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THE IMPACT OF NAFTA ON LABOR LEGISLATION IN MEXICO

FRANCISCO BREÑA GARDUÑO*

I. INTRODUCTION

During his election campaign in April of 1988, President Salinas de Gortari promised a new Federal Labor Law. To date, however, he has not given the slightest hint as to when and how he intends to fulfill that promise. On the basis of that promise, Mexican labor unions dreamed of and demanded higher salaries, a forty-hour work week, more social services, better pensions, more *contratos-ley* (collective agreements declared to be generally compulsory), unemployment insurance, and an end to the government's power to seize public service companies in case of strike.

On February 5, 1991, the Presidents of Mexico and the United States and the Prime Minister of Canada announced the decision to initiate trilateral negotiations in order to achieve a free trade agreement. Faced with the challenge of increased competition, the Mexican managerial sector demanded lower salary increases, payment by the hour, flexibility in the reduction of personnel, more facilities for temporary employment, less meddling by the unions in labor relations, fewer collective labor agreements, and a new, more flexible labor law to promote investment.

In view of the uncertainties resulting from the announcement of the North American Free Trade Agreement ("NAFTA"),¹ the marked disparity in salaries and in industries and technology, the lack of a skilled work force, and the discrepancy in working conditions and competitiveness, Mexican companies found their very survival threatened. Naturally, some companies recognized the necessity or convenience of taking a stand and preparing for a wider and more open market and economy with rapid and dramatic changes. These companies reduced their personnel, abolished rest periods, and negotiated with the unions for a higher degree of productivity from the work force.

The unions perceived these preparations by management as jeopardizing the custom of receiving political privileges and the virtually obligatory labor benefits for the masses of workers. The unions feared companies would sacrifice salary increases and changes in working conditions in

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1. Oct. 7, 1992 draft, U.S.-Can.-Mex.

favor of higher productivity. Another union concern was the possibility of an enormous loss of employment and the problems of adaptation to new technologies, without receiving, in turn, a substantial improvement in salaries and living standards. In short, the unions demanded that labor laws remain unchanged.

The Mexican government, for its part, formalized an objective study by sectors of the economy to facilitate an adjustment to the planned economic changes. To facilitate this study, the Advisory Council for NAFTA was created in order to guide the participation of different sectors of Mexican society.

II. COOPERATION IN LABOR MATTERS BETWEEN MEXICO, THE UNITED STATES, AND CANADA

The Mexican Ministry of Labor and Social Welfare, represented by Minister Arsenio Farell Cubillas, and the United States Department of Labor, represented by Secretary Lynn Martin, signed an agreement providing for an exchange of information relating to labor matters on May 3, 1991. The agreement also contained a plan of action.

The most important points of the agreement are: (1) to develop specific activities which would be agreed upon later and; (2) to carry out an exchange of information within the framework of the Bi-national (Mexico-United States) Commission. The areas of information and cooperation were to include: (a) safety and hygiene; (b) working conditions, standards, and their application; (c) solution of labor conflicts; (d) collective agreements for the improvement of working conditions; (e) social security; (f) credits for household durables and housing; (g) labor statistics; and (h) quality and productivity. These measures of cooperation would be carried out utilizing the principles of equity, justice, and mutual benefits, by studying both labor systems, an exchange of information and statistics, the organization of conferences and seminars, and the development of joint projects.

It is important to point out that the activities agreed upon did not entail obligations in terms of international law; nor does this agreement, for the moment, contain any specific measures, since any such obligations would be formalized according to the requirements of an interchange. The plan of action focused on coordinating statistical methods for evaluating employment, salaries, collective contracts, accidents and illness in the working place, indices of productivity, and the participation of minors in economic activities. Mexico also signed a similar agreement of intent with Canada.

III. A COMPARATIVE DESCRIPTION OF MEXICAN LABOR LAWS AND THEIR APPLICATION

After a brief analysis of Mexican Labor Laws and their application, we come to the conclusion that they may be divided into the following general areas: (1) liberty of association; (2) the right to unionization and to collective bargaining; (3) heavy labor; (4) minimum age for employment;

(5) working conditions, including minimum salaries; (6) length of the working day, vacations, legal participation in profits, yearly bonus, and days of rest; and (7) safety and hygiene in the working place.

The Mexican system of labor relations is based on the framework of the Constitution, specifically on Articles 5 and 123, which confirm the free establishment of labor unions and professional associations of workers and employers. In addition, Mexico has ratified Agreement No. 87 of the International Labor Organization ("ILO") on the liberty of association. The agreement includes the workers' right to strike. It is interesting to note that Mexican strike legislation and practices differ from those in the United States and Canada. For instance, in Mexico, it is possible for a unionized minority to go on strike, during which all the workers stop working; however, management may remedy the situation within a period of seventy-two hours by applying for a declaration that the strike is "nonexistent." Upon a declaration of nonexistence, workers must resume their labor within twenty-four hours. The time allowed for procedure and resolution may be from one hour to one week. If the strike is declared legal and existent, the labor dispute will be resolved by negotiations. As for collective bargaining, the "closed shop" is the general rule.

It is my understanding that the power of unionized labor is proportionally greater in Mexico than in the United States and Canada; consequently, the political power of the unions is also greater. Along the Mexican border, about ten percent of the workers are unionized; in Matamoros, Reynosa, and Nuevo Laredo (State of Tamaulipas), practically 100% of the workers are unionized and earn a minimum salary of \$3.30 (U.S.) per hour. But in the central and other sectors of the country, thirty percent of the workers are unionized and, according to my estimate, they earn a minimum hourly salary of \$2.20 (U.S.) in the manufacturing industry. Labor legislation in Mexico is created federally, whereas in the United States there is separate federal and state jurisdiction, depending upon the jurisdictional limits within which the subjects of the labor relations operate.

Mexican legislation has strict prohibitions as to heavy labor for women and minors; for the latter, it establishes special working conditions. In case of maternity, women are entitled to ninety days leave with full salary. For minors of less than sixteen years of age, the workday is six hours. In Mexico, the legal minimum salary is not paid in factories of fifteen workers (or less), since these workers prefer to be in the "informal" work force. Along the border, they earn between \$2.00 (U.S.) and \$4.00 (U.S.) per hour.

In the United States, salaries are computed by the hour, but in Mexico, it is done by the day. Yearly salary increases for medium-range executives are higher in Mexico than in the United States. Additionally, salary levels of such executives in Mexico are sometimes higher than those in the United States. In contrast to such discrepancies, the length of the standard workday is fixed at eight hours maximum in both countries, with relatively unimportant differences in overtime pay, although overtime pay is some-

what higher in the United States. In Mexico, there are provisions such as the Sunday bonus, which is an extra payment of twenty-five percent above the salary whenever the rest day is not Sunday. The gratuitous medical services provided by the Institute of Social Security continue up to two months for workers who lose their jobs.

In the field of safety and hygiene, Mexican legislation provides for standards in the work place, prevention of fires and provisions for flammable materials, ventilation, and other more specialized standards, such as those used in undersea operations. These specific subjects will be dealt with among the bases for labor cooperation between Mexico and the United States.

To sum up, because the labor cultures in these two countries have more points of discrepancy than of agreement, the governments of both countries have discussed these bases for an understanding in labor matters.

IV. FORESEEABLE IMPACTS IN THE LABOR ASPECT

As the flow of commerce and production increases, more jobs and a higher demand for labor and services will be created in Mexico. NAFTA will benefit Mexico by creating more jobs, principally in the border regions. Due to the shortage of skilled labor in Mexico, however, the cost of labor will rise rapidly and approach the cost of labor in the United States. Such a rise will necessarily be preceded by effective training programs in Mexico. The real problem and the real challenge is to raise wages and salaries coincidentally with improvements in the quality and productivity of labor, and with increases in investment.

An optimistic approach leads us to believe that the unions have gradually ceased to be instruments of political power, turning instead into coordinators between labor and management. The first question is how to get the unions to take an active part in the increase in productivity, if major emphasis is given to the training and the real demands and requirements of the workers. The second question is how to get the unions to abandon their political ambitions. How do we get the companies to forget the state subsidies and protection and the authorities to put their own house in order?

The possible solution is that the unions make an effort to fit into the model of a professional association in the strictest sense. In the future, they will have to carry out serious studies on how to achieve a real and substantial improvement in defense of the real interests of their members.

According to this hypothesis, we will see studies on salaries, an evaluation of jobs, and new negotiation strategies adjusted to the changes in systems and procedures on the part of the unions. Another aspect, delicate and difficult to eliminate, is the corruption among the union leaders.

It is expected that Mexico will be able to export almost seventy percent of its national production and that the United States will be able to export to Mexico only forty percent of its covered production. As a consequence, the industrial sectors of Mexico expected to benefit from

NAFTA will be the automobile industry, tobacco, textiles, shoes, wood, cement, glass, petrochemicals, transportation, telecommunications, road-building, chemicals, garden produce, commerce, franchises, services, non-metallic minerals, machinery and equipment, and electricity. Actually, we have been able to observe that these Mexican industries defended themselves effectively against the first repercussions from the announcement of NAFTA.

In contrast to this, those Mexican industries that may be unfavorably affected by NAFTA are some chemical, pharmaceutical, and high-technology industries, as well as those in toys, and small and medium sized enterprises. Small and medium sized industries are the sectors most worried by the announcement of NAFTA. Faced by this problem, Nacional Financiera—an agency of the government—guaranteed a support and financing program for this sector. The high quality of products and flexibility will keep the small and medium sized enterprises alive.

As for the creation of jobs, it is easy to imagine that the economically favored areas will generate new sources of employment. In this area, however, competition again will be an important factor. Mexican industries and workers will have to compete for productivity and quality; and as is true in any competition, failing grades will mean elimination. Therefore, we will not only witness the creation of jobs, but also displacements, turnovers, and adjustments to the new economic situation of the work force.

As far as labor rights and NAFTA are concerned, it has already been shown that Mexican legislation offers a higher degree of protection to workers than that generally known in the United States and Canada. This protection is emphasized in the individual relationship regarding dismissals and one-sided termination of a labor relationship. Within these relationships, one of the major obstacles to representation of the best interests of the members in negotiating and carrying out the collective contracts is the union leaders' corruption and lack of preparation. This implies a high degree of patience and expense for the management sector.

It appears that current authorities are not preparing any changes in federal labor laws; but it would not be surprising if some select group within the government were preparing something along these lines, because of the promise of President Salinas. To go a bit further, the Employers' Association of the Mexican Republic is preparing a project demanding hourly wages, as well as less meddling by the union leaders in daily labor relations and related matters.

V. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the above analysis and other experiences, we may conclude that NAFTA will present the following challenges:

(1) For state governors and the federal government to improve the quality and supply of electricity to industrial enterprises so as to prevent the interruption of labor; for government to control the recognition of supposed incapacities to workers by the Social Security Institute; for the

government to revise the real rates of income tax on salaries because they may not be competitive; for the government to improve the general education and training of children and teenagers, tying it to the enterprises; and to impose responsibility on union leaders when they order illegal work stoppages or further actions detrimental to production.

(2) For representatives of the employer sector to discipline themselves, principally in their expenses and leadership, and to strive for better teamwork with the government and other companies; and for the employer sector to do a better job of selecting and training their workers, and to improve salary and incentive systems, relating them to quality, efficiency, and permanence.

(3) For unions to be more interested in recognizing the companies' needs and in improving the laborers' working conditions, rather than in pursuing their ambition to share with the companies the ability to discipline the workers and to have more political clout.

(4) For workers to develop teamwork; to accept training and more responsibilities without demanding higher remunerations, either beforehand or immediately afterwards; to reduce absenteeism; and to have more self-discipline in their work.

Although I do not possess a crystal ball, I would like to make a few predictions as to the promised Federal Labor Law. There will be a new Law before November 1994. This law will have higher economic benefits for the workers, tied in with the condition of more productivity and, in some cases, dismissal from jobs due to industrial or market changes. The new law will stress tangible incentives for training and ongoing on-the-job education. It will attempt to make the settling and resolution of conflicts between management, authorities, union, and workers more fluid and efficient. The law will put restrictions on inter-union conflicts that lead to work stoppages within companies. The law will support the function of the union leaders and will encourage them to promote collective negotiations and labor improvement, rather than further personal and political ambitions. Last, but not least, it will put more order and discipline into labor relations without affecting social justice or the legitimate rights and liberties of all concerned.

I also expect that those Mexican industries that benefit from NAFTA will start to create more and better paying jobs with collective negotiations aimed at the efficiency of the work force. Less favored companies will be doubly affected and there will be sales, dismissals, and closings. The adjustment will be dramatic for everybody and it will easily require four or more years to come to maturity. The state, the investors, the unions, and the workers will all need to change their customs and adapt themselves to this and other requirements. Finally, lawyers also will have to contribute more professionalism, patience, and work discipline.

COMMENTS ON LABOR LAW IN MEXICO: THE DISCREPANCY BETWEEN THEORY AND REALITY

JEROME I. LEVINSON*

In the North American Free Trade Agreement ("NAFTA")¹ the Bush Administration took the position, with respect to labor issues, that Mexican legislation and practices are roughly equivalent to comparable legislation and practices in the United States and Canada, and that whatever defects exist will be cured by the higher economic growth that will result from NAFTA. The Bush Administration argued that the Agreement will permit more resources to be invested in effective monitoring of workplace safety and labor enforcement standards. In theory and on paper, this is all true; in practice it is all false.

A key Mexican government agency which deals with the reality of Mexican labor relations and practices is the Ministry of Labor, headed by Arsenio Farrel Cubillas. Mr. Cubillas is the only cabinet minister who spans the administrations of Presidents de la Madrid and Salinas. The following report describes the role of Farrell Cubillas:

[Mr. Cubillas] has maintained his reputation as a former pro-labor opponent; he has maintained pressure on the labor sector in an effort to hold the line of wage demands. [Mr. Cubillas] has not hesitated in declaring a number of strike actions illegal, thus undercutting their possibility for success. These and other successful confrontations with unions have generally served to minimize the gains of labor activism.²

The report goes on to describe the Mexican government's tactics in the case of the Compania Minera de Cananea, a state-owned mining company designated for privatization in 1989. The obstacle, as seen by the government at the time, was that Cananea had an existing labor contract which was inconvenient in terms of achieving the objective of privatization. This is how the report described Farrell Cubillas' tactics:

Just before the workers were just about to initiate another strike in support of collective-bargaining demands, the government announced the company's bankruptcy and used soldiers to enforce the closure of the company. The government insisted on the revision of the

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1. Oct. 7, 1992 draft, U.S.-Can.-Mex.

2. Mexican Labor Trends, 1988-90, at 34 (Dep't State; unpublished report).

existing Cananea labor contract, a pressure tactic that is similarly employed in other disputes. Now, Cananea was particularly important because in Mexico it is historically viewed as the birthplace of Mexican trade unionism.³

This report, which describes the *reality* of Mexican labor practices, was compiled by the United States Embassy in Mexico City.⁴ Although very candid and directly contradictory to the information disseminated by the special U.S. trade representatives as to Mexican labor relations and practices, the report has now been made public.

These realities are not confined to state-owned companies like Cananea. They directly benefit foreign investors in Mexico, who have a very convenient vehicle in the government when they do not like the constraints of the contracts which they have negotiated with the unions. For example, the Ford Motor Company unilaterally terminated a plant contract and dismissed all the workers. A few months later, Ford re-opened the plant, and re-hired the workers at a lower wage standard and lower benefits. When the lower benefits were accepted by the union officially associated with the Confederation of Mexican Workers ("CTM"), the workers at the Ford plant tried to form a dissident union to regain the benefits under the original contract. A strike occurred; violence ensued and resulted in one death on the factory floor and several injuries. No inquiry has ever been made as to the sources of the violence, but most people knowledgeable about the case recognize that it was the CTM-affiliated union which instigated the violence.

A partial replay of the Ford drama took place at the Volkswagen plant this year; fortunately, however, there was no death or violence. Volkswagen also unilaterally reduced benefits. Workers from the official union then tried to form a dissident union to regain the lost benefits. The *Financial Times of London*, hardly a radical leftist publication, described the Mexican government's role in the Volkswagen case as follows:

The [Mexican] administration was, for example, almost certainly behind Monday's decision by the Federal Conciliation and Arbitration Board to cancel VW's collective contract with the unions, letting the company dismiss dissident workers at will and re-hire on its own terms.⁵

Again, this is the reality of labor practices in Mexico.

Another notorious case is that of Agapito Cavazos-Gonzales, the head of the journeyman workers union in Matamoros (which is across the border from Brownsville, Texas). This is a highly unionized area. Cavazos-Gonzalez, like most union leaders in Mexico, is no angel; in this respect he mirrors the union leadership in most of North America, and, one

3. *Id.*

4. *Id.*

5. Damian Fraser, *NAFTA Sets Mexico on the Path to Industrial Unrest: A Push to Raise Productivity Prompts a Union Backlash*, *FIN. TIMES*, Aug. 19, 1992, at 6.

could say, in some respects the U.S. union movement. He was, however, an aggressive negotiator on behalf of his membership; indeed, too aggressive for the comfort of the American companies on the border who had to negotiate with him. These companies sent their lawyers to complain to President Salinas that Cavazos-Gonzalez was ruining the investment climate in Matamoros. Within days of the meeting, Cavazos-Gonzalez was picked up while driving home and bundled on a plane to Mexico City.

He was grilled throughout the night by two magistrates as to alleged tax evasion in 1988. This seventy-six year old man began to hyperventilate and wheeze, so they moved him to a hotel under police-arrest. The magistrates then transferred him to a hospital under police-arrest. I lost track of him in June; at that time he was still in the hospital under arrest. Cavazos-Gonzalez may in fact be a tax-evader, though he denies it. My point, however, is that you do not pick citizens up in the middle of the night and bundle them on a plane and grill them through the night without the benefit of counsel or contact with representatives of his union or his family. That is the reality of the Salinas government approach. It is the government's policy to assure a low wage, stable labor environment conducive to attracting foreign investment, enforced by the kind of strong arm tactics outlined above. These are unfair labor practices which, in turn, constitute unfair investment incentives to attract foreign investment, such as American investment, to Mexico.

It is naive in the extreme to believe that American companies do not know that they can take advantage of this policy and the tactics which have been described. The United States negotiators for NAFTA, however, propose not to recognize that there is even a problem. NAFTA does not contemplate the creation of a social policy, as is the case with the European Community ("EC"). Therefore, the United States administration is attempting to compartmentalize the labor relations issue from the trade issue. NAFTA, however, is more than a trade agreement. It is a trade and investment agreement, and part of the investment climate which Mexico has created involves this low wage labor stability, which is enforced by strong-arm tactics. It constitutes, in my view, an unfair investment incentive, which should have been addressed as an integral part of the NAFTA negotiations. The dirty secret of the NAFTA negotiations is the failure to address this question of what constitute fair and unfair labor practices, which in turn amount to fair and unfair investment incentives.

In his paper, Francisco Breña Garduño points out that Mexico has ratified Agreement #87 of the International Labour Organisation ("ILO") Convention on the liberty of association.⁶ Mexico, therefore, nominally adheres to international standards of agreed labor relations practices among industrialized countries. I believe that NAFTA should include a provision which refers to the ILO Convention and makes it an integral

6. Francisco Breña Garduño, *The Impact of NAFTA on Labor Legislation in Mexico*, 1 U.S.-MEX. L.J. 220, 221 (1993).

part of the Agreement, and therefore actionable under the dispute settlement resolutions provisions. There is no reason and no logic, as far as I can see, why it is legitimate to negotiate aggressively to protect the intellectual property rights of American companies through incorporation by reference of four international conventions in Chapter 17, the Intellectual Property Chapter of NAFTA, while ignoring basic worker rights in Mexico.

I believe that some of the practices outlined above are unfair labor practices and therefore constitute unfair investment practice. This is unfair to American workers. By ignoring this issue, the NAFTA negotiators for the Bush Administration have simply relegated workers' rights to a lesser plane than the protection of the intellectual property rights of American corporations. There is no logical reason for distinguishing between the two, except the political decision that workers' rights are less important than the intellectual property and other rights which were so vigorously negotiated as part of the NAFTA negotiation.

I hardly need to point out that this is an unpopular, and a distinctly minority, view in Washington. In my view, NAFTA will go through Congress without significant reference to this issue. What Francisco Breña Garduño has described, very accurately, as the Agreement for Consultation—the exchange of information that Secretary of Labor Lynn Martin negotiated with Farrel Cubillas—is nothing more than a joke. It is totally without any credibility, especially in light of what I have described as the reality of Farrel Cubillas and the Mexican Labor Ministry's role in labor disputes. I think this is a fatal flaw in NAFTA, and if it were up to me, I would vote NAFTA down on this ground alone, unless the issue were addressed by making the ILO Convention language a part of NAFTA by reference.

In conclusion, I want to note that while it is true that we are not trying to create a European Community type of agreement and relationship under NAFTA, a lesson might be learned from the EC members' requiring Spain and Portugal to conform their basic institutions, including their labor relations, to elementary democratic standards. The EC has developed a social charter and has rejected explicitly the concept of what they refer to as social dumping; namely, the deliberate maintenance of lower work place standards and workers' rights as a device for attracting investment. What is wrong with NAFTA is that it institutionalizes social dumping. What we have is a deliberate policy of the Mexican government to maintain wages, which makes Mexico competitive with East Asian competitors and thereby attracts American investment. That is social dumping and it ought to be rejected, just as it was rejected by the European Community.

OBSERVATIONS OF A U.S. LABOR UNIONIST AND FORMER NEWS REPORTER IN MEXICO

STEVEN PAUL WEINGARTEN*

I have had experience in United States-Mexico labor relations as an American correspondent in Mexico from 1983 until early 1987 for the Cox News Chain. I also have had experience in labor relations as Communications Director for a labor union representing 43,000 workers in Los Angeles County. These workers include public sector employees, nurses, librarians, and welfare workers. Because of my encounters as a correspondent and as a member of a large labor union, I can see that there are profound changes underway in Mexico.

I was glad to learn that Francisco Barrio was sworn in as Governor of Chihuahua. I covered the Chihuahua election of 1986, in which he was defeated. I walked away feeling that a massive fraud had been perpetrated and that we would never see the end of it. I am glad to see that Mr. Barrio and the Panistas stayed in the race, followed it up, and did not get disheartened as in other Mexican states.

Winners and losers aside in Chihuahua, Sonora, or Oaxaca, I was very impressed with Mr. Barrio, whom I had met when he was Mayor of Ciudad Juarez. When I interviewed him at that time and during the gubernatorial election, I found that he represented a new generation of Mexican political leaders. He is someone with a nimble mind and good training who was very frank and eloquent with reporters. Previously, Mexican politicians generally tended to shut us off, to keep us at the door and to deal with the national press in a manipulative way. They were preaching to the choir for domestic use, and only the President and a bold handful of others would speak to the foreign press.

During four and one-half years of covering the "stocks and bombs" beat in Mexico City, however, I found that a new generation of Mexican professionals had grown up and extended itself across virtually every area of economic and political life. This is true in all three political blocks, left, conservative, and the center Partido Revolucionario Institucional ("PRI"). I found that business, university, and even labor people across the country are working with American university people on ecological, medical, and engineering projects.

This has not always been the case. For example, after the 1983 Cobalt 60 spill in Juarez—the worst nuclear disaster in North American history—I investigated Mexico's nuclear industry. I found many legal violations,

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even though very good laws were on the books. The problems seemed to be enforcement, review, and the plain ignorance on the part of people handling radioactive material. People were losing radioactive devices throughout the country. When I was moved to Texas, and covered the same story for the *Austin American Statesman*, I found that the problem existed on both sides of the border.

More recently, however, I have seen a trend toward efficiency and international cooperation. For example, on September 19, 1985, Mexico City lost 5,000 hospital beds, one-third of the capital's capacity, in two and one-half minutes of horrific earthquake. I saw UCLA medical center personnel led by one doctor from Mexico City rush in with open arms and suitcases full of medical supplies to begin an emergency airlift. Over time they moved from the emergency phase to a rebuilding phase, and UCLA Medical Center eventually adopted Mexico City General Hospital. This reflects an important change in the relationship of the people of the United States to the people of Mexico.

I saw this same pattern of ties deepening, especially in nongovernmental organizations, across the spectrum of life. It is especially strong in the southwest United States and northern Mexico. Consequently, I think that the North American Free Trade Agreement ("NAFTA")¹ is a case of the tail wagging the dog. NAFTA is a part of a process that has been generating momentum for many years. In fact, when I arrived in Mexico City there were sixty foreign correspondents, twenty of whom were American. In 1987 the press corps had increased four-fold to 240, with sixty Americans based full-time in Mexico City. The perception of Mexico in American eyes has changed.

I would like to refer to the AFL-CIO's weekly newspaper from March 4, 1991, when the NAFTA debate was on the fast track.² The dateline is Bar Harbor, Florida, where the labor leaders regularly gather. Labor pledged to join with its environmental and consumer allies to fight the proposed agreement on every front: in the halls of Congress, in corporate board rooms, and in the court of public opinion. The article quotes AFL-CIO Secretary Treasurer Thomas Donahue as saying that what the Bush Administration proposed was a fundamental restructuring of the economics of the North American Continent. Donahue went on to say that the Office of the United States Trade Representative wanted to push the Agreement through in six months, keeping everyone in the dark and giving Congress no chance to debate about or alter the Agreement. Donahue warned that unless the union and its allies could get the proposal off of the fast track, the Administration could ram through an agreement that would expand the *maquiladores*, "which is an absolute disaster for workers in the United States and Mexico."³

I believe that these sentiments are not very accurate, but one thing is extremely telling. When the AFL-CIO leadership talks about fighting on

1. Oct. 7, 1992 draft, U.S.-Can.-Mex.

2. Michael Byrne, *All Out Fight to Halt Mexico Pact*, AFL-CIO NEWS, Mar. 4, 1991, at 1.

3. *Id.*

every front, they forget about the workplace. They mentioned the halls of Congress, the corporate board rooms, and the court of public opinion. The problem with this threat, however, is that it is made by a bunch of old white men with a cold warrior focus on Europe. Mexico is the neighbor of the American southwest. The union leadership's focus is very much removed, both in composition and in thought, from the workers they represent.

In addition to union leadership, proponents of NAFTA will have a hard time selling it in Southern California. There is a \$588 million shortfall in the budget of California. Southern California in the last year has lost more than 500,000 jobs. Today, one out of seven residents of Los Angeles County receives some sort of public assistance, an increase of forty percent from last year. In the public mind, NAFTA will speed up this increase in unemployment. Jobs are leaving California. More of them go to the deep South or to Arizona than to Mexico, but public perception is different. It would have helped if labor had been asked for its input on this. Linda Powers states that the Bush Administration worked closely with Congress.⁴ The Administration, however, did not work closely with the labor unions at any level.

Finally, I believe that the future will bring more internal struggle within both the American and Mexican labor movements. There is already a new generation of Latino labor leaders. For example, my union has a thirty-eight-year-old Chicano leader and now consists of 43,000 public sector workers. This is a bilingual generation of workers with family ties going back to Mexico. One will find more Mexican workers who have had good experiences with American labor unions returning to Mexico and who demand changes within the Mexican union structure. After years of being shop stewards in American unions, they will be trained in how to spot problems in health and safety agreements. They will have support from their union brothers and sisters still in the United States. Whether this fight is fought in Congress or in the court of public opinion will have very little bearing on what goes on at the workplace level. Just as you have a common language among lawyers and engineers, you will see a common language among union members. American unions already have very tight links with Canadian labor. It is long overdue for us to work with our Mexican colleagues.

4. See Linda Powers, *NAFTA and the Regulation of Financial and Other Services*, 1 U.S.-MEX. L.J. 65.

DISCUSSION OF THE IMPACT OF NAFTA ON LABOR AND LABOR LAW

QUESTION: What has been the Canadian government's reaction to the Mexican labor policy you described?

ANSWER, *Mr. Levinson*: A lot of Canadian workers and others blame the U.S.-Canada Free Trade Agreement¹ for a deepening of the recession that they are in and for the loss of jobs. Thus, I do not know whether the Canadian government shares the view of the U.S. government, which is that the impact of labor is not an issue to be discussed as part of the North American Free Trade Agreement ("NAFTA"),² or that it is an issue to be put aside with the kind of cosmetic agreement that Francisco Breña Garduño described between Lynn Martin and Farrell Cubillas. The real issue is what people think in the Canadian workplace and in Canadian public opinion, and that seems to be turning against both the U.S.-Canada Free Trade Agreement and NAFTA.

QUESTION: Can you explain the recent Volkswagen strike in Puebla? How was the company legally able to dismiss all of its workers?

ANSWER, *Lic. Garduño*: As far as I have been informed, the labor union was divided into two groups. The legal representation signed an agreement with the company to accept the revision of the contract. When they went back to work, another group of workers then opposed them and the company could not reinstate their operations. According to the law, that is force majeure or an act of God. Some say "Why? If I cannot continue to perform my duties because of an act of God, it is beyond my responsibility." The company started to negotiate with the two groups again to see if they could resolve more. The company's position was that, according to law, they were entitled to terminate these relations because of the force majeure. The workers then have the right to file an Amparo proceeding. The real problem, in this case, is that the labor conflicts are influenced by a lot of politics. There are a lot of interests involved which are not legitimate, not really concerned with the improvements of the working conditions or with the company.

ANSWER, *Mr. Levinson*: Might I just amplify that by again quoting from that left-wing journal, the *London Financial Times*, "NAFTA has forced VW to take a tough stand with its union, provoking the dispute."³

1. Jan. 2, 1988, U.S.-Can., reprinted in BASIC DOCUMENTS OF INTERNATIONAL ECONOMIC LAW 353 (Stephen Zamora & Ronald A. Brand eds., 1990).

2. Oct. 7, 1992 draft, U.S.-Can.-Mex.

3. Damian Fraser, *Mexico Sets Mexico on the Path to Industrial Unrest*, FIN. TIMES, Aug. 19, 1992, at 1.

ANSWER, *Lic. Garduño*: It seems very suspicious to me that the journalists are better informed than the lawyers involved in the dispute, that the journalists would have investigated all of the cases and to have the truth. This is very strange, but, at least in this case, it looks to me like that is what happens in Mexico. Sometimes people come and tell me that the Mexican government disclosed in Washington or London that something is going to happen, or the way something happened. I ask why would the Mexican government prefer to give the first-hand news to these people rather than to Mexican interests? Mexico, as you know, is a country that is having some success even with all of these accusations.