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## **Background on Complaint under North American Agreement on Labor Cooperation (NAALC)**

### **What is the NAALC?**

The North American Agreement on Labor Cooperation (NAALC) is the side agreement to NAFTA under which each of the three countries that are parties to NAFTA agree to enforce their own labor standards, and to strive to improve labor standards in their country. It is often also called the “labor side agreement” to the NAFTA.

### **What are a country’s obligations under the NAALC?**

Under the NAALC, each party is to ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and obligates itself to continue to strive to improve those standards. Each country is to effectively enforce its labor law, provide access to adjudicative bodies and provide that its proceedings are fair, equitable and transparent. Countries are also obligated to ensure that their laws are shared with the public and that public awareness of the laws.

### **What are the labor principles under the NAALC?**

There are eleven labor principles incorporated into the NAALC. These are:

- Freedom of association and protection of the right to organize
- The right to bargain collectively
- The right to strike
- Prohibition on forced labor
- Child labor protections
- Minimum labor standards with regard to wages, hours and conditions of employment
- Non-discrimination in employment
- Equal pay for equal work
- Health and safety protection
- Workers’ compensation
- Protection of the rights of migrant workers

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## **How are complaints treated under the NAALC?**

Each country has set up a National Administration Office (NAO) within its labor department. The NAOs are responsible for the development or receipt of complaints about alleged violations of the NAALC, and the review of such complaints. There are potentially three levels of complaints:

### Review/consultation

Individuals may lodge complaints, called “public communications,” with the National Administration Office (NAO) of a country not involved in the complaint. The NAO reviews the complaint and reports on the complaint, and may recommend ministerial consultations.

### Evaluation Committee of Experts (ECE)

In trade-related matters involving a “pattern of practice” (more than one incident) of failure to effectively enforce labor laws, an ECE may be formed with one member from each country. The ECE evaluates the effectiveness of a country’s labor law enforcement challenged in a complaint, and issues a report and recommendations. The ECE has jurisdiction over complaints involving prohibition of forced labor, compensation in cases of occupational injuries and illnesses, protection of migrant labor, elimination of employment discrimination, equal pay for men and women, labor protections for children and young persons, minimum employment standards, and prevention of occupational injuries and illnesses. The ECE members are outside experts not governmental officials. Eight of the eleven labor principles are subject to evaluation by the committee of experts.

### Arbitration

A five-person panel of outside experts from the three NAALC countries may take up disputes not resolved after an ECE, and there has been a persistent pattern of non-enforcement of labor standards. The panel may issue an action plan for improving enforcement in relevant areas of labor law, in the areas of labor protection for children and young persons, minimum employment standards, including minimum wage, and prevention of occupational injuries and illnesses.. If the plan is ignored, fines may be laid against the offending government, or loss of NAFTA tariff preferences may be applied to the company or sector involved in the complaint. Minimum wage, child labor, and occupational safety and health cases are the only labor principles subject to arbitration.

## **What is Public Communication 9802, regarding the apple industry in Washington State?**

In May of 1998, a number of progressive Mexican unions filed Public Communication number 9802 with the NAO of Mexico. The complaint alleges many violations of the eleven labor principles of the NAALC, including the lack of legal protection for farmworker union organizing and collective bargaining, discrimination against migrant workers, a failure to effectively enforce state laws with respect to minimum labor standards and the protection of worker health and safety. The complaint was accepted for review by the Mexican NAO, and ministerial consultations began. In August of 1999, the Mexican NAO completed its review of the complaint, and requested ministerial consultations. A public forum has been scheduled in Yakima, Washington for August 8, 2001.

## **Why is the August 8, 2001 public forum important?**

This will be the first time that a broad, industry-wide complaint under the NAALC has come to public forum in the United States. It will be the workers’ opportunity to share their concerns about lack of protection for their international labor rights and lack of enforcement of minimum labor and health and safety standards.

## **What are the farmworkers' concerns?**

Discrimination against migrant workers/lack of legal protections for worker organizing: Farmworkers have traditionally been excluded from laws that protect nearly all other working people who wish to organize a union. Although farmworkers in Washington state cannot be legally discriminated against for joining a union, there is no legal mechanism to oversee union elections and collective bargaining. Without such a mechanism, growers and workers alike suffer from instability and disruption. Farmworkers will be asking for a mechanism to oversee fair elections, so that Washington state can come into compliance with international norms.

Farmworkers are typically the poorest paid of all low-wage workers, earning in Washington State only about \$7,500 per year. Farmworkers are excluded from both national and state laws that provide for overtime. As the state's minimum wage has risen, workers have found they are being paid the same piece rates as always. As a result, women workers and older workers have been passed over in favor of younger men who can pick more fruit at the same old piece rates. And workers who have suffered because of the industry's economic downturn find that they are not eligible for dislocated worker programs intended to benefit all workers. The state needs to do a better job of enforcing minimum labor standards, to stabilize and benefit both workers and growers who respect labor laws.

Farmworkers are involved in one of the most dangerous occupations in America. Although farm work is done by only 1% of the population of the United States, they represent 6% of the occupational fatalities. And work in Washington State is even more dangerous than in the rest of the country – tree fruit workers in Washington state have an injury and illness rate 54% higher than these workers nationwide.

Yet farmworkers have traditionally been afforded the lowest degree of protection against occupational illness and injury. When they are injured, their chemical illnesses are often not recognized in the state workers' compensation system. When they do receive benefits, it is often at a lower level than other workers.

Farmworkers in Washington state, a large percentage of whom are born in Mexico, are overtly discriminated against in three laws: collective bargaining, overtime compensation, and a "seasonality" provision in workers' compensation law. Nor do farmworkers get a fair share of state enforcement resources. Workers hope to eliminate these items of discrimination and create, together with employers, consumers and retailers, a model system of labor cooperation for agriculture in North America.

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