Executive Summary of the Public Statement MEX 2006-1
National Administrative Office in accordance with the
North America Agreement for Labour Cooperation

November 2012

Secretariat of Labour and Social Awareness of Mexico
Mexico, D.F., November 29, 2012

Secretariat of Labour and Social Awareness of Mexico

November 28, 2012 Mexico, D.F.

This document is in reference to the Public Statement MEX 2006-1 presented in October 2006 at the National Administrative Office (NAO) of Mexico under the North America Agreement for Labour Cooperation (NAALC).

In this respect, I present to you in accordance with the procedures established in the National Office Administration of Mexico article 16 (3) of the North America Agreement for Labour Cooperation (NAALC) the attached Summary Report.

If you are aware of any additional petitioners regarding this submission, kindly forward the attached document to them.

Cordially,

Lic. Eduardo Velasquillo Herrera

Hemispheric Labor Policies Sub-coordinator

Secretariat of Labour and Social Awareness of Mexico
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N.A.O. OF MEXICO REVIEW REPORT
PUBLIC STATEMENT MEX 2006-1

I. Executive Summary

In terms of the North America Agreement for Labour Cooperation (NAALC) the Governments of Mexico, United States of America and Canada have agreed, among other objectives, to improve the working labour conditions and the quality of life in their territories, to promote and maximize the established Labour Principles and to promote the application and supervision of their respective labour legislations.

The NAALC contemplates Public Statements' mechanism so any person can take to the attention of the Government any matter related to the effective application of the Labour Legislation arising in territory of any of the Parties. The current Executive Summary refers to the Public Statement MEX 2006-1 received via the National Administrative Office (NAO) of Mexico and established in the International Secretariat of International Labour Matters and Social Awareness.

The Public Statement was presented on October 18, 2006 by the Authentic Labour Front (ALF), the United Electrical Radio and Machine Workers of America (UE), the Canadian Labour Congress, and the National Union of Workers (NUW), among 51 union organizations and non-governmental organizations (NGO) of the three countries.

The NAO of Mexico allowed the revision of the Public Statement and requested a consultation for the cooperation of the U.S. NAO, in terms of Article 21 of the NAALC. In April and August of 2008 and May 2011, the petitioners presented additional information in support of the initial summary.

The Petitioners highlight the current violations to the following Labour Principles: 1, 2, 6,7,8,9 and 10 of the NAALC.

The petitioners argue the collective bargaining prohibitions to North Carolina's public sector workers under the North Carolina General Statue 95-98 (NCGS 95-98), which establishes that "any collective agreement from the public sector contravenes the state's public rights, and is illegal, illicit, null and without effect". According to the petitioners, this generates poor working conditions in regards to wages and working periods. Work related diseases and accidents are not been prevented, compensation in case of sickness or in work related accidents has been denied, and discrimination became a fact among public sector workers.

To this respect the U.S. Government is obligated, as per the NAALC, to guarantee that its laws and labour regulations provide high labour standards (Article 2), to promote the observance of its labour legislation and effectively apply it through the proper

governmental measures (Article 3), guarantee to workers their right for justice (Article 4 and 5), guarantee to workers their right to labour legislation awareness and publication (Articles 6 and 7).

The NAO of Mexico revised this based on the arguments presented by the petitioners and by the NAO of U.S. as established in the NAALC and in the NAO of Mexico’s rules regarding Public Statements. This revision did not pretend to create supernatural mechanisms as the NAALC does not have as function to judge or modify the other Parties’ legislation. The purpose of the revised summaries of the Mexican NAO as per the NAALC is to bring to the U.S. labour authorities’ attention, matters related to the apparent breach of labour laws raised in Public Statements.

In order to comply with the provisions of Article 5.8 of the NAALC, the NAO of Mexico sought information relating to matters that may be pending resolution, and left out from this report any matter sub judice.

The following, highlights the petitioner’s major concerns of the alleged U.S. Government’s failures regarding the following NAALC Labour Principles:

Regarding Principle 1 of the NAALC which refers to freedom of association; the petitioners pointed out that the labour policy of North Carolina prohibits workers the right to bargain collectively, and although is not illegal to join a union, by prohibiting collective bargaining, the state denies the main benefit of association. In contrast, they reported that federal employees enjoy the freedom of association right without restrictions.

The U.S. NAO note that employees at all levels of Government have the right to form and join unions, under the First Amendment of the U.S. Constitution that guarantees "...the right to people to associate peaceable". Moreover, it added that the North Carolina law leaves clear that "each state employee retains all rights and obligations of a citizen provided by the Constitution and the laws of the United States" and that while the people of North Carolina through their representatives have decided that their state and municipal Governments cannot bargain collectively, public employees in North Carolina and their unions have the right to freedom of association and the right to participate in state, municipal and federal democratic processes.

Notwithstanding the foregoing, the Freedom of Association Committee issued recommendations in March 2007 on a complaint submitted by the United Electrical Radio and Machine Workers of America in 2005, which emphasized that the right to freely negotiate working conditions with employers is an essential element of freedom of association, and that unions should have the right, through collective bargaining, to try to improve their working conditions of those whom they represent, without the intervention of the authorities. It also asked the U.S. Government to promote a legal framework for collective bargaining for public employees in North Carolina and to repeal the statute NCGS 95-98. In this regard, the U.S. informed the ILO about presenting initiatives to the General Assembly of North Carolina for the 2007-2010 sessions, and repealing the statute NCGS 95-98. In the ILO’s follow up reports from November 2008, March 2010 and November 2011, the Committee admitted to be aware of the filing of
the above initiatives, but noted that no legislation had been passed, and urged that U.S. continues its efforts to establish a legitimate framework for collective bargaining in North Carolina.

Regarding Principle 2 of the NAALC, related to collective bargaining, the petitioners state that the U.S. Government does not protect collective labour rights of the state and municipal workers in any labour laws or in the federal Constitution, and let the states regulate their collective bargaining rights. Moreover, the Assembly of North Carolina has not enacted any legislation granting public workers collective rights, and the federal courts have declined to meet demands made by workers to assert that the statute NCGS 95-98 violates the U.S. Constitution. They also note that federal workers have this fundamental right guaranteed by the federal service statue in regards to the relation between workers and management.

The petitioners claim that, although there are mechanisms to enforce their rights in the event of violations, these are expensive and often inefficient, and not a substitute for collective bargaining, but instead, they are a preventive measure against the protection of minimum working conditions. They believe that without collective bargaining rights various international legislations are being violated.

The petitioners state that the case was reported to the ILO twice, and it concluded that North Carolina should repeal NCGS 95-98 and establish a legitimate collective bargaining framework that integrates the collective rights in their legislation and focus attention on jurisdictions in which public officials are been deprived, wholly or partially, of those rights, all of the above in consultation with public sector unions.

The U.S. NAO confirms that at the federal level the U.S. Code guarantees to federal public employees the right to collectively bargain. However, for public workers of North Carolina the statute NCGS 95-98 applies. The public sector is divided into three levels: federal, state and municipal, in accordance with the Constitution which only gives the federal Government certain powers and the rest are reserved to the states.

The main collective bargaining law in the country, the National Labour Relations Act, specifically excludes from its application all state and municipal public employees, based on federalism principles. Therefore, the federal Government has no authority to interfere with the authority of the states to negotiate their own collective bargaining agreements, and most have failed in the General Assembly of North Carolina to amend the statute NCGS 95-98. Nevertheless, the U.S. Government promotes collective bargaining practices in federal and state levels, respecting the autonomy of the states to develop laws and policies for its own employees, such as the promotion of collective bargaining practices through the Federal Mediation and Conciliation Service.

The U.S. NAO argues the existence of Judicial Constitutional precedents that make collective bargaining mandatory and for instance, North Carolina is free to decide the application of the statute NCGS 95-98. Other precedents have pointed out that the

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2 The United States Constitution Amendment X (the powers that are not been delegated to the United States by the Constitution, forbidden to the States, are respectively reserved to the states or the population)
prohibition to collectively bargaining does not imply the prohibition to workers to get involved in collective activities with unions to discuss labour matters through the state’s legislative process, as they provided examples of these activities between workers and unions.

Additionally, in connection with the two complaints filed before the Freedom of Association Committee, the recommendations issued in March 2007, which stressed that the right to freely negotiate working conditions with employers is an essential element of freedom of association, and trade unions should have the right, through collective bargaining, to try to improve the working conditions of those whom they represent without the intervention of the authorities. It also requested to the U.S. Government to promote a legal framework for collective bargaining for public employees of North Carolina and to repeal the statute NCGS 95-98. In this regard, U.S. informed the ILO about presenting initiatives to the General Assembly of North Carolina for sessions from 2007 to 2010, aimed to repeal the statute NCGS 95-98. In the follow up reports from the ILO in November 2008, March 2010 and November 2011, the Committee was aware of the filing of the above initiatives, but noted that no legislation had been passed, and urged the U.S. to continue with efforts to establish a legitimate framework for collective bargaining in North Carolina.

The ILO is currently reviewing another case, 2741, alluding to the prohibition of state public workers to bargain collectively, filed on November 10, 2009 by the Transport Workers Union of America, (TWUA) and the Transport Workers Union of Greater New York, Municipal 100 (Municipal 100).

Regarding principle 6 of the NAALC, minimum working conditions, the petitioners note that because the statute NCGS 95-98 prevents public sector workers from bargaining collectively, state and municipal workers are unable to obtain fair living wages and working periods. The petitioners exemplify situations where public sector workers in North Carolina face excessive and unsafe working hours, without payment, and receive inadequate wages and benefits. They claim to be forced to work overtime without rest and work up to three weekends in a month.

The petitioners argue that they don’t have access to a fair process, as some of the state’s hospital workers can only present complaints before the North Carolina’s Department of Health and Human Services on some specific issues, and the minimum conditions are not included.

Regarding the labour laws applicable to this principle, the U.S. NAO state that there are federal laws governing the payment of wages and prohibits unequal pay or below standard, such as the Equal Pay Act. Also Title 29 Chapter 8, § 201 - § 219 of the U.S. Code, refers to fair labour standards (Fair Labour Standards Act) and sets minimum wages and overtime pay.

The North Carolina statute, NCGS § 95-25, requires that state and municipal public employers in the state post visible signs in the workplace regarding legislation on the federal minimum wage and overtime pay, as well as information about the resources they have available to workers. The procedures that workers can follow to complain
about violations against the Equal Pay Act must be filed with the state Equal Opportunity Commission and before the Wage and Hour Division in case of violations concerning the Fair Labour Standards Act. The petitioners did not mention having initiated these proceedings.

In relation to principle 7 of the NAALC, elimination of discrimination at work, the petitioners note that there is racial and sexual discrimination in North Carolina’s public sector, due to inequality in hiring, promotions, layoffs and salary of minorities and women. They also indicate that favoritism exists, as higher paying positions are filled by Caucasian workers, while jobs with lower pay are filled by African Americans. They argue that the complaints filed against discrimination are not satisfactorily resolved.

As reported by the U.S. NAO, the Equal Protection Clause of the 14th Amendment of the Constitution prohibits Governments at all levels to give differential treatment to people based on race or sex, so no distinction is legally justified.

Also, the Civil Rights Act provides equal treatment for all persons and prohibits discrimination; and Title 42 of the U.S. Code and the Workforce Investment Act prohibits employment discrimination. The Employment Litigation Section, Civil Rights Division of the U.S. Department of Justice’s applicable provisions of the Workforce Investment Act, prohibits state or municipal Government employers to discriminate in the workplace.

Additionally, the U.S. NAO notes that the North Carolina Constitution, Article I, § 19, provides that no person shall be denied the equal protection of the laws, or otherwise be subjected to discrimination by the state because of race, color, religion, or nationality. Also, that state statutes prohibits discrimination, for example, that all departments and agencies should provide equal opportunity for employment and compensation, as well as those authorities prohibit retaliation against an employee for complaining of discrimination. The U.S. NAO explained that workers have federal and state procedures against discrimination.

Referring to principle 8 of the NAALC, equal pay for men and women, the petitioners did not provide specific information, despite having mentioned it as one of the principles allegedly violated. However, they argued that the ban on collective bargaining rights limits public workers to have fair working conditions.

The U.S. NAO note that, with respect to workers’ wages, federal law requires an employer to pay equal wages to men and women who perform the same type of work, requiring equal skill, effort and responsibility and which is developed under similar working conditions.

Referring to principles 9 and 10 of the NAALC, injury prevention and occupational diseases and compensation in such cases, the petitioner’s workers shared the experiences of North Carolina’s mental health hospitals workers whom health and safety conditions are poor and argue that this demonstrates the need for an organization to represent them in order to improve these conditions. They argue that workers put overtime, sometimes relentlessly, in environments with aggressive and hostile patients that have caused injuries. They also referred that they have been
exposed to toxic substances without proper protection and that there are irregularities in the inspections performed.

The petitioners argue that workers do not have access to adequate process to assert their claims for violations on health and safety issues in the workplace; access to these processes is very limited and resolutions to complaints have been filed in his majority against the worker. They believe that workers do not receive the needed information to seek compensation when they are injured or sick, under the North Carolina Workers' Compensation Act and the Family and Medical Leave Act.

The U.S. NAO provided information through the Occupational Health and safety Act which ensures to each worker safe working conditions and hygiene, and encourages the states to develop plans to ensure safe workplaces, which are approved by the U.S. Department of Labour. In the case of North Carolina, the plan to implement health and safety standards was approved. It also mentioned that the statute NCGS 95-143 provides that state and municipal public employers in North Carolina must make public announcements in workplaces describing work safety laws and occupational health defenses and actions to bring before the Department of Labour of North Carolina. It also requires employers to keep records and reports of the causes of diseases and occupational accidents.

Regarding compensation for occupational injuries and diseases’ legislation, the U.S. NAO did not provide a response to the specific questions made by the OAN of Mexico and contained in the Cooperative Consultations.

**Recommendations (Translated by Robin Alexander, U.E.)**

1. By virtue of the arguments presented by the petitioners and by the government of the US via the NAO, and based on the Regulations of the National Administrative Office (NAO) of Mexico regarding public communications referred to in Article 16 (3) of the North America Agreement on Labour Cooperation (ACLAN), this brings to the attention of the Department of Labour of the US (DOL) this evaluation report so that, according to their internal procedures, the DOL may determine what follows, in terms of its legislation and internal practices, to attend to the arguments of the petitioners regarding whether the rights of public employees in North Carolina have been violated by not guaranteeing them their full exercise (of rights); not being able to count on government measures for the effective application of labour legislation; not have adequate access to procedures for the application of the legislation, nor the corresponding procedural guarantees; as well as lack of knowledge of the laws, regulations and procedures that workers have in order to effectuate their rights regarding:

- Freedom of association and protection of the right to organize;
- Right to collective bargaining;
- Minimum conditions of work;
- Elimination of discrimination at work;
- Equal pay for men and women;
• Prevention of occupational injuries and diseases; and
• Compensation in the case of occupational injuries or diseases

2. The Mexican NAO places particular emphasis on the topics of freedom of association and the right to Collective bargaining. As the petitioners mention, if freedom of association exists for the public workers of North Carolina, the prohibition on Collective bargaining limits the exercise of that freedom. In this respect, there are recommendations and follow-up reports from the Committee on Freedom of Association of the International Labour Organization to the effect that North Carolina must repeal the statute NCGS 95-98 and permit public employees of that state to negotiate collectively, as well as to promulgate a legislative framework that promotes that result. Nevertheless, those reports recognize the efforts of the US to pass legislation in the Legislative Assembly of North Carolina that includes collective bargaining for public sector workers. On this point, the NAO of Mexico reiterates its respect for the NAALC and to the general commitment established in Article 2 of the same: recognize the right of the Parties “to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations”, and abstains from requesting or recommending to the government of the US that it should abrogate the statute NCGS 95-98.

Notwithstanding this, the NAO of Mexico indicates its interest in knowing of the actions taken by the government of the US in order to promote the right to Collective bargaining by public workers North Carolina, as well as requesting that it be maintained informed about the presentation of new initiatives on this subject in the Senate or in the Legislative Assembly itself of North Carolina in order to repeal NCGS 95-98.

3. Regarding the topics of minimum employment standards and the elimination of discrimination at work, according to the information provided by the NAO of the US there are resources that exist within the legislation of the United States that permit the workers to effectuate their rights in the face of presumed violations. From the information provided by the Petitioners it is not clear if workers initiated such proceedings.

In this regard, the NAO of Mexico calls to the attention of the government of the United States the usefulness of disseminating more fully, through mechanisms that it considers appropriate, the rights and minimum labour standards on which public workers in that state may rely, as well as the legal resources available to them.

4. In the case of questions of health and safety mentioned by the petitioners, the NAO of Mexico recommends that this matter be maintained under review through cooperative consultations, in conformity with Article 21 of the NAALC, since from the information provided by the government of the US it is not clear what actions are taken by the government of that country and concretely by that of North
Carolina, in order to guarantee the protection of the health and safety of public employees in that state.

In this regard, the NAO understands that the process of obtaining information that is outside of the federal jurisdiction, as it belongs to the states, is not simple. Irrespective of this, the NAALC established the obligation of the Parties to comply with their commitments, without considering as an obstacle the autonomy of the states.

II. Introduction

The NAALC subscribed by the Governments of Mexico, U.S. and Canada, in force since 1994, has as objectives the following: to improve working conditions and living standards in the territory of each of the Parties; to promote to the maximum the employment Principles established in Annex I of the Agreement; encourage the cooperation to promote innovation and productivity levels and their quality; encourage the publication and exchange of information; pursue cooperative activities relating to work in terms of mutual benefits; promote the observance and enforcement of labour laws of each of the Parties, and promote transparency in the administration of labour laws.

The NAALC does not establish new labour laws, does not intend to standardize the laws of the three countries, and does not constitute supranational instances. Instead, it tries to highlight the interest and commitment of the Parties to effectively enforce their own labour legislation by their national authorities. It considers the mechanism of Public Statements so anyone can bring to the Government’s attention issues related to the effective enforcement of labour law arising in the territory of any of the Parties. This report complies with this mechanism.

The NAALC foresees other mechanisms among the three Governments in order to address issues related to the effective implementation of labour laws, such as ministerial consultations, expert committees and arbitration panels. After plenty opportunities for dialogue and collaboration, only the arbitration panel has the authority to determine if one of the Governments incurred in a persistent pattern of failure to effectively enforce labour laws regarding health and safety, child labour and minimum wages, and to appropriate punish the responsible Government.

This report addresses issues concerning the application of U.S. labour laws, based on the Public Submission 2006-1 MEX presented in the NAO of Mexico. The Petitioners argued that U.S. labour authorities have failed to implement the labour legislation effectively concerning the following:

- Freedom of Association and Protection of the Right to Organize;
- Right to Collectively Bargain;
- Minimum Conditions of Work;
- Elimination of Discrimination at Work;
- Equal Pay for Men and Women;
- Prevention of Occupational Injuries and Diseases; and
- Compensation in the Case of Occupational Injuries or Diseases

This report refers to the Petitioners' arguments and the U.S. Government's obligations with respect to the effective enforcement of its labour laws under the NAALC, and the pertinent rules according to the U.S. legislation with arguments by the U.S. NAO.

In order to comply with the provisions of Article 5.8 of the NAALC, the NAO of Mexico refrained from making any remarks on matters that may be pending resolution and matters sub judice. Furthermore, under Article 2 of the NAALC, the NAO of Mexico does not make pronouncements on current U.S. labour legislation based on the right of the Parties to establish its own domestic labour standards and adopt or modify accordingly its labour laws and regulations.

III. Legal Framework

The NAALC establishes among its objectives: "to improve working conditions and the quality of life in the territory of each Party, "to promote to the maximum the Principles established in Annex 1 " 3 to promote the observance and enforcement of labour laws of each Party "and" "to promote transparency in the administration of labour law."

In order to accomplish such objectives, the Parties are obligated to:

- Guarantee that the laws and labour rules provide high labour standards consistent to workplaces with high quality and productivity
- Observe and enforce its labour laws effectively through appropriate Governmental measures
- Ensuring that individuals have access to the proceedings;
- Ensure that administrative proceedings before their quasi-judicial and labour courts are fair, equitable and transparent;
- Publish their laws, regulations and procedures and
- Promote information and public awareness of its labour laws5

In its review, the NAO of Mexico highlights that the NAALC establishes the effective implementation of labour laws as the responsibility of the competent labour authorities of each country as it does not create or recognize supranational mechanisms. The Parties undertake to fully respect their own Constitutions, and to recognize the right to establish their own labour standards and amend its laws and labour regulations.6 In this sense, the NAO of Mexico also accentuates what the NAALC provides "the decisions given by the administrative, quasi-judicial, judicial and labour tribunals as well as

4 NAALC Article 1
5 NAALC Articles 3 to 7
6 NAALC Articles 2 and 42
matters pending resolution, and other revised proceedings, will not be subjected to revision nor will be reopened under the terms of the provisions of this Agreement.\footnote{NAALC Article 5.8}

The \textit{NAALC} provides that the \textit{NAO} establishes rules for the submission and receipt of Public Statements on matters relating to labour laws arising in the territory\footnote{NAALC Annex 49} of either Party. In this regard, the review of such matters by each \textit{NAO} will be in accordance with the procedures of each country.\footnote{NAALC Article 16.3}

Mexico published in its Federation’s Official Journal on April 28, 1995, the “National Administrative Office of Mexico Regulations on Public Statements made on Article 16.3 of the \textit{NAALC}.” That Regulation provides that Public Statements shall:

- be directed to the \textit{NAO}
- be written in Spanish
- identify the petitioner
- precise if they contain confidential information, in such case the \textit{NAO} will keep such information
- minimize matters related to labour legislation arisen in the territory of either of the Parties (Canada and the United States of America)

Once the Public Statement has been received, the \textit{NAO} of Mexico will notify the petitioner of the registration or any pending information. For the review, the \textit{NAO} of Mexico may request consultations with the \textit{NAO} of either Party, as provided in Article 21 of the \textit{NAALC}, and may obtain additional information from the petitioners as well as from experts and consultants, besides organizing informative sessions.

The \textit{NAO} of Mexico will issue, within a reasonable time, given the complexity and nature of every Public Statement, a report containing:

- Issues concerning labour laws arising in the territory of any other Party;
- The relationship of these issues and their obligations under the \textit{NAALC};
- The recommendation to request or not to request ministerial consultations on terms of Article 22 \textit{NAALC}, and any other measure that will be valuable to strengthen the achieving of objectives pursued in the tripartite legal instrument.

Based on the recommendations made by the \textit{NAO}, the Ministry of Labour and Social Awareness may request ministerial consultations regarding any matter within the scope of the agreement with its counterpart in the U.S. or Canada, in order to conduct a thorough revision of the case, specifically through available public information.\footnote{NAALC Article 22}

If the issue raised by the petitioners has not been resolved after the ministerial consultations are celebrated, any of the consulting Parties may request in writing the establishment of an Experts Evaluation Committee, which will examine, in the light of
the objectives of the NAALC and without contentious form, the behavioral patterns of each of the Parties in regards to the implementation of the rules on health and safety at work and other technical labour standards, to the extent that these be applied to the ministerial consultations' case previously considered by the Parties. 11

If after considering the final report of the Experts Evaluation Committee and the consultations described in Articles 27 and 28 of the NAALC are made, one of the consulting Parties presumes the existence of a persistent pattern of failure of another country in effectively implementing labour standards on health and safety, child labour, or minimum wages, the Minister Council may decide, by a vote of two-thirds of its members, to convene an arbitration panel. This panel has the authority to determine whether any Government incurred in a persistent pattern effectively failing to enforce labour legislation on health and safety, child labour and minimum wage, as long as such pattern is related to trades or covered by mutually recognized labour laws12. The arbitration panel shall issue a report so the Parties may agree on a plan of action. If the action plan is not implemented, the arbitration panel may sanction the Parties.

IV. Summary - Public Statement MEX 2006-1

The Public Statement presented at the Mexico NAO on October 18, 2006, by the Authentic Labour Front (ALF), the United Electrical Radio and Machine Workers of America (UE) and 53 trade unions and non-governmental organizations of the three countries13 refers to the banning of collective bargaining rights for public sector workers in North Carolina, U.S., affecting their rights of association, organization and collective bargaining. The petitioners point out the violation of their right to freedom of association NAALC Principle 1 (freedom of association) collective bargaining rights (Principle 2) minimum standards of work (Principle 6); elimination of employment discrimination (Principle 7); equal pay (Principle 8), prevention of occupational injuries and diseases (Principle 9), and compensation in case of work-related injuries or diseases (Principle 10).

The Petitioners state that U.S. violates Article 2 of the NAALC General Commitment, by avoiding correcting the labour standards of North Carolina, for which the North Carolina General Statute § 95-98 (NCGS 95-98) prohibits public sector workers to agree to collective agreements, breaching the commitment to provide the highest labour standards. The NCGS 95-98 statute provides that "any collective agreement in the public sector contravenes the public policy of the state, is illegal, unlawful, null and void". This generates working conditions that violate the NAALC Principles and "denies to the workers the opportunity to improve their working and health and safety conditions, and makes them subject to discriminatory treatment. The above violates Labour Principles 1 and 2 of the NAALC.

11 NAALC Article 23
12 NAALC Article 29
13 Among them: The Canadian Labour Congress (CLC); Farm Labour Organizing Committee (FLOC); International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM); National Union of Workers (NUW); UNITE HERE; United Food and Commercial Workers (UFCW).
It also points out that the NCGS 95-98 violates Articles 3, Government measurements for the effective implementation of labour laws, Article 4, particulars access to procedures, Article 5 procedural rights, and Article 7 information and public awareness of the NAALC by prohibiting public state employees and public premises to enjoy and execute labour rights that protect the same agreement.

They cite the recommendations of the Committee of Freedom of Association, in cases 1557 and 2460 which indicate that North Carolina should abrogate the statute NCGS 95-98 and establish a legitimate framework of collective bargaining rights in North Carolina. In this regard, they note that the U.S. Government argued that not having ratified Conventions 87 (Union Freedom and Protection of the Right to Unionization), 98 (Right to Unionization and Collective Bargaining) and 115 (Protection of the Right to Unionization and Procedures for Determining the Public Sector Employment Conditions) of the OIT, do not have international legal obligations arising directly from these instruments, and reiterating that "the political system prevents the federal Government from intervening in the internal legislation of the states". Through this argument, the petitioners argue that "U.S. prevents the objectives of the NAALC to be achieved and contravenes the provisions by the Supreme Court of the United States regarding "the federalism argument is without prejudice to evade international obligations".

Also it is noted that "although U.S. has not ratified Conventions 87, 98 and 115, as a member of the ILO and subscriber of the American Democratic Charter, is committed to respect, promote and enforce the labour rights' core contained in those agreements whether they were ratified or not."

The petitioners point out that in "North Carolina racial and sexual discrimination is well documented. Public workers with low wages in that state have been, historically and predominantly, African Americans and women, and the Latin American population has increased significantly since 2005". They also refer to unworthy working conditions due to low wages and benefits and excessive work periods. Additionally this asserts violations to the prevention of work related injuries and diseases and compensation in cases of occupational injuries and diseases arguing that employees come in contact with toxic substances without protective equipment, that the practiced inspections are not impartial and that employers do not provide them the appropriate means to obtain compensation in case of temporary disability.

The petitioners did not argue Labour Principle number 8 (Equal pay) according to the Principle of equal pay for equal work under the same working conditions but they did point out violations to the same.

On October 10, 2007, the NAO of Mexico, requested consultations with the U.S. NAO, in terms of Article 21 of the NAALC, on matters relating to labour laws addressed in the Public Statement MEX 2006 - 1, and admitted them for revision as per the requirements established in Article 1 of the National Administrative Regulation Office of Mexico on Public Statements referred to in Article 16 (3) of the North America Agreement for Labour Cooperation published in the Official Gazette on April 28, 1995.
In May 2007, the petitioners submitted an Addendum to the Public Statement. In April and August 2008 and May 2011 the Petitioners provided additional information in a brief related to cooperative consultations and the occurrences of public employees.

In September 2008, the U.S. NAO sent to the NAO of Mexico their response to the cooperative consultations. The letter sent by the U.S. NAO gives a general argument, as per the Public Statement, regarding the NAALC Principles that are being allegedly violated. It is pertinent to note that the U.S. NAO gave no specific response to the questionnaire sent by the NAO of Mexico in October 2007, as part of the cooperative consultations; instead it sent general information to "provide an overview of the U.S. policies and legislation evidencing compliance with its international obligations."

V. Matters Related to the NAALC's Labour Legislation and Obligations

The purpose of this report is to systematically present the petitioners' arguments related to the MEX Public Notice 2006-1, the Articles and principles applicable to the NAALC and the applicable labour laws in U.S., and the arguments presented by the NAO of that country, as part of its response to the cooperative consultations in relation to protecting the NAALC Principles: (i) Principle 1, freedom of association, (ii) Principle 2, right to collective bargaining, (iii) Principle 6, minimum standards of work; (iv) Principle 7, elimination of employment discrimination; (v) Principle 8, equal pay; (vi) Principle 9, prevention of occupational injuries and diseases; (vii) Principle 10, compensation in case of work-related injuries or diseases.

5.1 Freedom of Association

5.1.1 Petitioners' Arguments

Freedom of association and collective bargaining rights are fundamental rights that improve working conditions and living standards for the workers.

The Petitioners argue that in North Carolina, public sector workers have no such rights. The NCGS 95-98 prohibits public employees to associate, and prevents them from enjoying decent working conditions, fair wages, establish mechanisms to prevent racial and sexual discrimination, and enjoy non-governmental measures to ensure workplace safety. These circumstances prove, according to the Petitioners, that the U.S. Government has failed to fulfill its commitment to "protect, enhance and enforce the rights of their workers in terms of the NAALC."

The Petitioners point out that although the labour policy developed by North Carolina does not prevent workers from joining unions, it does prohibit workers to collectively bargain which inhibits the main benefit of freedom of association.

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14 Response sent via electronic mail by the NAO of U.S. on September 4, 2008. The document provides general information and do not provide specific answers to the questionnaire sent by the NAO of Mexico in October 2007 as part of the cooperative consultations.
15 The NCGS 95-98 prohibits collective bargaining to North Carolina’s public sector workers which origin is House Bill 118 presented in February 1959 and approved by the Senate in June of the same year.
They note that in 2006, the International Commission for Labour Rights\(^\text{16}\) (ICLR) released a report which found that public workers in North Carolina face significant violations to the international labour standards, which are linked to the absence of their right to collectively bargain.

As an example of freedom of association and right to organize violations, the Petitioners state that janitors from the city of Raleigh reported discrimination when joining unions, that their right to discuss the union's activities outside working hours are denied and that the administrators of the janitors' department refuse to deal with complaints from unionized workers.

They also note that the Broughton Psychiatric Hospital of the City of Morganton, the John Umstead Hospital and the North Carolina Special Care Center retaliate against workers who complain about working conditions, or that support or are active members of a union.

In contrast, the Petitioners state that federal employees are free to form, join, or assist any labour organization, or to refrain from such activities freely and without fear of reprisals (Title 5 US Code 7102).

Additionally, federal courts have refused to recognize that freedom of association is meaningless without the establishment of the right to collectively bargain.

The Petitioners argue that federal employees can file complaints to seek redress for violations of their right of freedom of association before the Federal Labour Relations Authority, an organization that investigates and punishes violations of these rights to federal employees; however, there is not an equivalent agency for state and municipal workers.

Finally, the Petitioners argue that federal Government employees are informed through advertisements and the Federal Labour Relations Authority website of their right to freedom of association and right to organize. However, state authorities fail to inform their workers about that right.

### 5.1.2 U.S. Obligations According to the NAAALC

In the NAAALC, the Parties have agreed to guarantee: "The right to freely exercise workers’ rights without any impediment to establish and join organizations of their own choosing, in order to promote and defend their own interests", Labour Principle number 1, freedom of association.

Regarding the arguments of the Petitioners, the U.S. Government pledged the following:

\(^{16}\) The ICLR is an independent commission integrated by human and labour rights experts. The Commission formed a team of experience and knowledgeable people on international rights and its standards and union comparison in the public sector and the right to collective bargaining in North Carolina. The CIDL delegation conducted field evaluations from October 31 to November 4 2005.
• Article 2. "Reaffirming full respect for the Constitution of each of the Parties and recognizing the right of each Party to establish ... its own labour standards ... each Party shall ensure that its labour laws and regulations provide high labour standards consistent with high standards in the workplaces and productivity and continue to strive those standards in that context".

• Article 3. Governmental measures for the effective implementation of labour legislation:

1. "Each Party shall promote its labour legislation and implement it effectively through appropriate governmental actions such as:

   g) Initiating, in a timely manner, proceedings to seek sanctions or appropriate remedies for labour law violations.

2. Each Party shall ensure that its competent authorities give appropriate consideration, in accordance with its laws, to any application filed by employers, workers or their representatives, and other persons interested in investigating any alleged violation of the Party’s labour legislation”.

• Article 4: Particulars’ access to the proceedings

1. Each Party shall ensure that persons with a legal interest recognized under the law in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of their labour law.

2. The legislation of each Party shall ensure that, where appropriate, those people have access to the procedures that will make effective the established rights:

   a. In its labour laws, including what is related to health and safety, working conditions, worker-employer relations and migrant workers; and

   b. In collective agreements.

• Article 5. Procedural rights

1. “Each Party shall ensure that procedures before its administrative, quasi-judicial or labour tribunals for the implementation of its labour laws are fair, equitable and transparent, and to this end will provide that:

   a) Such proceedings comply with the appropriate legal process;

   d) The procedures are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays
3. Each Party shall, where appropriate, provide that the Parties are entitled in such proceedings, in accordance with its law, to seek review and, where warranted, amend final decisions issued in such proceedings.

5. Each Party shall provide that the Parties' proceedings before administrative, quasi-judicial, judicial and labour tribunals have access to resources to enforce their labour rights. Such remedies may include, when appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or workplaces emergency closures.

6. Each of the Parties may, by appropriate means, establish or maintain offices to defend work matter that represent or advise workers or their organizations.

- Article 6. Publication

  1. "Each Party shall ensure that its laws, regulations, procedures and general administrative applications with respect to any matters covered by this agreement are promptly publish or otherwise become available to the interested persons and Parties.

  2. According to its legislation, each Party shall:

     a) Publish in advance any proposed measure to be adopted; and

     b) Provide to the interest persons a reasonable opportunity to comment on the proposed measures”.

- Article 7. Information and public awareness

  “Each Party shall promote public awareness of its labour laws, in particular:

     a) ensuring the availability of public information related to its labour laws and the procedures for its application and knowledge;”

5.1.3 Applicable Labour Legislation

Individuals employed at all levels of Government have the right to form and join unions, under the First Amendment of the U.S. Constitution which guarantees "... the right to peaceable association...”.

The Petitioners acknowledge in their argument that while joining a union in North Carolina is not illegal; to prohibit collective bargaining status denies the main benefit of unionization. They note that federal Government employees have the right of freedom of association and collective bargaining, pursuant to Title 5 USC 7102, which states that "every worker has the right to form, join, or participate in any labour organization, or to freely refrain from such activity without fear of reprisal or punishment, and each worker shall be protected in the exercise of that right. Except as provided in this chapter, as
such right includes: to celebrate collective agreements with regards to working conditions."

The U.S. NAO said that the Constitution of this country is above the state’s law under the Supremacy Clause of Article VI, for instance North Carolina cannot limit the fundamental right of association through the enactment of a state law. In this sense, state law leaves clear that "each state employee retains all rights and obligations of citizens provided by the Constitution and laws of the United States." This means that the North Carolina law cannot prevent state and municipal workers to form and join unions.

The NAO also notes that this fundamental Principle is established in U.S. precedents and has been specifically recognized in North Carolina, in a case\(^7\) in which a three-judge panel of the Federal District Court sustained that the freedom of association right, granted by the U.S. Constitution, protects the rights of North Carolina’s public workers to join and form unions.

Moreover, in connection with the complaint filed by the United Electrical Radio and Machine Workers of America (case 2460) before the International Labour Organization and the recommendations made by the Committee on Freedom of Association in its report no. 344, March 2007, in which it stressed that the right to freely negotiate the working conditions with employers is an essential element of freedom of association. Moreover, unions should have the right, through collective bargaining or other lawful means, to try to improve the working conditions of those whom they represent, while public authorities should refrain from any interference and from curtailing or preventing its legitimate exercise.

Also, the FAC requested to the U.S. Government to promote a framework of collective bargaining in North Carolina’s public sector and to take steps to bring its legislation to comply with the Principles of freedom of association, including the abrogation of statute NCGS 95 -98, ensuring the effective recognition of their right to collectively bargain throughout the territory of the country.

The ILO has been following the case and in several follow-up reports, no. 351 (November 2008), no. 356 (March 2010) and no. 362 (November 2011), in these reports the FAC gave evidence that the U.S. Government had made efforts in the General Assembly of North Carolina to abrogate the statute NCGS 95-98 and thus eliminate the ban on collective bargaining imposed on state and municipal public employees. No initiative has been approved so far.

In the 2007-2008 session period an initiative was presented. In the 2009-2010 sessions period four bills were presented: Public Safety Employer-Employee Cooperation (No. 1651 of the House of Representatives), Restore Contract Rights to state/municipal (No. 750 of the House of Representatives and 427 of the Senate), and Abrogate Ban GS 95-98 (Senate bill). In the 2011 public session period no initiative was presented.

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\(^7\) Atkins v. City of Charlotte, 296 F. Supp. 1068
The ILO noted the efforts of the U.S. Government, as in December 2009, President Barack Obama enacted the executive order no. 13522, intended to establish productive relationships and cooperation across the Government.

The NAO said that U.S. federal Government re-sent to North Carolina the Committee's Report and the recommendations approved by the Administrative Council of the ILO. The U.S. agreed to notify to the Committee any relevant developments and in February 2008 issued a Report to the Committee with the meetings held between the complainant and the state authorities.

In addition, the ILO is currently reviewing another case (2741) alluding to the prohibition of state public workers to bargain collectively. This case was filed on November 10, 2009, by the Transport Workers Union of America, AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Municipal 100 (Municipal 100) in which the complainants allege that state law prohibits any strike in the public sector, impose excessive sanctions for undertaking illegal strikes and severely restricts the transport workers' collective bargaining rights in the public sector, through the imposition of a binding arbitration process. In this regard, the FAC conclude in its report of November 2011 that it recognizes the initiatives that the U.S. Government has undertaken at the federal level to promote collective bargaining in the public sector and hopes that the Government will take the necessary measures to promote full respect of the Principles of freedom of association in the entire country.

5.2 Right to Collectively Bargain

5.2.1 Petitioners' Arguments

The Petitioners state that the U.S. Government does not protect the state and municipal workers' collective rights in any federal labour law or in its Constitution, leaving to the states its regulation.

The Petitioners report that the North Carolina workers do not have access to collective bargaining rights, unlike the federal Government workers who have this fundamental right guaranteed by the Federal Service Statue in connection to the Relation between Workers and Administrative bodies. They argue that North Carolina is virtually the only state that prohibits public sector workers to collectively bargain, as the statute NCGS 95-98 states that any public sector's collective agreement "is contrary to the public policy of the state, is illegal, unlawful, null and void”. The Petitioners claim that this creates working conditions that violate the Principles of the NAALC, by refusing workers the chance to improve their working, health and safety conditions, and that makes them subject to discriminatory treatment.

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18 The NCGS 95-98 states that “All agreements and contracts between the Governmental authority of a town, city, county or any other municipality, and between an agency, unity, entity or municipal institution, or between an agency, entity or the State of Carolina’s institution and a union or labour organization, as the negotiator agent for the public employees of such town, city, county, municipality, agency or Governmental instrument is declared contrary to the state’s public policy, and is illegal, illicit, nulled and without effect.
They highlight that the U.S. Constitution and federal law do not include collective rights for public workers, so the states, through their own Congress, have the power to regulate labour-management relations between the state and its workers (in relation to minimum wages and overtime). Nonetheless, the North Carolina Congress has not enacted any legislation granting public workers its collective rights, and the federal courts have declined to meet these demands in order to assert that the statute NCGS 95-98 violates the U.S. Constitution.

The Petitioners point out that from 2007 to 2010, several bills to derogate the NCGS 95-98 were presented to the State Congress. The initiative 1583 was approved by the Judiciary Committee but rejected by the Allocation Committee in 2010, the latest caused that the initiative was not approved. However, the initiative will continue to be submitted before the State Congress for its review and approval.

Additionally, they noted that on several occasions, being the last time in January 2009, the bill on employer-employee Cooperation on Public Security (HR 413) has been filed before the federal Congress. This bill provides a method so the Federal Labour relations Authority could ensure that state or municipal security bureaus public employees (police forces, fire department, emergency service workers) have the right to collective bargaining. If approved, although this legislation would apply to a segment of state Government workers only and the majority of workers would still lack the right to collectively bargain.

The Petitioners report that despite the existence of Governmental mechanisms to enforce labour rights against violations, which are costly and often inefficient, such mechanisms do not replace the collective bargaining rights as a preventive measure for the protection of minimum working conditions.

According to the Petitioners, the U.S. Government has stated that its Federal Political System prevents the Federal Government from intervening in the internal legislation of the states. However, the Petitioners note that even if the Federal Government has refused to abrogate the NCGS 95-98, this does not imply that the state Government should reject collective bargaining rights. In addition, it was presented in various occasions before the Federal Congress the Employer Cooperation Act on Public Safety-Worker (HR 413) which evidences that the Federal Government has the power to regulate labour relations between state and municipal employees and their employers.

They also note that the NCGS 95-98 statute violates basic labour rights protected by various international jurisdictions, including the Declaration of the International Labour Organization (ILO) related to the Fundamental Principles and Rights at Work, and the commitment to protect the workers’ fundamental rights, stated in the preamble of the North America Free Trade Agreement (NAFTA). They also mention the violation of the International Covenant on Civil and Political Rights, which guarantees freedom of association for workers, which may be restricted only in very specific cases, the Inter-American Democratic Charter, and the provisions of the Inter-American Commission on Human Rights that the domestic law of the country should follow the Principles recognized in international law as inherent to freedom.
As mentioned in section 5.1.1 and 5.1.3, in the ILO framework, according to the Petitioners, the statute NCGS 95-98 was reported to the Freedom of Association Committee (FAC) of the ILO in cases 1557 and 2460. In both cases, the complaints stated that the U.S. Government "failed to fulfill its obligation, as a member of the ILO, to protect the fundamental rights that are subjected to Agreements No. 87, 98 and 151 ". On case 1557, the FAC found that "U.S. cannot continue to evade its obligation to protect the workers fundamental rights by hiding in the concept of federalism". On case 2460, the FAC concluded that the North Carolina law does not adhere to the Principles of freedom of association and issued recommendations to the effect that "North Carolina should abrogate the NCGS 95-98 and should set a legitimate collective bargaining framework that integrates the collective rights in their legislation and focuses its attention on jurisdictions in which public officials are private, wholly or partially, of those rights, all this in consultation with the public sector unions."

Given this, the Petitioners state that "even though the U.S. has not ratified the 87, 98 and 115 Agreements, as a member of the ILO and subscriber of the Interamerican Democratic Charter, is committed to respect, promote and enforce labour rights contained in those fundamental agreements, even if they have been ratified or not. " They highlight the resolution from a U.S. Court which found that "although [this Court] recognizes that U.S. has not ratified the ILO agreements numbers 87 and 98, the ratification of such is not necessary in order to enforce the right of association as part of customary international law".

The ILO 87 agreement states, "one of the last Principles of the guarantee of freedom of association is to allow the employers and employees to join the independent Government organizations, to determine, by means of the collective agreements carried out freely, wages and other employment conditions." Therefore the Petitioners point out the violation of this agreement, noting that "despite the fact that North Carolina's public workers had recognized their right of association since 1969, it cannot be exercised as they have the express prohibition of collective bargaining rights. They stress that the ILO has recognized that the right of association and collective recruitment are interdependent and complementary, as the main purpose of the right of association is to collectively bargain.

Finally, the Petitioners state that the International Commission for Labour Rights examined the conditions faced by public sector workers in North Carolina and found "significant violations of the international labour standards strongly linked to the absence of the right to collectively bargain".

5.2.2 U.S. Obligations Under the NAALC

Under the NAALC, Governments pledged to ensure "the protection of the worker's organizational rights to freely engage, in a collective way, the terms and conditions of employment"; labour Principle 2, right to collective bargaining.

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19 Public Communication addendum presented by the petitioners on May 21, 2007
20 The petitioners added to the initial statement the report The Denial of Public Sector Collective Bargaining Rights of North Carolina (U.S.) issued by the ICLR in June 2006.
In relation to the petitioner's arguments, the U.S. Government is obligated by the NAALC to:

- Article 2. "Reaffirming full respect for the Constitution of each of the Parties and recognizing the right of each Party to establish, internally, its own labour standards, to adapt or modify, consequently, its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide high labour standards, consistent with high standards in the workplaces and productivity and continue to strive those standards in that context".

- Article 3. Governmental measures for the effective implementation of labour legislation:
  1. "Each Party shall promote its own labour legislation and will implement it effectively through appropriate Governmental actions such as:
     b) Monitoring compliance with laws and investigating suspected violations, including through on-site inspection visits;
     g) Initiating in a timely manner the proceedings to seek sanctions or remedies for violations of its labour law.
  2. Each Party shall ensure that its competent authorities give appropriate consideration, in accordance with its laws, to any application by employers, workers or their representatives, and other persons interested in investigating any alleged violation of labour legislation of the Party".

- Article 4. Particulars' access to the proceedings
  1. Each Party shall ensure that persons with a legal interest, recognized under its law, in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of the labour law of the Party.
  2. Each Party's legislation shall ensure, where appropriate, that such persons have access to the procedures by which they can establish the arising rights:
     a. In its labour laws, including what is related to health and safety, working conditions, industrial worker-employer relations and migratory workers;

- Article 5. Procedural rights
  1. "Each Party shall ensure that the procedures before its administrative, quasi-judicial or labour tribunals for the implementation of
its labour laws are fair, equitable and transparent, and to this end will provide that:

b) Such proceedings comply with the appropriate legal process;

e) That the procedures are not unnecessarily complicated and do not entail unreasonable time limits or charges or unwarranted delays

3. Each Party shall, when appropriate, provide entitlement to the Parties in such proceedings, in accordance with its legislation, to seek the review and, when warranted, the amendment of final decisions issued in such proceedings.

- Article 6. Publication

1. “Each Party shall ensure that its laws, regulations, procedures and general administrative applications with respect to any matter covered by this Agreement, are promptly published or otherwise become available to the interested persons and Parties.

2. According to its legislation, each Party shall:

a) Publish in advance any proposed measure to be adopted; and

b) Provide to the interest persons a reasonable opportunity to comment on the proposed measures”.

- Article 7. Information and public awareness

“Each Party shall promote public awareness of its labour laws, in particular:

a) Ensure the availability of public information related to its labour laws and the procedures for its application and knowledge;”

5.2.3 Applicable Labour Legislation

At the federal level, as reported, there is legislation that makes and guarantees to federal public employees the right of collectively bargain, as follows:

The 5 USC7114 (A) (4) states that:

An agency and an exclusive representative in an appropriate unit in the agency, through appropriate representatives, must meet and negotiate in good faith for the purpose of achieving a collective bargaining agreement. Additionally, the agency and the exclusive representative may determine appropriate techniques, consistent with section 7119 of this title to assist in the negotiation.
The 5 USC7114 (a) (5) states that:

For purposes of this chapter, an agency labour practice is being considered

(5) refuse to consult or negotiate bona fide with a labour organization according to what is establish in this chapter;

The 5 USC 7118 in relation to the Prevention of Unfair Labour Practices establishes the procedure to be followed to prevent the commission of the same.

Notwithstanding the existence of the aforementioned federal provisions, that guarantee the right to collectively bargain to the federal public employees, the statute NCGS 95-98 provides that:

"Any agreement or contract between the Government authority of a city, town, county or other municipality, between an agency, unit, entity or municipal institution, or between an agency, entity, or institution of the State of North Carolina and a union or labour organization, as a bargaining agent for the public employees of that city, town, county, municipality, agency or Government institution is held to be contrary to the public policy of the State, illegal, unlawful, null and void".

According to the U.S. NAO, the country's public sector work is divided into three levels: federal, state and municipal, in accordance with the Constitution, which establishes a federal system of Government under which the federal Government exercises only the powers that the Constitution gives it, all other powers are reserved to the 50 states or the population. The states, should delegate its powers to the municipal units of Government, such as cities and counties.

The regulation of labour relations in the United States respects the Constitutional mandate regarding the distribution of powers between the national Government and the states. So, in 1935, when the Congress enacted the main collective bargaining law in the country, the National Labour Relations Act specifically excluded from its application the state and municipal public employees, according to the Principles of federalism. Since then, the federal legislation occasionally allows, from the federal level, to allow the states to collectively bargain, but it has never obtained the majority of support in either Chamber of the Congress to enact it in the states, in part because the power of the Federal Government to interfere has been challenged with the authority of the states to negotiate their own collective bargaining agreements.

The U.S. NAO argues that the federal Government actively promotes collective bargaining practices at Federal and state levels, respecting the autonomy of the states to develop laws and labour policies for their own workers.

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21 The United States Constitution Amendment X (the powers that are not been delegated to the United States by the Constitution, forbidden to the States, are respectively reserved to the states or the population)
In that sense, it promotes and encourages collective bargaining practices through the Federal Mediation and Conciliation Service (FMCS), created in 1947. The FMCS is in charge of promoting stable relationships through mediation. For instance, it counts with many services for the public sector at the federal and state levels. For example, provides mediation services in collective bargain, and supports and promotes joint labour-management committees to integrate workers in decisions affecting their work.

Moreover, the U.S. NAO argued that in the Atkins case, mentioned by the Petitioners, the Court noted that there is nothing in the U.S. Constitution, including the First Amendment’s right to free association that forces a person to enter an agreement. As a result, the Court upheld the validity of the NCGS 95-98, noting that the State of North Carolina is free to decide, through their democratically elected representatives, if they enter those agreements.

It noted that although public workers' unions in North Carolina cannot agree on state contracts with their state level employers, they may, through the legislative process, address the issues that are normally reviewed in a collective bargaining agreement.

Additionally, argued that in a case law, a Federal Court of Appeal held the prohibition of collective bargaining rights, paragraphs 95-98 of the NCGS "does not extend to the representation of a union to give their particular point of view." This means that the statute NCGS 95-98 does not block public workers, unions, and associations of workers from engaging in collective activities aimed to establish, through the legislative process, collective bargaining topics such as compensation, benefits, working conditions, and other labour issues.

The U.S. NAO stated that in 2007 and 2008 meetings were held between worker's representatives, employers and state officials. These meetings discussed topics related to wages, benefits, working conditions, a new personnel system and the pending legislation to abrogate the ban on public workers to bargain collectively. These meetings have been based on the Executive Order 105 made by the Governor on August 18, 2006, which directs all state institutions, offices, agencies, departments, or commissions, under the authority of the Governor, to allow access to the workers' representatives for the purpose of recruiting and consulting.

According to the U.S. NAO, there are other activities of public workers unions in North Carolina that show that the workers are actively involved in the process to establish the terms and conditions of their work. For example, the fact that Section 150 of the United Electrical Radio and Machine Workers of America (UE), represents the public workers in North Carolina, subdivides the workplace, and attempts to bring workers to discuss its problems and solutions. Also the state Employees Association of North Carolina represents the state's Public Workers.

The U.S. NAO noted that in the 2007 - 2008 period sessions, in both houses of the General Assembly of North Carolina a bill to abrogate NCGS 95-98 was introduced.

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22 Hickory Fire Fighters Ass’n v. City of Hickory, 656. f. 2d 917.
Neither of those two laws has been approved. Information was requested from the U.S. NAO about whether this legislation is still being discussed. To this report’s date that office did not respond.

The U.S. NAO notes that in general, an individual who believes that his/her association and collective bargaining rights have been violated, may seek compensation in the state or Federal court, and the decisions of these courts can be challenged in higher hierarchy courts of Appeal.

Moreover, in relation to the complaints filed before the ILO, by the United Electrical Radio and Machine Workers of America (case 2460) and the recommendations made by the Committee on Freedom of Association in its report no. 344, March 2007, the Committee stressed that the right to freely negotiate working conditions with employers is an essential element of freedom of union association. Moreover, unions should have the right, through collective bargaining or by other lawful means, to seek the improvement of the working conditions of those whom they represent, while public authorities should refrain from any interference so this right is curtailed or its legitimate exercise prevented. Also, the FAC requested to the U.S. Government to promote a collective bargaining framework in the public sector in North Carolina and to take measures to make its legislation to comply with the Principles of freedom of association, including through the abrogate of the statute NCGS 95-98, ensuring the effective recognition of the right to collective bargaining throughout the country.

The ILO has been following this case and in several follow-up reports, no. 351 (November 2008), no. 356 (March 2010) and no. 362 (November 2011), the FAC gave evidence that the U.S. Government had made efforts in the General Assembly of North Carolina to abrogate the statute NCGS 95-98 and thus eliminate the ban on collective bargaining imposed on state and municipal public employees. No initiative has been approved so far.

In the 2007-2008 sessions an initiative was presented. In the 2009-2010 period session four bills were presented: Public Safety Employer-Employee Cooperation (No. 1651 of the House of Representatives), Restore Contract Rights to state / municipal (No. 750 of the House of Representatives and 427 of the Senate), and Abrogate Ban GS 95-98 (Senate bill). In the 2011 session no initiative was presented.

The ILO noted the efforts of the U.S. Government, as in December 2009, President Barack Obama enacted the executive order no. 13522, intended to establish productive relationships and cooperation across the Government.

The U.S. NAO pointed out that the Federal Government resent to North Carolina the Committee’s report and the recommendations approved by the Administrative Council of the ILO. U.S. agreed to notify the Committee about any relevant developments, and in February 2008 issued a report to the Committee’s summary of the meetings held between the complainant and the state authorities.

In addition, the ILO is currently reviewing another case, 2741, which alludes to the prohibition for state public workers to bargain collectively. This case was presented on
November 10, 2009 by the Transport Workers Union of America, AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local100) in which the complainants allege that the state’s law prohibits any strike in the public sector, imposes excessive sanctions for undertaking illegal strikes and severely restricts the transport workers’ collective bargaining rights in the public sector, through the imposition of a binding arbitration process. In this regard, the FAC concluded in its report of November 2011 that it recognizes the initiatives that the U.S. Government has undertaken at the Federal level to promote collective bargaining rights in the public sector and hopes that the Government will take the necessary measures to promote full respect to the Principles of freedom of association in the entire country.

The NAO notes that while the people of North Carolina, through its representatives, have decided that their state and municipal Governments cannot negotiate collective bargain agreements, public employees in North Carolina and their unions have the right of freedom of association and the right to collectively participate in state, municipal and Federal democratic processes and to commit their Governments to their free and open discussions on working life in the public sector and collective bargaining itself.

5.3 Minimum Working Conditions

5.3.1 Petitioner’s Arguments

The Petitioners point out that because the statute NCGS 95-98 prevents public sector workers from collectively bargaining, state and municipal workers are unable to earn fair living wages, establish mechanisms to prevent racial and sexual discrimination, and guarantee save working places. They also mention the report of the International Commission for Labour Rights which states that public sector workers in North Carolina, mostly African American women, faced excessive and unsafe working hours; being understaff with consequent peak workloads, mandatory overtime without payment; favoritism and disrespectful treatment from superiors; serious violations of health and safety in the workplace, and receive inadequate wages and benefits (under $ 30,000 per year); The Petitioners claim that the janitors of the cities of Raleigh and Charlotte, North Carolina, are examples of such conditions as they are forced to work overtime without payment and unable to take days off to compensate it. They also consider that the long work periods make their work dangerous.

The Petitioners report that they conducted a session in May 2008 in the city of Raleigh\textsuperscript{23}, where a number of workers exposed the hazards associated with long working hours. A female worker\textsuperscript{24} expressed that she was unfairly suspended from work for refusing to work mandatory overtime, and to work double shifts because there were not enough employees. Another worker\textsuperscript{25} mentioned that the policy in his workplace is to work three weekends of each month.

\textsuperscript{23} The petitioners presented a report of this audience as an addendum in the public communication of August 28, 2008.
\textsuperscript{24} Testimony of Olivia Lagnston, Cherry Hill Hospital technician for 9 years
\textsuperscript{25} Testimony of Raymond Howard, Caswell Centre development technician
The Petitioners point out that workers from state hospitals have only been authorized to file complaints with the Department of Health and Human Services of North Carolina, on some specific issues, so they cannot complain about mandatory overtime, job assignment and shifts, denial of requests for a license, and for the function, program and department budgets. Furthermore, according to the Petitioners, workers are limited to appeal resolutions.

5.3.2 U.S. Obligations Under the NAALC

In the NAALC, the Government of the three countries agreed to guarantee: “the establishment of minimum working conditions, such as, minimum wages and overtime payments to the salaried-employees, including those whom are not protected by a collective agreement, Labour Principle number 6, minimum working conditions.

Regarding the arguments of the Petitioners, the U.S. Government pledged to the following:

- Article 2. “Reaffirming full respect for the Constitution of each of the Parties and recognizing the right of each Party to establish... its own labour standards... each Party shall ensure that its labour laws and regulations provide high labour standards, consistent with high standards in the workplaces and productivity and continue to strive those standards in that context”.

- Article 3. Governmental measures for the effective implementation of labour legislation:

1. Each Party shall promote with labour legislation and implement effectively through appropriate Governmental actions such as:

   b) Monitoring compliance with laws and investigating suspected violations, including through on-site inspection visits;

   g) Initiating in a timely manner the proceedings to seek sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give appropriate consideration, in accordance with its legislation, to any application filed by employers, workers or their representatives, and other persons interested in investigating any alleged violation of labour legislation of the Party”.

- Article 4: Particulars’ access to the proceedings

3. Each Party shall ensure that persons with legal interest recognized under its law in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of the labour law of the Party.
4. The legislation of each Party shall ensure that, where appropriate, those persons have access to the procedures by which they can establish the arising rights:

b) In its labour laws, including what is related to health and safety, working conditions, employer-worker relations and migratory workers; and

- Article 5. Procedural rights

1. "Each Party shall ensure that procedures before its administrative, quasi-judicial or labour tribunals for the implementation of its labour laws are fair, equitable and transparent, and to this end will provide that:

   c) Such proceedings comply with the appropriate legal process;

   f) The procedures are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays

3. Each Party shall, where appropriate, provide that the Parties are entitled in such proceedings, in accordance with its law, to seek review and, where warranted, the amendment of final decisions issued in such proceedings.

- Article 6. Publication

1. "Each Party shall ensure that its laws, regulations, procedures and general administrative applications with respect of any matter covered by this Agreement is promptly published or otherwise become available to the interested persons and Parties.

2. According to its legislation, each Party shall:

   a) Publish in advance any proposed measure to be adopted; and

   b) Provide to the interested persons a reasonable opportunity to comment on the proposed measures”.

5.3.3 Applicable Labour Legislation

According to information provided by the U.S. NAO regarding the payment of wages, the federal legislation prohibits the inequitable payment or salary below the standard. The Equal Pay Act, 29 USC 206 (d)\(^2\) requires employers to pay equal

\(^2\) "No employer having workers under the provisions of this section shall discriminate them …. based on gender paying wages to workers by establishing a lower rate than that paid to employees of the opposite sex in the same
wages to men and women who have developed a common activity that requires equal skills, effort and responsibility and which is developed under similar working conditions. In addition, Title 29 of the U.S. Code, Chapter 8, § 201 - § 219, Fair Labour Standards Act, which refers to fair labour standards, establishes the minimum wage and overtime pay. Chapter 8, § 206 (minimum wage) sets the minimum wage increase to $ 7.25 per hour that occurred as per July 24, 2009. Article 207 of the same chapter, states that over time is set at 150% of the paid rate for all worked hours exceeding the 40 hours’ workweek.

The U.S. NAO notes that the Equal Pay Act and the Fair Labour Standards Act protects the state and municipal Government workers, among others, and each authorize the federal Government to initiate appropriate legal remedies in court, representing the workers individually. Generally, complaints against the Equal Pay Act are before the State’s Equal Opportunity Commission and violations are presented before the Fair Labour Standards Act which are directly investigated by the U.S. Department of Labour.

In addition, adverse decisions could be appealed before the appeal courts, including the Supreme Court of Justice.

The U.S. NAO also relates that at the state level, North Carolina has established by law a compensation policy for public workers which should be sufficient to promote excellence and to maintain competitiveness in labour markets through the Comprehensive Compensation System which includes provisions for annual wages increases, living cost increases, and productivity bonus, which are distributed equitably. To ensure proper development of this system, the State’s Personnel Director issues an annual report to the State Personnel Commission, the Governor and the State Congress, and recommends sanctions to departments, agencies and institutes that do not efficiently apply the system.

The North Carolina statute, NCGS § 95-25, also requires the state employers, including the state and municipal public employers, to place visible messages in the workplace legislation regarding federal minimum wages and overtime. The information should describe legal remedies for violations, and guide workers to contact the U.S. Department of Labour Wage and Hour Division, in charge of requesting additional information.

The Petitioners did not mention having initiated any proceedings before the Equal Opportunity Commission or the Wage and Hour Division to enforce their minimum wage and overtime rights.

5.4 Elimination of Employment Discrimination

5.4.1 Petitioner’s Arguments

place for equal work in activities that its development requires equal skill, effort, and responsibility, and to develop similar working conditions…”

27 Entity in charge of verifying compliance of the Fair Labour Standards Act
The Petitioners believe that there is racial and sexual discrimination in North Carolina's public sector, because there is inequality in hiring, promotions, layoffs and wages of ethnic minorities and women. They make reference to a racial segregation that at both state and municipal levels, as a disproportionate number of higher paying positions are held by Caucasian workers, while jobs with lower wages are held by African Americans.

They also argue the existence of racial and sexual harassment, use of derogatory language and hostility in the workplace, and ensure that workers have filed complaints but such have not been solved satisfactorily\textsuperscript{28}. An example of this is that workers of the Public Work Department in Morrisville, North Carolina, who complain that people are marginalized, and supervisors provide preferential treatment towards Caucasian workers which fosters a hostile environment against African Americans and Latin American workers. An African American worker quit his job because he was ignored in the process, promotion and salary increase and considered that he was disciplined more severely because of his race\textsuperscript{29}.

The International Commission for Labour Rights' (ICLR) report of June 2006 indicates that in the public sector of the city of Rocky Mount, North Carolina, there are wages differences between Caucasian and African American workers, and wrongful dismissals towards the last.

5.4.2 U.S. Obligations Under the NAALC

In the NAALC, the Parties committed to the "elimination of discrimination at work because of race, sex, religion, age or other concepts, excluding certain reasonable exceptions, such as, requirements or qualifications for employment, as well as establishing practices or rules governing this in good faith, and special measures of protection or assistance for particular groups designed to encounter the effects of discrimination, labour Principle 7, elimination of employment discrimination.

- Article 3. Governmental measures for the effective implementation of labour legislation:

1. Each Party shall promote labour legislation and implement it effectively through appropriate Governmental actions such as:

b) Monitoring compliance with laws and investigate suspected violations, including through on-site inspection visits;

2) Initiating in a timely manner the proceedings to seek sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give appropriate consideration, in accordance with its legislation, to any application filed by employers, workers or their representatives, and other

\textsuperscript{28} Public Communication Addendum presented in April 2008

\textsuperscript{29} Idem
persons interested in investigating any alleged violation of labour legislation to the Party”.

- Article 4: particulars’ access to the proceedings

5. Each Party shall ensure that persons with legal interest recognized under its law in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of the labour law of the Party.

6. The legislation of each Party shall ensure that, where appropriate, those people have access to the procedures by which they can establish the arising rights:

   c) In its labour legislation, including what is related to health and safety, working conditions, industrial worker-employer relations and migratory workers; and

- Article 5. Procedural rights

1. Each Party shall ensure that procedures before administrative, quasi-judicial or labour tribunals for the implementation of its labour laws are fair, equitable and transparent, and to this end will provide that:

   d) Such proceedings comply with the appropriate legal process;

   g) The procedures are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays

3. Each Party shall, where appropriate, provide that the Parties are entitled in such proceedings, in accordance with its law, to seek review and, where warranted, amend final decisions issued in such proceedings.

- Article 6. Publication

1. Each Party shall ensure that its laws, regulations, procedures and general administrative applications with respect of any matter covered by this Agreement is promptly published or otherwise become available to the interested persons and Parties.

2. According to its legislation, each Party shall:

   a) Publish in advance any proposed measure to be adopted; and

   b) Provide to the interested persons a reasonable opportunity to comment on the proposed measures”.

Translated by Amelia Rosas KM LLP 2013
5.4.3 Applicable Labour Legislation

According to information provided by the U.S. NAO, the Equal Protection Clause found in the 14th Amendment of the Constitution prohibits Governments from all levels to treat people differently based on characteristics such as race or sex, for instance, no distinction is legally justified.

Similarly, the Civil Rights Act (42 USC § 1981) ensures that all people have equal rights in every state and territory of the U.S. to make and enforce contracts, to sue, to be Parties, to test, and to receive the full and equal benefit of the laws and proceedings for the security of persons and their properties. Moreover, is also illegal for the state and municipal Governments, as employers, to discriminate in any aspect of employment because of race, color, religion, sex, or nationality.

Title 42 of the U.S. Code § 2000e-2, paragraph (a), relating to illegal employment practices, states that it is unlawful for an employer to discriminate any individual with respect to his compensation, terms, conditions, or benefits of employment, because of race, color, religion, sex, or nationality. While Title 42 § 2000d, establishes the prohibition against discrimination based on race, color, or origin in programs, including the state and municipal levels that receive federal funds. This provision is replicated in the Workforce Investment Act (29 U.S. Code § 2938 (a) (2)) and in education programs funded by the Government (20 U.S. Code § 1681).

It also points out that the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice applies relevant provisions from the federal legislation that prohibits state or municipal Government employers to discriminate. All this through the filing of lawsuits in cases alleging that public employers have a pattern, or type of practice to denied employment or promotion opportunities to a specific type of individuals, or in cases involving allegations for discrimination filed before the Equal Employment Opportunity Commission of U.S., which investigates complaints before passing the results to the Department of Justice for litigation.

The Commission also issues guidelines to assist state and municipal public employers to comply with federal anti-discrimination laws. The Commission requests comments from the interested Parties before publishing such guidelines in the U.S.’s Code of Federal Regulations, including workers and public sector unions.

The U.S. NAO refers in a consistent manner to the federal legislation, that in the Constitution of North Carolina Articles I, § 19, no person shall be denied the equal protection of their laws or be subjected to discrimination by the state because of race, color, religion, or nationality. In addition, the statute NCGS § 126-16, which refers to Equal Employment Opportunities, stipulates that all state departments and agencies including North Carolina’s, should provide equal opportunity for employment and compensation, regardless of race, religion, color, creed, national origin, sex, age, or disability.
In order to complement the previous Article, the statute NCGS § 126-17 provides that no department, state or municipal agency of North Carolina will retaliate against an employee for complaining about alleged violations of the statute NCGS § 126-16, while the statute NCGS § 7A-245 indicates that the North Carolina’s courts are empowered to enforce the non-discriminatory provisions of the Constitution and state laws.

In addition to the above-mentioned legislation granting procedural complaints against discrimination, the public employees of North Carolina, also have provisions like the NCGS § 126-34, which provides that a public employee who has a complaint arising from his employment and that alleged harassment or discrimination due to age, sex, race, color, origin, religion, belief, disability or political affiliation must file a written complaint with the department or agency where the person is employed and may appeal the response before the State Personnel Commission.

According to the U.S. NAO, employers in North Carolina, including state Government employers must publish information in the workplace regarding federal laws and equal opportunities and must contain both the laws and procedures to enforce these rights as well as contact details of the U.S. Equal Employment Opportunity Commission to promote federal and municipal anti-discrimination resources. Public sector workers in North Carolina can access to state or municipal procedures, an alternative method of dispute resolution, or they can go directly to the state Personnel Commission of North Carolina to resolve their complaints.

The Petitioners did not mention having initiate any proceedings pointed out by the NAO of the U.S. before the authorities to enforce their rights supporting the elimination of discrimination.

5.5 Equal pay

The Petitioners did not provide specific information on this subject. Nevertheless, it was mentioned as one of the supposedly violated Principles. However, the fact that the statute NCGS 95-98 prevents public workers from collectively bargaining limits state and municipal workers to obtain adequate working conditions.

The U.S. NAO said regarding employees’ wages, that the federal legislation prohibits unequal pay or below minimum wage and provides the appropriate means for workers and their representatives to get compensated for them. For example, notes that the Equal Pay Act in paragraph 206 d) requires employers to pay equal wages to men and women who develop the same type of work, require equal skill, effort and responsibility and which is develop under similar working conditions. Similarly, the Fair Labour

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30 The North Carolina State Personnel Commission is regulated by the NCGS 126-2. The Commission has established rules and policies to determine the salary of all public employees; the basic requirements such as education. experience, certifications and other requirements that are necessary to hire personnel; recruitments programs to promote employment in public sector, schedules, working days, vacations and other working conditions; and investigating complaints and issuing binding orders or other remedial actions in hiring, promotions, transfer, dismissal or reinstatement of public employees, among other activities.
Standards Act ensures that minimum wages and overtime payment to workers is the established national standard.

5.6. Prevention of Occupational Injuries and Diseases

5.6.1 Petitioners Arguments

According to the Petitioners, the fact that the NCGS 95-98 Statue prevents public workers from collectively bargaining, limits the state and municipal workers to obtain safe and adequate working conditions.

The Petitioners presented experiences of public service workers of North Carolina, brought at a public hearing held in May 2008\(^\text{31}\) in the city of Raleigh. According to the Petitioners, the precarious working conditions are reflected, in particular, in matters of health and safety, and demonstrate the need for an organization to represent them to improve such conditions.

Mental health hospital's workers in North Carolina state that working conditions are not safe due to the reduced number of workers who are assigned to a large group of patients, who become violent at times\(^\text{32}\). They also point out that this forces them to work overtime, which decreases their performance and jeopardizes the safety of patients and co-workers\(^\text{33}\). Moreover, the Petitioners argue that hospital workers are force to work even when they have an injury, caused in the execution of their duties\(^\text{34}\).

Workers allege exposure to toxic substances, which are used to wash the floors\(^\text{35}\). These substances have caused nose bleeding and eyes numbness. The inspections that have been previously conducted always show irregularities because inspectors were always accompanied by the employers' representatives during the reviews and this prevent the workers from giving a free testimony.

Additionally, the Petitioners point out that workers do not have access to adequate process to assert their claims for violations on workplace health and safety issues, and when they have access to this type of process; it is limited, as they can only file complaints on some specific situations.\(^\text{36}\) In 2007, less than 10% of the complaints filed by state psychiatric hospitals workers were resolved in favor of the worker. Subsequent to the complaint process, workers suffer retaliation from their employers.

Finally, the Petitioners state that if a worker has an accident, the employer refuses to release the medical records of the incident.

\(^{31}\) Public Communication Addendum, presented by the petitioners in August 2008 by the OAN of Mexico
\(^{32}\) Testimony of Melvin Davis, Health Centre Technician (HCT) in a psychiatric hospital for the State for 11 years.
\(^{33}\) Testimony of Olivia Langston, HCT in Cherry Hill Hospital in April 2008
\(^{34}\) Addendum information presented by the petitioners in April 2008.
\(^{35}\) Testimony of Raymond Sanders, former president of municipal 150 of the United Electrical, Radio and Machine Workers of America (UE) union, given during the public audience of May 29, 2008 and the HCT in Cherry Hill Hospital. As well as testimony from William Shuler, University of North Carolina in Chapel Hill.
\(^{36}\) They can have a claim, for example, for mandatory overtime, the assignation of work and the work schedule, the denial to obtain a license.
5.6.2. U.S. Obligations Under the NAALC

According to the NAALC, the three Governments agree to: “prescribe and implement standards to minimize the causes of occupational injuries and diseases”, labour Principle number 9, occupational injuries and diseases prevention.

Regarding the arguments of the Petitioners, the U.S. Government pledged to the following according to the NAALC:

- Article 2. "Reaffirm full respect for the Constitution of each of the Parties and knowing the right of each Party to establish ... its own labour standards ... each Party shall ensure that its labour laws and regulations provide high labour standards consistent with high standard workplaces and productivity and continue to strive to improve those standards in that context.

- Article 3. Governmental measures for the effective implementation of labour legislation:

  1. Each Party shall promote its own labour legislation and shall effectively implement it through appropriate Governmental measures such as:

     a) Naming and providing training to inspectors

     b) Monitoring compliance with laws and investigating suspected violations, including through on-site inspection visits

     d) Requesting records and reports;

     g) Initiating in a timely manner, proceedings to seek sanctions or appropriate remedies for violations of its labour law.

  2. Each Party shall ensure that its competent authorities give the appropriate consideration, in accordance with its laws, to any application filed by employers, workers or their representatives, and other persons interested in investigating any alleged violation of labour legislation to the Party”.

- Article 4: particulars access to the proceedings

  1. Each Party shall ensure that persons with legal interest recognized under its law in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of the labour law of the Party.

  2. The legislation of each Party shall ensure that, where appropriate, those people have access to the procedures by which they can establish the arising rights:
a) In its labour laws, including what is related to health and safety, working conditions, worker-employer relations and migrant workers; and

• Article 5. Procedural rights

1. "Each Party shall ensure that procedures before its administrative, quasi-judicial or labour courts for the implementation of its labour law are fair, equitable and transparent, and to this end will provide that:

a) Such proceedings comply with the appropriate legal process;

d) The procedures are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays

4. Each Party shall guarantee that the tribunals that are dealing with such proceedings, or revise them, are impartial an independent and that these do not have a substantial interest in their resolution.

5. Each Party shall provide that the Parties proceedings before administrative, judicial, judicial and labour tribunals have access to resources to enforce their labour rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or workplaces emergency closures.

• Article 6. Publication

1. "Each Party shall ensure that its laws, regulations, procedures and general application's administrative rulings with respect of any matter covered by this Agreement are promptly published or otherwise become available to the interested persons and Parties.

2. According to its legislation, each Party shall:

a) Publish in advance any proposed measure to be adopted; and

b) Provide to the interested persons a reasonable opportunity to comment on the proposed measures”.

5.6.3 Applicable Labour Legislation

The U.S. NAO notes that the Government of that country, through the Occupational Health and safety Act, attempts to "ensure as much as possible, to every worker in the nation, safe and hygienic working conditions" urging states to develop plans to ensure safe workplaces, through Title 29 of the U.S. Code § 651 (Congressional statement of findings and declaration of purpose and policy) establishes that:
b) The Congress declares that it is its purpose and policy, through the exercise of its power, to regulate commerce among the several states and foreign nations and to provide for the general welfare, to ensure as much as possible to each worker in the Nation safe and healthy working conditions and preserve human resources---

(11) encouraging the states to assume a full responsibility for the administration and enforcement of its laws on occupational health and safety, ensuring support to the states by identifying their needs and responsibilities in the area of occupational health and safety, to develop plans consistent with the provisions of this chapter, to improve the administration and enforcement of state laws on occupational health and safety, and to conduct pilot demonstration projects relating to the subject;

c) Plan approval conditions

The Department must approve the plan submitted by the state, or any modification, if the plan fits its view-

(6) contains satisfactory guarantees that the state, as permitted by its law, will establish and maintain an effective and comprehensive health and safety plan applicable to all employees of public agencies of the state and its municipalities, whose program is equally effective as the standards contained in the approved plan.

The U.S. NAO states that the statute NCGS 95-143 provides that employers in North Carolina, including state and municipal public employers must post public notices in the workplace regarding occupational health and safety laws. Such postings should describe the law, defenses, and actions and explain to employees how to make a complaint before the Department of Labour of North Carolina.

This section of the statute NCGS (95-143) refers to the obligation of employers to maintain records and reports of the causes of occupational diseases and accidents. Those reports, when subjected to the administration of federal Occupational Health and Safety, should "sufficiently ensure that the state shall establish and maintain a program of effective occupational health and safety, applicable to all public agencies of the state employees and its subdivision policies.

To obtain federal approval of its plan, the state program for state and municipal Government workers should contain, among other matters, standards that are at least as effective as those that apply to private sector workers. The program must contain provisions for conducting periodic inspections or due to a complaint, notify workers of their rights, defenses against retaliation for exercising a statutory right, access to information about exposure to toxic materials or harmful physical agents, and procedures to control or eliminate imminent dangers.

The U.S. NAO argues that North Carolina submitted and received approval of the state's plan to implement health and safety standards in the workplace. It also notes
that the state plan, with a few exceptions, covers all activities of employers and all work places in North Carolina. It points out that to ensure their own workers enjoyment of proper hygiene and safety working conditions, the state requires its agencies to develop, in writing, safe and health programs, establish education and training programs, and involve workers in health and safety committees, the state also encourages workers to present complaints about health and safety issues, and investigates such complaints and accidents.

5.7 Compensation in Occupational Injuries and Diseases

5.7.1 Petitioner’s Arguments

The petitioner’s claim that African American employees of the Special Transportation Service of the City of Charlotte, who suffered work injuries, were denied relocation after being injured, oppose to Caucasian employees who got relocated after suffering an injury.

They also referred to the fact that none of the workers received the forms to apply for compensation for injuries or diseases, according to the North Carolina Workers’ Compensation Act, also alleged that they were not informed that according to the Family and Medical Leave Act, they are entitled to take days off to recover from the injury suffered.

5.7.2 U.S. Obligations Under the NAALC

Under the NAALC, the three Governments committed to “the establishment of a system that provides benefits and compensation to workers or their dependents in case of occupational injuries, accidents or fatalities arising out of, or that are in connection with, or have occurred in the workplace” Labour Principle number 10, compensation in workplace injuries or diseases cases.

With regards to the alleged violations of the right to compensate, the U.S. Government agreed to comply with the following provisions of the NAALC:

- Article 2. "Reaffirming full respect for the Constitution of each of the Parties and recognizing the right of each Party to establish... its own labour standards... each Party shall ensure that its labour laws and regulations provide high labour standards, consistent with high standards in the workplaces and productivity and continue to strive those standards in that context".

- Article 3. Governmental measures for the effective implementation of labour legislation:

  1. “Each Party shall promote with labour legislation and implement effectively through appropriate Governmental actions such as:

37 Program manual for safety and health requirements in the workplace in North Carolina
38 Addendum presented by the NAO of Mexico April 2008.
b) Monitoring compliance with laws and investigating suspected violations, including through on-site inspection visits;

e) Encourage the establishment of worker-management committees to address labour regulation in the workplace

g) Initiating in a timely manner, proceedings to seek sanctions or appropriate remedies for violations of its labour law.

• Article 4: Particulars’ Access to the Proceedings

1. Each Party shall ensure that persons with legal interest recognized under its law in a particular matter have the right access to administrative, quasi-judicial or labour tribunals for the implementation of the labour law of the Party.

2. The legislation of each Party shall ensure that, where appropriate, the persons with legal interest have access to the procedures by which they can establish the arising rights:

   a) In its labour laws, including what is related to health and safety, working conditions, worker-employer relations and migratory workers; and

• Article 5. Procedural rights

1. "Each Party shall ensure that procedures before its administrative, quasi-judicial or labour tribunals for the implementation of its labour law are fair, equitable and transparent, and to this end will provide that:

   a) Such proceedings comply with the appropriate legal process;

   d) The procedures are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays

4. Each Party shall guarantee that the tribunals that are dealing with such proceedings, or revise them, are impartial an independent and that these do not have a substantial interest in their resolution.

5. Each Party shall provide that the Parties proceedings before administrative, judicial, judicial and labour tribunals have access to resources to enforce their labour rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or workplaces emergency closures.

• Article 6. Publication
1. Each Party shall ensure that its laws, regulations, procedures and general administrative applications with respect to any matter covered by this agreement are promptly published or otherwise become available to the interested persons and Parties.

2. According to its legislation, each Party shall:
   
a) Publish in advance any proposed measure to be adopted; and

b) Provide to the interested persons a reasonable opportunity to comment on the proposed measures”.

- Article 7. Public Knowledge and Information

“Each Party shall promote public awareness of its labour laws, in particular by:

a) Ensuring the availability of public information related to its labour laws and the procedures for its application and knowledge;” and

b) Promoting education with respects to its labour legislation”.

5.7.3 Applicable Labour Legislation

The U.S. NAO did not provide information to this respect, even though the NAO of Mexico requested information about the U.S. applicable labour laws pertaining to the competency of their authorities to resolve compensation issues in matters relating to occupational injuries and diseases; as well as the measures implemented by the Government to ensure such rights, among others.

VI. Recommendations (Translated by Robin Alexander, U.E.)

In terms of the North American Agreement for Labour Cooperation (NAALC), the Governments of Mexico, U.S. and Canada agreed, among other objectives, to improve working conditions and living standards in their territories; promote to the maximum the established Labour Principles, and promote the compliance and effective application of their respective labour laws.

The NAALC contemplates the mechanism of Public Statements so any individual can bring before the Government, matters related to the effective implementation of labour laws arising in the territory of any of the Parties. This review report relates to the Public Notice 2006-1 MEX received by the National Administrative Office (NAO) of Mexico, and established in the International Affairs Unit of the Ministry of Labour and Social Awareness.

1. By virtue of the arguments presented by the Petitioners and by the Government of the US via the NAO, and based on the Regulations of the National Administrative Office (NAO) of Mexico regarding Public Statements referred to in Article 16 (3) of the North America Agreement for Labour Cooperation
(NAALC), this brings to the attention of the Department of Labour of the US (DOL) this evaluation report so that, according to their internal procedures, the DOL may determine what follows, in terms of its legislation and internal practices, to attend to the arguments of the Petitioners regarding whether the rights of public employees in North Carolina have been violated by not guaranteeing them their full exercise (of rights); not being able to count on Government measures for the effective application of labour legislation; not have adequate access to procedures for the application of the legislation, nor the corresponding procedural rights; as well as lack of knowledge of the laws, regulations and procedures that workers have in order to effectuate their rights regarding:

- Freedom of association and protection of the right to organize;
- Right to collective bargaining;
- Minimum Conditions of work;
- Elimination of discrimination at work;
- Equal pay for men and women;
- Prevention of occupational injuries and diseases; and
- Compensation in the case of occupational injuries or diseases

2. The Mexican NAO places particular emphasis on the topics of freedom of association and the right to Collective bargaining. As the Petitioners mention, if freedom of association exists for the public workers of North Carolina, the prohibition on Collective bargaining limits the exercise of that freedom. In this respect, there are recommendations and follow-up reports from the Committee on Freedom of Association of the International Labour Organization to the effect that North Carolina must abrogate the statute NCGS 95-98 and permit public employees of that state to negotiate collectively, as well as to promulgate a legislative framework that promotes that result. Nevertheless, those reports recognize the efforts of the US to pass legislation in the Legislative Assembly of North Carolina that includes collective bargaining for public sector workers.

On this point, the NAO of Mexico reiterates its respect for the NAALC and to the general commitment established in Article 2 of the same: recognize the right of the Parties “to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations”, and abstains from requesting or recommending to the Government of the US that it should abrogate the statute NCGS 95-98.

Notwithstanding this, the NAO of Mexico indicates its interest in knowing of the actions taken by the Government of the US in order to promote the right to Collective bargaining by public workers North Carolina, as well as requesting that it be maintained informed about the presentation of new initiatives on this subject in the Senate or in the Legislative Assembly itself of North Carolina in order to abrogate NCGS 95-98.
3. Regarding the topics of minimum employment standards and the elimination of discrimination at work, according to the information provided by the NAO of the US there are resources that exist within the legislation of the United States that permit the workers to effectuate their rights in the face of presumed violations. From the information provided by the Petitioners it is not clear if workers initiated such proceedings.

In this regard, the NAO of Mexico calls to the attention of the Government of the United States the usefulness of disseminating more fully, through mechanisms that it considers appropriate, the rights and minimum labour standards on which public workers in that state may rely, as well as the legal resources available to them.

4. In the case of questions of health and safety mentioned by the Petitioners, the NAO of Mexico recommends that this matter be maintained under review through cooperative consultations, in conformity with Article 21 of the NAALC, since from the information provided by the Government of the US it is not clear what actions are taken by the Government of that country and concretely by that of North Carolina, in order to guarantee the protection of the health and safety of public employees in that state.

In this regard, the NAO understands that the process of obtaining information that is outside of the federal jurisdiction, as it belongs to the states, is not simple. Irrespective of this, the NAALC established the obligation of the Parties to comply with their commitments, without considering as an obstacle the autonomy of the states.