with 10.5 injuries and illnesses per 100 workers.[31] However, the state ranks 41st in the average fine applied to employers that violate OSHA standards.[32]

As recently as July 25, 1997, 100 workers in a Washington State apple packing facility were overcome by carbon monoxide fumes from plant machinery and had to be hospitalized. A supervisor at the plant reportedly refused to let employees leave when they first complained of feeling ill. Excusing the delay, another manager explained that *"if a supervisor thought a worker was gold-bricking or giving a false excuse, the supervisor may question them."* A state labor inspector stated that it is not uncommon for packing plants to have problems with carbon monoxide, and that his office has investigated many similar incidents.[33]

F. Pesticide Hazards in Washington State Agriculture

In Washington State in the period 1987-1990, farmworkers had a rate of systemic poisoning that was 3.2 times higher than the rate for all workers in the state, and their rate of toxic disease was 2.2 times higher. Their respiratory disease rate was 2.4 times the norm, and the rate for skin disease was 3.9 times the norm.[34]

Highly toxic pesticides are commonly used in Washington State agriculture and in the apple industry. In 1993, 27 farmworkers were hospitalized after exposure to Phosdrin, an extremely toxic insecticide. Even a few drops of this material can cause acute systemic illness, blindness, severe burns, and death. Several of the workers would likely have died without emergency medical treatment.[35]

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[31] *See* U.S. Department of Labor, *Survey of Occupational Injuries and Illnesses* (1995).

[32] *See U.S. Department of Labor, OSHA Compliance Data (1996).*

[33] See Marla J. Pugh, Fumes Blamed on Closed Vents, Wenatchee World, July 28, 1997, at 1.

[34] See Washington State Department of Labor and Industries, Farm Worker Health and Safety in Washington State: A Look at Workers' Compensation Data (1991).

[35] *See* Washington State University, Washington State Department of Agriculture, *Safety Alert for Mevinphos (Phosdrin) Use in Washington* (August 26, 1993); testimony of Marion Moses, M.D., before the Washington State Department of Agriculture (October 7, 1993).

Other highly toxic pesticide are used even more than Phosdrin. For example, Guthion is applied to 90 percent of Washington's apple crop an average of three times a year.[36] In June, 1993, 55 apple workers reported symptoms including nausea, headaches, and dizziness after an adjacent field was aerially sprayed with Guthion.[37]

Washington State's Department of Labor and Industries has acknowledged that reported incidents show only the tip of the iceberg because occupational disease among farmworkers is grossly underreported.[38] A 1988 study of 47 Washington State farmworkers who indicated past health problems from pesticide exposure found that only one of the 47 had filed a claim for workers' compensation.[39]

"Intimidation of workers by employers" is cited by the GAO as a major factor in the underreporting of occupational illnesses by farmworkers.[40] As one Yakima Valley worker testified in an EPA public hearing, *"Many farmworkers don't come forward because they don't want to lose their jobs. The farmers don't care about us. They just care about getting their fruit off."* She added that Hispanic workers are afraid to file complaints or see a doctor about pesticide-related illnesses because the growers threaten them. Another worker testified to the same effect, that growers tell their workers that if they say anything to an outside authority or to a doctor, they will lose their jobs.[41]

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36 See Washington Agricultural Statistics Service, Washington Agricultural Chemical Usage: Apples (1992).

37 See Washington State Department of Health, Quarterly Summary of Pesticide Incidents: Report from 4/1/93 to 6/30/93, at 36.

38 Id., at 12.

39 See K. Gerstle, Symptoms Related to Pesticide Exposure Among Farmworkers in the Skagit Valley (1989).

40 See GAO Report, supra note 25 , at 9,15.

41 See U.S. Environmental Protection Agency, Office of Pesticides Programs, A National Dialogue on the Worker Protection Standard: Part I: Transcripts of the Public Meetings (March 1997); Carrie Schafer, Hazards no lower, workers tell EPA, Pasco, WA Tri-City

Case Studies in Employer Intimidation

Two concrete examples provide dramatic confirmation of these views. In one, seven workers were discharged from their jobs after an investigation began on their poisonings. The workers were sprayed and drifted upon continuously while cleaning up brush in an orchard downwind from where Thiodan, a highly toxic pesticide, was being sprayed. When one of the workers told their employer they were getting sick from the pesticide, the employer told them to get back to work in the orchard unless they wanted to lose their jobs. The workers returned to work and became even more ill. They experienced tremors, burning and itching eyes, blurred vision, severe headaches, vomiting, stomach aches, skin rashes, and disorientation. When legal services advisors asked state agencies to investigate the poisonings, the workers were discharged.

In another case, a worker was discharged after he told the farm manager that a piece was missing from his respirator. The manager told the worker to ignore the missing piece and to continue spraying. The worker became ill and told the manager he was going to see a doctor. The next day the worker was discharged, and his family was evicted from a house on the orchard property.[42]

NAALC Article 3 Obligation: Government Enforcement Action

A. OSHA Enforcement

The United States does not promote compliance with and effectively enforce its occupational safety and health law through appropriate government action. The number of OSHA inspectors has fallen from nearly 1,400 in 1980 to fewer than 1,000 today. There are only about 1,000 state OSHA inspectors in 22 states that have adopted "state plans" for OSHA enforcement. These OSHA inspectors must cover more than 6 million U.S. workplaces and nearly 100 million workers. At its current staffing and inspection levels, it would take OSHA 167 years to inspect each workplace under its jurisdiction.[43]

Adjusted for inflation, OSHA's budget is now less than it was in 1975. Budget cuts in recent years have actually reduced the number of inspections, while the number of workplaces and the labor force have grown. OSHA conducted some 24,000 workplace inspections in fiscal 1996. The number of inspections in 1996 fell from 29,000 in 1995. The 1995 figure was down 31

Herald, June 20, 1996.

42 See Daniel G. Ford, Pesticide Issues Affecting Farm Workers, Memorandum of Columbia Legal Services, Seattle, Washington, to Environmental Protection Agency, October 11, 1996.

43 See AFL-CIO, Death on the Job: The Toll of Neglect (April 1997), at 3.

percent from inspections in fiscal 1994. Overall, enforcement decreased on the following scale from 1994 to 1995:

* Total inspections decreased by 31 percent
* Safety inspections decreased by 35 percent
* Health inspections decreased by 20 percent
* Complaint inspections decreased by 10 percent
* Accident inspections decreased by 5 percent
* Construction inspections decreased by 43 percent
* Manufacturing inspections decreased by 21 percent
* Number of employees covered by OSHA inspections decreased by 29 percent.[44]

From 1995 to 1996, further cuts reduced OSHA operations by more than 15 percent: down $22 million for inspection and enforcement; down $5 million for advice to small employers; down $3 million for training and technical support; down $2 ½ million for data collection; down $1 ½ million for setting and interpreting standards.[45] Some restorations have been made to OSHA's budget, but it is still far below the level needed for effective enforcement.

B. Worker-Management Committees

U.S. law also does not encourage the establishment of worker-management committees to address safety and health issues, contrary to the obligation assumed by the United States in Article 3(1)(e) of the NAALC. OSHA has no requirement for joint health and safety committees in U.S. workplaces.

Most workers in non-union workplaces are afraid to file complaints with OSHA, or to accompany OSHA inspectors during their inspections, for fear of employer retaliation. Many companies actually maintain a practice of awarding prizes to workers for not reporting work-related injuries or illnesses, such as jackets, drinking mugs, free dinners, and cash bonuses. Investigations have revealed that some companies contract out hazardous jobs to temporary agencies to avoid responsibility under the law.[46]

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44 See 1995 Annual Report of the Occupational Safety and Health Administration.

45 See Stephen Barr, Budget Cuts Impede OSHA's Ability to Enforce Worker Safety Laws, Washington Post, February 19, 1996, at A1, A12.

46 See letter of August 1, 1996 from Coalition to Save OSHA to Administrator Joseph A. Dear, noted in Groups Cite Continuing Concerns Over Commitment to Worker Safety, BNA Daily Labor Report, August 22, 1996, at A-8.

C. Pesticide Enforcement in the Washington State Apple Industry

EPA has delegated enforcement of agricultural pesticide standards to Washington State authorities. However, the state Department of Agriculture has only 12 inspectors to enforce pesticide regulation in this massive industry.

There are 8,700 chemical compounds used in Washington State's multi-billion dollar agriculture industry. In thousands of apple orchards, thousands of workers are pesticide applicators. Tens of thousands more workers enter the orchards after the application of pesticides to pick the crop.

Confidential EPA documents published by the *Seattle Post-Intelligencer* in a 1997 investigative report indicate serious doubts about Washington State authorities' *"ability and willingness"* to enforce pesticide laws in the agricultural industry. One memorandum declared that the state

enforcement agency *"has done little or nothing to improve the repeated pattern of deficiencies in its investigations and enforcement of [pesticide] regulations."*

Another document obtained by the *Post-Intelligencer* suggested that state inspectors who have tried to enforce regulations to ensure compliance *"encounter internal roadblocks which they cannot pass."* Another viewed the state's response to an incident of aerial pesticide spraying over a wildlife refuge and along irrigation canals as one that *"approaches negligence."* [47]

The executive director of the Washington Environmental Council characterized the state enforcement authorities as *"an industry handmaiden, defending the application of pesticides with more fervor than the farmers, incapable of conducting serious investigations."* A spokesman for the industry declared that *"I've been watching them for years, and I have great faith that they've been protecting us."* [48]

NAALC Article 5 Obligations: Procedural Guarantees

A. Unnecessary Complications and Unwarranted Delays

U.S. law does not provide that its proceedings for enforcement of health and safety laws are not unnecessarily complicated and do not entail unwarranted delays. Delays are common in the OSHA enforcement process. There are various levels of investigation, trials and appeals that can take years to reach a conclusion. During all the time that a case is being litigated, the employer

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[47] See Andrew Schneider and Joel Connelly, The state is under fire over pesticides: EPA to probe agency's enforcement of rules, Seattle Post-Intelligencer, June 23, 1997, at A1.

[48] Id., at A4.

does not have to take any action or spend any money to correct the hazard. Pointing to a case where an accident occurred in 1972 but the final adjudication did not take place until 1981, OSHA scholars have concluded that *"this system encourages delay."* [49]

B. Lack of Effective Remedies

U.S. law does not provide that parties may seek remedies to ensure the enforcement of their rights. Remedies under OSHA do not ensure enforcement of safety and health standards. OSHA penalties have become a mere cost of doing business for most employers. Although the Act authorizes fines up to $7,000 for a "serious" OSHA violation (defined as causing or likely to cause death or serious physical harm), the average proposed penalty for a serious violation is $645. These penalties are generally reduced to half this amount or less.

In Washington state, enforcement officials investigated only 259 pesticide-related complaints by workers in all of 1995 -- further evidence that underreporting of health and safety violations is a serious, unremedied problem. Violations were found in 87 of these cases. Fines were applied in 16 cases, and the average fine paid by employers found to have violated pesticide rules was $325 dollars.

The director of Washington State's pesticide enforcement agency has openly acknowledged his agency's failure to issue meaningful fines and penalties against violators, attributing the failure to the state legislature where growers exercise enormous political lobbying pressure. *"Some issues are out of our control,"* he said, pointing to a 1995 law that prevents state regulators from issuing

fines or any significant penalty against a violator until the offender is first offered "more friendly" technical advice. *"We are allowed to only issue a warning letter and offer our technical assistance,"* he explained. *"There's nothing we can do about it,"* he concluded.[50]

LABOR PRINCIPLE 10: COMPENSATION IN CASES OF OCCUPATIONAL INJURIES AND ILLNESSES

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

NAALC Article 3 Obligation: Government Enforcement Action

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[49] See Rothstein and Leibman, supra note23, at 719.

[50] See Schneider and Connelly, supra note 46, at A4.

Workers compensation in the United States is generally within state jurisdiction. Washington State enforcement officials discourage claims for workers' compensation for pesticide-related illnesses, and they deny claims at a much higher rate than for other claims.

Out of tens of thousands of agricultural workers in Washington state, only 245 filed claims for compensation due to pesticide-related illnesses in 1995. This is only .01 percent of claims filed for all industries, despite the massive size of the agricultural industry in Washington State. Of these claims, 98 (40 percent) were rejected. The rejection rate increased exponentially from only two years earlier, when just 6 percent of pesticide-related claims were rejected.[51]

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[51] See Washington State Department of Health, 1996 Annual Report: Pesticide Incident Reporting and Tracking Review Panel (April 1997), at 37-39.

LABOR PRINCIPLE 11: PROTECTION OF MIGRANT WORKERS

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

Background

In many areas of labor law, the United States is not providing migrant workers in its territory with the same legal protection as its nationals in respect of working conditions. This is a ***per se*** violation of its commitment in Labor Principle 11 of the NAALC and its obligation under Article 2.

Of the estimated 2.5 million farmworkers in the United States, approximately 1.6 million perform seasonal agricultural services. Of those, more than 40 percent, or 670,000, are migrant workers who follow the crop harvests from South to North. These include migrant workers who come to Washington State for the apple harvest.

Among migrant workers, a large majority (74 percent) are authorized to work in the United States, either because they are citizens or because they have proper documentation for work. A nearly equal percentage (71 percent), live part of the year in another country, usually Mexico.[52]

NAALC Article 2 Obligation: Levels of Protection

U.S. law does not provide for high labor standards with respect to the protection of migrant workers, and the United States is not continuing to strive to improve its standards for protection of migrant workers. Indeed, the United States is striving to reduce and eliminate protections for migrant workers.

A. Unequal Protection of the Right to Organize

Employers often call the Immigration and Naturalization Service (INS) when workers seek to organize a union. This is an unfair labor practice, but the remedies are so weak that is has become a common practice. This intimidating tactic is only available to employers where migrant workers are present. This tactic destroys the organizing rights of legally employed migrant workers, thus denying them the same protection available to U.S. nationals where migrant workers are not part of the labor force.

Migrant workers do not have the same legal protection as U.S. nationals on fundamental labor rights matters that are entirely separate from their documentation status. Migrant workers in

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52 See U.S. Department of Labor, supra note 4, at 19.

sectors covered by the NLRA do not have the same rights as U.S. nationals to back pay or reinstatement if they are discharged for union organizing.[53]

Illegally obtained evidence can be used against migrant workers that could not be used against U.S. nationals. In a recent case, the NLRB found that the employer illegally called the INS to destroy a union organizing campaign. However, evidence obtained in the raid was used by the INS to deport a worker who led the campaign. In contrast, evidence could not be used against a U.S. national if it was obtained through an unfair labor practice.[54]

B. Unequal Protection in Workers' Compensation

Another area of labor law where migrant workers are not provided the same legal protection as U.S. nationals with respect to working conditions is workers' compensation. Workers' compensation is within state jurisdiction, but it is included in the NAALC Labor Principles. In 17 states, workers' compensation benefits for migrant workers are lower than benefits for U.S. nationals. That is, many workers' compensation laws discriminate against migrant workers.

An especially dramatic example arose in Georgia, where a Mexican worker fell 22 stories to his death in a construction accident. His widow and children filed for death benefits under the Georgia workers' compensation act, which provides a $100,000 benefit for U.S. nationals and for Canadian nationals killed at work. However, the law limits the benefit for all other migrant workers to $1,000. As an attorney for the Mexican family stated, *"It's a racist statute, simple as that. Canadians look like us, and Mexicans don't."* [55]

Washington State is one of the 17 states which discriminate against migrant workers. Washington State limits the benefit for the family of a deceased migrant worker to 50 percent of the benefit available to the family of a U.S. national.[56]

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53 See Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984).

54 See Montero v. INS, 1997 USAPP Lexis 22957 (2nd Cir., 1997).

55 See Adam S. Hersch, Go Home, Stranger: An Analysis of Unequal Workers' Compensation Death Benefits to Nonresident Alien Beneficiaries, 22 Florida State Univ. Law Review 217 (Summer, 1994); Barge-Wagener Constr. Co. v. Morales, 429 S.E. 2d 671, cert. den. 114 S.Ct 579 (1993). See also Bill Rankin, Court Endorses $1000 Limit on Death Benefit Restriction on Foreigners, Atlanta Constitution, May 29, 1993, at B1.

56 See Wash. Rev. Code Sec. 51.32.140 (1993).

C. Unequal Protection in the H-2A Temporary Foreign Agricultural Worker Program

Another situation in which migrant workers are not given the same legal protection as U.S. nationals arises in the H-2A guestworker program. Approximately 20,000 migrant workers admitted to the United States under the H-2A guestworker program are excluded from coverage by the Migrant and Seasonal Agricultural Workers Protection Act (AWPA). H-2A migrant workers working legally in the United States are denied the same legal protections afforded to U.S. nationals covered by the AWPA in such matters as working conditions and wages, registration of farm labor contractors, and minimum standards for transportation, safety, and housing. H-2A migrant workers are also denied the right to file a lawsuit in federal court for failure to pay wages or other illegal practices, a right provided to U.S. nationals.

H-2A migrant workers also lose the protection of anti-retaliatory provisions in various U.S. laws, which are available to U.S. nationals. For example, it is illegal for employers to punish workers because they file workers' compensation or other claims allowed under the law. However, employers circulate a "blacklist" of workers who sought to exercise their legal rights while in the United States, and refuse to re-engage those workers the next season.[57]

D. Unequal Protection in Housing

In many states, migrant workers do not get the same protection provided to U.S. nationals with respect to housing that is afforded as part of the employment relationship. Employers can discriminate against migrant workers in housing and evict them without notice or other legal protection. Migrant workers have no recourse to landlord-tenant laws or procedures, consumer protection laws, truth-in-renting laws, and other protections provided to U.S. nationals.[58]

In Washington State, the health department estimates that 30,000 migrant workers live in housing that lacks basic sanitation facilities, drinking water, dry floors, and other necessities. Employers openly admit that they do not want to pay to improve migrant workers' housing. *"The trend has been for housing to be closed down because of the financial investment involved,"* says the executive director of the Washington Growers League, which is the principal anti-union organization of the apple industry.[59]

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[57] 56 Currently, H-2A workers are not imported into Washington State to work on the apple harvest. However, growers in Washington State are aggressively lobbying Congress and the Labor Department for changes to the existing guestworker program to further weaken minimum standards and enforcement.

[58] See Sherylle Gordon, Michigan Housing Laws Should Apply to Migrant Farmworkers, 41 Wayne Law Review 1849 (Summer 1995).

[59] See Hal Spencer, Effort to Upgrade Migrants' Housing Goes Awry, Chicago Tribune, September 9, 1997.

E. Unequal Protection in Health Insurance

Health insurance in the United States is basically an employment-related benefit. Workers must obtain health insurance from their employer, not from a public health service. However, employers are not obligated to provide health insurance. Thus, many of the "working poor" lack any health insurance, leaving them to the services of public hospitals and charity care. More than 40 million people in the United States have no medical insurance.

This is the situation confronted by workers in the Washington State apple industry. Full time workers are required to work more than 1,600 hours per year just to be eligible for health insurance. However, the pay deduction extracted from workers wages under the employers' health insurance plans is prohibitive — approximately 10 percent of their already meager wage. Employees working less than 1,600 hours per year are not eligible for health insurance coverage, even though many of them work year-around. They are among the 40 million who lack medical insurance.

Emergency public health services are available to U.S. nationals working in the Washington State apple industry who cannot afford employer coverage, However, the recent Immigration Reform Act and Welfare Reform Act have cut the availability of health services to migrant workers, including those authorized to work in the United States.

F. Unequal Protection in Family Reunification

Migrant workers are denied the same protection as U.S. nationals for bringing relatives to the United States. Migrant workers' chronically low wages mean they can never meet income requirements under the new immigration law. The average annual wage in the packing and warehouse operations in the Washington State apple industry is about $12,000. The average wage in the orchards is less than $10,000. However, the new law requires a worker to be making 125 percent of the poverty level wage based on family size — nearly $17,000 for a family of three, and more than $20,000 for a family of four.

The average wage of U.S. nationals in Washington State is nearly $30,000 per year. They can readily bring relatives to the United States because they easily meet the income requirement. However, migrant workers legally resident in the United States are not provided with the same opportunity by virtue of the low wages paid for migrant farm labor in Washington State.[60]

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[60] 60 See Debby Abe, A Fading Dream of Family: New Law Makes It Tougher for Many Legal Immigrants to Bring Relatives to U.S., News Tribune, May 4, 1997

VI. CONCLUSION

The United States is not effectively enforcing its labor laws to protect the rights of Mexican and U.S. workers employed in the Washington State apple industry, particularly in labor law matters contained in this submission. Employers in the Washington State apple industry are penetrating the Mexican consumer market with advantages derived from violating Mexican and U.S. workers' rights. Most recently, two major companies engaged in massive violations of workers' freedom of association and right to organize by launching a campaign of threats, intimidation, coercion, and discrimination in connection with union elections in January, 1998. This is an unconscionable form of "social dumping" in Mexico.

The unequal protection of laws related to working conditions of migrant workers clearly violates Labor Principle 11, which the United States is "committed to promote" under Annex 1 of the NAALC. These discriminatory laws also violate the obligation contained in Article 2 of the NAALC, under which the United States "shall ensure that its labor laws and regulations provide for high labor standards."

Employers in the Washington State apple industry must respect workers' rights and voluntarily recognize unions in bargaining units where a majority of workers desire union representation. Employers must bargain collectively to improve wages and working conditions in the industry. The organizations submitting this public communication hope that the NAALC, as an international instrument reflecting a solemn commitment by Mexico, the United States, and Canada, will help achieve this result. Effective application of the NAALC will help carry out its key objectives, to:

*improve working conditions and living conditions in each Party's territory;

*promote, to the maximum extent possible, the labor principles set out in Annex 1;

*promote compliance with, and effective enforcement by each Party of, its labor law.