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Labor Standards For Mexican Workers: The Failure of the North American Agreement on Labor Cooperation

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Labor Standards for Mexican Workers: The Failures of the North American Agreement on Labor Cooperation

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Introduction

The North American Free Trade Agreement (NAFTA) is a comprehensive regional trade agreement between Mexico, the United States and Canada (Compa 6). President George H. W. Bush signed NAFTA in December 1992, but it was President Clinton who sent NAFTA to the Senate for ratification in 1993 ("Trading Away Rights" 1). On January 1, 1994, NAFTA and the labor side accord, the North American Agreement on Labor Cooperation, came into effect (Caulfield 66). Although signed into law 23 years ago, this piece of legislation remains controversial. In the most recent presidential election between Republican Donald Trump and Democrat Hillary Clinton, NAFTA was a hot button issue and a point of great contention.

Throughout the 2016 presidential debates, Donald Trump consistently emphasized the unfairness of NAFTA to workers in the United States. Trump stated on his campaign website:

> Tell NAFTA partners that we intend to immediately renegotiate the terms of that agreement to get a better deal for our workers. If they don't agree to a renegotiation, we will submit notice that the U.S. intends to withdraw from the deal. Eliminate Mexico's one-side backdoor tariff through the VAT and end sweatshops in Mexico that undercut U.S. workers ("Donald J. Trump's Vision")

This statement encapsulates the view that many US politicians and citizens have about trade agreements: they are purely business deals. But, the essence of NAFTA offers more than just business incentives for member countries, it also provides for the enforcement of labor standards: a revolutionary concept in the realm of free trade agreements. NAFTA actually has a side accord, which was negotiated at the same time as NAFTA and the North American Agreement on Environment Cooperation accord, known as the North American Agreement on Labor Cooperation (NAALC) (Compa 6-7). The NAALC is a labor agreement, which calls on the

signatories to "enforce their domestic labor standards effectively while working cooperatively with the International Labor Organization (ILO)" (McGuinness 6). It was adopted in 1993 to "work toward broad improvements in the situation of labor rights in their respective countries" ("Trading Away Rights" 1). While an honorable mission, this mission is hardly discussed by the American public.

Although there is much public discourse in the United States on the subject of NAFTA's economic ramifications, few people discuss the NAALC, which is also important. In the following sections of my paper, I aim to show that the side agreement to NAFTA, known as the North American Agreement on Labor Cooperation (NAACL), does not give adequate protection to laborers in Mexico. To demonstrate this I will: provide background information on NAFTA and the NAALC, demonstrate the faults in the NAALC, analyze two cases that went through the remedy process laid out in the NAALC, and finally provide recommendations on how this piece of legislation can be improved.

Background

In this section, I will provide some background on NAFTA and NAALC. This background is necessary to understand the chapters that follow.

What is NAFTA?

NAFTA is a comprehensive regional trade agreement between Mexico, the United States, and Canada. In essence, "NAFTA provides for the phased elimination of tariff and most nontariff barriers on regional trade within 10 years" (Hufbauer and Schott 2). NAFTA also "extends the innovative dispute settlement procedures of the FTA to Mexico…; contains precedent-setting rights and obligations regarding services and investment; and takes an important first step in addressing cross-border environmental issues"(Hufbauer and Schott 2). The Free Trade

Agreement (FTA) between Canada and the United States was agreed to in 1988, so essentially NAFTA is an expansion of this initial agreement to include Mexico (Hufbauer and Schott 2).

The book, *NAFTA: An Assesment*, by Gary Clyde and Jeffrey J Schott, discusses the promising features of the agreement. The authors highlight four major features of NAFTA. They write:

> First, the NAFTA establishes within 15 years free trade in agricultural products between the United States and Mexico. The accord immediately converts key US and Mexican agricultural restrictions into tariff-rate quotas and sets a maximum 15-year period for the phase-out of the over-quota tariffs–an impressive achievement considering the dismal track record of other trade talks in reducing long-standing farm trade barriers. Second, the investment obligations of the NAFTA accord national treatment to NAFTA investors, remove most performance requirements on investment in the region, and open up new investment opportunities in key Mexican sectors such as petrochemical and financial services…. Third, the pact sets important precedents for the future regional and multilateral negotiations by substantially opening the financial services market in Mexico to US and Canadian participants by the year 2000 and by removing significant obstacles to land transportation and telecommunication services. Finally, the NAFTA offers a schizophrenic result in textiles and apparel. On the one hand, the pact calls for the elimination of all tariffs and quotas on regional trade in textiles and apparel. This is the first time in this heavily protected sector that imports from an important developing-country supplier have been significantly liberalized by the United States and Canada (Hufbauer and Schott 2-3)

NAFTA is the first of its kind type, and it set the precedent for the other trade agreements that have followed. But, while the NAFTA agreement deals specifically with free trade, the labor side accord, the NAALC set about labor provisions that the member countries must adhere to. This brings me to the question of have the labor standards been complied with? After 23 years, we are now in a position to address this question. For this paper, we will examine the effects the NAALC on the rights and wages of the laborers who work in Mexico.

The Groundwork for NAALC

While NAFTA was a groundbreaking trade agreement that encompassed many, never-before-seen components to a trade agreement, NAFTA left out human rights assurances for laborers (Compa 6). Since NAFTA has no provisions on labor rights, politicians and citizens in the United States, Mexico, and Canada began to voice their concerns about the trade agreement even before it was ratified (Compa 6). For example, during his Presidential run in 1992, Bill Clinton stated that NAFTA "did nothing to reaffirm our right to insist that the Mexicans follow their own labor standards, now frequently violated" (Human Rights Watch 1). These publicly expressed concerns ultimately led to the decision to create the North American Agreement on Labor Cooperation (Compa 6).

In the United States, many lawmakers expressed that they would refuse to approve the congressional-executive agreement unless labor norms were somehow incorporated into the free trade agreement (McGuinness 582). A major reason there was so much support for creating a way to implement labor standards was because there was much fear that industries in the United States and Canada would simply go to Mexico to exploit "lower production costs and the weak labor and occupational health regulatory structure" (McGuinness 580). The idea that American and Canadian citizens would lose jobs and Mexican workers may be subjugated to harsh, unfair

working conditions created a push to ensure that the laborers in all member countries would be in no way harmed by the effects of NAFTA. In essence, the NAALC was a mechanism to alleviate concerns about NAFTA's potential consequences (McGuinness 582).

Although the NAALC had the intentions of preserving labor rights and enforcing domestic laws, we must question whether or not this set-up actually worked. Did the NAALC truly make it so corporations could not exploit labor in Mexico? With the constant outrage in the US of jobs going to Mexico, it seems that the NAALC has failed. We will continue to explore the notion of potential failure in the next sections of this paper.

The North American Agreement on Labor Cooperation

In this section of the paper, I will explain what the North American Agreement on Labor Cooperation actually is and how it functions.

The Purpose

The main purpose of the NAALC is to have member countries enforce their domestic labor standards (Caulfield 66). "The NAALC is supposed to provide 'a mechanism for member countries to ensure the effective enforcement of existing and future domestic labor standards and laws without interfering in the sovereign functioning of the different national labor standards'" (Caulfield 66). The official text states that the main objective is:

> [T]o improve working conditions and living standards in the United States, Mexico, and Canada as the North American Free Trade Agreement (NAFTA) promotes more trade and closer economic ties among the three countries. The preferred approach of the Agreement to reach this objective is through cooperation--exchanges of information, technical assistance, consultations--a concept that is explicitly recognized in the very title of the instrument. The Agreement also provides some oversight mechanisms to ensure

that labor laws are being enforced in all three countries. These oversight mechanisms are aimed at promoting a better understanding by the public of labor laws and at enhancing transparency of enforcement. The Agreement does provide the ability to invoke trade sanctions as a last resort for non-enforcement of labor law by a Party ("North American Agreement on Labor Cooperation")

Essentially, the agreement has two main goals: "(1) to encourage the improvement of labor conditions in North America through cooperative activities, including the promotion of a set of eleven labor principles… and (2) to provide a mechanism for mediating labor disputes" (Caulfield 66). These broad goals are said to be the key reasons the accord was ratified.

The Function

In order to understand what the NAALC does, it is important to note what the NAALC does ***not*** do: "The NAALC does ***not*** require the governments of the three signatory countries to raise standards to meet existing minimum international labor standards" (Caulfield 66). This means that the NAALC does not create any new type of law or regulation. Now that I have explained what the NAALC does ***not*** do, I will explain what it does establish.

The agreement states that all member countries will follow six objectives ("The North American Agreement on Labor Cooperation"). These objectives are:

a) improve working conditions and living standards in each Party's territory;
b) promote, to the maximum extent possible, the labor principles set out in Annex 1[1];
c) encourage cooperation to promote innovation and rising levels of productivity and quality;

1 Annex 1: 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 injuries and illness, 10) Compensation in cases of occupational injury and illnesses, 11) Protection of migrant workers (Compa 1997)

d) encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;
e) pursue cooperative labor-related activities on the basis of mutual benefit;
f) promote compliance with, and effective enforcement by each Party of, its labor law; and
g) foster transparency in the administration of labor law. ("The North American Agreement on Labor Cooperation")

These six standards are followed by six ways in which the governments *can* implement the standards. This is covered in the "Government Action Section" ("The North American Agreement on Labor Cooperation"). The Government Enforcement Action section states:

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 sanction 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. ("The North American Agreement on Labor Cooperation")

These ideals are supposed to be enforced through a body created by the NAALC that is known as the Commission for Labor Cooperation (Caulfield 66). It is critical to remember that:

> While the countries have not yielded sovereignty with respect to the content of their laws or the authorities and procedure for enforcing them, they have transcended traditional notions of sovereignty by opening themselves to critical international and independent reviews, evaluations and even arbitrations over their performance in enforcing labor laws (Compa 7)

It is also important to note that only ***three*** out of the eleven issue areas that were covered in Appendix 1 carry any kind of potential fine or loss in accordance with the NAALC (Compa 7). The areas are: minimum wage, child labor, and occupational health and safety (Compa 7). Moreover, the fine or loss can only occur if there is a "persistent pattern of failure to effectively enforce domestic law (Compa 7). Again, the eleven labor standards are defined as "guiding principles" and they in no way "establish common minimum standards for their [the member countries] domestic law" (" The North American Agreement on Labor Cooperation").

Enforcement Mechanisms

The NAALC aims to ensure each country is complying with and enforcing their labor laws without yielding sovereignty (Compa 7). So, how exactly does the NAALC go about ensuring this objective? The NAALC "establishes a tri-national dispute resolution scheme seeking specifically to respond to differences in labor regulation throughout North America"

(1994). Additionally, there are two mandatory structures ("The North American Agreement on Labor Cooperation"). These structures are the Commission for Labor Cooperation, which is made up of a Ministerial Council and a Secretariat, and National Administrative Offices (NAOs) in each member county: the structure allows for oversight and enforcement if a member country is noncompliant with the rules of the NAALC ("The North American Agreement on Labor Cooperation"). As stated by the United States Department of Labor:

> The Agreement creates both international and domestic institutions. The international institution is the Commission for Labor Cooperation, consisting of a Council supported by a Secretariat. The domestic institutions are the National Administrative Offices (NAOs), located in each of the countries, and national or governmental advisory committees ("The North American Agreement on Labor Cooperation")

The first of these components is the "cabinet- level Ministerial Council and a permanent staff Secretariat [which] make up the Commission for Labor Cooperation" (Compa 7). The Council is made up of the United States Secretary of Labor, the Mexican Secretary of Labor and the Canadian Minister of Labor (Compa 7). The purpose of the Council is to ensure the compliance of the NAALC and work as a single entity to ensure the enforcement of the NAALC (Compa 7).

Additionally, the Council oversees the independent Secretariat, whom has an office located in Dallas, Texas and has a small staff of fifteen members (Compa 7). The two main functions of the Secretariat are creating reports on the labor laws and labor markets of the three countries and acting as a "general administrative arm" "providing staff support to the Council and to any Evaluation Committees of Experts or Arbitral Panels established under the Agreement" (Compa 9).

The other mandatory structure the NAALC provides is the National Administrative Offices (NAOs) within each member country's Labor Department (Compa 9). The basic function of the NAO offices is to "serve as a points of contact and sources information among themselves and government agencies, with the Dallas-based Secretariat, and with the public" (Compa 9). Furthermore, the NAOs are the bodies that receive labor complaints that occur in fellow NAFTA countries (Compa 9).

Workers, unions and allies of these groups who have complaints *must* file these complaints with the NAO in any country other then their own in order to begin the review process of their case (Compa 10). If there is a case that involves one or more of the eleven standards that have been agreed to by each country then the NAO *may* recommend "ministerial consultations at the Council level as part of its 'report for review'…. The consultations can be bi-lateral… or tri-lateral" (Compa 10).

After consultations occur (if they occur at all), any Party, meaning member country, involved in the dispute is allowed to request the establishment an independent Evaluation Committee of Experts (ECE). This may be requested if any of the labor principles are involved, with the exception of principles 1, 2 or 3 (Compa 10). Although an ECE can be established due to a complaint, a minister is able to request an ECE without any such formal complaint being present.

If a Party requested an ECE report and after the report has been commissioned said Party is still not satisfied then they are able to request an independent Arbitral Panel (Compa 10-11). This panel has the authority to rule on the issue and offer an "action plan" to the parties in conflict (Compa 10). If the action plan is not implemented then the Arbitral Panel has the authority to "impose a monetary enforcement assessment against the offending government"

(Compa 11). If the fine is not paid by the offending government then there is the potential for trade sanctions to be applied to the incompliant country" (Compa 11).

Overall, the structure provides for a "four-level dispute resolution process to promote compliance with national labor law" (Caulfield 66). The dispute process consists of: "(1) NAO review and consultations, (2) ministerial consultations, (3) evaluation by a committee of experts, and (4) review by a dispute-resolution panel" formally called an Arbitral Panel (Caulfield 66). However, of the thirty-nine cases that have ever been brought to the NAO's for review none have ever made it past the ministerial consultation phase ("Submissions under the North American Agreement on Labor Cooperation").

Now that I have explained the framework of the NAALC and the structure for implementing and overseeing the rules laid out in the NAALC, it should be clear that getting cases reviewed is a tedious and arduous process with no guarantee of any remedy. However, if we accept that the reason for creating the NAALC was to improve labor standards and create a path to reconcile any grievances, then we can not *just* look at the structures laid out in the text of the agreement: we must also decide how effective these structures have been in providing the services that they said they would and if the member countries and corporations are actually being held to the standards laid out in the agreement.

In the next section of the paper, I will be reviewing literature on the topic of the NAALC to further expand on my research.

Literature Review

In this section, I will provide additional academic sources that have focused on the effectiveness and reality of the NAALC.

A handful of studies looking into the NAALC have shown that Mexico's domestic labor standards are not being complied with under the NAALC (Englehart 386). For example, a report conducted by the Human Rights Watch that aimed to evaluate the accord and gauge how compliant the countries have been in respect to the NAALC, found many structural problems that the member countries have refused to resolve ("The Results of NAFTA Labor Rights Cases"). The report states, "little has been done… to overcome structural problems found in [the] enforcement mechanisms [of the NAALC]" ("The Results of NAFTA Labor Rights Cases"). The report also notes, "although the side agreement does not require outside complaints to spur governmental action on non-compliance with NAALC obligations, to date no country has independently initiated consultations regarding possible violations of the NAALC" ("The Results of NAFTA Labor Rights Cases"). The fact that no country has pursued any type of investigation implies a lack of will power by the Party countries to adhere to the standards of the NAALC ("The Results of NAFTA Labor Rights Cases"). Moreover, the NAOs have openly admitted that there are structural problems within the NAALC because they have held training and seminars to discuss the structural weaknesses ("The Results of NAFTA Labor Rights Cases"). However, these trainings and seminars have not created any changes to the enforcement mechanism processes in which many submitters have taken issue with and believe that the poor structuring of the NAALC has resulted in unfair results in the cases that have been filed ("The Results of NAFTA Labor Rights Cases").

It is interesting that there has been so many complaints about the Mexican government's non-compliance when, on paper, Mexican labor laws are quite strong (McGuinness 16). In fact, Article 123 of the Mexican constitution creates rigid standards in which employers are supposed to abide by (McGuinness 6). For examples, some of the fundamental labor standards included in

the Constitution are “standards controlling the work day, [standards regulating] working conditions and the Mexican laborer’s right to organize” (McGuiness 6-7). While the standards may seem strong, unfortunately, they continue to go unenforced (McGuinness 16-18)

A reason for the lack of enforcement may be due to a theory called Social Dumping (McGuinness 1) In the article, “The Politics of Labor Regulation in North America: A Reconsideration of Labor Law Enforcement in Mexico,” Michael McGuiness introduces the theory of Social Dumping and explains the ramifications of the phenomenon. First, the theory is rooted in three major arguments: First, that Mexico’s labor structure is disorganized and hence the workforce suffers from this disorganization, second, due to weak regulations in Mexico, the United States and Canada will take advantage of the poorly regulated Mexican workforce and third, the Mexican workforce will be exploited in terms of workplace safety and health conditions due to US and Canadian corporate interests (McGuinness 4; Alexander and Labotz; Kay 429). He attributes these three reasons to why the Mexican government continues to poorly enforce their own laws (McGuinness 4).

Furthermore, in the article, authored in 1996, titled, “Downward Mobility Mexican Workers After NAFTA,” author Carlos Heredia expresses his distaste with NAFTA. He expresses the sentiment that NAFTA was “designed to facilitate investment and capital flows into the regions, and to maintain a pool of cheap and available labor” (Heredia). The “cheap and available labor” has led to continuous complaints against the Mexican government, but often times, the complaints go unresolved (“The Results of NAFTA Labor Rights Cases”; Heredia). Moreover, he states, “in both countries [the United States and Mexico], only big capitalists have benefited from NAFTA (Heredia). While he remains adamant that the working conditions in Mexico are not up to standard, he does believe that three things could help fix the unfavorable

conditions. The three things are: democratization of labor unions, political alliances between unions and other organized sectors of the population and leadership that looks beyond geographical borders" (Heredia).

While it seems heavily agreed upon that there are not enough stringent enforcement mechanisms to adequately protect Mexican laborers, there are some ways in which the NAALC has tried to establish standards to hold countries and corporations accountable. The Agreement established the National Administrative Office within each of the member country's labor department. Additionally, the Agreement created the North American Commission for Labor Standards, which is "headed by a Ministerial Counsel comprised of the three parties' labor secretaries to coordinate the implementation of the agreement (Jacobs 130). However, even with these mechanisms to help regulate abuses, there are still widespread problems and flaws that need to be worked out in order to successfully achieve the objectives of the NAALC (Jacobs 2010). One of the main reasons for all the problems, in regards to the structures created by the NAALC, is that there are ever hardly any cases that go to the NAO. In the first twelve years of NAFTA, only thirty-four complaints were ever filed and of the complaints, none have made it past the consultation phase (Jacobs 131-132). Jacobs seems to believe that the reason for the lack of prosecution is due to the Ministers' unwillingness to pursue arbitration (Jacobs 136). Overall, there seems to be many studies and observations that prove there are fundamental flaws in the NAALC.

With this analysis we must question why ministers are unwilling to enforce labor standards and what would push ministers to decide they will begin enforcing standards. Further, we must evaluate what the NAALC is doing and if what it is currently doing is effective in

protecting laborers. In the next section of this paper, I will explain the reality of the NAALC and delve deeper into why this accord has been deemed as ineffective.

The Reality: Why the NAALC is Not Effective

In this section, I will explain how structural weakness of the NAALC and how the efforts to enforce the NAALC are inadequate.

Structural Weakness

A) Enforcement Mechanisms

As stated previously, the NAALC does not establish any new labor standards for the member countries to comply with (Compa 7). Its' most fundamental goal is to have member countries, the United Stated, Canada and Mexico, comply with their own domestic labor standards (Compa 7). Author, Frederick Englehart, perfectly explains what the purpose of the NAALC is in a piece he published titled, "Withered Giants: Mexican And U.S. Organized Labor And The North American Agreement On Labor." Englehart explains:

> Oversight mechanisms [drafted in the NAALC] are aimed at enhancing the public's understanding of labor law and transparency or enforcement rather than punishment through trade sanctions. Sanctions exist, but are contemplated to be applied only upon the failure of cooperation and consultation, expert evaluation, negotiation, and arbitration (351)

This leads to the conclusion that the different oversight bodies were structured more for the public image of the NAALC, as opposed to a body that could actually directly impact labor law and protect workers.

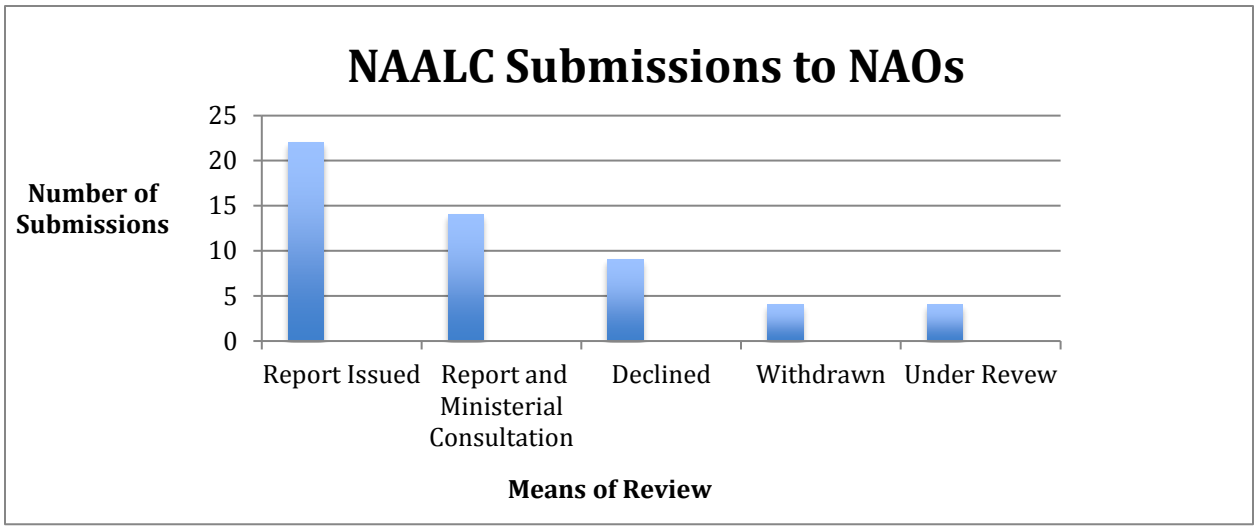
While transparency is beneficial to creating success in championing fair labor practices, due to the nature of the NAALC, many critics are upset by the totality of the agreement. In his

work, “The Limits of Regionalism: NAFTA’s Labour Accord,” Robert Finbow explains how skeptics of the NAALC continue to feel about the accord. He states, “critics were generally dismissive of the NAALC’s potential, and viewed it cynically as a paper tiger designed to assuage political pressures rather than encourage effective enforcement of labour laws and rights” (Finbow 4). Most critics agree that“ the labour accord is a weak vehicle designed ‘to publicly denounce the violation of labor laws [and] to sensitize public opinion regarding these violations and their impact’, with insufficient enforcement power” (Finbow 4).

The insufficient enforcement power is most obviously seen in the fact that a state can only face sanctions, the most severe repercussion for breaking the accord, for violating labor principles 5, 6 and 9. (Bieszczat 1393) “The glaring omission is the failure to provide sanctions for violations of the right to organize and bargain collectively” (Bieszczat 1393-1394). Out of the eleven labor principles that were agreed upon by each of the member countries only three hold any significant power. It must be noted that sanctions have thus far never been used in any of the thirty-nine cases that have gone to the NAOs for review (“Submissions under the NAALC”).

The most prominent enforcement mechanism used so far has been ministerial consultations (Bieszczat 1394). However, not much is ever accomplished by these ministerial consultations and there is never a direct remedy for the workers who had their rights violated in accordance with the labor principles that were agreed upon in the NAALC (Bieszczat 1394). Typically, after wrongdoing is found the Council will, more likely than not, create training sessions for government officials or establish a new type of committee (Bieszczat 1394). “This result leads to petitioner frustration, as even a successful petition accomplishes nothing more than what is perceived as a public relations move by the party governments” (Bieszczat 1394).

Figure 1: Data used from the United States Department of Labor



Since workers realize that filing a petition has not ever led to a clear remedy for them and "given the resources necessary to achieve this toothless result, petitioners are disincentivized from utilizing the NAALC petition process" (Bieszczat 1394). This may explain why only thirty-nine cases have ever been submitted for review.

The reality of the NAALC is that it has no real power to remedy workers. Workers, now seeing what has occurred when submitting a successful petition, feel disenfranchised because they know the NAALC process will not help them in their fight for justice (Bieszczat 1349). Furthermore, of the thirty-nine cases that have been submitted, only twenty-two have been accepted for review and of those twenty-two cases the NAOs only recommended ministerial consultations in fourteen of those cases: refer to figure 1 for a breakdown of the cases. This is troubling information given that the main objective of the NAALC, bettering working conditions in North America, is not being met for workers in Mexico.

This analysis leads to the argument that the structures set up under the NAALC do not have any *real* enforcement mechanism (Jacobs 139-140). As author Cody Jacobs states in his article "Trade We Can Believe In: Renegotiating NAFTA's Labor Provisions To Create More

Equitable Growth In North America," "the highest level of enforcement available under the NAALC [are] ministerial consultations" and even when these consultations have found wrongdoing on the part of corporations "none of the wrongly fired laborers were compensated or reinstated and none of the companies faced any consequences" (Jacobs 136). These early cases quickly reinforced the image of the NAALC among labor unions and activists as 'more of a meeting place than a true enforcement mechanism'" (Jacobs 136).

It would seem then that since there was open discussion about the wrongdoings that were being committed in violation of the NAALC, member countries would want to see repercussion for the incompliance. However, this is not the case. Instead, it was openly acknowledged that the NAALC was not creating legitimate enforcements, but member countries were okay with this fact: "the Clinton administration argued that [the] NAALC strengthened awareness of core rights" (Finbow 88). The "awareness," however, never seemed to translate into any feasible action. The lack of any "concrete results" has led an overwhelming amount of negative criticism and has made the majority opinion of the NAALC remarkably negative (Bieszczat 1393).

B) Non-interference by Other Countries

Finally, to make it clear that there will be no labor interference amongst the other member countries, no matter what the issue, Article 52 Part Six was agreed upon and is written in the NAALC. Part Six under Article 52 of the NAALC it states "Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party" (Government of Canada 2013). Essentially, Article 52 makes it evident that no member country can, in any way, act on behalf of another country in an effort to ensure labor standards are enforced in another country's territory.

This part of the agreement was most likely written in the manner it was due to Mexico's strong stance on enforcing their labor laws without interference (or repercussion) from other countries (Guerra Torriente 503-504). Before the NAALC negotiations even started, Mexico was adamant about ensuring autonomy and sovereignty in its' territory when entering an agreement with the US and Canada (Guerra and Torriente 504).

> During the NAFTA negotiations, Mexico opposed the notion of permitting the NAALC Commission to intervene into the area of Mexico's enforcement of its own labor laws, particularly those laws regulating collective bargaining. Mexico argued that such intervention could result in interference with and violation of Mexico's territorial sovereignty. Mexico took the position that permitting such interference was inappropriate in the context of a commercial treaty. The U.S. Nevertheless insisted that the NAALC be drafted (Guerra and Torriente 504)

Knowing that the Mexican government had strong views on overseeing their labor law, it is a wonder why the U.S and Canada went forward with the NAALC. Especially, when the U.S. always was open with the fact that the Mexican government was not good at enforcing their domestic labor laws (Guerra and Torriente 504). It is evident that critics are right in saying, "the NAALC… is… little more than a statement of good intentions [and] suffers from lack of clarity and lack of an efficient mechanism for achieving its goals, with the enforcement of most of its provisions left to the discretion of each of the NAFTA parties" (Guerra and Torriente 504).

To conclude the section, I want to emphasize that I understand the importance of protecting a country's sovereignty. However, human rights abuses, especially in the context of NAFTA, should be subject to scrutiny on an international level. While it is important to ensure that each country is able to be autonomous and act in a way that best serves their population, we

must remember that NAFTA is an international trade agreement and the NAALC is a means to ensure labor standards across the member countries. The structural weakness of the NAALC has rendered it ineffective and completely incapable of achieving it's mission of enhancing labor standards across North America.

Monitoring Labor Standards

Monitoring labor standards is a critical aspect to enforcing labor law. Without any sort of enforcement mechanism, laborers are unable to voice complaints and abuses continue to persist. Mexico's case, however, is quite interesting. "On paper, Mexican workers' rights appear enviable…. 'Mexican people live and work under and astounding collection of protective labor statutes, policies and practices which provide them, as employees, with an extensive list of detailed rights and privileges'" (Finbow 55). In fact, the Mexican Constitution, in Article 123, "establishes a number of fundamental labor standards in order to ensure dignified work for Mexican laborers, including standards controlling the work day, working conditions and the Mexican laborer's right to organize" (McGuinness 6-7). While the paper trail looks good for Mexico and their laborers, the reality is much different.

There is an excess of incompliance and loopholes that allow Mexican labor standards to fall short in comparison with the United States and Canada. One study, which was conducted from the Human Rights Watch, points out that labor inspectors simply seem unwilling to investigate claims of labor discrimination (in this case specifically, claims of gender discrimination) or they lack knowledge to conduct an effective investigation (McGuinness 17-18). Others who have investigated the issue have attributed it to the corruption and disorganization within the inspection system (McGuinness 19). Further, there are accounts that simply place the blame on the lack of political will amongst the labor administrator's in Mexico:

they do not effectively enforce or regulate compliance with the country's labor standards (McGuinness 2014). Lastly, there is some consensus that Mexico has adopted a "hands off approach to labor law enforcement…. [because] the Mexican government is more interested in attracting and appeasing foreign investors than in aggressively protecting the rights of Mexican Workers" (McGuinness 18).

Due to the lack of resources and lack of will on the part of the Mexican government, labor standards continue to go unenforced. It was thought that the NAALC's dispute-resolution process would remedy the lack of compliance with domestic labor standards in Mexico, but it has been discovered by multiple researchers that this is not the case. Instead, noncompliance continues to go unpunished and workers face grave injustice. Now that I have explained the structural weakness of the NAALC and the problematic nature of labor standards being monitored, I will now move on to the data and methods I use for the purposes of my research.

Data and Methods

In this section of the paper, I will explain the data and methods I have chosen to use in order to assess and analyze the topic.

I have approached this topic by using the case study method. I have chosen two cases, USNAO 19004 and USNAO 2000-02, in order to prove my thesis statement: the NAALC has not adequately protected laborers in Mexico. While there are thirty-nine different cases to look at regarding NAALC submissions, the two cases I chose adequately represents the common trend amongst all the cases. These two cases reflect the broader pattern that cases, which go through the dispute-resolution process of the NAALC, do not result in substantive resolution for laborers in Mexico. Nor do they create compliance with labor provisions by the Mexican government.

The case study method was the most appropriate choice for this paper because it allows me to demonstrate, clearly, all the details that go into deciding a case and then look at the remedy provided by either the NAOs or the Council. I can evaluate how the NAOs decide to evaluate a case, whether their evaluation is just and if the remedy provided is substantive and adheres to the main objective of the NAALC- to create better working conditions across all of North America.

In the next section of this paper, I will describe, in depth, two cases that have gone through the NAALC dispute-resolution process.

Case Studies

In this section of the paper, I will look at two separate case studies in order to demonstrate the lack of remedy provided by the NAALC.

General Background on Cases

The National Administrative Office's are generally in charge of providing remedies for cases involving labor standard violations (McGuinness 584). It is through the NAO's that laborers who believe they have legitimate claims can seek redress and file their complaints. The NAO's, on paper, are supposed to be protecting laborers by ensuring member countries are monitoring and complying with labor standards throughout their country. However, when looking at the way in which NAO's have dealt with claims, it seems that there has been no real remedies for laborers who have filed claims (Jacobs 136).

I have derived this assertion through a multitude of sources. To start, in the article "Trade We Can Believe In: Renegotiating NAFTA's Labor Provisions To Create More Equitable Growth In North America," author Cody Jacobs states "in the first 12 years of NAFTA's existence, only 34 complaints were ever filed with the NAO. Of those complaints, none have ever gone past the consultation phase and the majority were either dismissed or withdrawn at the national level"

(Jacobs 136). At first reading, it may seem that these complaints were simply remedied at the ministerial consultation level, but as Jacobs further explains, "labor ministers' *reluctance* [emphasis mine] to pursue arbitration (or even convene an ECE), is a reflection of their role as political appointees and representatives of their governments, rather than as impartial enforcers of the agreement" (Jacobs 136). This leads Jacobs to the ultimate claim that "[w]ith the dispute resolution process of the NAALC largely ineffective, Mexican authorities continue to laxly enforce their own labor laws, particularly in the area of free association, to the direct detriment of Mexican workers and the indirect detriment of U.S and Canadian workers facing unfair competition (136). The unfair nature of enforcement from the NAO's and the Mexican government has made it difficult for Mexican workers to actually voice complaints.

USNAO 94001- Honeywell Corporations

Honeywell Manufacturas de Chihuahua, S.A is a manufacturing plant that specializes in producing electronics equipment in the city Chihuahua, Mexico (USNAO Submission #94001 and #94002 2). At the time of the allegations, the plant employed approximately 480 workers (NAO Submission #94001 and #94002 2). The NAO accepted the case for review on April 15, 1994 (United States Department of Labor).

The International Brotherhood of Teamsters (IBT) filed a case against Honeywell Corporation through the U.S. NAO. The allegations of the case were that Honeywell was not allowing workers to join unions of their choice and, consequently, firing and threatening workers who showed interest in unionizing (Caulfield 72; Compa 14). Workers at Honeywell were paid, what is equivalent to, forty-five U.S. dollars a week. IBT asserted that these wages were "exceptionally low" and in order for the corporation to keep them this low "Honeywell ha[d] used illegal threats and firings to keep its employees from joining a union" (NAO Submission

#94001 and #94002 2-3). The allegers stated that the Mexican government was in violation of labor principle 1 of the NAALC and, additionally, was in violation of Article 123 of the Mexican Constitution; they did not adequately protect Mexican workers right to organize (Compa 14).

The specifics of the case are that on November 12, 1993, an officer of the union Sindicato de Trabajadores de la Industría Metálica, Acero, Hierro, Conexos y Similares (STIMAHCS), which is part of an independent labor organization, Frente Auténtico del Trabajo (FAT), hosted a meeting that twelve Honeywell workers attended (NAO Submission #94001 and #94002 3). After this meeting, in late November, Honeywell "fired approximately 20 production workers, nearly all of whom expressed an interest in joining an independent union" (USNAO Submission #94001 and #94002 3). Furthermore, the allegers state that the workers who were being fired were told that their termination was a result of their union interests and that they had to sign resignation forms in order to receive their severance (USNAO Submission #94001 and #94002 3). Additionally, the submission details that one of the workers who was fired by Honeywell filed a complaint before a Mexican Conciliation and Arbitration Board (CAB), which was pending, during the time the submission to the U.S. NAO (USNAO Submission #94001 and #94002 3). It should be noted that, "CABs have a reputation for refusing to reinstate workers fired for supporting independent unions like the FAT" (USNAO Submission #94001 and #94002 3).

The US NAO accepted the case for review and held a public hearing to review the facts of the case on September 12, 1994 (Compa 14). Workers from the plant, Mexican labor lawyers and US union representatives testified, however, no one representing the Honeywell Corporation came to give a statement (Compa 14). Lawyers who were representing the submitters asked for

several recommendations (USNAO Submission #94001 and #94002 19). These recommendations included:

> [R]equiring the two companies involved [Honeywell and General Electric] in the submission to reinstate workers, … asking companies to adhere to a code of conduct on worker rights for their operation in the maquiladora sector…. And recommended sustained consultations among the NAOs to develop cooperative activities on associational and organizing rights (USNAO Submission #94001 and #94002 19)

After the testimony was given, the Pubic Report of Review was issued on October 12, 1994 (United States Department of Labor). The final consensus of the NAO was that they were "not in a position to make a finding that the government of Mexico failed to enforce the relevant labor laws" (USNAO Submission #94001 and #94002 30). The reason for this decision was because the Mexican workers that were fired took a severance package, henceforth, "preempting Mexican authorities from establishing whether the dismissals were for cause or in retribution for union organizing" (USNAO Submission #94001 and #94002 30). However, the NAO acknowledges that most workers face economic hardship and therefore had to take the severance deal as opposed to getting their case reviewed by the Mexican Conciliation and Arbitration Board (CAB): "since workers for personal financial reasons accepted severance" they could not hold the Mexican government accountable for not taking action (USNAO Submission #94001 and #94002 29-30).

It seems counterintuitive then to assert that most worked *had* to take the severance package due to the economic hardship they faced, yet still render a decisions that would not provide remedy to workers who face these situations. It should also be noted that the NAO stated the purpose of the review "had not been aimed primarily at whether or not the two companies

named in submission acted in violation of Mexican labor law" (USNAO Submission #94001 and #94002 19). The point of the NAALC is to ensure each government in complying with their domestic laws, but one of the main objectives is to better working standards across North America- in this case, it seems these two ideals conflicted.

While the NAO chose not to hold a ministerial consultation, which could have led to finding the government responsible for the firings, the NAO did state that it "shares the submitters' concerns about the vital importance of freedom of association and right to organize and the implications for workers of the failures of the governments to protect such rights" (USNAO Submission #94001 and #94002 32). Due to the NAO's concerns they ultimately *recommended* several "cooperative activities" on the "issues of freedom of association and the right to organize"; these cooperative activities should include public education programs regarding the NAAALC (USNAO Submission #94001 and #94002 32-33). The member countries agreed to the recommendation and in 1996 held a conference in Canada where they discussed the issues of freedom of association, the right to organize and employment structures (Compa 15).

While the process of the NAOs aims to achieve the objective of "improving labor standards across North America," it is important to remember that the NAOs only look at government enforcement and *not* how corporations are treating employees ("The North American Agreement on Labor Cooperation). The NAO asserts this fact in their Report of Review by saying:

> [T]he NAO review has not been aimed primarily at determining whether or not the two companies named in the submissions may be 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 (USNAO Submission #94001 and #94002 28)

The NAO essentially found that workers had had their rights violated, however, due to the nature of the NAALC there was no way to hold the corporation accountable for these violations.

USNAO 2000-01- Auto Trim and Custom Trim

Auto Trim of Matamoros, Tamaulipas and Custom Breed of Valle Hermoso, Tamaulipas are maquiladora plants that specialize in manufacturing steering wheels and gearshifts (USNAO Submission #2000-01 9). The submission was filed by the Coalition for Justice in the Maquiladoras, twenty-two other unions and nongovernmental organization and several workers from Auto Trim and Custom Trim ("Submissions under the North American Agreement on Labor Cooperation"). The submission was filed on July 3, 2000 and the US NAO published a Public Report of Review issued on April 6, 2001 ("Submissions under the North American Agreement on Labor Cooperation"). In the NAOs report, ministerial-level consultations were recommended ("Submissions under the North American Agreement on Labor Cooperation").

The allegations of the case were that workers in these two plants had health and safety concerns due to exposure to toxic substances and muscular-skeletal disorders caused by "ergonomically unsound practices" (USNAO Submission #2000-01 9). Additionally, workers urged that problems stemmed from:

> [F]ailure to provide information and training about occupational hazards, pressure on workers to meet excessively high production quotas, poorly designed work stations,

> inadequate personal protective equipment, lack of properly functioning safety and health committees, failure to stock medical supplies on-site, failure to institute workplace monitoring, and substandard ventilation. The submitters also maintain that occupational illnesses and injuries are often unreported or under-reported and that workers are inadequately treated and compensated (USNAO Submission #2000-01 9)

The multitude of problems that went unresolved led to the submission of the case to the NAALC in order for workers to remedy the problems that occurred at these two plants.

Moreover, the submitters insist that these violations that had been occurring were due to the "inadequate enforcement on the part of the Mexican government, namely the failure to conduct inspections and impose sanctions or fines" (USNAO Submission #2000-01 9). The workers detail that they filed multiple submissions to the Mexican government (before filing the NAALC submission) in order to remedy the violations occurring at their place of work (USNAO Submission #2000-01 9-10). For example, In April 1999 workers, who had already filed for a petition to the Secretariat of Labor and Social Welfare (STPS) but did not receive any help, filed another submission to the Mexican Social Security Institute (IMSS) and the Secretariat of Health (SSA) to conduct inspections. However, the workers never believed any such inspection took place even though the SSA, after further insistence from the workers, told them they would conduct inspections (USNAO Submission #2000-01 5).

Due to the continued lack of enforcement by the government, the submitters argued that the government of Mexico violated the NAALC: specifically, provisions in articles 1, 3, 4, 5 and 7 (USNAO Submission #2000-01 10). Additionally, the government failed to enforce the Mexican Constitution and various national laws, standards and regulations (USNAO Submission

#2000-01 10). Due to the nature of the violations, the submitters of the petition asked for several remedies.

The submitters requested several actions from the US NAO. The key actions they requested were: investigating and examining the health violations that were occurring at Auto Trim and Custom Trim, compelling the Mexican government to comply with the health and safety standards that are established the Mexican constitution and established laws and to determine the "required fines and penalties for each health and safety violation at Auto Trim and Custom Trim/ Breed Mexicana according to the conclusions of the fact-finding commission" (USNAO Submission #2000-01 10).

The NAO did investigate the complaints and issue the findings of their inspection in their Public Report of Review. The US NAO found that the government has taken "remedial measures" to conduct health and safety reviews (USNAO Submission #2000-01 55). However, while the US NAO made the assertion that the Mexican government did complete inspections to varying degrees, they also found that "the efficacy of these processes [was] problematic" (USNAO Submission #2000-01 55). The problematic nature of the Mexican government's inspections can be seen in three key areas. The first is that the inspection reports give personal details about workers (USNAO Submission #2000-01 55). The lack of confidentiality in the reports likely led to workers not feeling secure in voicing the real problems they were having at their workplace in fear of facing repercussions from their company (USNAO Submission #2000-01 55). Second, the inspectors used a checklist when conducting their report. So, instead of testing and ensuring compliance with what was on the list, they only noted the existence of workplace systems and documents (USNAO Submission #2000-01 55). This led inspectors to carelessly give inspections and made it highly likely for inspectors to not look into violations that

were occurring at these two plants. Lastly, "the procedures for certifying third party monitors, which are relied on by employers and the governmental authorities [were] not clear" (USNAO Submission #2000-01 55). With procedures not being clear, there were likely many discrepancies in the ways in which the different inspectors were conducting their inspections.

Overall, the USNAO stated that they were recommending this case for ministerial consultation because the Mexican government failed to communicate with workers about the efforts the government was making in response to petitions that workers had previously filed and the lack of record keeping on the part of the government documenting the efforts the government was, supposedly, making (USNAO Submission #2000-01 55). Additionally, the US NAO asked the petitioners to draft a set of recommendations for the Ministerial Council to look over (Shurtman 326). The highest prioritized recommendations on the submitters list were the demands for the IMSS and STPS (Shurtman 327-328). They asked the IMSS to re-evaluate the cases of workers who were denied unemployment-related compensation pay or who claimed to be under-paid by the company (Shurtman 327). Furthermore they wanted the IMSS to "establish public, transparent criteria" for evaluations done by medical doctor on workers who claim they were injured or fell ill due the workplace, award compensation to these workers and ensure that workers who were being evaluated by the IMSS be given written notice of why the IMSS decided to award or deny compensation (Shurtman 327). They also recommended STPS (Secretary of Labor and Social Security) re-inspect the plant, continue monitoring on a regular schedule, issue the corrective measure to the employer and impose sanctions if the violations persist at the plants (Shurtman 328). They also stated in the closing of their letter, "the U.S. and Mexican governments must establish a reasonable timetable for the conduct of ministerial consultations and implementation of the submitters' recommendations" (Shurtman 328-329).

Submitters had much trouble during the NAALC process getting information from the NAOs and were left wondering when reviews would be held (Shurtman 326). The untimeliness of the process led submitters to emphasize the NAALC resolution-dispute process needed to be conducted in a more efficient manner so workers could be remedied as soon as possible (328).

On June 11, 2002 a Joint Ministerial Declaration was signed by the US and Mexican Labor Secretaries (Shurtman 332). The Ministerial Declaration declared that the problems that were raised in the submission would be resolved by establishing an "intergovernmental Working Group to further study the issues" (Shurtman 332). Unfortunately, the Joint Declaration "neither adopted any of the submitters' proposals, nor referred to one of the workers' primary concerns: the failure of the IMSS to comply with its own laws, regulations, and norms regarding treatment and compensation for work-related injuries and illness" (Shurtman 332).

The requests made by the submitters and the action taken by the Ministerial Council clearly does not match. After five years of time and energy put into this case the remedy that was given has achieved nothing for the workers: " No evidence exists that their [the submitters] efforts achieved measureable gains in the enforcement of occupational health and safety laws at other maquiladoras" (Shurtman 338). The realization that nothing was gained for the workers after going through the arduous NAALC resolution-dispute process has led to many frustrations and concerns by experts and workers alike. As Garrett Brown, an occupational health and safety expert and coordinator or the Maquiladora Health and Safety Support Network states:

> If after dotting ever 'i' and crossing every 't', these Mexican workers, who have suffered serious health problems due to conditions at their plants, can't get the company or the Mexican and U.S. governments to correct the serious health and

> safety hazards documented by the U.S. Labor Department and U.S. NIOSH investigations, what does this mean for the enforcement of labor rights under NAFTA (Shurtman 338)

The lack of remedy that comes from even "successful" cases may be the reason that in the past twenty-three years, the total lifetime of the NAALC, only thirty-nine cases have been submitted. However, even after the less than ideal remedy provided by the Ministerial Council, the submitters of the original case have continued to "press for a more concrete resolution of the case" (Shurtman 294).

The workers have expressed their distaste for the "intergovernmental Working Group" that was created by calling the Joint Declaration "all talk and no action" (Finbow 127; Shurtman 294). The submitters have done far more than just voice complaints about the remedy given by the Ministerial Council. Additionally, the workers have tried and communicate with the labor ministers about their concerns and have made it known they would like to be apart of the remedy process (Shurtman 294). For example, the workers recommended member countries "enhance enforcement of existing occupational healthy and safety laws," but the NAALC never responded to their suggestion (Shurtman 294). Additionally, the workers and the NGOs that participated in the petition asked the labor ministers if they could take part in the "intergovernmental discussions" in respect to the Auto Trim case: this request was denied (Shurtman 294). Now that I have detailed two cases, USNOA 94001 and USNAO 2000-01, I will explain my findings and give recommendations on the matter.

Findings

In this section of the paper, I will explain the findings I discovered in the case studies in

which I detailed in the previous section.

After reviewing the two cases, USNAO 19004 and USNAO 2000-01, it seems that there are several problems with the dispute resolution process that is set up in the NAALC. To start, the NAALC determines whether or not it will review a case. If an NAO feels that the submission filed would not "meet the objectives" of the NAALC than it will decline to review the case ("Submissions under the NAALC"). However, if one of the main objectives of the NAALC is to "encourage the improvement of labor standards across North America" than it naturally follows that a submission alleging labor violations should at least have an investigation conducted and a report issued by one of the NAOs (Caulfield 66).

Moreover, I found that even when the NAOs find wrongdoing or imply they have found wrongdoing, they do not necessarily remedy the wrongdoing. For example, in both the Honeywell and Auto Trim cases, the US NAO believed the submitters had legitimate claims and violations had occurred (USNAO Submission #94001 and #94002 32; USNAO Submission #2001-01 6). However, even though the NAALC acknowledged the violations, they did not do anything to directly remedy the workers; even though in both cases workers asked for direct remedies (USNAO Submission #94001 and #94002 33; USNAO Submission #2001-01 55). This is most likely due to states unwillingness to enforce their labor law (Bieszczat 1404). Due to their unwillingness to act it seems "nearly impossible that the NAALC's goals will be achieved through a process that relied upon state action" (Bieszczat 1404).

However, the most problematic finding in the cases were that even when a ministerial consultation occurred, workers *still* are not remedied for the injustice that has occurred. Having the NAO grant a ministerial consultation is thought to be a "success" in terms of the NAALC

dispute-resolution process. However, even when a case is "successful" this does not guarantee workers involved in the case will receive any remedy. Without the NAALC's ability to monitor corporate practices, it seems that laws, regulations and standards will continue to be under-enforced and in many cases simply unenforced.

Recommendations

In this section of the paper, I will provide three recommendations for strengthening the NAALC.

Independent Oversight Body

Currently, the Ministerial Council, which ultimately ensures compliance with the NAALC, is made up of the Mexican and US Secretary of Labor and the Canadian Minister of Labor (Compa 9). This means that the head of labor for each government is monitoring how their country's government in complying with the NAALC. While it may seem fitting that the Secretaries/ Minister of Labor would oversee the labor accord, there seems to be a reluctance to actually enforce the agreement (Bieszczat 1403, Human Rights Watch 6)

The reason that many scholars believe the NAALC is being ill enforced is due to the politicization of the job (Jacobs 139; Bieszczat 1403, Human Rights Watch 6). What this means is that government compliance is being ensured by a body of government workers. This leads to a lack of political will, because political appointees do not want to make their country appear incompliant, negligent or cruel (Jacobs 139). This can most obviously be seen in the reasoning behind never calling for an Evaluation Committee of Experts (ECE) to occur: if the case stops at ministerial consultations then no expert (outsider) input can testify to the wrongdoings of the government (Jacobs 139).

The nature of the job is to enforce the NAALC and to adhere to the mission of creating better labor standards across North America. Therefore, a more isolated, apolitical body would be better able to enforce the agreement (Jacobs 139). “As researcher Cody Jacobs states in his article, "Trade We Can Believe In: Renegotiating NAFTA's Labor Provisions To Create More Equitable Growth In North America," “a permanent supranational body that is more isolated from political and diplomatic concerns would be able to provide a much more neutral arbiter of the agreement as well as a source of consistent interpretations of the agreement that diplomatic negotiations simply cannot provide” (140). An independent body would be able to fully focus about on mission of the NAALC and would be less likely to get tied up in the political issues taking place in the member countries (Human Rights Watch 2).

Penalizing Corporations

The NAALC, currently, only provides language that holds governments responsible for lack of compliance with labor law. As stated in the Honeywell case, “the NAO review has not been aimed primarily at whether or not the two companies named in submission acted in violation of Mexican labor law” (USNAO Submission #94001 and #94002 28). This method proves to be problematic because when Mexican workers get terminated, but need money due to economic hardships, they feel pressed to take a severance package; like what was seen in the Honeywell case (USNAO Submission #94001 and #94002 29). Under Mexican law once a severance package is taken then the worker waives their right to file a claim against their former employer (USNAO Submission #94001 and #94002 3).

The Honeywell case demonstrates how legal loopholes allow abuses to continue. The NAALC only ensures the government is complying with the NAALC and if employees who are wrongfully terminated continue taking severance then the Mexican government, under the

current provisions in the NAALC, the employer can not be held responsible. This system seems convenient for the Mexican government and the corporations that have manufacturing plants in Mexico. However, I believe the process should not be so easily manipulated.

One of the main objectives of the NAALC is to "improve workings and living standards in each Party's territory" ("North American Agreement on Labor Cooperation"). This goal is currently not being met and will never be met if legal loopholes allow for abuses to continue occur. Therefore, it seems that the best way to remedy the problem is to add provisions to the agreement that would create a means to ensure corporations were complying with the NAALC.

If corporations were held accountable for the abuses that occur under *their* watch, government officials may feel more compelled to participate in the dispute-resolution process and corporations may begin to worry about workplace violations due to potential penalties.

I understand that by including provisions regarding compliance by corporations, the agreement would take on a new meaning/function because the current agreement solely aims to insure government compliance with domestic law. However, after much review of the cases that have gone before the NAOs, I believe the easiest way to ensure workers are being treated fairly is to monitor the actions of their employer. Theoretically, this could also increase cooperation by the governments when complaints are made to the NAOs because the burden to uphold labor standards would not solely be placed on the government.

Conclusion

In this section of the paper, I will state my final conclusion.

The NAALC has been in effect for twenty-three years, yet only thirty-nine submissions have ever been made to the NAOs. Furthermore, of those thirty-nine submissions, the farthest any of those have gone in the dispute-resolution process is to ministerial-consultations.

Therefore, we are able to speculate that there has been/ is reluctance by the Ministerial Council, made up of the Mexican and United States Secretary of Labor and Canadian Minister of Labor, to pursue further examinations of the cases. The lack of political will to fully investigate cases and, more importantly, formulate tangible remedies for workers has rendered the NAALC useless for workers who submit complaints.

As noted in the Case Study and Findings section of the paper, the cases that make it to ministerial consultations are considered "successful," yet individual workers are not ever provided substantial remedies. The lack of enforcement power by the NAALC and the unwillingness to provide remedies has created doubts in the minds of the workers. These doubts that have been created due to the less than ideal solutions created by the Ministerial Council is most likely the primary reason only thirty-nine complaints have ever been submitted to the NAALC.

The ineffectiveness of the NAALC, which I have proven throughout the entirely of this paper, has made me conclude changes to the structure and function of the NAALC need to occur in order to ensure the NAALC upholds the main objectives of the agreement: the objectives are: improving working conditions in North America; promoting a set of eleven labor principles; encouraging cooperation to increase productivity and quality; encouraging information exchanges to understand the labor laws in each country; pursing cooperative labor-related activities; enforcing domestic labor law; and fostering transparency in the administration of labor law ("North American Agreement on Labor Cooperation"). Since these objectives are not being met, I recommend two changes that would help with enforcement and compliance with the NAALC. First, create an independent oversight body to enforce the NAALC. Having government officials perform this task has proven to be unsuccessful due to the conflicting

political aspects of the job. Second, create provisions in the text that would allow for the NAALC to monitor corporations. If the NAALC could make findings about corporate behavior, they could hold corporations accountable for their misdeeds and provide direct recommendations or punishments to the corporations.

Overall, the lacking will power of the Council on Labor Cooperation to ensure that labor standards are being complied with and workers are being remedied has created many doubts for workers. The NAALC dispute-resolution process must be fixed in order to ensure fair labor practices are occurring in Mexico, Canada and the United States. The NAALC has had twenty-three years to enhance labor standards and ensure enforcement, but has failed. Due to the lack of will power and continued non-compliance, the NAALC must be renegotiated in order to create real change for workers in Mexico.

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