

Comparative Guides to Labor and Employment  
Laws in North America

# LABOR RELATIONS LAW IN NORTH AMERICA



Commission for Labor Cooperation  
North American Agreement on Labor Cooperation

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# CONTENTS

Foreword.....	13
INTRODUCTION.....	15
1. General Introduction to this Volume and Series.....	15
A. The Commission for Labor Cooperation and the North American Agreement on Labor Cooperation.....	15
B. The Role of the Secretariat.....	16
C. Comparative Guide to Labor Law.....	17
D. Format.....	18
E. Scope of the Guide .....	19
2. Introductory Comments on NAALC Labor Principles 1, 2 and 3.....	23
A. Labor Principle 1: Freedom of Association and Protection of the Right to Organize.....	23
B. Labor Principle 2: The Right to Bargain Collectively.....	25
C. Labor Principle 3: The Right to Strike.....	28
CANADA .....	31
1. General Introduction.....	31
A. Basic Labor Policy .....	31

B. Labor Law Jurisdiction .....	32
C. Legal Sources of Labor Rights.....	35
1) Constitutional Sources.....	36
2) Statutory Sources.....	37
3) Regulations and Rules.....	38
D. The Individual Employment Relationship .....	38
E. Exclusions from Coverage.....	40
2. Levels of Protection – Substantive Labor Laws.....	40
A. Labor Principle 1 – Freedom of Association and the Right to Organize.....	40
1) Legal Foundations.....	40
2) The Formation and Dissolution of Unions.....	41
3) Legal Status of Unions.....	42
4) Union Self-Governance.....	43
5) Political and Legislative Activities of Unions.....	44
6) Union Membership and Dues.....	44
7) Freedom of Association within Unions.....	46
B. Labor Principle 2 – The Right to Bargain Collectively.....	48
1) Legal Foundations.....	48
2) Acquisition of Bargaining Rights.....	50
3) The Collective Bargaining Process.....	53
(i) Obligation to Bargain.....	53
(ii) Disclosure of Information.....	55
(iii) Changes to Working Conditions during Negotiations.....	55
(iv) Scope of Bargaining and Contents of Agreement.....	56
(v) Conciliation, Mediation and Arbitration of Bargaining Disputes.....	57
(vi) Extension of Agreement Coverage.....	59
4) Enforcement of Collective Agreements.....	60
(i) Binding Effect of Collective Agreements.....	60
(ii) Enforcement Procedures.....	60
5) Successor Employers.....	62
6) Obligations of Unions towards Represented Workers.....	63
7) Termination of Bargaining Rights.....	64
C. Labor Principle 3 – The Right to Strike.....	64
1) Legal Foundations.....	64

2) Protected Strike Activity .....	65
3) Regulation of the Right to Strike.....	66
(i) No-Strike Clauses.....	66
(ii) Compulsory Conciliation .....	67
(iii) Unlawful Strikes.....	67
(iv) Essential Services.....	68
(v) Back-to-Work Legislation.....	68
(vi) Strike Votes.....	69
4) Picketing and Other Supportive Action.....	70
(i) Picketing.....	70
(ii) Secondary Strike Action.....	71
5) Limits on Striker Replacement.....	71
D. Protections against Interference.....	73
1) Prohibition of Employer Unfair Labor Practices.....	73
2) Prohibition of Union Unfair Labor Practices.....	79
3) Civil Rights and Protection.....	79
3. Government Enforcement.....	80
A. Structure and Functioning of Canadian Labor Relations Boards...	80
B. Examples of Canadian Labor Relations Boards .....	82
1) The Alberta Labour Relations Board.....	82
2) The Manitoba Labour Board .....	82
3) The Ontario Labour Relations Board.....	83
4) The Quebec Commissioners and the Labour Court .....	84
(i) The Office of the Labour Commissioner General.....	84
(ii) The Labour Court .....	85
4. Rights of Private Action.....	85
A. Access to Administrative Tribunals.....	85
B. Access to Courts.....	86
5. Procedural Guarantees and Remedies to Ensure Enforcement.....	87
A. Due Process.....	87
1) Procedural Protections.....	87
2) Independence and Impartiality of Decision Makers.....	88
B. Appeals and Judicial Review .....	90
C. Sanctions and Remedies.....	91

6. Publication Measures.....	93
A. Publication of Laws, Regulations, Procedures and Administrative Rulings.....	93
B. Notice and Opportunity for Comment.....	94
7. Public Information and Awareness.....	94
A. Availability of Public Information.....	94
B. Public Education.....	95
C. Private Information Sources.....	95
D. NAALC Cooperative Activities.....	95
 MEXICO.....	 97
1. General Introduction.....	97
A. Basic Labor Policy.....	97
B. Labor Law Jurisdiction.....	98
C. Legal Sources of Labor Rights.....	100
1) The Federal Constitution.....	101
2) The <i>Federal Labor Law</i> .....	102
3) International Treaties.....	103
D. The Individual Employment Relationship .....	103
E. Exclusions from Coverage.....	109
2. Levels of Protection – Substantive Labor Laws.....	110
A. Labor Principle 1 – Freedom of Association and the Right to Organize.....	110
1) Legal Foundations.....	110
2) The Formation and Dissolution of Unions.....	110
(i) Types of Union in Mexico.....	111
3) Legal Status of Unions.....	111
(i) Registration of Unions.....	111
4) Union Self-Governance.....	115
5) Political and Legislative Activities of Unions .....	115
6) Union Membership and Dues.....	115
7) Freedom of Association within Unions.....	117
B. Labor Principle 2 – The Right to Bargain Collectively.....	119

1) Legal Foundations.....	119
2) Acquisition of Title to a Collective Contract.....	119
(i) Challenging the Title of Another Union.....	120
3) The Collective Bargaining Process.....	121
(i) Obligation to Bargain.....	122
(ii) Disclosure of Information.....	123
(iii) Changes to Working Conditions during Negotiations .....	123
(iv) Scope of Bargaining and Contents of Agreement.....	123
(v) Conciliation and Arbitration of Bargaining Disputes.....	125
(vi) Law-Contracts: Extension of Contract Terms to an Entire Sector or Region.....	126
4) Enforcement of Collective Contracts.....	127
(i) Binding Effect of Collective Contracts.....	127
(ii) Enforcement Procedures.....	129
5) Substitute Employers.....	129
6) Obligations of Unions towards Represented Workers.....	130
7) Termination of Title to Collective Contract.....	130
C. Labor Principle 3 – The Right to Strike.....	131
1) Legal Foundations.....	131
2) Protected Strike Activity .....	133
3) Regulation of the Right to Strike.....	133
(i) Legal Definitions.....	134
(ii) Services Maintained Notwithstanding a Strike.....	136
(iii) Strike Procedures.....	137
(iv) Suspension of Work and Preservation of Equipment and Raw Materials.....	138
(v) Application for Determination that Strike is Legally Nonexistent or Illegal.....	138
(vi) Means of Ending a Legally Existent and Lawful Strike.....	139
4) Supportive Action.....	140
5) Prohibition of Striker Replacement.....	140
D. Protections against Interference.....	141
1) Just Cause Protection.....	141
2) Limitations on the Use of Exclusion Clauses.....	142
3) Prohibitions against Coercion.....	143
4) Civil Rights and Protection.....	143

3. Government Enforcement.....	144
A. Government Labor Authorities.....	145
1) Federal.....	145
2) State and Federal District.....	146
B. Administrative Labor Tribunals.....	146
4. Rights of Private Action.....	148
A. Access to Administrative Tribunals.....	148
B. Access to Courts.....	149
5. Procedural Guarantees and Remedies to Ensure Enforcement.....	149
A. Due Process.....	149
1) Procedural Protections.....	150
2) Independence and Impartiality of Decision Makers.....	152
B. Appeals and Judicial Review .....	153
1) <i>Amparo</i> .....	154
C. Sanctions and Remedies.....	155
6. Publication Measures.....	157
A. Publication of Laws, Regulations, Procedures and Administrative Rulings.....	157
B. Notice and Opportunity for Comment.....	157
7. Public Information and Awareness.....	158
A. Availability of Public Information.....	158
B. Public Education.....	159
C. Private Information Sources.....	159
D. NAALC Cooperative Activities.....	160
Appendix 3A: Provisions of the <i>Federal Labor Law</i> Relating to Special Types of Work.....	161
UNITED STATES .....	165
1. General Introduction.....	165
A. Basic Labor Policy .....	165

B. Labor Law Jurisdiction .....	166
C. Legal Sources of Labor Rights.....	167
1) Constitutional Sources.....	168
2) Statutory Sources.....	169
3) Rulemaking.....	171
D. The Individual Employment Relationship.....	171
E. Exclusions from Coverage.....	173
2. Levels of Protection – Substantive Labor Laws.....	174
A. Labor Principle 1 – Freedom of Association and the Right to Organize.....	174
1) Legal Foundations.....	174
2) The Formation and Dissolution of Unions.....	174
3) Legal Status of Unions.....	175
4) Union Self-Governance.....	175
5) Union Political and Legislative Activity.....	176
6) Union Membership and Dues.....	176
7) Freedom of Association within Unions.....	178
B. Labor Principle 2 – The Right to Bargain Collectively .....	179
1) Legal Foundations.....	179
2) Acquisition of Bargaining Rights.....	181
(i) Petitioning for an Election.....	181
(ii) Appropriate Bargaining Unit .....	182
(iii) The Representation Election Campaign.....	184
(iv) Secret Ballot Elections.....	184
(v) Election Objections.....	184
(vi) The Gissel Doctrine.....	185
(vii) NLRB Rulings Not Self-Enforcing.....	185
(viii) The One-Year Rule.....	186
3) The Collective Bargaining Process.....	187
(i) Obligation to Bargain.....	187
(ii) Disclosure of Information.....	189
(iii) Changes to Working Conditions during Negotiations.....	189
(iv) Scope of Bargaining and Contents of Collective Bargaining Agreement.....	190
(v) Conciliation, Mediation and Arbitration of Bargaining Disputes.....	191

(vi) Extension of Agreement Coverage.....	193
4) Enforcement of Collective Bargaining Agreements.....	193
(i) Binding Effect of Collective Bargaining Agreements .....	193
(ii) Enforcement Procedures.....	193
5) Successor Employers.....	196
6) Obligations of Unions towards Represented Workers.....	196
7) Termination of Bargaining Rights.....	197
C. Labor Principle 3 – The Right to Strike.....	198
1) Legal Foundations.....	198
(i) The Labor Injunction in U.S. Labor History.....	198
(ii) Norris-La Guardia Act and <i>National Labor Relations Act</i> Policy .....	198
(iii) Federal Preemption.....	199
2) Protected Strike Activity .....	199
3) Regulation of the Right to Strike.....	200
(i) Unlawful Strikes.....	200
(ii) Notice Requirements.....	201
(iii) No-Strike Clauses.....	201
(iv) National Emergencies .....	202
(v) Airline and Railroad Industries.....	203
(vi) Strike Votes.....	203
4) Picketing and Other Supportive Action.....	203
(i) Secondary Boycotts.....	203
5) Striker Replacement.....	204
(i) Unfair Labor Practice Strikes and Economic Strikes.....	205
D. Protections against Interference.....	206
1) Prohibition of Employer Unfair Labor Practices.....	206
2) Prohibition of Union Unfair Labor Practices.....	208
3) The “Laboratory Conditions” Requirement.....	209
4) Civil Rights and Protection.....	209
3. Government Enforcement.....	210
A. The National Labor Relations Board (NLRB) – Structure .....	210
1) The Board.....	211
(i) Supervision of Certification Elections in Representation Cases .....	211
(ii) Appeals from ALJ Decisions in ULP Cases.....	211

2) Office of the General Counsel.....	212
3) Division of Administrative Law Judges.....	212
B. NLRB Enforcement Procedures – Unfair Labor Practice	
Proceedings.....	213
1) Investigation.....	213
2) Complaint or Dismissal.....	213
3) Settlement Efforts.....	214
4) ALJ Hearing .....	214
5) Appeal to the NLRB.....	214
6) Non-Self-Enforcement of NLRB Decisions .....	215
7) Section 10(j) Injunctions.....	215
C. Department of Labor (DOL) .....	216
1) Complaint Proceedings.....	216
2) Monitoring of Compliance.....	217
3) Settlement Efforts.....	217
4. Rights of Private Action.....	217
A. Access to Administrative Tribunals.....	217
1) The National Labor Relations Board (NLRB).....	217
2) Department of Labor (DOL).....	218
B. Access to Courts.....	218
5. Procedural Guarantees and Remedies to Ensure Enforcement.....	219
A. Due Process.....	219
1) Procedural Protections.....	219
2) Independence and Impartiality of Decision Makers.....	220
B. Appeals and Judicial Review .....	221
C. Sanctions and Remedies.....	222
6. Publication Measures.....	223
A. Publication of Laws, Regulations, Procedures and Administrative Rulings.....	223
B. Notice and Opportunity for Comment.....	223
7. Public Information and Awareness.....	223
A. Availability of Public Information.....	223
B. Public Education.....	224

C. Private Information Sources.....	224
D. NAALC Cooperative Activities.....	225
Appendix 4A: An Overview of the <i>Railway Labor Act</i> .....	226
 BOX INSERTS	
Introduction	
1.1 Labor Principles 1, 2, and 3 of the NAALC.....	20
1.2 NAALC Part 2: Obligations.....	20
 Canada	
2.1 Private Sector Federal Labor Law Jurisdiction in Canada.....	34
2.2 The Rand Formula and Union Political Activities.....	45
2.3 Canada's Federal Task Force Addresses Striker Replacement.....	73
2.4 Balancing Employee Freedom of Association and Employer Free Speech: A Decision of the British Columbia Labour Relations Board.....	75
 Mexico	
3.1 Federal Labor Law Enforcement Jurisdiction.....	99
3.2 Just Cause for Termination of Employment in Mexican Labor Law.....	108
3.3 Severance Pay in Mexican Labor Law.....	142
3.4 Union Involvement in Tripartite Labor Policy Bodies.....	144
 United States	
4.1 Arbitration — “Private Jurisprudence” in U.S. Labor Relations...	194
4.2 Secondary Boycotts by Farmworkers.....	204

## **FOREWORD**

One of the fundamental purposes of the North American Agreement on Labor Cooperation is to reinforce the labor laws of the signatory nations in the face of increasing pressures of competition due to free international trade. Open trade is intended to bring greater business opportunities and more efficient use of resources resulting in more employment and economic growth. But open trade also intensifies the pressures of competition. It forces many companies to make major changes in the way they do business; it causes new businesses to start up and some companies to go out of business. All competitors must make the maximum use of their resources and investments and obtain the maximum production from their workforce.

Labor laws channel the forces of competition away from negative responses (competitiveness based on exploitation of the workforce) to positive responses (competitiveness based on the productivity of the workforce). Labor laws set the floor for fair competition, creating the standard conditions within which all competitors must operate. Only if all observe the rules do the rules serve the common good. If it is possible to circumvent the rules, if some competitors observe the rules and others do not, then the rules hinder fair competition rather than enhancing it.

Thus, the greater the pressure of competition the more important is the consistent and effective application of the standards by which all competitors must operate.

In establishing their Agreement on Labor Cooperation as a complement to the North American Free Trade Agreement, the governments of

Canada, the United States and Mexico accepted the fact that each nation had evolved a different system of labor law and administration. They agreed that those systems should continue to evolve independently within each sovereign jurisdiction. But they also recognized the extremely important fact that these three systems were based on underlying principles which were held in common and which could be articulated. These are the 11 Labor Principles of the NAALC.

Each principle defines a sector of labor law, which is given concrete expression by the statutes and jurisprudence of the different jurisdictions. The parties to the NAALC undertake solemn obligations to ensure that their laws in these sectors are effectively enforced. Thus all competitors in the North American Free Trade area will operate under the law in regard to labor matters, administered openly and consistently. Such is a major objective of the NAALC.

The objective of this publication by the Commission for Labor Cooperation is to enable the public at large in North America, and not just specialists in comparative labor law, to know simply and clearly what those different labor law regimes are and how they are administered. The NAALC relies primarily on the public to draw attention to any deficiencies which may occur in regard to labor law administration. It is thus imperative that the public have ready access to the content of the laws and how they are meant to apply, organized following the schema of the NAALC.

Some may find the language of this publication rather technical at times; in fact, every effort has been made to produce a document that is highly accurate yet general, accessible to as many as possible yet sufficiently precise to be useful as an operational guide. The challenge was much greater than was originally imagined, not to mention the need to operate in three languages and to reflect the influence of different legal cultures. The countless hours of work by the staff of the Secretariat whose names appear in this book testify to this challenge. But the value of such an overview, we firmly believe, justifies the investment.

*John S. McKennirey*

Executive Director

Secretariat

Commission for Labor Cooperation

May 1999

# INTRODUCTION

## 1. GENERAL INTRODUCTION TO THIS VOLUME AND SERIES

### A. THE COMMISSION FOR LABOR COOPERATION AND THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

The Commission for Labor Cooperation is a new international organization created by Canada, Mexico, and the United States under the North American Agreement on Labor Cooperation (NAALC). Along with an agreement on environmental cooperation, the NAALC is one of two supplementary or “side” agreements to the North American Free Trade Agreement (NAFTA). The NAFTA and the two side agreements came into force on January 1, 1994. The NAALC is the first international labor agreement linked to a trade treaty. It creates an international discipline on enforcement of domestic labor law, a major innovation in international labor affairs.

The NAALC sets forth objectives that include promoting 11 basic Labor Principles, promoting international cooperation in the labor arena, improving working conditions and living standards, and ensuring the effective enforcement and transparent administration of labor laws. Following these objectives, the NAALC countries agree to a set of six Obligations that relate specifically to the effective enforcement and transparent administration of labor law.

The NAALC's 11 Labor Principles and six Obligations define the scope of the agreement. These Principles and Obligations cover nearly all aspects of labor rights and labor standards.<sup>1</sup> The countries commit themselves to the Obligations and undertake to promote the Principles, but they have not established common laws or standards. However, the countries do agree to open themselves up to reviews and consultations among themselves on all labor matters within the scope of the Agreement.

In addition to review and consultation, the countries' obligations regarding the effective and transparent enforcement of labor law are subject to an evaluation by an independent committee of experts and, in certain circumstances, to dispute resolution by an independent arbitral panel.

The Agreement establishes an organizational structure for implementation. It creates the Commission for Labor Cooperation, headed by a Council of Ministers made up of the cabinet level minister or secretary responsible for labor matters in each nation, and an international Secretariat to support the Council. Each government has also established a National Administrative Office (NAO) within its department or ministry of labor to receive communications from the public in that country, to provide information, and generally to facilitate participation under the Agreement.

## B. THE ROLE OF THE SECRETARIAT

As the permanent staff organization of the Commission, the Secretariat has two main responsibilities. First, it assists the Ministerial Council in carrying out any of the Council's functions under the agreement, such as supporting an independent Evaluation Committee of Experts or Arbitral Panel which the Council may establish, or promoting cooperative

<sup>1</sup> The Principles and Obligations cover the following: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labor; labor protections for children and young persons; minimum employment standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; compensation in cases of occupational injuries and illnesses; and protection of migrant workers.

activities, including working groups and conferences on labor-related matters. Second, under Article 14 of the NAALC the Secretariat prepares periodic reports and special studies. Periodic reports cover four broad areas: (1) labor law and administrative procedures; (2) the implementation and enforcement of labor law; (3) labor market conditions; and (4) human resource development issues. In addition, special studies can be called for at any time on any matter that the Council considers necessary.

### C. COMPARATIVE GUIDE TO LABOR LAW

This volume is the first of a set of comparative guides to labor law in Canada, the United States, and Mexico. These volumes will describe how each NAALC member country addresses the six Obligations of the NAALC with respect to each of the Labor Principles that the NAALC commits its signatories to promote. They provide a concise description, for each NAALC member country, of the particular laws, practices, and administrative procedures which relate to each NAALC obligation. In so doing, their aim is to promote greater understanding of the legal systems of each country by providing an accurate picture of how each works and by facilitating comparisons between them.<sup>2</sup>

This guide covers basic labor and industrial relations: union organizing, collective bargaining, and the right to strike as set out in Labor Principles 1, 2 and 3 of the NAALC. Subsequent volumes will cover what the NAALC defines as “technical labor standards,” contained in Labor Principles 4 to 11.

Labor Principles 1, 2, and 3 and the six NAALC enforcement Obligations are set out in full at the close of this introduction.

<sup>2</sup> The Secretariat is preparing this comparative guide to labor relations law under its NAALC Article 14(1)(a) mandate to produce background reports on the labor law and administrative procedures of the three NAALC member states. Accordingly the report presents a descriptive analysis of the laws, procedures and practices needed to understand the labor law systems of the three NAALC member countries. This report is not, however, an analysis of trends and administrative strategies related to the implementation and enforcement of labor law, topics addressed under article 14(1)(b) rather than 14(1)(a) of the NAALC.

These comparative labor law guides are intended to serve both the specialized interests of labor law practitioners and the general interests of nonpractitioners concerned with the social dimension of expanding trade relations under the North American Free Trade Agreement.

A separate comparative labor market report series, collectively titled *North American Labor Markets: A Comparative Profile*, also published by the Secretariat, addresses labor force characteristics, employment, earnings and income distribution, adjustment and training programs, and other critical labor market issues in the North American economy. Like this report, the *Profile* is intended for both a specialized audience of economists and labor policy experts as well as the general public.

#### D. FORMAT

The first part of this volume provides an introductory discussion of the three Labor Principles which are its focus. The next three parts set out for Canada, Mexico and the United States, respectively, a narrative summary of the law, practice and procedure relevant to those principles and the NAALC Obligations.

Each country part is divided into seven sections. Section 1 presents a general introduction to the country's basic labor policy, the domestic legal foundations of labor rights, dividing lines between labor law jurisdictions, legal background of individual employment contracts, and exclusions from labor law coverage. Sections 2 through 7 describe, respectively, the law and practice which relate to the Obligations found in the correspondingly numbered NAALC article. Thus, section 2 deals with the substantive rights and protections provided by the labor laws of the country in question. Section 3 describes government enforcement measures; section 4, private rights of action to enforce labor rights; and section 5, the due process protections and remedies available to ensure enforcement. Section 6 outlines practices with respect to publication of labor laws, procedures and administrative rulings. Section 7 provides a brief overview of public information available on labor law and enforcement and compliance procedures in the country.

Each section within each country part is divided further into subsections. Those subsections are organized to present the key components of

the relevant law and practice. In order to facilitate cross-country comparisons, the subsections in each country part closely parallel those of each other country part.

Thus, a reader who wishes to understand, for example, how workers in each member country exercise and enforce the right to organize will find, in each country part, a description of the relevant rights under national law (in section 2), a description of how those rights may be enforced (in sections 3 and 4), and a description of what remedies are available to ensure their enforcement (in section 5). The reader will also be able to quickly compare the law and practice of different countries by turning to the corresponding sections and subsections of other country parts. In addition, on many topics the text includes brief comparative summaries of key differences between the countries. These are placed at the end of each section or subsection and are printed in bold type.

Paragraphs in **bold** type highlight key comparisons between countries. The reader can see at a glance, without having to review another country section, a summary of how one country's law and practice resembles or differs from that of the other countries. Box insets provide legal detail, statistics, practical examples, and other background information. These items are intended to bring life to the often unavoidable technicalities and generalities of labor law discussion. The Secretariat wants its reports and profiles to be "reader friendly" as well as technically accurate, for use in workshops, seminars, trade union and employer training programs, classrooms, community organizations and other venues.

## E. SCOPE OF THE GUIDE

As a supplemental agreement to the NAFTA, the NAALC is most directly concerned with labor rights in sectors engaged in trade among the three countries. Accordingly, this initial guide focuses on the main labor law systems for the three countries' *private sector* employers and employees. Each country has separate, highly developed legal regimes for public sector labor relations. Further, they often have special provisions for certain private or mixed public-private enterprises, or for limited special categories of workers. However, except for the U.S. *Railway Labor Act*

(which is discussed because of the importance of the railway and airline industries to trade), those distinct labor law regimes are not treated here.

Even within the main body of private sector labor law, this guide cannot delve into every area of labor law and practice. The treatment or omission of treatment of any employment sector or any aspect of labor law in this volume in no way reflects an interpretation of the scope of the North American Agreement on Labor Cooperation.

### **Box 1.1**

#### **Labor Principles 1, 2, and 3 of the NAALC**

1: Freedom of Association and Protection of the Right to Organize

*The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.*

2: The Right to Bargain Collectively

*The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.*

3: The Right to Strike

*The protection of the right of workers to strike in order to defend their collective interests.*

### **Box 1.2**

#### **NAALC Part 2: Obligations**

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

### Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:

- a. appointing and training inspectors;
- b. monitoring compliance and investigating suspected violations, including through on-site inspections;
- c. seeking assurances of voluntary compliance;
- d. requiring record keeping and reporting;
- e. encouraging the establishment of worker-management committees to address labor regulation of the workplace;
- f. providing or encouraging mediation, conciliation and arbitration services; or
- g. initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.

### Article 4: Private Action

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

- a. its labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and
- b. collective agreements, can be enforced.

### Article 5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

- a. such proceedings comply with due process of law;
  - b. any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
  - c. the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
  - d. such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.
2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:
- a. in writing and preferably state the reasons on which the decisions are based;
  - b. made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
  - c. based on information or evidence in respect of which the parties were offered the opportunity to be heard.
3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.
4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.
5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.
6. Each Party may, as appropriate, adopt or maintain labor defense offices to represent or advise workers or their organizations.
7. Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labor law distinct from its system for the enforcement of laws in general.
8. For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

### Article 6: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When so established by its law, each Party shall:

- a. publish in advance any such measure that it proposes to adopt; and
- b. provide interested persons a reasonable opportunity to comment on such proposed measures.

### Article 7: Public Information and Awareness

1. Each Party shall promote public awareness of its labor law, including by:

- a. ensuring that public information is available related to its labor law and enforcement and compliance procedures; and
- b. promoting public education regarding its labor law.

## 2. INTRODUCTORY COMMENTS ON NAALC LABOR PRINCIPLES 1, 2 AND 3

### A. LABOR PRINCIPLE 1: FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE

*The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.*

Freedom of association is the bedrock workers' right on which all other labor rights rest. It stems from a basic human need for society, community, and shared purpose in a freely chosen common enterprise.

Freedom of association is enshrined in every major international human rights instrument: the Universal Declaration of Human Rights; the

International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; and the human rights charters of Europe, Africa and the Americas.

The consensus of the world community reflected in those instruments is that freedom of association is a fundamental right that must not be derogated for any ulterior motive, including economic development. The NAALC partners have made freedom of association and protection of the right to organize the first of the Labor Principles to which they commit themselves.

Freedom of association is not only important for workers. It reaches all forms of organization in civil society: political, religious, social, cultural and more. Independent, nongovernmental organizations such as trade unions and federations, business enterprises and employers' federations, churches, community organizations and other associations of many kinds play a vital role in the societies of all three NAALC countries.

In the workplace, freedom of association is manifested above all in the right of workers to organize themselves to promote and defend their interests in employment. There is a key distinction, however, between freedom of association and protection of the right to organize. In human rights discourse, freedom of association is often referred to as a "negative right." This means that for the right to be enjoyed by workers, the State should do *nothing* — place no "impediment" in their way, nor cause them to suffer any disadvantage for attempting to associate, as long as their activity is lawful. (The phrase "negative right" seems contradictory, but it is the terminology employed in human rights theory to distinguish it from "positive rights" such as those described below.)

Protection of the right to organize is a "positive right." For the right to be enjoyed, the State must act affirmatively, or positively, to protect the right. Governments do this by enacting laws which enable workers to establish and administer autonomous organizations, laws which give those organizations the legal capacity to act on the collective decisions of their members, and laws which prohibit both interference with those organizations and discrimination or other forms of retaliation against workers or their leaders who seek to organize. To be fully effective, these laws must provide both remedies for workers and unions harmed by such discrimination and also sanctions against violators.

The United States, Mexico and Canada, each in its own way and consistent with its own history, culture and values, have incorporated the principles of freedom of association and protection of the right to organize in their constitutions, charters, laws and national practices. All three countries have laws that forbid discrimination against workers who seek to form trade unions and that provide remedies for victims of such discrimination.

In the United States, the First Amendment of the Constitution protects rights of assembly and speech and the right to petition the government for redress of grievances. In Mexico, Article 9 of the Constitution protects the general right of association, and Article 123 establishes the right of workers and employers to defend their respective interests by forming trade unions and professional associations. In Canada, Section 2(d) of the *Charter of Rights and Freedoms* guarantees freedom of association. The courts of all three countries safeguard these basic constitutional rights.

Each country has adopted laws and regulations protecting the right to organize: the *National Labor Relations Act* (NLRA) in the United States, the Mexican *Federal Labor Law* (FLL), and Canada's provincial labor relations acts or codes and the federal *Canada Labour Code*.

These laws require vigilance for their effective application. Laws protecting freedom of association and the right to organize are preconditions to effective exercise of these rights, but these laws are not sufficient in themselves. With the dramatic economic changes of the late 20th century and the forthcoming challenges of the 21st century, the effective enforcement of these rights is critical to achieve the objectives set forth in the North American Agreement on Labor Cooperation.

## B. LABOR PRINCIPLE 2: THE RIGHT TO BARGAIN COLLECTIVELY

*The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.*

The right to organize does not exist in a vacuum. Workers exercise their freedom of association for a purpose: to obtain just and favorable terms and conditions of employment when they have freely decided that collective representation is preferable to individual bargaining. Protect-

ing the right to bargain collectively guarantees workers a unified voice to engage their employer in an exchange of information, proposals and dialogue to establish wages, benefits, and other terms and conditions of employment.

Protecting the right to bargain collectively requires employers to enter into relationships with trade unions. Because protecting the right to bargain implicates the rights of employers in a profound fashion, its place in labor rights discourse is more complex than that of workers' freedom of association and protection of their right to organize. Different countries have developed a variety of methods for collective bargaining, based on their own history and culture of labor relations.

In some countries the law creates an affirmative duty to bargain in good faith. Such laws compel employers whose workers have chosen collective representation to bargain with their union, whether or not the employer voluntarily consents. Other countries avoid the imposition of involuntary bargaining. They allow the workers' right to strike or the prospect of state intervention in bargaining to induce employers to bargain out of practical necessity rather than legal compulsion.

To compel an employer to bargain, some countries require proof that a majority of workers desire collective representation. Other countries protect the right of a minority union to bargain with an employer, requiring only a minimum number of union members.

Labor laws in some countries favor a system of craft unionism, where unions of workers in different occupations bargain separately with an employer. Others favor industrial unionism, combining workers in different occupations in the same union to bargain as a group with their employer. Still others permit a combination of craft and industrial unions in the same workplace.

Some countries grant exclusive representation rights to one union through a system of union certification. Some of these countries will certify only a union that the majority of workers have chosen. Others will certify the most representative union, even without a majority. Other countries allow multiple unions in a single workplace, even in the same occupation or "bargaining unit."

Many countries require employers to consult with employee "works councils" on decisions affecting workers, whether or not a trade union is present in the workplace. The European Union (EU) has adopted a Eu-

ropean Works Council Directive requiring consultation by any firm operating in two or more EU countries with a works council made up of worker representatives from workplaces in each of the countries where it operates.

In some countries the law specifies clauses that must be contained in a collective bargaining agreement or topics that must (or may not) be negotiated between employers and unions. Others leave the entire process to the bargaining parties. Certain countries extend the terms of collective agreements to nonunionized workers and enterprises in the same industrial sector. Others confine the terms of agreements to the parties that negotiated them. Many countries require arbitration of collective bargaining disputes under certain circumstances, while others prefer to let the free play of bargaining power in a market economy determine the outcome of disputes.

This is just a sample of the variety of requirements and structures shaped by different collective bargaining laws. Despite these differences, however, the right to bargain collectively stems unbroken from the principle of freedom of association and the right to organize. It is the primary means by which those fundamental rights emerge in the real life of workers and managers as they bargain over terms and conditions in the workplace and the means by which their agreements endure. In short, the right to bargain collectively is the “real” implementation in the economic and social setting of the “ideal” civil and political rights of association and organizing.

The United States, Mexico and Canada share certain key features of their collective bargaining systems: exclusive representation; government certification or registration of bargaining representatives; the importance of majority status; a mix of craft and industrial bargaining structures; government conciliation and mediation services, and more.

The three countries also have significant differences. For example, U.S. and Canadian laws impose on employers a “duty to bargain in good faith” when a majority of their workers have chosen union representation. This duty is enforced by the definition and prohibition (as unfair labor practices) of a “refusal to bargain” in the United States and a “failure to bargain in good faith” in Canada. In contrast, Mexican law promotes collective bargaining by protecting the rights of workers and their unions to strike and by allowing unions to seek the intervention of Con-

ciliation and Arbitration Boards to resolve collective bargaining disputes. Mexican law does not use the unfair labor practice concept and does not impose a formal duty to bargain on employers.

Mexican law provides for “law-contracts” which extend negotiated terms of employment, on a mandatory basis, to cover all workers and employers belonging to a specific industrial branch or region provided that certain thresholds of representation are met. In Canada, only the labor laws of Quebec provide for similar coverage of nonunionized workers and employers by a negotiated contract through the extension of collective agreements by legal decree. The laws of the United States do not provide for extending contract terms to outside parties.

With all their similarities and differences, the United States, Mexico and Canada all maintain the right to bargain collectively as an essential feature of their labor relations systems. As North American economic integration progresses, the pressures of international competition on the labor force will intensify. Labor laws provide workers with a means of coping with these pressures and defending their interests through collective action. These laws will increase in importance as the labor market forces engendered by international trade and capital movements also increase in intensity. Thus, the success of the North American Agreement on Labor Cooperation depends on continued effective enforcement of this basic right.

### C. LABOR PRINCIPLE 3: THE RIGHT TO STRIKE

*The protection of the right of workers to strike in order to defend their collective interests.*

The right to strike concludes the fundamental labor and industrial relations principles of the North American Agreement on Labor Cooperation. Together, these first three NAALC Labor Principles form a foundation for the protection, enhancement and enforcement of workers’ basic rights — a stated purpose not only of the NAALC but also of the NAFTA. This structure of rights cannot stand if any one of these three principles is diminished or compromised.

Without the right to strike there cannot be genuine collective bargaining; there can only be collective entreaty. Without genuine collec-

tive bargaining, freedom of association and the right to organize are devoid of any value in the real world of employment and labor relations. Thus, these three rights necessarily form a seamless whole of basic protection for workers. A strike is generally a mechanism of last resort and often not a preferred means of resolving disputes. Nonetheless, the possibility of its use is well recognized as a necessary underpinning to the collective bargaining process.

New complexities arise in the progression from the freedom of association to the right to strike, however. The right to strike affects legitimate concerns of parties outside the employment relationship. In a commercial setting, vendors, customers, distributors and other entities engaged in business with a firm whose employees exercise the right to strike may be affected by the strike. In turn, they may well affect the strike by continuing or not to do business with the struck firm. Other workers and unions might support a strike because they see their own welfare affected by its outcome. They may also support workers who strike in hopes of raising labor standards generally, or from a sense of solidarity among workers. In the larger social setting, segments of the general public might be affected by a strike. Some might oppose the strike, and some might support it. For these reasons, governments often actively regulate the right to strike, and the international community has recognized the legitimacy of many such forms of regulation.

Of the three NAALC countries, only Mexico constitutionally guarantees the right to strike. Some U.S. courts have identified a right to strike within constitutional guarantees of freedom of association, but the question has not been definitively decided by the Supreme Court. The Supreme Court of Canada has decided that the right to strike is not guaranteed by the freedom of association clause of the Canadian *Charter of Rights and Freedoms*

Whatever their constitutional doctrine, the NAALC countries recognize that the right to strike is a necessary recourse for workers to promote and defend their employment interests. Each country's laws maintain the basic right of private sector workers to strike for a new collective agreement after legal requirements have been fulfilled. However, the United States and Canada have each established limits on the right to strike, and Mexico has a series of complex mandatory procedural requirements for exercising the right to strike.

In the United States, for example, a controversial “striker replacement” doctrine permits employers to permanently replace striking workers with newly hired employees, except where strike action is taken in response to unfair labor practices by the employer. In Mexico, strikes may be declared “nonexistent” by a Conciliation and Arbitration Board if legal requirements are not fulfilled. Such a decision forces workers to return to work or lose their jobs. In Canada, the law prohibits any strike during the term of a collective bargaining agreement.

Finding the proper balance between government’s interest in minimizing the harm resulting from industrial conflict and its obligation to protect workers’ right to strike in defense of their collective interests presents a challenge to legislators and labor law enforcers. The challenge is even greater in a rapidly liberalizing international economy, where the power of capital to freely cross borders contrasts with the relative immobility of workers and their families, who are grounded in their local communities. Protection of the right to strike is thus vital to the enhancement of workers’ basic rights proclaimed as an objective by the North American Agreement on Labor Cooperation.