

NAFTA AND WORKERS: THE RECORD SO FAR

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To introduce myself, I will indicate that I am a law professor at American University in Washington, D.C. and Director of Labor Rights Advocates, lawyers working for the protection of worker rights in the global economy. Labor Rights Advocates has been involved in all the cases discussed below concerning the North American Agreement on Labor Cooperation (NAALC).

Prior to adoption of the North American Free Trade Agreement (NAFTA) in the United States, an intense controversy raged over NAFTA's consequences for working people in the U.S. and Mexico. NAFTA proponents predicted large job creation in the U.S. because reduced Mexican trade restrictions would greatly boost U.S. exports to Mexico. Some also predicted wage and job gains for Mexico, as increased U.S. investment generated new production and raised productivity in Mexico and channels widened for Mexican exports to the U.S. NAFTA opponents predicted massive job loss and wage decline —Citizen Perot's "giant sucking sound"— as U.S. investment capital flowed south to utilize Mexican labor with low wages and weak legal protections. Opponents also raised concern about Mexican export penetration into U.S. markets, which would also cost jobs and press wages down.

With roughly three years of NAFTA experience behind us, it is now clear that proponents and opponents were both wrong in these predictions concerning NAFTA. NAFTA's impact on working people in both Mexico and the U.S. has been quite minor overall. I would like to review the record briefly and outline explanations for this fai-

lure of major impact. I will then offer a series of predictions as to economic, political, and cultural consequences Mexico can expect over the next two decades due to increasing trade with the U.S. Then I will review and assess developments so far under the NAFTA side agreement on labor, the NAALC.

There are two main reasons why NAFTA has not produced numerous export-oriented U.S. jobs. First, the post-NAFTA period has been marked by Mexico's severe economic crisis, entailing sharp devaluation of the peso and deep recession. Both have crippled Mexico's capacity to purchase U.S. goods and services. Second, less obvious but more important in the long run, Mexico's economy is simply too small and non-dynamic to provide major new markets for U.S. exports. It should be borne in mind also that exports in general provide a minor portion of the market for U.S. production. Hence exports to Mexico cannot possibly generate a significant proportional impact on U.S. job creation unless and until Mexico achieves growth far above the levels it has recently shown any capacity for.

There are several factors to bear in mind to understand why NAFTA has not caused significant proportional job loss or wage decline in the U.S. First, southward trends in productive investment pre-dated NAFTA and their levels are determined high and low by factors far more varied and complex than NAFTA. Though NAFTA simplifies rules and procedures and reduces investment restrictions, the impact of these changes on the overall investment climate is not huge. Predictions of massive production relocation from the U.S. to Mexico in search of cheap labor took a much oversimplified picture of what determines such business decisions. Mexico's low labor productivity operates as a major disincentive in production location, contradicting the attraction of low wages. Even where Mexican production utilizes technology equivalent to that utilized in the U.S., efficiency can be hampered by numerous additional factors, notably Mexico's inferior communications and transportation infrastructure and by its inferior level of human capital development. The interplay of all these factors means that production relocation will be far slower than suggested by many NAFTA opponents.

Second, the notion of massive U.S. wage decline due to increased Mexican production ignores key facts regarding the proportional size of the two economies and the relationship between wages and productivity. NAFTA opponents imagined that low Mexican wages would come to control the level of U.S. wages, driving them relentlessly downward toward Mexican levels. But with Mexico's economy only 4% the size of the U.S.'s, wage equalization trends from economic integration will be dominated by the U.S. not Mexico. Though NAFTA may lead to greater wage equalization between the U.S. and Mexico, it is likely that Mexican wages will rise far more than U.S. wages will fall. Mexican wages will be fueled by rising productivity, due in part to increased investment. As the productivity of Mexican workers rises, market forces will allow them to command higher wages. True, Mexican wage rates will be governed not only by rising productivity but by an abundant supply of underemployed labor in Mexico. Some NAFTA critics imagine a future in which Mexican production will be characterized by high productivity due to state-of-the-art technology and low wages due to oversupply of available workers. This in turn will threaten U.S. jobs and wages, they fear. Such critics point to the already existing maquiladora sector as concrete illustration of this scenario. In view of Mexico's vastly underemployed work force, it makes sense to acknowledge that Mexican wage levels may lag behind productivity increases and that this may in turn affect U.S. wages in the short run. In the longer run, however, it is unlikely that major disparities between wage and productivity levels can persist. To the extent that U.S. investment and trade linkages with Mexico expands, we can expect to see Mexican wages levels rise. I would venture a strong guess that wage trends in the maquiladora sector have revealed this tendency, at least where the impact of recessionary shocks is factored out in proper proportion. It is likely that rising Mexican wages will be most prevalent in high-skill sectors where new employment is created most directly. Low-skill workers will gain less and more slowly. Conversely, any negative effects on U.S. wage levels will likely be felt most strongly among low-skill workers. Relocated jobs that are high-skill compared to the Mexican

average may nevertheless be low-skill compared to the U.S. average. To the extent such jobs move south, low-skill U.S. workers will feel the sharpest pinch.

Third, it should be borne in mind that U.S. job and wage levels can be and are affected and manipulated by fiscal and monetary policy. Small changes in Federal Reserve interest rates, for example, can generate short-term employment consequences that dwarf the effects of cross-border investment. Job and wage levels are also affected by government policies and laws such as educational development and protection of union power, not to mention changes in productive technology and numerous other private sector forces. Stagnant U.S. wages over the past twenty-five years have coincided in time with increased U.S. cross-border investment. It is important to understand, however, that this wage stagnation stems from numerous and complex causes and that among those causes rising cross-border investment is among the least significant.

Another failed prediction is that NAFTA would produce a major surge in Mexican exports to the U.S. Though exports have in fact jumped since NAFTA, this stems far more from the peso's devaluation, making Mexican products cheap in dollar terms, than from NAFTA. Because Mexico's producers had not adequately developed export expertise and orientation, Mexico was not well-placed to take advantage of the export-expansion possibilities presented by the peso devaluation crisis. Hence, the opportunity has been squandered, by and large. In any case, since the peso crisis has little or no direct connection to NAFTA, NAFTA gets no credit for the export surge. In fact, it is hard to see how NAFTA could give any major boost to Mexican exports, since U.S. trade barriers to Mexican products were low even prior to NAFTA. Mexico's capacity to meet the price and quality specifications of U.S. buyers will be far more important to the expansion of its exports than NAFTA will be.

NAFTA's critics have taken an apparent boost from the crisis Mexico has endured since the agreement went into effect. Some NAFTA critics predicted the crisis (perceiving that the peso was overvalued) and others have blamed the crisis on NAFTA, validating their

general predictions that NAFTA would be economically disastrous. But it is a grievous error to blame the Mexican crisis on NAFTA. It is true that NAFTA's positive effects have been minor and equally true that NAFTA did nothing to forestall the crisis. It is also true that NAFTA's advocates were vastly overconfident in their projections of Mexico's economic strength, ignoring glaring signs of weakness and instability in the pre-NAFTA growth burst. It is in no way true, however, that NAFTA caused the crisis. The causes of the crisis probably lie at two levels, one short-term and one long-term. In the short term, the crisis (peso devaluation, investment flight, drastically hiked interest rates, production declines, job and wage declines, rising prices due to more expensive imports due to the weakened peso) stemmed from an acute foreign exchange shortage. Reserves were drained down simultaneously by high levels of imports, due in part to an overvalued peso, and by the need to make payments on vast dollar-denominated foreign loans. Neither the high imports nor the loan repayments were produced by NAFTA. Rather they represented trends that pre-dated NAFTA and would have forced a need to devalue the peso at some point, NAFTA or no. The most one can say about NAFTA is that President Salinas's desire to secure passage led him to postpone the peso devaluation and that NAFTA itself fueled some of the foreign loans that required repayment. But there is no strong reason to assume that the results were worsened by these factors, especially if we imagine that NAFTA-inspired foreign loans may have done Mexico some good along the way, though they hastened a devaluation that would have come anyway.

In a larger perspective, the foreign exchange crisis and peso devaluation were less the causes than the catalysts of a recession that represented a more or less inevitable effect of underlying weaknesses, tensions, and contradictions in Mexico's political economy. This is no place to explore in detail the possible nature or reasons for those underlying problems. Suffice it to allude to an evil brew of general underdevelopment, failed and mishandled redistribution of agricultural land, party-state control and corruption, excessive statism and weak entrepreneurship, and at the end of the day, overenthusiastic neoli-

beralism as a quick fix solution to all of the above. Though deep reform is clearly needed in Mexico's political economy, it is far from clear that neoliberalism has on balance made things better. In certain respects it may have made things much worse.

I now venture a series of five predictions concerning Mexico's future under the impact of NAFTA in particular and expanding trade/investment linkages with the U.S. in general. My focus is on employment impacts and their consequences.

First, as indicated above, we can expect rising Mexican wages in rough correspondence to increased U.S. trade and investment linkages. It should be stressed, however, that this effect can be stalled and stymied by recessionary conditions and policies. For the past decade and more the Mexican government has attempted to force the pace of foreign investment upward through draconian restraints on public spending and wages along with inordinately high interest rates. Putting aside the enormous and widespread hardship these policies seem to have produced, there is much reason to worry that they may have damaged the long-term investment climate through short-term impatience to improve it.

Second, there will be continued expansion of the maquiladora sector in north Mexico, with the balance of economic power within Mexico continuing to shift from the center toward the north. This economic shift will hasten important political and cultural changes in Mexican life. In politics, the shift from center to north along with the shift from public to private will augment pressures on the party-state system and foster the growth of pluralism. In culture, greater proximity of Mexico's work force to U.S. influences will prompt various transformations, including accelerating change in family and gender relations.

Third, there will be a steady deepening in Mexico's decades-long agrarian crisis. With trade barriers lowered, Mexico's peasant farms will face increasing competitive pressure from high-efficiency U.S. agriculture. As farms fail, millions may find their subsistence vanished. NAFTA attempts to control this damage by bringing Mexico's agricultural trade barriers down with deliberate slowness over the

course of more than a decade, longer than in any other sector. Nevertheless, the hammer will come down far too fast to avoid inflicting major pain. Underemployment will probably worsen, though it should be kept in mind that Mexican agriculture already features major underemployment, which is one index of the existing crisis. The effect of deepened underemployment on Mexican wage levels cannot be good. The scenario is far from happy, unless Mexico achieves levels of growth in non-agrarian sectors that can scarcely be imagined at the moment.

Fourth, maquiladora-driven northward shifts in Mexico's population, together with deepening agrarian crisis, will cause immigrant pressures on the U.S. to increase, not decrease as NAFTA advocates predicted. Immigration politics in the U.S., already tense, will grow even more tense. Depending on the twists and turns of U.S. immigration policy, Mexico's work force may experience a range of consequences from positive to negative. At the positive pole lie scenarios of expanded access to higher U.S. wages and other wealth through both direct employment and family sharing. At the negative pole lie scenarios of sharply-restricted access with Mexico losing an important counterweight to chronic underemployment, along with the direct benefit of higher U.S. wages and their indirect effect on Mexican wage rates.

Fifth, there will be slow improvement in the quality of Mexican labor protection enforcement, due in part to the impact of the NAALC. Other aspects of this improvement will be the weakening of Mexico's party-state system and the expansion of U.S. trade union influence within Mexico. All told, unions operating outside Mexico's party-state structure will gain increasing power in determining the shape of employment relations, including observance of legal protections for labor. At the same time, Mexican employment law and its meaningful observance and enforcement will probably shift away from mandated benefits like vacations and severance pay and toward prohibitions in such areas as anti-union discharges, discrimination, and unsafe workplaces. This trend will represent a convergence with U.S. practices and focus attention on problems where enforcement is relatively more straightforward than it is for mandatory benefits.

U.S. unions and their sympathizers by and large opposed NAFTA and criticized the NAALC because it mainly fails to levy penalties against either countries or firms that violate labor protections. It is not easy, however, to imagine how a better labor agreement could be devised, when one considers the deep differences among the labor protection systems in the three countries, along with concerns over sovereignty and anxieties that sanctions might be used for protectionist and other strategic purposes. U.S. voices calling for prompt repeal of NAFTA unless a stronger labor agreement can be forged are not likely to do much good for working people in any of the relevant countries. A strengthened agreement is almost certainly impossible given current realities. Meanwhile, NAFTA repeal will do little good for working people anywhere (with the possible exception of Mexican peasants) and loss of the NAALC would jettison tools that could be utilized to improve conditions for working people.

True, the NAALC cannot generate adversarial labor justice and targeted sanctions in the fashion of U.S. domestic law. On the other hand, however, the NAALC creates two kinds of tangible opportunities that could hardly exist in its absence. First, the NAALC has impelled an accelerated level of cross-border information sharing and cooperation among concerned groups. In time it may also foster accelerated intergovernmental perspective and cooperation on labor protection problems. Second, the NAALC has helped in bringing sunshine to bear on localized problems, abuses, and struggles that would otherwise not see the light of day. It is possible that this sunshine effect may enhance worker power and protection by deterring firms from pursuing agendas that might be labor-abusive. In summer 1995, for example, Ford settled a strike in the Mexico City area on terms fairly favorable to workers. Ford indicated that it was concerned that a harder line might subject it to scrutiny under the NAALC. With those generalized comments in mind, I will use the ensuing paragraphs to summarize briefly the major NAALC cases before the U.S. National Administrative Office (NAO) including two that have been completed, one that is recently-filed and pending, and two that are in preparation.

The two completed cases are known to insiders as the *GE/Honeywell* case and the *Sony* case. Both involved allegations of labor protection violations by U.S. owned subsidiaries operating in the maquiladora sector. The core of each case was suppression of worker efforts to form independent unions, unaffiliated with Mexico's party-state union structure. In both cases, a triple alliance among the employers, the party-state union structure and the state itself operated to stifle the independent unionism effort.

GE/Honeywell was the less significant case in terms of results. The central allegation was company dismissal of independent union adherents. Additional allegations concerned non-compliance with minimum wage and health/safety requirements. Under the NAALC it was understood that violations of Mexican law by the company itself do not constitute a violation. Like the NAFTA itself, the NAALC lays duties only on the sovereign signatory governments, not on any private actors. Hence, the *GE/Honeywell* petition claimed that Mexico itself stood in violation of its NAALC obligations by virtue of allowing widespread violations of law like those attributed to GE and Honeywell. Under NAALC, each signatory sovereign comes under a binding duty to ensure meaningful enforcement of its labor protection laws. Failure to sanction alleged GE/Honeywell illegalities was grounds for charging Mexico with violating the NAALC.

The NAO's resolution of the case was not a major story. In its report, the NAO observed that the bulk of workers dismissed for their dissident union activity had received statutorily-mandated severance pay upon being discharged. Under Mexican law, workers who accept such severance payments waive their rights to complain of illegal dismissal. The NAO concluded that this made it impossible to determine whether the dismissals had violated Mexican law. Since no legal violation could be proved, the NAO concluded that Mexico could not be reproached for non-enforcement of the law.

The NAO failed to reckon with the fact that under Mexican law, employers can rid themselves of independent unionists, so long as proper severance payments are made. Since discharged workers can rarely afford to refuse the severance pay, employers can use the dis-

missal and severance options to defeat unionism. Though anti-union dismissals are technically illegal under Mexican law, it is easy to avoid meaningful sanctions. The NAO understood this problem, but saw itself powerless to do anything about it. The problem was in the Mexican law itself, it reasoned. The NAALC imposes no duty on states to change or improve labor protection laws, but only to enforce laws as they exist. If Mexican law itself creates enforcement deficiencies, the failure lies in the law, not in failure to enforce it. Hence, the NAO saw no NAALC violation by Mexico and saw nothing it could say by way of criticism or suggestion.

Though the NAO's approach in *GE/Honeywell* was cautious and formalistic, in *Sony* it addressed a crucial problem forthrightly, even though it could have hidden behind the same clever metaphysics it deployed in *GE/Honeywell*. Again in *Sony* a critical allegation concerned dismissals of independent unionists. The NAO begged off from actually adjudicating the contested question whether workers who had been discharged were fired because of their support for the dissident union. The NAO did state, however, that the charge of anti-union dismissal seemed plausible, especially in light of comparable changes in *GE/Honeywell*, and expressed concern that there might be a problem on which the Mexican government should take some action. The NAO also expressed concern over two other allegations: (1) that elections between the dissident union and the party-state union had taken place in an atmosphere of intimidation and woeful lack of secrecy, and (2) that the Mexican government had used excessive and brutal force in suppressing public worker protests over the stifling of independent unionism.

The NAO's most striking step, however, was to criticize the Mexican labor protection bureaucracy for refusal to register the dissident union due to trivial technicalities in the application. Under Mexican law, certain registration requirements are highly technical. Denial of registration means a union cannot operate legally. The NAO criticized the use of overly-technical legal reasons to deny registration because such technical obsession can be used to suppress independent unionism. This criticism seems to attack the law itself and not state failure

to enforce it. In effect, the NAO saw that the substance of labor protection could be lost if a state could hold itself immune from NAALC criticism so long as no existing law has been technically violated. In suggesting that state enforcement obligations turn on substance rather than technical legality, the NAO opened a door to conceptualizing existing laws as impediments to effective enforcement and therefore in violation of the NAALC. Very interestingly, this indicates that NAALC could be found violated because of deficiencies in labor laws themselves, even though the NAALC officially makes states responsible only to enforce existing laws, not to alter them.

A third case, filed in June, 1996, deals again with issues of independent unionism, but this time concerns federal workers not the private sector. It raises complaints by an independent union that represented workers in the former fishing ministry. The fishing ministry was abolished in a governmental reorganization, its functions merged into a newly created ministry on the environment and natural resources. Many former workers from the fishing ministry secured jobs in the new ministry and wished to have representation by their independent union. But the government announced that the dissident union was dissolved because the ministry to which it was tied no longer existed. Instead, it announced that workers in the new ministry would be represented by a newly-registered official union. The independent union took its grievance to a federal labor tribunal, but that tribunal ratified the de-registration. Though courts reversed the tribunal and ordered the independent union's registration reinstated, the task of implementing that order rests with the original tribunal, which also holds responsibility to protect the dissident union's rights to operate effectively and to ensure a fair election between the two unions. The tribunal's execution of those duties has been deficient, according to the charges filed with the NAO.

Essentially the NAALC case raises three complaints: (1) that the tribunal has failed to protect the independent union's rights of free unionism under Mexican law; (2) that the federal tribunal system suffers generally from a conflict of interest that harms independent unionism, because membership on tribunals is controlled by the government and

its official union confederation; and (3) that Mexican labor law for the federal sector violates rights of free unionism because it forbids registration of more than one union per ministry and allows no union confederation other than the official one. Complaints (1) and (2) basically charge Mexico with violating the NAALC by failing to provide effective and fair enforcement on rights of free unionism. The more intriguing complaint is (3) because it sees a NAALC violation in Mexican law itself, not just in failure to enforce it. Since NAALC obliges its members only to enforce existing law, but not to change it, this attack on the face of the laws may seem out of bounds. But the petition argues that such a facial attack on national laws must be permitted under NAALC, if some national laws conflict with or block enforcement of others. In this case, the single-union and single-confederation laws contradict and block enforcement of laws that protect free unionism. Hence, the petition implies that NAALC can be used to attack existing laws that undermine other laws. If the NAO recognizes such a principle, NAALC could become a powerful tool for criticizing deficiencies in existing laws.

Two further petitions are in stages of preparation for submission to the U.S. NAO. The first concerns abuses in Mexico's tomato-growing and export business, involving U.S. firms and their subcontractors. Large numbers of Mexican migrant workers, many of them ethnically indigenous, work in this sector, particularly in Sinaloa. An investigation has been initiated into health and safety problems (pesticide spraying, poor sanitation, unsafe drinking water), minimum wage violations, and child labor violations. This investigation is especially significant because NAALC provides possible trade sanctions for violations in precisely these three areas — health and safety; wage and hour; child labor.

Another case may emerge from a government initiative to privatize the investigation and enforcement of labor protections in the Canadian province Alberta. The initiative seems straight out of a Chicago Boys homework assignment (let's see, we like privatization and we dislike labor protection law: let's privatize labor protection law!). The plan is to close much of Alberta's labor standards investiga-

tion/enforcement bureau, entrusting its tasks to small businesses which will receive fees for investigating and resolving labor abuse charges. No one seems to have considered the rather obvious problem how an enforcement system based on fees for tasks performed can possibly achieve neutral fairness. A petition will be prepared, charging that the plan violates NAALC duties of effective enforcement.

To summarize and conclude, the NAFTA record so far reveals no major impact positive or negative on worker well-being in either Mexico or the U.S. Increased trade and investment linkages will probably make negligible impact on U.S. workers in the foreseeable future. In Mexico, consequences may be more significant, hiked wages for some workers on the one hand, failed farms on the other. It cannot be assumed that repeal of NAFTA would greatly favor the interests of working people in either country. Meanwhile, the NAALC shows some promise of fostering slow progress in the effective enforcement of labor protection laws.