Core Labor Standards and Philippine Exports

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ABSTRACT

This paper examines how labor issues might play out in the negotiations between the Philippines and U.S. for a free trade agreement. It also suggests the appropriate track to follow in the negotiations on labor issues. Because of the difference in the level of economic development of the Philippines and of the United States, the Philippines must not agree to the adoption of uniform labor standards applicable to both countries and especially to proposals to incorporate these standards in Philippine labor laws. The immediate goal of the Philippines is to promote investments to absorb excess labor allowing the process of labor shortages, increasing capital labor ratios, increasing productivity, and eventually higher wages.

1. Introduction

Negotiations on a bilateral free trade agreement (FTA) between the Philippines and the United States will most certainly include discussions on the promotion and enforcement of labor standards. The US Congress incorporated labor issues as a negotiating objective when it granted the US President "trade promotion authority" in August 2002 and it is unlikely to ratify an FTA that is silent on labor issues and standards.[1] Thus far, all the bilateral and regional free trade agreements entered into by the US in recent years contain explicit provisions on the enforcement of labor standards and the settlement of disputes on labor issues.

Why do developed countries link the implementation and enforcement of labor standards to trade agreements? The main objective apparently is to ease growing concerns over the possible adverse consequences of free trade on working conditions and the welfare of workers. In particular, human rights activists in many developed countries are afraid that developing countries will engage in a "race to the bottom" in wages and benefits in an effort to gain a competitive edge in attracting foreign investments and expanding exports. Trade unions seeking to protect jobs want to "level the playing field" in what they perceive to be unfair competition with the workers of developing countries where wages and labor standards are lower. Hence, most governments in the developed countries propose that unrestricted access by developing countries to their markets should be conditioned on the adoption and enforcement of at least some internationally recognized core labor standards.

On the other hand, many developing countries, even those that support labor standards in principle, are against including them in trade agreements out of fear that developed countries may use them to restrict imports in what, in effect, is some form of disguised protectionism. There is also a concern that the push for global standards is a misguided attempt

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[1] The authority allows the US President to fast track approval of bilateral or multilateral trade agreements with little debate in Congress. Hence, a proposed agreement is either completely accepted or rejected by Congress.

to impose developed country institutions and practices inappropriate for developing economies. It is often argued that denying countries with low labor standards access to foreign markets is self-defeating. By restricting trade, developed countries perpetuate the economic backwardness of developing countries, making improvements in the welfare of workers an even more difficult undertaking.

The overall aim of this study, therefore, is to anticipate how labor issues might play out in the negotiations between the Philippines and the US for a free trade agreement. It will also suggest the appropriate track to follow in the negotiations on labor issues.

In particular the paper has the following objectives:

a. to identify the core international labor standards that countries are required to adhere to and to determine the official commitment of the Philippines to these standards;
b. to evaluate the country's enforcement of these standards particularly on the country's export industries;
c. to look into the role that core labor standards played in FTA negotiations of the US with other developing countries and the impact of these on the exports of the latter;
d. to ascertain the potential impact of the possible inclusion of core labor standards in the RP-US FTA negotiations on Philippine exports; and
e. to suggest the proper approach to follow on labor issues in the RP-US negotiations on an FTA.

2. Core Labor Standards: Definition and Rationale[2]

Core labor standards (CLS) are a set of four internationally recognized basic rights and principles regarding employment consisting of the following: ,

(1) The elimination of all forms of forced or compulsory labor;
(2) The effective abolition of child labor, with priority given to the worst forms;
(3) Equal opportunity and non-discrimination in employment; and
(4) Freedom of association and the right to collective bargaining.

[2] A comprehensive discussion of the core international labor standards can be found in the websites of the International Labor Organization and the World Bank.

The recognition of these four principles as the set of international core labor standards can be traced to the Declaration of the 1995 Copenhagen Summit on Social Development and in the 1998 ILO Declaration on the Fundamental Principles and Rights at Work. The Singapore Ministerial Declaration adopted on December 13, 1996 contains a statement by the WTO member-countries renewing their commitment to the observance of these core labor standards and expressing their support to the ILO in setting these standards and in promoting them. At the Doha Ministerial in 2001, WTO member countries reaffirmed the Singapore Declaration on these internationally recognized core labor standards.

While there are other labor standards, the list above constitutes the "core" that all countries are required to adhere to regardless of their level of economic development. It is clear from the list, nevertheless, that the CLS does not in any way prescribe a uniform level of working conditions, wages, and health and safety standards applicable to all countries. However, apart from the four ILO standards, the US often includes "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health" among the core international labor standards that they expect other countries to adhere to (Bolle, 2003).

2.1. *Forced or compulsory labor*

Forced or compulsory labor is any work or service, paid or unpaid, that is performed involuntarily or under the threat of penalty. It includes *indentured labor* wherein an employer forbids a worker to leave employment at his or her discretion; *bonded labor* wherein a person, usually a child, works to pay off a debt incurred by another, often the parent; and finally, *forced prison labor* carried out in violation of allowable conditions.

Aside from being unquestionably a fundamental abuse of basic human rights, forced labor exacerbates poverty of those who are forced to work since it is undertaken without proper compensation. Other workers may be adversely affected too if forced labor will exert downward pressures on their wages

The relevant and key international conventions on forced labor include the United Nation's 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the ILO's Forced Labor Convention of 1930 (No. 29) and the ILO's Abolition of Forced Labor Convention of 1957 (No. 105).

2.2. *Child Labor*

Child labor refers to paid or unpaid work undertaken by children below 14 years of age in order to produce goods or services for the market. UN and ILO Conventions set the age at which a person can be allowed to work. Developing countries may set it at 14 years of age with the understanding that it be increased over time. A higher minimum of 18 years of age is set for hazardous work and a lower one at 12 years of age for "light work" or work that is not harmful to the physical and mental health of a child and does not interfere with their schooling.

A distinction is often made between "child labor" and "child workers". The former refers to work by children that is harmful to their physical and mental well-being and that interferes with their schooling while the latter refers to light work by children usually undertaken under the supervision of their parents. ILO conventions prohibit child labor but not child work.

In recent years, the campaign against child labor has shifted to the complete elimination of the *worst forms of child* labor. Included among the worst forms are debt bondage or slavery, the use of children in armed conflict, the use of children in illegal activities, and work that, by its very nature, harms the health, safety, or morals of children.

The prevailing view among development specialists is that child labor, particularly when it is most abusive, is likely to hamper the mental, physical, or psychological development of children thereby reducing their future productivity. As a consequence, it tends to perpetuate poverty across generations by reducing the earning potential of the children of poor families, the ones who are most likely to engage in child labor.

The relevant and key international conventions on child labor include the 1989 UN Convention on the Rights of the Child, the ILO 1973 Convention on the Minimum Age of Employment (No. 138), and the ILO 1999 Convention on the Worst Forms of Child Labor (No. 182).

2.3. *Discrimination*

Discrimination is defined as a distinction, exclusion, or preference in pay or access to employment, training, and working conditions given to persons on the basis of race, color, sex, religion, political opinion, national extraction, and social origins. The relevant provisions covering this are ILO Conventions No. 100 and 111.

Those who oppose discrimination in employment and pay argue that it not only undermines human dignity and development but also holds back

economic growth by causing human capital resources to be underutilized and misallocated. It can also exacerbate poverty when it is aimed against groups that are already vulnerable such as ethnic and religious minorities and women.

2.4. *Freedom of Association and Collective Bargaining*

Freedom of association and collective bargaining are the rights of workers covered by the following ILO Conventions:

1. ILO Convention No. 87 – recognizes the right of workers to join together to pursue their interests.
2. ILO Convention No. 98 - provides protection against interference of workers' right to organize and protects measures promoting collective bargaining. The Convention also prevents employers from conditioning employment on worker's pledging not to join or to relinquish membership in a union and from dismissing or otherwise punishing a worker due to union activities.

Unlike the other three labor standards discussed above, the application and promotion of this standard is fraught with controversy rooted in strong but conflicting opinions about the role of unions in society.[3]

Some people view unions as monopolies that advance the welfare of their members at the expense of other members of society. According to this view, when unions succeed in raising the compensation of their members, firms will pass on the costs to consumers in the form of higher prices. This will reduce the real wage of all workers. The increase in the nominal wages of workers in the union sector will also induce a reallocation of labor to the non-union sector as unionized workers are laid off. This will reduce the wages and welfare of workers in the non-unionized sector. Moreover, when firms have to share their profits with unions, this creates a *hold up problem* wherein unionized firms reduce investments in physical capital and R & D. Finally unions, by imposing constraints on managerial prerogatives particularly with respect to hiring, staffing, and disciplining workers, can exert a negative impact on productivity and employment by effectively increasing labor costs per unit of output.

On the other hand, others view unions as positive forces in promoting the welfare and the productivity of workers. One way is by providing a "voice" mechanism through which workers' suggestions and preferences

[3] The discussion in this sub-section is based on Ehrenberg and Smith (1997) and Aidt and Tzannatos (2001).

can be communicated to management. This enhances worker motivation and morale and reduces exit or "voting with the feet." With lower quit rates, firms have the incentive to provide firm specific training to their employees increasing worker productivity in the process.

The view that unions reduce social welfare is based on the assumption of competitive frictionless labor markets where free entry and exit by the workers across firms ensures that workers will choose jobs where their productivity and satisfaction (utility) is maximized. This is not necessarily the case if the cost of moving is very large. In the face of high mobility cost, the alternative to the exit mechanism is "voice". Unions offer workers a *collective voice* about the various conditions of employment free of the risks and burdens of voicing grievances individually.[4] Also, if firms have substantial monopoly power in their output markets, then they would be earning excess profits. Through the union, workers can share in it with no adverse effect on total output and, hence, no social cost associated with higher wages.

While the empirical evidence on the economic impact of unions is mixed, good industrial relations between employers and employees can, without question, lead to stable social and economic outcomes beneficial to unionized and non-unionized workers.

3. Core Labor Standards: The Philippine Experience

This study will evaluate Philippine adherence to core labor standards in three ways. First, it will look into ratification by the government of relevant ILO Conventions on the international core labor standards. Second, it will look into inconsistencies between the provisions of the ratified conventions and national legislation. Finally, it will look into the application in practice of the core labor standards in the country.

3.1. *Ratification of ILO Conventions on the Core Labor Standards*

Table 1 shows the status of the ratification of the fundamental ILO conventions underpinning the core international labor standards of the

[4] According to Ehrenberg and Smith (1997), without unions, workers do not have the incentive to voice their grievances as individuals. For one, employers may respond to complaints by firing "troublemakers." Moreover, workers may try to "free-ride" on the effort of others to secure changes in workplace conditions since they will benefit without having to contribute. Hence, every worker will avoid complaining in the hope that someone else will take the risk and assume the cost of voicing the workers' concerns.

Table 1. Ratification of ILO Core International Labor Standards by the Philippines and the United States

Convention	Philippines		United States	
	Status	Ratification date	Status	Ratification date
No. 29: 1930 Convention on Forced Labor	Ratified	17-5-2005		
No. 105: 1957 Convention on the Abolition of Forced Labor	Ratified	17-11-1960	Ratified	25-09-1991
No. 138: 1973 Convention on the Minimum Age of Employment	Ratified	4-6-1998		
No. 182: Convention on the Worst Forms of Child Labor	Ratified	28-11-2000	Ratified	2-12- 1999
No. 100: 1951 Convention on Equal Remuneration	Ratified	29-12-1953		
No. 111: 1958 Convention on Discrimination	Ratified	17-11-1960		
No. 87: 1948 Convention on the Freedom of Association and Protection of the Right to Organize	Ratified	29-12-1953		
No. 98: 1949 Convention on the Right to Organize and Collective Bargaining	Ratified	29-12-1953		

Source: International Labor Organization, ILOEX Database Of International Labor Standards.

Philippines and the US. As shown in the table, the Philippines has ratified all the conventions, the most recent being the 1930 Forced Labor Convention (No. 29), which was ratified by the Philippine Senate only in May 2005. Although the Tripartite Industrial Peace Council, the legal body tasked to study ILO conventions has already endorsed ratification of this convention as early as the year 2000, the Philippine government has delayed ratification on grounds that it did not wish to be bound by a commitment to prohibit the obligation to work as a form of punishment imposed on prisoners. The ILO has repeatedly emphasized, however, that Convention No. 29 does not totally prohibit the imposition by the courts

of forced or compulsory labor on convicted prisoners for so long as certain conditions are met.

Nevertheless, the table also shows that the Philippines has ratified more ILO conventions on the core labor standards than the United States. The Philippines has ratified 8 out of the 8 "core" conventions. In contrast, the United States has ratified only two – Conventions 105 on the abolition of forced labor and 182 on the worst forms of child labor. The downloadable ILOEX database also reveals that of the approximately 180 conventions of the ILO, 30 have been ratified by the Philippines as against only 14 by the United States.

The United States will ratify a convention only when it has ascertained that it is consistent with its own laws and, at this stage, it is unwilling to change US laws in ways that will allow it to ratify additional conventions (Elliott, 2003). Given this, it is highly possible that the United States will adhere to its usual position, as it has in other free trade agreements, of requiring only the enforcement of national laws rather than international standards when it negotiates with the Philippines on a free trade agreement. Nonetheless, since most of these conventions are already incorporated in Philippine laws, the US position requiring the Philippines to enforce its own national laws is tantamount to a requirement to enforce the core international labor standards.

3.2. *Core Labor Standards and National Legislation*

Palafox (2002) notes that social and labor legislation of the Philippines is one of the most advanced in Asia covering almost all areas of the core international labor standards. The Constitution and the Labor Code protect the rights of workers to association and collective bargaining including the right to strike. They also contain a number of provisions protecting women from discrimination in employment and wages. The 1992 child protection law, R.A. No. 7610 provides for the protection of children against abuse, commercial sexual exploitation, trafficking and participation in illicit activities. R.A. 7658 sets the minimum age of employment to 15 for any kind of work and 18 for hazardous work.

Nevertheless, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has called attention to

[5] The CEACR is the supervisory body tasked to examine compliance of countries with ILO standards. Their reports are available through ILOEX, the downloadable database on international labor standards.

inconsistencies between certain ratified conventions and the Philippines' labor laws.[5] It has repeatedly called for amendments to Book V of the Labor Code (Industrial Relations), which sets what they consider excessive numerical requirements for establishing a union, a federation, or a national union.[6] It has raised objections to the provision prohibiting aliens from engaging in any trade union activity under penalty of deportation.[7] It has also expressed concern over the extensive powers given the Secretary of Labor and Employment to submit certain disputes to compulsory arbitration and thereby declaring strikes illegal and the blanket authority given to the President to declare industries as indispensable to national interests, the workers of which are therefore banned from participating in a strike.[8] It has expressed opposition to the stiff penalties imposed under the Code on workers participating in illegal strikes.[9] These provisions of Philippine labor law allegedly violate the spirit of Convention No. 87 (Freedom of Association and Protection of the Right to Organize).

The CEAR has also suggested that, in accordance with the spirit of Convention No. 98 (Right to Organize and Collective Bargaining), public sector employees not engaged in state administration should have the right to negotiate the terms and conditions of their employment. The Committee has also raised concerns that certain provisions of the country's Penal Code violate Convention No. 105 or the Forced Labor Convention of 1957.[10] Finally, the Committee expressed its concern that employers' preference for hiring males is not considered unlawful discrimination because of the absence of any specific legislative prohibition against it.

Some unions have also expressed criticism over the cancellation of their registration for failing to comply with the reportorial requirements of the DOLE. The DOLE argues that this policy does not infringe on the workers right to organize but is meant to discourage "fly-by-night" unions

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[6] In particular, union recognition requires that at least 20 percent of the total number of workers in a bargaining unit should be members while a federation or national union will be given recognition only when they have at least ten recognized unions as members.

[7] According to the DOLE, foreigners are allowed to engage in trade union activity as long as they have valid working permits and are citizens of countries allowing Filipino citizens the same right.

[8] The CEAR wants this provision of the Labor Code to be limited to disputes involving industries engaged in providing essential services defined as those which, when interrupted, would endanger the life, personal safety, or health of the whole or part of the population.

[9] The Labor Code provides that any union officer who participates in an illegal strike may be dismissed and, if convicted, imprisoned for up to three years.

[10] Specifically, the Committee argued that persons convicted of political crimes such as sedition or for participation in illegal strikes should be exempted from penalties involving imprisonment with the obligation to work.

trying to make money out of membership fees and doing practically nothing to advance the interests of their workers.

3.3. *Compliance with National Labor Laws*

While the country's labor laws would appear to reflect international labor standards generally, effective compliance with the provisions of the law is the more serious concern. This section examines Philippine compliance with its own labor laws at two levels: first, on domestic laws pertaining to the core labor standards, and second, on the other national labor laws. The latter is included on the assumption that the United States will focus on the enforcement of existing national labor laws rather than on core labor standards in its FTA negotiations with the Philippines.

3.3.1. Forced Labor

A US State Department (2003) report cited cases of forced and bonded labor especially by children. These occurred mainly in illegal activities such as prostitution and drug trafficking. Another form of forced or bonded labor took the form of a practice by some recruiters of bringing young girls to the cities to work, often as domestic helpers, under terms that involved a "loan" advanced to the parents which the children were obliged to pay through their work. There were no reports, however, of forced labor in the formal sector.

The Trade Union Congress of the Philippines (2003) alleged that, in order to meet export orders, a number of Philippine companies were resorting to what they consider tantamount to forced labor – forced overtime work. By law, the standard legal workday should not exceed eight hours. Beyond this, the company would have to pay an overtime rate of 125 % of the hourly rate on ordinary days and 130% for rest days and holidays. It should be noted, however, that under Philippine laws, there is no legal limit on the number of overtime hours that a firm may require from its workers.

3.3.2. Child Labor

Philippine law prohibits the employment of children under the age of 15, except when done under the direct supervision of parents or guardians. The law also forbids the employment of persons below 18 years of age in hazardous or dangerous work.

The latest Survey of Child Labor Survey (SCL) conducted by the National Statistics Office in 2000-2001 showed that there were over 4 million

working children, an increase from the number reported in the 1994-1995 survey (Table 2). Child workers are predominantly male and most of the work is done in rural areas. According to both surveys, more than half of these children were exposed to hazardous working environments, such as in farms, mines and quarries, dockyards, and on fishing boats.

According to Villamil (2002), most child work occurred in the informal sector of the economy, often in family settings as unpaid family workers in farms or in home-based family enterprises in the urban and rural areas. There are documented cases of children engaged in the production of exportables such as those in plantation agriculture, garment manufacturing subcontracted to home-based workers, fashion accessories, and other handicrafts produced for the export market. As

Table 2. Child Work in the Philippines, 1994-1995 and 2000-2001

Data Items	1994-1995	2000-2001
Total number of children 5-17 yrs. old	22,382,000	24,851,000
Number of working children 5-17 yrs. old	3,577,000	4,018,000
Proportion of working to total number of children	16.0%	16.2%
Distribution of working children by location		
Rural	67.1%	70.0%
Urban	32.9%	30.0%
Distribution of working children by gender		
Male	65.4%	63.4%
Female	34.6%	36.6%
Distribution of working children by age		
5-9	6.0%	6.1%
10-14	44.7%	48.1%
15-17	49.3%	45.8%

Source: NSO, Survey of Child Labor (SCL), 1994-1995 and 2000-2001

expected, government has always been hesitant to prosecute a poor family because it had a working child.

Nevertheless, the Government has imposed fines and pursued criminal prosecution against some companies found violating child labor

laws in the formal sector, particularly in manufacturing. The main approach, however, has been to collaborate with international organizations and non-government organizations (NGOs) in implementing programs to develop less harmful employment alternatives for children, return them to school, and offer families better options to child work.

3.3.3. Discrimination

The US State Department (2003) report observed that while women have most of the rights and protections accorded to men under Philippine law, it is not always the case in practice. They concluded that women continued to face some discrimination in employment. The basis for this conclusion is that while more women than men enter secondary and higher education, unemployment rates were consistently higher for women than for men and that women's salaries averaged approximately 47 percent lower than their male counterparts.

As shown in Table 3, although unemployment rates were historically higher for females than they are for males, the difference has narrowed significantly so that in the year 2002, male and female unemployment rates were practically the same. What is particularly

Table 3. Unemployed Persons and Unemployment Rate, By sex, Philippines: 1988-2002 (In percent)

YEAR	Labor Force Participation Rate			Unemployment Rate		
	Both Sexes	Male	Female	Both Sexes	Male	Female
1988	66.1	84.2	48.3	9.6	8.7	11.1
1989	66.0	83.8	48.7	9.2	8.1	11.0
1990	64.4	81.9	47.2	8.4	7.4	10.1
1991	66.4	83.9	49.3	10.6	9.3	12.8
1992	66.0	83.9	48.5	9.9	8.9	11.5
1993	65.6	83.0	48.4	9.3	8.4	10.7
1994	65.5	83.0	48.2	9.5	8.8	10.6
1995	65.8	83.0	48.5	9.5	8.9	10.7
1996	66.7	83.5	49.8	8.6	7.9	9.7
1997	66.3	83.5	49.3	8.7	8.1	9.8
1998	65.9	83.2	49.1	10.3	9.8	11.0
1999	66.4	82.9	50.1	9.8	9.7	10.0
2000	64.9	81.4	48.5	11.2	10.9	11.6
2001	67.1	82.4	51.8	11.1	10.8	11.6
2002	67.4	82.0	52.8	11.4	11.1	11.8

Source: Yearbook of Labor Statistics, Bureau of Labor and Employment Statistics

surprising is the tapering off of gender differences in unemployment despite the significant increase in the proportion of women looking for work.

Moreover, a study by Alba (1999) of the gender wage differential in the Philippines using 1994 data revealed that although the wage of the average male was about 26.5 percent higher than that of the average female, the wage differential was statistically non-existent. This implied that the differential could be explained by factors other than discrimination. The assignment of women mainly in secondary sector jobs that are unstable and characterized by relatively low pay (but which also allows flexibility in terms of work hours) can perhaps explain the observed wage differential between males and females. That females have traditionally entered and left the labor force frequently because of marriage and childbirth may, in turn, explain why women are often consigned to or voluntarily take in secondary jobs.

3.3.4. Freedom of Association and Collective Bargaining

Table 4 shows that there were about 3.9 million workers in the year 2002 who were members of a total of 11,365 registered labor organizations. They represented a mere 26.7 % of the total wage and salary workers or about 12 % of the entire labor force. There was a significant and steady increase in the proportion of organized workers from 1988 up to 1995. There was a steady decline subsequently. Although union membership has been increasing in absolute terms throughout the period, Table 5 shows that this was due primarily to increases in union membership in the public sector.

The reason for the relatively low rates of unionization in the country is not immediately obvious. Palafox (2000) argued that this could be attributed to the fact that only 50 % of the employed labor force are wage workers and that over 90 % of workers are employed in micro and small industries where unions cannot be viable.

Increased foreign competition may be another major factor contributing to the decline in union strength. This can be inferred from Table 4 which shows the decline in the proportion of organized workers happening during the mid-90's when trade liberalization policies began to be implemented in earnest. By making the demand for labor more elastic, increased competition from foreign firms makes it difficult for workers to

Table 4. Labor Organizations as Percent to Total Wage and Salary Workers, Philippines 1986-2002

YEAR	Total Existing Labor Organizations		
	Number	Membership	Percentage to Total Wage and Salary Workers
1988	3,468	2,180,437	22.8
1989	4,084	2,972,427	29.4
1990	4,636	3,055,091	29.7
1991	5,236	3,112,993	29.7
1992	5,710	3,142,031	29.5
1993	6,340	3,196,750	29.6
1994	7,274	3,511,084	31.0
1995	7,882	3,586,835	30.2
1996	8,250	3,612,353	28.6
1997	8,822	3,634,638	27.0
1998	9,374	3,686,778	27.0
1999	9,850	3,731,076	26.4
2000	10,296	3,788,304	27.2
2001	10,924	3,849,976	26.7
2002	11,365	3,916,684	26.7

Source: 2003 Labor and Employment Statistics, Bureau of Labor and Employment Statistics

Table 5. Number and Membership of Existing Labor Organizations in the Public and Private Sectors, Philippines: 1998-2002

YEAR	Total Existing Labor Organizations		Private Sector Unions		Public Sector Unions	
	Number	Membership (in thousands)	Number	Membership (in thousands)	Number	Membership (in thousands)
1998	9,374	3,687	8,816	3,537	558	150
1999	9,850	3,731	9,229	3,570	621	161
2000	10,296	3,788	9,605	3,611	691	177
2001	10,924	3,850	9,981	3,641	943	209
2002	11,365	3,917	10,215	3,680	1,150	237

Source: 2003 Labor and Employment Statistics, Bureau of Labor and Employment Statistics

[11] If the demand for labor is highly elastic, any increase in wages will cause a much larger decline in employment and workers tend to be more concerned about keeping their jobs. When competition increases, the demand for labor tends to be more elastic because part of the higher cost of labor will have to be passed on to consumers who will then reduce consumption. This ultimately leads to a decrease in employment.

gain significant benefits from collective action.[11] This makes union membership less attractive to workers.

Increased competition may have also caused employers to more strongly resist efforts to organize workers into unions. The US State Department (2003), for instance, reported that the dismissal or threatened dismissal of union members was common and that some workers were fired after merely speaking with union organizers. There were also reports that some companies offered cash to employees who agreed to identify union organizers and that some companies ordered overtime to disrupt union meetings.

Moreover, although labor laws should apply uniformly throughout the country, local political leaders and officials who govern special economic zones (SEZs) are reported to have attempted to frustrate union organizing efforts by maintaining union-free and strike-free policies. Disagreement over the interpretation of the provisions of the laws creating SEZs has created confusion regarding the applicability of laws recognizing the rights of workers to organize and strike. Despite objections from the Department of Labor and Employment (DOLE), the local administrators of the SEZs are claiming authority to conduct their own inspections citing this as one of the special privileges given to investors as intended by Congress. Because of restrictions on organizing activities within the SEZs, union successes in them are reported to have been few and marginal.

3.3.5. Other Labor Laws and Standards

Table 6 shows the number of establishments inspected by the DOLE and the number and proportion found violating general labor standards. Of the 32,363 establishments inspected in 2002, over 50 percent were found to be violating at least one labor law. There does not seem to be a significant improvement over time in the proportion of firms found violating labor laws.

According to the State Department (2003), the most common violations consisted of the underpayment of the minimum wage. DOLE officials estimated that 60-70 percent of workers who should be covered by the minimum wage were actually underpaid. A common practice by firms was to hire employees at apprenticeship rates, a rate below the minimum wage, even if there was no approved training in their production-line work. For SEZs, the most common complaints were the nonpayment of social security contributions, bonuses, and overtime pay.

Table 6. Establishments Inspected and Found Violating General Labor Standards, Philippines: 1980-2002

YEAR	Establishments Inspected	Establishments Found with Violations	Percentage of Establishments Found with Violations
1980	504	433	85.91
1981	367	297	80.93
1982	1,113	897	80.59
1983	712	612	85.96
1984	1,034	767	74.18
1985	1,307	676	51.72
1986	1,441	754	52.32
1987	12,044	5,145	42.72
1988	12,983	6,590	50.76
1989	27,219	13,901	51.07
1990	25,043	15,242	60.86
1991	25,854	14,968	57.89
1992	31,773	16,264	51.19
1993	37,485	22,482	59.98
1994	74,966	46,679	62.27
1995	77,849	43,380	55.72
1996	73,851	35,256	47.74
1997	60,134	30,770	51.17
1998	37,080	21,538	58.09
1999	50,129	25,588	51.04
2000	35,011	17,976	51.34
2001	33,914	17,719	52.25
2002	32,363	16,313	50.41

Source: 2003 Labor and Employment Statistics, Bureau of Labor and Employment Statistics

The law also provides for a comprehensive set of occupational safety and health standards. The DOLE has responsibility for policy formulation and review of these standards. However, the task of monitoring compliance with labor standards and laws can only be a cursory exercise considering that only 260 positions are available for inspectors (including supervisors and heads of offices) who have to visit 800,000 establishments nationwide. To overcome this severe limitation, the DOLE has adopted the practice of mobilizing unions to assist it in monitoring compliance by large firms (200 or more workers) with labor laws.

4. Labor Standards in U.S. Free Trade Agreements

In this section, the paper looks into the main features of the labor provisions contained in bilateral free trade agreements entered into by the United States. Only three agreements will be examined since they have become the model or standard for all subsequent agreements. These are the labor provisions in the North American Free Trade Agreement (NAFTA) and the bilateral free trade agreements between the US and Jordan, the US and Singapore, and the US and Chile.

4.1. *The North American Agreement on Labor Cooperation (NAALC)*

Sometime in 1993, the United States, Mexico, and Canada adopted a side agreement, formally known as the North American Agreement on Labor Cooperation or NAALC, to the North American Free Trade Agreement (NAFTA). Initially NAFTA, signed by then President Bush in 1992, contained only a few explicit provisions on labor issues. Soon after Clinton took office, however, negotiations on a comprehensive side agreement on labor began. This was in line with a campaign promise he gave earlier to organized labor in the US to allay their fears of a massive relocation of US companies to Mexico seeking to take advantage of the latter's relatively low wages and lax labor standards.

Initially, the US proposed the creation of a multilateral commission with the authority to enforce a mutually agreed upon set of labor standards. This was eventually discarded in the face of stiff opposition from Mexico and Canada. Hence, in the final version of the agreement, no attempt was made to harmonize or adopt uniform labor standards. Instead, the pact enjoined members to comply with and effectively enforce their own labor laws. In particular, the agreement required the creation of a watchdog to monitor the implementation and enforcement of national labor laws in each country, a forum for consultations and the settlement of disputes over the inadequate enforcement of labor laws, and a venue for joint initiatives to promote better working conditions and labor practices.

The NAALC created a Commission for Labor Cooperation (consisting of a Council of Ministers and a Secretariat) to oversee implementation of the agreement. The Council meets once a year and serves as the governing body. The Secretariat, which is permanently based in Washington D.C., implements policies and programs and provides technical support to the Council. The Council appoints the Executive

Director of the Secretariat for a three-year term from among the member countries on a rotating basis.

The NAALC also created the National Administrative Office (NAO) under the labor ministry of each member country. The NAO serves as the main bridge among the three countries for exchanging information and addressing labor issues arising under the agreement. It is the NAO that receives complaints from petitioners about alleged violations of labor laws in other member countries. On the basis of these complaints, it can initiate investigations and report their findings. If the domestic NAO determines that a complaint merits action, it may request consultations with the concerned foreign NAO. If the issue remains unsettled, the domestic NAO can recommend that consultations at the ministerial level take place.

If the matter remains unresolved at the ministerial level, any of the parties involved can request the establishment of an Evaluation Committee of Experts (ECE), consisting of experts from outside the NAALC machinery, to conduct an analysis and give non-binding recommendations. If the issue is unresolved at the ECE level, the Council then forms an arbitration panel. If the panel decides that a pattern of violations exists, it will recommend adoption of an action plan to remedy the situation. If the offending government fails to implement the action plan, it is assessed a financial penalty in the form of a fine or an import levy.

The NAALC identified 11 labor rights, referred to as principles, and divides these into three levels or tiers. The prescribed remedies for inadequate enforcement of these rights vary according to the tier.

The first level of labor principles refers to the freedom of association, collective bargaining, and the right to strike. Remedial measures for non-enforcement of these principles are limited to a NAO review and ministerial oversight. ECE reviews and penalties for non-enforcement are not applicable in these cases.

The second level of principles covers forced labor, gender wage discrimination, employment discrimination, compensation for work-related injuries or illnesses, and the protection of migrant labor. Complaints on the non-enforcement of these principles are subject to NAO review, ministerial consultations, and an evaluation by an ECE. However, these issues are not subject to arbitration by a panel nor can monetary penalties be imposed for non-compliance.

The third level consists of child labor, minimum wages, and occupational safety. These get the full treatment; NAO review, ministerial consultations, expert evaluation, panel arbitration, and possibly, fines imposed on erring firms.

4.2. The U.S.-Jordan Free Trade Agreement

The US-Jordan Free Trade Agreement was enacted on December 17, 2001. It broke new ground by including provisions on labor standards in the main body (Article 6) of the trade agreement rather than as a side agreement as in the NAALC.

While the parties to the NAALC promised to effectively enforce a wide number of labor laws, in the case of the US-Jordan agreement, sanctions are permitted only for a persistent pattern of non-enforcement of laws pertaining to child labor, minimum wages, and occupational safety and health. The parties are prohibited from waiving or derogating from existing labor laws in order to encourage trade. But, at the same time, they are not prohibited from modifying existing labor laws.

In the US-Jordan FTA, the labor principles that the parties must adhere to are not divided into tiers with certain levels allowing stronger mechanisms for their resolution. Instead, sustained or recurrent non-enforcement of national laws covering the four core international labor standards plus acceptable working conditions with respect to minimum wages, hours of work, and occupational safety and health could all lead to sanctions. The grounds leading to the imposition of sanctions are therefore broader in the case of the US-Jordan FTA.

On the other hand, this agreement also sets a higher standard than the NAALC for the opening of a case. A failure to effectively enforce a relevant labor law will only be of concern to the parties to the agreement if it takes place "in a manner affecting trade" between the two countries. Hence, only violations of labor laws in industries producing goods that are traded between the two countries can be the subject of dispute settlement.

Alleged violations of the labor agreement are subject to the same dispute settlement procedures as the trade and investment agreements and these in turn are patterned after the dispute settlement procedures in commercial disputes. If consultations, a dispute settlement panel, and the joint committee created to implement the agreement cannot resolve a dispute, then the complaining party can take any "appropriate and commensurate" action.

4.3 *Singapore and Chile*

As in the Jordan FTA, the labor provisions in both the Singapore and Chile agreements are located in the main body of the agreement. The provisions in these two agreements are similar and they combine labor provisions that are found in both the NAALC and the Jordan FTAs.

As in all previous agreements, the basic obligation of the parties is to effectively enforce their own labor laws as they affect trade between the two countries. The parties are also prohibited from waiving or derogating from their existing labor laws in order to encourage trade and investment. As in the US-Jordan FTA, no distinction is made on the applicable labor standards.

Like the NAALC, monetary fines can be imposed on the offending party in the case of unresolved disputes over labor issues and tariff concessions will be suspended if necessary to collect the fine. Violations would be subject to the same dispute settlement procedures as in commercial disputes as in the case of the US-Jordan agreement.

5. Labor Standards and Export Performance

What is the possible impact of a stricter enforcement of labor standards on Philippine exports? Labor standards would have adverse consequences on Philippine exports if stricter enforcement will add to the production costs of firms, restrict their flexibility, and impair their ability to undertake needed adjustments to changing economic conditions, all of which will tend to raise the cost of employing labor. The higher cost of employing labor in the country, *ceteris paribus*, will reduce the actual and potential output of our export industries by discouraging investment and by making our exports less competitive in markets abroad.

5.1. *Enforcement of the Core Labor Standards*

For most of the core labor standards, stricter enforcement is not likely to increase the unit cost of labor. The use of force or bonded labor, as pointed out earlier, is rare and confined to illegal activities and to domestic services. Requiring workers to render overtime work when necessary is not a violation of labor laws in most countries including the Philippines and neither is it considered a contravention of the core international labor standards.

Most child labor is undertaken under the supervision and guidance of parents in home-based family enterprises and therefore is not, strictly speaking, a violation of Philippine laws. Nevertheless, stricter enforcement of existing legislation on child labor will have minimal effect since industries that use child labor directly, or even indirectly through subcontracting arrangements with households, make up only a tiny fraction of the country's total exports.

There is also no evidence that firms discriminate systematically against the employment of women. On the contrary, there are indications that women are preferred particularly for employment in labor-intensive export manufacturing such as in the electronics and garment industries, among others.[12] The observed earnings differential between males and females need not be due to gender discrimination but can be explained by the "overrepresentation" of women in low paying jobs that provide more flexible hours and or their relatively lower (compared to males) accumulated work experience, both of which may be occasioned by their primary role in child-rearing. Indeed, the gender earnings gap is characteristic of most countries, both developed and developing. In the US, for instance, women's wages were, on average, only 67 percent of the average wage of their male counterparts (Blau and Kahn, 1995).

On the other hand, eliminating the "no union, no strike" policy practiced implicitly by local government officials and administrators in the special economic zones may significantly diminish the country's capacity to export. Most of the country's major export firms are located in these zones where they enjoy special tax incentives. The fear is that a more liberal policy, particularly on militant trade unionism and strikes, may lead to a situation similar to that experienced by the country in the mid-eighties. In 1986, after the downfall of the repressive regime of President Marcos, the Philippines was beset by over 580 industrial strikes, the highest ever recorded. The SEZs were particularly affected and started to lose investment and jobs as foreign enterprises pulled out. Employment in the Bataan Export Processing Zone, for example, fell from its peak of 21,729 in 1984 to 14,101 in 1993 (ILO, 1998).

A "no union, no strike" policy may not necessarily be desirable nor would it always guarantee industrial peace. As pointed out earlier, by

[12] *See, for instance, Edralin (2003).*

providing workers with a "voice", unions can help to reduce the cost, both to the workers and to firms, of high quit rates. Low quit rates in turn raise worker productivity by providing incentives to firms to provide on the job training because the cost associated with training can only be recovered if workers stay. Moreover, the incidence of strikes may have more to do with information asymmetries than with the efficacy of repressive labor policies.

Most analyses in recent years on strike activity are based on some kind of information asymmetry between workers and managers.[13] Workers, who would want a share in it, do not know what the actual or expected profits of a firm are and do no trust managers to be truthful about it. A strike is one means by which workers get a "signal" on the true state of a firm's profitability. If the firm's profit is greater than stated, then management should be less willing to put up a costly fight and will give in immediately to the workers' demands. If the firm offers resistance so that the strike is prolonged, then it is a signal that it really cannot afford the wage demands of the workers.

In some cases, union leaders may know the employer's true financial position. However, convincing the rank and file to moderate their wage demands when the firm is facing difficulties (something that the rank and file cannot validate) may only generate suspicions that the leaders had "sold out" to management. Under these circumstances, a better strategy would be for the leaders to call a strike to appear strong and militant and to convince the workers to moderate their demands when the strike becomes drawn-out so that they appear to be reasonable as well. This model of strike dynamics suggests that strikes will be less likely in firms where owners and managers are perceived by workers to be transparent and trustworthy.

According to the ILO (1998), industrial peace returned to the SEZs after many years of industrial conflict because of reforms that established a more stable system of labor-management relations. In particular, they cite the effort of the Department of Trade and Industry to promote the establishment of Labor-Management Councils in the zone enterprises. One can surmise, in the light of the above model of strike dynamics, that these councils may have been effective in reducing strikes by providing workers access to information on the actual conditions of the firm and by fostering a climate of trust between workers and managers.

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[13] See Ehrenberg and Smith (1998) for some examples.

5.2. *Strict Enforcement of Other Philippine Labor Laws*

Stricter enforcement of other labor laws, on the other hand, may constrain or even reduce the country's ability to expand exports. According to Sicat (2004), the formal labor market is so excessively regulated that it has caused the unit cost of labor to rise artificially. In particular, he cites two regulations that have made it difficult to employ new workers because it has made regular employment more expensive.

For one, legislation and executive fiat on wage supplements and other benefits is often used to raise wages rather than to allow markets and collective bargaining at the company level to determine it. Hence, wage increases are no longer based on gains in the productivity of workers and only serve to raise the cost per unit of output. Minimum wages are often set above the ability to pay of most firms.[14] The 13th month pay and cost of living allowances (COLA) that were designed to provide low-wage workers with temporary relief during momentary periods of high inflation have become permanent entitlements.

Second, and perhaps a cause for much greater concern, Philippine labor laws implicitly grant all regular employees security of tenure by imposing restrictions on the prerogative of employers to dismiss their workers. Workers cannot be dismissed without "just and authorized cause" and they are entitled to due process. This often entails a long and costly process of justification before the Department of Labor and Employment and the courts when a judicial case is filed. Hence, this represents another source of the relatively high cost of employing Filipino workers.

Moreover, this policy has deprived employers of one major instrument to discipline their workers and discourage them from shirking. By implicitly guaranteeing tenure to employees, the policy has spawned moral hazard. The risk of losing one's job from shirking is reduced and the employee has no incentive work hard. It has also made it difficult for firms to trim their work force when necessary in order to reduce costs. Consequently, for many firms, increasing the productivity of workers has become increasingly difficult to achieve.

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[14] The adoption of regional in place of national wage setting in the late 80's reduced the frequency of minimum wage adjustments and introduced some moderation in wage setting. Apparently, the regions are more concerned about preserving and expanding employment. Separating Metro Manila, where the cost of living tends to be higher, has also enabled regions to set relatively lower wage rates.

When the government began the task of dismantling trade barriers and as Philippine industries became more exposed to competition from imports, firms had to make adjustments, in areas over which they had control, in order to survive. Adjustment to the more competitive environment meant reducing the cost of labor, increasing worker productivity or both.

One way by which firms tried to adjust to a more competitive environment was via the "feminization" of the labor force. The increased use of female workers started even before the government began implementing trade liberalization measures. Labor-intensive export-oriented manufacturing firms facing strong competition in foreign markets were already employing females in large numbers. Women not only possessed characteristics that made them suitable for the kind of work needed by these industries but also were more willing to accept lower wages. They were also perceived to be less truculent and less likely to join unions.[15]

Adopting flexible labor arrangements was another way by which firms sought to overcome policies that increased labor costs or prevented them from varying labor inputs in response to changing economic conditions. This included the practice of substituting regular or permanent workers with temporary or casual labor, the greater use of part-timers and apprentices, subcontracting components of production that were previously done in-house to outsiders especially informal sector producers, and the subcontracting of services performed inside the plant (undertaken previously by regular workers of the firm) to outsiders such as in the provision of janitorial services, security, transport and maintenance, etc. Esguerra (1997) included the use of overtime or increasing the number of shifts in a day and the use of pay systems based on piece rates and bonuses rather than working time as the other measures used by firms to promote employment flexibility.[16]

To discourage the growth of contingent employment contracts, the government required firms to reclassify workers as regular employees after six months of continuous service. In response, firms simply hired their workers on a rotating basis or replaced them after six months. The attempt to provide workers employment security through legislation had

[15] Because the labor force participation of women tends to be intermittent, their expected benefits from joining unions tend to be lower.

[16] The author argued, however, that the use of flexible employment arrangements is bound to occur even without restrictive labor standards because they enable firms to adjust to unanticipated changes in output demand and to exploit economies of scale in the provision of some specialized inputs.

the opposite effect. Being adequately employed and staying employed for longer periods became a privilege enjoyed by only a few workers.

Finally, as shown earlier, firms simply ignored some of the more unrealistic labor laws particularly those concerning wages and other forms of compensation. Apparently, many firms saw that running the risk of getting caught and paying a fine (or a bribe) for violating labor laws was a cheaper alternative to paying workers legislated wages and benefits.

The "feminization" and "casualization" of the labor force are attempts by firms to legally overcome the constraints imposed by restrictive labor policies. This may have adverse consequences on the productivity and competitiveness of Philippine labor over the long run. At this stage, it is difficult for the Philippines to compete with countries like China and Vietnam in labor-intensive industries employing low-skilled workers. Given the relatively higher cost of labor, the country might be better off competing in skill-intensive industries where labor productivity is higher and consequently, it becomes feasible to pay workers higher wages. This will require greater investments in the human capital of our labor force through the formal educational system and through firm-level training.

Firm-level training and low worker turnover go hand in hand. Firms will train workers only if workers stay because they have to recover their training investments. At the same time, through training that raises the productivity of workers, firms can offer attractive compensation packages that provide incentives for workers to stay. The labor force participation of females, however, tends to be discontinuous and firms will only provide training to them if they will shoulder the cost of the training in the form of lower wages. This becomes difficult when compensation may have to be set below the floor prescribed by legislation on minimum wages and benefits. Furthermore, because of the incentives of firms to hire contingent workers, it is unlikely that these workers will be given training by firms.

6. Conclusions and Policy Implications

1. Stricter enforcement of the core international labor standards consisting of prohibitions against forced labor, child labor, gender discrimination, and the violation of the right of workers to organize and bargain collectively will have little harmful effects on Philippine exports. On the contrary, the perception that the country adheres to these standards may benefit Philippine exports to the US in the

context of an RP-US free trade agreement. For one, export-oriented multinational corporations with strong brand identities who wish to protect their reputations are more likely to locate in a country that is perceived to adhere to these standards. Moreover, the US public is less likely to patronize goods suspected of being produced in violation of these standards. Locally, better enforcement of these standards, particularly those relating to the right of workers to organize and bargain may help improve worker morale and productivity by providing them with "voice". Moreover, domestic support for free trade will be greater when these standards are enforced and followed.

2. On the other hand, stricter enforcement of Philippine labor laws, something the US is likely to insist on in its negotiations for a free trade agreement, may reduce the competitiveness of Philippine exports. Philippine laws, particularly those on compensation and the dismissal of workers, tend to raise the unit cost of labor and restrain efforts to instill discipline and the adoption of organizational measures to enable firms to adjust to a constantly changing environment. They also tend to provide firms with the incentive to employ contingent workers to the prejudice of firm-level training. These laws should be amended. The determination of real compensation should take into account the specific characteristics and conditions of industries and firms, should arise from collective bargaining between employers and workers, and should be based on real gains in labor productivity. Employers should not be hampered in their honest efforts to instill discipline in the workplace. In negotiations with the US on an FTA, it should be clear that while the Philippines is committed to enforce its labor laws, it will continue to exercise its prerogative to change these laws when the need arises.
3. Neither should the Philippines agree to the adoption of uniform labor standards applicable to both countries and especially to proposals to incorporate these standards in Philippine labor laws. The US is a developed country where labor productivity is relatively high. Its industries can afford to provide its workers with higher pay and

benefits and better working conditions. The Philippines, on the other hand, is a developing economy characterized by an excess supply of labor and low labor productivity. Its immediate goal is to promote investments to absorb excess labor allowing the process of labor shortages, increasing capital labor ratios, increasing productivity, and eventually, higher wages, to take effect naturally and gradually.

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(Footnotes)

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's who is also responsible for all errors and omissions.

[1] The authority allows the US President to fast track approval of bilateral or multilateral trade agreements with little debate in Congress. Hence, a proposed agreement is either completely accepted or rejected by Congress.

[2] A comprehensive discussion of the core international labor standards can be found in the websites of the International Labor Organization and the World Bank.

[3] The discussion in this sub-section is based on Ehrenberg and Smith (1997) and Aidt and Tzannatos (2001).

[4] According to Ehrenberg and Smith (1997), without unions, workers do not have the incentive to voice their grievances as individuals. For one, employers may respond to complaints by firing "troublemakers." Moreover, workers may try to "free-ride" on the effort of others to secure changes in workplace conditions since they will benefit without having to contribute. Hence, every worker will avoid complaining in the hope that someone else will take the risk and assume the cost of voicing the workers ' concerns.

[5] The CEACR is the supervisory body tasked to examine compliance of countries with ILO standards. Their reports are available through ILOEX, the downloadable database on international labor standards.

[6] In particular, union recognition requires that at least 20 percent of the total number of workers in a bargaining unit should be members while a federation or national union will be given recognition only when they have at least ten recognized unions as members.

[7] According to the DOLE, foreigners are allowed to engage in trade union activity as long as they have valid working permits and are citizens of countries allowing Filipino citizens the same right.

[8] The CEAR wants this provision of the Labor Code to be limited to disputes involving industries engaged in providing essential services defined as those which, when interrupted, would endanger the life, personal safety, or health of the whole or part of the population.

[9] The Labor Code provides that any union officer who participates in an illegal strike may be dismissed and, if convicted, imprisoned for up to three years.

[10] Specifically, the Committee argued that persons convicted of political crimes such as sedition or for participation in illegal strikes should be exempted from penalties involving imprisonment with the obligation to work.

[11] If the demand for labor is highly elastic, any increase in wages will cause a much larger decline in employment and workers tend to be more concerned about keeping their jobs. When competition increases, the demand for labor tends to be more elastic because part of the higher cost of labor will have to be passed on to consumers who will then reduce consumption. This ultimately leads to a decrease in employment.

[12] See, for instance, Edralin (2003).

[13] See Ehrenberg and Smith (1998) for some examples.

[14] The adoption of regional in place of national wage setting in the late 80 's reduced the frequency of minimum wage adjustments and introduced some moderation in wage setting. Apparently, the regions are more concerned about preserving and expanding employment. Separating Metro Manila, where the cost of living tends to be higher, has also enabled regions to set relatively lower wage rates.

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