The Calderón Administration's Labor Reform

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State employees protest labor reform.

Preface

Possible labor legislation reform is part of globalization and includes economic, political and cultural aspects that have been formally expressed over the last three decades. Multilateral bodies like the International Monetary Fund (IMF), the World Bank and the Organization for Economic Cooperation and Development (OECD) are vital for the course of economic development, and, therefore, it should come as no surprise that they hold international meetings to design the policies that national states and their governments should follow. These meetings produce documents like the Washington Consensus (1990) and the resolutions of the Santiago Summit (1998), mentioning the aim of deregulating economies and, specifically, working life.

Most of the countries in Latin America and Europe have made changes to their labor legislation and social security systems. Mexico has already reformed its social security system, but a possible reform of labor legislation, specifically the Federal Labor Law, has been in the works for two decades.

Background

During the Miguel de la Madrid administration (1982-1988), Mexico's working world went through very drastic, profound changes. Without resorting to any legal reforms, management-

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worker relations changed completely; in addition, in practice, the more than six-decades-long alliance between the state and workers, the government and unions, dissolved.

During the six-year term of Carlos Salinas de Gortari (1988-1994), proposals were made to amend the Federal Labor Law. Discussions brought in the sectors involved, but, in the end, no agreement was reached and the president abandoned the initiative in 1991.

During the administration of Ernesto Zedillo (1994-2000), the then-opposition National Action Party introduced a bill to reform labor legislation in 1995, and that same year the OECD recommended that Mexico deregulate its labor market by changing its labor legislation and social security system.

President Zedillo promoted three legislative reforms that touched on labor issues: 1) amendments to the Mexican Social Security Institute Law in 1995; 2) a bill called the Savings for Retirement System Law in May 1996, which went into effect in 1997 and profoundly changed Mexican workers' fringe benefits; and 3) a proposed amendment to the Federal Labor Law in 1998, but which met with political obstacles both inside and outside of Congress.

During the term of PAN President Vicente Fox (2000-2006), another attempt at reforming labor legislation was made. The Ministry of Labor called for different sectors to participate in a series of round table discussions to design a bill. In December 2002, Roberto Ruiz Ángeles, in the name of the parliamentary caucuses of the Institutional Revolutionary Party (PRI), the PAN and the Green Party of Mexico (PVEM), presented a "Bill to amend different articles of the Federal Labor Law." It was discussed in 2003, but never passed because labor movement representatives did not sign off on it.

During all these presidential terms, there have been repeated attempts, then, to reform labor legislation, but without success. However, in practice, management-worker relations have changed.

The Felipe Calderón Administration

Under the current administration of President Felipe Calderón Hinojosa, once again a new reform to labor legislation is on the agenda. The main proposals were made by Álvaro Castro Estrada, vice-minister of labor for security and social benefits, at the seminar "Labor Panorama, 2007-2008," organized November 21, 2007, by the Bankers Club of Mexico. I have selected a few of his proposals to comment on here.

The first thing that should be emphasized is that the Ministry of Labor did an exhaustive review of all the proposals made over the last 10 years. It says it has reviewed a total of 196 bills to amend the Federal Labor Law, 175 of which were presented before the Chamber of Deputies and 21 before the Senate.

The second point covers Ministry of Labor objetives for enriching the 2002 "bill from the sectors." These objectives are: 1) Foster more job creation; 2) Increase national productivity and competitiveness; 3) Eliminate discrimination and promote equity in work relations; 4) Update the legal framework for training; 5) Strengthen authentic unions and increase transparency in collective bargaining; 6) Strengthen labor peace, ensure greater legal certainty and make a priority of conciliation in legal proceedings.[1] Álvaro Castro Estrada's conclusion about these points is that the sum of these six objectives will make it possible to improving the living conditions of workers and their families. What he does not say is how they are going to do that.

The Most Important Issues for Modernizing Labor Law

According to Castro Estrada, seven key points will make it possible to "modernize" the Federal Labor Law:

New Forms of Individual Labor Contracts

New kinds of individual labor contracts would be established, like "trial period contracts" or "initial training contracts." The law would also explicitly regulate "temporary" labor relations; under current law, their existence can be inferred, but the amendment would explicitly regulate them. A 30-day trial period would be the general rule, extending that period to 180 days for executives, managers or technicians and specialized professionals, which would broaden out hiring possibilities. The "initial train-

ing contracts" would mean hiring a worker for a period of training and skills acquisition needed for a specific activity, during which he/she would be paid a wage in accordance with the classification of the post he/she would be carrying out. This kind of contract would as a general rule last for up to three months, and up to six months in the case of executives, managers and people carrying out positions directing the company, or in the case of technicians and specialized professionals. This kind of contract is an attempt to break the vicious circle consisting of "I don't have a job because I'm not trained and I'm not trained because I don't have a job."

These forms of hiring have a purpose: depriving the worker of job stability and the rights that come with seniority. This will have a very important effect on their pensions.

Distribution of the Work Day

The changes to the law would include management and labor's ability to agree on a longer work day, as well as a monthly program to accumulate working hours, or a "bank of hours" in order to give workers accumulated rest time that would last several days a week, without violating the stipulations of Article 123 of the Constitution, Subsection XXVII, Subdivision a).

Actually, the proposal violates an employee's right to work eight hours a day and have rest time. It is a step toward suppressing overtime and establishing hourly wages in the Federal Labor Law.

Simplification of Management Obligations Regarding Training and Skills Development

The entire chapter about worker training and skills development would be modified. It would be called "About Workers' Productivity, Education and Training." Only companies with more than 20 workers would have to create joint committees for productivity, training and skills development.

Different obligations in this field would be suppressed, among them: a) Registering company training and skills development plans with the Ministry of Labor; b) The procedures for institutions or schools authorizing and registering with the Ministry of Labor to be able to impart training and skills development; c) Registering certificates of job skills.

This is a way of reducing companies' responsibility to train their workers, who, at the same time, will have to be more productive.

Social security is transitioning from a regime of social solidarity to one of individual contributions managed not by state institutions, but by private banks.

Measures to Increase the Country's Productivity And Competitiveness

What is called the "blind" seniority system (based exclusively on number of years of employment) would be eliminated, thus making training the main criteria for promotion to vacant or newly created positions instead of time on the job. Being multi-skilled would be a factor that would allow workers to make higher wages. That is, workers could agree with management to carry out activities related but not limited to their main job, as long as their wages were adjusted accordingly.

Companies do not want to train, but they do want workers to increase their productivity and competitiveness on their own.

Recognition of Unions

The proposal includes the possibility of unions' official registration being canceled if they do not report to labor authorities about their activities or if they do not report changes in their membership (people signing up and resigning) every six months. The corresponding Conciliation and Arbitration Board would have to give notification of the cancellation of a union's registration on the request of its members or any other person legally involved.

This is a way to broaden out and specify new reasons for requesting that a union's registration be canceled, with the aim of putting an end to union autonomy.

Prerequisites for Signing A Collective Bargaining Agreement

When a union is about to sign a collective bargaining agreement, the ministry proposal stipulates that it would have to make a written request signed by union representatives and the workers it represents, accompanied by up-to-date certificates issued by the registering authorities about its registration. Otherwise, the collective bargaining agreement could not be registered with the authorities.

The 2007 proposal does not include concrete policies or measures for increasing real wages, depressed since 1983, and establishes the criterion of workers' productivity, but not how this will benefit workers.

This increases the obstacles to unions having collective bargaining agreements.

Strengthening the Labor Justice System

The proposal expressly includes the principle of conciliation in the labor system. During the entire procedure and up until a decision has been made, the Conciliation and Arbitration Boards will try to get the opposing parties to resolve grievances through conciliation. To support this process, it would include "conciliatory officials" as part of the boards' legal staff. All Conciliation and Arbitrations Board staff members would have to be graduates in and licensed to practice law, having distinguished themselves in labor law studies and of a good reputation.[2]

This is a way to force Labor Ministry and Conciliation Board personnel to professionalize and to force the unions to register professionals.

PROPOSALS FOR PROCEDURAL REFORM

The 2002 labor reform proposal also included 11 procedural measures. In the 2007 document, the Labor Ministry proposed another 16, making a total of 37, which would tend to facilitate: 1) making work more flexible; 2) strengthening companies' actions; 3) limiting the action of unions and their representatives; 4) offering labor authorities mechanisms for control, mediation and punishment.

Something else that should be pointed out is that, according to the ministry, consultations are no longer necessary; what is needed is to come to concrete agreements. In this context, the vice-minister of labor writes in his document, "The Minister of Labor has said this on other occasions, and on this occasion, I would like to quote him: 'We need to make the reform that is possible, not the perfect reform.' It is true. It is no longer the moment for consultations, but the time for coming to concrete agreements."[3] This leads us to conclude that for Labor Ministry officials, the time for consultations is over because they have already come to agreements with the so-called "sectors", which are none other than the leaders of corporatist unionism and management organizations. That is, the consultations have been carried out at the top, not with the whole of society.

CONCLUSIONS

- The previous and new proposals for reforming labor legislation correspond to the current conditions of capitalism and the policies put forward by international bodies like the IMF, the World Bank and the OECD, and, in the last analysis to policies put forward by national states like Mexico.
- We are witnessing the replacement of a rigid model of labor relations by a new, so-called flexible model.
- The new model is based on the principles of productivity, competitiveness, mobility and being multi-skilled.
- Collective labor rights like freedom of association (the right to unionize), collective bargaining and the right to strike have been restricted in different ways and the trend is for them to be limited even more.
- Social benefits, particularly social security, are transitioning from a regime of social solidarity to one of individual contributions managed not by state institutions, but by private banks. Here we should remember the reforms to the IMSS and ISSSTE laws.
- The seven most important issues for reforming the Federal Labor Law in 2007 continue to be valid, deepening and specifying questions involving the flexibility of labor put forward by previous proposals made in 1989, 1995, 1998 and 2002, favoring mechanisms for action by authorities and management.
- The 2007 proposal does not include concrete policies or measures for increasing real wages, depressed since 1983, and establishes the criterion of workers' productivity, but not how this will benefit workers in terms of wages or on a societal level.
- The proposal does not include mechanisms to increase formal employment, but rather how to legalize Mexico's informal employment.
- It also lacks mechanisms for changing the internal life of unions, which still have a long way to go in terms of democracy, transparency, leadership turnover and autono-

my *vis-à-vis* political parties, companies and government, to mention just a few points.

- The reform includes no mechanisms for avoiding sweetheart contracts; no sanctions for owners or companies that use them, or for union leaders or lawyers who promote and sign these documents without consulting workers.
- The labor reform presupposes an economic model whose aim is to increase wealth by raising productivity and reducing costs. However, this model does not include redistributing that wealth and benefiting workers (formal and informal, migrants, etc.) and the general population.
- The labor reform cannot be assessed in isolation; neither can it be reduced to a series of legal proposals. It must be oriented to benefiting the nation as a whole. Let us remember that this reform will not apply to a single company or group of companies, but to the entire country.
- Flexibility of labor is a proposal the Mexican state makes to become part of globalization. It can also be seen as a concrete way of making a priority of supporting companies. However, this is no guarantee that workers will see their welfare improved or that there will necessarily be a better distribution of wealth nationwide.

The possible labor reform should be fully discussed by the entire society, not only by congressional caucuses. It should also be part of a new economic-social program to achieve the full development of Mexico. MM

NOTES

[1] Secretaría del Trabajo y Previsión Social, at www.stps. gob.mx, consulted November 21, 2007.

[2] The vice-minister's speech says, "It will also be necessary to have a law degree and license to be able to represent workers and management before the Conciliation and Arbitrations Boards." The points made in the November 21, 2007 speech have been commented on by Jesús Luna Arias in "No dejes que te vuelen tus derechos," *Trabajo y Democracia Hoy* no. 95 (November-December 2007), pp. 21-24.

[3] The November speech has also been commented on by Patricia Muñoz Ríos in her article, "La propuesta de reforma laboral reduce obligaciones a los patrones" (The Proposed Labor Reform Reduces Management Obligations), *La Jornada* (Mexico City), January 14, 2008.