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# SETTLEMENT OF LABOR DISPUTES IN MEXICO

OSCAR DE LA VEGA GOMEZ\*

## I. INTRODUCTION

This article seeks to survey the efforts of Mexican labor laws in order to harmonize the conflicting interests of capital and labor. The primary purpose of Mexican labor law is to respond to the requests made by social groups to peacefully resolve labor disputes. Labor disputes in Mexico are increasing, largely due to industrial development. The efforts of Mexican law to provide a dignified life to workers is subject to the dynamics of a society which constantly evolves. Mexican labor law also attempts to assure competitiveness and efficiency of labor through the creation of administrative agencies designed to resolve labor conflicts. As an active participant in the resolution of disputes, the State attempts to promote an amicable settlement. If no settlement can be reached, the State provides mechanisms which ensure that the dispute will be resolved quickly. Although the Mexican government takes an active role in the resolution of labor conflicts, it still affords the parties an opportunity to create their own rules through bargaining forces, rules embodied in collective bargaining agreements.

## II. RESOLUTION OF LABOR DISPUTES IN MEXICO

In Mexico, the resolution of labor disputes is a matter of constitutional concern. Article 123(XX) of the Mexican Constitution grants workers and employers the right to submit their disputes to administrative agencies called "Conciliation and Arbitration Boards" (*Juntas de Conciliación y Arbitraje*). The operation of these boards is regulated by the Federal Labor Act (the "F.L.A.")<sup>1</sup>

Conciliation and arbitration boards were established in response to the need for permanent forums to resolve labor disputes. The boards' panels are composed of representatives of employers

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\* Member of the Mexican Bar Association.

1. 299:26 D.O. 1 (2d part)(Apr. 1, 1970)(Mex.).

and workers and a representative from the government. The term "conciliation" refers to the boards' efforts to promote amicable settlement of disputes. (Conciliation is considered an essential stage of labor relations in Mexico). The term "arbitration" refers to the boards' power to refer a dispute to arbitration.

The conciliation and arbitration boards maintain close connections with the government, workers, and business enterprises. The boards' members who represent employers and workers are appointed by employer and worker organizations respectively. Such representation reflects the concern of the legislature to make workers and employers share responsibility for resolving their disputes.

### III. LABOR DISPUTE BOARDS

Mexican labor law has established the following boards to carry out the functions of conciliation and arbitration: 1) federal conciliation boards which conduct conciliation proceedings when requested by workers and employers, and resolve disputes involving three months of wages or less; 2) *ad hoc* federal conciliation boards which perform similar functions in areas of the country where permanent boards have not been established; 3) local conciliation boards, functioning in places where there are no permanent conciliation and arbitration boards; 4) federal conciliation and arbitration boards with general jurisdiction to settle labor disputes; and 5) local conciliation and arbitration boards, sitting in each state, with jurisdiction to entertain labor disputes beyond the jurisdiction of the federal conciliation and arbitration boards.

### IV. MEXICAN LABOR LAW PROCEDURE

Mexican labor law provides for different procedural mechanisms designed to promote the fast and informal resolution of labor disputes. For example, Mexican labor law imposes on the boards and courts the duty to amend a defective or incomplete complaint filed by workers to make it conform to the requirements of law. This result is accomplished through a procedural device known as *suplicia de la queja*. Article 685 of the F.L.A. provides: "[w]hen the pleadings submitted by the workers are incomplete for failing to conform to all the requirements provided by law, the board shall hold the petition admissible, if possible, and amend the pleadings accordingly."

Article 685 was introduced as part of a package of amendments to the F.L.A., which was enacted in 1980.<sup>2</sup> The wisdom of introducing this mechanism is questionable because it seems to place the court in the dual role of judge and party to the dispute. It is unthinkable that the board would dismiss a petition which has been drawn by the board itself. Although the disparity of economic bargaining positions between workers and employers calls for some kind of protection for the weaker party, such protection, in this author's opinion, should be reflected in the substantive rights of workers, and not in procedural advantages. The law should treat the parties equally and the *suplencia de la queja* violates this principle.

The jurisdiction of the boards depends on the nature of the dispute. Mexican labor legislation distinguishes between individual labor disputes (*conflictos individuales*) and collective labor disputes (*conflictos colectivos*).

#### V. CONCILIATION PROCEEDINGS

Conciliation is regarded as a first and necessary step in the attempt to harmonize the interests of labor and capital. In collective labor disputes, conciliation and arbitration boards must schedule a conciliation hearing after receiving a claim announcing a strike. The parties are required to appear in person at that hearing.

During this pre-strike period, the conciliation and arbitration boards do not perform a judicial function because the boards are not entitled to make any pronouncement on the legality of the strike. During this period, the boards are limited to assisting the parties in reaching a conciliation agreement and avoiding a strike.

Mexican labor law provides for an optional conciliation proceeding of an administrative nature before the Federal Labor Department (*Secretaría del Trabajo y Previsión Social*) at the same time that conciliation proceedings are taking place. The Secretary of Labor of each Mexican state performs the role of conciliator. The purpose of this conciliation proceeding is to supervise the execution, revision, and termination of collective bargaining agreements.

In individual labor disputes, conciliation is a mandatory step

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2. 358:3 D.O. 1 (2d part)(Jan. 4, 1980)(Mex.).

which must be exhausted before resorting to judicial proceedings. Article 876 of the F.L.A. requires the parties to appear personally before the boards, without the assistance of lawyers or representatives. Article 876 has been subject to different, and at times conflicting, interpretations. Whereas it is clear that individuals must appear in person, it is uncertain how legal entities may personally appear at the conciliation proceedings. The weight of authority is that the corporate representative who must personally appear must be authorized to undertake certain acts of administration, such as directing, inspecting, and supervising the activities of the corporation.

#### VI. RESOLUTION OF COLLECTIVE LABOR DISPUTES OF AN ECONOMIC NATURE

Mexican labor law distinguishes between economic and legal collective labor disputes (*conflictos colectivos económicos o de intereses y conflictos de derecho*). In collective disputes of a legal nature, the boards must decide if a rule of law has been correctly applied. In a dispute of an economic nature, the boards must determine whether the working conditions are to be suspended, continued or modified based on the economic situation of the employer and employees.

The F.L.A. defines an economic labor dispute as one in which the claim brought before the conciliation and arbitration boards seeks the modification or implementation of different working conditions or the suspension or termination of labor relations. In collective labor disputes, the claims can be brought by those labor unions which are parties to collective bargaining agreements, by a majority of employees who work for an enterprise or by an employer which is a party to the bargaining agreement. If the parties fail to reach an agreement on their own, the boards shall decide the issues in dispute in light of the opinions of the parties' experts, who the boards may freely interrogate.

Article 919 of the F.L.A. provides that the boards must seek a fair and social balance between the claims of workers and employers. The boards may, for example, increase or decrease personnel, determine the length of the workday or workweek and the amount of wages, or modify working conditions. The arbitral award may also provide remedies other than those requested by the parties.

Although conciliation is theoretically the best method for

resolving labor disputes, this procedure has been weakened in Mexico because employees must waive the right to strike and agree instead to submit the dispute to the boards.

## VII. DETERMINING THE LEGALITY OF THE STRIKE

Mexican law defines a strike as "the temporary suspension of the work carried out by a coalition of workers." The term "coalition of workers" defines a temporary association of workers which has no legal capacity but is allowed to strike. In order to be protected by the law, a strike must have one of the following legal purposes defined in Article 450 of the F.L.A.:

I. To obtain a balance between the factors of production, harmonizing the rights of labor with the rights of capital; II. To obtain from employers the signing of a collective bargaining agreement and to demand its revision upon expiration, according to the provisions of Title VII, Chapter III; III. To obtain from employers the signature of the contract at law and to demand its revision upon its expiration according to the provisions of Title VII, Chapter IV; IV. To demand compliance with a collective bargaining agreement or the contract at law in the enterprises in which it had been violated; V. To demand compliance with the legal provisions on profit sharing; VI. To support a strike, the objective of which is one of those listed in the preceding paragraph; VII. To demand a revision of contractual salaries to which Articles 399 and 419 refer.

With regard to Section I, the arbitration boards have held that an imbalance between the factors of production must exist in the establishment or enterprise where the strike is held. In a July 1977 decision involving the Standard Fruit and Steamship Company, the conciliation and arbitration boards found a strike to be illegal because the economic problems affecting the workers of that company were not limited to the particular enterprise but instead were shared by all workers as a result of a serious economic crisis affecting the country at large.

Sections II and III of Article 450 provide that the strike must have as a purpose the execution of a collective bargaining agreement or a contract at law. Once such an agreement has been executed, there is a presumption that a fair balance between the factors of production has been reached. Consequently, it is illegal for a labor union to call a strike during the period in which a collective

bargaining agreement is in effect.

Article 450(IV) of the F.L.A. legalizes a strike in which a labor union seeks compliance by an enterprise or establishment with a collective bargaining agreement or contract at law executed by the two parties. To the extent that the execution of a contract presumes that a balance has been reached between the factors of production, any act of the employer aimed at breaking this balance justifies a strike. It follows that the employer must abstain from any act that attempts to circumvent the protection that the labor laws grant to workers.

A major amendment to the F.L.A. was the right of workers to participate in the profits of the enterprise, based on a percentage to be periodically determined by the "National Commission for the Participation of the Workers in the Profits of the Enterprises." At present, workers are entitled to receive ten percent of the profits of the enterprise. In order to guarantee the enforcement of these benefits, Article 450(V) of the F.L.A. provides that a strike is justified to demand compliance with these profit sharing provisions. The broad wording of this provision has given rise to many abuses because the law requires employers to comply with certain obligations before the benefits may be granted. To reconcile Sections I and V of Article 450, it should be understood that only the refusal of the employer to abide by the profit-sharing provisions may give rise to a rupture of the balance between the factors of production, thus triggering the right to strike.

Article 450(VI) departs from the general purposes of a strike by allowing what is known as a "solidarity" strike (*huelga por solidaridad*), a confrontational mechanism which may result in a general strike. A "solidarity" strike is a political weapon generally used to support a political position. There have been very few "solidarity" strikes in Mexico because labor unions rarely choose to clash with the government.

It is this author's belief that a "solidarity" strike conflicts with Article 123(XVIII) of the Constitution, which requires the maintenance of a balance among the factors of production in a specific establishment or enterprise.

#### VIII. REGULATION OF THE RIGHT TO STRIKE

A strike has several procedural stages. A pre-strike period commences when the workers file a statement of claim with the

employer and set forth their intention to call a strike in case their demands are not satisfied. If the workers seek a complete revision of a collective bargaining agreement, the employer must receive the statement of claim sixty days prior to the strike. This period is reduced to thirty days if the workers seek only an increase in wages. The employer must receive six days' notice prior to the suspension of labor, extended to ten days if the strike affects public services. Unfortunately, labor unions generally do not respect these notification requirements.

During the pre-strike period, conciliation and arbitration boards serve as mediators in conciliatory proceedings. Both parties are required to appear at the conciliation hearings which must be held before commencement of a strike. At these hearings, the boards must seek a resolution without passing judgment on the justification for the strike. As noted above, the boards' function at this point in the process is strictly conciliatory and not juridical.

After expiration of the pre-strike period, the procedural mechanisms of the board are adapted to a situation where there is an ongoing strike. To be legal, a strike must satisfy the requirements imposed by Article 123(XVIII) of the Constitution, which provides that "[s]trikes shall be legal only if their objective is to obtain a balance among the different factors of production, harmonizing the rights of labor and capital."

In the absence of such a legitimate purpose, the strike is viewed as an illicit action for which the striking workers may be held liable. Within seventy-two hours of the commencement of a strike, at the request of employers, workers other than those participating in the strike or third parties, the strike may be declared illegal by the conciliation and arbitration boards. A strike is illegal if it: a) is carried out by a minority of the workers in the enterprise or establishment, b) does not have one of the legitimate purposes enumerated in Article 450 of the F.L.A. or c) fails to meet the notice requirements provided by law.

If the strike is declared illegal, the boards must summon the workers to go back to work within twenty-four hours. If the workers fail to resume working, the employer may terminate the labor contract, discharge those employees involved in the strike, and contract with other workers. The strike will also be declared illegal if the workers engage in violent acts against persons or property, or, in case of war, if the workers work for establishments or services controlled by the government. In such cases, the exercise of

the right to strike is deemed a criminal offense.

#### IX. ARBITRATION IN COLLECTIVE LABOR DISPUTES

If the strike is declared illegal, or if, within the period provided by law, the employer has moved for a declaration of illegality of the strike, the strikers have the right to submit the dispute to the conciliation and arbitration boards. Article 937 of the F.L.A. expressly prohibits employers from submitting a dispute to arbitration "[i]f the dispute which has prompted the strike is submitted by the workers to the decision of the boards"; in such circumstances, the board "shall conduct the proceedings according to the procedure for settling collective labor disputes of an economic nature."

Thus, under Mexican law, labor controls the use and timing of the arbitration of collective disputes. There are apparently no justifications for precluding employers from submitting cases to arbitration.

#### X. RESOLUTION OF INDIVIDUAL LABOR DISPUTES

Mexican labor law provides for a different procedure for the resolution of individual labor disputes. Article 685 of the F.L.A. provides that "[l]abor procedures shall be public, free, predominantly oral, and shall proceed upon the parties' motion. The boards must take measures which are needed to implement the principles of concentration and informality of the procedure."

Proceedings for the resolution of individual labor disputes commence with the filing of a statement of claim by the employee. The conciliation and arbitration boards must schedule a hearing and follow the regular procedural steps, which include a conciliation stage, the filing of a complaint, the filing of objections and answers to the complaint, and the submission and production of evidence, among other things.

During the conciliation stage, the parties must appear personally before the boards without the assistance of lawyers. If the dispute cannot be resolved through conciliation, the boards assume an adjudicative role. The complaint may be amended and the answer may be filed orally or in writing. After the complaint and answers have been filed, the parties may submit evidence they deem pertinent so long as it is relevant to the issues in controversy. Concilia-

tion and arbitration boards must schedule a hearing for the production of evidence. After the conclusion of the evidentiary stage, no other evidence will be accepted other than that which relates to facts that occur thereafter. Once the fact-finding stage has terminated, one of the boards' members shall serve as a reporter and draft an award which is called *dictamen*. This *dictamen* is submitted to the vote of the boards' members, and if approved, it shall become the final award.

The evaluation of evidence is left to the discretion of the boards' members. There are no rules regarding the weight that should be given to the different types of evidence submitted by the parties. However, the boards' members must support the award with reasons and apply the rules of law applicable to the dispute. Article 841 of the F.L.A. provides:

The award shall be rendered at the discretion of the boards and in light of the facts relevant to the dispute. The members of the boards are not subject to rules or formalities in the evaluation of the evidence, although they shall express the reasons and legal norms supporting the award.

Although awards rendered by the conciliation and arbitration boards are final, any party may bring a writ of *amparo* before one of the Collegiate Circuit Tribunals or the Supreme Court of Justice.

Most labor disputes in Mexico have been settled at the conciliation stage. This is due, in part, to the increasing specialization of the boards' members in the settlement of labor disputes. The special nature of labor conflicts calls for a quick and informal procedure, as opposed to the stiff formalities of civil procedure which are not suitable to the dynamics of labor law.