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## NAFTA: Institutional Aspects: Labor and the Secretariat

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# NAFTA: Institutional Aspects:

## *Labor and the Secretariat*

*Monica Feldmann*

### ***I. The North American Agreement on Labor Cooperation***

The North American Agreement on Labor Cooperation (Labor Side Agreement) was signed by the Presidents of the United States of America and the United Mexican States, and the Prime Minister of Canada in September, 1993.<sup>1</sup> The Labor Side Agreement to the NAFTA calls for a multi-tiered governing body. This body is comprised of a National Administrative Office in all three signatory countries, a Ministerial Council, and a Labor Secretariat. The Council and Secretariat together form the Commission for Labor Cooperation. All three of these organizations and their functions will be discussed below.

#### **A. GOALS OF THE LABOR SIDE AGREEMENT**

The goal of the Labor Side Agreement is to improve labor conditions and promote the enforcement of national labor laws in the United States (U.S.), Mexico, and Canada.<sup>2</sup> The Labor Side Agreement hopes to achieve these goals in a manner different from past attempts. The Labor Side Agreement mentions certain labor principles which are not meant to establish minimum standards for each country's domestic law.<sup>3</sup> Rather, the Labor Side Agreement focuses on enforcing each country's existing labor law.

The Labor Side Agreement centers on having each country detail their own labor policies, and then encourages the countries to enforce these standards.<sup>4</sup> This format is different than other agreements, such as the GATT, that have set forth specific standards to be followed.<sup>5</sup> The Labor Side Agreement builds upon existing labor standards, which respects each Party's sovereignty. Historically, developing nations, including Mexico, have resisted actions that ignore their sovereignty.<sup>6</sup> By using existing labor standards as a starting point, the hope is that the signatory countries will be more inclined to cooperate.

1. Revised Notice of Establishment of U.S. National Administrative Office, 59 Fed. Reg. 16,660 (Apr. 7, 1994).
  2. Richard Rothstein, Economic Policy Institute, Briefing Paper — Setting the Standard: International Labor Rights and U.S. Trade Policy (1993), cited in Juli Stensland, Internationalizing the North American Agreement on Labor Cooperation, 4 Minn. J. Global Trade 141 (1995).
  3. North American Agreement on Labor Cooperation, Dec. 17, 1992, U.S.-Mex.-Can., Pub. L. No. 103-182, 107 Stat. 2057, reprinted in 32 I.L.M. 1499 (1993) [hereinafter NAALC].
  4. *Id.* art 3.
  5. Juli Stensland, Internationalizing the North American Agreement on Labor Cooperation, 4 Minn. J. Global Trade 141 (1995).
  6. R. Neils Marquardt, Why Workers Rights?, 65 Foreign Service J. 25, 25 (1988), and Steve Charnovitz, the Influence of International Labour Standards on the World Trading Regime, 126 Int'l Lab. Rev. 565, 565 (1987).
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The Labor Side Agreement contains a number of broad objectives to help the countries reach the overall goal of the Labor Side Agreement. These include: (1) improving working conditions and living standards in each country; (2) promoting specified labor principles, encouraging cooperation to promote innovations and raise levels of productivity and quality; (3) encouraging publication and exchange of information, including joint studies; (4) pursuing cooperative labor-related activities; (5) promoting compliance with and effective enforcement of each party's labor laws; and (6) fostering "transparency" in the administration of labor laws.<sup>7</sup> The U.S., Mexico, and Canada have agreed to ensure that their own labor laws provide for both high and consistently improving labor standards.<sup>8</sup>

#### **B. BODIES PROVIDED FOR BY THE LABOR SIDE AGREEMENT**

The Labor Side Agreement establishes the Commission for Labor Cooperation which is comprised of the Ministerial Council and Labor Secretariat.<sup>9</sup> The Council is composed of labor officials from the signatory countries. The Labor Secretariat is headed by a Canadian, John McKennirey, and staffed by 15 employees from the three member countries.

The Commission for Labor Cooperation is assisted in information gathering by each country's National Administrative Office (NAO). The NAO is the principal point of contact with the other member governments and with the Secretariat.<sup>10</sup> In the U.S., the NAO is part of the Department of Labor's Bureau of International Labor Affairs in Washington.<sup>11</sup>

### **II. The Commission for Labor Cooperation**

The Commission's purpose is to ensure compliance with the goals and objectives of the Labor Side Agreement. The Commission is comprised of a Ministerial Council and Secretariat, which are vested with certain investigatory and enforcement powers.<sup>12</sup>

#### **A. MINISTERIAL COUNCIL**

The Ministerial Council is comprised of U.S. Labor Secretary Robert Reich, Mexican Secretary of Labor and Social Welfare Santiago Onate Laborde, and Canadian Labor Minister Lucienne Robillard.<sup>13</sup> The Ministerial Council is the governing body of the Commission. The Council is concerned with several subjects, including: (1) occupational safety and health; (2) child labor; (3) labor statistics; (4) work benefits; (5) equality in the workplace; (6) provision of technical assistance, at the request of a Party for the develop-

7. David Joffe, NAFTA Side Pact on Labor Lays Out Ambitious Plan, May 13, 1994, Dallas Bus. J.

8. *Id.*

9. NAALC, *supra* note 3, art. i(g).

10. James M. Samples, Labor Side Agreement Important Part of NAFTA, Oct. 3, 1994, Star Trib. (Minneapolis-St. Paul) 03D.

11. *Id.*

12. *Supra* note 7.

13. Labor: NAFTA Signatory Officials to Meet on Establishment of Labor Secretariat, 11 Int'l Trade Rep. 27 (Jul. 6, 1994), and NAALC, *supra* note 3, article 11.

ment of labor standards; and (7) any other matters as the Parties agree.<sup>14</sup> It is hoped that by having such a far-reaching list that trilateral information sharing and technical assistance will be stimulated.<sup>15</sup>

The Ministerial Council's duties have recently included naming the executive director of the Secretariat as well as approving a budget for the Secretariat. The Council set the budget at approximately \$300,000 for the 1994 fiscal year, and \$3 million for the following fiscal year.<sup>16</sup>

The Ministerial Council is also part of the enforcement mechanism of the Agreement. Any Party may request consultations with any other Party "regarding any matter within the scope of the Labor Side Agreement."<sup>17</sup> These consultations occur at the ministerial level and are expected to occur with the exchange of publicly available information. However, if an agreement cannot be reached between the parties, the requesting party may take the next step. The party can go to the Council with a written request asking for the establishment of an Evaluation Committee of Experts (ECE).<sup>18</sup> The Council has no discretion in granting the request unless the issue was the subject of a prior ECE report with no new information present, or if the matter is not "trade-related" or not covered by "mutually recognized labor laws."<sup>19</sup>

The ECE analyzes patterns of practice in the enforcement of each Party's labor standards. The ECE is, however, limited to the review of issues regarding "occupational safety and health or other technical standards" that have not been considered in other bilateral ministerial consultations.<sup>20</sup> These standards are defined in the Labor Side Agreement and include the "prevention of occupational injuries and illnesses" and the "compensation in cases of occupational injuries and illnesses."<sup>21</sup> They also include child labor protections, minimum employment standards, employment discrimination prohibitions, equal pay, and protection for migrant workers.<sup>22</sup>

Once the ECE has decided it may assess the matter, the Committee engages in a comparative assessment, draws conclusions, and makes practical recommendations within a specified time frame.<sup>23</sup> If the ECE report involves the enforcement of a Party's "occupational safety and health, child labor or minimum wage technical labor standards," then the Party will request consultations to determine if there has been a "persistent pattern of failure . . . to effectively enforce such standards."<sup>24</sup> These become formal Council-level consultations that may result in sanctions.

14. Katherine A. Hagen, *Fundamentals of Labor Issues and NAFTA*, 27 U.C. Davis L. Rev. 917, 926 (1994).

15. Labor: Cooperative Projects under NAFTA Pact to include Safety, Productivity, 11 Int'l Trade Rep. 12 (Mar. 23, 1994).

16. NAALC, *supra* note 3, art. 22.

17. Hagen, *supra* note 16, at 927.

18. NAALC, *supra* note 3, art. 23.

19. *Id.*

20. *Id.* art. 29, and Hagen, *supra* note 14, at 928.

21. *Id.*

22. Hagen, *supra* note 14, at 929.

23. NAALC, *supra* note 3, art. 27.

24. *Id.*

If the Council fails to resolve the matter through consultations, an arbitral panel may be established by a two-thirds vote of the Council.<sup>25</sup> At this stage the matter must be determined to be trade related, based on mutually recognized labor laws, and deal with a persistent failure to enforce standards applying to occupational safety and health, child labor, or minimum wage.<sup>26</sup> The arbitral panel can impose a monetary enforcement assessment on the delinquent party, but it first must exhaust efforts to implement a "mutually satisfactory action plan."<sup>27</sup> During the first year of the Labor Side Agreement, these monetary assessments have been capped at \$20 million, and at 0.007% of total trade between the Parties in subsequent years.<sup>28</sup>

### B. LABOR SECRETARIAT

The Labor Secretariat is situated in Dallas, Texas, and the executive director is a Canadian, John S. McKennirey. McKennirey's term will run for three years. Before coming to the Secretariat, McKennirey was Canada's lead negotiator for the Labor Side Agreement. He has been a Canadian public servant, who most recently served as Director of General Staff Relations and Compensation at Canada's Department of National Revenue.<sup>29</sup> In his previous position, McKennirey was responsible for labor relations, compensation, and related policy for the largest federal government department in Canada. This experience made McKennirey the perfect choice to head the trinational Labor Secretariat.

The Secretariat's 15 member staff consists of 5 members from each signatory country. The Secretariat's main duties consist of preparing background reports on: (1) labor law and administrative procedures; (2) trends and administrative strategies related to the implementation and enforcement of labor law; (3) labor market conditions such as employment rates, average wages and labor productivity; and (4) human resource development issues, such as training and adjustment programs of the three countries.<sup>30</sup> Not only will the Secretariat prepare reports, but it will also conduct studies related to any labor law matters that the Council requests.<sup>31</sup> The Secretariat supports, and is fully accountable to the Council.

### III. National Administrative Offices (NAO)

Each of the member countries has set up a NAO to assist in the implementation of NAFTA and the Labor Side Agreement. Each NAO is set up to be the principle point of contact with the other member governments and the Secretariat. The NAO's are largely trans-

25. Hagen, *supra* note 14, at 929.

26. NAALC, *supra* note 3, art. 37-39.

27. *Id.*, annex 39.

28. Labor: McKennirey of Canada Named to Head NAFTA Trinational Labor Commission, 12 Int'l Trade Rep. 9 (Mar. 1, 1995).

29. NAALC, *supra* note 3, art. 14.

30. *Supra* note 28.

31. Hagen, *supra* note 14, at 927.

mitters of information and may consult with each other regarding any party's labor law, administration, or market conditions.<sup>32</sup>

#### A. DUTIES OF THE NAO

The U.S. NAO will be the central point of contact for all labor related NAFTA issues. The duties of the office include: (1) providing assistance to U.S. Agencies, the other NAO'S, the secretariat, and the Ministerial Council; (2) accepting public submissions on labor law matters arising in Mexico and Canada; (3) initiating a review of any matter covered by the Labor Side Agreement at the discretion of the NAO secretary; and (4) publishing periodic reports, including lists of public submissions on labor law matters, lists published by other NAO'S, and any special reports made under its purview.<sup>33</sup> The NAO is also responsible for making public "communications on labor law matters arising in the territory of another Party."<sup>34</sup>

### IV. Labor Issues Today

A major focus of current labor issues is on Mexico and its labor relations history. Significant pressures are being placed on the multinational companies operating in Mexico and on the Mexican government to improve wages and working conditions.<sup>35</sup> U.S.-based labor unions and human rights groups are working with their Mexican counterparts to try and develop a more positive labor relations climate in Mexico.<sup>36</sup> For instance, the Teamsters and the United Electrical Workers, who asked for a review by the U.S. NAO based on a Mexican company's interference with organizational right,<sup>37</sup> have formed an alliance with the largest independent Mexican Union, the Authentic Workers Front.<sup>38</sup>

In August 1994, a third submission was made to the U.S. NAO by four U.S. and Mexican human rights organizations. These groups made charges against Sony and the Mexican government for "lax enforcement of its internal labor laws."<sup>39</sup> These groups also charged Sony with similar offenses as the Teamsters and United Electrical Workers, including Sony's interference with the organizational rights of workers in Mexican plants and discharging employees attempting to organize workers.

32. Labor: DOL Sets Up Office to Monitor Labor Issues Arising under NAFTA, 11 Int'l Trade Rep. 17 (Jan. 5, 1994), citing 58 Fed. Reg. 69,410 (Dec. 30, 1993).

33. Stensland, *supra* note 5.

34. James M. Samples, Labor Side Agreement Important Part of NAFTA, Oct. 3, 1994, Star Tribune (Minneapolis-St. Paul), 03D.

35. *Id.*

36. Implementation: Labor and Environmental, 1 NAFTA Rev. 103, 114 (Mar. 1995).

37. Samples, *supra* note 34.

38. *Id.*

39. *Id.*

### ***V. Conclusion***

The Labor Secretariat has been established and with this comes the hope of more interaction between the Parties with respect to the Labor Side Agreement. A successful Labor Secretariat is a large step in securing the prosperous future of the NAFTA. The Secretariat will further the goals of the Labor Side Agreement by making information more readily accessible and by enforcing the "high labor standards" provided for by the Agreement and domestic labor law.