

9-1-1993

Our Eroding Industrial Base: U.S. Labor Laws Compared With Labor Laws of Less Developed Nations in Light of the Global Economy

Andrew K. Stutzman

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>

 Part of the [Comparative and Foreign Law Commons](#), [International Law Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Stutzman, Andrew K. (1993) "Our Eroding Industrial Base: U.S. Labor Laws Compared With Labor Laws of Less Developed Nations in Light of the Global Economy," *Penn State International Law Review*: Vol. 12: No. 1, Article 5.
Available at: <http://elibrary.law.psu.edu/psilr/vol12/iss1/5>

This Comment is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Our Eroding Industrial Base: U.S. Labor Laws Compared With Labor Laws of Less Developed Nations in Light of the Global Economy

I. Introduction

The world is slipping into an era of economic globalization. The ramifications of such development are immense. As economic competition arrives from unseen locations and divergent cultures, U.S. governments and companies will be forced to discontinue prior methods of operation. As countries compete internationally, current differences between U.S. labor laws and the laws of less developed nations will increasingly become relevant.

Differences in U.S. and foreign labor laws have helped spur a rapid disintegration of certain sectors of U.S. industry.¹ While the United States is generally expanding its worker and union protections, many of its global competitors are actually constricting or holding static their labor laws, causing the United States to lose large numbers of manufacturing jobs to less developed nations. As one commentator states:

[W]e will see the destruction of our wage base, the elimination of good mid-level jobs which have been the strength of our economy, and their continuing replacement by minimum wage jobs — a process that would take us halfway down the road to being truly competitive with Brazil, Taiwan, and Hong Kong, and halfway down the road to the adoption of their standards of living as well.²

1. See, e.g., Steven Greenhouse, *Clinton Seeks to Narrow a Growing Wage Gap*, N.Y. TIMES, Dec. 13, 1993, at D1. U.S. Labor Secretary Robert Reich stated: “Global integration [means the relatively unskilled are] competing with millions of people willing to work at a fraction of their wage.” *Id.* at D3. See also Kristin Huckshorn & Jennifer Lin, *NAFTA Debate Alters Politics of Trade*, PHILA. INQUIRER., Nov. 15, 1993, at A9 (“[I]n the last decade, the United States has lost 1.2 million manufacturing jobs. In many cases, businesses decided to close factories and move to other countries to become more competitive globally.”); Richard M. Daley, *Wastelands Transformed*, N.Y. TIMES, Jan. 4, 1994, at A15 (“Since 1960, America has lost 10 million manufacturing jobs, leaving a wasteland of abandoned, contaminated industrial sites too expensive and numerous for local governments or private businesses to restore.”); David Johnston, *Jobless Rate Dips to 7.4 Percent*, PHILA. INQUIRER., Nov. 7, 1992, at A1 (economists say many “quality jobs” are vanishing forever); *Trade Investment, and Economic Justice for All Workers*, 131 CONG. REC. H13,048 (daily ed. Dec. 19, 1985) (statement of Rep. Feighan) (“[P]rotection for the American worker is inextricably linked to protection for all workers.”).

2. Thomas R. Donahue, *Symposium: The Role of Unions in the 1980's: The Role of and Challenges Facing Unions In the 1940's and the 1980's — A Comparison*, 52 FORD. L. REV.

Accordingly, understanding the labor laws of less developed nations is a necessary first step in preventing the erosion of the U.S. industrial base.

This Comment compares labor laws of selected "less developed" nations³ with labor laws of the United States. Part II provides general background information on modern free trade and, in particular, explains how tools that were formerly utilized to protect domestic industries may no longer be relevant and useful in a world economy. Part III examines U.S. labor laws, briefly noting the history of and trends in U.S. labor laws and the formal U.S. acknowledgement of the potentially destructive effects of weak foreign labor laws on U.S. industries. Part IV evaluates the labor laws of foreign nations, discussing the significant differences between U.S. labor laws and those of less developed nations. Finally, Part V examines the North American Free Trade Agreement (NAFTA)⁴ and Mexico's evolving labor laws in order to illustrate the problems emanating from substantial differences between the labor laws of the United States and less-developed nations.

II. A Background on Modern Free Trade

Previously, nations utilized formal trade barriers to protect domestic employment.⁵ These mechanisms largely served two functions. First, the country developed an emerging domestic industry by shielding its market from developed or advanced foreign competition. In time, the nation's industry would progress beyond infancy and acquire the ability to compete directly with more advanced economies. Later, efficiency demanded that the developing nation reduce or eliminate its trade barriers.⁶ Second, the nation utilized trade barriers to protect aging domestic industries. These mechanisms were designed to impede market access by foreign competitors in order to protect existing industry. The

1062, 1068 (1984). See also Murray Weidenbaum, *Regulations on Employers Repress the Willingness to Hire*, *Studies Say*, L.A. TIMES, Nov. 7, 1993, at D2.

3. This Comment does not consider "developed" nations such as Japan or Great Britain. Although significant U.S. trading partners, these nations are more appropriately studied in a separate undertaking.

4. See North American Free Trade Agreement Implementation Act § 101(a), 107 Stat. 2057 (1993). See generally *Proclamation to Implement NAFTA by President Clinton*, U.S. Newswire, Dec. 15, 1993, available in LEXIS, Nexis Library, USNWR File.

5. See generally Daniel K. Tarullo, *Law and Politics in Twentieth Century Tariff History*, 34 UCLA L. REV. 285 (1986).

6. See, e.g., Peter Passell, *How Free Trade Prompts Growth: A Primer*, N.Y. TIMES, Dec. 15, 1993, at A1. Cf. Martin Crutsinger, *Cost of Trade Barriers Put at \$19 Billion*, PHILA. INQUIRER., Nov. 27, 1993, at D1 (removing present worldwide trade barriers would cause consumer prices to drop 3% as jobs shift to the most efficient producers).

LENDER LIABILITY CASES

industry utilized this opportunity to redevelop its operations and, thus, reemerge as a more powerful competitor.

With a greater acceptance of and desire for free trade, there is a reduction of protective barriers. Without these protective barriers, industries facing stiff foreign competition have incentive to relocate to an area offering more desirable manufacturing conditions. For example, a firm is likely to find substantial cost savings in relocating to a country with less burdensome labor or environmental laws. During the heated debate concerning the North American Free Trade Agreement, many argued that the enactment of NAFTA would result in U.S. companies moving to Mexico in order to take advantage of weak environmental and labor laws.⁷ This comparative analysis of labor laws is undertaken in light of today's globally integrated economy.⁸

III. The Study of American Labor Laws

A. *The Historical Development of U.S. Labor Law*

Historically, organized labor in the United States has grown from an unaccepted and illegal status to its present legal position. Initially, concerted actions by employees designed to improve working conditions and benefits were illegal. This illegality stemmed from either the aims of the labor organization or its conspiring nature. As stated in the Philadelphia Cordewainer's case, an early U.S. labor case, "A combination of workmen to raise their wages may be considered in a twofold point of view: one is to benefit themselves . . . [and] the other is to injure those who do not join their society. The rule of law condemns both."⁹ In 1896, Justice Holmes began to erode this concept. In a dissenting opinion, he stated: "[W]hen a plaintiff proves that several persons have combined and conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a

7. See, e.g., Keith Bradsher, *NAFTA: Something to Offend Everyone*, N.Y. TIMES, Nov. 14, 1993, at A14.

8. Note that "[i]n 1970, United States merchandise exports were 4.2 percent of the gross national product and merchandise imports were 3.9 percent. Today, merchandise exports are 7.2 percent of G.N.P. and imports 9.3 percent." Thomas L. Friedman, *Trade vs. Human Rights*, N.Y. TIMES, Feb. 6, 1994, at A1, A10. Cf. Tom Ridge, *NAFTA Is a Big Step Forward for Pennsylvania and the Nation*, PHILA. INQUIRER, Nov. 9, 1993, at A15 ("[I]n a global economy with worldwide competition, companies will continue to migrate and jobs will be created and lost It is the inevitable consequence of global markets."); Richard W. Stevenson, *East Europe's Low Wages Luring Manufacturers from West Europe*, N.Y. TIMES, May 11, 1993, at A1.

9. *Commonwealth v. Pullis*, (Philadelphia Cordewainers' Case), 3 Commons & Gilmore 59 (Mayor's Ct. 1806).

cause of action, *unless the facts disclose or the defendants prove some ground of excuse or justification.*"¹⁰ Justice Holmes then concluded that concerted activity was justified under common-law notions of economic competition, even if it acted to injure an employer.¹¹ This conclusion provided the foundation for a growing acceptance of employee organization.¹² Even so, an employer was still considered to have "a legal and constitutional right to exclude union men from its employe [sic]."¹³

During the depression era of the 1930s, Congress began to develop statutory protection for union organization. The Norris-LaGuardia Act limited federal court injunctions against labor activities.¹⁴ The National Labor Relations Act (NLRA) soon followed.¹⁵ The NLRA delineated guidelines for labor-management relations and defined national labor policies.¹⁶ It was essentially designed to offer stability and promote industrial peace by encouraging collective bargaining and prohibiting certain employer and labor union practices.¹⁷ It expressly granted "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."¹⁸ In providing procedural mechanisms known as "unfair labor practices," the NLRA unequivocally protected employee rights of self-organization.¹⁹ The

10. *Vegeahn v. Guntner*, 44 N.E. 1077, 1080 (Mass. 1896) (emphasis added).

11. *Id.* at 1080-81. Specifically, Justice Holmes concluded that "free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination." *Id.* at 1081. Furthermore, he reasoned that [t]he fact that the immediate object of the act by which the benefit to themselves is to be gained is to injure their antagonist does not necessarily make it unlawful, any more than when a great house lowers the price of goods for the purpose and with the effect of driving a smaller antagonist from the business.

Id. at 1082.

12. *See, e.g.*, P.S. Atiyah, *The Legacy of Holmes Through English Eyes*, 63 B.U. L. REV. 341, 363-364 (1983).

13. *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 253 (1917).

14. Norris-LaGuardia Act of 1932, 29 U.S.C. §§ 101-15 (1988).

15. National Labor Relations Act, 29 U.S.C. §§ 151-169.

16. *Id.*

17. *See* National Labor Relations Act § 1, 29 U.S.C. § 151. *See generally* *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

18. *Id.* § 7, 29 U.S.C. § 157.

19. *Id.* § 8, 29 U.S.C. § 158. The Act also created the National Labor Relations Board (NLRB), which continues to play a preeminent role in deciding numerous questions arising under the Act. *See id.* § 3, 29 U.S.C. § 153.

In addition, the number of U.S. union members has remained near 17 million since 1985, with approximately 16.7 million in 1990. *See* BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., UNION MEMBERS IN 1990 (Feb. 6, 1991). Of those, 10.3 million union members were in

OUR ERODING INDUSTRIAL BASE

underlying conceptual basis for the Act was an adversarial, rather than cooperative relationship between management and labor.²⁰ This adversarial basis remains intact today. Global competition, however, was never a consideration when the NLRA took effect in 1935.²¹

B. Present U.S. Labor Law

Since the enactment of the NLRA, additional U.S. legislation has expanded worker rights. The Fair Labor Standards Act of 1938 (FLSA) requires the payment of a minimum wage and overtime pay for time worked in excess of 40 hours in any workweek.²² Currently, the minimum wage is \$4.25 per hour.²³ Work over 40 hours in a week is compensated at 1½ times the worker's regular rate of pay.²⁴ The FLSA also provides for limitations on use of child labor²⁵ and prohibits the payment of different wages on the basis of sex.²⁶ The Employee Retirement Income Security Act protects an employee's pension rights, provides minimum vesting of pension benefits, and sets informational requirements for beneficiaries.²⁷ U.S. workers who incur an injury arising out of and in the course of their employment are eligible for

private industry. *Id.* These members encompass 12.1% of private sector employment, a drop from 12.4% in 1989. *Id.* From the early 1960s through 1979, the number of union members increased slower than overall employment, causing a decline in union membership. *Id.* From 1979 to 1990, however, union membership fell while employment rose. *Id.*

20. Richard M. Lyon, *Competitiveness and Labor Law: Are We Talking About Legal Issues*, 14 CAN.-U.S. L.J. 29, 30 (1988). "The NLRA was not a framework for encouraging a creative partnership between management and labor. That law saw labor and management as natural adversaries and that is still true of the Act to this very day." *Id.* at 29-30.

21. *Id.* at 29.

22. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-209 (1978).

23. *Id.* § 206. However, the Clinton administration recently indicated that it will seek increases in the minimum wage to \$4.75 per hour and possibly tie future increases to the rate of inflation. *See, e.g.*, Kevin G. Salwen, *Reich to Seek Rise in Minimum Wage to \$4.75 an Hour, an Increase of 12%*, WALL ST. J., Oct. 13, 1993, at A2. Note also that some U.S. states require minimum wages higher than the federal minimum wage. *See, e.g.*, Washington Minimum Hourly Wage Law, WASH. REV. CODE 49.46.020 (West Supp. 1994) (\$4.90 per hour); Alaska Minimum Wage Law, ALASKA STAT. § 23.10.065 (1990) ("50 cents an hour greater than the prevailing Federal Minimum Wage Law"); Iowa Minimum Wage Law, IOWA CODE § 91D.1 (Supp. 1993) (\$4.65 per hour).

24. Fair Labor Standards Act, 29 U.S.C. § 207.

25. *Id.* §§ 203(l), 212. *See generally* WALTER I. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA (1970). Note also state law governing child labor. *See, e.g.*, Pennsylvania Employment of Infants Law, PA. STAT. ANN. tit. 43, § 42 (1992) (with some exceptions, the minimum employment age is 16 years); Texas Child Labor Law, TEX. REV. CIV. STAT. ANN. art. 5181.1, § 3 (West 1987) (the minimum employment age is 14 years).

26. Fair Labor Standards Act, 29 U.S.C. § 206(d).

27. *See* Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 (1985).

worker's compensation benefits.²⁸ The Occupational Safety & Health Act (OSHA) regulates hazards in the workplace.²⁹ Finally, U.S. workers are also protected from a variety of forms of discrimination by their employers.³⁰

Legislation at the state level further enhances worker protection. For instance, laws in certain states require that wages are paid by cash or check,³¹ require that wages are paid at specific and regular intervals,³² and impose restrictions on the assignment and garnishment of wages.³³ U.S. workers who are laid off receive compensation at one-half to two-thirds of their former pay³⁴ and can elect to continue

28. See, e.g., California Workers' Compensation Law, CAL. LAB. CODE §§ 3201-5300 (Deering 1991). See generally H. Alston Johnson, *Workers Compensation*, 51 LA. L. REV. 431 (1990).

29. Occupational Safety & Health Act, 29 U.S.C. §§ 651-678 (1985). See generally Nina G. Stillman & John R. Wheeler, *Expansion of Occupational Safety & Health Law*, 62 NOTRE DAME L. REV. 969 (1987). Note also that the Clinton administration supports additional legislation requiring companies to set up worker-management teams to improve safety. See Kevin G. Salwen, *Labor Secretary to "Strongly Support" Stricter Workplace Safety Regulations*, WALL ST. J., Dec. 6, 1993, at A16.

30. See, e.g., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e - 2000e-17 (1981) (prohibits employment discrimination based on "race, color, religion, sex, or national origin"); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1985); Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (Supp. 1993). In addition to these federal laws, employment discrimination laws at the state level may extend discrimination protection. See, e.g., Michigan Elliott-Larsen Civil Rights Act, MICH. STAT. ANN. § 3.548(101)-3.548(210) (Callaghan 1990) (prohibiting discrimination based on "religion, race, color, national origin, age, sex, height, weight, familial status, or marital status"); New Jersey Law Against Discrimination, N.J. STAT. ANN. § 10:5-12 (West Supp. 1993) (prohibiting discrimination based on "race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, sex or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual").

31. See, e.g., Michigan Payment of Wages and Fringe Benefits Law, MICH. COMP. LAWS. ANN. § 17.277(6) (1989).

32. See, e.g., Massachusetts Wage Payment Law, MASS. GEN. LAWS ANN. ch. 149, § 148 (West 1982). See also Craig Becker, *The Check is in the Mail: Timely Payment Under the Fair Labor Standards Act*, 40 UCLA L. REV. 1241 (1993) (arguing federal jurisdiction as well).

33. See, e.g., Maryland Assignment of Wages Law, MD. COM. LAW CODE ANN. §§ 15-301 - 15-305 (1990) (requires spousal consent and prohibits assignments after 6 months); Nebraska Garnishment Law, NEB. REV. STAT. § 25-1558 (1989) (restricts garnishment to 25% or less of weekly earnings). Note also that Pennsylvania prohibits any assignment or garnishment of wages. See Pennsylvania Assignment of Wages Law, PA. STAT. ANN. tit. 43, § 271 (1992).

34. See, e.g., North Carolina Employment Security Law, N.C. GEN. STAT. §§ 96-1 - 96-29 (1993). See also Federal Unemployment Tax Act, 26 U.S.C. § 3301-3311 (1981). Note that the Clinton administration's new "dislocated worker" plan proposes to transform the present U.S. unemployment system into a broad job training and career counseling program. See, e.g., Mona Charen, *Job Training Programs are a Ripoff*, ATLANTA J. & CONST., Dec. 21, 1993, at A15.

OUR ERODING INDUSTRIAL BASE

receiving their former employer's health insurance by paying for it themselves.³⁵

C. Current Trends in U.S. Labor Law

Generally, modern U.S. worker protections are still being expanded through legislation. For example, the Employee Polygraph Protection Act of 1988 prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.³⁶ The Worker Adjustment and Retraining Notification Act requires employers to provide 60 days notice for certain furloughs or job terminations.³⁷ The recently enacted Family and Medical Leave Act provides for the continuation of health care during a worker's leave of absence for certain reasons and reserves the worker's job during that time.³⁸

In addition, the Pregnancy Discrimination Act of 1978 protects employees from discrimination based on pregnancy.³⁹ For example, a

35. See Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §§ 1161-1168 (Supp. 1993). See generally David L. Gregory, *COBRA: Congress Provides Partial Protection Against Employer Termination of Retiree Health Insurance*, 24 SAN DIEGO L. REV. 77 (1987).

36. Employee Polygraph Protection Act of 1988, 29 U.S.C. §§ 2001-2009 (Supp. 1993). See generally Ching Wah Chin, *Note: Protecting Employees & Neglecting Technology Assessments: The Employee Polygraph Protection Act of 1988*, 55 BROOK. L. REV. 1315 (1990). The Act exempts those employees reasonably suspected of involvement in a workplace incident resulting in economic loss or injury to the employer's business; some prospective employees of private armored car, security alarm, and security guard firms; and some current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. *Id.* § 2006. Note also state law prohibiting polygraph tests as a condition of employment. See, e.g., Pennsylvania Crimes Code, 18 PA. CONS. STAT. § 7321 (1983).

37. Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §§ 2101-2109 (Supp. 1993). See generally Howard J. Weg, *Introduction to Federal Regulation of Plant Closings & Mass Layoffs*, 94 COM. L.J. 123 (1989). Notice is required with a furlough of one-third or more of the full-time workers at any site that employs at least 150 workers, with a furlough of at least 500 employees, or with a closure that affects 50 or more workers at a facility of 100 or more employees. See *id.* § 2101(a). Exceptions to the warning requirements include the following: a "faltering company" — if the employer actively seeks capital or business to avoid or postpone the shutdown and reasonably believes that giving notice will preclude procurement of the capital or business (applicable to shutdowns, only); "unforeseeable business circumstances" — if the closing or mass layoff is caused by business circumstances not reasonably foreseeable at the time notice was required; and a "natural disaster" — if the closing or layoff is caused by a natural disaster. See *id.* § 2102(b). Note also that the Clinton Administration is considering expanding the class of employees covered by the law because of a low rate of compliance. See Kevin G. Salwen, *Clinton Mulls Requiring More Notice of Layoffs*, WALL ST. J., Sept. 14, 1992, at A2.

38. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (Supp. 1993). Note similar state law as well. See, e.g., California Moore-Brown-Roberti Family Rights Act, CAL. GOV'T CODE § 12945.1-12945.2 (Deering Supp. 1994).

39. See Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (1981) (prohibiting

mother is the subject of illegal discrimination when asked questions about her marital status, pregnancy, how many children she has, and similar subjects during a job interview.⁴⁰ Refusing to employ smokers may also subject employers to a variety of legal attacks,⁴¹ and the new Americans with Disabilities Act offers powerful protections for disabled workers.⁴² Finally, with the onslaught of AIDS, U.S. employers are developing additional policies to cope with the disease and must stay abreast of emerging state laws on the subject.⁴³

In contrast to the actions of the federal and state legislatures, the U.S. judiciary has historically been reluctant to protect employee rights, construing worker protection laws narrowly in favor of employers. Recent trends retain some of this conservatism. For example, under the long-established *MacKay* doctrine, an employer has the right to hire permanent replacements during a strike to protect and continue business operations.⁴⁴ This doctrine was recently extended so that "[a]n employer is not required . . . to lay off junior crossovers [of strike lines] in order to reinstate more senior full-term strikers at the conclusion of a strike."⁴⁵ Moreover, a law barring any member of a striking

unequal treatment of pregnant workers). See generally Marjorie Jacobson, Note: *Pregnancy and Employment: Three Approaches to Equal Opportunity*, 68 B.U. L. REV. 1019 (1988). Note further that some states do not just prevent discrimination against pregnant women, but require favorable treatment. See, e.g., California Fair Employment and Housing Act, CAL. GOV'T CODE § 12945 (Deering Supp. 1994) (requiring, among other things, that employer consent to transfer of a pregnant employee to less strenuous or less hazardous work and provide pregnancy leave of up to four months).

40. See, e.g., *King v. Transworld Airlines*, 738 F.2d 255 (8th Cir. 1984). Cf. *Glimpses of Changes in the Workforce*, PHILA. INQUIRER., May 5, 1993, at G6.

41. See, e.g., John J. Donohue III, *Forbidden Grounds: The Case Against Employment Discrimination Laws*, 44 STAN. L. REV. 1583, 1614 (1992) (at least 21 states have enacted laws protecting smokers from employment discrimination). See also Lisa L. Frye, "You've Come a Long Way, Smokers": *North Carolina Preserves the Employee's Right to Smoke off the Job in General Statutes Section 95-28.2*, 71 N.C. L. REV. 1963 (1993).

42. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (Supp. 1993). See generally Tracy L. Hart, Legislative Note: *The Americans with Disabilities Act: Equal Employment Rights for Disabled Americans*, 18 DAYTON L. REV. 921 (1993); Renee L. Cyr, Note, *The Americans with Disabilities Act: Implications for Job Reassignment and the Treatment of Hyper-susceptible Employees*, 57 BROOK. L. REV. 1237 (1992).

43. See, e.g., Wayne R. Cohen, *An Economic Analysis of the Issues Surrounding AIDS in the Workplace: In the Long Run, the Path of Truth and Reason Cannot Be Diverted*, 41 AM. U. L. REV. 1199 (1992); Tracy Jackson Smith, Comment: *AIDS and the Law: Protecting the HIV Infected Employee from Discrimination*, 57 TENN. L. REV. 539 (1990).

44. See *NLRB v. MacKay Radio & Telegraph Co.*, 304 U.S. 333, 333 (1938). Note, however, that the employer may not directly fire or discriminate against the striker. See National Labor Relations Act § 8(a)(3), 29 U.S.C. § 158(a)(1) ("It shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to . . . discourage membership in any labor organization.").

45. See *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 489

OUR ERODING INDUSTRIAL BASE

worker's household from eligibility for food stamp benefits recently survived constitutional attack.⁴⁶

Bills are continuously introduced in Congress to overturn the *MacKay* doctrine and prohibit the permanent replacement of striking employees.⁴⁷ The sentiment of sponsoring members is echoed in the following statement of Senator Howard Metzenbaum of Ohio:

The 1980s witnessed a tremendous growth in the hiring of permanent replacements. Since 1981, tens of thousands of strikers have been permanently replaced. Not surprisingly, the 1980's also witnessed a decline in the number of strikes. Workers, knowing that permanent replacement was a very real risk, were much less willing to exercise their right to strike. A preliminary comparison of labor relations activity by seven major unions indicates that the number of strikers fell by 50 percent between 1980 and 1987. Yet the number of strikes where permanent replacements were hired increased by more than 300 percent in this same 7-year period.⁴⁸

Although Congress recently passed anti-striker replacement legislation, it could not override President Bush's subsequent veto.⁴⁹ President Clinton appears more willing to sign anti-striker replacement legislation, although another bill may not reach his desk.⁵⁰

U.S. 426, 426 (1989). The court stated:

We see no reason why those employees who chose not to gamble on the success of the strike should suffer the consequences when the gamble proves unsuccessful. Requiring junior crossovers, who cannot themselves displace the newly hired permanent replacements and "who rank lowest in seniority," to be displaced by more senior full-term strikers is precisely to visit the consequences of the lost gamble on those who refused to take the risk.

Id. at 438 (cit. omitted).

46. See *Lyng v. International Union*, 485 U.S. 360 (1988) (regarding the Omnibus Budget Reconciliation Act of 1981, 7 U.S.C. § 2015 (1993)).

47. See, e.g., *Cesar Chavez Workplace Fairness Act*, H.R. 5, 103d Cong., 1st Sess. (1993); *Collective Bargaining Protection Act*, H.R. 2918, 102d Cong., 1st Sess. (1991); S. 2112, 101st Cong., 2d Sess. (1990). See generally S. REP. NO. 103-110, 103d Cong., 1st Sess. (1993). But note Pennsylvania law prohibiting the use of "professional" striker replacements, see *Pennsylvania Strikebreakers Law*, 43 PA. STAT. ANN. tit. 43, § 217.21-217.27 (1992), and Hawaiian law making it illegal to "offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute," see *Hawaii Employment Relations Act*, HAW. REV. STAT. § 377-6 (Supp. 1993).

48. 103 CONG. REC. S1124 (daily ed. Feb. 8, 1990) (statement of Sen. Metzenbaum).

49. *Capital Gang* (CNN television broadcast, May 9, 1992) (discussing President Bush's veto of anti-striker replacement legislation).

50. See Kenneth C. Crowe, *Labor Rallies to Clinton*, NEWSDAY, Oct. 30, 1992, at 51 (mentioning Bill Clinton's promise to sign anti-striker replacement legislation). The concept of "at-will employment," or termination or departure without restraint, is firmly embedded in U.S. common law. See generally, Michael A. DiSabatino, Annotation, *Modern Status of Rule that Employer may Discharge At Will Employee for Any Reason*, 12 A.L.R. 4th 544 (1992); Howard

Despite the judiciary's conservative approach, more and more individuals are bringing claims in the courts to secure employee rights. For example, a growing concern for employers is the increasing number of former employees who file suits because of unfavorable job references.⁵¹ These claims are based on defamation, intentional infliction of mental distress, misrepresentation, interference with prospective employment, and Title VII discrimination.⁵²

Thus, given the increase in employment related suits and actions by the federal and state legislatures, it seems likely that worker protections in the United States will continue to expand. With U.S. labor laws apparently becoming more protective and sophisticated, U.S. industry faces serious consequences, especially from transnational trade with nations offering less developed labor laws. Indeed, the U.S. government has recognized this important competitive difference and has devised retaliatory measures against nations utilizing meager labor standards to gain a competitive edge.

III. U.S. Acknowledgement of Destructive Effects of Foreign Labor Laws

Congress has linked foreign worker rights of self-organization and minimum workplace standards to trading privileges "[i]n response to criticism that liberalized trade causes the loss of United States jobs to cheap foreign labor resulting from repressed labor activities abroad."⁵³ Several trade laws, the Caribbean Basin Economic Recovery Act,⁵⁴ the

C. Ellis, *Employment-at-Will and Contract Principles: The Paradigm of Pennsylvania*, 96 DICK. L. REV. 595 (1992). But see Arthur S. Leonard, *A New Common Law of Employment Termination*, 66 N.C. L. REV. 631 (1988). Montana is presently the only state that has taken a significant step to curtail this doctrine. See Montana Wrongful Discharge From Employment Act of 1987, MONT. CODE ANN. §§ 39-2-901 - 39-2-914 (1993) (prohibiting terminations without cause). Although the Commissioners on Uniform State Laws offered provisions echoing the Montana provisions, see MODEL EMPLOYMENT TERMINATION ACT (1991), Montana remains the lone accepting state.

51. See, e.g., *Funk v. Sara Lee Corp.*, 699 F. Supp. 1365 (1988); *Avallone v. Wilmington Med. Center, Inc.*, 553 F. Supp. 931 (1982).

52. See Betty Southard Murphy, *Workplace Privacy Issues: Current Law and Legislation*, [1983-1992 Transfer Binder] Lab. L. Rep., Lab. Rel. Current Comment & CCH Analysis (CCH) ¶ 9383, at 19,428 (1989).

53. Michael S. Barr et al., *Labor and Environmental Rights in the Proposed Mexico-United States Free Trade Agreement*, 14 HOUS. J. INT'L L. 1, 27 (1991). Imports from corporations that pay low wages to foreign workers denied the free exercise of basic labor rights has been termed "social dumping." See, e.g., 131 CONG. REC. H13,048 (statement of Rep. Pease).

54. Caribbean Basin Economic Recovery Act, 19 U.S.C. §§ 2701-2706 (Supp. 1993) (establishes the Caribbean Basin Initiative (CBI)).

OUR ERODING INDUSTRIAL BASE

Trade Act of 1974,⁵⁵ and the Overseas Private Investment Corporations Amendments Act of 1985,⁵⁶ condition a nation's trade benefits on compliance with employment rights.⁵⁷ These laws are to be "used in a constructive manner to achieve . . . basic underlying objectives -- namely, the improvement of basic worker rights and standards abroad so as to raise the standards for all workers, broaden the home markets for export-oriented countries, and create new markets for U.S. exports."⁵⁸

Under the Caribbean Basin Initiative, twenty-seven countries receive duty-free treatment for certain exports at the President's direction.⁵⁹ However, before the President can designate a country as a "beneficiary," the President must consider whether workers in that country are afforded "internationally recognized worker rights."⁶⁰ These "internationally recognized worker rights" include a minimum age for child labor and "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."⁶¹ The same labor considerations apply to the granting of duty-free status on imports from "beneficiary developing countries" under the Trade Act of 1974⁶² and to the attainment of financing or insurance from the Overseas Private Investment Corporation for investment in less-developed countries.⁶³

The Trade Act of 1974 makes "actionable . . . the competitive advantage in international trade that some countries derive from systematic denial to their workers of basic internationally recognized worker rights."⁶⁴ The Act's legislative history states:

55. The Trade Act of 1974, 19 U.S.C. §§ 2101-2495 (Supp. 1993).

56. Overseas Private Investment Corporation Amendments Act of 1985, 22 U.S.C. §§ 2191a-2200a (Supp. 1993).

57. See Theresa A. Amato, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 83 (1990).

58. S. REP. NO. 71, 100th Cong., 1st Sess. 88 (1987). However, legislative history commands the use of provisions only for trade purposes and not to exert pressure to adopt U.S. labor laws. *Id.*

59. Caribbean Basin Economic Recovery Act, 19 U.S.C. §§ 2701, 2702. Note that the CBI has encouraged numerous U.S. industries to relocate to such countries and spurred the investment of billions of dollars. See Susan Warner, *Basin Nations Scurry to Protect Trade Turf*, PHILA. INQUIRER., Nov. 8, 1993, at A1.

60. Caribbean Basin Economic Recovery Act, 19 U.S.C. § 2702(b)(7), (c)(8).

61. Trade Act, 19 U.S.C. § 2462(a)(4).

62. See *id.* § 2462(b)(7), (c)(7).

63. See Overseas Private Investment Corporation Amendments Act, 22 U.S.C. § 2191a. See also 131 CONG. REC. H13,048 (statement of Rep. Pease) ("[T]he Overseas Private Investment Corporation [is prohibited] from asking American taxpayers to underwrite the investments of American-based multinational corporations in any foreign country that does not respect basic labor rights.").

64. H.R. REP. NO. 40, 100th Cong., 1st Sess. 67 (1987). See also Trade Act § 301, 19

The particular worker rights and standards enumerated are each covered by a convention of the International Labor Organization (ILO)⁶⁵ ratified by a large number of countries. While the United States has not ratified these ILO conventions, each of the rights and standards is fully recognized by the United States under the Constitution or under separate domestic statutes. The list specifies the particular worker rights and standards included in the definition and is all-inclusive, not illustrative, of the rights and standards which could be the subject of petitions and potentially actionable under section 301 [of the Trade Act of 1974].⁶⁶

To uphold an objection against a nation under the Trade Act of 1974, it is necessary to show that U.S. industries face a competitive disadvantage because of another country's poor working conditions.⁶⁷

Although these laws represent an effort to negate the advantages a trading partner gains through the abuse of worker rights, the United States has rarely utilized this tool.⁶⁸ Considering the effects labor laws in less developed nations can have on the U.S. economy, the U.S. government should be more willing to use these and other means to protect U.S. industries.

U.S.C. § 2411(d)(3)(B)(iii).

65. The International Labor Organization (ILO) was established in 1919 as part of the Versailles Peace Treaty to improve working conditions and promote social justice and is now a specialized agency of the United Nations. See Stephen I. Schlossberg, *United States' Participation in the ILO: Redefining the Role*, 11 COMP. LAB. L.J. 48, 50-56 (1989). See generally, A. ALCOCK, HISTORY OF THE INTERNATIONAL LABOR ORGANIZATION (1971); G. JOHNSTON, THE INTERNATIONAL LABOUR ORGANIZATION (1970).

66. H.R. REP. NO. 40.

67. See Trade Act § 301, 19 U.S.C. § 2411(d)(3)(B)(iii). See generally, K. Blake Thatcher, *Section 301 of the Trade Act of 1974: Its Utility Against Alleged Unfair Trade Practices by the Japanese Government*, 81 NW. U. L. REV. 492 (1987).

68. One authority found that "[t]he Section 301 process has never been used to counter an unreasonable labor practice, nor has any country been denied participation in the CBI [Caribbean Basin Initiative] because of its poor labor record." Barr, *supra* note 53, at 38-39. See also Jeffrey Ballinger, *Will Clinton Demand Labor Rights in Foreign Trade?*, PHILA. INQUIRER., Jan. 2, 1994, at C5 ("Many thousands of workers in lands where elections mean little have waited in vain for the United States to enforce the labor-rights provisions of its trade laws."); *EPI Urges Policy to Stimulate U.S. Exports to Third World by Raising Labor Standards*, BNA Int'l Trade Daily, Mar. 15, 1993, available in LEXIS, BNA Library, DNAITD File ("The Clinton Administration can expand U.S. exports to the Third World and protect U.S. jobs from unfair low-wage competition by adopting a policy stressing internationally recognized labor standards."); 131 CONG. REC. H13,048 (statement of Rep. Pease) ("[T]oo many trade policy makers do not understand that while our Government turns a deaf ear to the exploitation of foreign workers, it does so at the expense of a growing number of American jobs and declining standards of living for many American workers.").

OUR ERODING INDUSTRIAL BASE

IV. Labor Laws of Less-Developed Nations

U.S. labor unions and their members enjoy substantial protections prohibiting discrimination and mandating collective bargaining and benefits arising from a number of paternalistic laws governing the workplace. In contrast, many less developed nations do not provide their workers with these protections and benefits. Understanding the labor laws of less-developed nations provides a more reasoned approach to questions on U.S. trade and competition and helps guide policy decisions with respect to the United States' industrial base.

A. *The Right to Strike and Bargain Collectively*

As previously discussed, U.S. workers have enjoyed the right to strike and bargain collectively for almost 60 years.⁶⁹ In addition, employers are prohibited from discriminating against workers for union activities.⁷⁰ These rights are considered critical to the formation and ongoing viability of unions. In many cases, the basic labor rights that U.S. workers have long enjoyed contrast significantly with the rights of workers in less developed nations. Indeed, the fundamental rights to strike and freely organize are either substantially restricted or prohibited in many less developed nations.

1. *The Middle East.*—Although most Middle Eastern nations permit collective bargaining, they almost always prohibit strikes and have far less permissive labor laws than those in the United States. Algerian workers, for example, just recently attained several basic labor rights.⁷¹ In June 1990, the Algerian National Assembly passed a law permitting workers to form independent trade unions.⁷² As a result of this law, the formation of a labor union no longer requires government approval.⁷³ In addition, a June 1990 law on trade union activity and an April 1990 worker relations law provide for collective bargaining.⁷⁴ Algerian workers also enjoy other labor rights. For instance, employers are

69. See generally National Labor Relations Act, 29 U.S.C. §§ 151-169.

70. *Id.* § 8(d), 29 U.S.C. § 158(a).

71. See *Algeria — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Algeria*]. Until 1989, Algerian workers did not have the right to form autonomous labor unions. *Id.*

72. *Id.* The law formally ended the representation monopoly of the General Union of Algerian Workers (UGTA), which was linked to the ruling party. *Id.*

73. *Id.* Considerable labor activity resulted, including numerous strikes in all sectors of the economy. *Algeria*, *supra* note 71. Although many of the strikes were unauthorized, the government declined to prosecute the organizers. *Id.*

74. *Id.*

prohibited from anti-union discrimination.⁷⁵ Moreover, although the government must approve strikes, many unauthorized strikes occur because the government generally does not prosecute those holding unauthorized strikes.⁷⁶

The basic labor rights of several Middle Eastern nations are substantially similar. Although the right to self-organization is recognized in Bahrain's Constitution, strikes are prohibited.⁷⁷ Moreover, expatriate workers, comprising about 60 percent of the Bahraini work force, are denied these limited labor rights.⁷⁸ Egyptian workers are free to join trade unions, but strikes are essentially prohibited.⁷⁹ Collective bargaining is permitted in the private sector, although unions have no real leverage.⁸⁰ There are no real labor unions in Iran. The officially sanctioned Islamic labor councils are instruments of government control and not bodies created to protect workers.⁸¹ It is not yet clear whether strikes are formally prohibited in Iran, but none occurred in 1991.⁸²

Some nations' laws exclude a number of workers from their protections. Israeli labor law, for example, differentiates between Israelis and non-Israelis.⁸³ The right of workers to freely join labor organizations of their own choosing is embodied in Israeli law,⁸⁴ and

75. *Id.*

76. *Id.*

77. *Bahrain — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Bahrain*]. The government has encouraged the formation of elected joint management committees (JCCs) in major companies to discuss wages and working conditions. *Id.* These JCCs now represent 28% of the work force. *Id.* However, the government closely controls the JCCs through the General Committee of Bahraini Workers. *Id.*

78. *Id.* Foreigners must also obtain work sponsorship from citizens, but can then be blacklisted from subsequent entry or other sponsorship. *Bahrain*, *supra* note 77. Exploitation floods this system, and foreign workers are often unwilling to report abuses for fear of forced repatriation. *Id.*

79. *Labor*, BUS. INT'L: INVESTING, LICENSING & TRADING, Aug. 1, 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Egypt*]. Once 50 employees express a desire to organize, they can form a union's local or worker's committee. *Id.* However, despite the harsh punishment strikers endure, Egyptian courts have upheld the right to strike under international conventions. *Id.*

80. *Id.* This device is rarely exercised because the larger private businesses offer high wages and are not unionized. *Id.*

81. *Iran — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Iran*].

82. *Id.*

83. *Israel — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Israel*].

84. *Id.*

OUR ERODING INDUSTRIAL BASE

Israeli workers are permitted to strike.⁸⁵ However, nonresident workers, including Palestinians from the West Bank and Gaza, may not organize within Israel.⁸⁶

Kuwait also differentiates between citizens and noncitizens. Although Kuwaiti law limits unions to no more than one in each "functional area,"⁸⁷ workers with Kuwaiti nationality have the right to establish and join unions, and anti-union discrimination is prohibited.⁸⁸ Moreover, workers have a right to strike, although compulsory negotiations and subsequent arbitration severely limit this right.⁸⁹ However, expatriate workers, who comprised about 80 percent of the pre-invasion Kuwaiti workforce, are permitted to join labor unions only as non-voting members and only after five years of residency.⁹⁰

Other Middle Eastern nations also have restrictive labor rights. In Saudi Arabia, government decrees prohibit labor organizations and strikes.⁹¹ The Saudi government also prohibits collective bargaining.⁹² Syria's 1973 Constitution grants the right to form trade unions and protects union members from discrimination.⁹³ In addition, unions can bargain collectively and are active in enforcing health and labor standards.⁹⁴ However, the government controls nearly all aspects of labor activity through a principal union.⁹⁵ Moreover, although the

85. *Id.*

86. *Id.*

87. *Id.*

88. *Kuwait — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Kuwait*]. After liberation, approximately 90% of the pre-invasion total of 27,000 Kuwaiti laborers in the country re-registered as union members. *Id.*

89. *Id.*

90. *Id.*

91. See, e.g., Paul C. Homsy, *Legal Aspects of Doing Business in Saudi Arabia*, 16 INT'L LAW. 51 (1982) [hereinafter *Saudi Arabia*]. See also *Saudi Arabia — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File.

92. *Saudi Arabia*, *supra* note 91.

93. *Syria — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Syria*].

94. *Id.* Many of the regulations do not cover day laborers and nonpermanent workers. *Id.* In its 1992 report on Syrian labor laws, the Committee of Experts of the International Labor Organization (ILO) cited the impropriety of a single, controlled union; restrictions on foreign workers' rights to freely form or join unions; government supervision of trade union finances; the requirement that members spend at least six months in a given occupation before attaining eligibility for union office; and the prohibition of strikes in the agricultural sector. *Syria*, *supra* note 93.

95. *Id.*

government does not formally forbid strikes, it minimizes them, as demonstrated by the absence of strikes in 1990 and 1991.⁹⁶

Some Middle Eastern nations offer more advanced labor rights. Morocco, for instance, has more progressive labor laws as a result of past French control over the country.⁹⁷ Some of the nation's labor laws date back to 1913, when the French Protectorate controlled Morocco,⁹⁸ and were originally designed for French colonial workers rather than native Moroccans.⁹⁹ Morocco's Constitution grants the right to strike,¹⁰⁰ the right to organize, and the right to bargain collectively.¹⁰¹ Furthermore, a 1988 draft labor code, which is still under consideration, would protect Moroccan workers against anti-union discrimination.¹⁰²

2. *The Far East.*—Although each area and, indeed, each nation remains idiosyncratic, the labor laws of Far Eastern nations are similar to those of the Middle East. For example, China, an important U.S. trading partner,¹⁰³ maintains several progressive labor laws. Until recently, China had relatively few labor laws. Over the past few years, however, it has developed detailed laws covering employment, wages, insurance, hours, safety, and sanitation in mines and other areas.¹⁰⁴ These laws are considered progressive, reportedly "drawing from the experiences of foreign countries."¹⁰⁵ Nevertheless, many of these laws are designed to maximize state control over the citizenry, notwithstanding their announced purpose of "ensur[ing] that laborers enjoy the master's role in the country."¹⁰⁶ For instance, a recent trade union law further extends control over China's citizens by only allowing the formation of

96. *Id.*

97. *Morocco — Foreign Labor Trends, 1990*, Nat'l Trade Data Bank, Apr. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Morocco*].

98. *Id.* Today, most labor laws have evolved beyond their colonial forms, but they are still based on the French model. *Id.*

99. *Id.*

100. [Constitution] art. 3 (Morocco).

101. *Id.* art. 14. Any group of eight or more workers can organize. *Id.*

102. *Morocco*, *supra* note 97.

103. Andrew Browne, *China Confident on U.S. Trade, Plans Tariff Cuts*, Reuters, Nov. 22, 1992, available in LEXIS, Nexis Library, REUTER File. "China's trade surplus with the U.S., its largest trading partner, reached \$12 billion [in 1991]." *Id.* Daniel Williams & R. Jeffrey Smith, *Trade Status for China is Extended*, PHILA. INQUIRER, May 29, 1993, at A3. China's trade surplus with the U.S. was \$18 billion in 1992. *Id.* U.S. exports to China make it America's fifteenth largest market. *Id.*

104. *Id.*

105. *Id.*

106. *China Will Have First Labor Laws Next Year*, Xinhua (New China) News Agency, Nov. 28, 1989, available in LEXIS, Nexis Library, XINHUA File [hereinafter *China*].

OUR ERODING INDUSTRIAL BASE

state-controlled official unions.¹⁰⁷ This new law bans all independent worker organizations and “enshrines the monopoly of the tame All-China Federation of Trade Unions.”¹⁰⁸ It makes clear that “the main purpose of a trade union is less to represent worker interests than to safeguard the socialist state power of the people’s democratic dictatorship.”¹⁰⁹ Although the new law proclaims that unions “are the working class mass organizations formed by staff and workers on a voluntary basis,” all unions must submit to approval by higher level trade unions.¹¹⁰ This requirement grants the Chinese government de facto control over all Chinese labor unions through the state controlled All-China Union.

3. *Africa*.—Unlike their Middle Eastern and Far Eastern counterparts, African nations generally grant more progressive worker rights and are moving toward greater associational freedoms. For example, the promulgation of the Gabonese Constitution of 1991 secured the right to collective bargaining in Gabon.¹¹¹ Moreover, as a result of the abolishment of a one party political system in 1990,¹¹² the Gabonese Union Confederation lost its exclusive right to represent workers, and unions are now multiplying.¹¹³ Although current Gabonese labor law severely limits the right to strike, a proposed labor code would liberalize these and other provisions of the existing code.¹¹⁴

In Ghana, labor unions govern trade unions, providing a framework for collective bargaining and prohibiting anti-union discrimination.¹¹⁵ One principal union, the Traders Unions Congress (TUC), represents Ghana’s organized labor.¹¹⁶ Although previously linked to the

107. Workplaces employing no more than 25 people rather than the previous 200 can now establish union branches. *Population and Labor*, BUS. INT’L, June 22, 1992, available in LEXIS, Asiapc Library, BUSINT File.

108. *China*, supra note 106.

109. *Id.*

110. John Kohut, *China: Unionist Speaks Out Against Labor Law*, S. CHINA MORNING POST, available in LEXIS, Asiapc Library, CHINAH File. In addition, the International Labor Organization has urged the inclusion of antiunion discrimination provisions. *Id.*

111. *Gabon — Economic and Trade Policy*, Nat’l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaftr Library, ALLMDE File [hereinafter *Gabon*]. The Democratic Party of Gabon (PDG) was the sole political party until 1990. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* Gabon’s existing labor code is the Industrial Relations Act (IRA) (1958) (Gabon). *Gabon*, supra note 111.

115. *Ghana — Economic and Trade Policy*, Nat’l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaftr Library, ALLMDE File [hereinafter *Ghana*]. However, the ILO continues to criticize Ghanaian legislation that limits the rights of workers to form unions of their choosing. *Id.*

116. *Id.*

governing party, the TUC now conducts elections freely and is becoming increasingly autonomous.¹¹⁷ The right to strike is also recognized both in law and in practice in Ghana.¹¹⁸

Other African nations permit collective bargaining and grant the right to strike. In Kenya, all workers in private industry are free to join unions of their own choosing.¹¹⁹ Moreover, labor laws prohibit discrimination against unions and their members.¹²⁰ However, these laws also restrict a worker's right to strike.¹²¹ Workers may only strike if they submit a written report to the Minister of Labor, who then orders mediation, arbitration, or fact finding.¹²²

Nigerians in private industry are also permitted to join trade unions, bargain collectively, and strike.¹²³ Employers are legally obligated to recognize unions and must pay employee's union dues or deduct them as a checkoff.¹²⁴ Furthermore, union discrimination is prohibited and enforced through an independent arm of the judiciary.¹²⁵ In practice, unions frequently bypass their employers and take concerns directly to the government because the Nigerian government yields considerable authority over labor activities.¹²⁶

South Africa's labor laws permit all nonagricultural workers in the private sector to join labor unions freely.¹²⁷ These employees also enjoy the right to strike, although rally permits have been denied and force used to disburse labor gatherings.¹²⁸ The South African government does not generally interfere with the collective bargaining process, and anti-union discrimination is prohibited.¹²⁹ South African labor laws, however, do not apply to the South African "homelands," which are black-ruled territories.¹³⁰

117. *Id.*

118. *Id.*

119. *Kenya — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Kenya*].

120. *Id.*

121. *Id.*

122. *Id.*

123. *Nigeria — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Nigeria*].

124. *Id.*

125. *Id.* (The Nigerian Industrial Court handles union discrimination claims.).

126. *Nigeria*, *supra* note 123.

127. *South Africa — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *South Africa*] (referring to the Labor Relations Act).

128. *Id.*

129. *Id.*

130. *Id.*

OUR ERODING INDUSTRIAL BASE

Although recently announcing moves to enhance worker rights, Zaire is currently dealing with economic and political difficulties.¹³¹ Prior to April 24, 1990, only one legal union existed in Zaire.¹³² On that day, President Mobutu granted labor pluralism in a speech on political reforms.¹³³ The government, however, has yet to revise the labor code in order to strengthen workers' rights to form unions and bargain collectively.¹³⁴ Although the right to strike is recognized in Zaire, labor laws establish mandatory and lengthy arbitration and appeals, which severely inhibit strikes.¹³⁵ Furthermore, the government has been known to use force to quell strikes.¹³⁶

4. *Others.*—Many other less developed nations restrict the basic labor rights of their workers. For example, Malaysia recently amended its labor laws to legalize in-house unions.¹³⁷ These in-house unions are similar in nature to the company unions the U.S. prohibits under the NLRA because of excessive employer control over the union.¹³⁸ Indeed, many assert that the nation's changes are really designed to facilitate control over the workforce and dilute union power.¹³⁹ Bangladesh has also amended its labor laws to restrict union activity. These amendments prohibit workers dismissed from a particular industrial unit from becoming a leader of that unit's trade union.¹⁴⁰ The amendments also limit unions to one per company and reduce the number of union officials immune from involuntary transfers out of a plant.¹⁴¹

On the other hand, a few less-developed nations offer more progressive basic labor rights. For instance, Pakistan has developed

131. *Zaire — Economic and Trade Policy*, Nat'l Trade Data Bank, Mar. 1992, available in LEXIS, Mdeaf Library, ALLMDE File [hereinafter *Zaire*].

132. *Id.* The National Union of Zairian Workers was the nation's lone legal union. *Id.*

133. *Id.*

134. *Id.*

135. *Zaire*, *supra* note 131.

136. *Id.*

137. *Malaysia Amends Labor Laws*, Xinhua (New China) News Agency, Mar. 22, 1989, available in LEXIS, Nexis Library, XINHUA File (Trade Union Act).

138. *Id.* The National Labor Relations Act prohibits excessive employer domination "in the formation or administration of any labor organization or [in the contribution of] financial or other support to it." § 8(a)(2), 29 U.S.C. § 158(a)(2).

139. *Id.*

140. *Bangladesh Decides to Amend Labor Laws*, Xinhua (New China) News Agency, Oct. 19, 1989, available in LEXIS, Nexis Library, Xinhua File. Under the amendments, only the President and General Secretary of a trade union receive immunity from involuntary transfers of employment. *Id.* Formerly, all union leadership enjoyed this immunity from transfer. *Id.*

141. *Id.*

labor laws that enhance worker rights.¹⁴² Both Pakistani employers and employees are given the right to form organizations of their choice.¹⁴³ Companies of fifty or more employees are required to maintain a joint management board comprised of at least one-third employee nominees.¹⁴⁴ The board considers a variety of issues including productivity and efficiency, the setting of job and piece rates, employee transfers, and the structuring of remuneration systems.¹⁴⁵ Moreover, Pakistan's labor laws define employer and employee unfair labor practices.¹⁴⁶ Violators of its labor laws are subject to large fines and prison terms of up to four years.¹⁴⁷

B. Laws Restricting Child Labor and Forced Labor

An important gauge in the development of a country's labor laws are child labor laws. Many have criticized less developed nations for their widespread use of child workers¹⁴⁸ or forced labor.¹⁴⁹ Improper use of child or forced labor significantly undercuts workers in nations with more protective or enforced labor laws. Moreover, in many

142. See generally Richard DeBelder & Makdoom A. Khan, *Legal Aspects of Doing Business in Pakistan*, 20 INT'L LAW. 535, 558-60 (1986).

143. Industrial Relations Ordinance § 3 (1969) (Pak.).

144. Industrial Relations Ordinance § 23. The employer's representatives are usually directors or senior executives. *Id.*

145. *Id.* The employer is required to furnish any information reasonably necessary to the functions of board. *Id.*

146. Industrial Relations Ordinance § 15 (1969) (Pak.).

147. *Id.* § 53(1A) (Rs 5000 fines for labor law violations). The exchange rate as of January 31, 1994, was Rs 27.20 per U.S. dollar. See *Travel Watch*, N.Y. TIMES, Feb. 6, 1994, at xx17.

148. See, e.g., Child Labor Deterrence Act of 1993, H.R. 1397, 103d Cong., 1st Sess. § 2(a)(10) (1993) ("Adult workers in the United States and other developed countries should not have their jobs imperiled by imports produced by child labor in developing countries."). In addition, note that "children under the age of 15 constitute approximately 11 percent of the workforce in some Asian countries, 17 percent in parts of Africa, and a reported 12 to 26 percent in many countries in Latin America." *Id.* § 2(a)(4). See also Vijay Joshi, *Millions of South Asian Childhoods Lost to Work*, CHI. TRIB., Aug. 18, 1993, at C8 ("Child labor is part of a system embedded in South Asia's history, but pressures against it are rising."). Note that despite criticism, U.S. child labor laws are likely to be more effectively enforced. Compare *Double Damages for Age Bias Upheld by Seventh Circuit*, Daily Lab. Rep. (BNA), at 63 (Apr. 1, 1993) (U.S. "Labor Department expands enforcement of child labor laws by initiating another national strike force") with 137 CONG. REC. S2956 (daily ed. Feb. 6, 1991) (statements of Sen. Metzenbaum introducing Child Labor Amendments of 1991, S. 600, 102d Cong., 2d Sess. (1991)).

149. See, e.g., Harry Wu, *China's Gulag*, N.Y. TIMES, Feb. 4, 1994, at A23 (In China's "slave labor" camps, "ordinary people . . . are forced to work or starve."); Kathy Wilhelm, *China to Allow U.S. to See Jail Factories*, BENTSEN ANNOUNCES, PHILA. INQUIRER, Jan. 21, 1994, at A4 ("There has been acrimonious debate over whether the use of 'slave labor' has been underwriting cheap Chinese exports.").

OUR ERODING INDUSTRIAL BASE

instances it subjects children to deplorable working conditions for little income.

Essentially, all less developed nations specify minimum working ages, and most prohibit forced labor. Nevertheless, child labor laws of less developed nations vary widely with respect to minimum ages and working conditions, and enforcement of those standards varies even more.¹⁵⁰ Because no regional trends in child labor standards exist, this Comment will discuss all regions together.

Algeria,¹⁵¹ Bahrain,¹⁵² and Gabon¹⁵³ prohibit the employment of children under sixteen years of age. Egyptian laws issued in 1981 ban employment until twelve years of age.¹⁵⁴ Moreover, other laws prohibit children under fifteen years from joining labor unions.¹⁵⁵ Morocco also sets a twelve year minimum age, although enforcement is not fully effective.¹⁵⁶ Furthermore, women in Morocco are restricted from working evening hours.¹⁵⁷

Ghanian legislation sets a minimum employment age of fifteen and prohibits night work and certain types of hazardous labor for those under eighteen.¹⁵⁸ In practice, however, child labor is prevalent in Ghana because children often work to help their extended families in accordance with local custom and based on economic necessity.¹⁵⁹ In Iran, although many industries are exempted from child-labor restrictions,¹⁶⁰ employment is prohibited under twelve years of age and limited until the age of eighteen.¹⁶¹ Iranian law also provides that any person who does not have a definite means of subsistence and who, through laziness or

150. Some nations also treat children and women similarly with respect to night work and work in hazardous conditions.

151. *Algeria*, *supra* note 71.

152. *Bahrain*, *supra* note 77.

153. *Gabon*, *supra* note 111.

154. *Egypt*, *supra* note 79. A decree issued by the Ministry of Manpower in 1982 prohibits the employment of children in bakeries, oil refineries, and cement and cotton plants. *1.5 Million Child Labour in Egypt*, Xinhua (New China) News Agency, Mar. 14, 1987, available in LEXIS, Nexis Library, Xinhua File. Under the labor law of 1981, children aged 12 to 15 may work six hours a day, but not after 7:00 p.m. and not in dangerous or heavy activities. *Id.*

155. *Id.*

156. *Morocco*, *supra* note 97.

157. *Id.*

158. *Ghana*, *supra* note 115.

159. *Id.*

160. *Iran*, *supra* note 81. These exempted industries include agriculture, domestic services, family businesses, and to some extent, other small businesses. *Id.*

161. *Id.* Both women and minors are prohibited from working in jobs that require hard labor or night work. *Id.*

negligence, does not look for work may be obliged by the government to take suitable employment.¹⁶²

Similar to its other labor laws, Israeli child labor law differentiates between Israelis and Palestinians. While Israeli children under fifteen years of age may not work,¹⁶³ Palestinian children under seventeen may not be employed.¹⁶⁴ Kuwaiti child labor is forbidden in all forms of work, including part-time work, for those under eighteen.¹⁶⁵ A 1974 Nigerian Labor Decree bans most employment before fifteen years of age,¹⁶⁶ but the law is only sporadically enforced.¹⁶⁷ Saudi Arabian children under eighteen years of age and women may not work in hazardous or unhealthy industries.¹⁶⁸ Although there is no minimum age for South African agricultural workers,¹⁶⁹ children under fifteen are prohibited from working in most South African industries, and working in mines is prohibited for those under sixteen.¹⁷⁰

Sri Lanka is presently attempting to cope with an alarming amount of illegal child labor. At least five hundred thousand children work in this nation of only sixteen million.¹⁷¹ Sri Lankan law defines a child as a person under fourteen years of age and bans employment of those under twelve years of age.¹⁷² No Syrian law banning forced labor exists.¹⁷³ The minimum working age in Syria varies in the private sector according to industry, but never falls below twelve years. Parental permission is required for those under sixteen, and children are forbidden to work at night.¹⁷⁴ Both the constitution and the labor code of Zaire prohibit forced labor.¹⁷⁵ Zairian children between fourteen and eighteen years of age must have parental consent to work.¹⁷⁶

162. PENAL CODE § 273 (Iran). See also *Iran*, *supra* note 81.

163. *Israel*, *supra* note 83. Individuals between the ages of 15 and 18 are subject to certain restrictions. *Id.*

164. *Id.* A labor inspection service enforces these provisions. *Id.*

165. *Kuwait*, *supra* note 88. Also, the Kuwaiti Constitution prohibits forced labor "except in cases specified by law for national emergencies and with just remuneration." *Id.*

166. *Nigeria*, *supra* note 123.

167. *Id.* (restricted apprenticeships are permitted for those between 13 and 15).

168. *Saudi Arabia*, *supra* note 91. In other industries, there is a minimum age of 13, which the Ministry of Labor may waive with the consent of the minor's guardian. *Id.*

169. *South Africa*, *supra* note 127.

170. *Id.* In South Africa, Dutch-Roman common law prohibits forced labor. *Id.*

171. *Half Million Sri Lankan Children Subjected to Child Labor*, Xinhua (New China) News Agency, Sept. 11, 1992, available in LEXIS, Nexis Library, XINHUA File.

172. *Id.*

173. *Syria*, *supra* note 93.

174. *Id.*

175. *Id.*

176. *Id.*

OUR ERODING INDUSTRIAL BASE

C. Other Laws

Virtually all the nations studied in this Comment maintain a maximum work week greater than the U.S. standard of forty hours, and many offer a minimum wage significantly less than the minimum wage in the United States.¹⁷⁷ Furthermore, in many cases enforcement of existing labor standards is lax, and few nations offer labor laws that protect worker rights to the same extent as those in the United States.

1. *The Middle East.*—Many Middle Eastern nations maintain a work week significantly greater than forty hours. Some also provide women less labor protection than men. Algeria, for instance, has a forty-four hour work week and strict occupational and health regulations.¹⁷⁸ However, enforcement of these provisions is relaxed.¹⁷⁹ Bahrain has a maximum forty-eight hour work week.¹⁸⁰ Bahrain's labor law does not require equal pay for equal work.¹⁸¹ Consequently, Asian workers are often paid less than Bahrainis or Westerners with the same qualifications.¹⁸² In addition, Bahraini women are usually paid less than men.¹⁸³ Iranian labor law establishes a six day, forty-eight hour maximum work week¹⁸⁴ and requires employers to give twelve days of paid leave per year.¹⁸⁵

Egypt maintains a forty-eight hour maximum work week, and its wages are lower than wages in other more developed nations.¹⁸⁶ However, Egyptian employers are required to grant pay bonuses, even if the company runs a loss,¹⁸⁷ and to provide annual leave.¹⁸⁸ It is

177. In this Comment, the "maximum work week" constitutes the maximum amount of time an employee can work at regular pay. Normally, hours worked beyond this limit require premium pay. For discussion on the U.S. maximum work week and minimum wage, see Part III of this Comment.

178. *Algeria, supra* note 71. After negotiations with labor officials, the government fixes minimum wages by decree. *Id.*

179. *Id.*

180. *Bahrain, supra* note 77.

181. *Id.*

182. *Id.*

183. *Id.* Bahrain's Labor Law, enforced through decree by the Ministry of Labor and Social Affairs, establishes acceptable conditions of work for all adult workers, including standards regarding minimum wages, working hours, and occupational safety and health. *Id.*

184. *Iran, supra* note 81.

185. *Id.* (Paid leave days are given in addition to paid public holidays.).

186. *Egypt, supra* note 79. Egypt's minimum wage is set on a monthly basis for a 6 day, 48 hour work week. *Id.*

187. *Id.*

188. *Id.* In Egypt, the government sets minimum wages and benefits by decree after consultation with union leaders. *Id.*

extremely difficult to fire Egyptian workers because lengthy bureaucratic procedures are required for most terminations.¹⁸⁹ Moreover, employers cannot reassign employees without their consent.¹⁹⁰ Nonetheless, enforcement of health and safety standards established by the Egyptian Ministry of Labor is weak.¹⁹¹

Israeli labor law again discriminates against native Palestinians. The maximum Israeli work week is forty-seven hours, but national collective bargaining agreements establish a private sector 45 hour work week and a public sector 42.5 hour work week.¹⁹² Labor legislation in 1986 provided for periodic adjustments in the minimum wage to 45 percent of the nation's average wage.¹⁹³ Although Palestinians are covered by the Minimum Wage Law and enjoy many social benefits granted in private collective bargaining agreements, they are not entitled to national insurance benefits, even though the government deducts the same amount from the pay of Palestinians and Israelis.¹⁹⁴ These benefits are tied to residency requirements.¹⁹⁵

Kuwaiti labor laws distinguish between the oil industry and the other types of industry. In non-oil industries, the work week is limited to forty-eight hours, with one day of rest per week.¹⁹⁶ In addition, a minimum of fourteen days annual paid leave is required.¹⁹⁷ However, there is no minimum wage.¹⁹⁸ In the oil industry, law provides for a maximum forty hour work week, mandatory overtime pay for shift work, thirty days annual paid leave, and generous sick leave.¹⁹⁹ Women are permitted to work in nonhazardous positions in the industry and are guaranteed nondiscriminatory pay.²⁰⁰

Morocco has many of the same standards that Kuwait has. Since 1939, the maximum work week has been forty-eight hours.²⁰¹

189. *Egypt, supra note 79.*

190. *Id.*

191. *Id.*

192. *Israel, supra note 83.*

193. *Id.* Most wages and salaries are established in collective bargaining agreements. *Id.*

194. *Id.* Additionally, union bargaining agents and the Labor Inspection Service enforce labor, health, and safety standards in the workplace. *Israel, supra note 83.*

195. *Id.* (residency requirements include old age, survivors and disability pensions, unemployment compensation, and children's allowances).

196. *Kuwait, supra note 88.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Morocco, supra note 97.* The work week also provides for an additional 12 hours of overtime pay at one and one-half times normal pay. *Id.*

OUR ERODING INDUSTRIAL BASE

Although the minimum nonagricultural wage is only about \$.65 per hour,²⁰² Morocco requires thirteen months of salary for a twelve month year.²⁰³ Moreover, workers are given mandatory annual wage increases based on seniority, the maximum increase being 20 percent.²⁰⁴

Saudi Arabia's work week is forty-eight hours, and the official day off is Friday, which is given with full pay.²⁰⁵ Employees are also allotted fifteen days of paid vacation annually after one year of employment and twenty-one days of vacation after three years.²⁰⁶ Employers with more than twenty employees are required to post a list of penalties and bonuses and the terms under which they are applicable.²⁰⁷ Despite these protections, worker laws for the most part do not protect agricultural and domestic workers.²⁰⁸ Moreover, women are excluded from the Saudi workforce, although they are permitted to work with computers at home.²⁰⁹

2. *Africa*.—In addition to granting more progressive labor freedoms, African countries generally allow a shortened work week, although longer than the work week in the United States. Gabon's maximum work week is forty hours, with a minimum rest period of forty-eight consecutive hours.²¹⁰ Gabon also has health and safety standards, but adherence to these standards is reportedly varied.²¹¹ Despite these protections, the nation's minimum wage only applies to Gabonese workers and not immigrants.²¹²

Similar to Gabon, Ghana maintains a forty hour work week.²¹³ In Ghana, a tripartite committee composed of representatives from the

202. *Id.* The minimum agricultural wage is \$3.45 per hour. *Id.*

203. *Id.*

204. *Id.*

205. *Saudi Arabia, supra* note 91.

206. *Id.*

207. *Id.* (citing Labor Law Regulation art. 125 (1969)) (Saudi Arabia). There is currently no minimum wage, although labor law provides that the Council of Ministers may set one. *Saudi Arabia, supra* note 91.

208. *Id.* The Basic Conditions of Employment Act, which legislates minimum working conditions, is inapplicable in regard to domestic servants and agricultural employees. *See id.*

209. *Id.*

210. *Gabon, supra* note 111.

211. *Ghana, supra* note 115.

212. *Id.* In Gabon, minimum wage rates are established administratively after tripartite consultation, i.e., union-employer-government consultation. *Id.* Most of the firms operating petroleum production facilities in Gabon are subsidiaries of or otherwise associated with European or U.S. companies. *Id.* These companies tend to follow their home-country standards. *Id.*

213. *Ghana, supra* note 115.

government, labor, and employers establishes a minimum wage.²¹⁴ Kenya offers more restrictive labor conditions than its African neighbors. The Kenyan government promulgates wage policies limiting increases to 75 percent of the annual inflation rate.²¹⁵ The nonagricultural work week is limited to fifty-two hours, although nighttime employees may work sixty hours a week.²¹⁶

Other African nations maintain more progressive labor laws. Mozambique's parliament has recently amended the republic's labor law by cutting the maximum private sector work week from six to five days.²¹⁷ Previously, employees in Mozambique worked eight and one-half hours on weekdays and five hours on Saturday mornings, for a total of 47.5 hours.²¹⁸ Now, employees work five days a week for a total of forty-five hours.²¹⁹ A 1974 Nigerian labor decree established a forty hour work week, with two to four weeks of unpaid, annual leave.²²⁰ However, organized labor in Nigeria has criticized the government for poor enforcement of the nation's health and safety standards.²²¹

Although South Africa requires no minimum wage, a labor relations act provides for negotiations between labor and management to set industry-wide minimum wage standards.²²² The maximum Zairian work week is forty-eight hours, with a twenty-four hour rest period required every seven days.²²³ The nation's labor code also specifies health and safety standards, although enforcement is considered minimal.²²⁴

214. *Id.*

215. *Kenya, supra* note 119.

216. *Id.*

217. *Mozambique Adopts Five-day Working Week for Industrial Workers*, Xinhua (New China) News Agency, July 21, 1991, available in LEXIS, Nexis Library, XINHUA File.

218. *Id.*

219. *Id.*

220. *Nigeria, supra* note 123. The Factories Act of 1951 was amended in 1990 to include agriculture, service, and public sectors, as well as other detailed health and safety standards. *See id.* (discussing Factories Act of 1951 (Nig.)).

221. *Id.* The Ministry of Labor's Directorate of Occupational Health and Safety Services performs inspections upon reasonable cause or worker complaints. *Id.* Recent amendments to the Factories Act permit inspectors to enjoin practices involving a risk of serious injury. *Id.*

222. *South Africa, supra* note 127.

223. *Zaire, supra* note 131.

224. *Id.* Pursuant to negotiations, labor and management sets wages with minimal government supervision. *Id.* However, procedures are currently failing because of economic chaos in the country. *Id.* The minimum wage was increased by 50 percent in January 1991. *Id.* Organized labor, however, considered the increase inadequate and called for strikes. *Zaire, supra* note 131.

OUR ERODING INDUSTRIAL BASE

D. Advances in the Labor Laws of Less Developed Countries

Some less developed nations have taken steps to enhance the labor protections in their countries. For example, China has significantly expanded women's rights in the workplace. In 1992, China adopted the Women's Rights Protection Law, which provides legal protection for the health and safety of the nation's large female workforce.²²⁵ The law also prevents sex discrimination and guarantees improved employment conditions.²²⁶ Additional laws also protect women's health by regulating working conditions during certain periods in the woman's life, such as menstruation, pregnancy, and nursing.²²⁷ For instance, these laws provide that during menstruation, women may not "work at high altitudes, in places with low temperatures, or in cold water," and must limit their physical exertion.²²⁸ These laws also grant women paid maternity leave and minimum break periods.²²⁹

Pakistan has had relatively comprehensive labor protections for over fifty years.²³⁰ For example, larger Pakistani firms are required to pay five percent of their annual profits into an employee bonus fund.²³¹ The Factories Act, which applies to a premises containing a manufacturing process where ten or more individuals work, prescribes minimum standards regarding the cleanliness, ventilation, artificial humidification, and lighting of factories.²³² The Payment of Wages Act requires employers to pay employees at specified minimum intervals.²³³ Pursuant to the Minimum Wages Ordinance, the Minimum Wage Council sets mandatory minimum wages.²³⁴ In

225. Law Protecting Women's Rights and Interests (1992) (P.R.C.). See generally Margaret Y.K. Woo, *Biology and Equality: Challenge for Feminism in the Socialist and the Liberal State*, 42 EMORY L.J. 143 (1993). But see Sheryl WuPunn, *Layoffs in China: A Dirty Word But all too Real*, N.Y. TIMES, May 11, 1993, at A4 ("women often are last hired and first fired" because of their added benefits).

226. Law Protecting Women's Rights and Interests art. 25.

227. Regulations Governing Labor Protection for Female Staff Members and Workers.

228. *Id.*

229. *Id.* See also Regulations for Health Care for Women Employees.

230. See The Factories Act (1934) (Pak.); Payment of Wages Act (1936) (Pak.); Minimum Wages Ordinance (1961) (Pak.) (applicable to an "industrial undertaking").

231. See Company Profits (Workers Participation) Act (1968) (Pak.), as amended, Company Profits (Workers Participation) Act (1972) (Pak.). Companies subject to the employee participation fund are those having (1) fifty or more employees, (2) a paid-up capital of Rs 2 million or more, or (3) fixed assets of Rs 4 million. *Id.* The exchange rate as of January 31, 1994, was Rs. 27.20 per U.S. dollar. See *Travel Watch*, *supra* note 147.

232. See The Factories Act § 2(j).

233. See Payment of Wages Act (1936) (Pak.).

234. See Minimum Wages Ordinance (1961) (Pak.).

addition, workers also have certain rights concerning industrial accidents²³⁵ and elderly benefits.²³⁶

Oman also offers progressive worker benefits. Royal Decree 34/73, which applies to both citizens and non-citizens alike, gives employees the right to a written contract, annual paid leave, sick pay, severance pay, and no termination without cause.²³⁷ Laws also grant maternity leave and other protections for women and the physically disabled.²³⁸ Furthermore, employers with fifty or more employees must either offer vocational training programs for workers or contribute to government run programs.²³⁹ Finally, the Law of Compensation for Industrial Injuries provides a compensation program for work-related injuries that mirrors the U.S. worker's compensation system.²⁴⁰

Syrian labor laws also provide relatively expansive worker standards. Syria prohibits most job terminations without cause.²⁴¹ The Syrian work week is six days long, and workers must only work six hours a day.²⁴² However, in certain fields where workers are not continuously busy, employers may require a nine hour work day.²⁴³ Workers may also initiate lawsuits against their employers for hazardous working conditions.²⁴⁴ Guest workers in Syria expressly receive equal benefits, although many do not press claims against their employers because they fear that the government will withdraw their worker permits.²⁴⁵ Venezuela has also strengthened employment rights. New laws grant a variety of enhanced worker benefits, including job termination indemnities, fines for violations of individual employment contracts, and expansions of paid maternity leave and vacations.²⁴⁶

235. See Workers Compensation Act (1923) (Pak.).

236. See Employees Old-Age Benefits Ordinance (1975) (Pak.).

237. Royal Decree 34/73 (Oman).

238. *Id.*

239. Labor Law art. 22 (Oman).

240. Law of Compensation for Industrial Injuries, Royal Decree 40/77, OGSO no. 127 (1977) (Oman).

241. Syria, *supra* note 93.

242. *Id.* A 24 hour rest period is also mandated. *Id.* According to a 1959 labor law, the Minister of Social Affairs and Labor sets minimum wages by sector utilizing recommendations of industry and labor. *Id.* A special department of social security cooperates on a local level with inspectors of the Ministries of Health and Labor to ensure compliance with health and safety standards. *Id.*

243. Syria, *supra* note 93.

244. *Id.*

245. *Id.*

246. Latin America, 25 INT'L LAW. 762, 771 (1991). In December 1990, Venezuela enacted a new Organic Labor Law. *Id.* The new law merges the republic's prior assorted labor rules and substantially increases worker rights and benefits. *Id.*

OUR ERODING INDUSTRIAL BASE

Despite advances in the labor laws in some less developed nations, it is important to note that dramatic differences still exist between the labor laws of the United States and most less developed nations. As has been discussed, most less developed nations restrain the right to strike (if one is granted at all), allow significantly longer work weeks, maintain extremely low minimum wages, and allow the extensive use of child or forced labor. Indeed, some less developed nations do not even grant the associational freedom to form unions.²⁴⁷

Moreover, many countries do not enforce the labor laws that they do have.²⁴⁸ The Philippines serve as a good example. In 1988, the Philippine Department of Labor and Employment reported that 40 percent of the nation's businesses were violating the nation's labor standards.²⁴⁹ These violations ranged from a lack of ventilation and safety guards on hazardous equipment to the underpayment and forced utilization of workers in excess of the maximum work week.²⁵⁰ Enforcement of labor standards is especially difficult in the Philippines because the country's high unemployment rate deters employees from reporting abuses.²⁵¹

V. The Effects of Weak Labor Laws of Less Developed Nations in a Nutshell: The North American Free Trade Agreement

Many less developed nations resist enhancing employment laws in their countries, hoping to attract foreign investment and to make their products more attractive in foreign markets. When industries do not face burdensome and costly domestic labor laws they are able to sell their products in the international market at low prices. Moreover, foreign companies have incentive to relocate in less developed nations in order to take advantage of lower production costs resulting from weak labor laws. Many believe that these effects will occur with the enactment of the North American Free Trade Agreement (NAFTA), which will increase economic competition between the U.S., with its sophisticated

247. For example, Saudi Arabia grants no right to organize collectively. See *Saudi Arabia*, *supra* note 91.

248. See, e.g., Albert S. Golbert & Yenny Nun, *LATIN AM. LAWS & INSTITUTIONS* 474, 474 (1984) ("Although most Latin American countries have succeeded in formulating codes protective of workers, few have been able to significantly enforce most provisions").

249. *Forty Percent of Philippine Firms Violate Labor Laws*, Xinhua (New China) News Agency, Aug. 11, 1988, available in LEXIS, Nexis Library, XINHUA File [hereinafter *Philippines*]. See also Joshi, *supra* note 148 (Although "[a]ll countries of South Asia have laws against child labor, . . . enforcement is lax.").

250. *Philippines*, *supra* note 249.

251. *Id.*

and advanced labor laws, and Mexico, with its generally weak labor laws, by eliminating many of the tools both countries formerly used to protect domestic industries.

A. NAFTA Understood

Former President Bush declared that NAFTA "would be a dramatic first step toward the realization of a hemispheric free trade zone stretching from Point Barrow in Alaska to the Strait of Magellan."²⁵² Over a fifteen year period, NAFTA will gradually eliminate tariffs on goods and services and all other barriers to investment in the United States, Canada, and Mexico.²⁵³ The result will be "the largest single trade bloc in the world, surpassing the European Community both in consumer demand, with 360 million customers, and in economic clout, with \$6 trillion in output."²⁵⁴ Indeed, such an astounding free trade zone potentially contains immense benefits for all nations involved. In the face of stiff and unrelenting European and Japanese economic competition, U.S. industry must gain new markets to remain economically competitive. Whether NAFTA will accomplish this result, however, remains to be seen.

1. *Pro NAFTA*.—"I think free trade is going to expand our job opportunity. I think it is exports that have saved us when we're in a global slowdown . . . [I]t's free trade, fair trade that needs to be our hallmark, and we need more free trade agreements, not fewer." President George Bush in the final 1992 Presidential Debate.²⁵⁵

252. *Canada to Join U.S.-Mexico Free Trade Talks*, L.A. TIMES, Feb. 5, 1991, at D2. Note further that "[t]he Clinton Administration is drafting a plan that would create a Western Hemisphere free trade zone in 10 to 15 years and, as a first step, add Chile to the North American Free Trade Agreement by late next year." Steven Greenhouse, *U.S. Plans Expanded Trade Zone*, N.Y. TIMES, Feb. 4, 1991, at D1. The expanded trade zone could eventually yield a free trade market of 750 million people. *Id.* See generally James Brooke, *With a View of One Hemisphere, Latin America is Freeing its Own Trade*, N.Y. TIMES, Dec. 29, 1993, at D2; Juanita Darling, *Latin America Hopes to Join Free-trade Zone*, PHILA. INQUIRER, Nov. 23, 1993, at B7 ("Latin American nations are lining up to join a pact they believe brings closer to reality a free-trade zone for all of the hemisphere.").

253. William Cormier, *Trade Officials Report Progress on Accord for North America*, PHILA. INQUIRER, July 27, 1988, at B5.

254. Steven Komorow, *Clinton Announces Support for Trade Pact with Mexico*, PHILA. INQUIRER, Oct. 5, 1992, at A4.

255. *Text of Final 1992 Presidential Debate*, PHILA. INQ., Oct. 20, 1992, at A17 (quoting President George Bush) [hereinafter *Debate*]. The Clinton Administration predicts that the pact will create 200,000 U.S. jobs in its first two years and one million U.S. jobs over five years. See Robert A. Rankin et al., *Trade Pact Battle Opens in Earnest*, PHILA. INQUIRER, Sept. 15, 1993, at D1. Most studies, however, project a gain of only about half that number. *Id.* See also Craig Stock, *Consequences of a NAFTA Death*, PHILA. INQUIRER, Nov. 10, 1993, at C1.

OUR ERODING INDUSTRIAL BASE

Supporters advance numerous arguments in favor of NAFTA. First, the NAFTA trading bloc will create a U.S.-led “counterweight” to the integrated economic forces of the European Community and “an emerging Japan-led East Asian bloc.”²⁵⁶ Second, unrestricted access to a large and growing Mexican market will provide needed market expansion for U.S. industries.²⁵⁷ Third, improving Mexican society through enhanced work and consumption opportunities further opens the Mexican market to higher priced goods and services originating in the United States.²⁵⁸ Fourth, lower production costs from reduced materials will cut the cost of U.S. exports.²⁵⁹ Fifth, an improved Mexican standard of living may also reduce illegal northbound immigration.²⁶⁰ Finally, NAFTA “will in many ways simply codify what is already taking place.”²⁶¹ The current trend of major U.S. manufacturers shifting operations to Mexico will occur regardless of whether NAFTA is passed.²⁶²

256. Cormier, *supra* note 253. See Gwen Ifill, *Clinton Uses Japan to Sell Mexico Pact*, N.Y. TIMES, Oct. 21, 1993, at A20; Keith Bradsher, *Trade Pact Opposition Eases a Bit*, N.Y. TIMES, May 11, 1993, at D1, D21 (lobbying efforts include “appeals to anti-Japanese sentiment in Congress”).

257. See, e.g., Gary Hufbauer, *NAFTA: Friend or Foe; More Exports, More Jobs*, N.Y. TIMES, Nov. 15, 1993, at A17. For example, Pennsylvania’s exports to Mexico have increased dramatically because of “lowered tariffs, privatized and deregulated industry and . . . other steps that made selling in Mexico much easier for Americans. The \$694 million worth of Pennsylvania goods bought by Mexico in 1991 was 283 percent more than the \$181 million of just five years earlier.” Andrew Knox, *Looking South for Markets*, PHILA. INQUIRER, Oct. 15, 1992, at F1. See also George W. Grayson, *An Argument for NAFTA: Access to Mexican Oil*, PHILA. INQUIRER, Oct. 8, 1993, at A27 (U.S. sales of oil field equipment to Mexico could triple to \$349 million during the first year of the NAFTA.); Jack Kemp, *NAFTA is the Right Way to Go; All that is Needed is Leadership*, PHILA. INQUIRER, Sept. 7, 1993, at A19 (“Since Mexico began reducing tariffs in 1987, 23 Pennsylvania industries have more than doubled their exports to Mexico.”). Cf. Brooke, *supra* note 252 (“With lower tariffs, U.S. exports to Latin America rose 27 percent in 1992.”). In addition, note that U.S. “Labor Department statistics indicate that American jobs related to exports pay an average of 20 percent more than those focused exclusively on the domestic economy.” Friedman, *supra* note 8.

258. Hufbauer, *supra* note 257. See also Francisco Breña Garduño, *The Impact of NAFTA on Labor Legislation in Mexico*, 1 U.S.-MEX. L.J. 219, 222 (1993) (As a result of “more jobs and a higher demand for labor and services in Mexico, . . . the cost of labor will rise rapidly and approach the cost of labor in the United States.”).

259. *Id.*

260. *Id.*

261. Stephen Baker et al., *Mexico: A New Economic Era*, BUS. WK., Nov. 12, 1990, at 105. See also Terence Hunt, *Chicago Lawyer Leads Effort to Pass NAFTA*, PHILA. INQUIRER, Aug. 20, 1993, at A21 (President Clinton has stated that “even if NAFTA [is] defeated, there [is] nothing to stop employers from going to Mexico for low-wage help.”).

262. Baker, *supra* note 261.

2. *Con NAFTA.*—

You implement . . . NAFTA, the Mexican trade agreement where they pay people a dollar an hour, have no health care, no retirement, . . . et cetera, et cetera, et cetera, and you are going to hear a giant sucking sound of jobs beings pulled out of this country We've got to proceed very carefully on that.

Presidential candidate Ross Perot during the final 1992 Presidential Debate.²⁶³

Opponents of NAFTA offer equally forceful arguments. American organized labor argues that the pact will place U.S. workers in a no-win competition with cheap Mexican labor.²⁶⁴ Mexican wages are 15% of those in the United States and have dropped 22 percent since 1980.²⁶⁵ These wide wage differentials will enable Mexican producers to undersell their U.S. counterparts and will pressure U.S. firms to lower wages or reduce their work forces to remain competitive. In addition, U.S. businesses would have incentive to relocate in Mexico in order to access extremely cheap labor and lax worker standards.

263. *Debate, supra* note 255 (quoting Ross Perot). See also Mike Robinson, *Perot Urges Defeat of Mexican Trade Pact*, PHILA. INQ., May 31, 1993, at A4. Some believe that U.S. unions' "power to safeguard good-paying jobs, and their very capacity to represent the interests of their members in manufacturing industries vital to both nations' domestic prosperity, have never been more in question." *Spotlight on . . . the Labor Outlook*, MEX. SERVICE, Sept. 9, 1992, available in LEXIS, Nexis Library, MEXICO File [hereinafter *Spotlight*]. But see Robert Barnstone, *Border Bonanza*, TEX. MONTHLY, Jan. 1993, at 44 (because of labor shortages in Mexico, fewer Mexicans will emigrate, thus raising U.S. wages for low-skilled labor).

264. See, e.g., Robin Toner, *In Auto-Making Country, Trade Accord is the Enemy*, N.Y. TIMES, Sept. 14, 1993, at A18 (Auto workers believe the NAFTA will devastate their U.S. jobs.).

265. Anthony DePalma, *Vague Mexico Wage Pledge Clouds Free Trade Accord*, N.Y. TIMES, Sept. 29, 1993, at A1. There are 264 minimum wages in Mexico. *Id.* The National Commission on Minimum Salaries, comprised of representatives from labor, industry, and government, sets these wages. *Id.* There are 88 different categories of work and three levels of wages for each category, depending on the geographic location of the job. *Id.* Mexican President Salinas recently pledged to raise Mexico's minimum wages based on increases in productivity. See Gregory Katz, *Mexico President Hails Treaty Deal*, DALLAS MORN. NEWS, Aug. 14, 1993, at A1. In addition, one authority states:

Despite severe inflation and a decline in real wages since the early 1980's, coordination between government policymakers and "official" labor unions has meant that "[w]age agreements are consistently negotiated at levels well below the rate of inflation Unionists who retain their independence from the government may have their rights abridged in a range of contexts from registration of new workplaces with the Ministry of Labor, to arbitration, contract negotiations and strikes to attempt to gain seats on government wage commissions."

Barr, *supra* note 53, at 12-13 (quoting Amy H. Goldin, *Collective Bargaining in Mexico: Stifled by the Lack of Democracy in Trade Unions*, 11 COMP. LAB. L.J. 203, 220-21 (1990)).

OUR ERODING INDUSTRIAL BASE

B. U.S. Concerns

Many influential sources have noted that free trade with Mexico and its poor labor standards may significantly impact U.S. jobs. For example, although President Bill Clinton has signed the controversial free-trade agreement, he would not sign it unless additional steps were taken to ensure protection for U.S. workers.²⁶⁶ President Clinton insisted on three side agreements to help ensure that Mexico will follow its own labor and environmental laws and to grant the U.S. President broad authority to renegotiate the pact if the U.S. economy is unexpectedly harmed.²⁶⁷ In addition, as a result of interviews with 100 companies and trade groups, the California World Trade Commission recommended “far-reaching coordination — approaching uniform standards — on . . . health and worker safety issues.”²⁶⁸ Furthermore, a letter to the Bush Administration from two powerful Congressmen expressed Congressional interest in including in NAFTA meaningful provisions on labor organization, worker health, and safety standards to protect U.S. workers.²⁶⁹

C. Atmosphere of Mexican Labor Laws

“[O]n balance [NAFTA] does more good than harm if — if we can get some protection . . . so that the Mexicans have to follow . . . their own labor law standards” President Bill Clinton during the final 1992 Presidential Debate.²⁷⁰

266. See Komorow, *supra* note 254 (quoting Presidential Candidate Bill Clinton, Address at North Carolina State University, Oct. 4, 1992). “If [NAFTA] is done right, it will create jobs in the United States and Mexico We must always remember why we’re doing it -- to help the working men and women of America.”

267. See, e.g., Robert Dodge, *Key Obstacles Overcome in Trade Pact Negotiations*, DALLAS MORN. NEWS, Aug. 14, 1993, at A1 (completion of the side agreements on labor, environment, import surges). For the full text of the NAFTA side agreement on labor, see *North American Agreement on Labor Cooperation Supplemental Agreement to the NAFTA Released September 14, 1993*, Daily Lab. Rep. (BNA), at 177 (Sept. 15, 1993). The labor side agreement has been strongly criticized as too weak. See, e.g., *Labor Leaders Denounce the Side Agreement to NAFTA*, Daily Lab. Rep. (BNA), at 156 (Aug. 16, 1993); Perot, *Jackson Assail Trade Pact’s Side Agreements*, DALLAS MORN. NEWS, Aug. 15, 1993, at A12.

268. Juanita Darling, *Panel Backs U.S.-Mexico Trade Pact, Urges Disputes Be Tackled*, L.A. TIMES, Feb. 1, 1992, at D1.

269. See Stuart Auerbach, *Administration Urged to Widen Mexican Free Trade Proposal*, WASH. POST, Mar. 13, 1991, at C3 (discussing Letter to Carla Hills from U.S. Senator Lloyd Bentsen, Chairman of the Senate Finance Committee (now Secretary of the Treasury in the Clinton Administration) and Congressman Dan Rostenkowski, Chairman of the House Ways and Means Committee).

270. *Debate, supra* note 255 (quoting President Bill Clinton).

Although current practices dilute their strength, Mexico generally has progressive labor laws.²⁷¹ The Constitution sets forth detailed and expansive labor rights,²⁷² granting, among other things, the right to strike,²⁷³ the right to organize,²⁷⁴ limitations on employer lockouts,²⁷⁵ severance pay for terminations without cause,²⁷⁶ and first priority for wages when in bankruptcy.²⁷⁷ As one commentator notes:

The Congress of the Union cannot . . . contravene an established list of basic [labor] principles. Some of these basic [constitutional] principles include an eight hour work day, a seven hour shift for night work, and a maximum work week of six days. Other notable provisions include mandatory childbirth and maternity leave . . . , equal pay for equal work, regardless of sex or nationality, and a minimum wage provision²⁷⁸

Nonetheless, while Mexico offers some progressive labor laws, in practice worker benefits fall short of these sophisticated provisions.²⁷⁹ Moreover, Mexico's massive debt and an economic crisis in the early 1980s have widened "the gap between Mexican labor law and practice."²⁸⁰ It appears that the Mexican government "perceive[s] its

271. For example, sixty-one percent of surveyed companies operating in Mexico found the nation's labor laws to be at least as comprehensive as their U.S. counterparts. *Workers in U.S. Multinationals Highly Unionized*, Notimex Mex. News Service, June 30, 1992, available in LEXIS, Nexis Library, MEXICO File. Discrepancies, however, do exist. For example, Mexico has no unemployment insurance, unlike the United States. See, e.g., Geri Smith & Douglas Harbrecht, *The Moment of Truth for Mexico*, BUS. WK., June 28, 1993, at 44-45.

272. Constitución Política de los Estados Unidos Mexicanos [Constitution] art. 123 (Mex.).

273. *Id.* art. 123(A) (XVII).

274. *Id.* XVI.

275. *Id.* XIX.

276. *Id.* XXII.

277. *Id.* XXIII.

278. Anne M. Bartow, Comment, *The Rights of Workers in Mexico*, 11 COMP. LAB. L.J. 182, 183 (1990) (citations omitted).

279. Barr, *supra* note 53, at 11 ("Ensuring labor rights in the context of a North American FTA [Free Trade Agreement] depends less on creating new substantive standards than on creating effective enforcement mechanism."). See also Garduño, *supra* note 258 ("Mexican legislation offers a higher degree of protection to workers than that generally known in the United States and Canada.").

280. Barr, *supra* note 53, at 13. The authors further state:

After 1982, formal sector employment shrank, but the labor force has continued to increase at close to one million persons annually. The expansion of the information sector has resulted in increased violations of child labor laws and other labor standards. The strains of the austerity programs and the dissatisfaction with union corruption have given rise, moreover, to growing sympathy for independent unions, both in Mexico City and in the traditionally less affected border area. Partly in response to increased public awareness of union corruption, President Salinas' administration ousted several corrupt union leaders, including the heads of the

OUR ERODING INDUSTRIAL BASE

current dilemma as a choice between foreign investment and worker rights.”²⁸¹ In fact, many believe that President Carlos Salinas de Gortari has embarked on a determined drive to curtail organizational rights to prepare for North American free trade by “implementing a de facto reform of the labor law through actions ranging from a tough line on wage restraint to official refusal to recognize strikes.”²⁸²

Recent events in Mexico indicate the government’s willingness to restrict its labor laws. A Mexican labor tribunal recently ordered the reinstatement of 14,000 fired Volkswagen employees, whose pay of \$18 a day is high in the country’s auto industry. However, the federal tribunal also stripped the workers of many previously granted union benefits by rescinding an existing bargaining agreement.²⁸³ This incident alarmed many in the country. As one commentator stated,

petroleum workers’, auto workers’, and musicians’ unions. These actions, however, coexist with continued repression to keep wage increases within government guidelines and to prevent political challenges to the government.

Id. at 13-14.

281. *Spotlight, supra* note 263.

282. *Id.* See also Dianne Solis, *Nafta Divides Mexico’s Laborers Into 2 Camps: Elite and Left Out*, WALL ST. J., Dec. 27, 1993, at A8 (“The labor changes that come with NAFTA have already begun polarizing the Mexican labor force.”); Anthony DePalma, *Mexico’s Unions, Frail Now, Face Free Trade Pact Blows*, N.Y. TIMES, Dec. 14, 1993, at A3 (Mexican unions are now “weaker than they have been for half a century.”). As a result, Mexican workers have expressed apprehension over the changes, fearing that employers eager to modernize and seek job cuts will reduce already low wages to levels equaling wages in other Latin American nations. See Dave Todd, *Workers in Canada Face the Sting of Anti-Labor Laws ... in Mexico*, OTTAWA CITIZEN, Sept. 13, 1992, at A1. For instance, workers in the automotive, textile, and oil industries have recently begun to demonstrate their unhappiness. *Id.* Free trade will likely affect these industries. *Id.* Interestingly, nations to the south of Mexico have subjected Mexican textile workers to competitive low wage pressures in the same way that Mexico has subjected Canadian and U.S. workers to low wage pressures in other industries. *Id.*

Specifically, free trade will force Mexican employers to extract increased flexibility from labor contracts (to enhance their ability to move workers from job to job); build in productivity standards and link them to salary or wage increments; and create new work organization structures (such as the Japanese “just in time” inventory management and work team systems similar to those pioneered by Volvo).

Spotlight, supra note 263. Cf. Sergio R. Bustos, *Questions on NAFTA Don’t Stop at the Border*, PHILA. INQUIRER, Oct. 14, 1993, at A1 (small and mid-sized Mexican companies may be endangered by NAFTA as U.S. companies obtain greater access to the Mexican market).

283. *Spotlight, supra* note 263. The tribunal rescinded the bargaining agreement at the request of Volkswagen. *Id.* Specifically, the rehired workers lost a 30 minute lunch break, Saturdays off, and seniority. *Id.* The new contract also “[permits] unlimited hiring of short-term workers, sets a new salary scale based on work teams, adds a productivity clause and weakens the union severely by eliminating the ‘section delegates’ who served as intermediate-level negotiators for workers.” *Id.* When the reinstated workers returned to work, police officers attacked a peaceful demonstration of dissident workers over a mile from the plant using attack dogs and clubs. *Id.* At least 12 workers were injured, and 11 were detained. *Spotlight, supra* note 263.

[T]he ease with which their collective agreement was annulled, and dissident workers fired, has sent shockwaves through the country's labor movement [T]he incident demonstrates just how far the Salinas government is prepared to go to demonstrate to the outside world its willingness to play by the rules of so-called "globalization" of export markets.²⁸⁴

Despite such actions, President Salinas formally pledged that he will not seek reforms to weaken the nation's labor laws further.²⁸⁵ Nevertheless, given the Mexican government's apparent desire to diffuse existing labor protections in Mexico, the United States must insure that its industrial base does not dissipate as a result of NAFTA's enactment.²⁸⁶

VI. Conclusion

The differences in the labor laws of the United States and less developed nations are becoming increasingly important in the global economy. Less developed nations often use their labor laws as a tool to enhance their economic position. These nations reduce worker protections in order to reduce production costs in their countries so that domestically produced goods are cheaper in foreign markets. They also hope to attract foreign investors, who locate businesses within their borders to take advantage of less burdensome and costly labor laws.

284. Todd, *supra* note 282. Note also that situations similar to the Volkswagen incident are fairly common, for instance occurring at a large Mexican Ford plant. See Jerome I. Levinson, *Comments on Labor Law in Mexico: The Discrepancy Between Theory and Reality*, 1 U.S.-MEX. L.J. 225, 226 (1993). Meanwhile, despite recently announcing plans to close 21 plants in Canada and the United States, General Motors (GM) unveiled plans to invest hundreds of millions of dollars in sophisticated plant improvements in Mexico. *Id.* GM's average wage and benefits in its Mexican plants are 90% lower than in its U.S. plants. *Id.* The Ford Motor Company has already begun investing one billion dollars in plant improvements in Mexico. *Id.* The United Autoworkers Union claims that investment shifts into Mexico have already cost 75,000 American jobs in the auto industry. *Id.* See also Richard Alm, *Free Trade can be Two Way Job Creator*, DALLAS MORN. NEWS, Aug. 16, 1993, at D1 (1,200 U.S. workers lost their jobs when a Smith Corona and a Zenith Electronics plant moved to Mexico); Editorial, *The Politics of NAFTA*, PHILA. INQUIRER, Oct. 6, 1993, at A14 (Phillips Electric moved its Warren, Pennsylvania, plant to Mexico, costing 250 American jobs.).

285. Todd, *supra* note 282.

286. See, e.g., Sylvia Nasar, *A Primer: Why Economists Favor Free Trade Agreement*, N.Y. TIMES, Sept. 17, 1993, at A1 (Economic studies of NAFTA are uncertain. Some studies, for example, predict the addition of 170,000 U.S. jobs, while others predict losses of as much as 420,000 U.S. jobs.). See also Daniel Rubin, *Questions on NAFTA Don't Stop at the Border*, PHILA. INQUIRER, Oct. 4, 1993, at A1 (Canada has experienced significant industry relocations since instituting free trade with the United States.). Cf. James Gerstenzang, *White House Offers NAFTA Sweetener*, PHILA. INQUIRER, Sept. 20, 1993, at A2 (The Clinton Administration has proposed job retraining for those who will lose their jobs as a result of NAFTA.).

OUR ERODING INDUSTRIAL BASE

These reduced worker protections can have a direct and adverse impact on U.S. industry and jobs. U.S. corporations are often forced to flee the more sophisticated and strict labor laws of the United States, seeking a safer haven in a less developed nation that offers lower labor standards.

In the context of global trade, the United States must remain conscientious of feeble and impotent foreign labor laws. Before opening its borders to an influx of products from a certain country, the United States should insure that the country develops and enforces labor protections similar to those existing in the United States. In addition, the United States should seek to enhance cooperation between domestic industry and labor in order to make industry more productive and efficient. Finally, the United States should maintain a long term strategy towards industry and the global economy.²⁸⁷ Hopefully, such measures can reduce or even reverse the disintegration of the U.S. industrial base, securing the United States' position in the emerging global economy for years into the future.

Andrew K. Stutzman

287. For an excellent discussion on winning practices for U.S. industry, see THOMAS J. PETERS & ROBERT H. WATERMAN, JR., *IN SEARCH OF EXCELLENCE* (1982). Greater adherence to the teachings of renowned management expert W. Edwards Deming may also improve America's manufacturing sector, as it once did in Japan. See generally Mary Walton, *Deming's Concern was for Workers, Too*, PHILA. INQUIRER, Dec. 28, 1993, at A9. In addition, U.S. management might be better off by dropping its seeming "addiction" to layoffs. See, e.g., B.J. Phillips, *The Addiction of the Layoff*, PHILA. INQUIRER, Jan. 7, 1994, at C1 ("The people who survive layoffs tend to emerge both risk-averse and less productive. That's hardly the kind of workers who'll succeed in the global marketplace.").

