

Reforming Mexico's Labor Law for Independent Labor Unions:
A Legislative Research Report

Abstract:

Reforming Mexico's Labor Law for Independent Labor Unions analyzes the legal difficulties Mexican independent labor unions face in establishing themselves and proposes a legislative solution. The methodology used examines the institutionalized behaviors of the administrative labor boards and businesses, which prevent the formation of independent labor unions. The discretion that Mexican labor law affords the labor boards and businesses explains, in large measure, the obstacles facing independent labor unions. Having analyzed the relevant legal framework this article proposes specific legislation to strengthen these independent labor unions. Within the context of a developing country, *Reforming Mexico's Labor Law for Independent Labor Unions* shows the powerful impact that the law can have on a social problem.

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Part I: Introduction.

“Shortly after Vicente Fox was elected president of Mexico, some investigative reporters went to the Fox family farms and found underage children working in the field in violation of Mexico’s Constitution and Federal Labor Law” (Ley Federal del Trabajo: LFT).¹ As this disconcerting example illustrates, Mexico has labor laws, but they do not have the authorities’ backing. In fact, Mexican law guarantees some of the most extensive of worker’s rights in the world. Yet, for all this legal fanfare, Mexican workers do not receive the benefits the law promises them. Given the legal guarantees on the books, why has Mexican labor suffered so?

1. Problem and Proposed Solution.

Bad labor conditions prevail in Mexico in part because the state’s labor boards (Juntas de Conciliación y Arbitraje) prevent the development of non-official labor unions independent of the state and business. Transformative change to support independent unions and thereby improve labor conditions calls for a bill reforming the LFT as it governs the labor boards.

2. Context.

We begin by briefly touching upon globalization to situate the bad labor conditions as part of this larger challenge. Although the remainder of the research report focuses on the labor boards’ specific problems, our bill must constitute part of a broader legislative program, which would assist Mexico in overcoming the challenges globalization poses to workers. We also describe in some detail the prevailing labor conditions, which demand our attention and concern. Although we recognize freedom of

association as a right, the fact that independent labor unions concretely improve labor conditions motivates our bill. In this regard, we present evidence of the critical role that independent labor unions can play in securing adequate labor conditions. In essence, this latter part substantiates our view that by supporting independent labor unions, our bill will, in effect, lead to better labor conditions.

a) Globalization.

Globalization and neoliberal economic policies provides the backdrop explanation for labor's crisis. Global competition has taken its toll on Mexican workers. Between 1992 and 1996, with the introduction of neoliberal economic reforms, the North American Free Trade Agreement (NAFTA) and the 1994 Peso Crisis, workers' wages dramatically fell by nearly 40%.² While capital has secured for itself transnational mobility, as well as, formidable international protections, states have continued to impose severe restrictions on labor's freedom of movement (i.e., immigration laws) and have succeeded in sidelining labor protections in comparison to those for capital. One has merely to contrast the headlines heralding the World Trade Organization, which goal is to lower barriers to trade and investment, with the relative obscurity of the International Labor Organization, which dedicates itself to invigorating workers' rights. This power imbalance between labor and capital makes for a race to the bottom as nations compete against one another to lower labor costs to attract investment. The result is that while capital may thrive, workers generally do not benefit, but instead suffer the vagaries of politics and policies at the behest of capital. Nonetheless, while it behooves us to advance labor rights on an international level, taking steps to ensure them through reforming national legislation is a necessary first step in the right direction.

b) Labor Conditions.

The working conditions in Mexico are severe with long and arduous work hours. In manufacturing labor worked 47 hours a week on average with nearly 80% working over 40 hours a week and 25% working over 48 hours. Furthermore, while productivity has increased significantly since the introduction of NAFTA (an astonishing 40%), this has not translated into higher wages. Standard economics would have us predict that wages would increase in tandem with an increase in productivity because it claims that companies pay their workers in function of their value, i.e., their productivity. Reality contradicts the prediction linking increased productivity to higher labor remuneration. The 1995 peso devaluation, an exogenous factor it is true, wrought a 32% decline in wages in the economy overall. Even as of 2002 wages remained 8% lower than prior to NAFTA and the peso crisis despite the tremendous gains in productivity. Workers have fared no better in terms of fringe benefits. 42% of workers received nothing in this regard: neither health insurance nor pensions from their employers. True, the state provides some measure of assistance in this area, but insufficiently.³

While NAFTA has not brought the benefits promised to Mexican workers, its side-agreement on labor (the North American Agreement on Labor Cooperation: NAALC) has shined a spotlight on the widespread opprobrious working conditions, most notably, in the maquiladoras. These enterprises (predominantly owned by international corporations) manufacture goods for the U.S. economy across the border, i.e., export-processing firms in Export Processing Zones (EPZs). Under the agreement, private actors can bring claims against the violators of labor standards to the National Administrative Organizations set up in the member states (Mexico, U.S., and Canada). Even though

states respond minimally to the NAO's directives, the claims nonetheless serve to illuminate the state of Mexican labor conditions. Over half the 23 cases filed targeted firms located in Mexico.⁴

The U.S. NAO report on the Tijuana Han Young maquiladora case in Mexico exemplifies the unacceptable labor conditions prevalent in Mexico. Throughout 1997, the Secretary of Labor and Social Forecasting (Secretaría del Trabajo y Previsión Social: Secretary of Labor), found 41 health and safety violations contravening its national labor standards. These included the lack of a plant health and safety committee, of health and safety plans, of employee training, of hazard controls, concerning noise, fume and fire hazards, of procedures to prevent electrocutions and amputations, and the reliance upon life-threatening machinery in a state of disrepair. A year later, subsequent to multiple inspections, the Secretary revealed 36 violations remained uncorrected, along with 9 additional violations. Han Young's predicament was "resolved" only when the corporation closed the plant and relocated to another location in the same city of Tijuana. Meanwhile, they fired those workers involved in the strikes, which had called attention to the firm's violations.⁵

c) Impact of Independent Unions.

We briefly turn to the question of whether or not independent unions would improve labor conditions assuming our bill would succeed in spurring their growth. A recent paper undertook just such a study. We first note that in the formal sector union membership declined from 30% to under 20% from 1984 to 2000. Without unions wages 21% lower in 1984 and 15% lower in 1996 would have prevailed. In the nonwage sector, workers would have received 40% less in 1984 and 35% less in wages in 1996. In terms

of fringe benefits, unions obtained a 142% increase in 1992 while only a 26% increase in 1999. Productivity appears to rise 25% among union establishments as compared to nonunionized firms in 1992 and 12% in 1999. Firms' profits do not seem adversely affected by union membership. Not only do unions appear to provide substantial benefits to union and nonunion workers alike while not detracting from the business' bottom line, but the decrease in union membership and thereby workers' bargaining power correlates with a decrease in the benefits redounding to workers.⁶ While the results come from only one study, this study applied the same analytical framework and obtained similar results as did a well-regarded study conducted in the United States.⁷ Seen in this light, unions vigorously defending their workers' rights can play a critical role in securing better labor conditions and justifying our bill's aims to encourage these independent and representative unions.

We have seen that any bill addressing labor conditions must ultimately comprise part of a larger legislative program to confront globalization's challenges. The deplorable labor conditions in Mexico demand remedial action. In light of the logic and evidence indicating that representative unions improve labor conditions our bill seeks to address this urgent need by removing the obstacles to such labor unions

3. Outline.

The rest of this legislative research report aims to harness reason informed by experience to change the institutions (relations of repetitive behaviors) that prevent the organization of independent unions. In "Part II: The Difficulty the Bill Will Address," we first survey the nature and scope of the problem, i.e., independent unions' difficulty in asserting themselves. This part introduces the surface appearance of the problem our bill

aims to resolve, that is to say, the lack of independent unions. We then describe the primary role occupants' behaviors, which bear responsibility for the independent unions' anemic defense of workers' interests: the alliance between the state's labor boards and business. Here we introduce the key players and some of their organizations to identify who influences the labor boards and to what extent. We also present the problematic behaviors that the labor boards abet as the LFT's enforcer skewed to favor neoliberal interests. In effect, as an adjudicatory body the labor boards' condemnable role is to sanction neoliberal behavior through its interpreting and applying the LFT. In other words, we describe the labor boards' inputs and outputs. We follow with a social impact statement assessing how the present situation benefits or hurt the various role occupants. We then conclude this heading.

In "Part III: Explanation of the Causes of the Behaviors that Comprise the Difficulty," we explain the role occupants' behaviors in question with the help of the ROCCIPI methodology. The ROCCIPI methodology serves as a comprehensive program of analysis comprising Rule, Opportunity/Capacity, Communication of Law, Process, Interests, and Ideology. We canvass first and foremost the relevant LFT rules governing the activities in which the role occupants play the principal role. We then analyze the modalities of these role occupants' behaviors with the aid of the remaining OCCIPI agenda. For, while the rules, more or less, circumscribe the range of behaviors, the other OCCIPI modalities determine behavior within the boundaries the rules establish.

In "Part IV: Proposal for a Solution," we examine various alternative proposals, which have the potential to address the deplorable labor conditions in Mexico generally and pay special attention to options that purport to foster independent labor unions to this

end of improving labor conditions. We then explain our proposed bill's major reform provisions, which support the formation of representative unions. Further, we ascertain precisely how the bill will help to strengthen independent unions and by extension to dismantle anti-union state-business alliance. We proceed by linking the mechanisms by which the bill addresses the causes underlying the specific problematic behaviors. We also analyze the costs and benefits of the bill to assess its likely consequences. Finally, we underline the monitoring measures. These measures provide us with the critical feedback on the bill's effectiveness, which only time and its actual implementation can reveal. We then conclude.

Part II: The Difficulty the Bill Will Address.

1. Introduction.

Examining the problem serves as the indispensable starting point for the research report by providing data on the problem the bill seeks to address. To this effect, we begin by conducting an overview of the challenges independent unions face. We follow by describing the primary role occupants' behavior: That of the labor boards and business. We then offer a short social impact statement describing the costs and benefits of the present situation and how they redound to each of the role occupants. We then conclude.

2. Nature and Scope of the Difficulty.

Mexican unions often do not represent their workers. The Confederation of Mexican Workers (Confederación de Trabajadores Mexicanos: CTM) and the Labor Congress (Congreso del Trabajo) represent the two main umbrella organizations for these

so-called non-representative officialist unions. They negotiated 81,4% of all collective contracts.⁸ Workers' widespread discontent with their unions highlights the nature and scope of the problem. A survey of workers in the Exclusive Union of Mexican Electrical Workers (Sindicato Único de Trabajadores Electricistas de la República Mexicano: SUTERM), a powerful union in Mexico, revealed a strong degree of dissatisfaction with the union's internal organization.

“Do you consider that the union leadership is representative of the interests of workers?”	47.5%
“Do you think that the leadership has been effective in negotiating positive conditions for workers in terms of wages and benefits?”	35%
“Would you consider the role of union delegates at the section or department level to be satisfactory?”	17.5%
“Do union assemblies take place timely following the provisions stipulated in the union statutes?”	15%
“Do you consider that the processes for the selection leaders are clean and transparent?”	70%

* percentage answering yes from a sampling of 40 SUTERM members (1999-2001).⁹

While the paucity of such surveys makes their results anecdotal, a study of the Mexican automobile maquiladora industry tends to corroborate unions' unrepresentativeness. Unions that genuinely represent their worker strive to achieve control in the following areas: Promotion procedures and employment security (including union participation in hiring and promotions, and limitations on temporary workers), the production process (union participation in determining the production rate, work

assignments, wage equalization, and occupational health and safety measures), and specification of conflict resolution procedures. Out of 14 auto plants the study found that only those three plants with independent unions unaffiliated with CTM had positive control in these areas of union concern, revealing a dearth in genuinely representative unions.¹⁰

The experiences of three textile maquiladoras provides concrete evidence of the difficulty of establishing representative unions. In the Han Young case previously mentioned two years elapsed during which NGOs, both domestic and internationally, as well as, US government diplomacy pressured the Mexican government to intercede in favor of the workers. Indeed, the NAO issued a report condemning the Mexican government's interposing itself against the workers exercising their right of association. The case ended only when Han Young fired everyone and relocated. Prior to the cases' sad denouement, thugs pounced upon and severely beat the leader of the independent union effort precisely during a government sponsored meeting in response to the Han Young incident laying bear the impunity of labor rights' violators.¹¹ Workers' experiences to form an independent union at the Kundong and Duro maquiladora plants in Puebla and Rio Bravo met with the same resistance. Workers at these plants succeeded in establishing a representative union, although their efforts met with success only after 9 months and three years, respectively.¹² Government intercession on the workers' behalf only took place in the face of significant international NGO pressure, which emphasizes the tremendous difficulties workers face in establishing independent unions.

3. Whose and What Behaviors Constitute the Difficulty.

a) Labor Boards.

The state commands the heights of the economy. Congress passes legislation, but the executive Presidency appoints those in charge of implementing legislative directives. The President appoints the Secretary of Finance who oversees general economic policy. The President also appoints the Secretary of Labor and Social Forecasting (Secretaria del Trabajo y Previsión Social: Secretary of Labor), who oversees the labor boards. Mexico lacks a professional civil service corps. Prior to the Debt Crisis, executive officials came instead predominantly from the ranks of politicians who had climbed the PRI echelons. In the 1980s so-called technocrats began to displace the career politicians. These technocrats with business or economic backgrounds often originated as powerful businessmen. The pro-business PAN's electoral success epitomizes this change and Fox has all the bearings of a technocrat. He studied at Universidad Iberoamericana and at Harvard's Business School and formerly supervised Coca-Cola's Latin American operations. Similarly, the present Secretary of Labor, Carlos Abascal, a lawyer specialized in business administration, left behind a CEO position for an insurance company, and the former president of the powerful business association, the Mexican Employers' Confederation (Confederación Patronal de la República Mexicana: COPARMEX). When Duro's independent union petitioned to hold a union election on neutral ground he denied the request. Abascal himself has the primary responsibility for the labor boards and labor justice.

We now return to the incontrovertible evidence that the boards disfavor independent unions. In essence, they discriminate against independent unions in favor of

officialist unions often times associated with CTM. While CTM affiliates comprise mostly unions conciliatory with respect to the employer, independent unions threaten a more aggressive defense of workers' rights. An NAO report concerning two garment maquiladoras illustrates the difficulties independent unions face: Matamoros Garment S.A. de C.V. and Tarrant México S.R. de C.V. Workers tried to unionize under the Center for Worker Support (Centro de Apoyo al Trabajador: CAT) in 2003. The board rejected both petitions for technicalities: The board rejected the former because petitioners had misspelled one of the names of the petitioners, for failure to state the reason for unionizing, failure to properly authorize the list, failure to authenticate that workers were over 14 years of age, one worker on the list denied having attached his signature, and the board's inability to verify that the plant had a minimum of twenty workers (the plant having suspiciously closed the very day the board came to inspect for verification; in the case of the latter, for failure to submit two copies of the petition, failure to elect its executive committee, for the misspelling of one out of 728 workers' names, failure to establish bylaws regarding union's assets, and unclear bylaws concerning member discipline. Some of the causes for rejection do not fall under any of the reasons listed under registration requirements (LFT 356, 371). Further, the LFT stipulates that the board has the responsibility to invite the workers to correct their petition's deficiencies (LFT 685). In any event, having reviewed the relevant documents, the NAO found the petitioners had satisfied all registration requirements. The union filed an *amparo** with the District Court for Labor Matters, but subsequently found itself unable to pursue its *amparo* when its workers withdrew their claim in exchange for severance payments. In sum, the boards obstruct the establishment of independent unions.

* an *amparo* is somewhat akin to a judicial appeal alleging illegal government action.

Although a few of the grounds for rejection likely have some validity, lack of substantiation characterize others or reveal a gross distortion of the LFT.¹³

NAO consultants “concluded that [labor boards] generally [...] are known to be fair, impartial and unbiased, especially regarding their role in matters dealing with the rights of individuals; in collective matters, however, their activity is deemed to be more controversial. [Indeed,] in Mexico generally, [they] are biased in favor of companies, especially in matters of collective bargaining” and by extension favor business’ officialist allies.¹⁴

We conclude from the problematic behaviors' surface appearance that the boards wield significant discretion in certifying collective labor actions at labor's expense. Discretion has the advantage of endowing the implementing agency with flexibility to address the particulars of each case across time. The converse of such discretion is that the agency's policy implementation depends to a high degree on the attitude of the agency's personnel.

b) Business Associations.

The business sector enjoys one of the best organizations in Latin America. Its concerted action attests to neoliberalism's pivotal role in Mexican politics and by extension helps explain the states’ lack of commitment to labor rights. Because business wields so much power it has in effect co-opted the state. These business organizations underpin the continuity characterizing neoliberalism embrace. Business articulate their neoliberal economic agenda through these organized media outlets.

Four principal private business organizations share the reins of corporate power: COPARMEX, the Council of Mexican Businessmen (Consejo Mexicano de Hombres de

Negocios: CMHN), the Business Coordinating Council (Consejo Coordinador Empresarial: CCE), and the Trade Coordinator for Business Enterprises (Coordinadora de Organismos Empresariales de Comercio Exterior: COECE). Although the Confederation of National Chambers of Commerce (Confederación de Cámaras Nacionales de Comercio: CONCANACO) had a promising beginning as the official business entity, COPARMEX, CMHN, CCE, and COECE have displaced the latter as the organ by which business interests dominate the state.

These organizations range from the exclusive CMHN, which consists of the forty largest corporations, to COPARMEX, which includes many small and medium sized businesses. Further, their influence reflects their exclusivity, with CMHN decisively carrying the most weight in government policy decisions. For instance, CMHN annually announces at Los Pinos (the Mexican equivalent of the White House) their investment commitments for the coming year, an exhortatory fanfare directed to promote the Mexican market. Such heft provides CMHN with unique political leverage. CMHN has monthly luncheons where members gather to discuss economic policy issues of the day with senior cabinet officials in a closed press environment. A highpoint in its political influence came in 1987 when the PRI President de la Madrid, asked CMHN to interview its top six presidential candidates before choosing his successor. Notwithstanding this last high profile seminal political event, CMHN prefers discretion. CMHN has made itself the funding backbone of the other more visible business organizations. The CCE has its own research and public relations corps. Reflecting its essential role in financing these other organizations, CMHN invariably holds their presidencies. CCE is the peak business confederation including both CMHN and COPARMEX. COECE is CCE's auxiliary

committee concerned with trade agreements. It coordinated support for NAFTA among businessmen and helped design the agreement. COECE flanked the Mexican government's NAFTA delegation, often hovering directly outside closed-door inter-governmental meetings to advise Mexican political representatives. Business interests have a privileged rapport with government principals whom they persuade, cajole and pressure. Thanks to these business organizations, the state often appears business' handmaiden, which leads to a biased arbiter in the case of the labor boards as we shall see.¹⁵

c) How Companies Undermine Unions.

Business interests also protect their interests at the level of the company, especially when it comes to minimizing independent unionization as much as possible. General Motors provides a telling example of corporations' deliberate strategy in this regard. Its three main stratagems include heavily screening job applicants to remove potential union activists from their midst, operating a divide and conquer strategy mostly through a hierarchical pay schedule, and offering low-budget, but valuable amenities to workers provided by pseudo-unions. The first ploy amounts to scrutinizing job applicants' "credentials." Desired applicants typically have a ninth-grade education with family members to support and high monthly rent payments, qualities deemed amenable to long-term employment. Once applicants meet these requirements, they undergo a battery of physical and psychological tests to determine their ability to adapt to line work. This filtering process results weeds out 75% of applicants because they do not fit the searched for profile. By dividing the workforce through differential pay scales for same work GM obviates the potential for an esprit de corps forming between the various firms

in its integrated enterprise (including input suppliers and assembly plants). Such foresight stems from its fearing the debilitating consequences of production-wide work-stoppages. GM also essentially segregates workers per plant by gender to take advantage of general distrust across gender lines, reaching levels of 80% gender exclusivity. GM also considers women more pliant as do many maquiladoras belying their they pronouncement to the contrary. The company finances union social workers to advise workers on how to handle workers' new found moneys. These ersatz union administrators become in effect workers' accountants upon which the workers in turn come to depend. GM thus has a multi-faceted and effective strategy to discourage independent unionization.¹⁶ Employers commonly have little hesitation in committing labor improprieties because they know well enough that workers in economic straits have little choice but to sign a severance agreement, thereby relinquishing their claims against the company, rather than pursue a lengthy arbitration to obtain justice. The employers' arsenal comprises other weapons such as to falsely accuse employees of crimes, to have job applicants sign "blank sheets" as a condition for their employment, which employers can subsequently fill out as fits their needs and to compile "black lists" of recalcitrant workers all of which pressure fired workers to sign severance agreements.¹⁷

Businesses also resort to ghost unions and outright intimidation and threats of violence. Ghost unions permit businesses to exclude independent unions thanks to a legal sleight of hand. They form roughly 90% of collective bargaining agreements and thereby help explain business' ability to thwart the formation of independent unions (see *infra*). Business' armamentarium to defeat independent unions also comprises direct intimidation and threats of physical violence. When workers at a General Electric

Mexican subsidiary initiated a campaign to elect an independent union, the firm harassed them as they attempted to distribute campaign literature and fired some 20 activist workers for having met with a United Electrical Workers auxiliary delegation.¹⁸

Widespread irregularities undermine union elections' authenticity. Han Young offered to pay \$2 000 to an activist leader at its plant if he desisted from organizing and \$125 to each worker who voted for the CTM union against the independent union. At the TAESA election (see *supra*) TAESA had hired “armed soldiers . . . with heavy caliber arms [on the premises including on the roof], attack dogs, an electrified wire” and concert speakers blaring the TAESA theme song. This combination of business' anti-union preventive and coercive tactics exemplifies some of the difficulties independent union organizers face. Given this overt hostility to independent union formation, it should come as no surprise that, thanks to their organizational heft, business influence on the boards in conjunction with the boards discretion, leads to boards that implement a labor policy agreeable to business interests and to labor's detriment.

4. Who Benefits and Who Suffers under the Present Situation.

The state-business alliance completely smothers independent union efforts. Without genuine union representation workers have very little bargaining power and their remuneration and working conditions suffer as a consequence. Business exploits the favored position it now enjoys *vis-à-vis* the state, by brazenly violating workers' rights knowing full well that the state only half-heartedly enforces the LFT. As a result, business increases its profits at the expense of labor. This pro-business conjuncture applies especially to the EPZs where the state gives relative free rein to the maquiladoras to attract the foreign direct investment (FDI) Mexico needs to pay off its foreign debts.

Given that business has captured the state, these two win under present labor relations. The losers are independent unions and the unrepresented masses of Mexican workers.¹⁹

5. Conclusion.

The state is closely tied with business interests, especially in union formation. Business enjoys unrivaled access to the state thanks to its powerful business organizations promoting a labor flexibility agenda. At the plant level it adopts an aggressively anti-union approach to personnel management. Additionally, employers readily use more direct and forcible methods to disrupt independent unionization. In sum, the labor boards and business constitute a formidable front more or less united in thwarting independent union activity.

Part III: Explanations of the Causes of the Behavior that Comprise the Difficulty.

1. Introduction.

To explain the actors' behavior we now apply the ROCCIPI methodology. The acronym stands for Rule, Opportunity/Capacity, Communication of Law, Process, Interest, and Ideology. ROCCIPI ensures a comprehensive analysis to best understand the causes of the behaviors constituting the difficulty, which our legislative proposal will ultimately have to address to ensure its effectiveness. After presenting the Mexican Constitution's fundamental role in defining workers' rights, we consider in turn, our two role occupants, i.e., the labor boards and business. To this effect, we apply the ROCCIPI analytical framework, with respect to each role occupant. We accord pride of place to the

LFT rule most pertinent to the role occupant in question and then proceed with the rest of the ROCCIPI agenda.

2. Explaining the Actor's Behavior according to ROCCIPI.

a) The Mexican Constitution and the LFT.

The Mexican Constitution in Article 123, Title VI "Of Labor and Social Security" provides that business and workers have the right to organize themselves into associations representing their particular interests and that workers have the right to strike: Art 123: "XVI. Workers as well as business owners will have the right to come together with each other in defense of their respective interests; forming unions, professional associations, et cetera;" "XVII. The Constitution itself neglects to offer guidelines to curb discretion in implementing labor rights. As we shall see, this role of filling in the essential details devolves to the LFT.

b) Labor Boards

The labor boards systematically impede union registration.

i. LFT Rule: Union Registration.

Theoretically one can easily establish a union. To form a union requires a minimum of 20 workers (LFT 364). To register, the union must file the following documentation: an authenticated copy of the minutes of the constituent assembly, a list of members with their name, residence, and place of work, an authenticated copy of the union's bylaws, and an authenticated copy of the minutes for the election of the board of directors (LFT 365). The union's secretary general, organizing secretary and minutes

secretary retain the right to authorize the above documents unless the union's bylaws stipulate otherwise (LFT 365). The board can only refuse to register the union if the union does not aim to better workers' interests; if the union does not have the required 20 members; or if the union does not file the right documentation (LFT 356, 366). Once 60 days have elapsed since filing the petition the workers can demand that the board announce its decision. After a further three days if the board still has yet to decide the board must automatically registered (LFT 366). If more than one union contends to negotiate a collective bargaining agreement with an employer, the union with the most votes gains the right to negotiate (LFT 388). Disputes over who has the most votes take place like any other labor dispute before the boards (LFT 892-895). Either party can also call for a recount (LFT 931). Employers must negotiate with the representative union or face a strike (LFT 387). Finally, the Panel on Representatives' Responsibility (Jurado de Responsabilidades de los Representantes) comprised of the usual tripartite structure can sanction, including with a dismissal, those representatives who participate in proceedings in which they have a conflict of interest; who impose unjustified delays; or who vote for a resolution that is patently illegal or unjust (LFT 671-674, 707-708). The board's Presiding Officer has the obligation to investigate and mete out appropriate sanctions to officials and staff other than the representatives (LFT 637). A tripartite committee of representatives constitutes the feedback mechanism, which has the responsibility to inform the Secretary of Labor of any deficiencies in the boards functioning (LFT 614).

ii. OCCIPPI: Labor Boards

The rules reveal that the boards have decisive opportunities and capacity to thwart independent union efforts. They wield full discretion in ascertaining the outcomes of

labor conflicts. These present themselves most notably when unions attempt to register with the boards. The boards' wide discretion ties into the fact that the rules effectively insulate them from oversight. Although in theory the tripartite representative committees and ultimately the Secretary of Labor ought to hold the board members accountable no evidence indicates that anyone ever actually holds them as such in any of the sources reviewed. In such a situation unaccountability prevails. The rules stipulate that the eligible members of the board have the responsibility to oversee, reprimand and otherwise punish LFT violations. In this respect, one should praise the rule requiring the dismissal of a member guilty of issuing a blatantly unjust ruling. Yet, because each of the tripartite bodies oversees itself, the members are accountable only to themselves and therefore to no one. To make matters worse, when the state intervenes to reprove its board member, it did not seek to uphold the LFT. Quite the contrary, for instance, it has pressured the state board member into resigning or simply fired them when these latter have seen fit to respect the law and approved independent union registration activity as in the Han Young case.²⁰

Communication of the law remains a critical problem. The boards do provide detailed written copies of the grounds on which they based their decision to each party thereby allowing the parties to contest the decision with an *amparo*. However, while the boards require registration of collective bargaining agreements and the unions that negotiated them, there is no public registry where workers can verify whether a union, which may be claiming to represent them, already exists. In practically all the cases mentioned above, workers did not know that a union already existed until they discovered it through their efforts at unionization. Yet, complaints require the name of the parties so

that the board can give notice to the opposing party (LFT 751). What should be a mere formality becomes an insuperable obstacle because the boards do not provide a public registry where workers can ascertain the name of the opposing party.

In terms of process, the boards lack accountability in that decisions that egregiously contravene the law and standards of justice do not bring about the reprove or destitution of the responsible authorities. In practice , the boards habitually violate their own stipulated deadlines and, yet, the boards have not shown themselves willing to hold their own accountable for such violations. Finally, feedback is the responsibility of a committee comprised of the tripartite representatives, which poses additional glaring conflict of interest problems.

The board, as part of the state apparatus, favors business interests both because businessmen occupy the highest echelons of power and because of a general business persuasion at all levels of government as the top-tier inexorably diffuses its predilections to its subordinates. Furthermore, even were the state is not so closely tied to business interests a vibrant economy is the *sine qua non* of a successful political term. Neoliberal economic ideology, besides dovetailing with business interests, admonishes that to attract domestic and foreign investment requires labor peace and flexibility. In this light, the boards become the state's critical instruments to encourage such a receptive investment environment by curtailing the development of independent unions, which might disrupt labor peace.

c) Business.

i. LFT Rule: Labor Standards.

Mexican labor laws embody some of the most progressive labor rights in the world when written and remain so today. The Constitution spells out in Article 123 Title VI “Of Labor and Social Considerations” workers’ rights to satisfactory remuneration and working conditions, including: a maximum of eight-hour work days, six days a week, a minimum wage, overtime pay, severance pay, profit sharing, occupational safety and health standards and protection from dismissal without just cause. Businesses must adhere to the minimum labor standards set out in the Constitution and detailed in the LFT, as well as, stipulations of any collective bargaining agreements or other contracts they enter into (LFT 919). Furthermore, they cannot negotiate a reduction in labor conditions from those in force (LFT 394). They must negotiate with the representative unions at their instigation (LFT 387). Though offering to protect labor rights the rules allow for too much discretion and omit sanctions for violations.

ii. OCCIPPI: Business

Although in its broad outlines the law offers some protection to labor rights, it still provides large loopholes or opportunities of which unprincipled employers take advantage. Given the employers’ obligation to negotiate with the standing union, they have every incentive to engage the services of a compliant union before employees form a more assertive union. By employers preempting a truly representative union unionizers face the tremendous difficulty of dislodging the incumbent union (see *supra*). "Protection contracts" aptly refer to these contracts negotiated between employers and pliant unions,

which represent some 90% of collective bargaining agreements. These unions often exist only on paper, an existence, which workers only discover to their dismay upon filing to establish their own union (hence the term ghost union). CTM offers such conciliatory unions. In exchange for legitimizing the employer sponsored workers union, CTM receives payment from the said employer and, in tandem, deepen their ranks and thus strengthen their overall sway in the neoliberal system.²¹ As the purveyor of funds and the linchpin of economic growth, business persuades, cajoles and coerces state officials and corrupt union leaders.

Regarding communication of the law, businesses know precisely the law and the loopholes that it affords. As for process, we have seen *supra* their role on labor boards, as well as, their disreputable, even criminal activities aimed at forcibly preventing the formation of independent unions. While the state inspects businesses for labor violations, unfortunately it has neither the commitment nor the resources to implement an effective inspection scheme as the NAO reports: “Notwithstanding repeat inspections, however, serious unabated violations were allowed to continue over this entire period [1993-1997].”²²

Business has primordial loyalty to their bottom line. To ensure the largest profits possible business does everything it can to repress wages. To stay competitive, they seek the greatest possible flexibility including notably control over production and therefore workers. On both these issues business oppose truly representative labor unions and, as a result, seeks to discourage them. Business does not have an incentive to idly sit back till independent unions form and then negotiate with them because the ensuing labor strikes disturb the labor peace upon which business relies. They go so far as to relocate, rather

than deal with an assertive union. Since relocation is expensive, however, they often times choose tactics in the penumbra between the legal and the criminal, which undermine independent union formation. Businesses' neoliberal economic policy, which their business organizations push, encompass the tenets of labor flexibility at the service of business interests.

3. Conclusion.

In sum, the LFT ambitiously attempts to protect workers, but, unfortunately leaves gross loopholes, of which opportunistic state officials and businessmen readily take advantage to the detriment of workers' rights. Because collective labor conflicts have the potential to threaten Mexico's neoliberal agenda, the labor boards refuse to adequately implement the LFT to enforce collective labor rights. Although, in most respects, they do not violate the LFT's explicit provisions, they eviscerate its spirit, i.e., to defend workers' rights. They depart from the LFT's spirit, if not its letter, by legitimizing protection contracts and ghost unions, obstructing independent unions' registration, arbitrarily prohibiting strikes, their absence in overseeing union elections, their underwriting exclusion clauses and, in general, wielding unchecked discretion to prejudice independent unions. Any valid proposal for solution will have to address these issues. This analysis lays a basis in facts, logically organized, for designing detailed provisions in our bill to alter or eliminate the problematic behaviors' causes, and induce role occupants to behave in ways likely to ensure more effective protection of workers' efforts to organize independent unions, which can represent and protect them in their in-plant conflict with management.

Part IV: Proposal for Solution.

1. Introduction.

Having examined the problem and its causes we now turn to proposed solutions. In line with legislative theory, our proposed bill's detailed provisions logically aim to alter or eliminate the objective and subjective causes of the relevant role occupants' behaviors that, in the past, contributed to thwarting workers' efforts to build independent trade unions. We present the two main alternative proposals for improving labor conditions: reforming labor standards' regulatory framework of and the government's plan to revise the labor boards. The former proposes to address labor conditions by focusing on means other than strengthening independent labor unions. By presenting this option, we ensure that we do not forego promising alternative proposals by limiting ourselves to independent labor unions.

Next, we articulate our bill's major provisions' details. We then demonstrate the advantages our bill has over its rivals by explaining how each provision addresses the specific causes underlying the problematic behaviors opposing independent labor unions. We also assess the costs and benefits of the bill and indicate monitoring mechanisms to ensure feedback on the bill's performance. One cannot overemphasize the importance of these latter monitoring mechanisms because they both ensure feedback on the bill's effectiveness whether fault resides in its construction or in the agency's implementation. In this head, we consider the very real possibility that independent unions will ineluctably become like their predecessors, neoliberal instruments rather than genuinely representing the workers. We then conclude.

2. Alternative Proposals for Solutions.

There are three means the state can institute to improve and protect workers' conditions: Regulatory labor standards, labor relations reform and direct state social provisions (social security etc.).²³ Considering in passing the latter option first, social provisions require funds. Unfortunately, budget strictures combined with austerity measures, which international financial institutions have pressed upon Mexico appear to bar an expansion of the welfare state.

Reforming the regulatory framework of labor standards has its attractiveness in its ostensible simplicity. Government promulgates the appropriate standards and an agency (in the case of Mexico, the Secretary of Labor) implements them. However, such a policy has its complications. Mexico has one of the most regulated labor markets in the world including stipulations as to minimum wage, dismissals restricted to just cause, and detailed health and safety standards. The weak link, as it were, the Secretary of Labor, does not and/or cannot perform its job adequately. The sheer vastness of the undertaking, that is to say, inspecting the 100,000s of firms, signs the inspections' demise from the beginning. Assuming a Secretary sincere in its mission, it would still face an insurmountable challenge: Keeping the entire labor market in line with its labor standards. Given the limited funding available, it does not seem reasonable to expect the Secretary to successfully see its mission through. Furthermore, the government does not have the conviction to root out violators. The government has a conflict of interest because of its close ties to business. Whether under the present incumbent, the PAN, or under the alternative PRI leadership, those with power remain in government; and the business interests have the money and influence to arrogate to themselves this power.

Thus when one says government, we should assume that state and business interests coincide. Basically, only the very credulous would feel comfortable relying upon the government to see through with minimum funding the formidable inspection scheme necessary to effectively enforce labor standards throughout Mexico's labor market.

Neither is the PAN proposal to reform labor relations and the labor boards a credible remedy to unsatisfactory labor conditions. Its ostensible goal is labor market flexibilization steeped in neocorporatism. The proposal, called the Abascal Project, named after the former head of COPARMEX, now the head of the Secretary of Labor under the PAN, is a blueprint for reinforcing neoliberal and anti-union policies, i.e., labor market flexibilization. In addition to eviscerating labor protections, such as restrictions on firing, it assaults protections on the right of workers to freely associate in independent unions. It adds to the number of documents unions need, before the Secretary of Labor will certify them as unions, documents that the Secretary of Labor has, but will not share with the prospective unions. It limits the number of union applications to one at a time. Given that it can take a year or more for the process to run its course, this requirement serves to retard the formation of unions and therefore undermines their pertinence to resolve problems in the here and now. The Abascal Project goes so far as to require that workers favoring a union election identify themselves as such. This invites retaliation on the part of the firm and their government allies. True, the proposal institutes secret ballots in union elections; however, the previous identification requirement vitiates the purported benefits of a secret ballot. For all Abascal Project's objectionable clauses, its deficiencies lie also in what it does not do. Absent is a requirement that the Secretary of Labor provide a public registry for unions and collective bargaining agreements. Consequently,

the authorities refuse workers the requisite information to form unions. The above provisions reforming the labor boards, by their inclusion, as well as, their omission, would serve to undermine existing labor protections and to entrench the unrepresentative unions.²⁴

3. Description of the Details of the Bill's Major Provisions.

a) List of bill's major provisions.

The labor boards must...

- require a union election even for the initial union registration.
- provide for a public registry of union registrations.
- be obligated to certify a union election within two weeks of a union petition.
- secure a secret ballot for union elections.

Note: Fully protecting labor rights will require additional legislation, in particular, legislation directly addressing business labor violations.

c) The bill's reforms.

We propose a bill, which revises the labor boards to strengthen independent labor unions and thereby help to improve labor conditions. While the labor boards make excessive, even insurmountable demands on challenging unions, they perfunctorily accept a firm's initial union. The present situation lends itself too readily to the establishment of the discredited ghost unions and associated protection contracts. Legislation should require a union election to legitimize this initial union organization. Furthermore, the labor boards must provide a public registry of all union registrations,

collective bargaining agreements and any other documentation required of union petitions. They have the relevant information and can readily make it available to the public. The law should oblige the labor boards to certify the holding of union elections within two weeks of receiving the relevant petition. Also, democratic elections free of intimidation demands a secret ballot and the labor boards should institute this measure.

4. How the Bill Addresses the Causes of the Difficulty.

The proposal eliminates those provisions that underpin unrepresentative unions. The stricter review of initial union organization, where previously review was nonexistent, aims to condemn protection contracts. These protection contracts presently underpin the structure obstructing the formation of independent unions. The public registry would by its very nature eliminate ghost unions. Workers could then verify who supposedly represents them. Just as importantly, the public registry as a repository of all documentation necessary to a successful petition would enable workers to avail themselves of their right to hold union elections to replace existing unresponsive ghost unions. The two week deadline on processing the union election request should give the labor boards sufficient time to process the paperwork. Such a timetable would encourage discontented workers to hold elections because their demands for representation would bear fruit in the immediate future. The secret ballot prevents employers and ghost unions from retaliating against particular workers since they would no longer know who was behind the union election initiative nor who ultimately voted in favor of the newly formed representative union.

5. Costs and Benefits of the Bill.

The proposal's reforms should impose minimal economic costs in terms of its implementation. The labor boards would not have responsibility for any additional oversight or implementation except as it pertains to reviewing the initial union organizations. All in all, the labor boards' structure would remain the same and would not entail additional responsibilities and therefore resources.

Business interests' bottom line may suffer due to their diminished ability to exploit their workers. Business' government allies would also find fewer opportunities on the labor boards to intervene on the side of business. Since, the bill aims to redistribute power from business to independent unions and by extension workers, we should view the costs the state and business incur not as costs, but as the necessary consequence of revitalizing workers' rights.

6. Monitoring Performance.

The bill leaves very little discretion to the labor boards in terms of supporting the implementation of the bill's provisions after its promulgation. It mainly specifies what the boards cannot do in terms of interfering with their formation. Where the bill directs the boards to do something, as in the case of the public registry, nongovernmental organizations should serve to monitor that the boards actually implement the bill's relatively straightforward provisions. The independent unions embody the bill's monitoring linchpin. Once in place, they will serve as the boards' principal monitor. Independent of the state and business they will have as their sole purpose and interest will be the defense of workers' rights.

By removing the obstacles to independent unions, we expect them to flourish. The bill's provisions, in particular, those which remove the prohibitory red tape and require

secret ballots promises workers the freedom to unionize. To realize their empowerment, nongovernmental organizations such as independent unions and human rights organizations, both domestic and international will have to participate in training workers to take advantage of their newfound right to organize. Fortunately, organizations promises to fill this need. International unions such as the United Electrical Radio & Machine Workers of America International, Human Rights Watch, and FAT have stepped into the brink to assist in empowering workers. Indeed, we can expect to see these nongovernmental organizations monitoring Mexican labor conditions, as well as, training union organizers given that their activism and research already underwrite this legislative research report. Those unions that ignore workers' demands will find themselves losing their incumbency. Ultimately, however, our bill having empowered workers to freely unionize, relies on workers' commitment to improving their lot.

Therefore, the combination of explicit prohibitions, limited discretion and accountability, assistance on the part of nongovernmental organizations and the development of independent unions themselves should enable adequate monitoring of the bill's implementation and thereby secure independent and representative labor unions to improve labor conditions in Mexico.

7. Conclusion.

Thus, neither additional social provisions, improved labor standards nor the present government's proposal of reinforcing anti-union neoliberal policies viably promise to improve labor conditions. Our proposal focuses on eliminating the obstacles to the formation of independent unions. Its advantages consist in that it addresses the various means that explain businesses' and governmental allies' problematic behavior

while retaining the general structure of the relevant implementing agency. Its cost and benefits tend to reflect the undermining of the neoliberal state-business alliance and as such inevitably hurt business and their government supporters. However, workers' conditions will significantly improve with a dedicated advocate on its behalf, i.e., independent unions. Finally, the bill incorporates monitoring considerations at various levels to restrict board members discretion and increase their accountability, including, first and foremost, through the separation of powers associated with the introduction of independent unions as a viable power favoring workers' rights and a continued reliance on nongovernmental organizations to monitor progress.

Part V: Conclusion.

Mexican labor legislation is remarkable in the protection it promises workers. However, these provisions have mainly remained paper tigers. Especially in the last decade, working conditions have declined, in part, because of the increasing race to the bottom entailed by globalization and the spread of neoliberal economics. However, in recent times, under pressures for flexibilization, unions have seen their influence decline. As a result, workers have been left to fend for themselves. Legislation governing the right of association and union activity have up till now successfully prevented the formation of alternative, genuinely democratic unions to vindicate their rights. Labor standards in themselves and the government's proposal of reinforcing anti-union neoliberal policies have limited promise. However, our bill proposes to remove the obstacles to the development of independent unions and invigorate workers' rights. It would redistribute power to workers through the instrument of independent unions in large measure thanks to imparting these independent unions and other nongovernmental organizations with the

role of monitoring working conditions. Through the promotion of independent unions the bill should go far in improving labor conditions in Mexico.

GLOSSARY:

- ASSA: Association of Flight Attendants of Mexico/Asociación de Sindical de Sobrecargos de Aviación de México
- CAT: Center for Worker Support/Centro de Apoyo al Trabajador
- CCE: Business Coordinating Council/Consejo Coordinador Empresarial
- CEN: National Executive Committee/Comité Ejecutivo Nacional
- CMHN: Council of Mexican Businessmen/Consejo Mexicano de Hombres de Negocios
- COECE: Trade Coordinator for Business Enterprises/Coordinadora de Organismos Empresariales de Comercio Exterior
- CONCANACO: Confederation of National Chambers of Commerce/Confederación de Cámaras Nacionales de Comercio
- COPARMEX: Mexican Employers' Confederation/Confederación Patronal de la República Mexicana
- CT: Labor Congress/Congreso del Trabajo
- CTM: Confederation of Mexican Workers/Confederación de Trabajadores Mexicanos
- EPZ: Export Processing Zone
- FAT: Authentic Labor Front/Frente Auténtico del Trabajo
- FDI: Foreign direct investment
- GM: General Motors
- ISI: Import Substitution Industrialization
- LFT: Federal Labor Law/Ley Federal del Trabajo
- NAALC: North American Agreement on Labor Cooperation
- NAFTA: North American Free Trade Agreement
- NAO: National Administrative Office
- NGO: Non governmental organization
- PAN: National Action Party/Partido de Acción Nacional
- PRD: Party of the Democratic Revolution/Partido de la Revolución Democrática
- PRI: Institutional Revolutionary Party/Partido Revolucionario Institucional
- ROCCIPI: Rule, Opportunity/Capacity, Communication of Law, Process, Interests, and Ideology
- SNTETA: National Union of Air Transport Workers/Sindicato Nacional de Trabajadores y Empleados del Transporte Aéreo
- SUTERM: Union of Electrical Workers/Sindicato Único de Trabajadores Electricistas de la República Mexicana
- TAESA: Executive Air Transport/Transporte Aereos Ejecutivos
- UNT: National Workers Union/Unión Nacional de Trabajadores
- SNTE: National Union of Workers in Education/Sindicato Nacional de Trabajadores de la Educación
- SUTERM: Exclusive Union of Mexican Electrical Workers/Sindicato Único de Trabajadores Electricistas de la República Mexicana

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