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Complaints About Migrant-Worker Treatment Could Test NAFTA Labor Code

by LADB Staff

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Independent unions and advocates for migrant workers have filed complaints against US agricultural producers charging them with violating the rights of their employees. Both actions could have implications under the labor provisions in the North American Free Trade Agreement (NAFTA). The US, Mexico, and Canada negotiated the NAFTA Agreement on Labor Cooperation to promote improved labor conditions and strong enforcement of national labor laws in the three NAFTA countries.

Most of the 11 labor complaints filed under NAFTA have been by US labor unions accusing Mexico of failing to enforce its labor laws. Two of the most recent cases were a complaint against maquiladora plants for discrimination against pregnant women and one against the state of Baja California for interfering with workers' rights to choose their own union (see SourceMex, 01/21/98 and 05/06/98).

Better conditions sought for Washington apple pickers

One of the two recent actions filed on behalf of the Mexican migrant workers involved a direct complaint under the NAFTA labor provisions. The complaint, filed by a coalition of four labor groups led by the Union Nacional de Trabajadores (UNT), accused fruit growers in Washington state of depriving migrant laborers of their basic labor rights. It said Washington fruit growers have deprived 45,000 apple pickers of overtime pay, safe working conditions, and the ability to organize without fear of retaliation.

The complaint is the second brought by Mexican unions under NAFTA. The previous case charged US telephone company Sprint with improperly closing a California plant during a unionization drive. Joining the UNT in the new complaint are the Frente Autentico de Trabajadores (FAT), the Frente Democratico de Trabajadores Agricolas, and a metalworkers union. Two US labor organizations, the International Brotherhood of Teamsters and the United Farm Workers (UFW), have provided support to the Mexican unions. The Teamsters is working to organize apple packers in the state, while the UFW is seeking to unionize the fruit pickers. "Wages of warehouse and field workers have fallen below poverty levels," said the complaint filed by the Mexican unions. "Workers face high exposure to dangerous chemicals, safety hazards, and unsanitary conditions in fields and warehouses."

The complaint, filed with the NAFTA office in Mexico City, also accused the US Occupational Health and Safety Administration (OSHA) of failing to adequately enforce safety laws to protect apple workers from pesticides. The four Mexican unions and their two US counterparts urged President Ernesto Zedillo's administration to demand high-level consultations with the US to highlight the poor working conditions of migrant workers. Under the NAFTA side accord, the complaint could eventually be brought before an arbitration panel with power to impose sanctions against the US

government and the industry. "We don't expect this process to improve actual labor standards," said Maria Figueroa, an analyst in the Teamsters research department. "But we think this process can expose the weakness of our own legal system in providing labor protections."

Class-action suit filed on behalf of workers in Maine

In an earlier case involving the rights of migrant workers, 14 employees at Maine's largest egg producer filed a class-action lawsuit against their employers alleging racial discrimination. The Maine Migrant Workers' Advocate Group and the Mexican government have joined the workers in the lawsuit against DeCoster Egg Farms of Turner, Maine.

The Mexican government is a party to the lawsuit through its consulate in Boston and its embassy in Washington. The lawsuit claims migrant workers were forced to live in unsanitary conditions in substandard and crowded housing units, while white workers received better housing, medical care, and working and living conditions. Mexican Embassy spokesman Jose Antonio Zabalgoitia said the Mexican government is paying legal fees in the lawsuit, which asks for unspecified damages. Any money won in the lawsuit will be divided among 15,000 Mexicans who worked at DeCoster during the past decade, said Zabalgoitia.

Anne Marie Slaughter, an international-law specialist at Harvard Law School, said this case could set a precedent because this is the first time a foreign government has joined plaintiffs in suing a company for mistreating workers within the US. Slaughter said the Mexican government's case could be indirectly helped by the NAFTA labor provisions, which require the three member countries to enforce their own labor laws. "The climate created by NAFTA is one in which we make each other's business our business," Slaughter told the Boston Globe newspaper.

The Washington state and Maine cases could affect other cases involving the rights of Mexican farm workers in the US, particularly in Florida and California. In a recent case, the UFW has launched a campaign to organize 20,000 strawberry pickers in California. The UFW says the workers need a union to fight low wages and poor working conditions, and exposure to pesticides and other dangerous chemicals. [Sources: Associated Press, 03/28/98, 05/28/98; United Press International, Excelsior, The Boston Globe, 05/19/98; The Miami Herald, 05/20/98; Excelsior, 05/19/98; Portland (Maine) Press-Telegram, 05/25/98; Associated Press, The New York Times, 05/28/98; Novedades, 05/29/98]

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