

MEXICO

1. GENERAL INTRODUCTION

A. BASIC LABOR POLICY

The *Political Constitution of the United Mexican States*, promulgated in the city of Queretaro on February 5, 1917, is the country's basic legal instrument. The early 20th century was marked by social and political movements that culminated in the Mexican Revolution of the 1910-1917 period. The revolution's original objectives were to remove then-President Porfirio Diaz from office and to establish constitutional recognition of the principle that a president may not be reelected. This movement expanded to become a genuine national revolution that gave rise to an entirely new constitutional order.

Article 123 of the Mexican Constitution of 1917 was the first in the world to enact social and economic rights in a country's basic charter. Article 123 guarantees the right to organize, to bargain collectively and to strike. It also secures a set of workers' social and economic rights, including the eight-hour day and the six-day week, pregnancy and childbirth leave and pay, minimum wages, profit sharing, overtime pay, severance pay, worker housing and recreation, and occupational safety and health.

A basic objective of Mexican labor law is to ensure stability in the employment relationship and, in particular, to provide protection to workers against unjust dismissal. Article 123 of the Mexican Constitution

contains protections against unjust dismissal and dismissal for joining a union or a lawful strike. The *Federal Labor Law* (*Ley Federal de Trabajo*, hereinafter FLL), which is the key labor relations statute in Mexico, specifies 15 reasons for which an employer can dismiss a worker justifiably and without liability (see The Individual Employment Relationship, section 1D, below). Any reason for discharge not encompassed by those specified in the FLL is *per se* unjustified. Since union activity is not among the lawful justifications for discharge, discharge for union activity is contrary to the FLL. Just cause protection provides to some extent a functional equivalent to the unfair labor practice doctrines found in U.S. and Canadian labor law.

B. LABOR LAW JURISDICTION

Article 123 of the Constitution originally granted state legislatures the power to enact their own labor laws. However, this system created uncertainty and, in 1929, Articles 73-X and 123 of the Constitution were amended to grant the federal Congress exclusive power to enact labor laws.

Article 123 of the Constitution and the *Federal Labor Law* are both in force throughout the country. However, the responsibility for enforcement of Mexico's labor law is shared between the federal government and local governments, that is, the 31 states and the Federal District (D.F.). The authority of local governments is contained in Section XXXI of Article 123, which states that "labor law enforcement belongs to the authorities of the states in their respective jurisdictions." Except in key industries or sectors reserved by the Constitution for the federal jurisdiction (see box 3.1), all enterprises fall within the enforcement jurisdiction of local authorities.

Maquiladora industries are concentrated along the U.S.-Mexico border, where more than 3,000 factories employ over one million workers; because of their location, the maquiladora plants generally come under the jurisdiction of state labor authorities and the state-based Conciliation and Arbitration Boards (CABs) in Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas.¹

¹ See Secretaría del Trabajo y Previsión Social (STPS), *Estadísticas Laborales - Primer*

Box 3.1**Federal Labor Law Enforcement Jurisdiction**

Article 123, Section XXXI of the Mexican Constitution states:

“Labor law enforcement belongs to the authorities of the states in their respective jurisdictions, but the following matters remain within the exclusive competence of the federal authorities:

a) Branches of Industry and Services:

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|---------------------------------|--------------------|--------------------|
| 1. Textile | 2. Electrical | 3. Cinematography |
| 4. Rubber | 5. Sugar | 6. Mining |
| 7. Foundries and steel mills... | 8. Energy | 9. Petrochemical |
| 10. Cement | 11. Limestone | 12. Automotive... |
| 13. Chemical... | 14. Pulp and paper | 15. Vegetable oils |
| 16. Packaged food processing... | 17. Brewing... | 18. Railroads |
| 19. Lumber... | 20. Glass... | 21. Tobacco... |
| 22. Banks and credit unions | | |

b) Enterprises:

1. Those administered directly or in decentralized form by the federal government.
2. Those operating by virtue of a federal contract or concession, and connected industries.
3. Those operating in federal zones or under federal jurisdiction, in territorial waters or in those included in the exclusive economic zone of the nation.

Also within exclusive competence of the federal authorities are enforcement of labor laws in matters related to disputes that affect two or more federal entities, collective contracts that have been declared manda-

Trimestre 1998 (México, D.F.: STPS Subsecretaría “B”, CGPEET, 1998), at p. 17, Cuadro I.6; and Instituto Nacional de Estadística, Geografía e Informática (INEGI), *Industria Maquiladora de Exportación - Indicadores Mensuales, Número de Establecimientos por Entidad Federativa and Personal Ocupado Según Categoría*, (México, D.F.: INEGI, <http://dgcnesyp.inegi.gob.mx/BDINE/J15/J150001.HTM>, December 15, 1998).

tory in more than one federal entity, employer obligations in education matters under the terms of the law, and with respect to employers' obligations in matters of training and skills development, as well as safety and health in the workplace, for which the federal authorities shall have the assistance of state authorities when it concerns branches or activities within state jurisdiction, according to the terms of the relevant regulatory law."

The United States maintains a single federal system of labor relations laws and enforcement applying throughout the country with preemptive effect over state laws. The United States maintains a single National Labor Relations Board to enforce U.S. law on rights to organize, bargain collectively and strike. By contrast, in Canada, federal labor law does not prevail over provincial labor law; federal and provincial labor relations statutes apply in parallel across different jurisdictions. Canada has 11 distinct labor law regimes. Each Canadian jurisdiction maintains its own separate agency to enforce its labor relations laws.

C. LEGAL SOURCES OF LABOR RIGHTS

Article 133 of the Mexican Constitution establishes a hierarchy among different types of law. The Constitution itself, followed by laws which emanate from the Constitution and duly ratified international treaties, form the supreme law of the land. These laws take precedence over regulations,² local (state or D.F.) constitutions, and local statutes. However, there are no local labor law statutes in Mexico (see Labor Law Jurisdiction, section 1B, above).

The law governing the labor relations of private sector workers in Mexico is found in several legal instruments. The key sources are the *Political Constitution of the United Mexican States*, the *Federal Labor Law*, regulations made thereunder, and international treaties approved by the federal Senate and signed into law by the President of the Republic. In addition, where there is no express provision in those sources or in their provisions covering similar cases, Article 17 of the FLL provides that the

² Regulations serve to implement a particular statute, generally by providing further detail with respect to and establishing rules for the application of the law. A regulation is issued by the executive branch of the government.

general principles of law, the general principles of social justice deriving from Article 123 of the Constitution, case law and precedent, custom and equity will be taken into account.

In Mexico's civil law system, court decisions do not necessarily create binding precedent which governs the decisions of lower courts and tribunals. The Mexican Supreme Court and the federal appeals courts (Collegiate Circuit Courts) create binding precedent, referred to as *jurisprudencia firme*, only when they issue five consecutive consistent decisions on the same point. In the absence of such a series of decisions, a court ruling binds only the parties to a particular case in question and need not be followed in other cases. Instead of relying on prior decisions, Mexican courts and tribunals tend to base decisions upon a doctrinal analysis of sections of relevant statutes, articles of the Constitution, or regulations, as the case may be. Mexican courts may also give significant weight to the doctrinal opinions of respected jurists, who are usually law professors or legal researchers.

The U.S. National Labor Relations Board and Canadian provincial labor relations tribunals operate largely by deciding cases that establish precedents to guide future conduct. However, the Canadian province of Quebec, like Mexico, comes from a civil law tradition which places more emphasis on codes than on judicial or administrative tribunal precedents.

1) The Federal Constitution

Article 9 of the Mexican Constitution establishes the right of all citizens to freely associate for lawful purposes. In addition, Article 123 provides specific labor rights. Article 123(A), Section XVI (*Artículo 123, Apartado A, Fracción XVI*) states that "both employers and workers shall have the right to organize for the defense of their respective interests, by forming unions, professional associations, etc." The introductory clause of Article 123 has been construed to protect the right to bargain collectively, as it empowers the federal Congress to enact laws governing "every contract of employment." Section XVII of Article 123 guarantees workers the right to strike, and Section XVIII defines a lawful strike as one

that has as its objective “[obtaining] balance between the different factors of production, harmonizing the rights of labor with those of capital.” Article 123 also establishes the organization and competence of the Conciliation and Arbitration Boards (CABs), the federal and state labor boards with jurisdiction over labor disputes.

The rights contained in Article 123 directly govern relations between employers, employees and unions. Thus, for example, a union could enforce directly against an employer its constitutional right to strike. However, since the FLL deals with labor relations matters in greater detail than the Constitution, it is more often the key point of reference in labor relations.

In Canada and the United States, the constitutional rights of workers, unions or any other private parties generally do not offer direct protection against interference by other private parties. Constitutional rights protect only against interference by government action. They do not directly govern relations between private parties and cannot be enforced against private parties.

2) *The Federal Labor Law*

The first comprehensive *Federal Labor Law* was passed in 1931. Its most important forerunners were laws and regulations adopted in various states and cities in the early 20th century. The textile industry and other key sectors were the focus of early efforts to organize and bargain collectively. During the period between the 1917 Constitution and passage of the first FLL in 1931, these sectors were regulated mainly by the states and municipalities. In 1925, the federal government sponsored a convocation of workers and employers in the cotton textile industry to standardize terms and conditions of employment in the sector. Terms and conditions were then overseen by labor-management factory committees, district committees, and a joint national commission.

The revised FLL of 1970 defines the individual and collective employment relationship and regulates organizing, collective bargaining and strikes. The FLL also governs the makeup and functioning of the tripartite CABs that administer labor justice and provide conciliation,

mediation and arbitration services. In addition to labor and industrial relations, the FLL also covers minimum wages, hours of work and overtime, child labor, protection for working women, workplace safety and health, profit sharing, job training, and other labor matters.

3) International Treaties

Under the Mexican Constitution, international treaties signed by the President of the Republic and ratified by the Senate, including those dealing with labor matters, are considered “self-executing” and become an integral part of domestic law insofar as they do not contravene the Constitution. In addition, Article 6 of the FLL provides that treaties concluded and approved under Article 133 of the Constitution shall apply to labor relations insofar as they are to the workers’ advantage.

The most important, albeit not the only, such international treaties are the Conventions of the International Labor Organization (ILO). The key ILO conventions relating to freedom of association and the rights to organize, to bargain collectively and to strike are the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98). Mexico has ratified Convention No. 87.

Canada has ratified the Freedom of Association and Protection of the Right to Organize Convention (No. 87), but the text of that Convention has not been incorporated directly into Canadian domestic law. Canada has not ratified Convention No. 98. The United States has ratified neither Convention No. 87 nor Convention No. 98.

D. THE INDIVIDUAL EMPLOYMENT RELATIONSHIP

The individual employment relationship in the private sector in Mexico is governed by the Constitution and the *Federal Labor Law*. Detailed aspects of every employee’s job are defined and regulated by law. The Constitution, as already noted, guarantees the rights to organize, bargain and strike, the eight-hour day and the six-day week, paid pregnancy and

childbirth leave, overtime pay, profit sharing, housing funds, health and safety protection, and compensation for unjust discharge. In addition to such matters the FLL regulates work shifts, holidays, vacations, promotion standards, and other working conditions.

In Mexico every employee works under an individual contract of employment incorporating minimal terms specified in the Constitution and the FLL, whether or not the contract is written and whether or not the employee is also covered by a collective agreement. Individuals can negotiate for terms and conditions superior, but not inferior, to those required by law for all individual contracts of employment.

Under Mexican law, collective contracts between a union and employer exist alongside each worker's individual contract of employment. The collective contract can be a standardization of the individual contracts. Under general principles of Mexican labor law recognized under the FLL (see Legal Sources of Labor Rights, section 1C, above), a collective contract takes precedence over an individual contract, given the superior general interest of workers in the collective contract. Mexican law does not recognize modifications or exceptions to collective contract terms that are negotiated between an employer and an individual worker.

In Canada and the United States, union-represented employees cannot have individual employment contracts; their terms and conditions of employment are set solely by the collective bargaining agreement and any legislated minimum labor standards.

Every Mexican worker who enters into employment has a contract of employment for an indefinite term unless the parties agree at the time of hiring to a specific contract duration. A contract for a specific duration can be made only in situations stipulated in the FLL, such as where the work to be done is of a temporary nature, or where the contract is to provide a temporary substitute for another employee (art. 37). A worker is presumed to have a permanent employment contract which can be terminated or modified — including changes in pay or job duties — only in accordance with the law and subject to legal proceedings.

Employment contracts can be changed on agreement of the parties. However, a general labor law norm applicable under the FLL provides that the employment contract of a worker cannot be amended so as to

render its terms less advantageous to the worker. Moreover, a worker whose wages are reduced by his or her employer is entitled to terminate his or her employment and claim severance benefits (*indemnización*). A Conciliation and Arbitration Board may, however, on application by an employer, modify working conditions in an individual employment contract where economic circumstances justify such action, provided that no contract may provide terms less advantageous to an employee than the conditions of work stipulated in the FLL. Conversely, a CAB may, on application by a worker, modify the worker's conditions of work if the worker's wages are not sufficiently remunerative, his or her hours of work are excessive, or there are special economic circumstances justifying such action.

Article 123, Section XXI of the Constitution and Title II of the FLL provide that a worker may not be dismissed without just cause and may claim reinstatement or compensation to remedy unjust dismissal. The FLL specifies 15 just causes for discharging a worker without liability (see box 3.2, below).

In the United States, most nonunionized employees are employed “at will,” which means that, subject to certain statutory exceptions such as antidiscrimination laws and other limited “public policy” exceptions, their contract of employment can be terminated without notice or severance pay, at any time, for any reason. By contrast, unionized employees are typically covered by collective bargaining contract clauses stipulating that they may be discharged only for “just cause.” In Canada, the employment-at-will doctrine does not apply. Those covered by collective agreements (approximately 35 percent of the labor force) can generally have their employment terminated only for “just cause.” Moreover, statutory termination notice requirements are applicable to all employees, as are antidiscrimination laws and a common law judicial requirement of reasonable notice (or pay in lieu of notice) for any termination of an employment contract which is for an indefinite term.

Any discharged worker can challenge his or her discharge by filing a complaint with the relevant CAB. At the time that the worker files the complaint, he or she must elect either to claim reinstatement or to claim a payment of three months' wages (*indemnización*). The CAB will first

seek to settle the case and, if the case is not settled, will hold a hearing to determine whether the employer can prove one of the 15 just causes for discharge. If the worker claims reinstatement and the employer fails to prove cause for discharge, the CAB will order that the worker be reinstated in his or her employment and be paid wages in arrears from the date of discharge to the date that the employer complies with the order.

In discharge cases the CAB will either uphold the discharge without compensation or, depending on which remedy the worker has elected to pursue, order the reinstatement or *indemnización* of the worker. It will not review the reasonableness of the penalty of discharge.

In some Canadian jurisdictions workers may claim statutory rights to severance pay, but only in the event of mass terminations of employment. There is no statutory right to severance pay in the United States. On the other hand, in both Canada and the United States government-sponsored unemployment insurance programs replace a part (in Canada 50-55%, in the U.S. generally about 50%) of a worker's wages for a period of time (in Canada between 14 and 45 weeks, in the U.S. generally up to a maximum of 26 weeks) in the event of involuntary termination of employment. There is no counterpart to these programs in Mexico.

Many cases of unjust discharge are processed each year by the more than 100 federal and state CABs throughout Mexico. Workers are entitled to free legal assistance from the Federal Office of the Labor Public Defender of the Mexican Department of Labor and Social Welfare (STPS) (in matters of federal jurisdiction) and from similar functionaries of the state departments of labor (in matters of state jurisdiction). Many workers also turn to private attorneys who specialize in such cases and who are paid from the proceeds of the severance pay won by such workers.

Workers usually accept severance pay in liquidation of their claim for reinstatement. According to data from the Federal Office of the Labor Public Defender, only one worker among 154 who won a claim for unjustified discharge in 1995 opted for reinstatement.³ In a case study of

³ Information supplied to the Secretariat by the Federal Office of the Labor Public Defender of the Mexican Department of Labor and Social Welfare.

two state CABs, researchers examined 75 cases of individual claims of unjustified dismissal. None of the workers who prevailed in those cases opted for reinstatement.⁴

In addition to any severance pay to which he or she may be entitled, a worker who has 15 or more years of service with an employer is entitled, upon resigning or being discharged for any reason, to a statutory seniority allowance of 12 days' pay per year of service. The upper limit for the daily salary amount used to calculate this payment is two times the daily minimum wage.

Under Article 49 of the FLL, an employer is exempted from the obligation to reinstate certain types of worker. These include workers employed in the enterprise for less than one year, confidential employees, domestic servants, and casual workers. In such cases the CAB will order the employer to give the worker compensation comprising a payment of three months' wages, a payment of 20 days' wages per year of seniority, the statutory seniority allowance (12 days' pay per year of service) and arrears of wages from the date of discharge to the date on which compensation is paid.

The FLL specifies nine justified reasons for a worker to quit employment and still receive statutory severance pay (*indemnización*), which is normally three months' pay plus 20 days' pay for each year of service (see boxes 3.2 and 3.3). A worker may claim any severance pay owing after resignation by filing a complaint with the relevant CAB in order to collect it. The CAB will seek to settle any case brought before it. If the case is not settled, the CAB will hold a hearing, receiving and evaluating the evidence to determine whether the reason for quitting falls within one of the definitions of just cause. If the CAB finds that the worker was justified in quitting, it will order the employer to pay the amounts owing.

⁴ See Kevin J. Middlebrook and Cirila Quintero Ramirez, "Conflict Resolution in the Mexican Labor Courts: An Examination of Local CABs in Chihuahua and Tamaulipas" (1995), available from the U.S. National Administrative Office.

Box 3.2**Just Cause for Termination of Employment in Mexican Labor Law**

Article 47 of the FLL defines the following 15 just causes for terminating an individual contract of employment:

- falsification of documents or statements on which the worker bases his or her application for employment;
- misconduct at work directed at the employer, members of the employer's family, or managers;
- misconduct directed at coworkers that upsets workplace discipline;
- misconduct outside of work directed at the employer, members of the employer's family, or managers;
- intentional material damage;
- material damage through negligence;
- inexcusable breach of workplace safety;
- immoral acts in the workplace;
- revelation of trade secrets;
- three absences within 30 days without permission or without just cause;
- disobeying management orders without just cause;
- refusal to obey health and safety rules;
- working under the influence of alcohol or drugs (except medical prescriptions);
- imprisonment under sentence of law;
- any equally grave act with similar workplace consequences.

The employer must provide the worker with a written statement of reasons for discharge. If the worker refuses to accept it, the employer must file it with the CAB within five days.

Article 51 of the FLL specifies nine just causes for a worker to terminate employment and receive severance pay of three months' pay plus 20 days' pay for each year of service:

- deception by the employer about working conditions;
- mistreatment by the employer or agents of the employer within the workplace against the worker or members of the worker's family;
- mistreatment by the employer or agents of the employer outside the workplace against the worker or members of the worker's family;
- reduction in the worker's salary;

- failure to provide proper pay on the agreed date and location;
- malicious damage by the employer to the worker's personal tools or equipment;
- the existence of a serious danger to health and safety of the worker or his or her family;
- negligence by the employer in compromising health and safety;
- equally grave actions with similar consequences.

E. EXCLUSIONS FROM COVERAGE

In general, the labor rights contained in the Constitution extend to all workers within the national territory regardless of occupation or status.

Under the *Federal Labor Law*, any person who personally performs subordinate work for another individual or legal person in return for remuneration, except family members employed in a family enterprise, has the rights to organize, to bargain collectively, and to strike. Workers whose jobs are legally classified as "confidential," such as managers, general supervisors or workers in a position of trust, are legally prevented from joining other workers' unions and in practice rarely form unions.

In addition to managers, supervisors, agricultural workers and domestic employees, U.S. labor law generally excludes all independent contractors. Canadian labor relations statutes exclude managers and those employed in a confidential capacity in matters relating to labor relations. Some Canadian jurisdictions also exclude specific occupations such as domestic servants, agricultural workers, or members of such professions as law or medicine. In much of Canada, low-level supervisors and contractors in a position of economic dependence are covered by labor relations law.

2. LEVELS OF PROTECTION – SUBSTANTIVE LABOR LAWS

A. LABOR PRINCIPLE 1 – FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE

1) Legal Foundations

As noted above (see section 1C, Legal Sources of Labor Rights), the Mexican Constitution guarantees freedom of association and the right to organize.

The *Federal Labor Law* of 1970 defines unions as “the association of workers or employers, constituted for the study, betterment and defense of their respective interests” (art. 356) and establishes “the right to form unions without need for previous authorization” (art. 357). Article 359 declares that “unions have the right to adopt their own constitutions and bylaws, to elect freely their representatives, to organize their administration and activities and to formulate their program of action.” Unions require legal registration to obtain the status needed to engage in contractual activities or legal proceedings on behalf of their members (see Legal Status of Unions, section 2A.3 below).

Workers may also form a temporary “coalition” to defend their interests, without going through the formality of forming a trade union. Such coalitions do not have the same legal capacity as a registered union to enter into contracts or engage in business transactions, but they may act much as unions do in participating in profit sharing and health and safety committees and negotiating for improvements in working conditions. They may also undertake a strike to achieve their demands, even without the same juridical capacity as a formal union.

2) The Formation and Dissolution of Unions

Under the FLL, any group of 20 or more workers in active employment may form a trade union without the need for previous authorization.

(i) Types of Union in Mexico

The FLL specifies various types of trade union. Unions must meet one of these definitions:

- 1) an enterprise union, made up of workers in a single company;
- 2) a guild union or craft union, made up of workers in the same occupation, craft or specialty, who may work for different companies;
- 3) an industrial union, made up of workers in two or more companies in the same industrial sector;
- 4) a national industrial union, made up of workers in one or more companies in the same industrial sector operating in two or more states;
- 5) a general labor union, made up of workers with different occupations in those small localities where the 20-worker minimum for union formation cannot be met by workers in the same occupation.

Trade unions may join together in federations and confederations. Federations are normally formed at the state level. Confederations are formed at the national level or at a multistate level.

The dissolution of a union must be done by majority vote of at least two-thirds of the union membership in an assembly called for this purpose. Only a CAB order can ultimately dissolve a union.

3) Legal Status of Unions

Article 374 of the FLL expressly defines unions as “persons” before the law, with legal capacity to acquire property, enter into contracts, and defend their legal rights before courts and tribunals.

(i) Registration of Unions

In Mexico, trade unions, like any other legal “person”, including businesses, civic associations, cooperatives and all other nongovernmental

organizations, require a public act of state called “registration.” In practice, a union requires registration to obtain the status needed to engage in most legal, contractual or commercial activities on behalf of its members. Without registration, unions can still hold meetings, elect officers, make demands on employers, issue public statements and the like, in keeping with the principle of freedom of association. However, other parties need not respond to their actions, since unregistered unions are treated as lacking the required legal capacity.

Union registration is the key to collective bargaining in Mexico. Once registered, unions can obtain title to collective contracts with employers (see Acquisition of Title to a Collective Contract, section 2B.2, below), acquire property, and otherwise undertake action in keeping with the defense of their members’ interests, including legal action.

Article 365 of the FLL requires unions within the federal jurisdiction to register with the STPS General Directorate of Registry of Associations and Unions within local (state or Federal District) jurisdiction to register with the local-level CABs. In the federal jurisdiction, the STPS informs the relevant federal CAB of the union’s registration.

The legal requirements for obtaining registration are minimal, and the granting of registration should be a purely administrative act. Article 366 of the FLL states that union registration may be refused only if: (1) the union does not have the aims and objects required by Article 356 of the FLL; (2) the union does not have the number of constituent members required by Article 364 of the FLL; or (3) the documents listed in Article 365 of the FLL are not submitted to the CAB or STPS, as the case may be. As long as the union complies with filing requirements, a union can be denied registration only if its stated purposes deviate from those related to the nature of a trade union, or when the union cannot prove that it has met legal minimum membership requirements.

Article 356 defines a trade union as an association of workers (or employers) set up for the study, improvement and defense of their respective interests. Article 365 requires that an applicant for registration submit in duplicate: (1) an authorized copy of the minutes of the constituent assembly; (2) a list showing the number of members indicating their names and addresses and the names and addresses of their employers, enterprises, or establishments in which they are employed; (3) an authorized copy of the union’s bylaws; and (4) an authorized copy of the

minutes of the meeting at which the board of directors was elected. Article 364 provides that any group of 20 or more workers in active employment may register a union of which they are members. A union must be one of the five types listed in Article 360 of the FLL (see The Formation and Dissolution of Unions, section 2A.2, above). This means that the group of workers registering the union must be composed of the type of workers of which the type of union that they seek to register must consist. For example, those registering a craft union must be workers of the same occupation, trade or craft, and those registering an enterprise union must all be employed in the same enterprise. An industrial union must consist of workers who are employed in two or more enterprises in the same branch of industry. Provided that they meet the above requirements, the workers registering a union need not constitute a majority of any particular workforce.

There is controversy in Mexico over whether CABs have a discretion to deny union registration on grounds not specifically set out in Article 366. Some CABs have refused registration on the basis that a registered union already exists in the workplace of the workers seeking to register the new union, and some authorities maintain that this approach complies with Mexican labor law. Other experts disagree. The Supreme Court of Mexico has recently stated that limiting the number of unions that may exist in a workplace is contrary to the constitutional protection of freedom of association and the right to organize and that denying registration on the basis that a union already exists in a workplace would also violate those protections.⁵ These decisions are not yet *jurisprudencia firme* however (see Legal Sources of Labor Rights, section 1C, above). Some CABs have used denial of registration to enforce the substantive requirements for the contents of union bylaws such as those set out in Article 371 (see Freedom of Association within Unions, section 2A.7, below). This interpretation of the FLL is also controversial.

The CAB will generally verify that a registering union meets the minimum of 20 workers in active employment by consulting employer payroll records, though other means of proof may be used. Some Mexican

⁵ *Amparo* Decision 337/94, Union of Academic Personnel of the University of Guadalajara, and *Amparo* Decision 338/95, Solidarity Union of Employees of the State of Oaxaca and Decentralized Agencies.

experts have questioned the legality and effectiveness of relying upon inspection of employer records or employer testimony to verify the employment status of union members.⁶ Article 364 of the FLL requires that the CAB include in its count those workers whose employment was terminated or who received notice of dismissal at any time between 30 days preceding the date on which the application for registration is made and the date on which such registration is granted.

Once a union has been registered, it may obtain title to a collective contract on behalf of appropriate groups of workers. For example, an enterprise union may hold an agreement only on behalf of workers in the same enterprise. A union registered as a craft union may hold title to any number of collective contracts made on behalf of persons in the same occupation. An industrial union may hold collective contracts with any number of employers within the same industry.

The authorities must resolve registration applications within 60 days. If they fail to respond, registration is considered to have been approved for all legal effects.

Federations and confederations must register as labor organizations with the STPS. Registration of a trade union federation or confederation is an administrative process in which officials simply verify that the by-laws of the federation or confederation address the subjects required by articles 371 and 383 of the FLL.

Dissolution or cancellation of union registration cannot take place by a simple administrative act. Instead, there must be a legal proceeding before the relevant CAB, fulfilling strict requirements for procedural and financial termination of union affairs. A union's registration may be cancelled only if the union ceases to fulfill the statutory requirements for its objects and organizational form or if it is properly dissolved by its members.

⁶ See, for example, National Administrative Office of Mexico, *Report of the National Administrative Office of Mexico, U.S. NAO Submission 94003*, Part IV, Study by the Group of Independent Experts (Mexico City, 1995).

4) Union Self-Governance

Under Mexican labor law unions are free to act within the mandate of their constitution and bylaws under the direction of their own leadership. This principle of trade union autonomy is an important element of Mexican labor law. Except for the intervention of the authorities with respect to union registration, government interventions are not contemplated in the FLL. As already noted, Article 359 of the FLL grants unions the right to establish their constitution and bylaws, to freely elect their representatives, to organize their administration and activities, and to formulate their program of action.

Article 378 of the FLL provides that unions cannot intervene in religious activities or engage in for-profit commercial ventures. Some unions, however, have negotiated with employers to obtain the right to administer subcontracting arrangements for parts of the employer's business. In practice, these arrangements have brought problems in their administration, so many unions have abandoned these ventures.

5) Political and Legislative Activities of Unions

Workers and unions in Mexico may engage in political and legislative activity in accordance with Article 9 of the Constitution, which guarantees the right of association for any legal objective. Unions may establish in their own constitution and bylaws the extent and nature of their political activities and are free to decide how to spend union funds. In practice, many unions are aligned with particular political parties and work closely with them on their legislative and administrative agendas.

6) Union Membership and Dues

The FLL provides that no one is required under the law to belong or not belong to a labor organization. However, Article 395 of the FLL permits an employer to agree with a union, in a collective bargaining contract, to hire only members of that union. The employer may also agree with the union to discharge any employee who resigns or is expelled from the

union. This agreement is known as an “exclusion clause” in Mexican labor discourse. A union’s internal rules may provide for the expulsion of members who join or support another union. In general, an employee who is discharged pursuant to an exclusion clause may not claim severance pay or reinstatement. However, under Article 123, Section XXII of the Constitution a worker may claim such remedies if he or she is dismissed pursuant to an exclusion clause for joining or supporting a union during the process of forming and seeking to register that union. An exclusion clause may not be applied to require the dismissal of employees in the service of the employer before such a clause was negotiated. However, an employer and a registered union may agree to implement such a clause prior to the hiring of any workers at the employer’s establishment.

The exclusion clause is a controversial element of Mexican labor law. Supporters believe that the clause is necessary to maintain worker unity to effectively confront employer power. Critics argue that the clause serves as an instrument of control over potential union dissidents. Some jurists consider exclusion clauses to unconstitutionally interfere with freedom of association guarantees.

In the United States an employer may not discharge or discriminate against an employee because that employee has lost or been denied union membership, unless the employee lost or was denied membership due to his or her failure to pay uniformly required union dues. In Canada, an employer may not discharge or discriminate against such an employee if he or she lost or was denied union membership because he or she exercised rights under labor law, including the right to join or associate with another union.

The FLL requires employers to deduct from union members’ pay and remit to the union ordinary union dues payments. Ordinary union dues are those which are paid at regular intervals to support the normal operating expenses of the union. A worker who is not a union member may not be required to pay union dues. There are no legal restrictions on a union’s ability to allocate funds to otherwise lawful activities, whether collective bargaining related or political, except that unions may not engage in for-profit activity or intervene in religious affairs (see Union Self-Governance, section 2A.4, above).

In the United States, compulsory union dues or fee payment is left to the bargaining parties, except in 21 “right-to-work” states. These states have exercised an option under federal labor law to prohibit negotiation of a union security clause requiring either membership in a union or payment of an amount equal to union dues by those workers in a union’s bargaining unit who choose not to become union members. In all U.S. states, unions are prevented from spending any portion of a nonmember’s dues on political purposes if that nonmember objects to such expenditures. In Canada the majority of labor relations statutes require that, at the request of the union, the employer deduct the amount of regular union dues from the wages of each worker in a bargaining unit that it represents. All but one of the Canadian jurisdictions allow unions to decide whether and how to spend dues revenue, both from union members and nonmembers, for political purposes.

7) Freedom of Association within Unions

Article 371 of the FLL sets out a list of subjects which a union’s bylaws must address, including such matters as the rights and obligations of members; the mode of payment and amount of union dues; and rules for the administration, acquisition and alienation of property constituting the assets of the union. A union member has a legal right to ensure that these bylaws are followed and may file a complaint with the relevant CAB to do so.

Article 371 does not mandate that any particular member rights be included in union bylaws, with two exceptions. First, it provides the following procedural protections for union members facing expulsion from the union:

- (a) a meeting of the workers shall be called for the sole purpose of informing them of expulsion;
- (b) in the case of trade unions subdivided into sections, the expulsion procedure shall be carried out at a meeting of the section concerned; the motion of expulsion shall be submitted to the workers of each one of the sections of the trade union for their decision;
- (c) the worker concerned shall be entitled to make a statement in his or her defense in accordance with the bylaws;

- (d) the meeting shall hear the evidence on which the motion of expulsion is based and the evidence submitted by the worker concerned;
- (e) workers shall not be represented by proxy or vote by correspondence or in writing;
- (f) expulsion shall be approved by a two-thirds majority of the total membership of the trade union; and
- (g) expulsion may be decided only in those cases expressly stipulated in the bylaws, duly evidenced and exactly applicable to the case.

Article 371(VIII) also provides a mechanism whereby the members of a union can convoke, by petition of workers representing at least 33 percent of the total membership of the union, a general meeting of the union if the board of directors of the union fails to do so.

As noted above (see Union Membership and Dues, section 2A.6), the Mexican Constitution provides remedies to workers against dismissal pursuant to an exclusion clause for joining or supporting a union during the formation or registration of that union.

Article 373 of the FLL requires the board of directors of a union to provide a complete and detailed account of the administration of the union's assets to a general meeting of the union at least once every six months. Unions must report to the relevant CAB the makeup of their leadership, as well as registering new union members and any changes in leadership. The CABs treat union membership lists as confidential. Unions also must report any change in their constitution or bylaws and respond to inquiries from the authorities about any union-related actions.

In the United States the *Labor Management Reporting and Disclosure Act* (LMRDA) includes a comprehensive union member's "bill of rights" regulating internal union democracy. The LMRDA protects free speech rights in union affairs; the right to vote on union dues; the right to run for union office; the right to obtain the union's charter, bylaws and a copy of the collective bargaining agreement; the right to obtain an accounting of union finances; and the right to union elections free of intimidation or fraud. Canada does not regulate internal union democratic processes as closely as the United States. Most Canadian jurisdictions require unions to provide their members with a copy of the

union's audited financial statements and prohibit unions from retaliating by seeking dismissal under union security clauses against bargaining unit members for exercising labor law rights. Most of the other rights provided to U.S. unionists under the LMRDA are left to the discretion of Canadian unions as to their inclusion in the union's constitution.

B. LABOR PRINCIPLE 2 – THE RIGHT TO BARGAIN COLLECTIVELY

1) Legal Foundations

The Constitution does not explicitly mention the right to bargain collectively. However, the introductory clause of Article 123 (A) of the Constitution, which promotes “social organization for labor” and empowers the federal Congress to “enact labor laws which shall apply... in a general way to all labor contracts,” has been interpreted to provide a constitutional basis for the right to and regulation of collective bargaining.

The 1931 FLL incorporated the definition of the collective contract developed in earlier state legislation, defining it as “any agreement concluded between one or more trade unions of workers and one or several employers, for the purpose of establishing the conditions under which work will be performed in one or more companies or establishments.” This remains the definition in Article 386 of the 1970 FLL. Articles 386 to 469 of the FLL set out the main provisions relevant to collective bargaining in Mexico.

2) Acquisition of Title to a Collective Contract

The FLL definition of a collective contract establishes that only trade unions can enter into such an agreement. The union that signs a collective contract is considered to hold title to the agreement. Its counterpart may be a single employer, a multiemployer group, or a union of employers, depending on the type of union (see *The Formation and Dissolution of Unions*, in section 2A.2, above). A collective contract can be negotiated with a single facility or with a multifacility employer, or a

combination of the two, again depending on the type of registration the union holds.

A union that holds title to a collective agreement has the exclusive right to administer, enforce and renegotiate its terms. Moreover, the collective contract is considered a right of workers as a class and must be extended to cover all workers in the enterprise (except managers and certain confidential employees), whether or not they are members of the union that negotiates the collective contract. This rule does not apply to the collective contracts of craft unions.

Unlike in Canada and the United States, where the scope of the group represented by the union is based on the relatively fluid criterion of bargaining unit appropriateness, in Mexico the coverage of a collective agreement to which a union holds title is prescribed by the FLL and depends primarily on the type of union.

In Mexico, a union may be formed and registered, may bargain collectively, and may obtain title to a collective agreement without an election or other evidence that it has the support of a majority of the workers that it seeks to represent. There may be more than one registered union in a given workplace (see, however, Union Membership and Dues, section 2A.6, above).

In Canada and the United States a union requires the support of a majority of any group of workers that it seeks to represent before engaging in collective bargaining on their behalf. In Mexico, it is only when a union is faced with either a challenge by another union seeking title to the collective contract (see immediately below) or a challenge by an employer to its majority support for a strike (see Regulation of the Right to Strike, section 2C.3, below) that it may be legally required to demonstrate that it has the majority support of the workers it represents.

(i) Challenging the Title of Another Union

Any union of a type appropriate to the workers in question can at any time seek support from workers covered by a collective contract and file with the relevant CAB a challenge to the incumbent union's title to that contract. The CAB will then hold hearings into the challenge. If the in-

cumbent union does not prove its majority support during such proceedings, it will lose title to the collective contract, and thus lose the right to administer and negotiate revisions to it. The union that demonstrates majority support obtains or maintains title to the contract, as the case may be. In deciding such challenges, a CAB may supervise a vote by the workers, known as a *recuento*, in order to obtain evidence of which union enjoys majority support. A *recuento* will not necessarily be conducted if other evidence is sufficient to prove majority support. If a vote is held, it may be carried out by secret ballot or by public declaration of support. The decision to conduct a *recuento* by secret ballot or not is at the discretion of the CAB. The FLL does not specify a required voting procedure. In practice worker votes are most often recorded publicly.

U.S. labor law provides that no union representation election may take place within one year of an earlier election in the same bargaining unit. Canadian labor law generally provides that, when a union's application for certification is unsuccessful, that union may be temporarily barred from making another application for certification for substantially the same bargaining unit. The length of the bar varies by jurisdiction but is most often less than one year.

If multiple-enterprise or industrial unions compete for representation in a single workplace, the collective contract must be concluded with the union having the greatest number of members among workers employed in the enterprise (FLL art. 388). If there are multiple craft unions, the employer may make a collective contract with a group of unions representing a majority of the craft workers, as long as the rest of the craft unions agree. If they do not, each craft union may negotiate a separate collective contract. If a craft union competes with an enterprise union, it may negotiate separately as long as it has more members than the number of workers of that craft who prefer the enterprise union; otherwise, the enterprise union will bargain for everyone.

3) The Collective Bargaining Process

Collective contracts generally have an unlimited duration. Salary scales must be revisable on a yearly basis (FLL art. 399BIS). Either party may

request revision of the collective contract. A request for revision must be made at least 60 days before the expiry of a collective contract made for a special fixed period, if such period does not exceed two years; or at least 60 days before the conclusion of a contract's second year, in the case of a contract for a specified period of time longer than two years or an unspecified period of time, or for a specified or unspecified piece of work. Collective contract negotiations thus generally take place at two-year intervals. A request for revision of the salary scale must be made at least 30 days prior to the end of its one-year term. If neither party requests a modification, or if the union does not exercise its right to strike for its proposed changes, the collective contract is extended for a period equal to its previous term.

(i) Obligation to Bargain

When an employer is asked by a union to sign a collective contract and refuses to do so, the workers may exercise their right to strike (FLL art. 387 and art. 450). In practice, this generally compels the employer to engage in bargaining and to conclude a collective contract with the union. Unions must file a notice of strike with the relevant CAB prior to striking (see Strike Procedures, in section 2C.3, below). Unions often file a notice of strike with the relevant CAB at or soon after the beginning of negotiations.

U.S. and Canadian labor laws establish a legal “duty to bargain in good faith” on the part of employers. Unlike Canadian and U.S. labor law, Mexican labor law does not create a legal duty to bargain. Mexican labor law enforcement thus does not deal with negotiating practices or refusals to bargain *per se*. Rather, legal enforcement deals with the results of an employer's refusal to sign the contract sought by the union, if the refusal results in a strike. The legal enforcement role of the CAB in these situations is to verify that the strike meets legal requirements and, if so, to enforce the right to strike by granting the workers the necessary guarantees and assistance to halt company operations (see Regulation of the Right to Strike, section 2C.3, and Prohibition of Striker Replacement, section 2C.5, below).

(ii) Disclosure of Information

There is no legal obligation upon parties to collective bargaining to disclose to each other information concerning subjects of negotiation. However, under Article 121 of the FLL, an employer is legally obligated to disclose its tax declaration to its workers within 10 days of filing that declaration with the Department of Finance and Public Credit. This obligation is imposed for the purpose of facilitating mandatory profit sharing under the FLL. Employees are not permitted to disclose information contained in these returns to any third party. Employees may, however, disclose such information to their union.

(iii) Changes to Working Conditions during Negotiations

The terms of the collective contract remain in effect until either (1) a strike begins, or (2) a new collective contract is reached, whether by agreement, CAB decision, or voluntary arbitration. Note that, as discussed below (see Binding Effect of Collective Contracts, in section 2B.4), collective labor relations may be suspended or terminated in cases of economic necessity, pursuant to articles 427 to 439 of the FLL.

In the United States an employer may not unilaterally alter terms and conditions of employment from the time when either party gives notice to negotiate a collective bargaining agreement until the parties reach an impasse in negotiations. The employer may, however, refuse to deduct union dues or to participate in arbitration hearings once a collective bargaining agreement has expired. In Canada a freeze on terms and conditions of employment applies from the time that either party gives notice to bargain to the time at which the parties have completed the conciliation process and are in a legal strike or lockout position.

(iv) Scope of Bargaining and Contents of Agreement

Article 391 of the FLL provides that every collective contract shall state:

- I. the names and addresses of the contracting parties;
- II. the enterprises and establishments covered by it;

- III. its duration or a statement to the effect that it is for an unspecified time or for a specified piece of work;
- IV. the hours of work;
- V. rest days and vacation leave;
- VI. wage rates;
- VII. the training to be provided to workers in the enterprises or establishments covered;
- VIII. the initial training to be given to persons recruited for work in the enterprise or establishment;
- IX. rules for the establishment and operation of the committees to be set up in accordance with the *Federal Labor Law*; and
- X. any other stipulations agreed to by the parties.

If the agreement lacks a salary scale, the CAB nullifies it for failing to fulfill this legal requirement. If there are no terms regarding holidays and vacations or hours of work, the constitutional and statutory minimums are applied and the contract is approved as legal by the CAB (FLL art. 393). A first collective contract may not contain terms less favorable to workers than those contained in their individual employment contracts.

Unlike the U.S. system of collective bargaining, there is no distinction in Mexican labor law between “mandatory” and “permissive” subjects of bargaining. Canadian labor law likewise does not make this distinction.

Mandatory Joint Committees

The FLL mandates the formation of worker-employer joint committees to carry out social and economic functions prescribed by the FLL or the collective contract. The most important committees are those that determine profit sharing (FLL art. 125 s. 1), those that create the general framework for seniority rules (art. 158), those that formulate company disciplinary policies (art. 424 s. 1) and joint health and safety committees (art. 509). Health and safety committees are empowered to propose preventive measures, to investigate the causes of accidents and occupational disease, and to supervise measures they adopt. The agreements of joint committees may add to but may not take away from the rights of workers contained in the FLL or in a collective contract.

(v) Conciliation and Arbitration of Bargaining Disputes

A union and an employer may at any time voluntarily request conciliation by the labor authorities. The federal STPS has created a Conciliators Corps to assist parties in settling contract disputes. Once a union has filed a notice of strike with the relevant CAB, conciliation by the CAB becomes mandatory. At that point, the CAB will summon the employer in order to give it an opportunity to respond to the union's position and will hold a conciliation hearing prior to the commencement of any strike action. If no agreement is reached in conciliation, the union may strike on the date given in its notice.

Arbitration of bargaining disputes is not legally mandatory in Mexico, though the parties may agree to submit their disputes to such processes at any time. In addition, once a strike has begun, a union may submit the labor dispute to the relevant CAB for resolution. For a more detailed discussion of CAB conciliation and dispute resolution processes, see Regulation of the Right to Strike, section 2C.3, below.

In practice, when unions in Mexico declare their intention to strike, the parties often seek intervention of the labor authorities to mediate and conciliate the conflict. If the dispute arises in an important enterprise or industry, the federal or state secretary of labor often gets involved, either personally or through high-level aides. This is when genuine bargaining usually takes place, with mediation helping the parties to reach an agreement.

In most Canadian jurisdictions, conciliation is a mandatory precondition to striking. Binding first-contract arbitration is available to prevent an employer from "stonewalling" a newly certified union. In the United States, unions may proceed to strike upon the expiration of a collective bargaining agreement without mandatory mediation or conciliation. The U.S. *National Labor Relations Act* generally limits government intervention to mediation at the request of both parties. The U.S. Federal Mediation and Conciliation Service (FMCS) may enter a dispute only when both parties request it. Only a genuine "national emergency" can provoke stronger government intervention. The *Railway Labor Act*, however, which covers the railroad and airline industries, requires mediation before any strike in those industries. It also provides for farther-reaching government intervention, even by the

President or the Congress of the United States, in those industries (see Appendix 4A, below).

(vi) Law-Contracts: Extension of Contract Terms to an Entire Sector or Region

Unions representing at least two-thirds of unionized workers in a given industrial or geographic sector may petition the relevant federal or state Department of Labor and Social Welfare for a declaration bringing a law-contract into force throughout the sector. A law-contract (LC) is defined by Article 404 of the FLL as “the agreement made between one or more unions of workers and various employers, or one or more unions of employers, for the purpose of establishing conditions of work in a determined branch of industry where such conditions are declared obligatory in one or more federal states, in one or more economic zones within one or more states, or in the entire national territory.” The LC thus extends negotiated contract terms to all employers and employees in the specific branch of industry.

Upon receiving a petition, the authorities may convene a meeting of interested unions and affected employers. Those attending the meeting may, by separate majority votes of unions representing and employers employing two-thirds of the unionized workers in the industry or sector in question, adopt a law-contract for the sector. Before such mandatory extension of contract terms, nonunionized workers and employers have an opportunity to state their objections.

The LC is administered by the majority union in each workplace, commonly through a labor-management committee overseen by a national commission. There are currently seven such law-contracts. They cover the following sectors: four textile sectors (cotton, wool, silk and hard fibers), with 30 unions and 34,507 workers in 1996; rubber (one union and 10,004 workers); sugar (nine unions and 27,942 workers); and radio and television (seven unions and 18,256 workers).⁷

The duration of an LC may not exceed two years (FLL art. 412). The LC can be modified by petition to the labor authorities by the represen-

⁷ See Secretaría del Trabajo y Previsión Social (STPS), *Informe de Labores 1996-1997* (Mexico, D.F.: STPS, 1997), at p. 104, Cuadro 6.

tative trade unions and employers in the sector, under terms similar to those for modifying collective contracts. It can terminate through mutual consent of the parties or if a petition for revision does not end with an agreement and the unions have not subsequently exercised the right to strike.

In Canada the province of Quebec has a similar institution, through which collective agreement terms are extended by legal decree to cover an entire sector or type of occupation. Such extension decrees cover 29 occupations or sectors. The mandatory extension of collective bargaining agreements to nonunionized employers and employees does not occur in the United States or in Canada outside of Quebec.

4) Enforcement of Collective Contracts

(i) Binding Effect of Collective Contracts

All collective contracts must be examined by the CAB for their legality and to ensure that they do not diminish workers' minimum rights under the FLL. Once this is done, the collective contract is treated as a judicial order of the CAB itself and is enforceable as such. The collective contract can be terminated by mutual consent of the employer and the union, due to completion of the project for which work has been contracted, or due to the permanent closure of the company or establishment.

In articles 427 through 439, the FLL provides a mechanism by which an employer may suspend or terminate collective labor relations in certain cases of economic necessity. Suspension of collective labor relations is somewhat analogous to a temporary layoff under Canadian or U.S. labor law, and a termination is analogous to a permanent layoff or plant closure. Articles 427 and 434 stipulate the legally recognized grounds for such measures.⁸ Suspension or termination of collective labor relations is

⁸ Article 427. Temporary suspension of labor relationships. The following shall be deemed to be grounds for the temporary suspension of the labor relationships in an enterprise or establishment:

subject to CAB approval. Except in cases falling under Article 427, Part I, or Article 434, Part I or V,⁹ CAB authorization must be obtained prior to the suspension or termination. Suspension or reduction of the work hours of particular workers takes place in reverse seniority order. In approving a suspension, the CAB awards compensation to the workers in question of up to one month's salary. Workers whose employment is terminated are entitled to receive at least three months' pay plus a seniority allowance (see the description in *The Individual Employment Relationship*, section 1D, above). Suspended workers maintain rights to be recalled to their former positions. In the event that a terminated undertaking is started up again, the hiring preference clauses in the collective contract will apply.

U.S. and Canadian labor relations statutes do not provide mechanisms through which collective bargaining agreement terms can be suspended or terminated in cases of employer economic hardship or necessity. Such mechanisms are left to the parties to negotiate and include in the agreement.

I. "force majeure" or any unforeseen event not attributable to the employer, or the employer's physical incapacity or death, shall entail the suspension of work as an inevitable, immediate and direct consequence;

II. lack of raw materials not attributable to the employer;

III. over-production in relation to the enterprise's economic situation and the state of the market;

IV. the known and obvious inability, of a temporary nature, of the enterprise to pay its way;

V. lack of money and the impossibility of obtaining it for the normal continuance of work, on condition that these facts are adequately proved by the employer.

Article 434. Grounds for termination of labor relations. The following shall be grounds for terminating the labor relationship:

I. "Force majeure" or any unforeseen event not attributable to the employer, or the employer's physical incapacity or death, shall entail the suspension of work as an inevitable, immediate and direct consequence;

II. the known and obvious inability of the enterprise to pay its way;

III. the exhaustion of the substance being extracted by a mining enterprise;

IV. the cases referred to in Art. 38;

V. statutory declaration of insolvency proceedings or bankruptcy, if the competent authority or the creditors decide on the permanent closing down of the enterprise or the permanent retrenchment of production.

⁹ *Ibid.*

(ii) Enforcement Procedures

The union has the right to file a complaint with the CAB claiming that the employer has violated the collective contract. Each individual worker has the same right. Such complaints are normally filed when a problem has not been resolved in direct discussions with the employer. In CAB proceedings, a worker may present his or her claim alone or with the union's assistance. The CAB will at the outset of the proceedings seek to conciliate the dispute between the parties. If a settlement is not reached it will conduct a hearing and issue an order in the case.

The use of the Mexican government CABs to resolve grievance issues, including individual workers' grievances, contrasts with the systems of the United States and Canada. There private arbitration is generally the contract enforcement mechanism, rather than recourse to the NLRB (in the U.S.) or the federal or provincial labor boards (in Canada).

5) Substitute Employers

A change of employer, whether through the sale or transfer of an establishment or enterprise or other transaction, does not affect labor relationships in the establishment or enterprise. The collective contract continues unchanged, the substitute employer is bound by its terms, and title to the agreement is not affected.

Canadian labor law also requires that the terms and conditions of a collective agreement carry over to an employer continuing the business of a previous employer. In the U.S., a "successor" employer has a duty to bargain with the union only if the successor employer hires a majority of the former company's union-represented workers. Otherwise there is no duty to bargain. The terms of the collective bargaining agreement are not binding on the successor employer.

6) Obligations of Unions towards Represented Workers

Article 375 of the FLL provides that a union shall represent its members in defending their individual rights unless the individual chooses to act directly and without the assistance of the union.

U.S. and Canadian laws impose a duty of fair representation on unions. The duty requires them to represent all bargaining unit members without arbitrariness, bad faith or discrimination. It applies to the union's administration of rights under the collective bargaining agreement. In the U.S. and in most Canadian jurisdictions, it also applies to the negotiation of that agreement.

7) Termination of Title to a Collective Contract

Workers who wish to change collective bargaining representatives may at any time seek through a registered union to challenge the title of the current union to the collective contract (see Acquisition of Title to a Collective Contract, section 2B.2, above). Workers wishing to terminate their union representation completely rather than switch union representatives may seek to dissolve their union or to install as the contract title holder a union that they will later dissolve (see The Formation and Dissolution of Unions, section 2A.2, above). In practice workers seldom seek to deunionize.

Canada's labor laws create periodic opportunities during which employees are allowed to change or remove their union representative. In the interests of labor relations stability, Canadian labor legislation typically gives unions a secure period of one year within which to negotiate a collective agreement. Where a collective agreement is in place, a union may in general be decertified only during specified "open periods," generally within two months of the expiry of the collective agreement. U.S. law provides similar opportunities for workers to change or remove their bargaining representative. There a union may not be decertified if an election was held in the bargaining unit within the previous year or during the first three years of a collective bargaining agreement.

C. LABOR PRINCIPLE 3 – THE RIGHT TO STRIKE

1) *Legal Foundations*

The 1917 Mexican Constitution was the first in the world to protect the right to strike. Four sections of Article 123 speak directly to the right to strike:

Section XVII states that “the laws shall recognize the strike and the lockout¹⁰ as a right of workers and of employers.”

Section XVIII states that “strikes shall be lawful when they have as their purpose achieving balance between the different factors of production, harmonizing the rights of labor with those of capital... Strikes shall be considered unlawful only when the majority of the strikers engage in violent acts against persons or property.”

Section XIX states that “lockout shall be lawful only when a production surplus makes it necessary to suspend work to maintain prices at a level with costs, and with prior approval of the Conciliation and Arbitration Board.”

Section XXII states that “an employer who dismisses a worker without justifiable cause or because he has entered an association or union, or

¹⁰ The English word “lockout” in this constitutional provision is the usual translation of the Spanish *paro*. However, it is not an accurate translation in terms of U.S. or Canadian labor discourse. “Lockout” has a precise meaning in Canadian or U.S. collective bargaining. The lockout is the weapon of economic strength available to an employer who “locks out” workers to compel them to accept the employer’s bargaining proposal. In the United States and Canada, the lockout is the employer’s counterpart to the workers’ strike weapon. When it is used, the lockout usually accompanies employer demands for wage or benefit reductions. In both countries it is relatively rare. In Canada, extensive conciliation and mediation requirements usually preclude the lockout. In the United States, the employer’s ability to unilaterally implement its final offer once the parties reach impasse in bargaining limits resort to the lockout, since implementation forces the union to strike or to work under the unilaterally imposed terms.

By contrast, *paro* in the Mexican constitutional sense has nothing to do with collective bargaining. The “lockout” concept does not exist in Mexican labor law. Employers are not permitted to lock out workers to force them to agree to wage or benefit reductions (although there have been instances of companies closing and reopening under other provisions of the law to achieve such a goal). In this constitutional provision, *paro* has a different meaning. It means a stoppage of work initiated by the employer because of economic necessity. Thus, it is best rendered by “layoff” or “furlough.”

for having taken part in a lawful strike, shall be required, at the election of the worker, either to fulfill the contract or to indemnify him to the amount of three months' wages.”

The first recorded strike in Mexico was one by singers and minstrels at the Metropolitan Cathedral of Mexico City in 1582 when the city reduced their salaries. The strike lasted one and a half months. Another early strike was one in 1766 by miners at the Real del Monte mine in Hidalgo. In notable 19th-century strikes, the weavers of Tlalpan in the Federal District went on strike for a shorter workday. Textile workers at the La Magdalena plant struck against the company store, and miners in Pachuca, Hidalgo, struck to improve working conditions. Early in this century, the best-known strikes were those by mineworkers in Cananea, Sonora, and by textile workers in Rio Blanco, Veracruz. Some authors find in these strikes the antecedents of the revolution of 1910.

The 1915 labor law of Yucatan was the first Mexican legislation dealing with strikes. It defined a strike as a stoppage by workers leaving their jobs or breaking their employment contract “with the purpose of compelling the employer to accede to their needs and demands.”

For a decade and a half after passage of the 1917 Constitution, labor law jurisdiction rested exclusively with the states. Between 1917 and 1929, many states adopted labor laws dealing with strikes, among them the 1925 Tamaulipas Act, which established an important precedent for the federal law of 1931. The Tamaulipas law defined a strike as “the suspension of work as a consequence of a coalition of workers.” This introduced the important concept of coalition, or concerted activity, by a group of workers for the defense of their common interests.

In Oaxaca, legislation defined a strike as the collective action of workers through a temporary suspension of their normal labor with the objective of balancing the different factors of production, harmonizing the rights of workers with those of employers. This formulation paved the way for the definition and norms that emerged in the FLL of 1931. The FLL brought labor law under federal jurisdiction, with enforcement shared between federal and state authorities. The 1931 FLL defined a strike as “the temporary suspension of work as a result of a coalition of workers.”

The statutory regulation of the constitutional right to strike remained a controversial issue in Mexican labor law. Later reforms introduced the

concept of a “legal” strike, implying that workers needed prior approval of the authorities to undertake a strike. Adding to the constitutional definition of licit and illicit strikes, new statutory concepts of “legal” and “illegal” strikes, “existing” and “nonexisting strikes” and “justified” and “unjustified strikes” complicated this area of labor law in Mexico.

Article 440 of the current FLL of 1970 refined the definition of a strike, expressing it as “the temporary suspension of work carried out by a coalition of workers.” This formulation effectively recognizes the right to strike without prior approval. Articles 440 to 469 and 920 to 938 of the FLL are the key provisions governing the right to strike.

2) Protected Strike Activity

Article 443 of the FLL limits the definition of a strike to “the mere act of suspending work.” Thus the legal framework protecting the right to strike does not protect work slowdowns or other tactics that stop short of suspending work.

Canadian labor laws employ a broad definition of the term strike, which typically includes most concerted refusals, cessations or slowdowns of work or other concerted activities designed to limit output. The U.S. *National Labor Relations Act* uses a narrower definition, excluding partial and intermittent strikes as well as work slowdowns from its definition of “protected concerted activities.”

3) Regulation of the Right to Strike

Strikes are permitted during the term of a collective contract if the employer violates the contract, to seek new collective contract terms during an annual wage reopener, or during general collective contract negotiations. Strikes are also permitted to enforce the profit sharing provisions of the FLL. Solidarity strikes are expressly permitted under FLL Article 450, Section VI. A no-strike clause in a collective contract is unconstitutional under Mexican labor law.

In Canada, all jurisdictions prohibit strikes during the term of a collective agreement, requiring arbitration to resolve any dispute relating to the interpretation, application or alleged violation of the agreement. In the United States, a no-strike clause is a matter for bargaining between the parties. The vast majority of union contracts contain a no-strike clause for the duration of the contract, with arbitration as the specified recourse for a claimed violation of the agreement. Neither Canada nor the United States permits secondary strike activity in support of workers involved in a primary labor dispute.

Mexican labor law regulates the right to strike in the following ways:

- 1) It specifies the permissible objectives of a strike.
- 2) It allows an employer, striking workers or an affected third party to require that a striking union show that the strike has the support of a majority of the workers at the enterprise(s) or establishment(s) affected by the strike.
- 3) It terminates the employment of workers involved in a strike in which the majority of the strikers perpetrate violence against persons or property, or in a strike during a time of war by workers employed in establishments or services under the government.
- 4) It requires certain workers providing key services to continue to work notwithstanding a strike.
- 5) It creates a set of mandatory strike procedures, which include a minimum period of notice of a strike (six days in the private sector) and conciliation conducted by the relevant CAB.
- 6) It provides a mechanism through which a union can submit the labor dispute to the relevant CAB for resolution and can seek redress where the cause of the strike is imputable to the employer.

Some of this regulation is achieved through a set of legal definitions. The key definitions are those of illicit, legally nonexistent, and justifiable strikes.

(i) Legal Definitions

*A *legally nonexistent strike* (FLL art. 459) is one that is not carried out by a majority of workers in the undertaking or establishment or is not carried out for any of the purposes enumerated in the law (FLL art. 450), or

fails to comply with procedural requirements set out in Article 920 (see Strike Procedures, below in this section).

FLL Article 450 defines the necessary objectives of a legally existing strike as follows:

- I. to obtain a balance between the different factors of production, harmonizing the rights of labor with those of capital;
- II. to achieve the employer's or employers'¹¹ acceptance of a collective contract and revisions of the contract at the end of its term;
- III. to achieve the employers' acceptance of a law-contract and revisions of the contract at the end of its term;
- IV. to secure compliance with the collective contract or law-contract when the employer violates the agreement;
- V. to secure compliance with the legal requirements for profit sharing;
- VI. to support a strike which has any of the foregoing objectives; and
- VII. to obtain salary revisions on the anniversary date of the contract in accordance with articles 399 and 419. (Those articles require annual salary negotiations at the anniversary date of the collective contract, normally at the mid-point of a two-year contract.)

If a strike is declared legally nonexistent, workers must return to work within 24 hours or face dismissal.

* An *illicit strike* is one in which violence is perpetrated by a majority of the strikers against persons or property or, in time of war, one in which the striking workers are employed in establishments under the government. Workers involved in a strike determined to be illicit are considered to have terminated their employment.

* A *justifiable* strike is one whose cause is attributable to the employer (e.g., a strike precipitated by an employer's systematic violation of a collective contract). A CAB finding that a strike is justifiable can have significant economic consequences for an employer (see Strike Procedures, below in this section).

¹¹ Mexican labor law allows unions holding the appropriate type of registration to bargain with multiemployer groups. See Legal Status of Unions, section 2A.3, and Acquisition of Title to a Collective Contract, section 2B.2, above.

(ii) Services Maintained Notwithstanding a Strike

Article 466 requires certain workers on strike to continue to provide certain services. In particular, transportation workers must complete their travel to a final destination, and health care workers must ensure that patients are safely transferred to other facilities before they may join a strike.

On occasion, the President of the Republic has issued an executive order, referred to as a *requisas*, transferring control of a telecommunications or transportation enterprise facing a strike to a government-appointed administrator. *Requisas* are authorized only under specific legislation applying to the telecommunications and transportation industries. In general, the purpose of these laws is to ensure the continuity of such services to the public in order to avert harm to national interests. The legislation empowers the federal government to take control of transportation or telecommunication enterprises in specified situations, such as in times of war or in cases of “imminent danger to the national economy.” The administrator who assumes control of the enterprise may be authorized to use other workers in order to keep it running notwithstanding the strike. Some unions have argued that the use of *requisas* in this manner breaches workers’ constitutional right to strike.

On occasion, Canadian governments have enacted *ad hoc* back-to-work legislation in order to bring an end to otherwise lawful strikes, generally in economically important enterprises. For example, the government of Canada passed back-to-work legislation in the federal jurisdiction 30 times between 1950 and 1999 in order to end railway, postal service, port operations, shipping and grain handling strikes. Under “national emergency” provisions of U.S. labor law, the President of the United States may direct the Attorney General to seek a court injunction against a strike or threatened strike. A court may issue an 80-day injunction if it finds that the strike or threatened strike will imperil the national health or safety. These “national emergency” provisions have been used in a number of industries, including steel, coal, atomic energy, maritime transport, and telecommunications.

(iii) Strike Procedures

Articles 920 to 938 set out the procedures governing strike action. Article 920 requires that a union give written notice of its bargaining demands to the employer, with a copy to the CAB, declaring the objectives of the strike and specifying a date and time when a strike will commence unless the demands are met. At least six days' advance notice is required before a strike may begin, except where the employer provides a public service, in which case 10 days' notice is required. Strike notice is referred to in Mexican labor discourse as *emplazamiento de huelga*.

Unions normally convey a strike notice in connection with every contract renewal or annual wage reopener, so labor law authorities record thousands of *emplazamientos* each year. The actual launching of a strike, the *estallamiento de huelga*, is much less frequent.

Under articles 448 and 902, a union's exercise of the right to strike (by giving a strike notice) suspends all legal proceedings between the parties before a CAB unless the union submits the dispute to the CAB for resolution. Under FLL Article 924, serving a strike notice also suspends the enforcement of all judgments against an employer's assets and prevents the sequestration of those assets, which must be preserved to protect the rights of workers, particularly with regard to pensions, severance pay, social security and housing fund payments. Workers' claims to these obligations have priority over all others except taxes.

Within 48 hours of receiving a strike notice, the employer must reply to the union's demands in writing. Unless Article 923 applies, the CAB then summons the parties to a conciliation hearing. Article 923 provides that a CAB may not act upon a notice of intention to strike if that notice is given by a union that is not a party to the relevant collective contract or law-contract or by an organization that seeks to conclude a collective contract, notwithstanding that one covering the workers in question has already been deposited with the CAB. As a result, if a collective contract or law-contract is in force, the CAB will not carry out the conciliation and adjudication procedures described below unless a strike notice is filed by the union that holds title to the collective contract or by the union administering the law-contract. Further, a CAB will not carry out such dispute resolution procedures if a union files a strike notice to seek a new collective contract, notwithstanding that a collective contract

which is not yet open for revision (see The Collective Bargaining Process, section 2B.3, above) has been deposited with the CAB.

If conciliation does not produce an agreement, the union may proceed to strike.

(iv) Suspension of Work and Preservation of Equipment and Raw Materials

If a strike occurs, the union sets up red and black flags at entrances to the workplace. Red and black flags are the universal strike symbol in Mexico. All union workers in the struck facility must halt work when the flags go up (see, however, Services Maintained Notwithstanding a Strike, above in this section). The company must cease operations except those necessary to protect equipment and raw materials. FLL Article 449 commands the CABs and corresponding civil authorities to enforce the right to strike and to grant workers the necessary guarantees and assistance to halt company operations. The union assumes legal responsibility for the preservation of equipment and raw materials and must cooperate by supplying workers for that purpose.

Before the strike begins, the CAB is required to set the number of workers who must remain at their posts to preserve equipment and raw materials, in order for the union to meet its obligation to preserve the employer's property during the work stoppage. The parties are entitled to be heard by the CAB on this matter. The union must submit to the CAB a list of members who can remain at their posts.

(v) Application for Determination that a Strike is Legally Nonexistent or Illegal

As noted above, FLL Article 451 provides that a strike that is not carried out by a majority of workers in the undertaking or establishment is legally nonexistent. Striking workers, the employer or an affected third party may apply within 72 hours of the suspension of work to the relevant CAB for an order declaring a strike legally nonexistent. The CAB will then open a proceeding that includes a hearing and the taking of evidence. It may also conduct a *recuento* or vote count to determine majority sentiment and to qualify the strike as existent or nonexistent. If a ma-

majority does not support the strike, the CAB declares it to be nonexistent and workers must return to their jobs within 24 hours or face dismissal. If the CAB is not petitioned to declare a strike nonexistent, it is deemed to exist for all legal purposes.

In the United States strike votes are not mandatory, though as a matter of practice many unions hold them. Canadian labor relations statutes require a strike vote, usually by all workers in the bargaining unit, before a strike may occur.

An application for a declaration that a strike is illicit may be brought at any time after the strike has begun. Articles 928 to 933 set out detailed procedures for hearings of applications to have a strike declared illegal or nonexistent, including procedures for any strike vote that may be held to determine the legal existence of a strike.

(vi) Means of Ending a Legally Existent and Lawful Strike

FLL Article 469 defines the methods for ending a legally existent and lawful strike:

- I. by agreement between the striking workers and the employer;
- II. if the employer accepts the union's written demands and covers the salaries that the workers did not receive;
- III. by arbitral order of an arbitrator or arbitral panel freely chosen by the parties; and
- IV. by an order of the Conciliation and Arbitration Board if the striking workers have submitted the dispute for the CAB's decision.

Most strikes are settled by agreement between the union and the employer. Where a union does submit a bargaining dispute to the CAB for resolution, Article 937 provides that if the CAB declares in its award that the reasons for the strike are attributable to the employer, it must order the employer to meet the workers' claims, insofar as they are lawful, and pay them for the days that they were on strike. However, an employer may not be required under this section to pay such wages to workers engaged in a solidarity strike.

The union's option to submit a bargaining dispute for decision by the CAB contrasts with U.S. and Canadian law, where both parties normally must agree to have a strike resolved by a third party. An exception exists in the U.S. *Railway Labor Act*, which provides for binding government intervention (even of the Congress or the President) in some disputes, and in many Canadian jurisdictions where the board or labor minister can act to settle a first-contract dispute.

4) Supportive Action

As noted above, Article 450 of the FLL provides that workers may strike in support of a lawful strike by other workers. Workers may also demonstrate in support of their demands or those of other workers, consistent with their freedom of assembly and freedom of expression. While workers are free to do so, they seldom picket their employer in labor disputes. Employers are in any event required to cease production once a strike begins (see immediately below).

5) Prohibition of Striker Replacement

Article 4 of the FLL prohibits the use or attempted use of replacements for lawfully striking workers. The only exception to this prohibition arises if the union refuses to provide workers needed to preserve equipment and raw materials (see Regulation of the Right to Strike, section 2C.3, above). In such a case the employer may use temporary replacements under Article 936 of the FLL.

In the United States, employers may seek to continue operations during a strike. They may solicit workers represented by the union to remain at or return to work during the strike. They may hire replacement workers to maintain operations, and such replacements can permanently displace strikers unless the strike was provoked by the employer's unfair labor practices. Canadian labor relations statutes prevent the permanent replacement of striking workers. Employers may seek to continue operations using management personnel and, in most provinces, nonstriking workers and temporary replacement workers.

D. PROTECTIONS AGAINST INTERFERENCE

1) *Just Cause Protection*

Article 123, Section XXII of the constitution and various provisions of the FLL seek to ensure that employees who are dismissed for union or other lawful activities have access to reinstatement or severance pay, at their option.

Section XXII of Article 123 provides that an employer who dismisses a worker without justifiable cause or because he has entered an association or union, or for having taken part in a lawful strike, shall be required, at the election of the worker, either to fulfill the contract or to indemnify him to the amount of three months' wages. The law shall specify those cases in which the employer may be exempted from the obligation of fulfilling the contract by payment of an indemnity.

Article 47 of the FLL defines 15 "just causes" for discharge and makes unlawful a discharge that is not based on one or more of the permissible reasons spelled out in the law. Union activity, like any other lawful activity, is not among those reasons. Thus, a discharged Mexican worker does not have to show that antiunion motivation was a factor in the dismissal. The burden always rests with the employer to prove that the reason for the discharge falls within the statutory definition of just cause for discharge. Under general principles of Mexican labor law, any ambiguities in the evidence with respect to whether just cause existed must be resolved in favor of the worker. Article 48 of the FLL gives the worker who is discharged for union activity a choice between seeking a reinstatement order from the relevant CAB or accepting a payment of at least three months' salary (*indemnización*). In the majority of cases workers negotiate a severance payment with the assistance of an attorney, instead of seeking reinstatement. For further detail, see The Individual Employment Relationship, section 1D, above.

Box 3.3

Severance Pay in Mexican Labor Law

For U.S. and Canadian readers of this report, the importance of severance pay in the Mexican system cannot be overstated. All workers are entitled to severance pay when they lose their jobs, unless they are discharged for one of the 15 specified acts of misconduct in Article 47 of the FLL. There is no unemployment insurance system in Mexico, so the immediate provision of severance pay, in the highest possible amount, becomes of paramount interest to workers in both individual discharge cases and mass layoffs.

A great number of cases of alleged unjust discharge are processed each year in Mexico's federal and state CABs (in 1996 the Federal CAB in Mexico City processed 4,610 of these cases). For their part, the CABs normally press the parties to reach a private settlement for severance pay.

Throughout the country, workers can obtain free legal assistance in such cases from the Federal Office of the Labor Public Defender. Because it is a statutory benefit for all workers, there is a high demand for such legal assistance. Where workers engage private attorneys to represent them before the CAB, the attorney's fees are customarily a percentage of the total severance amount. This creates an incentive for them to reach a settlement at the highest possible amount.

The caseload of the Federal Office of the Labor Public Defender has increased dramatically in the past decade. In 1985, the labor public defender provided some 15,000 consultations, achieved about 3,000 settlements, and took 1,200 cases before the CABs. In the 1996-1997 fiscal year, more than 50,000 consultations, 7,075 settlements, and 9,803 CAB cases were initiated.¹²

2) Limitations on the Use of Exclusion Clauses

Article 123 of the Constitution provides workers with remedies against dismissal pursuant to an exclusion clause for joining another union during the registration of that union (see Union Membership and Dues, section 2A.6, above).

¹² See Secretaría del Trabajo y Previsión Social (STPS), *Informe de Labores 1996-1997* (Mexico, D.F.: STPS, 1997), at p. 82, Section 3.5.2, paragraph 3.

3) Prohibitions against Coercion

Article 133 of the FLL provides that employers shall not “compel an employee by coercion or any other means to join or withdraw from the union or association of which he or she is a member, or to vote for a specified candidate.” It also prohibits employers from interfering in any manner in the internal activities of a union.

Mexican labor law does not specifically address other forms of employer interference with freedom of association, the right to organize or the right to strike, or such interference by trade unions. However, as noted above (see Legal Sources of Labor Rights, section 1C), ILO Convention 87 (Freedom of Association and Protection of the Right to Organize Convention, 1948) applies to labor relations in Mexico. The ILO’s Committee of Experts on the Application of Conventions and Recommendations has stated that “the protection afforded to workers and trade union officials against acts of antiunion discrimination constitutes an essential aspect of freedom of association, since such acts may result in practice in denial of the guarantees laid down in Convention No. 87.”¹³

4) Civil Rights and Protection

Without civil and political rights there can be no normal exercise of trade union rights. The Mexican Constitution provides fundamental civil and political rights to all Mexicans. Like other Mexican residents, unions and union members enjoy constitutional protection of their freedom of assembly, provided that the exercise of this freedom does not pose significant danger of substantial harm to property or physical safety. Unionists have the freedom to travel within and outside the country that is granted to all residents and have the right to attend national and international trade union meetings with full freedom and independence. Similarly, unions and employees have the constitutional right to express their views and opinions publicly and to impart information through

¹³ See International Labour Organization, *Freedom of Association and Collective Bargaining* (Geneva: I.L.O., 1994), at p. 92, paragraph 202.

any media, like other Mexican residents. Note, however, that under Article 378 of the FLL, unions may not intervene in religious activities (see Unions Self-Governance, section 2A.4, above).

Unions and employees engaged in union activity, like all Mexican residents, have a constitutional right to be free from search and seizure of their property without a judicial warrant. Similarly, unionists enjoy constitutional freedom from arbitrary arrest or detention without a warrant and without charges being brought. Unions and their members are entitled to full protection of the criminal laws which prohibit physical assaults and damage to property and to the same police protection from such harms as other Mexican residents.

3. GOVERNMENT ENFORCEMENT

The public administration of key elements of Mexican labor law is carried out in a tripartite fashion, involving government, labor and management representatives. The federal and state CABs that regulate and enforce rights to organize, bargain collectively and strike are made up of government, labor and management representatives. National commissions and institutes on minimum wages, profit sharing, housing, and social security also have such tripartite composition.

Box 3.4

Union Involvement in Tripartite Labor Policy Bodies

Mexican unions are represented on tripartite bodies that serve as the mechanisms of national consultation and cooperation among business, labor and the government. In recent decades these have included the National Tripartite Commission of 1971, giving unions a voice in the drafting of proposed labor law amendments; the 1977 Alliance for Production; and successive agreements such as the 1983 Economic Solidarity Agreement, the 1989 Stability and Growth Agreement, and the 1995 Alliance for Economic Recovery. The 1983, 1989 and 1995 agreements (*pactos*) had as a key purpose controlling inflation through wage restraint.

Mexican labor legislation states that the “most representative national unions” are entitled to serve on such tripartite bodies. Under the *Social Security Law* (art. 248) and the law creating the National Workers’ Housing Fund (art. 8), the STPS is empowered to designate these organizations (under a regulation that takes into account the number of union members as documented before the labor authorities) and to organize assemblies where unions and employers elect their representatives to these bodies.

The National Minimum Wage Commission is the body charged with setting minimum wages for various occupations in the country. This commission consists of a government chairperson and an equal number of labor and management representatives (art. 554).

The National Profit Sharing Commission is a tripartite body that sets the percentage of income of employers upon which profits must be shared with workers. Under Article 579, it is also made up of an equal number of labor and management representatives.

The governing body of the Mexican Social Security Institute (IMSS) is made up of 10 representatives each from the federal government, employer organizations and unionized workers (art. 246-247 of the 1945 *Social Security Law*). The Technical Council of the IMSS operates in a similar tripartite fashion, with four persons from each of these groups.

The National Workers’ Housing Institute (INFONAVIT) is another tripartite national organization in which unionized workers participate through national trade unions. The ruling body is composed of 15 representatives of government, labor and management. This body administers the housing fund created through obligatory payroll taxes to provide a source of low-interest loans for workers to purchase or improve their homes.

A. GOVERNMENT LABOR AUTHORITIES

1) *Federal*

The federal labor authorities are headed by the Department of Labor and Social Welfare (STPS), an executive agency that oversees compliance with labor laws, as well as collective bargaining, fair labor standards, labor defense, and job training. The STPS also oversees the Federal Conciliation and Arbitration Board (FCAB) and various other tripartite

organisms such as the National Minimum Wage Commission and the National Profit Sharing Commission. The STPS contains the General Directorate for Registration of Associations, which is charged with trade union registration in the federal jurisdiction. The STPS has approximately 50 offices called Federal Labor Delegations where most federal jurisdiction labor affairs are handled. These offices are found in state capitals and in other cities with a large labor presence.

2) State and Federal District

In each of the states and in the Federal District of Mexico (Distrito Federal, D.F.) there are departments of labor under the authority of the local executive branch (the state governor or the chief of the government of the D.F.). These local authorities carry out the same functions as the STPS, but within the local jurisdiction. They oversee the local CABs. The local labor departments also assist federal authorities in implementing job training programs and other programs in federal jurisdiction. Local CABs are responsible for trade union registration within state jurisdiction.

B. ADMINISTRATIVE LABOR TRIBUNALS

The CABs are judicial tribunals located in the executive branch of government. They are charged with interpreting and enforcing the labor laws to resolve disputes arising out of labor relationships between workers and employers or between workers only or employers only. This mandate covers disputes between workers and their unions and disputes between employers and their organizations. They are composed in tripartite fashion of representatives of the government, workers and employers. CABs have varying numbers of members depending on the volume of cases in their jurisdiction. CAB chairpersons are appointed by the STPS (in the federal administrative jurisdiction), by the relevant state governor (in state administrative jurisdiction), or by the chief of the government in the Federal District. They must be lawyers. Labor and management members of the CABs are elected in annual assemblies of their respective organizations.

The Federal CAB has its headquarters in Mexico City, but it also operates 21 Federal Special CABs in Mexico City and 43 Federal CABs throughout the country for various sectors of federal jurisdiction. In every state capital and in the Federal District, tripartite local CABs carry out equivalent functions within local jurisdiction. In total, over 100 CABs operate to enforce the *Federal Labor Law* within their respective jurisdictions.

The CABs administer all aspects of industrial relations issues in Mexico — union formation, union registration, disputes between unions for representation rights, collective bargaining, plant closings, the right to strike and so on — as well as individual discharges and other grievances between individual workers and employers outside the industrial relations context. They generally dispose of cases in a single proceeding, starting with an attempt to resolve the matter through conciliation. If conciliation fails, the parties will generally proceed directly to a hearing of their dispute. Decisions of the CAB are final. They may be appealed only under a proceeding for judicial review known as an action for *amparo*. Such actions may be based only on certain limited grounds, the most important of which are error of law, breach of due process, and exceeding legally authorized powers (see Appeals and Judicial Review, section 5B, below).

In the federal jurisdiction, Special Conciliation Boards have been established as part of the Federal CAB structure. The Special Conciliation Boards are empowered to arbitrate disputes involving amounts not exceeding three months' salary. They are also empowered to conciliate individual and collective labor disputes.

The impartiality of the CABs in matters of union registration and other actions has been the subject of extensive debate in Mexico. There are various currents of opinion, and some have been translated into proposals aimed at modifying the *Federal Labor Law*. For example, proposals have been advanced to substitute a single judge for the current tripartite boards.

Mexico's tripartite CABs combine many of the functions carried out in the United States and Canada by labor boards, labor tribunals, mediation and conciliation services and private arbitrators. The U.S. NLRB is made up of public members appointed by the President. A majority

of Canadian jurisdictions provide for tripartite participation in labor boards.

The U.S. NLRB's enforcement procedures can involve several steps: the filing and investigation of a complaint, the issuance of charges or dismissal of the complaint, administrative law judge (ALJ) hearings, appeal of the ALJ's decision to the National Labor Relations Board, and court proceedings for enforcement of the NLRB's order or to appeal it. By contrast, like Mexico's CABs, Canada's federal and provincial labor boards (and in Quebec the Office of the Labour Commissioner and the Labour Court) are more integrated than the U.S. NLRB in their structure and operation. Most boards have labor relations officers or investigation officers who summarily investigate and attempt to settle cases prior to hearings. If settlement efforts are unsuccessful, the board holds a single set of hearings and issues a final decision. Most boards will reconsider such decisions only in unusual cases. The board's decision is generally not appealable to the courts. The decisions of Canada's federal and provincial labor boards are immediately enforceable as judicial orders upon filing of the decision in the appropriate superior court. Quebec's Labour Court is a judicial body whose orders are immediately enforceable.

4. RIGHTS OF PRIVATE ACTION

A. ACCESS TO ADMINISTRATIVE TRIBUNALS

Any worker has the right to file a complaint with the relevant CAB to enforce individual employment rights under the FLL or under a collective contract, if the worker is covered by one. If the worker is covered by a collective contract, the union with title to it may represent the worker. However, workers can waive union representation and represent themselves, personally or through counsel, in disputes arising under the collective contract as well as the FLL. Upon such a waiver, the intervention of the union ceases. The individual worker is entitled to representation at no cost by an attorney from the Federal Office of the Labor Public Defender, a branch of the labor ministry in the federal jurisdiction, or by an attorney from the analogous local (state or D.F.) office.

In the United States, following a preliminary investigation of charges, a complaint may be issued; at that point the Office of the General Counsel of the NLRB prosecutes the case on behalf of the charging party (worker, union or employer) and the people of the United States. The board's attorney effectively serves as the charging party's counsel in proceedings before an administrative law judge and in any appeal to the full board or the courts. By contrast, in Canada individual workers, unions or employers may file complaints directly with the labor relations tribunal and present a case directly to the tribunal. The parties are responsible for their legal representation costs.

B. ACCESS TO COURTS

In general, the Constitution (art. 123) and the FLL give the relevant CAB exclusive jurisdiction over all employment law matters. A private party therefore may not take a labor law claim directly to court. However, a party may invoke a right of *amparo* to obtain judicial review in a constitutional court of a CAB action that is alleged to violate individual constitutional rights or due process protections (see Appeals and Judicial Review, section 5B, below).

5. PROCEDURAL GUARANTEES AND REMEDIES TO ENSURE ENFORCEMENT

A. DUE PROCESS

Article 14 of the Constitution provides a general guarantee of due process of law in the legal system (see Appeals and Judicial Review, below). In addition, extensive provisions in articles 685 to 991 of the FLL apply due process guarantees in proceedings before the CABs. The *Federal Administrative Procedure Law* (FAPL) of 1995 provides procedural protections which apply to the administrative acts, proceedings and decisions of federal administrative agencies, including the STPS. These protections apply to the process of registering a union in the federal jurisdiction. They do not apply to the federal or local CABs.

1) Procedural Protections

Key elements of due process guarantees in CAB labor proceedings require that they be: (1) open to the public (with certain exceptions, such as not offending morals); (2) free, that is, there are no filing fees or other procedural costs; (3) immediate, in the sense that the members of the tribunal must be in personal contact with the parties; and (4) predominantly oral, short and simple.

Parties to CAB proceedings have the right to receive notice of hearings and to attend them in person. The hearing must generally take place upon 10 days' notice and within 15 days of the filing of the relevant complaint with the CAB. No specified form is required for tendering pleas or making statements. Parties have the right to be represented by an attorney during CAB proceedings.¹⁴

At the outset of proceedings, CABs seek to settle through conciliation the cases that come before them. If a settlement is not reached, the case moves to the hearing stage, where the CABs receive the evidence offered by employers and workers in relation to the matter in dispute and hear their arguments. Hearings must generally continue from day to day until they are completed. Parties may present evidence in support of their claims and, at the request of a party, the CAB will compel the appearance of witnesses, whom the parties may examine and cross-examine, provided that the evidence to be obtained through questioning such witnesses is relevant to the case. Parties have the right to respond to each other's pleadings, evidence and arguments.

The CAB evaluates the evidence and issues a decision called a *laudo*. The *laudo* must be issued in writing and contain a concise statement of the issue and the positions of the parties, an account of the evidence and the evaluation of the evidence by the CAB, the legal reasoning behind its decision, underlying jurisprudence and legal doctrine, and the points resolved.

¹⁴ A worker may choose to be represented at the conciliation stage of CAB proceedings, notwithstanding Article 876 of the FLL. See the *jurisprudencia* established in Contradicción de Tesis 16/83, *Semanario Judicial de la Federación*, octava época, tomo IV, primera parte, julio-diciembre de 1989, p. 330, analyzing the relationship between articles 876 and 692 of the FLL.

Mexican labor law assumes that employers have inherent advantage over workers in the employment relationship and in the intricacies of legal proceedings. Therefore the labor law is expressly *tutelar*, that is, protective of workers' rights. For example, the burden of proof in CAB cases always rests with the employer, which must produce evidence to support its position in the case. If a worker's complaint does not cover all of the legal grounds for relief that could be raised on the basis of facts alleged by the worker, the CAB must correct the complaint petition by adding those grounds (FLL art. 685). CABs are also required to note any evident irregularities or matters in a worker's complaint which could lead to contradictory legal claims and provide the worker with three days to correct such matters (FLL art. 873).

In most Canadian jurisdictions the burden of proof in an unfair labor practice case involving discrimination for union activity rests with the employer, who must prove that it had no antiunion animus in acting as it did. In the United States, the NLRB's general counsel has the burden of proof in unfair labor practice cases, including cases involving discrimination for union activity. However, the general counsel need only present *prima facie* proof of antiunion actions or motivations in order to shift the burden of proof to the employer, which must then show that the same personnel action would have occurred in the absence of union activity, or that prohibited motivations played no part in its decisions.

As noted above, the FAPL provides procedural protections which apply to the administrative acts, proceedings and decisions of federal administrative agencies, including the STPS, and these protections apply to the process of registering a union in the federal jurisdiction. Among other things, the FAPL provides that an agency may not set any requirements for an application additional to those stipulated in the law, must provide an applicant with information on the legal and technical requirements for the application, must admit evidence permitted by law and take it into account in reaching a decision on the application, must permit access to its files and archives within the time limits set out for the application, and must give an answer to all questions raised by an application within time limits for processing it. It gives to an applicant the right to know at any time the status of the application, the right to obtain at its own ex-

pense certified copies of the documents contained in the administrative file pertaining to the application, and the right to timely notice of decision on application.

2) Independence and Impartiality of Decision Makers

CAB members serve six-year renewable terms. The FLL sets the remuneration of Federal and Federal District CAB chairpersons at the amount received by judges of the Mexican Supreme Court and the President of the High Court of Justice respectively. Articles 643 to 645 of the FLL stipulate the grounds upon which a CAB chairperson may be dismissed and restricts those grounds to such matters as dereliction of duty, accepting gifts from a party, voting an evidently illegal or unjust decision, or failing to provide for timely enforcement of decisions. Article 646 vests the power to dismiss a chairperson with the authority that made the appointment (see Government Enforcement, section 3, above).

Article 707 of the FLL sets out the grounds upon which CAB members may be legally disqualified from conciliating or hearing a particular case. These grounds include: a direct personal interest in the case; a relationship of economic dependence on one of the parties; a family, debtor/creditor, heir or legatee or business partnership relationship with a party. A CAB member may not conciliate or hear a case in which he or she has acted as an attorney for a party, or upon which he or she has issued an opinion. There is some disagreement among Mexican jurists over whether a CAB member who is assigned to adjudicate a case and who is a member of a union, union confederation, or employers' organization that is a party to that case can be disqualified from adjudicating the case on that ground.

Articles 708 to 711 set out disqualification procedures. Article 708 requires any representative of the government, employers or workers to withdraw from a case upon finding himself or herself involved in one of the circumstances described in Article 707. Under Article 710 a party to a case who believes that a CAB member should be disqualified from hearing that case may file an application to have that member disqualified. In the case of worker or employer representatives, or in the case of the president of a Special Conciliation Board, the president of the relevant CAB

decides the application. Where the application seeks to disqualify the president of the CAB, it is brought to the STPS in the case of the Federal CAB, or to the governor of the state or chief of the government of the Federal District, as the case may be, where a local CAB is concerned. If a CAB member is disqualified, a substitute is appointed. For a CAB president the substitute is a CAB officer stipulated in Article 710, generally the secretary of the CAB. Workers' or employers' representatives are replaced by their respective alternates on the CAB. CABs are required to make their awards in good faith, on the basis of well-informed truth and an appraisal of the facts made in good conscience (art. 841).

The FAPL prevents any federal public official from intervening in a federal jurisdiction union registration proceeding when that official has a direct or indirect interest in the outcome of the matter, has a family relationship with a party to it, objectively demonstrates the existence of manifest friendship or enmity towards a party through clear acts or evident attitudes, has previously intervened in the matter as an expert witness, or has a relationship of service with a party directly interested in the matter.

B. APPEALS AND JUDICIAL REVIEW

Decisions of the CABs are self-enforcing. This means that they do not require any other act of authority in order to become effective. They normally are not reviewable, and CABs cannot reverse their own decisions (FLL art. 848). However, without changing the essence of its ruling, the CAB may clarify it at the request of a party to correct mistakes of fact or to make a point more precise (art. 847). Parties may also seek review by the CAB of actions taken by the chairperson to enforce CAB awards (see Sanctions and Remedies, section 5C, below.)

Canada's labor laws also make labor board rulings self-enforcing upon filing with the appropriate court. Judicial review is limited to constitutional, jurisdictional and due process issues. In contrast, rulings of the U.S. NLRB are not self-enforcing. Employers may ignore NLRB rulings, forcing the board to seek enforcement of its orders in the courts.

1) *Amparo*

The action for *amparo* (translated literally, “shelter” or “protection”) is an institution which originated in Mexico and now forms part of the legal system of many Latin American countries. *Amparo* permits any person to obtain judicial review of a law or act or decision by a public authority which allegedly violates his or her constitutionally guaranteed individual rights. Articles 2 to 28 of the Mexican Constitution provide a set of civil rights including freedom of speech, press and assembly, rights in civil and criminal proceedings, property rights, and social rights. These form the primary bases for *amparo* actions.

Articles 14 and 16 of the Constitution are of particular importance. These articles ensure that legal decisions and actions affecting the rights of persons (including legal or artificial persons such as corporate employers or unions) are taken both in accordance with procedural due process and in accordance with the law. In particular, Article 14 requires that the essential elements of procedural due process be observed in any proceedings through which a person’s rights are removed. Due process requires that the parties be properly notified, represented and heard by a tribunal and that the proceedings of the tribunal be fair, unbiased and unaffected by coercion, intimidation or fraud. Article 14 also requires that in civil suits (including labor law matters) final judgments be made according to the letter of the juridical interpretation of the law or, in its absence, be based on the general principles of law. Article 16 requires that acts or decisions of public authorities which directly affect individual persons or their property be specifically authorized by law and be permitted by law.

The federal courts have exclusive jurisdiction over actions for *amparo*. An action for *amparo* must be filed with the court within 15 days of the act or decision being challenged.

Actions for review of a final decision are referred to as “direct” *amparo* actions. A direct *amparo* action is filed with the CAB, requesting that it temporarily suspend the application of the decision in question and that the case file be sent to the Collegiate Circuit Tribunal for review. Where the action challenges the constitutionality of a law or regulation, the Collegiate Circuit Tribunal will send the file to the Mexican Supreme Court

for hearing and decision. In general, decisions of the Collegiate Circuit Tribunal in direct *amparo* cases are final and may not be appealed.

A party may also seek *amparo* review of an interlocutory decision or procedural ruling where the party alleges that the decision or ruling will cause him or her irreparable harm. Such actions are referred to as “indirect” *amparo* actions. Indirect *amparo* actions are normally filed with the relevant federal district court. A party dissatisfied with a decision by the federal district court to deny *amparo* may petition the Collegiate Circuit Tribunal for review. The tribunal will hear the request for review, unless it challenges the constitutionality of a law or regulation, in which case the request for review will be heard by the Mexican Supreme Court.

Under the federal *Amparo* Law (*Ley de Amparo*, hereinafter LA) courts are required in labor law matters to correct deficiencies in an *amparo* complaint for the benefit of the worker. The LA also provides that in labor law matters an employer must post a bond prior to a CAB’s suspending the application of a decision or action with respect to which the employer seeks *amparo* review. The chairperson of the CAB may then give to the worker the amount of the bond in the event that the worker suffers serious hardship while awaiting completion of the *amparo* proceeding.

A final decision granting *amparo* overturns an act or decision that was the subject of the *amparo* proceeding. In cases where the constitutionality of a law or regulation is successfully challenged, a decision granting *amparo* suspends the application of that law or regulation to the petitioning party. An *amparo* decision generally affects only the parties to the *amparo* action, creating no binding precedent (see Legal Sources of Labor Rights, section 1C, above).

Where a CAB decision is overturned, the court will identify the legal errors committed, indicate the legal interpretations that should govern, and direct that the CAB reopen or resume its proceedings so that a decision may be reached in accordance with those interpretations.

C. SANCTIONS AND REMEDIES

The final decisions of the CABs are called *laudos*. *Laudos* are judicial orders and immediately enforceable as such. A CAB may directly invoke police powers to enforce a *laudo*. There is no need to file a *laudo* with a

court prior to its enforcement. Noncompliance with a CAB order subjects the violating party to fines or seizure of assets to satisfy the judgment.

The CABs have general powers to award remedies to provide redress for violations of the FLL. A *laudo* may require, among other things, the reinstatement of or severance payment to a worker unjustifiably discharged or may order the employer otherwise to comply with the law or with the collective contract. The chairperson of the CAB is empowered to take necessary measures to ensure prompt and expeditious enforcement of *laudos* (FLL art. 940).

If an employer refuses to submit a dispute with an employee to arbitration or to accept a CAB award in such a dispute, the CAB must: (1) declare the labor relationship to be terminated; and (2) order that the employer pay the worker three months' wages plus compensation set out in articles 50 and 162 of the FLL (generally 20 days' pay per year of service plus a seniority allowance of 12 days' pay per year of service), plus back pay from the date of termination of employment (art. 947). However, this rule does *not* apply in cases where an employer has dismissed a worker without justifiable cause or for joining a union or association or participating in a lawful strike.

CABs may issue fines against employers who fail to fulfill contract terms regarding wages, the workday and days off. Such fines can amount to 15 to 315 times the general daily minimum wage, and fines can accumulate for prolonged violations, with a 25 percent additional penalty. Each day of an ongoing violation of the law can be treated as a separate offence, subject to an additional fine. Under Article 994 of the FLL, a CAB may also fine an employer between 15 and 155 times the daily minimum wage for violating Article 133's prohibition against coercing or compelling a worker's choice of representative.

The federal *Criminal Code* and criminal codes of the states create a special category of labor-related crimes, including salary fraud or the fraudulent use of joint funds created under collective contracts. If a CAB decides upon a review of the evidence in a case that there may be grounds for prosecution, it will direct the relevant file to the public prosecutor, who may then pursue criminal sanctions.

6. PUBLICATION MEASURES

A. PUBLICATION OF LAWS, REGULATIONS, PROCEDURES AND ADMINISTRATIVE RULINGS

By law, Mexico's laws and regulations must be published in the *Diario Oficial de la Federación* (DOF), which appears daily Monday through Friday. A section devoted to the STPS contains all matters related to labor laws and regulations. Copies are distributed throughout the country at low cost and are generally available in any library.

Judicial decisions are published in the *Judicial Weekly*, with Supreme Court decisions also published in the *Annual Report of the Chief Justice of the Court*. The Supreme Court also issues a compact disc on general jurisprudence every year. The National Autonomous University of Mexico (UNAM), the Institute of Juridical Research (IIJ), and the STPS jointly issue a compilation of labor law jurisprudence, labor laws and regulations, and a specialized bibliography. This compilation, entitled *Sistema de Información Jurídico Laboral*, is published in CD-ROM format. Commercial services such as the Mayo collection also publish court decisions and related matters. Similarly, laws and regulations are published in the Andrade collection, produced by another commercial publishing house.

The Federal CAB publishes the *Gazette of the Federal Board*, which contains materials on new developments in labor law and jurisprudence, as well as analytical studies. CAB decisions can be found in the archives of the relevant boards.

The archives of the General Registry of Associations are not open to the public. With regard to trade union registrations, only parties with a legal interest may consult the archives. Collective contracts filed with the CABs are generally not publicly available.

B. NOTICE AND OPPORTUNITY FOR COMMENT

Proposed laws and legislative amendments may be introduced by deputies or senators in the legislative branch or by the President of the

Republic. The two houses of the legislature normally function through specialized committees that consider the legislation. A committee may organize public activities and forums to receive the views of persons, organizations and institutions. The mass media, especially the press, diffuse proposals for new law, giving rise to a process of analysis and public commentary.

7. PUBLIC INFORMATION AND AWARENESS

A. AVAILABILITY OF PUBLIC INFORMATION

To disseminate knowledge of labor law, the STPS publishes 30,000 copies of the FLL each year for free distribution to the public in general and to workers in particular. The STPS also publishes numerous booklets on workers' rights.

The STPS publishes an annual report which contains an overview of its programs, activities and expenditures, including information specific to the workings of the Federal CABs and the Federal Office of the Labor Public Defender. Statistical tables include information on the number of individual and collective disputes, the number of collective agreements, and the number of strike notices filed with the CAB. The report also contains statistics on the number of strikes that occurred, the number of collective dispute conciliations undertaken by the CAB, and the number of cases in which the Federal Office of the Labor Public Defender was consulted by or represented workers in legal proceedings.

The STPS publishes the *Mexican Labor Review*, containing studies on labor law themes. It also publishes the thrice-yearly *Labor Notes*, the bimonthly *General Conditions in Matters of Safety and Health*, and semi-annual reports of labor statistics. The statistical reports include data on the number and type of collective and individual labor disputes within the federal jurisdiction and whether those disputes were resolved through conciliation or adjudication. The state CABs also produce annual reports.

B. PUBLIC EDUCATION

The STPS and state labor departments maintain public affairs officers to deal with inquiries from the public and the press and to publicize the activities of the departments. Labor department and CAB offices are open to the public with staff responsible for responding to requests for assistance. The office of the Federal Office of the Labor Public Defender provides advice as well as legal representation to workers who believe their rights have been violated.

The STPS, state labor agencies and CABs sponsor and participate in conferences, workshops, forums and other events to disseminate knowledge of labor law.

C. PRIVATE INFORMATION SOURCES

Several private publishers market low-cost editions of the *Federal Labor Law* for sale in bookstores and newsstands.

Among management groups, the Employers Confederation of the Mexican Republic (COPARMEX) publishes a monthly review and a weekly bulletin. The National Confederation of Chambers of Industry (CONCAMIN) publishes a monthly review.

In the trade union sector, the major federations and confederations publish newsletters and reports. These include the Confederation of Workers of Mexico (CTM), the Revolutionary Laborer-Farmworker Confederation (CROC), the National Union of Workers (UNT), the Regional Workers Confederation (COR), and the Authentic Labor Front (FAT). Other labor groups also publish newspapers, journals and special reports.

The Institute of Juridical Research of the Universidad Autónoma de Mexico (UNAM) publishes the *Mexican Comparative Law Bulletin* and the *Juridical Annual* with labor themes. Similarly, the Law School of UNAM and other faculties and schools of law publish law reviews including labor matters.

There are also private labor-related organizations such as the Mexican Academy of Labor Law and Social Security and the Mexican chapter of the Iberoamerican Academy of Labor Law, which sponsor labor educa-

tion events. A commercial publication called *Laboral* contains extensive labor law information.

D. NAALC COOPERATIVE ACTIVITIES

The Mexican National Administrative Office (NAO), in collaboration with the NAOs of Canada and the United States, has undertaken an extensive program of cooperative activities on industrial relations principles of the NAALC. Members and staff of various Mexican federal and provincial labor agencies as well as many unions and employers' organizations have participated in these activities. Information on such programs can be obtained from the NAO of Mexico.

Appendix 3A

PROVISIONS OF THE FEDERAL LABOR LAW RELATING TO SPECIAL TYPES OF WORK

Title VI of the FLL (art. 181-353) contains provisions governing certain specific types of work. These provisions serve mainly to create special terms for individual employment relationships, the details of which are beyond the scope of this volume. However, some of Title VI's provisions relate directly to freedom of association and the rights to organize, to bargain collectively and to strike. The most important of those provisions are the following:

EXCLUSION OF CERTAIN AIRLINE WORKERS FROM COLLECTIVE BARGAINING

Operational managers, flight superintendents, persons in charge of training, chief pilots, pilot instructors or examiners, and any other officials who perform similar duties are deemed to be representatives of the employer (art. 219). Such workers therefore cannot be represented by a union in their dealings with their employer.

COLLECTIVE BARGAINING IN UNIVERSITIES AND LEGALLY AUTONOMOUS HIGHER EDUCATION INSTITUTIONS

Unions of university workers must be composed only of: (1) academic personnel (defined as individuals who render teaching or research services to the university or institution); or (2) administrative personnel (defined as individuals who render nonacademic services to the university or institution); or (3) both academic and administrative personnel. A union of either group is treated as an occupational union, while a union of both groups is treated as an enterprise union. Unions of university workers may exist only at an enterprise level: the boards of directors and membership of such unions may be drawn only from workers who ren-

der their services at a particular university or institution. Collective contracts may not contain clauses requiring that only members of the union be admitted to employment or that the employment of those who are not members of the union be terminated. (These are known as “exclusion clauses” and would otherwise be permitted by art. 395.) Notice of any strike must be given at least 10 days in advance of the strike date. Workers required to remain on duty during a strike include those workers who are necessary to prevent irreparable prejudice to an investigation or experiment which is under way (see art. 353J – 353U).

SPECIAL GROUNDS FOR LEGALLY JUSTIFIABLE DISMISSAL

Certain classes of worker may be dismissed for just cause for reasons not enumerated in Article 47 of the FLL. Such grounds are enumerated in specific articles contained in Title VI of the FLL. (See art. 185, 208, 244, 255, 264, 291, 303, 341, and 353G). These exceptions relate mainly to various transportation workers, to confidential employees, and to “commercial agents” (salesmen, publicity and sales promoters and the like).

The employment of a confidential worker may be terminated if there are “reasonable grounds for loss of confidence” by the employer, even if these do not coincide with the justified grounds for termination set out in Article 47.

The employment of seafarers may be terminated for, among other things: failing to report for work, drunkenness, use of stupefying drugs, insubordination or breach of laws with respect to import or export of merchandise.

The employment of members of flight crews may be terminated for, among other things: loss of passport or visas required by national or foreign laws; being under the influence of alcohol, a narcotic or a stimulant (not prescribed by a specialist in aviation medicine) at any time in the 24 hours preceding the start of the flight; violation of laws with respect to import or export of merchandise; refusal without good cause to carry out mercy or search and rescue flights; refusal to commence or continue assigned flying duties; refusal to undergo training courses organized by the employer; a deliberate act or omission or negligence likely to endanger

his or her own safety or that of others or to damage or endanger property of the employer or any third party.

The employment of railway workers may be terminated for: allowing goods or passengers to be taken aboard at places other than those specified by the enterprise for such purposes; or refusal to make a scheduled run as contracted for, or unjustified interruption of the run.

The employment of road transport workers may be terminated for: refusal to make a trip as contracted for, or interruption of the same for insufficient reason; or “considerable and repeated falloff in the volume of income, unless there are circumstances justifying the same.”

The employment of commercial agents may be terminated for “any considerable and reiterated falloff in the volume of trade, unless there are extenuating circumstances.”