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UNION RESPONSES TO THE CHALLENGES OF AN INCREASINGLY GLOBALIZED ECONOMY

Stephen B. Moldof*

The organized labor movement in the United States is facing challenges on several fronts. Domestically, the unionized percentage of the private sector workforce continues to shrink. Economic conditions in the U.S., at least until recently, have placed severe downward pressure on wages and working conditions. Concessionary collective bargaining has been increasingly the norm, particularly in certain industries that have been especially hard-hit since the events of September 11, 2001 – most notably in the airline industry, where a heretofore heavily unionized environment has been severely challenged through the intrusion of lower-cost non-union competition.

The increased globalization of American industry has had broad consequences for the way business is conducted. Many American enterprises have begun doing business outside of the United States, have opened branches or subsidiaries outside the U.S., and/or have forged alliances with non-U.S. entities.1

The internationalization of business, in turn, has had increasingly significant consequences for employees of U.S. companies. Of particular concern to organized labor are:

(1) the threat that work opportunities will be shifted from higher-cost U.S. employees to lower-cost foreign labor – often referred to as “outsourcing;” and (2) the prospect that, in response to such threats, considerable pressure will be exerted on U.S. employees and their unions to agree to lower wages and less than optimal working conditions in order to make the U.S. workforce more cost-competitive. These concerns are premised on the belief that, to the extent feasible, employers who do busi-

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ness globally will strive to concentrate their work activities in areas where costs are at their lowest, which often means shifting work and employment opportunities to foreign locations. Indeed, a recent study concludes that there is a growing phenomenon throughout the world of U.S. and foreign-owned multinational companies shifting production from high-wage countries to multiple low-wage destinations, that this trend is becoming increasingly pronounced, and that unionized workplaces are being disproportionately impacted. Such concern with a redirection of employment opportunities to the lowest-cost labor environment was a principal motivating factor in the widespread union opposition to U.S. entry into the North American Free Trade Agreement (NAFTA) and subsequently to other contemplated trade agreements.

Exacerbating the problems for labor have been cutbacks by governments in industrialized nations, including the U.S., on economic and social programs and benefits, and the move to privatize activities that had been government owned or operated, all of which has operated to remove a social and economic safety net upon which the affected employees previously could rely. The resort by globalized employers to subcontracting, outsourcing, and the hiring of temporary and part-time workers also threatens the continued enjoyment of established wages and working conditions.

Certain segments of the organized American labor union movement have recognized the urgent need to change their way of doing business, to develop new ways to protect the interests of employees, and to become actively involved in the international arena if they are to have any hope of maintaining and enhancing their role as a vital force in the workplace and in society.

This paper will review some of the ways unions have acted to address the significant challenges presented by an increasingly globalized employment environment.

A. The Formation of Alliances and Global Networks

One approach unions have taken to counter increased coordinated activities between U.S. and non-U.S. employers, or between U.S. parents and their foreign subsidiaries, has been to form cross-border alliances and global networks. One way in which unions have achieved this is through the creation of cross-border unions, which are organizations that facilitate collaboration and coordination between unions in different countries. These unions can help to ensure that workers around the world are protected by similar standards and can help to prevent companies from exploiting the lowest-cost labor markets.

2 Id.
4 See id. at 3-4.
5 See id. at 8-9.
union alliances or networks. The nature and scope of these inter-union associations has varied.

1. The Airline Industry

Over the past fifteen years, U.S. air carriers have formed and implemented extensive alliances with foreign airlines covering a variety of activities, including some or all of the following: coordination of frequent flyer programs, airport lounges, marketing of flights, scheduling, maintenance; code-sharing (single flights identified to the public as if they were flights of multiple airlines); revenue sharing (whereby the carriers share revenues derived from flights operated by the alliance, regardless of which carrier operated the flights); and common ownership interests.

These international alliances have presented potentially significant problems for the unions that represent the employees of the alliance carriers. In the absence of contractual or other legal constraints, there is nothing to prevent the airline partners from deciding which carrier will operate particular flights between the U.S. and a foreign country (e.g., whether a flight between the U.S. and Europe will be operated by a U.S. carrier, a European carrier, or both). If there were significant differences in the cost structure of the carriers that are parties to an alliance, and if the carriers had some means of sharing revenue from their joint flight activities, the carriers might have an incentive to funnel a disproportionate amount of the flying to the carrier with the lower cost structure. In such a scenario, unions representing the higher-cost employees would be faced with a clear dilemma: (a) face the loss of employment opportunities by those they represent, or (b) agree to reductions in wages and working conditions to close the gap in labor costs in the hope that this will prevent such losses. The challenge for unions confronted with such possibilities is to find a means for placing limits on the ability of carriers to decide amongst themselves, and without union participation, how flying will be allocated, and for eliminating or limiting carrier efforts to whipsaw pilot groups against one another.

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7 The principal alliances are: the Star Alliance (including United, Lufthansa, US Airways, SAS, Thai, Air Canada, Varig, Air New Zealand, ANA, bmi, Singapore, Austrian, Asiana, LOT and Spanair); OneWorld (including American Airlines, British Airways, Cathay Pacific, Quantas, Finnair, Iberia, Aer Lingus and LanChile); and the Sky Team Alliance (including Delta, Air France, Alitalia, Continental, Northwest, KLM, Czech Airlines, Aeromexico and Korean). There have been many other relationships between airlines involving some of the activities mentioned above.
Pilot unions have embarked upon a variety of activities to counter these significant global challenges. One vehicle they have used for such purposes is the International Air Line Pilots Association, International (IFALPA), the international pilot union umbrella organization that includes ninety member unions worldwide collectively representing over 100,000 pilots.\(^8\) Through IFALPA, pilot unions from around the world meet and exchange information on matters of mutual interest; solicit and offer support for pilot organizations facing particular challenges from employer organizations or governmental bodies; formulate positions to be taken in dealing with employers, governmental bodies and broader international organizations on matters of common concern; and, in general, act to help safeguard pilot interests.

In the United States, the Air Line Pilots Association (ALPA), in addition to actively participating in the activities of IFALPA, has established an International Pilot Services Corporation (IPSC).\(^9\) Operating less formally through the IPSC, ALPA has shared its considerable expertise in negotiations, economic and financial analysis and other areas with many foreign pilot groups.\(^10\) Such ALPA activities have helped these other pilot groups evaluate the finances and operations of their carriers, develop financial restructuring programs, analyze the impact of deregulation, improve their bargaining techniques and strategies, and develop effective communications vehicles and techniques. While these activities are primarily intended to benefit these other pilot groups, ALPA, no doubt, anticipates that the pilots it represents in the U.S. will also benefit if, as a result of such efforts, the gap between the wages and working conditions of pilots internationally is sufficiently reduced to eliminate the incentive to shift flying away from U.S. pilots because of pilot cost differentials.

In addition, pilot unions have formed their own alliances to match/counter those formed by the airlines: the pilots employed by carriers that are part of the Star Alliance have formed the Association of Star Alliance Pilots, and pilot union alliances have been formed as well for the One World and Sky Team Alliances.\(^11\) These pilot alliances have organized themselves along similar lines to their carrier counter-

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parts by adopting articles of governance and other guidelines for the
duct of activities, including explicit procedures for making alliance
decisions. In addition, they have developed policies and guidelines
for mutual assistance; the equitable allocation of work among the pilot
groups; jointly dealing with pertinent government authorities; obt-
taining recognition by the carrier alliance; and communicating as a
pilot alliance with the outside world. Some pilot alliances have es-
established working groups to deal with specific issues of mutual inter-
est, similar to the working groups established by the carrier alliances.
Unions representing flight attendants employed by alliance carriers
also have engaged in some level of coordinated activity through the
umbrella of the International Transport Workers’ Federation (ITF).
While some of these alliances have been more active than others, they
all share an understanding of the reality that individual national un-
ions can no longer “go it alone” if they hope to be able to fully protect
their members’ interests in an increasingly global economy.

Governmental initiatives to replace the traditional “bilateral”
approach between nations for addressing international aviation issues
with regional, multi-national approaches bring new challenges to air-
line industry labor. Most of the major European airlines, acting
through the Association of European Airlines, proposed a “Transatlan-
tic Common Aviation Area,” requiring a common regulatory frame-
work within which European and U.S. carriers would operate. This
approach received official approval, at least from the European Com-


tunity, that would prohibit individual European Community member
nations from negotiating aviation agreements with the U.S. and in
stead require that agreements be conducted by the European Com-
nunity as a single entity on behalf of its member nations. Of course,
action by the U.S. government will be necessary in order for such an
initiative to be directly binding on U.S. carriers.

12 See id.
13 See generally, Fasten your seatbelts; Air travel: Strikes and troubles to come,
14 See Joint Statement of Code-Share/Alliance Partners, www.itfglobal.org/civil-
15 See Towards a Common Aviation Area AEA Policy Statement (Sept. 1999 Asso-
16 See Commission of the European Communities v. Denmark, Case C-467/98
(2002).
17 Efforts to move the treatment of airline issues from a bilateral two-country
agreements to multi-national regional approaches have spread beyond Europe.
The U.S., Mexico and Canadian aviation agencies formed the North American Avi-
ation Trilateral (NAAT), an offshoot of NAFTA, and have taken steps to expand
these regional concepts into Asia, Africa, Europe, Latin America and the Carib-
bean. See ICAO Report on North American Aviation Trilateral (Oct. 6, 2004) (tou-
Additionally, organized labor is concerned with recent initiatives within Europe to relax restrictions on the right of "foreign" airlines to incorporate or base their operations in locations outside of their "home" countries.18 Airline operations may relocate to areas with a lower cost of employment, especially with the expansion of the European Community. Further labor concerns stem from possible changes in U.S. legislation that would permit increased foreign ownership of U.S. carriers and a relaxation or possible elimination of the current "cabotage" rules, which prohibit foreign airlines from transporting passengers between points in the United States.19 The European Commission, in discussions in 2003 and 2004 with the U.S. on aviation matters, has been pressing for European airlines' access to the domestic U.S. market.20 U.S. organized labor has expressed deep reservations with the proposed European approach.21 While the U.S. government did not address these issues during the 2004 Presidential and Congressional races, they are likely to re-emerge now that President Bush has been re-elected and a Republican majority remains in Congress.

2. Global Union Networks

Cross-border union relationships have not been limited to the airline industry. Several U.S. unions representing employees in other industries have joined forces with unions outside the U.S., through broader union federations, to form "global networks" to address issues

21 See, e.g., Duane E. Woerth, Remarks to the International Aviation Club, (Sept. 21, 2004), www.alpa.org.
concerning a common global employer or a related group of employers.\textsuperscript{22}

IP Global Workers' Network, representing employees of International Paper Company (IP), is comprised of 21 unions in 11 countries on 5 continents, including PACE International Union in the U.S.\textsuperscript{23} The Network's expressed purpose is to advance and protect the interests of IP employees worldwide.\textsuperscript{24} The IP Global Network seeks to secure an international agreement with IP that will address working conditions, human rights, health, safety and environmental concerns applicable to IP worldwide, which would serve as a supplement to local bargaining agreements that address wages, benefits and issues of more local concern. This network has focused attention on what the unions consider to be serious concerns with IP's approach to collective bargaining, its attitude towards unionization, and its failure to provide adequate health, safety and security protections. The network lent support to strikers in New Zealand, which the unions credit with helping to secure a successful outcome to the strike.\textsuperscript{25}

Unions in 14 countries, claiming to represent 20 million members worldwide, are participants in the ExxonMobil Global Network.\textsuperscript{26} This network operates through the International Chemical, Energy, Mine and General Workers' Union (ICEM), and includes PACE in the United States.\textsuperscript{27} This represents another effort by unions to address issues common to workers worldwide who are employed by large multi-national corporations. The ExxonMobil merger created a particular impetus for this network, as, in the view of the unions, the combined company has pursued a decidedly more anti-union, and confrontational approach than had been the case at Mobil prior to the merger. This network, with the assistance of non-union organizations such as Amnesty International as well as religious groups, mounted a campaign that included a shareholder proposal in 2004 which man-

\textsuperscript{23} International Paper is the world's largest paper and forest products company. Presumably, the active participation of U.S. unions in networks that have included PACE will continue following the merger of PACE and the United Steelworkers of America (USWA), as the USWA also has been an active player in Global Networks, as reviewed below. See http://www.icemna/pdfs/ipnewse.pdf.
\textsuperscript{24} Id.
\textsuperscript{25} See IP Network Delivers at Kinleith, www.ipworkers.org.
dated changes in ExxonMobil's global employment practices. The campaign generated publicity which prompted ExxonMobil to adopt a workplace human rights policy based on the 1998 ILO Declaration of Fundamental Principles at Work, including freedom of association, recognition of the right to collective bargaining, and the elimination of discrimination in employment. Other ICEM global networks have been formed for worldwide workers of Bridgestone, Goodyear, Novartis and Rio Tinto.

As noted, the Steelworkers Union is another U.S.-based union that has recognized the need for forging alliances with unions outside the U.S., particularly in dealing with global employers. Such USWA efforts have been coordinated through the ICEM and the International Metalworkers Federation (IMF). Key objectives of these union networks have been to: exchange information on experiences in dealing with large multi-national companies; coordinate bargaining strategies; formulate and implement various types of support activities; and publicize effectively the companies' unfair employment, safety and environmental practices as a means of building community support for the unions' efforts to unionize and to engage in collective bargaining and similar core union activities.

The USWA and the International Longshore & Warehouse Union (ILWU) have been active participants in the ICEM's Rio Tinto Global Union Network. The USWA has expressed the view that support activities provided by the Rio Tinto Network helped the USWA reach an agreement with Kennecott, a Rio Tinto subsidiary. Similarly, the ILWU credited the Rio Tinto Network, through organization of rallies in Australia and at stockholders' meetings, with helping the ILWU reach an agreement with U.S. Borax, another Rio Tinto subsidiary. Prior to those campaigns, the Rio Tinto Network conducted solidarity actions in the U.S., Canada, Chile, Brazil, Colombia, Korea, Namibia, Pakistan, South Africa, and Thailand in support of the unions' efforts to combat other Rio Tinto anti-union activity in Austra-

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29 Id.
lia. In the view of the Australian unions, this was instrumental in
forcing Rio Tinto back to the bargaining table.

The USWA has undertaken, along with unions representing
employees of Grup Mexico in Mexico and Peru, collaborative efforts
with South American union counterparts to deal with Teck Cominco.
The USWA and other unions have united to form an Aluminum Industry
Working Group and IMF Global Company Councils in order to deal
with problems in the aluminum industry that extend beyond any sin-
gle nation's borders.

UNITE, HERE, and SEIU have launched another alliance
aimed at confronting perceived problems with a multinational corpora-
tion's employment practices against Sodexho. Sodexho is a food and
facilities management company based in France, with operations in
seventy-six countries. Within the U.S., it provides services in the
public, health care, and building sectors. The three large U.S. unions
have committed to spend a minimum of $10 million over an eighteen-
month period in support of this campaign, which will include collabo-
rative efforts with unions in other countries in which Sodexho
operates.

SEIU, at its 2004 Convention, committed to devote considera-
ble manpower and resources to forge global alliances of workers who
perform similar work throughout the world to develop common strate-
gies and plans of action for dealing with common multi-national em-

33 American Unions Launch Effort to Support Australian Miners in Rio Tinto Dis-
pute, available at http://icemna.org/enewsp20.htm (last visited Sept. 26, 2005);
(last visited Sept. 26, 2005)
34 See American Unions Launch Effort to Support Australian Miners in Rio Tinto Dis-
pute, supra note 33; see also ICEM Campaign Against Rio Tinto, http://
icemna.org/ecmprio.htm (last visited Sept. 26, 2005) (listing several of ICEM's
campaigns against Rio Tinto).
(last visited Sept. 26, 2005).
36 USWA: New Global Solidarity in Aluminum, http://www.uswa.org/uswa/pro-
gram/content/592.php (last visited Sept. 26, 2005).
37 Michelle Amter, Unions Launch Drive to Organize Workers of Sodexho in
United States and Canada, DAILY LAB. REP., July 12, 2004, at C-1.
38 Id.
40 See Amter, supra note 37 at C-1.
41 See id.
General Workers Union in Great Britain and with unions in Scandanavia.\textsuperscript{42}

B. The Extension of Labor Disputes Across National Boundaries

Another significant way unions have sought to counter threats posed by increased globalization has been to join forces across single-nation boundaries, lending support to unions engaged in strikes or other labor-management disputes. The following are a few examples of such globalized labor disputes.

1. The Northwest Airlines and KLM Pilot Coordinated Actions

The situation confronting the airline industry in the early 1990s eerily resembled the current environment. The airline industry was in dire financial straits, virtually all carriers were losing enormous sums of money, a number of carriers were in Chapter 11, and others, like Northwest Airlines, teetered on the edge of bankruptcy.\textsuperscript{43} Northwest's precarious financial situation was due not only to the general downturn in the economy, specifically in the airline industry, but also to the severe debt burden placed on Northwest's balance sheet by the leveraged buyout of the airline in the late 1980s.\textsuperscript{44} Northwest avoided a Chapter 11 filing in 1993 only because its labor unions agreed to substantial concessions, and the carrier's lenders and other stakeholders agreed to substantially restructure the nature of their relationships with Northwest.\textsuperscript{45} One of those stakeholders was KLM, which, at the time, had a significant ownership interest in Northwest and seats on the Northwest Board of Directors.\textsuperscript{46}

With the entry of the U.S. and the Netherlands into an Open Skies Agreement, Northwest and KLM secured a grant of antitrust immunity from the U.S. government for their alliance, along with the counterpart authority in Europe, to enable them to conduct activities that would have not otherwise have been legal.\textsuperscript{47} Armed with that immunity, the carriers entered into a joint venture which, among other

\textsuperscript{42} See id.


\textsuperscript{44} See id.

\textsuperscript{45} See id. at 256; see also Significant Events in Northwest's History: Aviation: MSNBC.com, http://msnbc.msn.com/id/9344497/ (last visited Sept. 26, 2005) detailing the financial history of Northwest Airlines.


\textsuperscript{47} Joint Application of Northwest Airlines, Inc. and KLM Royal Dutch Airlines, DOT Order 93-1-11 (Jan. 11, 1995) (Final Order).
things, provided for scheduling coordination, code-sharing, and other lower level activities found in other airline alliances, and also for revenue sharing on the carriers’ trans-Atlantic flights.48

To counter the close ties between the carriers, the unions for the Northwest pilots (“ALPA”) and the KLM pilots (the “VNV”) formed close relationships. One method the unions used to counter the airlines’ advantages, was to adopt certain “Protocols.” Through these protocols they committed to share flying opportunities between the U.S. and Europe equally, and to maintain a mix of flying, between aircraft types allotted to each pilot group, that was consistent with certain agreed-upon baselines.49 This ensured one group did not benefit at the expense of the other.50 To accomplish these objectives, the Protocols further committed the two pilot groups to seek agreements from their respective carriers that would embody this equal allocation principle. Northwest management was agreeable to entering into a multi-party agreement addressing issues of common concern, and the Protocol that had been reached between the two pilot groups actually was incorporated into the Northwest/ALPA collective bargaining agreement. Northwest also agreed to facilitate four-party negotiations between themselves, the two pilot groups, and KLM. However, because KLM was unwilling to enter into such negotiations, it was not possible to conclude a formal four-party agreement.

In 1997, KLM claimed a downturn in financial fortunes and sought agreement from its pilots to substantial concessions, including pay cuts of twenty-percent.51 These demands were unacceptable to the KLM pilots and they resolved to strike, if necessary, to resist the company’s concessions. Looking for assistance, the KLM pilots apprized the pilots of alliance partner Northwest of the situation.52

In response, the Northwest pilots decided that they would not conduct any flight operations that could be considered “struck work.”53 Specifically, the Northwest pilots resolved not to perform three categories of activities: (1) they would not fly routes between the U.S. and Europe which previously had been flown only by KLM prior to the

50 See id.; see also Tony Kennedy, Pilots of Wings Alliance Plan Mutual Cooperation, Star Trib., Apr. 22, 1999 at 3D.
52 See Tony Kennedy, Northwest Pilots Support KLM Colleagues, Star Trib., Mar. 15, 1997 at 1D.
53 See id.
strike; (2) they would not fly more flights between the U.S. and Europe (so-called "extra sections") than they had flown pre-strike; and (3) they would not fly larger aircraft (referred to within the industry as "larger gauge") between the U.S. and Europe than they had flown on alliance flights before the onset of the strike.\(^5\) In short, the Northwest pilots would operate the same flights, and on the same aircraft types, as they had flown pre-strike and nothing more.

The Northwest pilots considered this approach to be consistent with the commitments previously forged between the two pilot groups, and with established principles of trade union solidarity.\(^6\) The Northwest pilots believed that if KLM succeeded in its efforts to substantially reduce the KLM pilot wages, this would pressure the Northwest pilots to entertain similar concessions in order to close the cost-gap, or risk a shift of alliance flying to a lower-cost KLM. The union believed that their ability to withstand such pressures would be strengthened by taking the contemplated actions in support of the KLM pilots.

Had the Northwest pilots proceeded with their announced course of action, a legal confrontation with Northwest was likely. This could have presented a host of interesting issues under the Railway Labor Act (the U.S. labor law applicable to labor-management relationships in the airline industry), and also conceivably under European law, because the parties to the primary dispute — KLM and its pilots — were subject to European law, not U.S. law.\(^7\) Ultimately, KLM and its pilots reached an agreement which did not include the threatened concessions, the Northwest pilots did not need to implement their resolved course of action, and the potential legal confrontation was avoided.\(^8\)

The following year, the reverse situation unfolded. The Northwest pilots were engaged in a protracted bargaining dispute, and a strike appeared to be a distinct possibility (and, in fact, eventually occurred).\(^9\) They kept their KLM counterparts informed as to the status of the negotiations and the prospect of a strike. The KLM pilots, in furtherance of their commitments to the Northwest pilots and union solidarity principles, and in gratitude for the Northwest pilots’ offer of concrete assistance the previous year, committed to refrain from per-

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\(^5\) See Tony Kennedy, *NWA Pilots Poised to Take Job Action, Union Grants Funding to Prepare in Case of Strike in Sympathy with KLM*, *Star Trib.*, May 18, 1997 at 9B.

\(^6\) See id.


forming the three previously-described activities that the Northwest pilots had agreed not to undertake.\textsuperscript{59} However, the KLM pilots raised the stakes by refusing to operate selected flights between Europe and the U.S. that the KLM pilots had been operating prior to any Northwest pilot strike.\textsuperscript{60}

At this point, KLM sued its pilot group in the Netherlands. While the Dutch Court held that the KLM pilots could not refuse to fly trips which they had operated prior to a Northwest pilot strike, it upheld their right not to engage in the three types of new or expanded flying outlined above, which both the Northwest and KLM pilots had resolved not to conduct.\textsuperscript{61} Thus, this was a situation in which a Dutch Court decided issues under Dutch law which directly impacted the conduct of a strike and collective bargaining between a U.S. employer and U.S. employees.\textsuperscript{62}

2. \textit{Other Coordinated Pilot Activities}

As previously noted, Delta and Air France are parties to an alliance. Several years ago, the Air France pilots were engaged in highly contentious negotiations with management and it looked as though they would strike or pursue some other form of industrial action. The Delta pilots (represented by ALPA) resolved, as the Northwest-ALPA pilots had years before, to not operate extra flight sections between the U.S. and Europe in the event of an Air France pilot strike. The dispute between Air France and its pilots was resolved and the Delta pilots never needed to actually implement their support resolution.

A somewhat different situation was presented by the bitter and protracted dispute between Cathay Pacific Airlines (based in Hong Kong) and its pilots. Cathay embarked on a course of action that included substantial reductions in pilot pay and working conditions, unilateral action on wage and work rule issues without involvement of the pilots’ union, and other actions that threatened fundamental rights and protections, including seniority, that previously had been the sub-


\textsuperscript{60} See id.


\textsuperscript{62} Subsequent to the 1997 and 1998 Northwest-KLM pilot activities, the Northwest pilots similarly resolved to refuse to perform what they considered to be struck work in the event of a job action by the pilots employed by Japan Air Systems (JAS), a carrier with whom Northwest had a code-sharing relationship. That activity was never implemented because the threat to the JAS pilots that would have prompted a strike was eliminated by voluntary action by JAS.
ject of negotiation and agreement between the carrier and the union.\textsuperscript{63} The Cathay Pacific pilots' union alerted other pilot unions to this grave situation through IFALPA and also through their relationship with other pilot unions that were part of the One World Alliance of pilot unions.\textsuperscript{64} In 2001, IFALP responded by imposing a "recruitment ban," in which each pilot union within IFALPA was charged with informing its members that they were not to apply for work at Cathay Pacific or to assist in training newly hired Cathay Pacific pilots.\textsuperscript{65} In essence, such work would be considered "struck work," and if someone performed such activity, he or she would be considered to be functioning as a "scab," and could be treated accordingly by his or her respective pilots' union. The recruitment ban continued for two years and was lifted only when the Cathay pilots' union asked that the ban be lifted because it believed doing so might be beneficial to its efforts to negotiate an end to the dispute with Cathay management.\textsuperscript{66}

IFALPA's use of a recruitment ban is one of the types of support activities contemplated by the "Mutual Assistance" Policies that IFALPA has adopted. These policies provide that member unions engaged in industrial disputes will keep IFALPA and its member unions advised as to the nature and progress of such disputes, and set forth procedures that are to be followed by a pilot group that desires assistance from other pilot groups.\textsuperscript{67} In addition to possible recruitment bans, the IFALPA Policies contemplate that a group involved in a dispute may ask other groups to do the following: increase or decrease the number or capacity of flights; attempt to persuade their carriers to ban extra flights or capacity and to refrain from providing training or facilities to or for the benefit of other airlines involved in the dispute; and/or provide financial support to the union involved in the dispute. In addition, member unions are instructed to seek to negotiate a contractual commitment from their respective carriers that they will not, without the union's agreement, schedule, assign, or contract out flight personnel to assist other airlines who are engaged in an industrial dispute with their own flight crew members.

\textsuperscript{63} See Mark Landler, Cathay Pacific Fires 49 Pilots in a Union Dispute, N.Y. TIMES, July 10, 2001, at W1.


\textsuperscript{65} See IFALPA Agrees to Lift Recruitment Ban Against Cathay Pacific Airways, AIRLINE INDUSTRY INFO., June 9, 2003.

\textsuperscript{66} See id.

\textsuperscript{67} See Member Associations, http://www.ifalpa.org (last visited Sept. 26, 2005) (discussing the duties of member associations).
3. Extension of the 1997 UPS Strike Outside the United States

Another instance in which a U.S. union/employer dispute was extended outside the United States was during the 1997 strike by the International Brotherhood of Teamsters ("IBT") against United Parcel Service ("UPS"). The IBT recognized that an important part of UPS's growth strategy was to greatly expand its operations outside the United States. Working with the International Transport Workers Federation ("ITF"), a World Council of UPS Trade Unions was formed that could be mobilized to assist overseas efforts supporting the IBT's bargaining strategies, and later, its strike.68 An example of such activities was the proclamation of a UPS World Action Day which included over 150 job actions or demonstrations at UPS facilities worldwide. These activities and others were designed to do several things: undermine customer confidence that UPS could fulfill its promise to timely transmit packages; weaken the hand of UPS vis-a-vis its many competitors in Europe and elsewhere; and throw roadblocks in UPS's rapid global expansion effort.69

The IBT's worldwide campaign focused attention on a variety of workplace, health and safety problems at UPS facilities, and provided support to organizing activities worldwide. Within Europe, sympathy strikes, sickouts, and/or wildcat strikes were organized in England, Belgium, Germany, the Netherlands, and France.70 Unionized employees of competitor packaging companies also lent their support.71 The IBT considered these activities outside the United States to have been critical to the success of the UPS strike.72

4. Extension of U.S. Shipping Industry Labor Disputes Outside the United States

a. U.S.-Japanese Dispute

Still another example of the internationalization of a labor dispute between a U.S. union and a U.S. employer occurred in the shipping industry. The International Longshoremen's Association ("ILA") sought to require the exclusive use of union dockworkers to load goods

71 See id. at 556.
72 See id. at 568.
intended for export on ships docked in Florida.\textsuperscript{73} The ILA requested that its counterpart in Japan pressure Japanese importers not to import goods from the U.S. that arrived on ships loaded in the U.S. by non-union labor.\textsuperscript{74} The Japanese union's activities resulted in Japanese importers restricting their imports to goods that had been boarded in the U.S. by union workers.\textsuperscript{75} This outcome led to protracted litigation before the NLRB and in the courts in the United States.\textsuperscript{76}

In 2002, labor and management were again at loggerheads in the U.S. shipping industry. The impact of the dispute upon the global economy purportedly played a central role in President Bush's decision to seek injunctive relief under Section 206 of the Taft Hartley Act, 29 U.S.C. § 206.\textsuperscript{77}

\textbf{b. Trico Dispute}

In the late 1990s, approximately 25\% of the U.S. shipping industry was unionized, but there was virtually no union presence in the Gulf of Mexico. To address this situation, the U.S. maritime unions began a campaign to organize the Gulf mariners. Many of the principal U.S. shippers were multi-national entities that employed, either directly or through related entities, mariners throughout the world. The U.S. unions recognized that their organizing efforts in the U.S. might be assisted by enlisting the support of unions that represented mariners outside the U.S. To implement this global strategy, the U.S. unions met with representatives of the ITF, which had assisted the Teamsters in 1997, and with unions representing mariners in Europe, Latin America, the Caribbean, Asia, and Africa.

The foreign unions encouraged the Trico affiliate in their countries, as well as customers of Trico, to pressure Trico to reinstate U.S.

\textsuperscript{73} See Craig Dunlap, \textit{Court Affirms Citrus Injunction Against ILA Union Sought Aid From Japan Labor}, J. Com. Oct. 21, 1992, at 1B.


\textsuperscript{75} See id.; Dunlap, \textit{supra} note 73.

\textsuperscript{76} Dowd v. Int'l Longshoremen's Ass'n, 975 F.2d 779, 789-91 (11th Cir. 1992) (on NLRB application for injunction); Int'l Longshoremen's Ass'n, 313 N.L.R.B. No. 53, 1993-1994 NLRB Dec. (CCH) ¶ 31,140 (decision on merits); Int'l Longshoremen's Ass'n, 323 N.L.R.B. No. 178 1997-1998 NLRB Dec. (CCH) ¶ 33,856 (on remand from the D.C. Circuit, the NLRB dismissed the case).

\textsuperscript{77} See \textit{Labor Department's Summary of Presidential Action in the Dispute Between Pacific Maritime Assoc. and Int'l Longshore and Warehouse Union}, 195 \textit{Daily Lab. Rep.}, at E-23; Oct. 8, 2002; see also Steven Greenhouse, \textit{The Nation: The $100,000 Longshoreman; A Union Wins the Global Game}, N.Y. TIMES, Oct. 6, 2002, § 4, at 1 (characterizing the ILA as having "played the global-trading system as well as any international investor").
employees who allegedly had been fired for their pro-union activity and to agree to a process that would permit mariners to exercise their freedom of choice as to whether they desired union representation. In addition, the U.S. unions signed a Bilateral Solidarity Pact with the Brazilian maritime unions, and the Singapore Maritime Officers Union asked a Singaporean entity that had entered into a joint venture with Trico to urge Trico to change its labor practices. In May 2000, the unions also conducted a "Global Day of Solidarity," similar to the previously described UPS World Action Day, in the U.S., Brazil, Australia, and Trinidad to focus attention on the plight of the U.S. workers.

On the legal front, the U.S. unions filed an unfair labor practice charge with the NLRB against Trico and together with the ITF, filed a complaint against Trico with the Organization for Economic Commerce and Development ("OECD"). The OECD complaint focused on Trico's non-compliance with basic internationally recognized labor standards, including those set forth in the OECD's Guidelines for Multinational Enterprises.

The Norwegian Oil and Petrochemical Union (NOPEF), representing Norway's mariners, began a boycott of Trico in support of its U.S. colleagues, resulting in further legal activity. When NOPEF learned that Trico's Norwegian affiliate planned to sue to enjoin the threatened boycott, NOPEF took the initiative and filed suit in Norway seeking the equivalent of a declaratory judgment confirming its right to proceed with the boycott.

In response to the threatened boycott, Trico's U.S.-based parent company filed unfair labor practice charges with the NLRB. Following an investigation, the NLRB declined to issue a complaint. The board found that while the U.S. unions had requested NOPEF's assistance, NOPEF had independently determined whether, and how, to respond, and had not operated as an agent of the U.S. unions. The U.S. shippers also threatened their own boycott of the Norwegian offshore shipping industry if it acceded to NOPEF's pressure. Trico additionally commenced litigation in the U.K. against the ITF in response to the ITF's support for the unions' campaign against Trico.

Thus, this was another situation in which foreign courts were asked to adjudicate issues directly related to a domestic labor dispute between American unions and employers. Both the Norway and U.K. cases were settled prior to issuance of decisions by the Courts, which rendered the pending NLRB proceedings in the U.S. moot.78

78 There have been other examples of foreign union support for U.S. unions involved in difficult labor disputes. In addition to the previously described actions by the KLM pilots to support the strike of the Northwest Airlines pilots, the ICEM has supported the efforts of the UAW to resist its decertification at the Massachu-
C. Union-Organized "Days of Action"

As noted above, both the UPS and Trico disputes involved the use of global "action days." This type of action has been utilized extensively by trade union alliances. For example, in November 1999, trade unions representing workers in the shipbuilding industries of twelve European countries, supported by the European Metalworkers’ Federation (EMF), staged a European Day of Action aimed at persuading European Union industry ministers to take steps towards safeguarding the shipbuilding industry against severe job losses.79 Many of these losses were the result of fierce global competition, such as Korean shipyards that enjoying substantial governmental subsidization. The action day included work stoppages, demonstrations, rallies, press conferences, and the distribution of leaflets and petitions.80

In January 2001, another European Day of Action, organized by the EMF, was staged to protest General Motors' decision to close its Vauxhall car manufacturing facilities in the U.K.81 According to the EMF, over 40,000 General Motors employees in Europe (specifically in the U.K., Germany, Belgium, Portugal and Spain) stopped work and took part in the protest.82 The unions and employees pressed for the introduction of "European norms on information and consultation of workers in all companies within the EU."83

In October 2002, 5,000 LSG Sky Chefs workers in France, Belgium, the U.K., Germany, Denmark, Spain, Austria and Norway conducted an International Day of Action.84 During the event, workers wore solidarity buttons to express support for the LSG Sky Chefs facility of the French-owned Saint-Gobain Group. Despite these coordinated efforts, the UAW was decertified in late January, 2005. The ICEM is continuing its support campaign by appealing to the French parent Company, while the UAW is pursuing challenges before the NLRB as to the U.S. affiliate's conduct during the decertification campaign. See BNA DAILY LABOR REP. February 1, 2005 at A-3, www.icem.org/update/update2005.

80 Id.
82 Id.
83 Id. (quoting European Trade Union Confederation (ETUC) general secretary Emilio Gabaglio).
workers in the United States, represented by the Hotel Employees & Restaurant Employees International Union, in their effort to negotiate a collective bargaining agreement. The European workers expressed concern that the mistreatment of U.S. workers by their common employer would negatively impact the reputation of the company and its parent, Lufthansa Airlines.

The European Cockpit Association (ECA), an umbrella organization for unions representing pilots employed by European airlines, held a Day of Action in January 2003. Pilots from across the EU expressed their concerns about what the unions believed were serious inadequacies in the proposals then being considered by the European Parliament to regulate pilot flight and duty times. IFALPA lent its support to this Day of Action.

The unions belonging to the Rio Tinto Global Network conducted two weeks of solidarity actions in 2003 at Rio Tinto facilities around the world to protest what the unions considered to be a pattern of anti-worker, anti-union, and anti-community behavior by Rio Tinto and its subsidiaries throughout the world. This consisted of wearing stickers calling for justice, presenting local Rio Tinto management with a petition demanding adherence to internationally recognized labor standards, and conducting May Day demonstrations.

In April 2004, the ETUC conducted a European Day of Action to demand workers' rights and adequate welfare provisions be recognized and upheld throughout Europe. These reforms were especially needed in light of significant changes underway in Europe's economic framework, caused by the addition of ten new countries to the European Union.

In October 2004, workers and unions from Belgium, Germany, Poland, Portugal, Spain, Sweden and the U.K., acting under the leadership of the EMF and supported by the International Metalworkers' Federation (IMF), conducted a European Day of Action in response to General Motors' threat to cut 12,000 jobs in Europe, mostly in Ger-

86 Id.
89 See www.union-network.org.
many. The event’s purpose was to focus attention on specific demands, including that there be no plant closures, no forced redundancies and no violation of collective agreements (the latter being somewhat analogous to U.S. collective bargaining agreements). The unions were also protesting General Motor’s failure to engage in discussions at the European Works Council level regarding its contemplated actions.

As previously noted, the purpose of these Days of Action is both to encourage global worker solidarity as well as focus the attention of the public, the press, local governments and local management on particularly egregious employer conduct (particularly at the parent corporation level). These groups can then pressure the parent global corporation to reverse its course of conduct by permitting workers to organize and collectively bargain, and/or by addressing specific problems. At least some of the unions involved in the underlying primary disputes credit such support activities with helping these unions to make headway in their dealings with management.

D. Global Framework Agreements

One other activity that some global union alliances have sought to focus on is obtaining so-called “Global Framework Agreements” with multi-national corporations. These agreements are designed to establish commitments by a global company to respect or adhere to certain basic principles throughout its worldwide operations (e.g., to recognize the right of its employees to seek union representation; to not utilize child or forced labor). Some include more specific employment-related protections. Unions entering into such agreements envision, or at least have as their objective, using these framework agreements as stepping-stones or adjuncts to supplemental agreements negotiated at the local level that will address more specific terms and conditions of employment.

Global union federations that have been particularly active in this area include the International Federation of Chemical, Energy, Mine and General Workers’ Union (ICEM), the International Federation of Building and Wood Workers (IFBWW), the IMF, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), and the Union Network International (UNI).

91 Id.
An example of one of the more detailed agreements was just reached in January 2005 with Electricité de France (EDF Group), a French-headquartered global utility company that employs 167,000 workers worldwide.\textsuperscript{93} Union parties to the Agreement include the ICEM and several others.\textsuperscript{94} Among other things, the Agreement includes commitments by EDF:

- to adhere to certain core international standards, including the Fundamental Conventions of the International Labor Organization that provide guarantees for freedom of association, the rights to organize and to engage in collective bargaining, and prohibitions against discrimination in employment;
- to establish a dialogue between labor and management on health and safety issues no later than one year after signing of the agreement, and to provide for “ongoing dialogue”;
- to respect its employees’ right to engage in trade unions and in particular to ensure against any discriminatory acts jeopardizing the right to organize, with “attention [to] be paid to evolutions in the careers of employees with trade union responsibilities or representing personnel”;
- to supplement employee wages by profit-sharing incentives within the three-year term of the Agreement;
- to systematically ensure that sub-contractors provide work and labor in full compliance with applicable laws and international standards;
- to recognize as a fundamental principle EDF’s obligation to provide “reliable, quality and updated information on its activities and results to labor, and financial stakeholders, and public authorities”;
- to utilize employee-manager dialogue as a fundamental means of facilitating information sharing and in-

\textsuperscript{94} Id.
volving employees in the evolution and development of EDF and the individual companies within EDF that employ the workers;

- to “respect the autonomy and independence of trade union organizations, in compliance with current laws and regulations,” and to “acknowledge as bargaining partners and counterparts the recognized trade union organizations, and particularly with respect to collective bargaining”; and

- to honor the “right of any EDF group employee to join the labor organization of his/her choice, “to elect and be elected for representative functions and to enjoy recognized rights of worker association, taking into account current laws and regulations in force,” and to refrain from penalizing any employee for his participation in or representation of a trade union.”

Similar, but even more extensive commitments, would be provided by a Global Code of Conduct and Social Responsibility for the SkyTeam Alliance, to which a number of unions representing employees of SkyTeam Alliance airlines, operating through the International Transport Workers Federation, are seeking to have the SkyTeam carriers commit. This would require, among other things, the following:

- in the event of restructuring, the employers shall ensure that “both opportunities and risks are distributed fairly among the alliance partners,” and are negotiated with the unions representing the affected employees, and those adversely affected shall be redeployed elsewhere within the Alliance;

- all employer members shall respect basic trade union rights, including the right to organize in an environment free of harassment and intimidation, the right to collective bargaining, the right to strike, freedom from being penalized for engaging in union activity, and the right to participate in legitimate trade union activities;

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• a commitment to promote and comply with ILO Conventions (including those set forth in the the EDF Global Framework Agreement\textsuperscript{97});

• a prohibition on discrimination on the basis of nationality, political opinions or religious beliefs, age, gender, sexual orientation or lawful union activity;

• a safe and healthy working environment;

• unions shall have access to Alliance task forces or other bodies when they hold discussions that affect jobs and conditions, prior to and when these decisions are made; and

• unions and employees shall have the right to full disclosure of information concerning the corporate strategy and decision making of the Alliance where this affects jobs and employment conditions.\textsuperscript{98}

The main question regarding these global framework agreements is whether they will be empty rhetoric, or instead will translate into concrete, enforceable actions. Predictably, skeptics abound and the jury is still out.

E. Union Opposition to U.S. International Trade Agreements

One fundamental but strongly disputed issue is the extent to which meaningful protections of employee rights, including those embodied in International Labor Organization (ILO) Conventions, should be included in trade agreements.\textsuperscript{99} The AFL-CIO and constituent unions actively attempted to influence the direction of Congressional action on proposed trading agreements between the U.S. and other nations or regional nation groups. This activity was no doubt generated by the widespread dissatisfaction of organized labor with NAFTA. From the perspective of the organized labor movement, its predictions that NAFTA would cause substantial loss of U.S. jobs and reductions in wages and working conditions have been borne out in practice.

Reflective of this view are the findings included in the Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), the union body that comments on proposed trade agreements, with regard to the U.S.-Chile Free Trade Agreement:

Since NAFTA went into effect . . . our combined trade deficit with Canada and Mexico has grown from $9 billion to $87 billion, leading to the loss of hundreds of

\textsuperscript{97} See Agreement on EDF Group Corporate and Social Responsibility at Art. 1.

\textsuperscript{98} Global Code of Conduct and Social Responsibility for the SkyTeam Alliance Union Coalition, supra note 57.

\textsuperscript{99} See generally Elizabeth Becker, Amid a Trade Deal, A Debate Over Labor, N.Y. Times, Apr. 6, 2004, at C1.
thousands of jobs in the United States. Under NAFTA, U.S. employers took advantage of their new mobility and the lack of protections for workers’ rights in Mexico to shift production, hold down domestic wages and benefits, and successfully intimidate workers trying to organize unions in the U.S. with threats to move to Mexico.100


To prevent a continuation of what labor perceived as the adverse consequences resulting from NAFTA, the AFL-CIO joined with its counterpart organization in Chile, the Central Unitaria de Trabajadores (CUT), to encourage trade negotiators from both the U.S. and Chile to include enforceable workers’ rights consistent with International Labor Organization Conventions in any U.S.-Chile Free Trade Agreement between the two countries. According to AFL-CIO President John Sweeney, this joint effort was intended to demonstrate “that workers’ movements are united in their demand to make workers’ basic rights central to the new rules of the global economy.”103

Joint communiqués from the two labor federations called attention to perceived abuses in the workplace, including discharge of workers who attempted to join unions, delays in collective bargaining, and permanent replacement of strikers. While U.S. unions certainly view these concerns to exist in the U.S. as well as elsewhere, the clear emphasis


of the AFL-CIO/CUT program was on serious deficiencies perceived in the enforcement of labor laws in Chile.¹⁰⁴

Notwithstanding labor's efforts, Congress enacted and President Bush signed Free Trade Agreements (FTAs) between the U.S. and Chile and between the U.S. and Singapore. Organized labor believes these inadequately protect workers' rights or fail to correct the deficiencies of NAFTA. The LAC has concluded that "it is likely that both agreements will, like NAFTA, result in shifts in production from the U.S. and rising trade deficits, leading to more lost jobs."¹⁰⁵

Organized labor in the U.S. has also been an outspoken opponent of the efforts to form the Free Trade Area of the Americas (FTAA). This campaign included, among other things, a bus tour across the U.S. (dubbed the "March to Miami") to culminate with protests in Miami during the FTAA's 2004 ministerial meeting. The purpose of the campaign was to focus national attention on what labor considered to be the loss of thousands of manufacturing jobs because of the allegedly "failed" trade policies of the U.S. In response, business groups stepped up their lobbying efforts on behalf of the FTAA. Organized labor attempted to make opposition to the FTAA and other trade pacts a key issue in the recent Presidential election campaign, particularly in states that had suffered severe job losses during the past few years.¹⁰⁶ Unions have also expressed their opposition to the

¹⁰⁴ For a detailed review of international activities of the AFL-CIO, see Jonathan P. Hiatt & et al., Union Participation in International Labor Affairs, in 1 Int'l Lab. & Empl. Laws (BNA) 43-1 (2d. ed. 2003).

¹⁰⁵ LAC Report, supra note 100, at 4. Much as organized labor in the U.S. has decried the shift of jobs from the U.S. and U.S.-based employees to lower-cost Mexican labor since the establishment of NAFTA, Mexican workers now are complaining of the loss of thousands of jobs due to the shift of business and work opportunities to lower-cost labor in China, see, e.g., Juan Forero, As China Gallops, Mexico Sees Factory Jobs Slip Away, N. Y. TIMES, Sept. 3, 2003, at A6, cf. Elizabeth Becker, Textile Quotas to End Soon, Punishing Carolina Mill Towns, N.Y. TIMES, Nov. 2, 2004, at C1 (reporting that textile workers in Cambodia and Bangladesh fear a loss of employment opportunities to China as a result of the eliminating of protective global textile quotas).

¹⁰⁶ See, e.g., Opponents of Trade Pacts Say Issue Could Be Decisive in Battleground States, 144 DAILY LAB. REP. July 28, 2004, at A-6. While organized labor continues to challenge the U.S. government's failure to include meaningful employee protections in its trade legislation, it should be noted that the government recently signaled it "[would] not conclude trade agreements with Oman and the United Arab Emirates until they have put in place what in the adequate laws protecting workers' rights." United States to Shelve Trade Accords With Oman, UAE Absent Worker Protections, 8 DAILY LAB. REP., Jan. 12, 2005, at A-9.
Central American Free Trade Agreement (CAFTA), which they believe will result in the loss of thousands of U.S. jobs.  

F. Activity by U.S. Unions on Behalf of Foreign Workers

With increasing frequency, U.S. unions have participated in campaigns focused principally on improving wages and working conditions of foreign workers employed outside the U.S. One example is reflected in a petition filed by the Association of Flight Attendants (AFA), the largest flight attendant union in the U.S., with the United States National Administrative Office (U.S. NAO) under the North American Agreement on Labor Cooperation (NAALC) of NAFTA. The AFA petition was directed at alleged violations of Mexican workers' rights and the failure of the Mexican Government to enforce such rights. Specifically, AFA charged that Executive Air Transport (TAESA), a Mexican airline founded and principally owned by a Mexican billionaire with close political ties to then Mexican President Carlos Salinas de Gortari, had: forced the TAESA flight attendants to accept greatly substandard wages; impeded their ability to obtain representation by a union that enjoyed the widespread support of the flight attendants (the Association of Flight Attendants of Mexico, ASSA); improperly pressured them to instead opt for representation by a labor union linked to the ruling Institutional Revolutionary Party of President Salinas; and fired and otherwise coerced flight attendants who supported ASSA. AFA requested that consultations be held by the U.S. NAO with its Mexican counterpart and that far ranging relief be provided, including recognition of ASSA as bargaining representative and adoption of a collective bargaining agreement consistent with industry standards for flight attendants.

The U.S. NAO conducted an investigation and hearing, found substantial evidence substantiating the charges contained in the AFA submission, and recommended U.S.-Mexico ministerial-level consulta-

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108 The National Administrative Office of the Bureau of International Labor Affairs of the DOL has just recently been renamed the Office of Trade Agreement Implementation to reflect its increased responsibilities beyond those related to NAFTA. Notice of Renaming the National Administrative Office as the Office of Trade Agreement Implementation 69 Fed. Reg. 77128 (proposed Dec. 23, 2004).

tions.\textsuperscript{110} Thereafter, the U.S. Secretary of Labor formally requested, and the Mexican Secretary of Labor consented to have consultations.\textsuperscript{111} However, consistent with the experience unions and employees often have had when seeking assistance under the NAFTA framework, this governmental response failed to provide the significant action requested by AFA and ASSA. Instead, the two Labor Departments agreed to address the issues in a seminar to be held in Mexico, which would include a dialogue on the structure and rules used by Mexican labor boards in the process of awarding collective bargaining agreements, and other structural changes to provide for impartiality in the handling of claims such as those that AFA presented.\textsuperscript{112}

Other efforts by U.S. unions to obtain NAFTA-related relief have not gotten as far as the AFA complaint. For example, the U.S. NAO refused to accept for review a submission by the AFL-CIO and the Paper, Allied-Industrial, Chemical & Energy Workers Union (PACE) challenging alleged deprivations of the right of workers employed by Duro Bag Manufacturing Corp. to secretly vote on union representation.\textsuperscript{113}

More recently, the AFL-CIO embarked on a campaign to assist workers in China in their effort to obtain improvements in wages and working conditions and fundamental worker protections. This included submission of a 103-page petition urging the U.S. government to take action against China for engaging in unfair trade practices against the U.S. action, which the AFL-CIO considered to be authorized under Section 301 of the Trade Act of 1974.\textsuperscript{114} The President and the U.S. Trade Representative subsequently rejected the Petition.\textsuperscript{115}


\textsuperscript{112} See id. see also U.S., Mexico Ministers Resolve Three cases, Create Working Group on Workplace Safety, DAILY LAB. REP., June 12, 2002, at A-11.

\textsuperscript{113} See Public Communication to the U.S. NAO under the NAALC on Labor Law Matters Arising in the Territory of Mexico (June 29, 2001), http://www.dol.gov/ilab/media/reports/nao/submissions. (Interestingly, the World Trade Organization recently voiced its concerns with regional trade agreements, suggesting that they create trade relationships that discriminate against other nations that are not parties to the regional agreements.), see also DAILY LAB. REP., Dec. 22, 2004, at A-4.

\textsuperscript{114} See http://www.aflcio.org/issuespolitics/globaleconomy.

\textsuperscript{115} See DAILY LAB. REP., May 25, 2004, at C-1.
In September 2004, the AFL-CIO and other labor organizations joined together in "The China Currency Coalition," and filed another Trade Act petition, this time seeking imposition of trade sanctions against China unless it revalues its currency. In the expressed view of this Coalition, China's maintenance of an artificially low exchange rate has fueled a greatly expanded U.S. trade deficit, created an unfair competitive advantage for China over the U.S., and caused the loss of thousands of U.S. jobs. The AFL-CIO maintains that China's actions are in direct violation of the recently amended Trade of Act of 1974.116

G. Alien Tort Claims Act Litigation

The support of the organized U.S. labor movement for foreign workers also has been reflected in its provision of legal counsel, funding and other assistance in connection with lawsuits that have been filed under the Alien Tort Claims Act, 28 U.S.C. §1350. These suits have sought to hold American companies liable for their alleged involvement or complicity in the murder, torture and rights abuses of and against workers in foreign countries where these U.S. companies were operating.117

H. Additional Union Responses to Outsourcing

One aspect of the globalization of the world economy that has recently received extensive public attention is the outsourcing of U.S. jobs to workers employed outside the U.S.118 The move to outsourcing reportedly has prompted several U.S.-based law firms to establish

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practice areas focused on helping their clients outsource parts of their businesses.\textsuperscript{119} Of course these issues are part of the concerns that have fueled the growth of union alliances and triggered other multi-union actions reviewed above.

There has been substantial criticism of the absence of reliable data on the extent of outsourcing.\textsuperscript{120} One recent report estimates a shift in 2004 alone of more than 400,000 jobs from the U.S. to overseas.\textsuperscript{121} Another recent report indicates that large U.S. companies plan to increase their outsourcing activities by more than 50\% in the next couple of years.\textsuperscript{122}

Clearly, there is disagreement as to whether and to what extent outsourcing has hurt the U.S. economy and the American workforce. Just as clearly, feelings on the issue run deep and have become part of our political dialogue. Opponents of the reelection of President Bush seized upon the statement in early 2004 of Gregory Mankiw, Chairman of the Council of Economic Advisers, that outsourcing is just a new way of doing business and that its effects have been beneficial rather than harmful, as reflecting President Bush’s alleged lack of concern for American workers and their families. Mr. Mankiw’s comments prompted AFL-CIO President Sweeney to remark that the current Administration has given “giant corporations a green light to continue sending jobs overseas.”\textsuperscript{123} Sweeney also said, “President Bush should give his economic team the boot, and bring in economic advisors who will create jobs, not destroy them.” The attack on outsourcing also became part of the Congressional debate. Legislation proposed in 2004 would remove tax incentives from outsourcing

\textsuperscript{119} See Dee McAree, \textit{More Firms are Helping Clients to Outsource}, \textsc{Nat’l L. J.}, Oct. 4, 2004, at S-2.


\textsuperscript{121} \textit{The Changing Nature of Corporate Global Restructuring}, supra note 2, at 2.


work. Legislation was also put forth for consideration that would expand the Worker Adjustment and Retraining Notification Act (the Warn Act) to require non-manufacturing companies to give workers more advance notice than currently required in the event of a relocation of U.S. jobs overseas. State legislatures have also entered the anti-outsourcing fray.

The alleged consequences of outsourcing have formed a principal part of organized labor's opposition to NAFTA and subsequent trade agreements. One recent example cited by labor of the effects of outsourcing is the decision by Levi Strauss to close four plants in the U.S. and Canada, causing the displacement of nearly 2,000 workers, many of whom were represented by UNITE and the UFCW. The unions placed the blame for this loss of work on the perceived evils of U.S. trade policy. UNITE President Bruce Raynor said, "at a time when 10 million Americans are looking for work, these plant closings are yet another indictment of a failed trade policy that is destroying entire industries."

Labor's concern with the consequences of outsourcing were recently expressed at the ministerial meeting of the Organization for Economic Cooperation and Development (OECD). The business community presented a sharply contrasting view, supported once again by the Council of Economic Advisors' Chairman Mankiw.

The outcry and disagreement over outsourcing has even motivated the distinguished economist Paul A. Samuelson to enter the fray. Professor Samuelson apparently has significant concerns with the factual basis for key assumptions made by those economists, in-

124 See S. 1637 (stating that amendment to corporate tax bill would prohibit U.S. taxpayer dollars from being used to outsource or transfer offshore government contract work that formerly was done in the U.S.); S. 2531 (stating that companies that outsource U.S. jobs offshore would lose tax deductions).

125 S. 2090.

126 See DAILY LAB. REP., May 19, 2004, at A-1; Robert Atkinson, Meeting the Offshoring Challenge, Policy Report of Progressive Policy Institute, p. 1 (July 20, 2004) (noting that "at least 35 states have proposed legislation aimed at preventing state funds from going to companies doing work overseas, either directly or through subcontractors"), http://www.ppionline.org.; DAILY LAB. REP., Feb. 7, 2005, at A-2 (reporting on proposed Illinois legislation that will require prospective state vendors to disclose the degree to which their contracts with the state would be fulfilled through U.S. of domestic-based workers).

127 35 AIL Labor Letter 10 (October, 2003).

cluding Mr. Mankiw, who have downplayed the possible adverse consequences of outsourcing for workers.\textsuperscript{129}

Outsourcing is not just an issue in the United States. A recent report by the United Nations Conference on Trade and Development (UNCTAD) and Roland Berger Strategy Consultants surveying European companies confirms a significant increase in outsourcing by European entities principally motivated by a desire to lower costs. Significant work has been relocated from Europe to lower-cost countries and to Asia, most notably to India.\textsuperscript{130}

European unions, like their U.S. counterparts, are beginning to confront the reality and threat of outsourcing. To forestall a threatened shift of work to Eastern Europe, unionized workers at Siemens in Germany agreed to work longer hours with no additional pay. German unions have entered into other similar concessionary deals to ward off a loss of jobs through outsourcing, and other European unions have been confronted with similar situations.\textsuperscript{131} In turn, such efforts may prompt counter-efforts by those who have been beneficiaries of outsourcing to resist efforts to raise costs in their workplaces and thereby risk removing the incentives that enabled them to attract businesses and work opportunities.\textsuperscript{132}


\textsuperscript{130} See http://www.unctad.org. (Interestingly, it has been reported that workers in poor countries such as Cambodia and Bangladesh, who have benefited from a shift of textile work from the U.S., are now themselves facing a risk that they will lose work to China, with the phasing out of global textile quotas.), Elizabeth Becker, Textile Quotas to End Soon, Punishing Carolina Mill Towns, Nov. 2, 2004, at C.1.

\textsuperscript{131} See Gabriel Kahn, Alitalia Pleads for Big Job Cuts, Moves to Split Airline in Two, WALL ST. J., Sept. 7, 2004, at A.11; Matthew Karnitschnig, Firms in Germany Pressure Unions to Accept Change, WALL ST. J., Dec. 21, 2004, at A.14 (reporting not only on such pressures in Germany but also elsewhere in Western Europe); Noelle Knox, Longer Workweeks Likely in Europe, USA TODAY, July 27, 2004, at B4; Chris Reiter and Stephen Power, VW Gives German Workers Job Pledges, WALL ST. J., Nov. 4, 2004, at A.3. Rather than enter into a concessionary agreement, workers at GM's plant in Bochum, Germany, staged wildcat strikes against the Company's announced intention to cut thousands of jobs. See Mark Landler, G.M. Workers in Germany Protest Job Cuts a 3rd Day, N.Y. TIMES, Oct. 19, 2004, at W1.

\textsuperscript{132} See Dan Bilefsky, European City Wins Jobs - and Looks Over Its Shoulder, WALL ST. J., July 8, 2004, at A1; see also Erin E. Arvedlund, Modest Now, Russian Outsourcing Has Big Hopes, N.Y. TIMES, Dec. 15, 2004, at W1 (reviewing Russia's recent efforts to compete with India for the outsourcing business from higher-cost
I. Multi-Party, International Collective Bargaining Agreements

One potential area that global union alliances or relationships may venture into in the near future is multi-party, international collective bargaining – a prospect that is either exciting or nightmarish, depending on one's particular perspective.

The previously-referenced relationships between Northwest Airlines and KLM and their pilot groups provide an example of how multi-national collective bargaining might develop. As previously noted, the Northwest and KLM pilot groups committed to seek to obtain the agreement of their carriers to an equal sharing of flying opportunities on flights operated between the U.S. and Europe. They made headway in this endeavor with Northwest, but the effort was resisted by KLM.

By the time the Northwest pilots entered negotiations for a new contract in 1996, it had become apparent that they were flying less of the Northwest-KLM Alliance flights than were the KLM pilots. A principal focus of the Northwest pilots' negotiations strategy was to obtain expanded "scope" protections which, among other things, would address this inequity. Ultimately, that effort was successful. The new Northwest-ALPA collective bargaining agreement reached in 1998 provided that the share of the alliance flying conducted by the Northwest pilots would reach at least the 50% mark by a certain date during the life of the agreement.\footnote{The Northwest-ALPA agreement also included provisions to govern the allocation of alliance flying when and if Continental Airlines joined the Alliance with KLM. Allocation of flying opportunities among pilot groups of different airlines again became an issue in negotiations in 2002 between ALPA and Northwest and between ALPA and Delta Airlines regarding the then proposed expansion of the alliance between Northwest and Continental to include Delta.} This approach was consistent with the general principals that the airlines had already agreed upon between themselves for allocation of flying within the joint venture.

Following the conclusion of the Northwest-ALPA negotiations, KLM and its pilots also engaged in negotiations that addressed allocation of flying issues. While the KLM pilots were committed to the

countries). There have been reports of a recent backlash against outsourcing to certain countries because of difficulties encountered in dealing with the accents and cultures of foreign workforces. See, e.g., Ian Austen, \textit{Canada, The Closer Country for Outsourcing Work}, \textit{N.Y. Times}, Nov. 30, 2004, at W1 (indicating recent increases in "near shore outsourcing" to Canada rather than India because of the closer cultural similarities between Canada and the U.S.); Michael Sasso, \textit{Accents to Cost Indian Call Center Jobs}, \textit{Tampa Trib.} (Fl.), Jan. 21, 2005 (reporting on decision of Tampa-based Sykes Sykes Enterprises to cut the volume of work outsourced to call volume centers in India for Delta Air Lines and internet service provider MSN because of customer complaints regarding difficulties in understanding Indian customer service representatives).
same principle of equal allocation of flying, the criterion they advocated for measuring such equality differed somewhat from that favored by the Northwest pilots. The differences in approach created some practical obstacles to ensuring the equality of flying that all four parties—the two airlines and the two pilot groups—purport to embrace.

The Northwest-KLM experience demonstrates the logic of multi-party cross-border collective bargaining, at least with respect to certain issues. In this situation, all parties agreed in principle to the same basic concept of equally splitting U.S.-Netherlands flying between the two airlines. By incorporating that principle into a single four-party agreement, the parties could have ensured that they arrived at an approach that was acceptable to all concerned. It is not difficult to imagine other issues that could lend themselves to such multi-union/multi-employer cross-border agreements.

Indeed, the multi-union, multi-airline collective bargaining approach has been undertaken domestically in the airline industry. In recent years, several major U.S. carriers have formed relationships with so-called regional carriers, often wholly or partially owned by the major carriers. In some of these relationships, the pilot groups at the associated major and regional carriers have committed themselves to “flow through” agreements pursuant to which pilots at the regional carriers receive priority opportunities to fill pilot openings at the major carrier (“flow up”) and pilots laid off (or “furloughed”) by the major carrier are provided opportunities to fill positions at the regional carriers (“flow down”). One such major/regional airline carrier relationship exists between American Airlines and its wholly-owned American Eagle regional carrier. The pilots at American Airlines are represented by the Allied Pilots Association (APA) and the American Eagle pilots are represented by ALPA. Several years ago, the two pilot groups succeeded in obtaining the agreement of the two carriers to a flow through arrangement. This was embodied in a four-party agreement amongst the two carriers and the two unions.

U.S. law does not prohibit multi-employer/multi-union agreements that include participants from both within and outside the United States. Unless foreign law presents an obstacle, there would appear to be no legal impediment to entry into such agreements. Arguably less certain is the extent to which such agreements would be enforceable in the event disagreements were to arise regarding their applicability to a particular dispute or over the interpretation of terms included in such agreements. The experience of past litigation in the U.S. involving the enforcement of labor agreements with international components does little to remove this potential cloud.

At least some United States courts have drawn a distinction in the enforceability of collective bargaining agreements in global con-
texts, based upon the location of performance of the work at issue. In *Independent Union of Flight Attendants v. Pan Am World Airways, Inc.* (also referred to the Berlin Express Case), the court was confronted with a collective bargaining agreement between a U.S. airline and a U.S. union that included a "scope" clause purporting to apply worldwide and to which the carrier's U.S.-based parent company was also a party. During the contract's life, the company established an intra-Germany shuttle-type operation and assigned the work solely to European nationals represented by a German union. At least some of the flying in question was previously done by employees represented by the U.S. union under the terms of the U.S. collective bargaining agreement. The U.S. union filed a grievance, which the Company refused to entertain. The Union then sued in the U.S. to compel arbitration. The Court held that U.S. labor law was inapplicable, and the collective bargaining agreement between a U.S. airline and a U.S. union was unenforceable – notwithstanding its inclusion of terms that appeared to cover the carrier's flying throughout the world – because the flying in question took place wholly outside the United States. The court based its decision on the so-called "non-extraterritoriality presumption."  

On the other hand, the court in *Local 553, Transport Workers Union v. Eastern Air Lines,* held that U.S. labor law was applicable, and a collective bargaining agreement between a U.S. employer and a U.S. labor union was enforceable with respect to a dispute where the flying at issue was not "wholly foreign," but consisted primarily of flights between the U.S. and foreign points. Interestingly, a British Court also found U.S. labor law applicable, rather than British labor law, to a dispute between United Airlines and British-based employees of another U.S. carrier (Pan Am), whose British operations had been acquired by United. The British Court relied principally upon the *Local 553, Transport Workers Union* decision rendered by a U.S. court because, as in *Local 553, Transport Workers Union,* the British-based employees of a U.S. airline would be working principally on flights between England and the U.S., rather than within Europe.

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134 923 F.2d 678 (9th Cir. 1991).

135 The "non-extraterritoriality presumption" recognizes that: (1) while United States statutes can be enforced beyond the territorial boundaries of the United States; (2) they will not be presumed to apply outside the U.S. in the absence of some indication that Congress so intended ("long-standing principle of American law . . . that Congress legislates against the backdrop of the presumption against extraterritoriality"). *EEOC v. Arabian American Oil Co.,* 499 U.S. 244, 248 (1991).

136 544 F. Supp. 1315, 1322 n.1 (E.D.N.Y.), *aff'd as modified,* 695 F.2d 668 (2d Cir. 1982).

While this paper does not include a detailed discussion of choice of law issues presented by international labor law disputes, it should be noted that it is highly questionable whether a continued judicial focus on the purported situs of work can be squared with the reality of the globalized, computer-driven environment, in which it is increasingly difficult to identify a single, fixed workplace location.\footnote{See Torrico v. IBM, 213 F. Supp. 2d 390, 405 n.9 (S.D.N.Y. 2002); General Accounting Office, Transatlantic Aviation: Effects of Easing Restrictions on U.S.-European Markets 33 (2004). For a more detailed discussion of case law addressing the determination of applicable law in the context of international disputes and related issues, see Stephen B. Moldof & Joseph Z. Fleming, Extraterritorial Application of U.S. Laws, Part II - Collective Bargaining, in 1 Int'l Labor and Employment Laws 50-35 (William J. Keller, ed., BNA 2d ed. 2003 & Supp. 2004); Stephen B. Moldof, The Application of U.S. Labor Laws to Activities and Employees Outside the United States, 17 Lab. Law. 417 (Winter/Spring 2002).}

Thus, a potential obstacle to a collective bargaining approach to dealing with issues generated by increased globalization is the uncertainty of determining how disputes will be resolved. Presumably, the parties could include choice of law and choice of forum provisions in their agreements, but that would not necessarily eliminate the potential controversy. It is an established principle in U.S. law that private parties cannot, simply by their agreement, confer subject matter jurisdiction on a federal court and that a court can determine independently whether it may properly exercise jurisdiction over a particular dispute. Thus, even if parties agree that U.S. law is applicable and that disputes could be enforced in tribunals within the United States, a U.S. court might determine that it lacks jurisdiction much as the court did in the \textit{Berlin Express} case. The best means for ensuring the enforceability of contractual commitments is through inclusion of appropriate enforcement provisions in agreements reached between the nations of the parties at interest. The prospects for obtaining government support for such approaches may actually be greater at this time in Europe than it is in the U.S. given the current move within Europe to have matters of international interest handled at the European Community level.

\textbf{SOME CONCLUDING OBSERVATIONS}

The American labor movement is facing a variety of threats on many fronts, partially as a consequence of the increased globalization of the U.S. and world economies. As reviewed above, at least certain segments of the organized labor in the U.S. have begun to involve themselves internationally; no doubt the extent of those efforts will increase in the future. There have been successes in the international arena, there have been failures, and there is much uncertainty as to
whether certain activities will prove to meaningfully advance the interests of organized labor and of the represented American workforce. It is clear that organized labor in the United States, just like American management, no longer has the luxury of hiding within the friendly confines of the United States, but instead must become an active player in the world stage. This presents another formidable test for unions to their ability to survive and grow.