

U.S. Chamber of Commerce



February 4, 2004

Mr. Lewis Karesh
Acting Director, U.S. National Administrative Office
U.S. Department of Labor, Room S-5205
200 Constitution Avenue, NW
Washington, DC 20210

RE: Comments by the U.S. Chamber of Commerce on the Operation and Effectiveness of the North American Agreement on Labor Cooperation

Dear Mr. Karesh:

The U.S. Chamber of Commerce (Chamber) is pleased to submit these comments in response to the Department of Labor's notice, published in the *Federal Register* on November 5 and 25, 2003,¹ seeking public comments on the operation and effectiveness of the North American Agreement on Labor Cooperation (NAALC).

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, with substantial membership in all 50 states. Chamber members have significant operations in Canada and Mexico, in addition to the United States. Implementation of the North American Free Trade Agreement (NAFTA) and the NAALC has a significant impact on Chamber members.

These comments are critical of the way that the public submission process has been used by those seeking to wage corporate campaigns against specific employers and suggest several ways in which the process could be improved to ensure that the focus remain on systematic failures of a NAALC partner country to enforce its labor laws. These recommendations include adopting procedures that ensure that submissions based on a single incident or on a matter not yet fully adjudicated are not accepted. Likewise, cases should not be referred to by company name, but by an alternative label and greater care should be taken to ensure hearings are not used as a platform for corporate campaigns. In addition, affirmative steps should be taken to ensure that the NAOs are not involved in an ongoing labor dispute.

¹ The original notice was published on November 5, 2003. 68 Fed. Reg. 62,620. The November 25 notice extended the comment period until February 4, 2004. 68 Fed. Reg. 66,125.

These comments also highlight the many successful cooperative activities undertaken pursuant to the NAALC. These activities have led to a better understanding of the North American labor market and each country's respective laws. The Secretariat's efforts at promoting comparative law materials are particularly useful as a resource for employees, employers, academics, policy makers, and other stakeholders. The Chamber encourages increased emphasis on such cooperative activities.

Context

Many critiques of the NAALC misconstrue the purpose of the agreement and the roll that its drafters envisioned, arguing that the NAALC is structurally flawed and cannot possibly be an effective tool. However, the NAALC was never designed to operate as a panacea to cure labor and employment matters that could arise as a result of increased trade and investment. To the contrary, the NAALC was adopted as one component of a plan designed to increase the potential benefits of NAFTA while reducing any potential negative impact of entering into the trade agreement. For example, when former President Clinton announced his intent to open negotiations on the NAALC, he called for complimentary domestic programs, such as a worker training initiative designed to help mitigate any loss of domestic jobs and to maintain a skilled domestic workforce for the Twenty-first Century.²

As negotiations on the NAALC were completed, the agreement raised some serious concerns among U.S. Chamber members. Key among those concerns was the fact that the agreement provides for the possibility of trade sanctions as a result of a violation of labor provisions in the NAALC, a premise with which the Chamber generally disagrees. However, the Chamber chose not to actively oppose the NAALC because, on balance, the agreement emphasized cooperative measures likely to help the NAFTA partners over adversarial processes that could ultimately divide the partners, lead to an escalating trade war, or unfairly single out a particular industry or market for the failings of a government to adhere to the terms of its agreement.

The appropriate measure by which to consider the operation and effectiveness of the NAALC, therefore, is not its ability to address all perceived deficiencies in labor and employment law or enforcement thereof in its constituent countries. Rather, in measuring the operation and effectiveness of the NAALC it is important to remember that it was designed to be just one tool that would be helpful in mitigating the potential adverse impact of increased trade by the parties.

Submission Process

While the focus of the NAALC is cooperative efforts among the parties, it does provide a mechanism for individuals, unions, employers, and other members of the public to submit communications to National Administrative Offices (NAOs) on "labor law matters arising in the territory of another Party."³ To implement this mechanism, each party has adopted procedural guidelines for the review of submissions. The NAALC also

² See, e.g., E.J. Dionne Jr., *Clinton Cautiously Backs Free-Trade Pact; Democrat Urges 'Supplemental' Agreements With Mexico and Canada, Aid for U.S. Workers*, WASH. POST, OCT. 5, 1992, at A6.

³ Article 16(3).

includes a number of procedures by which submissions are considered by the parties, including consultations and potential review by an evaluation committee of experts. Certain unresolved matters could also be subject to dispute resolution procedures and ultimately monetary assessments and trade sanctions.

While the submission process is a comparatively minor part of the NAALC, it has attracted the most attention and criticism. The Chamber appreciates the view that members of the public should have a mechanism to raise concerns within the scope of NAALC and ensure that those concerns be given due consideration. Unfortunately, there is significant potential for abuse of the submission process by those who may be motivated less by ensuring that the NAALC objectives are carried out but by other factors, for example, influencing an ongoing labor dispute or waging an adverse publicity campaign, such as a corporate campaign, against an employer.

The NAOs and the NAALC signatories face a significant challenge in ensuring that the submission process is not abused by those with ulterior motives. This is largely due to the fact that the process is highly visible. However, there are a number of steps that the NAOs, the Secretariat, and NAALC signatories could take to ensure the NAALC submission process is not abused.

Corporate Campaigns

While a full discussion of corporate campaigns is beyond the scope of these comments,⁴ a brief description may be helpful to understand how the submission process could be used as one element of such a campaign. At its most basic level, a corporate campaign is a coordinated effort to force a corporation to take a particular action. For example, in the union representation context, it is not uncommon for a labor organization to wage a corporate campaign against an employer to force it to recognize the union without a secret ballot election conducted by the National Labor Relations Board. As described by one federal court, the corporate campaign

encompasses a wide and indefinite range of legal and potentially illegal tactics used by unions to exert pressure on an employer. These tactics may include, but are not limited to, litigation, political appeals, requests that regulatory agencies investigate and pursue employer violations of state or federal law, and negative publicity campaigns aimed at reducing the employer's goodwill with employees, investors, or the general public.⁵

As described by Communications Workers of America (CWA) President Morton Bahr, labor unions favor waging corporate campaigns as a way to exert economic pressure over employers as compared to striking, the traditional economic weapon of unions, because corporate campaigns “put even greater economic pressure on

⁴ For an excellent discussion of corporate campaigns, see JAROL B. MANHEIM, *THE DEATH OF A THOUSAND CUTS: CORPORATE CAMPAIGNS AND THE ATTACK ON THE CORPORATION* (2001).

⁵ *Food Lion, Inc. v. UFCW*, 103 F.3d 1007, 1004 n.9 (D.C. Cir. 1997).

[employers] ... while allowing union members to stay on the job, earning their wages.”⁶ Certainly, however, many corporate campaigns do not have the interests of the workers most immediately impacted at heart. For example, as noted by George Washington University professor Jarol Manhein, among the top reasons unions wage corporate campaigns is to punish an employer, “even to the point of driving it out of business.”⁷

In the context of the NAALC, organized labor has used the submission process as part of corporate campaigns similar to methods by which it uses agency investigatory processes to focus attention toward a company and to help drive public opinion. While such a submission may implicate issues covered by the NAALC, the principal purpose of the submission is not to better achieve the goals of the NAALC but to force a particular employer to engage in some desired conduct, for example, recognizing a union without a secret ballot election or to accept union demands during contract negotiation.

Example of Abused Submission Process – Mexican Submission 9501 (plant closings)

One of the first submissions made under the NAALC was made through the Mexican NAO raising issues regarding freedom of association and the right to organize in the context of an employer that suddenly closes its business. The facts submitted to the Mexican NAO involved a single incident at a U.S. telecommunications company.

The factual background⁸ involved a U.S.-based multinational telecommunications company (the parent) that purchased a California-based company (the subsidiary) whose business model involved marketing long distance telephone service to Spanish speaking customers. Specifically, the employer decided to close the subsidiary on July 14, 1994, and immediately terminate its employees, with 60 days pay and benefits. The submitters felt that the employee layoffs interfered with the employees’ right to organize and bargain collectively, because when the shutdown was announced, the CWA and the subsidiary had already agreed to hold a representation election on July 22.

However, the assertion that worker rights were violated ignores the very serious financial difficulties that faced the subsidiary company. In fact, it was running a \$4.5 million loss for the year in 1994 when the decision to close was made, in comparison to the \$8 million in annual profit the parent company had expected.

While there were certainly additional facts that complicated analysis of the case, in the end a federal appeals court ruled that the employer did not act with anti-union animus in its decision to close the facility, but did so based on the “overwhelming record evidence that [the subsidiary] was in a serious and sustained financial decline throughout the months before its closure.”⁹ In other words, the company’s action in closing the subsidiary was based on lawful economic concerns, not an unlawful attempt to interfere with employee rights.

⁶ Elizabeth Lesly, *Union at AT&T Has Tough Option; Wants Workers, Pals To Use Competitors*, WASH. TIMES, Jun. 5, 1992.

⁷ MANHEIM, *supra* note 4, at 193.

⁸ Facts taken from *LCF, Inc. v. NLRB*, 129 F.3d 1276 (D.C. Cir. 1997).

⁹ *Id.* at 1283.

However, long before the federal courts ruled on the lawfulness of the shutdown, the union filed its NAALC submission for the principal purpose of helping shape public opinion toward the parent company as part of a corporate campaign with the ultimate goal of organizing the parent company's long distance company.¹⁰ While the union focused on traditional elements of organizing, including education campaigns targeting the employer's employees, it also included corporate campaign elements. For example, to pressure the employer to yield to union demands, the union solicited the help of overseas unions who had more influence over the employer's global partners.¹¹ In fact, the CWA had laid the groundwork for a campaign using the NAALC by forming alliances with its Mexican and Canadian counterparts to strategically use the NAALC in pressuring employers.¹² Indeed, the CWA explicitly consulted with its Mexican counterpart prior to its submission with the Mexican NAO.¹³

Flaws in Submission Process

Using the plant closing case as an example, it is easy to see how the NAALC submission process is attractive in waging a corporate campaign and to identify flaws that should be corrected. Key problems with the submission process that exacerbate its misuse include the acceptance of submissions related to a single incident, acceptance of submissions before adjudicated in the country of jurisdiction, the identification of cases by names of employers, and a hearing process easily used to propagate inflammatory rhetoric targeted towards an employer. In addition, the NAOs should take affirmative steps to adopt processes to prevent misuse of the submission process to affect an ongoing labor dispute.

First, **submissions based on a single incident should not be accepted.** The submission process permits members of the public to challenge whether a NAALC partner country is effectively enforcing its labor and employment laws. However, determining whether enforcement has been effective is hardly possible based on a single set of facts and circumstances. Indeed, it would seem that any fair analysis of whether enforcement has been effective could only be made after examining enough separate events or circumstances to establish a systemic failure to effectively enforce labor laws.

Second, **submissions should not be accepted based on claims not fully adjudicated.** It should be axiomatic that no claim for ineffective enforcement can be made until the results of any enforcement action are known. In the plant closing case described above, the employer was found to have acted within the law and thus its actions could not implicate the NAALC. Yet, the employer was still faced with the adverse publicity generated by the NAALC submission. The U.S. NAO recognizes the

¹⁰ See *GTE-Sprint First Nonunion Long Distance Target for CWA*, COMM. DAILY, Dec. 18, 1984.

¹¹ See Tim Shorrock, *Mexican Trade Union Steps In To Defend US Workers' Rights*, J. OF COM., Feb. 13, 1995 ("the CWA has also applied pressure of Sprint through German unions that sit on the board of directors of Deutsche Telekom AG, which is negotiating a 10 percent state in Sprint valued at more than \$2 billion.").

¹² Terry Boswell and Dimitris Stevis, *Globalization and International Labor Organizing: A World-System of Perspective*, WORK & OCCUPATIONS, Aug, 1997.

¹³ Shorrock, *supra* note 11.

importance of the domestic enforcement process in its submission guidelines by reserving the right to reject submissions where appropriate relief has not been sought under domestic laws.¹⁴

It should be clear that no judgment can be made about the effectiveness of a law or enforcement thereof while legal proceedings are still ongoing or if the disputing parties have yet to exhaust the legal resources at their disposals. Ensuring that claims not fully adjudicated are not accepted in conjunction with our recommendation that NAOs not accept submissions based on a single incident would go a long way toward ensuring that submissions are focused on a NAALC country's systemic failure to enforce the relevant laws.

Third, **cases should not be identified by employer names.** Employers are not party to the NAALC, countries are. Proper submissions should allege failure of a NAALC party to carry out its responsibilities under the agreement. While we understand that such a case may necessitate consideration of a number of specific facts and cases that could include the use of an employer's name, labeling a case based on the name of an employer at the least implies that the employer is a party to the case and may bear some culpability.

The Chamber appreciates the efforts that the NAALC Secretariat has made in referring to cases by number or by a label other than a particular employer's name. However, the U.S. NAO still maintains a web site and documents in which most cases are referred to by employer name.¹⁵ We urge the Secretariat and NAO to continue to move away from this practice and find alternative ways of referring to cases.

Fourth, **the hearing process should not be used as a platform for corporate campaigns.** Even though the NAO may advise witnesses that public hearings on submissions are not adversarial, witnesses tend to treat the hearings as adversarial and testimony frequently singles out a particular employer. For example, in the plant closing case discussed above, CWA President Morton Bahr's testified that the forum demonstrated that the NAALC "would provide another vehicle to hold [the employer] and other companies who violate workers rights accountable for their actions."¹⁶ Bahr also testified that the employer "must be reminded again and again that the CWA and all those who have stood up for the rights of these workers will never give up this fight until [the employer] provides them with meaningful remedies, including compensation and job opportunities at other ... locations."¹⁷

¹⁴ U.S. NATIONAL ADMINISTRATIVE OFFICE, U.S. DEPARTMENT OF LABOR, NORTH AMERICAN AGREEMENT ON LABOR COOPERATION: A GUIDE, 6 (1998).

¹⁵ See <http://www.dol.gov/ilab/programs/nao/status.htm>.

¹⁶ COMMISSION FOR LABOR COOPERATION, PLANT CLOSINGS AND LABOR RIGHTS: A REPORT TO THE COUNCIL OF MINISTERS ON THE EFFECTS OF SUDDEN PLANT CLOSINGS ON FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE IN CANADA, MEXICO, AND THE UNITED STATES, app. F, (*hereinafter* Plant Closing Study) Available online at: http://www.naalc.org/english/nalmcp_16.shtml.

¹⁷ *Id.*

While hearings may be a useful tool for receipt of information, it is likely that less formal methods will generally produce sufficient information for the NAALC secretariat or an NAO to complete its work. Unfortunately, hearings too often fail to produce the kinds of substantive discussions that are helpful to truly understand a complicated issue and on the contrary, frequently serve only as a highly visible platform for propagating inflammatory rhetoric that can all too easily be used to mount an adverse campaign against employers.

Finally, to protect the NAALC process from misuse, **NAOs should take affirmative steps to ensure that the submission process is not being used intervene or interfere with labor disputes.** In particular, when a submission is received, the NAOs should assess whether an ongoing labor dispute is in progress and whether acceptance of the submission or further proceedings would tend to have an impact on that dispute. The submission process was not designed for the redress of individual grievances, but rather to examine the systemic failure of a NAALC country to enforce its labor laws. For this reason, submissions that involve ongoing labor disputes should be rejected. At the very least, NAOs should proceed with extreme caution in such cases, taking care to ensure that they do not get drawn into the dispute and to ensure that those seeking to resolve a particular grievance do not exploit processes under the NAALC. Taking such a step would not be unprecedented. For example, in the immigration context, the U.S. Citizen and Immigration Service has recognized that in some cases reports will be filed about the employment of undocumented workers for the purpose of interfering in a labor dispute. To help ensure that government processes are not misused in this manner, the Service maintains “operating instructions” that provide advice on how to proceed if information creates a suspicion that an enforcement action might involve the government in a labor dispute.¹⁸

Cooperative Processes

As mentioned above, the NAALC created a framework by which member countries could work together on issues of mutual concern through cooperative processes. Indeed, of the seven objectives that the NAALC itemizes, six are cooperative in nature.¹⁹ However, the cooperative activities undertaken by the NAALC partners and the NAALC institutions receive comparatively little attention. Nevertheless, they represent an important tool that has made a significant contribution toward improving understanding of and compliance with the NAALC countries differing regimes of labor and employment regulation.

Labor Market and Labor Law Understanding

At the outset it is important to emphasize the numerous challenges inherent in efforts to better understand another country’s system of labor and employment laws and workforce demographics due to significant differences in the development and evolution

¹⁸ Immigration and Naturalization Service Operating Instruction 287.3a. Available at <http://uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-44912/slb-52414?f=templates&fn=document-frame.htm#slb-oi2873a> (The INS no longer exists, but the operating instructions are maintained by the Department of Homeland Security’s U.S. Citizenship and Immigration Services Bureau.).

¹⁹ Article 1.

of each system. When the NAALC published its first comparative profile on North American labor markets, it noted that even comparing basic data between the countries was difficult “because of differences in statistical approaches and methodologies and in data availability among the three countries.”²⁰ For example, even comparing such basic information as unemployment rates can be difficult. For example, the United States sets a lower age limit of 16 years for inclusion in surveys, while Canada uses 15 years and Mexico 12. Likewise, Mexico considers those about to start or return to work within four weeks as employed, while the United States and Canada consider such individuals unemployed.²¹

These challenges arise in part because our respective labor markets and labor laws have evolved differently, reflecting the three countries’ respective rich history and culture. The NAALC wisely sought to respect each country’s own paradigm of labor regulation and strives to assist each country in improving its standards consistent with certain principles without imposing one-size fits all rules that would likely be doomed to fail. One of the most important roles of the NAALC is to help bridge these diverse systems so that they can be understood in context.

In this respect, the NAALC has made significant progress in recent years. First, the efforts by the Secretariat to examine economic and demographic data have helped significantly in understanding how the North American labor market works. In addition, these efforts have successfully identified numerous areas for further research. For example, when the Secretariat published its most recent comparative profile of North American Labor markets, it included a section detailing the informal labor sector in Mexico, due to the high incidence of such work in Mexico.²² This expanded look at Mexico’s informal sector is helpful in promoting a better understanding of the North American labor market. Likewise, the periodic seminars that the Secretariat has held on income and productivity in North America have produced scholarly work and allowed academics, business, and labor to discuss in great depth both transcontinental macroeconomic issues and microeconomic issues such as compensation and employee involvement. Ongoing efforts include cooperative efforts between the United States and Mexico in assisting Mexico develop and implement a standard occupational classification system.²³ These efforts have enhanced the ability of academics, policymakers, businesses, and workers to understand more about the labor markets in which they work and how the market has evolved since NAFTA’s inception.

Comparative Law and Regulation

Chamber members especially appreciate the Secretariat’s publication of materials undertaking a comparison of regulatory schemes across the NAALC countries. For

²⁰ COMMISSION FOR LABOR COOPERATION, NORTH AMERICAN LABOR MARKETS: A COMPARATIVE PROFILE, 6 (1997).

²¹ *See id.* at 29.

²² COMMISSION FOR LABOR COOPERATION, NORTH AMERICAN LABOR MARKETS: MAIN CHANGES SINCE NAFTA, 70-71 (2003).

²³ Workshop on June 23-26, 2003, in Mexico City.

example, *Labor Relations Law in North America*²⁴ provides an excellent overview of the three countries' approach to regulating three key labor principles enumerated in the NAALC: freedom of association and the right to organize, the right to bargain collectively, and the right to strike. This publication presents a very good starting place for research about a NAALC country's regulatory and enforcement regime with regard to these three labor principles. Recent modifications to the Commission's web site will further assist in such research – in particular by providing links to substantive laws in the respective countries.²⁵ The Chamber urges the continuation of such useful services, perhaps ultimately including translations of the substantive law, as well as link to regulatory or administrative material where appropriate.

Though much less ambitious in scope, the reference manual comparing income support programs for workers is also a useful tool that can help all interested parties from employers and employees to policymakers in understanding basic income support and related aspects of the NAALC countries' employment laws. We urge the Commission to continue to make development of materials comparing the laws and regulations of NAALC countries a priority.

Unfortunately, it is our experience that comparatively few stakeholders are aware of the Secretariat's efforts in these areas. We encourage the NAOs and the Secretariat to take steps to improve access to and awareness of these important efforts.

Meetings and Forums

The Chamber also believes that the public forums that have been held in a cooperative spirit have been largely successful at achieving the goals of the NAALC. For example, the NAALC members have hosted numerous forums with a focus on occupational safety and health that we believe have had a positive effect on increasing employee and employer awareness of particular issues and have helped guide development of policies that will result in decreased rates of occupational accidents, injuries, and illnesses. For example, two of last year's technical workshops discussed voluntary protection programs, including employer best practices and key elements for effective occupational and health management systems, as well as compliance assistance.²⁶

Successful NAALC cooperative activities also include seminars focusing on job skills and education. For example, the 1998 and 2003 seminars studying worker training programs and placement services carried out by NAALC countries focused attention on human resource development in the three countries including trends in job training and education. Such programs are a key component of NAALC's mission if the NAALC is to assist member countries in helping ensure that their respective workforces are trained and prepared for relevant jobs in the Twenty-first Century.

²⁴ COMMISSION FOR LABOR COOPERATION, *COMPARATIVE GUIDES TO LABOR AND EMPLOYMENT LAWS IN NORTH AMERICA: LABOR RELATIONS LAW IN NORTH AMERICA* (2000).

²⁵ See <http://www.naalc.org/english/links.shtml>.

²⁶ Forums on March 10-12, 2003, in El Paso, Texas and Ciudad Juarez, Mexico, and on June 16-17 in Mexico City.

Cooperative Activities in Response to Public Submissions

While the Chamber has been supportive of much of the cooperative initiatives of the NAALC and the NAOs, we have concerns regarding some cooperative activities entered into as a response to public submissions. For example, in the public submission discussed earlier related to a plant closing at a California telecommunications company, the Ministerial Consultations included an agreement for the United States to host a public forum to allow interested parties an opportunity to convey their concerns about the effects of sudden plant closings. The agreement also called for the Secretariat to conduct a study on “the effects of the sudden closing of a plant on the principle of freedom of association and the right of workers to organize in the three countries.”²⁷

Unfortunately, the study ultimately published relied on biased and highly unreliable data. In particular, in preparing the report the Secretariat commissioned a study by Kate Bronfenbrenner of Cornell University focusing on “the effects of plant closings or threat of plant closing on the right of workers to organize in the United States.”²⁸ The Bronfenbrenner report concluded “plant closing threats and plant closings have become an integral part of employer anti-union campaigns” and “the majority of private sector employers threaten a full or partial shutdown of the facility after a union wins election.”²⁹ Yet, these conclusions are unreliable for a number of important reasons. First of all, they come from a survey of lead union organizers in union organizing campaigns – hardly an unbiased source. Even if the source were neutral, the data pool is biased against employers with good relations with their unions – for example, it completely ignores all those organizing campaigns in which the employer voluntarily decided to recognize the union without an NLRB election. In addition, determining whether an employer made a “threat” was not measured by any legal or objective standard, but on the union organizer’s subjective view of what employer speech was threatening – again, hardly an unbiased way to collect data.

When the NAALC undertakes funding research projects, it should make every effort to ensure that those projects are conducted in as responsible a manner as possible. Unfortunately, in this case, the NAALC funded a project heavily biased in the favor of those with an agenda of demonizing private sector employers. Perhaps recognizing this after the fact, the Secretariat’s report did contain language clarifying that the term “threats” was not a legal term, but was based on perceptions of union organizers.³⁰ Unfortunately, the data was nevertheless included in the report. In addition, the Bronfenbrenner report exists outside of the context of the Secretariat. Indeed, organized labor now routinely relies on this report and a more recent update of it. For example, the AFL-CIO web site relies on its data in propaganda it uses to justify its legislative agenda

²⁷ See Ministerial Consultations – Submission 9501: Agreements on Implementation, available at: <http://www.dol.gov/ilab/media/reports/nao/minagreemt9501.htm>.

²⁸ Kate Bronfenbrenner, *Final Report: The Effects of Plant Closing or Threat of Plant Closing on the Right of Workers to Organize*, 1 (Sept. 30, 1996).

²⁹ *Id.* at 26.

³⁰ Plant Closing Study, *supra* note 16, available at: http://www.naalc.org/english/nalmcp_8.shtml.

in the United States, in particular its proposal to abolish secret ballot elections for union representation elections.³¹

Certainly organized labor and other groups should be free to fund whatever research projects they deem appropriate. However, it is not the NAALC's responsibility to fund such research. The NAOs and Secretariat should take greater care when commissioning research to ensure that the research is impartial or, at a minimum, ensure that both sides are presented.

Summary

In our experience, the NAALC has, in many important respects, served its purpose as providing a useful mechanism that the United States, Canada, and Mexico can use to better understand each other's labor and employment laws and labor markets. In addition, by focusing on cooperative efforts, the NAALC has succeeded in providing useful comparative analyses of member country laws and regulations that have proven to be valuable resources. Finally, by using the NAALC to host meetings and forums on appropriate, timely issues, such as job training or improving occupational safety and health through voluntary compliance, the NAALC is succeeding in meeting its objective of improving the working conditions and standard of living across North America. The Chamber supports the NAOs and the Secretariat's efforts in these areas.

However, the Chamber has significant concern with the potential for misuse of the public submission process, in particular to the extent that the process is used as part of an anti-employer corporate campaign. To reduce the chance that NAALC processes will be misused in this way the Chamber urges that the NAO's require that public submissions be based on systemic failures rather than single incidents or incidents that have not been fully adjudicated. We also urge the NAOs and the Secretariat to refrain from identifying cases by employer name, as employers are not parties to the NAALC. We also urge that procedures be adopted to reduce the likelihood that hearings are misused as a platform for corporate campaigns and that the NAOs and Secretariat adopt procedures to ensure that neither they nor the NAALC processes are involved in an ongoing labor dispute.

Thanks you for the opportunity to comment on the operation and effectiveness of the NAALC. Please do not hesitate to contact us if the Chamber may be of further assistance in this important matter.

Sincerely yours,



Randel K. Johnson
Vice President
Labor, Immigration and Employee Benefits



Michael J. Eastman
Director
Labor Law Policy

³¹ See http://www.aflcio.org/aboutunions/joinunions/howjoin/upload/vatw_issuebrief.pdf.