Testing the Naalc's Dispute Resolution System: A Case Study

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I. INTRODUCTION

Luz Elena Corona felt the gnawing pains in her stomach intensify. 1

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She asked her supervisor for permission to go home early, but he refused her request. A few minutes later, shortly after 1:00 a.m., Luz Elena Corona ran to the bathroom where she had a miscarriage. She returned to work, leaving her dead fetus in the factory bathroom. Although Luz Elena Corona was bleeding, her supervisor refused to allow her to leave work in order to go to a doctor. Instead, he forced her to continue packing plastic skirt hangers. Unfortunately, Luz Elena Corona’s story is not unusual; her supervisor punished her because she was pregnant.

A 1996 investigation in Mexico by Human Rights Watch, a Washington, D.C.-based non-profit human rights organization, found that pregnant workers in maquiladoras, or export processing factories, are discriminated against in order to maintain low production costs. Such gender discrimination occurs during the hiring process and during employment. The 1996 Human Rights Watch study found that United States U.S.-based Multi-National Enterprises (“MNEs”) including: General Motors, Zenith, Teledyne, Carlisle Plastics, American Telephone & Telegraph, International Telephone & Telegraph Corp., TRW, W.R. Grace, General Electric, and Sunbeam-Oster, often partly or wholly own or subcontract these factories or maquilas.

2. Id.
3. Id.
4. Id.
5. Id. During her interview, Luz Elena Corona remarked that she “felt like a cow in a market.” In 1993, after eleven years of employment with Carlisle Plastics, Inc., she claims she was fired for distributing workers’ rights literature at the plant. See id.
6. See Moore, supra note 1, at A20 (addressing the exploitation of Mexican women in the labor industry).
8. See DENNIS R. APPELWARD & ALFRED J. FIELD, JR., INTERNATIONAL ECONOMICS 341 (1995) (explaining that the maquiladoras are industrial parks located in Northern Mexico). The first maquiladoras were established during the mid-1960s to encourage foreign direct investment in Mexico by U.S. companies. Id. In addition to cheap labor, the Mexican government offered these companies other economic incentives, such as tariff reductions, to encourage them to locate their production facilities in Mexico. Id.
9. See HUMAN RIGHTS WATCH, supra note 7, at 7 (stating that pregnancy discrimination persists because the government’s interest in attracting and retaining foreign investment dovetails with the economic interests of maquiladora operators to keep their operating costs as low as possible).
10. See generally HUMAN RIGHTS WATCH, supra note 7, at 2 ( noting that, as a condition of employment, women must undergo a pregnancy test and may not be hired if they are pregnant).
11. See HUMAN RIGHTS WATCH, supra note 7, at 3 (implicating U.S.-based companies in the reported findings).
Part I of this Comment uses the 1996 Human Rights Watch investigation\textsuperscript{12} to argue that the North American Agreement on Labor Cooperation ("NAALC")\textsuperscript{13} dispute resolution system should be assessed for its effectiveness, or lack thereof, in protecting workers' rights. To date, the NAALC's dispute resolution system has not been extensively tested. The Human Rights Watch investigation is particularly timely because it reflects the emerging conflict between protecting workers' rights in Mexico and Mexico's policy of encouraging increased trade and foreign direct investment ("FDI").\textsuperscript{14}

Part II briefly outlines the history of the North American Free Trade Agreement ("NAFTA"),\textsuperscript{15} its role in Mexico's economic growth, and the controversy it created in the U.S. concerning whether NAFTA sufficiently protects workers' rights.\textsuperscript{16} This Part outlines the NAALC, a side agreement that was written to provide external mechanisms to compel NAFTA members to enforce their own domestic labor laws.\textsuperscript{17}

Part III analyzes Mexico's labor laws. This section focuses on the underlying economic reasons that Mexico has not enforced its laws while simultaneously using the Human Rights Watch investigation to support the allegation of non-enforcement. Part III concludes that national economic development justifications proffered by free trade economists should not take precedent over the economic and moral reasons for enforcement of labor laws.

\textsuperscript{12} This Comment uses the terms "sex discrimination" and "pregnancy discrimination" interchangeably. See Human Rights Watch, supra note 7, at 2 (classifying that pregnancy discrimination is sex discrimination because pregnancy is unique to females). This Comment does not address whether protections for pregnant workers constitute special treatment or equal treatment. See also Sally J. Kenney, For Whose Protection? Reproductive Hazards and Exclusionary Policies in the United States and Britain 73-75 (1992) (outlining the strengths and weaknesses of special treatment and equal treatment theories in ending sex discrimination).


\textsuperscript{14} See generally infra Part III.C.1 (discussing the economic reasons for Mexico's lax enforcement of its labor laws).


\textsuperscript{16} Sidney Weintraub, NAFTA: For Better or Worse, in NAFTA Now!, supra note 15, at 7.

Part IV describes how Mexico lacks effective labor law enforcement to prevent pregnancy discrimination. Consequently, this Comment explores whether external remedies under the NAALC may be used to prevent gender discrimination in Mexico. In particular, it focuses on a recent submission filed by Human Rights Watch with the U.S. National Administrative Office ("NAO") urging a U.S. government investigation into pregnancy discrimination in Mexico. This section describes the NAALC investigative process and speculates how a submission regarding alleged pregnancy discrimination might progress through the NAALC's dispute system. Part IV also briefly discusses the NAO's response and rendered decision to the Human Rights Watch's allegation. It recommends that human rights organizations continue to file submissions regarding allegations of workers' rights violations with the NAO to test the NAALC dispute resolution system.

Finally, Part V recommends that any country that wants to join NAFTA be required to sign the NAALC and abide by its obligation to enforce domestic labor laws. It also discusses how future trade negotiations in the U.S. may become more complicated and controversial than NAFTA if the NAALC fails.

II. CONTROVERSY OVER NAFTA AND THE DRAFTING OF THE NAALC

A. The Goals and Aspirations of NAFTA

NAFTA's main goal is to promote economic development for its members by eliminating impediments to free trade in goods, capital, and services among signatory countries. Modern economists and politicians believe that increased international trade is essential to facilitate economic development and prosperity.


19. See NAALC, supra note 13, sec. C (establishing three NAOs, one each for Mexico, Canada, and the United States, and discussing the functions of the NAO).

20. See McGuinness, supra note 17, at 582-86 (summarizing the dispute resolution process under the NAALC and the various governmental organizations that carry out the process).

21. See Weintraub, supra note 16, at 6 (stating that from the U.S. viewpoint, such impediments include high tariffs, administratively burdensome investment requirements, and other protectionist measures).

22. Globally, the value of trade in goods exceeded $3.7 trillion in 1992, and the value in services equaled approximately $1 trillion. See generally APPLEYARD & FIELD, supra note 8, at 12-14 (noting the increased importance of international trade and the need for adjustment by countries).