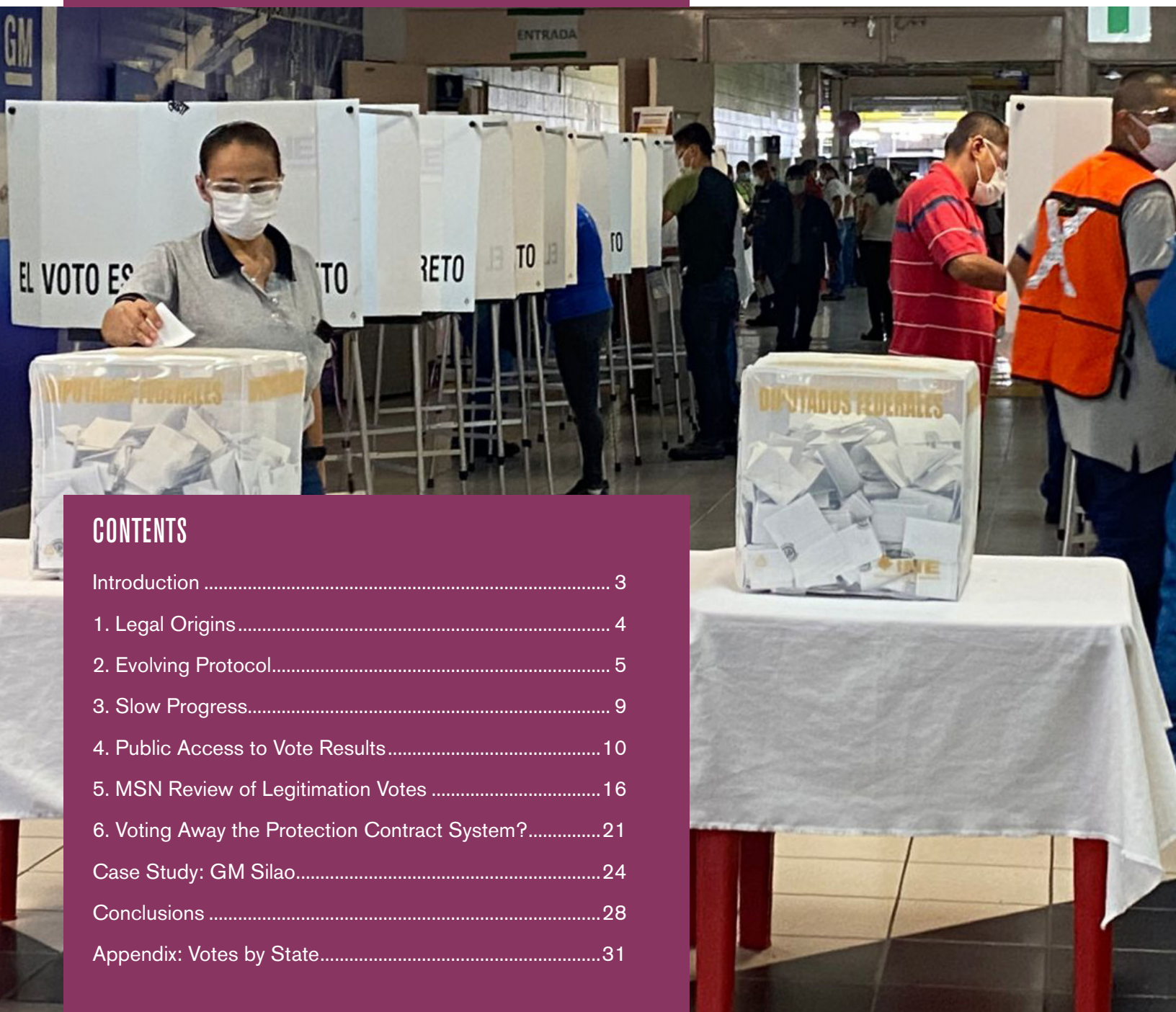
Red de Solidaridad de la Maquila
Solidarity Network

DECEMBER 2021

BRIEFING PAPER

LEGITIMATING COLLECTIVE BARGAINING AGREEMENTS IN MEXICO

WHAT HAVE WE LEARNED TO DATE?



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MSN's database with detailed results of the legitimation votes (September 2019 - April 30, 2021) is available at: https://www.maquilasolidarity.org/en/cba-legitimation-results-mexico.

The Maquila Solidarity Network (MSN) is a labour and women's right organization based in Toronto, Canada that supports the efforts of workers in global supply chains to win improved wages and working conditions and greater respect for their rights. For more information on MSN's work on labour rights, freedom of association and labour justice reform in Mexico, visit: https://www.maquilasolidarity.org/en/our-work/supporting-freedom-association-foa-mexico.

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Front and inside cover photos:
August 2021 legitimation vote for General Motors Silao CBA (STPS)

INTRODUCTION

In this briefing paper, MSN reviews and assesses the requirements, procedures and outcomes in the legitimation of existing collective bargaining agreements (CBAs) registered with the Federal or a Local Conciliation and Arbitration Board (*juntas*). Under this legal requirement, all existing CBAs must be subjected to a vote for approval by workers covered by them by May 1, 2023.

The one-time-only vote for the legitimation of existing CBAs, as well as the right of workers to vote on an initial CBA and on negotiated revisions to the CBA, are critical elements of Mexico's labour justice reform. These new voting rights are intended to challenge Mexico's protection contract system, in which unrepresentative unions or lawyers sign collective bargaining agreements without the knowledge or consent of the workers covered by these agreements, let alone the right of workers to ratify their CBAs and any negotiated revisions to them.[1]

A related objective of the labour reform is to replace the tripartite Conciliation and Arbitration Boards, which are under the control of the executive branch of federal and state governments, official unions and employer organizations, and have been criticized for registering protection contracts, with new, independent and impartial judicial institutions. The Federal Centre for Conciliation and Labour Registration (Federal Centre, CFCRL in Spanish), which began its operations in November 2020, has established new procedures for registration of unions and CBAs and will replace in stages the current conciliation and arbitration boards at both the federal and state levels.[2]

However, democratizing industrial relations in Mexico will clearly also require more fundamental changes in trade union culture, as well as workers gaining knowledge of the basics of labour law in order to interpret their CBAs, and accumulating experience with more democratic forms of unionism.

The briefing paper focuses on what has taken place in the first two years of the CBA legitimation process, the interim period in which the Secretariat of Labour and Social Welfare (STPS) was responsible for overseeing the process and through the initial transition to oversight by the new Federal Centre from May 1, 2021. It also assesses some of the changes that have been made by the Federal Centre since assuming those responsibilities, and examines some of the weaknesses of the design of the CBA legitimation process, such as entrusting almost total control of organizing, conducting and reporting on legitimation votes to the incumbent union; the lack of monitoring by state institutions of the actions of employers and unions prior to authentication votes; and the lack of public access to information on voting results and the findings of investigations into worker allegations of irregularities. The paper includes a brief case study on the legitimation process and rejection of the existing contract by GM Silao workers.

[1] Mexican labour officials and experts estimate that there are over 500,000 registered collective bargaining agreements and that 80-90 percent of all existing CBAs are protection contracts.

[2] See MSN, *Catching Up on the Labour Reform #3: Registering Unions and Collective Bargaining Agreements in Mexico*, September 2020. www.maquilasolidarity.org/sites/default/files/resource/Registering_Trade_Unions_and_Collective_Bargaining_Agreements_in_Mexico_Sept_2020.pdf.

The conclusion provides a series of observations on what could be improved in the CBA authentication process to help meet its objective of challenging Mexico's protection contract system and strengthen the rights of workers to authentic union representation and collective bargaining.

Accompanying the paper is an extensive database detailing the results of the 1,300 CBA legitimation votes that took place over the first two years of the process through April 30, 2021.[3]

1. LEGAL ORIGINS OF CBA LEGITIMATION REQUIREMENT

The proposal for secondary legislation for the reform of the labour justice system, which became law on May 1, 2019, included the provisions on CBA legitimation. The 11th Transitory Article of the reformed Federal Labour Law (LFT) establishes that all current CBAs must be voted on within four years, and that this is to be completed under terms detailed in Article 390.[4] That article specifies that the content of the CBA must be approved by the majority of workers covered under it in a free and personal secret ballot vote.[5] The legitimation of existing CBAs within four years of the publication of the secondary legislation is also a requirement of the labour chapter of the US-Mexico-Canada Agreement (USMCA).[6] It is likely that the four-year limit was included to ensure that the process would be completed during the current Mexican presidential administration.[7]

According to the LFT, if the majority of workers vote against the existing CBA, the contract is terminated. However, the contractual benefits for each worker that was covered by the CBA are preserved – including those that are superior to that provided for in the LFT. By law, the employer is required to maintain these benefits for each worker.[8]

If the CBA is terminated, the union that held title to it could seek to negotiate another contract. However, it would have to initiate the same legal registration process as for an entirely new CBA. Article 390 of the LFT requires that unions wishing to negotiate an initial CBA must first apply for and receive a Certificate of Representivity from the Federal Centre, confirming that the union enjoys the support of at least 30 percent of the eligible workforce.[9] In the event that two or more unions claiming

[3] MSN. Mexico's CBA Legitimation Vote Results (September 2019-April 30, 2021), December 2021. https://www.maquilasolidarity.org/en/cba-legitimation-results-mexico.

[4] Federal Labour Law, 2019, 11th Transitory Article, Legitimación de Contratos Colectivos de Trabajo, pp. 312-313. http://www.diputados.gob.mx/LeyesBiblio/pdf/125_230421.pdf. Also see Article 390 Ter, pp. 112-113.

[5] Although Article 390 appears to indicate that all workers covered by the existing CBA are eligible to vote, the initial Protocol of the STPS (#7), states that all *union members* covered by the CBA have the right to vote. The Protocol of the Federal Centre (XII), clarifies that *all workers* covered by the CBA have the right to vote in the legitimation process, and the revised STPS Protocol states that all workers covered by the CBA can file complaints if there are irregularities in the process. [See links in Footnotes 11, 12 and 13 below.]

[6] This agreement was ratified by Mexico on June 20, 2019, signed into law by the United States on January 29, 2020 and adopted by Canada on March 13, 2020. Each of the three countries uses a different name and acronym for the trade agreement, USMCA in the US, CUSMA in Canada, and T-MEC in Mexico. We use USMCA as the reference in the English version of this paper.

[7] Thus maintaining commitment to the policy during a single, six-year presidential term. In Mexico, the end of the term usually means significant changes in policy priorities.

[8] Federal Labour Law, 2019, 11th Transitory Article, Op. cit. Footnote 4.

[9] "Eligible workforce" refers to the portion of the workforce that would be covered by a CBA, which usually excludes employees with managerial responsibilities.

to represent workers apply for the Certificate, an election (*recuento*) is held to determine which of these unions has the support of the largest number of workers, and therefore has the right to bargain a new CBA. A negative vote on the existing CBA could therefore result in the removal and potential replacement of the current union.

Finally, if a contract is never subjected to a vote, or the vote is not held within the four-year period, it is annulled, meaning it is declared invalid and disappears altogether from the CBA registries.

2. EVOLVING PROTOCOL FOR THE LEGITIMATION OF EXISTING CBAS

The protocol that details how the legitimation vote can be held, and the processes to manage reporting on results, have changed three times. The 2019 reform to the Federal Labour Law specified that the Ministry of Labour and Social Welfare (STPS) was charged with developing a protocol until the Federal Centre assumed responsibility for the CBA legitimation process, no later than April 30, 2021.[10]

STPS published an initial protocol for the legitimation of existing CBAs in July 2019,[11] which was followed by publication of a revised version in February 2021.[12] When the Federal Centre took over responsibilities for overseeing the process, it published its own version of the Protocol, on April 30, 2021.[13] Successive changes to the Protocol sought

Protocol Timeline

May 1, 2019:
Reformed Federal Labour Law goes into effect

July 31, 2019:
STPS Protocol for Legitimation of Existing CBAs published

December 2019:
STPS circulates draft revisions of Protocol for public input

February 4, 2021:
Revised STPS Protocol is adopted and goes into effect

April 30, 2021:
Federal Centre's Protocol published and comes into effect May 1

[10] The Federal Centre began its initial operations on November 18, 2020, with headquarters in Mexico City. As of November 3, 2021, branch offices have been established in 21 of the 32 Mexican states, and additional branches in the remaining 11 states will come into operation in May 2022.

[11] STPS. Protocolo para la legitimación de contratos colectivos de trabajo existentes. *Diario Oficial de la Federación*, 31 de julio de 2019. https://dof.gob.mx/nota_detalle.php?codigo=5566910&fecha=31/07/2019. An English version of the Protocol is available at: http://www.mexicanlaws.com/STPS/PROTOCOL.pdf.

[12] STPS. Acuerdo por el que se modifican y adicionan diversas disposiciones del Protocolo para la Legitimación de Contratos Colectivos de Trabajo existentes. *Diario Oficial de la Federación*, 4 de febrero de 2021. https://dof.gob.mx/nota_detalle.php?codigo=5610863&fecha=04/02/2021.

[13] CFCRL. Protocolo para el Procedimiento de la Legitimación de Contratos Colectivos de Trabajo Existentes. *Diario Oficial de la Federación*, 30 de abril de 2021. https://legitimacion.centrolaboral.gob.mx/Upload/ProtocoloLegitimacion.pdf.

to reinforce government oversight over the voting process, and introduced mechanisms to provide channels for workers to register complaints of irregularities, as we detail below.

The STPS and Federal Centre protocols place responsibility for organizing and carrying out the vote with the union that holds the title to the CBA.

The Protocol sets out:

- how and when unions must notify STPS of their intent to hold the legitimation vote;
- time frames for unions to notify workers that the vote will take place, and under what conditions;
- how to record which workers are eligible to vote;
- that workers must provide an official identification to vote;
- how to print, distribute, and safeguard ballots and other materials for holding the vote; and
- how voting areas are to be set up.

The Protocol specifies the process for the incumbent union to count and record votes, post the results in the workplace and union office, and notify STPS of the outcome through the internet portal designed for this purpose.

Employers have two responsibilities as part of the process. The first is providing all workers with a printed copy of the CBA at least three days prior to the legitimation vote.[14] A provision in the Federal Centre Protocol instructing verifiers of the legitimation process to establish whether workers have received a printed or electronic copy of the CBA[15] caused considerable confusion among labour rights advocates on whether providing an electronic copy meets the legal requirement. The Director of the Federal Centre, Alfredo Domínguez Marrufo, later clarified that employers must provide workers a printed copy, and not an electronic copy, of their CBA.[16]

The second requirement on employers is to provide a secure location to hold the legitimation vote that is accessible to all workers that are eligible to vote. In practice, most of the votes we reviewed are being held at the workplace, which while facilitating worker participation, also introduces questions of neutrality. Aside from meeting these two responsibilities, the employer must not interfere with the proceedings. It is the incumbent union, with title to the CBA, that is responsible for all other aspects of the CBA legitimation vote, as well as reporting on the results.

[14] Not providing the CBA, or not doing so in the established timeframe, may lead to fines levied on employers by STPS. If the employer fails to provide workers with a CBA, the Protocol stipulates that the union may provide the CBA to workers, at the expense of the employer. Protocolo para el Procedimiento de la Legitimación de Contratos Colectivos de Trabajo Existentes, CFCRL, 30 de abril de 2021, Articulo 25, *Op. Cit*. Footnote 13.

[15] *Ibid*. See articles 25 and 30-1(d).

[16] Martínez, María del Pilar. "Legitimaciones de contratos colectivos apenas alcanzan el 0.2%, a dos años de reforma laboral," *El Economista*, 20 de junio de 2021. https://www.eleconomista.com.mx/empresas/Legitimaciones-de-contratos-colectivos-apenas-alcanzan-el-0.2-a-dos-anos-de-reforma-laboral--20210620-0020.html.

The decision to entrust almost total responsibility for organizing, implementing and reporting on the results of CBA legitimation votes with the incumbent union has been criticized by labour rights organizations and legal experts in Mexico and the US, given the vested interest of unrepresentative unions in maintaining their title to existing collective bargaining agreements.[17] Efforts to increase oversight through inspection and reporting are steps in the right direction, however, they may not be enough to guarantee fair votes.

Government oversight of legitimation votes

The Protocol requires oversight of legitimation votes by government inspectors, or by a notary public, the latter chosen and paid by the union. While using notaries is an option that provides some oversight of voting where, given the small number of government inspectors, who are often not available for overseeing the legitimation process, it introduces a potential conflict of interest, as it is the union that chooses and hires the notary. It is also questionable whether a notary would have sufficient knowledge or experience with labour relations issues to be an effective monitor of the CBA legitimation process. Evidence of both concerns came to light in a legitimation vote at a maquiladora plant in Tamaulipas, where workers charged that the notary, having been paid by the General Secretary of the union organizing the vote, ignored irregularities in the voting process that affected the outcome.[18] One labour rights expert we interviewed called the use of notaries a form of privatization of monitoring.

The July 2021 report of the US Independent Mexico Labor Expert Board (IMLEB) also raises concerns about potential conflict of interest and possible corruption, stating: "In effect, the Protocol allows a corrupt union to engage and pay a notary and thus legitimize a CBA and continue to collect dues."[19]

Notaries are hired to report on whether unions and other actors carried out the voting process according to the Protocol, but not to inspect the veracity of information provided, such as the list of union affiliates or other aspects of documentation or procedure. They do not carry out additional verifications, so notaries simply take unions and employers at their word that the list of workers eligible to vote is complete and correct.

[17] Fuentes, Manuel. "Las legitimaciones de contratos con filtro, Opinión," *La Silla Rota*, 14 de septiembre de 2021. https://lasillarota.com/opinion/columnas/las-legitimaciones-de-contratos-con-filtro/560461; Independent Mexico Labor Expert Board (IMLEB), Report. July 7, 2021, pp. 20-26. Available at: https://www.maquilasolidarity.org/sites/default/files/attachment/IMLEB%20Report%20and%20Separate%20Stmt%20of%20Members%20Fortson%20et%20al.%202021.07.7.pdf; IMLEB Interim Report. December 15, 2020, pp. 17-20. Accessible through the AFL-CIO website, at: https://aflcio.org/media/3644.

[18] Aguilar, José Gregorio. "Obreros de Aptiv II impugnarán elecciones de legitimación de contrato colectivo de trabajo," *Gaceta.mx*, 23 de noviembre de 2021. https://www.gaceta.mx/2021/11/obreros-de-aptiv-ii-impugnaran-elecciones-de-legitimacion-de-contrato-colectivo-de-trabajo/?fbclid=IwAR2ruDI1OMTCXtzyPVJ5y-oaKt1m3rsHr5BJrRQI3C_aR0WCQX81Rrubpb8.

[19] IMLEB Report. July 7, 2021, p. 23, *Op. cit.* Footnote 17.

Both revisions to the Protocol retained the general requirements for holding a legitimation vote, and added specific procedures meant to increase government oversight of the vote. The February 2021 revisions to the STPS Protocol, for example, clarified that STPS has the authority to review the legitimation vote process before, during and after the vote to verify whether these regulations were being followed. It also established a complaint process by which one or more workers could challenge any irregularities in the process by registering a complaint with STPS.[20] The revised protocol lists examples of what irregularities might occur that alter the course of the vote, before or during or after the vote takes place.[21]

When the Federal Centre published its version of the protocol, it sought to strengthen both oversight and the avenues provided to workers to report irregularities.[22] The STPS' examples of potential irregularities became a more detailed list of specific issues that were to be reviewed and verified by inspectors.

On May 12, 2021, the Federal Centre and STPS signed an agreement in which STPS agreed to share inspectors to assist with the verification of compliance with the Protocol.[23] Those inspectors – drawn from the ranks of federal and local STPS labour inspectors and Federal Centre inspectors – will serve as dedicated staff assigned to verify voting as "personal verificador." They are now required to present evidence and reports on irregularities in the course of inspection of the process, before, during and after the vote.[24] Unions, as well as notaries they hire, are now encouraged to complete a new self-assessment form (*formato de autoverificación*), reporting into the Federal Centre a recount of the details of the vote and the results.[25]

The procedures on how any worker complaints received will be investigated, and under what timelines, are also more detailed in the Federal Centre Protocol.

After receiving reports from verifiers, self-assessment forms from unions, and the finding on any complaints from workers, the Federal Centre determines whether or not the vote met the requirements, before certifying the legitimation vote results. The Centre reserves the right to undertake a more thorough review in any case it chooses.

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[20] However, the revised protocol stipulates that a complaint may or may not be investigated, and that complaints of irregularities will be taken into account in issuing or not the approval of the legitimation vote results. If it is found that irregularities that changed the vote outcome were committed, the resolution is only to nullify the vote results and hold the vote again.

[21] STPS. 4 de febrero de 2021, Section 11-A, *Op. cit.* Footnote 12.

[22] Redacción Factory Capital Humano. "Alistan nuevo protocolo para legitimar contratos colectivos, fortalecerán a inspectores," *Factor Capital Humano*, 16 de marzo de 2021. https://factorcapitalhumano.com/leyes-y-gobierno/alistan-nuevo-protocolo-para-legitimar-contratos-colectivos-fortaleceran-a-inspectores/2021/03.

[23] STPS and CFCRL. Convenio de Coordinación que celebran la Secretaría del Trabajo y Previsión Social y el Centro Federal de Conciliación y Registro Laboral, para colaborar en las acciones de verificación de procedimientos de democracia sindical, consultas sobre aprobación y legitimación de contratos colectivos de trabajo, así como convenios de revisión contractual. *Diario Oficial de la Federación*, 12 de mayo de 2021. https://www.dof.gob.mx/nota_detalle.php?codigo=5618147&fecha=12/05/2021.

[24] CFCRL. 30 de abril de 2021, Art. 30, *Op. cit.* Footnote 13.

[25] STPS and CFCRL. Formato de Autoverificación para la Legitimación del Contrato Colectivo de Trabajo. https://legitimacion.centrolaboral.gob.mx/Upload/FormatoDeAutoverificacion.pdf.

3. SLOW PROGRESS ON CBA LEGITIMATION

Although figures vary on the total number of registered CBAs in the country, a conservative estimate is 530,000.[26] As of December 1, 2021, the Federal Centre website listed the total number of legitimated contracts at 2,426.[27]

Although Mexico's Secretary of Labour has made use of the press, webinars and public events to encourage participation in the process, the number of CBA legitimation votes to date remains very low.[28] One reason for the small number of votes thus far is that the vast majority of CBAs are in fact contracts signed between employers and lawyers or leaders of union federations with no relationship to workers they claim to represent. In most cases, there is no active union at the workplace to initiate and coordinate the voting process, and so it will be highly unlikely that these contracts will be subjected to a vote. In fact, STPS estimates that due to the large number of such "simulated" CBAs, only 10 to 15 percent (or between 53,000 and 79,500) of currently registered CBAs will go through the legitimation process.[29]

With less than 2,500 contracts voted on as of December 1, it will be difficult, if not impossible, to accomplish even that modest goal. In their July 2021 report, IMLEB estimated that there would need to be 125 CBA legitimation votes per day, every day, until May 1, 2023 to reach this target, and the pace of voting has not increased significantly since that report was published.[30]

Where there is a union present that holds title to a protection contract, they may be delaying holding the vote for strategic reasons. Both unions and employers may be wary of the vote being held, and they may have colluded to hold off for now, in order to monitor the trends in the early votes and assess the potential outcomes in their own workplaces before moving forward on scheduling CBA legitimation processes. It is also possible that unions were aware that the Federal Centre would likely publish its own protocol once it took over the process and waited to schedule votes after this change, in order to hold their legitimation processes under the most current set of rules.

[26] Hernández, Gerardo. "Contratos de protección, el gran desafío para la reforma laboral y el T-MEC," *El Economista*, 22 de noviembre de 2021. https://www.eleconomista.com.mx/capitalhumano/Contratos-de-proteccion-el-gran-desafio-para-la-reforma-laboral-y-el-T-MEC-20211119-0045.html.

[27] CFCRL. Sistema de Registro de eventos para la Legitimación de Contratos Colectivos de Trabajo. https://legitimacion.centrolaboral.gob.mx. There is no way to verify this summary figure, which is updated weekly, as no individual voted results (*actas*) have been posted since the end of August.

[28] Alcalde Luján, Luisa María. "¿Por qué conviene legitimar contratos colectivos?, Opinión," *El Universal*, 25 de junio de 2021. https://www.eluniversal.com.mx/opinion/luisa-maria-alcalde/por-que-conviene-legitimar-contratos-colectivos.

[29] AP. "Hasta 85% de los contratos colectivos existentes se firmaron a espaldas de los trabajadores: Alcalde," *El Financiero*, 7 de enero de 2020. https://www.elfinanciero.com.mx/economia/hasta-85-de-los-contratos-colectivos-existentes-se-firmaron-a-espaldas-de-los-trabajadores-alcalde.

[30] IMLEB Report. July 7, 2021, p. 16, Op. cit. Footnote 17.

The most likely reason that the legitimation process is behind schedule is that a vote against the CBA opens the possibility that another union could apply to represent workers at a workplace, an outcome that works against the interests of both the current union and the employer. Press reports have suggested that the vote against the CBA is also a rejection of the union in the workplace. Such reports have mistakenly interpreted a vote to reject the CBA as one that immediately removes the incumbent union from the workplace.[31] For employers, the possibility of losing union representation, or having to negotiate with a different union, puts at risk Mexico's "*paz laboral*" (labour peace) model, where control over rank-and-file workers by protection unions, with the collusion of employers, reduces strikes or other worker actions to demand higher wages or better working conditions. The CTM has suggested that if unions can no longer maintain *paz laboral*, that foreign investors will leave, and that unemployment will increase.[32]

There is also a great deal of confusion as to whether the CBA legitimation vote must be held separately from the periodic votes on negotiated revisions to the CBA, or whether they can satisfy or replace the legitimation vote. According to STPS, a biannual vote on revisions to the CBA can be held on the same date and time as the legitimation of the CBA, but the two votes and reporting on results must be done separately.[33] How this could work in practice, and whether workers would understand the different purposes and consequences of the two votes is questionable. Confusion over this issue could also explain why unions have not participated widely in the CBA legitimation process to date.

4. PUBLIC ACCESS TO CBA LEGITIMATION VOTE RESULTS

In August 2019, the STPS launched an on-line portal for the CBA legitimation process and maintained it through April 30, 2021, when it was transferred to the Federal Centre's website.[34] The portal includes a password-protected section for unions to register and prepare for carrying out legitimation votes, as well as public information on legitimation votes that have taken place, and on votes scheduled for future dates.

On November 3, STPS and the Federal Centre, as part of the launch of the labour reform's "second phase," announced the creation of a new public national union registry to expand and consolidate

[31] Examples of news report that misrepresent the immediate consequences of a negative CBA legitimation vote include: Laureles, Jared. "Rechazan trabajadores contrato de GM Silao; se va la CTM" [*GM Silao workers reject contract; the CTM is out*], *La Jornada*, 19 de agosto de 2021. https://www.jornada.com.mx/notas/2021/08/19/economia/trabajadores-de-gm-en-silao-rechazan-mantener-contrato-laboral; García Ortíz, Octavio, "Trabajadores de GM en Silao rechazan seguir en sindicato afiliado a la CTM" *[GM workers at Silao reject staying affiliated to the CTM], W Radio*, 19 de agosto de 2021. https://wradio.com.mx/radio/2021/08/19/nacional/1629401533_669424.html.

[32] González, Alfredo. "Amaga T-MEC a paz laboral. –CTM," Reforma, 8 de septiembre de 2021. www.reforma.com/amaga-t-mec-a-paz-laboral-ctm/ar2254547?referer=--7d616165662f3a3a6262623b727a7a7279703b767a783a--.

[33] CFCRL. Preguntas Frecuentes. https://legitimacion.centrolaboral.gob.mx/Sindicato/PreguntasFrecuentes.aspx.

[34] CFCRL. Sistema de Registro de Eventos para la Legitimación de Contratos Colectivos de Trabajo. https://legitimacion.centrolaboral.gob.mx.

existing publicly available information on union activities.[35] While additional data has and continues to be uploaded into the "Publications" section of the Federal Centre's website, as of our writing, it has not been consolidated into a single registry, and the legitimation portal continues to exist separately. This section describes the portal with some reference to new databases, especially where those seem to duplicate data from the portal but in different formats.

The front page of the legitimation portal includes regularly updated summary figures listing the number of CBAs legitimated; the number of voting events that have taken place; number of workers consulted; and number of unions registered.[36] It also includes links to key reference documents, including the Protocol, Frequently Asked Questions, a detailed guide for employers and unions, and the auto-evaluation form noted above.

Most importantly, there is a link to the "*listado de legitimaciones*," which includes a detailed listing of upcoming votes scheduled, as well as information on contracts that have gone through the legitimation vote process – those that have been "legitimated", and those that have been voted down (*terminados*).[37]

Scheduled Votes (Consultas Programadas): The listing of upcoming votes (usually within the following month) includes the names of the union and company, the contract number, and date on which the voting will take place. This listing is accessible to download in Excel format. This section also includes a separate listing of votes scheduled under Article 18 of the Protocol, which allows for unions to hold multiple voting events on a CBA in cases where the CBA covers more than one workplace or where there was a large number of eligible voters working in multiple work shifts. Unfortunately, the listing does not reveal the full number of voting "events" that will take place for any one contract. This is an important omission because many companies, such as banks and department store chains, have a number of workplaces in various parts of the country in which workers are

[35] STPS and CFCRL. "El 3 de noviembre arranca el Registro Público Nacional de los Sindicatos, para transparentar toda su actuación," *Boletín Conjunto* 036/2021, 28 de septiembre de 2021. https://centrolaboral.gob.mx/comunicados/124-el-3-de-noviembre-arranca-el-registro-publico-nacional-de-los-sindicatos-para-transparentar-toda-su-actuacion; Martínez, María del Pilar. "A partir del primer minuto del 3 de noviembre inicia segunda etapa de la reforma laboral en 13 estados," *El Economista*, 29 octubre de 2021. https://www.eleconomista.com.mx/empresas/A-partir-del-primer-minuto-del-3-de-noviembre-inicia-segunda-etapa-de-la-reforma-laboral-en-13-estados-20211029-0064.html.

[36] One problem with the portal is the lack of definitions of terms used regarding the results of legitimation votes. For example, the front page of the portal lists the total number of *trabajadores consultados* (workers consulted), without specifying if this number refers to the number of workers who voted, or the number of those eligible to vote. Given that there are some workplaces where less than half of the workforce participated in the legitimation vote, these are important distinctions. The portal also lists *contratos legitimados* (legitimated contracts), but does not specify whether this is the number of all CBAs that have been put to a vote, or only those approved by workers.

[37] CFCRL. Consulta del Listado de Legitimaciones. https://legitimacion.centrolaboral.gob.mx/Listado_Legitimaciones.aspx.

covered by the same CBA. Another problem is that the information on scheduled votes disappears once the votes have taken place, making it virtually impossible to verify whether votes did take place as programmed, given the delay of three months or more in posting voting results.[38]

Contracts Legitimated and Contracts Rejected (Legitimados y Terminados): This is the section of the portal that includes the critical information for those wanting to review results of legitimation votes to date, and is the least transparent. The information on legitimation votes that have taken place includes the CBA number or file (*expediente*) number, the union name, and a link to the voting results (*acta de resultados*) as submitted by the union. In addition to a breakdown of the vote results,[39] *actas* include the company name and the location where the vote took place,[40] and the signature of the General Secretary or legal representative of the union, although these are blacked out and therefore unreadable, presumably in order to comply with privacy regulations.

One change made to the legitimation portal in March 2021 was to provide a separate listing of contracts that were not approved by workers, under *Contratos Terminados*, with a link to the *acta*. However, the summary of legitimation results on the front page of the portal still only gives one figure titled "legitimated contracts," so it's unclear whether that figure includes contracts that workers voted against. While not a problem when only 16 of approximately 2,500 contracts have been rejected, it would become a problem if the number of terminated contracts increases significantly.[41]

Confusing, incomplete and missing information

While an important resource for monitoring the outcomes of the CBA legitimation process, the portal is cumbersome and anything but user-friendly. In order to have full information about a specific vote that was held, one must find the vote in question on the site's list, click the link for the *acta*, and then use a cellphone to open the QR code on the *acta*, in the instances where these are included and/or accessible. Obviously, having to link to three different web pages to access information on legitimation votes on any one contract for a process that should be documenting thousands of contract votes, is extremely problematic. Adding to the confusion, the listing of contracts that have been voted on is not ordered by date.

[38] The posting of Scheduled Votes is duplicated in the Publications section of the Federal Centre's website, in a different format. This version includes additional searchable functions, although without the option to download the list of scheduled votes into Excel files, with a separate file for "partial votes" (as per Protocol Article 18). And, while each listed scheduled vote appears to include link to a PDF file with additional information, these links do not yet work. https://centrolaboral.gob.mx/publicacion-consultas-programadas.

[39] Number of workers with a right to vote, votes in favour, votes against, and invalid votes.

[40] Some *actas* list specific addresses, while others only provide the city or states where votes took place.

[41] Since November 3, data for both legitimated and terminated contracts are duplicated in the Centre's Publications section. See https://centrolaboral.gob.mx/publicacion-contratos-legitimados and https://centrolaboral.gob.mx/publicacion-contratos-terminados. Again, that data is presented in different formats, making comparison with the portal almost impossible, except for Terminated Contracts, given that there are only 16 at present (December 1). The link to the General Motors Silao termination document (52/1/01) is broken in the publications listing, but is accessible on the portal page.

The time lag in posting contract vote results is another problem. Neither the STPS nor the Federal Centre has posted legitimation voting outcomes within the 20-day time frame provided for in the law, making it more difficult for workers or observers to examine the voting process either to assess outcomes at individual places of work, or to review trends across all votes over time. As of December 1, no *actas* have been posted on votes held beyond the end of August.

i. Contract vs File (Expediente) number

The listings under "contract numbers" on the portal are especially confusing. The Protocol requires that unions provide the number of the file (*expediente*) in which the contract that will be voted on was deposited.[42] The acta format provided to unions also asks for the *expediente* number. However, the legitimation portal lists these as "contract numbers."[43] As a result, unions seem to be reporting different numbers, sometimes the contract number, sometimes the union file number, and sometimes a reference number that seems to be neither of these.[44] The numbering confusion no doubt stems in part from the fact that while the Federal *Junta* had a single numbering system, state local *juntas* used a variety of formats. It is extremely difficult for workers, or any other interested party, to obtain a copy, from *juntas* at the state level, of the CBA without the correct contract number.[45]

ii. Actas

When reviewing the voting results, or *actas de resultados*, we found important omissions, and incomplete and incorrect information. A significant number of *actas* do not include key information, such as the date or dates of the vote(s), the name of the company, or the address(es) where the voting took place. A few of the *actas* are illegible, and links to some *actas* are broken.[46] Of the 1,300 contracts voted on through April 30, 2021, MSN identified 99 *actas* that are not accessible. MSN found similar problems in *actas* for contracts that were voted on after May 1, and the transfer of responsibility from STPS to the Federal Centre.

More problematic than these correctable mistakes is the fact that *actas* do not provide details on the results of votes in each workplace ("voting events") where CBAs cover multiple workplaces, including in different states. As noted above, these votes are registered under Article 18 of the protocol,

[42] CFCRL. *Protocolo para el Procedimiento de la Legitimación de Contratos Colectivos de Trabajo Existentes*. p. 10. https://legitimacion.centrolaboral.gob.mx/Upload/ProtocoloLegitimacion.pdf.

[43] While the contract number is a unique number for the CBA deposited with the appropriate *junta*, the registry number (*número de expediente*) is a file or folder number, assigned to a union, and which includes union registry documents and statutes, as well as all revisions to the CBA to which the union claims title.

[44] See examples under the "Consultas Programadas," "Contratos Legitimados" and "Contratos Terminadas" tabs in the CFCRL's Consulta de Listado de Legitimaciones at https://legitimacion.centrolaboral.gob.mx/Listado_Legitimaciones.aspx.

[45] As the July IMLEB report explained, even with the correct contract number, only CBAs under federal labour jurisdiction, contracts deposited at the Mexico City local *junta*, and contracts for public sector workers are usually available online. Many CBAs deposited at local *juntas* are next to impossible to access from government sources electronically because most offices only kept paper copies. IMLEB Report. July 7, 2021, p 11-12, Op. cit. Footnote 17. The Federal Centre has begun the process required by the reform to make all CBAs publicly available, which is available here: https://centrolaboral.gob.mx/publicaciones/contratos_colectivos_de_trabajo_*juntas*.

[46] MSN. Mexico's CBA Legitimation Vote Results (September 2019-April 30, 2021), December 2021, Op cit. Footnote 3.

with the specifics agreed to with the Federal Centre. However, the Centre's summary page does include the number of voting events. For example, as of December 1, corresponding to the 2,426 "*contratos legitimados*," it lists 5,439 "*eventos realizados*."

In MSN's review of the *actas* for the first two years of the legitimation process, through April 30, 2021, we found only one example in which the results of each voting event on the same CBA were reported separately.[47] Except for that case, *actas* only reported the aggregate vote count of all workplace votes. As a result, the information on voting in each workplace covered by the CBA is not publicly available, nor whether workers in some work centers voted against the CBA, although we assume that partial vote results are reported to the Federal Centre. A recent, striking example of this omission in reporting is the June legitimation vote on the CBA covering more than 400,000 workers employed by Mexico's Social Security Institute (IMSS). Workers employed in close to 1,000 clinics and hospitals voted in 761 voting sites across the country. Yet only the total results of all the votes are publicly available, without any information provided on results by workplace, or by state.[48]

The lack of reporting of voting results at separate workplaces represents an important loss of information, because it is not clear whether all workers at one of many workplaces in fact voted against their contract, or whether the votes against the contract are concentrated in one workplace, one state, or one or more cities.

iii. QR Codes

The QR codes included on most *actas* are another source of confusion. When accessible, the QR codes provide important information that complements what is found in the *actas* and the portal – the printed name of the union's General Secretary or legal representative, the union registration number, the address where the vote took place,[49] and whether the CBA was "deposited" with local or federal *juntas*. However, not every *acta* includes a QR code, and there is no clear pattern for why some *actas* include QR codes and others do not. The problem has been further confounded by the fact that as of the third week of June 2021, QR codes from all *actas* administered by STPS became inaccessible, with the result that the additional data for 1,300 contracts voted on is no longer publicly available.[50]

[47] CC-718/1999-XII-GTO, CTM-Sindicato de Trabajadores de la Industria Metalmecánica, Automotriz, Similares y Conexos de la República Mexicana, Aam Maquiladora México, S de R.L. de C.V. The acta on the website links to a summary *acta* and then six "partials" – all for votes at the same address (in Guanajuato) and on the same date. https://legitimacion.centrolaboral.gob.mx/Upload/Sindicato/ResultadosHome/CC-718-1999-XII-GTO492237889.pdf.

[48] CC-15-1986-XII RM (1), Sindicato Nacional de Trabajadores del Seguro Social. https://legitimacion.centrolaboral.gob.mx/Upload/Sindicato/ResultadosHome/CC-15-1986-XII%20RM%20(1).pdf. "El 98% de los trabajadores votantes legitiman el CCT en el IMSS," 22 de junio de 2021. https://sntss.org.mx/noticias/el-98-de-los-trabajadores-votantes-legitiman-el-cct-en-el-im.

[49] From MSN's review of the data through April 30, 2021, the majority of legitimation votes were held in the workplace, however neither the *acta* nor QR code specifically records the workplace location. MSN. Mexico's CBA Legitimation Vote Results (September 2019-April 30, 2021), December 2021. *Op. cit*. Footnote 3.

[50] MSN did access all available QR code information in the preparation of our CBA legitimation database, but did not save PDF versions of the QR pages. While our database includes that information, it is no longer publicly accessible from the CFCRL legitimation portal.

iv. Key information not reported

Perhaps more important than the confusion and limitations of the legitimation portal as it is currently organized is that critical information is not publicly available that could enhance scrutiny by workers and outside monitors. The most important omission is that there are no links to the text of CBAs that have gone through the legitimation process. The post-November 3 Publications section of the Federal Centre's website does include a section titled "Contratos Colectivos," with links to a very few CBAs, although it is not clear which contracts are being uploaded here.[51]

Also absent from the portal is information on whether or not labour authorities received reports of voting irregularities from workers, or whether they investigated such allegations. Even the publication of a tally of worker complaints would provide information about whether workers were engaging in the complaint process or not. Similarly, the Federal Centre reserves the right to verify and inspect more closely voting results, as they deem appropriate, but likely based on reports of irregularities. However, there is no publicly available information on whether the Centre and/or STPS is carrying out such verifications, how often, or where. The post-November 3 Federal Centre's Publications page includes a link to a section that could potentially address this problem. "Resoluciones de inconformidades" directs users to resolutions on irregularities reported to the Federal Centre in 2021.[52] However, as of the date of publication MSN was unsuccessful in accessing any detail.

Despite new information, confusion continues

Announcements by the STPS and the Federal Centre of a November 3 launch of a national public registry of union activities in the country, which will include information on collective bargaining agreements, union leaders, internal union regulations, and other documents, seem to have been premature. While there are now many more documents on union matters publicly available on the Federal Centre website – a step forward on transparency – the duplications and lack of clarity of what information "users" (unions, workers, monitoring organizations, government) are able to access, represents a serious limitation.[53]

[51] CFCRL. Publicaciones-Contratos Colectivos de Trabajo. https://centrolaboral.gob.mx/publicaciones/contratos_colectivos_de_trabajo_*juntas*.

[52] CFCRL. Publicaciones-Resoluciones de Inconformidades. https://centrolaboral.gob.mx/publicacion-resoluciones-de-inconformidades.

[53] There is no link on the STPS or Federal Centre websites to a single national union registry that MSN could find. The Publications section of the Federal Centre website lists the following pages that may form part of that registry: Constancia de Representatividad; Aviso de Resultados de Contratos Colectivos de Trabajo; Contratos Colectivos; Registro de Asociaciones; Toma de Nota; Estatutos; Padrón de miembros; Rendición de cuentas; Actas de asamblea; Programa anual de adquisiciones, arrendamientos servicios; Programa anual de obras públicas y servicios relacionados con las mismas; Estándares de competencia; Consultas programadas; Contratos legitimados; Contratos terminados; Resoluciones de inconformidades; Adquisición y servicios obras públicas; Informe de austeridad. https://centrolaboral.gob.mx/#publicaciones.

5. MSN REVIEW OF LEGITIMATION VOTES (SEPTEMBER 2019-APRIL 30, 2021)

To better understand and analyze the legitimation process, and to provide detail that is not easily accessible on the legitimation portal, MSN compiled a database of all contract legitimation votes through the two-year period when the STPS was charged with overseeing the legitimation process.

The database includes details on 1,300 contract votes with the CBA number, the date and location of the vote, company and union names, confederation affiliation, the union signing representative, whether the CBA is registered at the federal or a local *junta*, and full vote results.[54]

Of the 1,300 CBA contract legitimation votes, which took place between September 2019 and April 30, 2021, in only 4 cases did the majority of workers vote against the existing CBA, all in plants with a small number of workers "eligible to vote." As of December 1, that number had increased to 16.

CBA contract legitimation votes under STPS administration = 1,300

September–December 2019: 68.

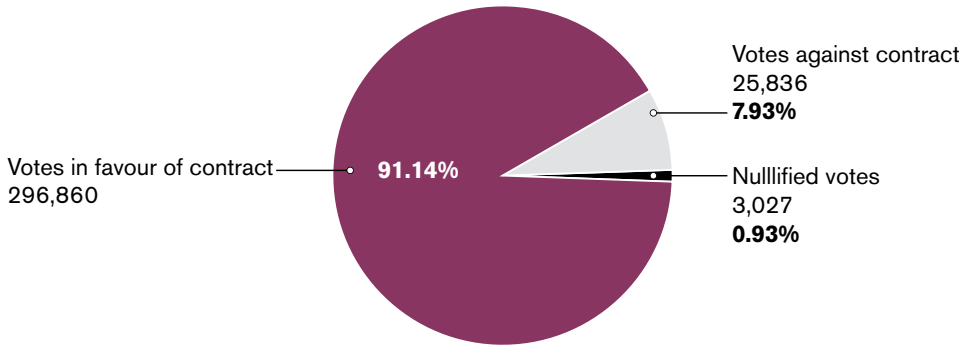
January–December 2020: 477.

January–April 30, 2021: 755.

For a breakdown by state see Appendix, p. 29.

Overall, 91% of the votes cast across 1,300 CBAs were in favour of the existing CBA, with only 8% of workers voting against the contract, and less than 1% of votes cast were deemed null and void. In total, 19% of eligible voters did not vote. However, the number of voter abstentions varied between 1% and over 71%.

Total voting results (September 2019-April 30, 2021)



[54] MSN. Mexico's CBA Legitimation Vote Results (September 2019-April 30, 2021), December 2021. https://www.maquilasolidarity.org/en/cba-legitimation-results-mexico.

Despite the overwhelming percentage of votes in favour of existing CBAs, there were some anomalies that raise questions about the accuracy of the data reported and/or the credibility of the union reports, reinforcing concerns about union control of the legitimation process.

- **Number of workers eligible to vote:** In 119 contracts voted on, the number of workers listed as eligible to vote was fewer than the minimum of 20 workers required to form a union. It is unclear why a CBA would exist at a workplace with too few workers to legally form a union.
- **Large number of workers not participating:** In 144 CBA legitimation votes, 30% or more of eligible voters did not take part in the vote. For example, in 11 of 68 CBA votes in facilities owned by the supermarket chain Chedraui, more than 40% of eligible voters did not vote. In one Chedraui facility, 66% of eligible voters did not vote.
- **Not a single worker voting against contract:** In 250 cases, there was not one vote cast against the existing CBA. For example, in facilities owned by the CEMEX cement company alone there were 37 of 59 CBA legitimation votes in which not one worker of the 1,137 of those who participated voted against the existing CBA. In one of the CEMEX votes, media reports quoted workers as saying that they were told by the union that if they voted no, they would lose the benefits in their CBA.[55] Although unions in such cases may argue that the voting results merely demonstrate unanimous support for the existing CBA, such results should raise suspicions with STPS that workers may have been pressured or provided false information in order to achieve such results.
- **Union images in voting areas:** Photos of some CBA authentication votes show that images of the incumbent unions were displayed on posters, banners and t-shirts in voting areas, including on voting urns. While this may not be a violation of the Protocol, displaying posters of a political party in a voting area during an election would not be tolerated.
- **General Secretary:** In one case, the *acta* and QR code, which include the name and blacked out signature of the General Secretary of the union, shows that the vote took place two days after news reports confirmed the death of the General Secretary.[56]
- **Union office as vote location:** In one case, the *acta* reports the union office address as the location where the vote took place, raising concerns as to whether a free and fair CBA legitimation vote could be carried out in a facility owned or rented by the union that holds title to the CBA.[57]

[55] Cattan, Nacha. "NAFTA rewrite runs into trouble as Mexican reform comes up short," Bloomberg, November 20, 2019. https://www.bloomberg.com/news/articles/2019-11-20/nafta-rewrite-runs-into-trouble-as-mexican-reform-comes-up-short. On file at MSN.

[56] Legitimation vote, CBA CC004/2003, Sindicato de Trabajadores de Oficinas de la Industria y del Comercio; Vanguardia. "Fallece líder cetemista Gilberto Martínez," Vanguardia, 17 de diciembre de 2021. https://vanguardia.com.mx/dinero/fallece-lider-cetemista-gilberto-martinez-CTVG3564042.

[57] Legitimation vote, CBA CC-630-1986-XVI-DF(1)05-IX-86, Sindicato Nacional de Trabajadores Harineros, Panificadores, de Alimentos, del Transporte y Comercio, Similares y Conexos de la República Mexicana.

- **Altered election date and results:** MSN's CBA listing on our database through April 30 originally included information on a contract legitimation vote that the *acta* reported as taking place on March 25 at Wallstabe & Schneider Mexico Service. Results from that *acta* indicated that workers had rejected the CBA by one vote (12 in favour and 13 against). However, in our recent review of legitimation votes, the acta for the same contract shows a later voting date with no votes against the CBA.[58]

Whether or not there are plausible explanations for these anomalies and incomplete or inaccurate information, the control of the voting process and the information reported to STPS or the Federal Centre by the incumbent unions makes it difficult for interested parties to obtain the facts behind these legitimation votes.

At the very least, these anomalies reinforce the need for more transparent reporting and increased government oversight of the CBA legitimation process.

Who holds title to legitimated contracts?

Not surprisingly, the majority of contract legitimation votes were carried out by the major "official" union and "white" union organizations[59] – Confederación de Trabajadores de México, CTM (42%); Confederación Revolucionaria de Obreros y Campesinos, CROC, (16%); Federación Autónoma del Sindicalismo Independiente en México, FASIM (13%); Confederación de Agrupaciones Sindicales Mexicanas, CONASIM (8%); Federación de Trabajadores de Sindicatos Autónomos, FTSA (8%); Federación de Sindicatos Independientes de Nuevo León, FNSI (4%); and Confederación Regional Obrera Mexicana, CROM (3%). For more information on unions that have participated in the CBA legitimation process, as well as the confederations and/or federations to which they are affiliated, see MSN's database.[60]

The database also includes names of union representatives listed on the voting results (*actas*), either the General Secretary or legal representative. With that detail, we were able to identify representatives for approximately 1,250 contracts. In a number of cases, the same person is signatory to a large number of collective bargaining agreements, for multiple unions, in multiple workplaces, often in different economic sectors and various states.

[58] 96/2013/LC/CU/RCC, Sindicato de Trabajadores de la Industria Metal Mecánica Automotriz Similares y Conexos de la República Mexicana. Original Acta (March 25 2021), 34 workers with right to vote, with 12 votes in favour; 13 votes against. Current acta (June 21, 2021) lists 35 workers with right to vote, with 31 votes in favour, and zero against. https://legitimacion.centrolaboral.gob.mx/Upload/Sindicato/ResultadosHome/96-2013-LC-CU-RCC..pdf.

[59] In Mexico, the term "official union" refers to those union organizations affiliated with Mexico's historical ruling party, the PRI, whereas the term "white union" refers to those union organizations that were created by employers, which are most common in the state of Nuevo Leon. Examples of white unions include FASIM, FNSI, FTSA, and CONASIM. See: Ramírez Sánchez, Miguel Ángel (2011), "Los sindicatos blancos de Monterrey (1931–2009)," Frontera Norte (23) 46, http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0187-73722011000200007.

[60] MSN. Mexico's CBA Legitimation Votes (September 2019-April 30, 2021), December 2021, Op. cit. Footnote 54.

For example, Roberto Mendoza León is associated with 107 CBAs either listed as General Secretary of two different unions in two different federations, FOS and FOSRM, or through the unions' legal representative Daniel Gallo Ovilla. These CBAs cover workplaces in seven different economic sectors in multiple states. Salim Kalkach Navarro is listed as General Secretary on 28 CBAs for seven different unions across multiple states and unrelated sectors. These unions are also affiliated with the CROC. Arturo Omar Rodríguez Martínez is listed as General Secretary on 13 CBAs for one union, affiliated with CONASIM, that represents workers across nine different sectors in multiple states.

That a single person could serve as the General Secretary for multiple unions across several unrelated economic sectors[61] in different states at the same time suggests that these are protection contracts. Given that these figures only represent those CBAs that have been subjected to legitimation votes, the number of CBAs to which these union leaders hold title, or the number of sectors where they hold contracts, could be much larger.

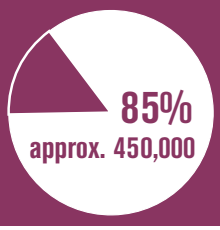
Photo: El Mundo Digital

[61] Roberto Mendoza León claims to represent workers in unions in the construction, transportation, hotels, production of foodstuffs, cement, and chemicals sectors, as well as service sectors such as grocery stores. In the case of Salim Kalkach Navarro, the sectors include auto parts, industrial food processing, garment and textiles production, manufacture of electronics, pipefittings and valves, and the fabrication of industrial restaurant equipment. In the case of Arturo Omar Rodríguez Martínez, sectors include auto assembly, auto parts, plastics, bottling, mechanics and maintenance of heavy trucks, commercial trucking, supermarket workers, employment placement services and landscaping.

Protection contacts, the mechanism for simulating unions in Mexico

Protection contracts have been present in Mexico for decades, and their existence was one of the reasons for the inclusion of the labour chapter in the USMCA, in order to guarantee union democracy in the country.

Registered Collective Bargaining Agreements / Number of Contracts

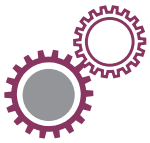


Of **530,000** registered CBAs

85% of collective bargaining agreements are protection contracts (approx. 450,000)

What are protection contracts?

They are **contacts signed between a union and an employer behind the backs of workers** where there is a payment involved and collusion with labour authorities.



How does it work?

The term "**protection**" is used because it's a way for companies to **evade collective bargaining and avoid strikes**. It's a simulation of a union.

What does it include?

Protection contacts **include the minimum legally- mandated benefits**, given that their purpose is not to improve the working conditions of the union members.

How many are there?

In Mexico, there are approximately 530,000 registered collective bargaining agreements, and the **Ministry of Labour (STPS) estimates that 85% of those could be protection contracts** (approx. 450,000).

What is their fate?

The labour reform of 2019 included **a process for the legitimation of all the collective bargaining agreements through a vote by the workers**, in order to purge those contracts signed behind the backs of workers.

With information from the Observatorio Ciudadano de la Reforma Laboral and Graciela Bensusan. Reprinted with the permission The Economista, November 2021. Translation MSN.

6. VOTING AWAY THE PROTECTION CONTRACT SYSTEM?

Results from CBA legitimation votes held up to April 30, 2021 make clear that rather than contesting their current union representation, in the vast majority of cases, workers have instead been choosing to validate their current collective bargaining agreement.

Although the labour experts we spoke with suspected that employers and incumbent unions were coercing and/or inducing workers to vote in favour of the existing CBA, there have been only a few cases where there is verifiable evidence of employer interference or unions failing to comply with the formal criteria for the legitimation process outlined in the Protocol.[62] Nor did the STPS, up to the end of April or the Federal Centre since then, report on any formal complaints by workers or other interested parties on specific legitimation processes or votes.

One important exception is the case of the initial CBA legitimation vote on April 20-21 at the General Motors pickup truck assembly plant in Silao, Guanajuato. Verifiers from STPS and the Federal Centre were compelled to shut down the vote halfway through the process after they found destroyed ballots in the union office.

The denial of the workers' rights in the GM Silao vote became the subject of the first petition filed by the US government under the USMCA rapid response mechanism, which led to the signing of a remediation agreement between the Mexican and US government setting strict conditions under which a follow-up vote would be held.[63]

The suspension of the April vote and the results of the second vote on August 17-18, in which the majority of workers rejected the existing CBA, has focused increased media and public attention in Mexico on the legitimation process, and has renewed hopes that the process could contribute to democratization of labour relations. For example, labour activists have pointed to legitimation votes at Parker Brownsville Servicios, Panasonic, Tricon de Mexico, and AFX Industries in the state of Tamaulipas as examples of an increased willingness of workers to vote against existing CBAs. However, they also note that harassment of workers by incumbent unions has continued after those votes.[64]

See GM Silao workers vote against existing CBA, pp. 24-27, for a summary of this ongoing case.

[62] It is telling, however, that maquila workers invited to speak about their knowledge and views of the CBA legitimation process at a November 11, 2021 public seminar hosted by the Colegio de la Frontera Norte declined to participate because of their fear of retaliation from their union or employer. Quintero Ramírez, Cirila, "El miedo a hablar en tiempos de democracia sindical," 11 de noviembre de 2021. https://www.colef.mx/opinion/el-miedo-a-hablar-en-tiempos-de-democracia-sindical.

[63] A US government fact sheet on the Remediation Agreement between the US and Mexico is available at: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2021/july/fact-sheet-biden-administration-reaches-agreement-mexico-gm-silao-rapid-response-action-and-delivers. The full Agreement is available at: https://ustr.gov/sites/default/files/enforcement/USMCA/Silao%20Course%20of%20Remediation%20FINAL%207.13.2021.pdf.

[64] Laureles, Jared. "Reforma Laboral de 2019 necesita 'perfeccionarse': especialistas," *La Jornada*, 17 de octubre de 2021. https://www.jornada.com.mx/notas/2021/10/17/sociedad/reforma-laboral-de-2019-necesita-perfeccionarse-especialistas.

Despite the relatively few reported irregularities in other legitimation votes during the first two years of the process, the manner in which votes are organized has been and continues to be extremely problematic.

First, as noted above, the organization and timing of the voting process is in the hands of the union that holds title to the current CBA. It is the union that chooses when and where the vote will be held, serves as the sole channel of information to and from STPS (and now the Federal Centre) on the legitimation vote(s), manages the lists of workers eligible to vote, and prepares ballots, ballot boxes and voting reports. The fact that unions are required to tally votes in a public and transparent manner and have the voting results posted in the workplace is a positive development, but it is the union that is responsible for calculating the results and reporting them to Mexican labour authorities on a web-based platform.

Experience with irregularities in union representation votes (*recuentos*) under the labour regulations of previous regimes, and even those held since the new labour justice reform, makes the reliance on existing unions to organize and report on the legitimation votes problematic (to say the least). Unions that have signed protection contracts are very unlikely to risk losing control of their CBAs and the union dues or monthly payments and other benefits associated with the ownership of protection contracts. Rather than confirming that voting was carried out in compliance with Protocol requirements, the relatively small number of reports of irregularities could merely point to the inability of STPS and the Federal Centre to monitor the activities of the union and management, especially prior to the actual vote.

A union-driven CBA legitimation process may have been adopted in order to purge from records the CBAs that are clearly paper contracts with no union involvement ("*sindicatos fantasmas*"). Yet, putting control of contract legitimation in the hands of incumbent unions, when it is generally accepted that the vast majority are unrepresentative, clearly undermines the legitimacy of the process. When such protection unions are in control of CBA legitimation – including explaining its purpose and consequences to workers as, in most cases, the sole source of information about the vote and content of the CBA, the results are not surprising. This self-regulation model chosen by the federal labour authorities has meant in practice that workers are unlikely to challenge their CBAs or the unions that holds title to them, unless there is an alternative worker organization active in the workplace, as was the case in the GM vote.

The fact that the first two years of the CBA legitimation process took place during the height of the COVID-19 pandemic was also likely a contributing factor to the vast majority of votes being in favour of existing CBAs, as well the low turnout in some of the votes. Measures to control infection led to temporary layoffs and the permanent closure of many enterprises.[65] Unemployment, economic hardship, and uncertainty about the economy only heightened the importance for workers of a formal job with a contract and some benefits, leaving many to vote for the CBA they have – rather than face

[65] Aguilar, Alberto. "Vestido pierde 1206 empresas y piden a economía abrir centros comerciales," El Economista, 28 de enero de 2021. https://www.eleconomista.com.mx/opinion/Vestido-pierde-1206-empresas-y-piden-a-Economia-abrir-centros-comerciales-20210128-0005.html.

the risks, which are likely being exaggerated by the union, about an uncertain future under a different CBA, no CBA, or a different union.

Union and employer messaging prior to legitimation votes

Interviews with labour experts suggest that messaging to workers by unions and/or employers may explain in part the CBA voting outcomes. For example, unions in at least three cases have reportedly spread misinformation about what may happen to benefits if workers do not approve the CBA, suggesting that workers will lose benefits if they vote against the contract, or if the union no longer represents them.[66]

While, in most cases, blatant employer interference may not be taking place at the time of the vote, subtle, and not so subtle, messaging to workers about the importance of the current union to the employer and/or false suggestions that workers will lose benefits if they vote against the CBA could take place in the weeks prior to the vote. It's worth noting that the legitimation Guide to Action encourages employers to anticipate that the union will approach them about holding worker assemblies and other communications to inform workers of the benefits of union affiliation and the CBA.[67]

For example, in the GM Silao case, workers allege that prior to the April vote they were required to attend private audience meetings where union delegates told them they had to vote "yes" to retain the benefits in their CBA. Such meetings could not take place during working hours without the consent and cooperation of GM management. An audio recording made public since the vote appears to confirm worker allegations that union officials threatened workers that if they voted "no", they would lose their jobs and the factory would be moved elsewhere. Workers also allege that the union was offering gifts and raffles to the workers to influence their vote in a second CBA legitimation event.[68]

The Protocol prohibits the granting of extraordinary payments or benefits to discourage workers from voting or to influence their vote, but it is unclear whether the granting of marginal improvements in fringe benefits or promotion of management/labour cooperation would be the basis for successful worker complaints.

One reported case of blatant employer interference in the legitimation process was at a facility of the

[66] There have been numerous reports on the GM Silao case, including Rodríguez, Ivet, "Libertad sindical: la consulta en la planta de GM en Silao abre la Caja de Pandora," *Expansión*, 17 de agosto de 2021. https://expansion.mx/empresas/2021/08/17/libertad-sindical-la-consulta-en-la-planta-de-gm-abre-la-caja-de-pandora?utm_source=internal&utm_medium=branded. Also see report on vote at a CEMEX facility in 2019 in Cattan, Nacha. November 20, 2019, Op. cit. Footnote 55. A more recent case is the vote at the Aptiv II maquiladora in Ciudad Victoria. Aguilar, José Gregorio. 23 de noviembre 2021, *Op. Cit*. Footnote 18.

[67] STPS. Legitimación de contratos colectivos de trabajo: La llave de acceso al nuevo modelo laboral (Guía de acción). p. 7. https://www.gob.mx/stps/documentos/legitimacion-de-contratos-colectivos-de-trabajo?idiom=es. A newer incident was reported at the Aptiv II maquiladora in Tamaulipas, see Aguilar, José Gregorio. 23 de noviembre de 2021, *Op. cit*. Footnote 18.

[68] However, in the audio it is not clear who is speaking, or to whom. Silva, Karen. "Audios evidencian intimidación a empleados de GM Silao ante consulta sindical," *Correo de Guanajuato*, 18 de junio de 2021, https://periodicocorreo.com.mx/audios-evidencian-intimidacion-a-empleados-de-gm-silao-ante-consulta-sindical.

department store chain Liverpool where workers alleged that their employer, rather than the union, organized and managed the CBA legitimation vote at their workplace, including putting together the list of workers eligible to vote and having senior management invite workers to participate in the vote by email.[69]

Under the Protocol, workers can file a complaint about irregularities in the vote, including regarding employer interference and/or communication to workers by the employer or union of false or blatantly misleading information on the legitimation process in order to discourage their participation or influence their vote. However, a fundamental problem remains – will workers feel confident that if they file complaints, the employer and/or the incumbent union will not retaliate against them or against all workers they consider "trouble makers".

It is also unclear how much weight will be given worker testimony on irregularities without corroborating documentation, or whether onsite interviews will be carried out with workers and management personnel in order to verify worker allegations. In the GM Silao case, STPS reported that it had insufficient evidence to determine the validity of worker allegations of a number of irregularities, effectively placing a high barrier to workers corroborating their claims with the evidence they can provide, which is not likely to include extensive written documentation.[70] It is also highly unlikely that an employer providing workers false information on the consequences of voting against the existing CBA would leave a paper trail of such conversations.

CASE STUDY: GM SILAO WORKERS VOTE AGAINST THE EXISTING CBA

On August 17 and 18, in a precedent-setting test of CBA legitimation process, workers at the General Motors (GM) pickup truck assembly plant in Silao, Guanajuato voted to reject the existing collective bargaining agreement (CBA) between their employer and the Miguel Trujillo Lopez union, an affiliate of the Confederation of Mexican Workers (CTM).

Of the 5,876 workers who voted, 3,214 voted NO and 2,623 voted in favour. As a result, the CBA was nullified, but the workers will retain any benefits in the contract the go beyond legal obligations. Observers at the August vote included representatives of STPS, the National Electoral Institute (INE), and International Labour Organization (ILO).

The second legitimation vote on the Silao GM contract took place almost four months after the

[69] Martínez, María del Pilar. "Trabajadores de Liverpool denuncian que fue la empresa quien organizó la legitimación de contrato colectivo," *El Economista*, 6 de octubre de 2021. https://www.eleconomista.com.mx/empresas/Trabajadores-de-Liverpool-denuncian-que-fue-la-empresa-quien-organizo-la-legitimacion-de-contrato-colectivo-20211006-0056.html.

[70] STPS. Resolución respecto al procedimiento de legitimación del contrato colectivo de trabajo número cc-973=2005-XII-219-7819, celebrado entre el Sindicato Nacional de Trabajadores de la Industrias Metal-Mecánica, Automotriz y Proveedores de Autopartes en General, CTM 'Miguel Trujillo Lopez', y la Empresa General Motors de Mexico S. de R.L. de C.V. On file at MSN.

initial April 2021 vote was suspended by STPS when serious violations were uncovered, including the destruction of ballots after the union counted results halfway through the voting process.

The violations of the GM workers' rights under Mexico's Federal Law and the labour chapter of the US-Mexico-Canada trade agreement (USMCA) became the subject of the first complaint lodged by the US government under the agreement's rapid response mechanism.[71]

On July 13, the governments of Mexico and the US reached final agreement on a remediation plan to address the denial of workers' rights at the GM plant.[72] Key points of agreement included:

- STPS was to apply greater scrutiny to the organization and logistics of the August vote, requiring the company to submit plans for the location of voting areas for STPS approval. The company was required to set aside designated paid time for workers to vote, without pressuring them to participate, and seek approval by STPS for the dates and schedule of the vote.
- The company was to adopt and disseminate to workers, and post in visible areas in the workplace, a declaration of neutrality, highlighting its respect for the majority decision, a guarantee the no worker will be retaliated against for exercising their rights, and a commitment that its continued operations in Mexico did not depend on the outcome of the vote.
- STPS was to prepare and disseminate informational materials directed at workers regarding the CBA legitimation process, including information on why the April vote was annulled, the consequence of the two possible outcomes to the August vote, and how to file complaints if there were irregularities. STPS was to also validate that any informational materials disseminated by the company or union were aligned with the STPS materials.
- The company was to guarantee the delivery to all workers with voting rights a printed copy of the CBA, accompanied by the informational materials issued by STPS, 10 days prior to the vote.
- STPS, not the incumbent union, was charged with creating ballot and election information, and safeguarding materials before and after the vote.
- STPS was to place a sufficient number of federal inspection personnel in the factory for an extended period of time prior to the vote, beginning two days after the signing of the agreement. STPS inspectors were charged with carrying out random interviews with workers on a daily basis, including on worker transport and bus stops. STPS was mandated to investigate any potential misinformation, intimidation or retaliation against workers.
- The International Labour Organization (ILO) was to post observers in the factory starting 15 business days before the vote, until one day after the vote.

[71] For an excellent Spanish-language analysis of how Mexico's labour justice reform and the negotiation of the labour chapter of the USMCA set the stage for the second GM Silao vote, see: Giménez Cacho, Luis Emilio. "Sorpresa en Silao," *Nexos*, 19 de octubre de 2021. https://www.nexos.com.mx/?p=61808.

[72] See Footnote 63 with links to US government fact sheet and full the Remediation Agreement between the US and Mexico.

- Staff of the Mexican electoral institute, INE, were also charged with observing conditions of the vote the days of the event.

The conditions outlined in the agreement helped to ensure that the CBA legitimation vote at the GM Silao factory took place without incident, and that there was no repeat of the false communications, threats and intimidation by the union and employer prior to the initial vote.

Multiple pressures from various actors contributed to the successful outcome, including:

- Suspension of the initial vote by STPS and its insistence that a new vote be held with greater government oversight;
- The active role of a workers' movement (*Generando Movimiento*) of current and former employees campaigning for a change in union representation long before the first vote;
- Ongoing support for the workers from a Mexican federation of independent auto unions (FESIIAAAN), and CILAS and other labour rights organizations;
- Press coverage on the first vote, which served to counteract union misinformation on the consequences of voting against the contract;
- The US government's decision to file a complaint under the rapid response mechanism of the USMCA and to negotiate a robust remediation agreement with the Mexican government;
- Pressure on GM headquarters from US and Canadian unions; and
- The very real threat of a suspension of trade benefits under USMCA if GM allowed further violations to take place.

While this effective combination of pressures is unlikely to be replicated in many other CBA legitimation votes, the GM Silao experience does offer concrete examples of actions and conditions that could contribute to fair outcomes in future votes.

With the vote to terminate the existing CBA at the GM Silao plant, the workers now have the option to form or join another union and negotiate an improved CBA, and on August 30 a new independent union (SINTTIA), announced that it will be seeking the right to do so.

In September, the General Secretary of the incumbent CTM union also declared that they will be seeking the right to negotiate a new CBA, stating, "at GM the war is not over, we're going for the collective bargaining agreement."[73] When two or more unions apply to the Federal Centre for a Certificate of Representivity in order to gain the right to negotiate a new CBA, each union would need to provide evidence that they have the support of at least 30 percent of the workforce. In such cases, a union representation election (*recuento*) might be necessary to determine which union has the support of the largest number of workers.

[73] Martínez, María del Pilar. "En GM no ha terminado la guerra, vamos por el contrato colectivo: Tereso Medina," *El Economista*, el 7 de septiembre de 2021. https://www.eleconomista.com.mx/empresas/En-GM-no-ha-terminado-la-guerra-vamos-por-el-contrato-colectivo-Tereso-Medina-20210907-0059.html.

On September 19, the STPS announced that the termination of the existing CBA would take effect on November 3. SINTTIA denounced the decision, stating that it would allow the Miguel Trujillo López union of the CTM more time to pressure workers in the production lines and at their homes to sign a document declaring their affiliation with that union.[74]

On September 29, SINTTIA released a public declaration accusing the CTM union and GM management of harassing leaders and supporters of the independent union and allowing the Miguel Trujillo López union free reign inside the factory to pressure workers to sign up for that union.[75] The statement called on the STPS and the ILO to once again send observers to the factory.

On November 3, STPS announced that the CBA was terminated, and SINTTIA released a public statement pledging that with the support of the workers at the factory it would be applying for a certificate of representivity and demand the signing of a new collective agreement that would contribute to improved working conditions and a better life for the workers.

On December 10, STPS and the Federal Centre published a joint public communication advising that to date three different unions had applied for a certificate of representivity for the right to negotiate a new collective bargaining agreement at the GM Silao facility. These included the independent SINTTIA union, a second union affiliated with the CTM, and a third that had disaffiliated from the CTM in May of this year. Apparently, the Miguel Trujillo Lopez union that formerly held title to the CBA had not yet applied for a certificate.[76]

[74] Laureles, Jared. "Denuncian obreros más presiones para afiliarse a la CTM," *La Jornada*, el 25 de septiembre de 2021. https://www.jornada.com.mx/notas/2021/09/25/politica/denuncian-obreros-mas-presiones-para-afiliarse-a-la-ctm.

[75] The SINTTIA public declaration is on file at MSN. See related article: Avila, Alfonsina. "Piden nueva intervención de la OIT en GM Silao por anomalías en últimos meses del CCT," *Zona Franca*, 30 de septiembre de 2021. https://zonafranca.mx/politica-sociedad/piden-nueva-intervencion-de-la-oit-en-gm-silao-por-anomalias-en-ultimos-meses-del-cct.

[76] Laureles, Jared. "Admiten constancia de representatividad de tres sindicatos de la planta GM-Silao," La Jornada, el 13 de diciembre de 2021. https://www.jornada.com.mx/notas/2021/12/13/politica/admiten-constancia-de-representatividad-de-tres-sindicatos-de-la-planta-gm-silao.

CONCLUSIONS

The Mexican government has moved forward to implement the process for legitimation of existing CBAs in line with the provisions of the reformed Federal Labour Law. Yet, despite the government's best efforts, out of an estimated 530,000 CBAs currently registered with federal and local *juntas*, as of December 1, according to the Federal Centre's count, only 2,426 had been subjected to legitimation votes.

The fact that the vast majority of votes that have taken place have approved existing collective bargaining agreements by a wide margin calls into question whether the legitimation process will achieve its intended goal of challenging the protection contract system, although it will likely eliminate 85-90% that are simulated CBAs with no union backing.

Given the lack of knowledge and experience of most Mexican workers with more democratic forms of unionism or the potential benefits of authentic collective bargaining, it is not surprising that almost all legitimation votes to date have been in favour of the existing CBAs. A combination of factors – shortcomings of the voting process, inadequate oversight by STPS before, during and after the vote, employer and/or union messaging prior to the vote, the lack of training for workers, and the COVID-19 crisis – have all contributed to making it less likely that workers vote for change.

A fundamental flaw in the CBA legitimation process is that the organization of the vote, carrying it out, and counting and reporting results is entirely under the control of the incumbent union that currently holds title to the CBA. Although there are only a few examples to date of explicit interference in the process by employers, or intimidation of workers by protection unions, given the history of protection unionism in Mexico, there is a real danger that employers and traditional unions have and will continue to manipulate the process in order to avoid the possibility that a democratic union will seek to represent the workers.

A key recommendation of both of the IMLEB reports is a more direct role for government in organizing and conducting the legitimation votes. The July 2021 report is more explicit, calling for the legitimation votes to be "conducted by government representatives [rather than incumbent unions] with the authority to investigate and correct violations in order to ensure fairness, secrecy and protection of all rights," and for the nullification of the CBA where there is evidence of serious violations by the titular union during or prior to the vote.[77] Implementation of these recommendations would likely require changes to the Federal Labour Law, or at least the adoption of a new CBA legitimation protocol.

STPS amendments to its initial protocol, which are also included in the protocol of the Federal Centre, have addressed at least some of its shortcomings. It is hoped that as the Federal Centre assumes greater responsibility for the legitimation process, there will be further improvements in

[77] IMLEB Report, July 7, 2021, p. 43, *Op. cit.* Footnote 17.

these regulations, as well as stronger and more direct government oversight of the process, including monitoring of the activities and messaging of employers and unions prior to legitimation votes. For this to be possible, there will need to be a substantial increase in budget, personnel and training of inspectors. It is also hoped that STPS, the Federal Centre and other relevant government institutions will be more proactive in educating workers on the process and the actual consequences of voting for or against the existing CBA.

There are a number lessons to be learned from the remediation agreement for the second GM Silao vote that could be applied to other legitimation votes, such as requirements that the employer make a declaration pledging neutrality and non-interference, that STPS educational materials on the voting process and the objectives and possible outcomes be posted in prominent places in the workplace, and that information on how workers can file complaints with STPS if there are any irregularities be distributed to workers.

It is essential that public reporting on the results of legitimation votes be more transparent, so that workers and labour rights experts and advocates have access to consolidated data in order to monitor and assess the outcomes of the process and raise concerns and recommendations for improvements with the appropriate governmental authorities. At the very least, information on legitimation votes and their results should be made publicly available and easily accessible, including the names and addresses of all companies in which legitimation votes are scheduled and have taken place, the locations of the votes, the results of votes at each workplace, the name of the union and the General Secretary or legal representative that signed the CBA, and the full text of the CBA. Information should also be made publicly available on any worker complaints of irregularities in the legitimation process and the findings and penalties assessed and/or corrective action taken.

Ultimately, the success of the CBA legitimation process will depend upon whether workers have sufficient information to understand the content of their existing CBA, and whether there are options available to them to achieve authentic union representation and collective bargaining. For legitimation votes to lead to displacing unrepresentative unions, workers would need training, well in advance of any vote, on their rights under the reformed labour law, as well as on the content of the existing CBA, and clear information on the consequences of rejecting the CBA. Yet it is unlikely that an unrepresentative union would cooperate with this kind of training and risk being displaced by the vote. Such training would require the involvement of other unions or workers' organizations, labour rights NGOs, or public institutions to provide training and alternative information to workers about the CBA and the legitimation vote procedures, and ranges of outcomes and consequences. Without intense and sustained worker education, the procedural issues noted above are of less importance.

Independent unions and labour rights organizations are best positioned to provide this kind of education and training, but they will need considerable resources to play this essential role. In its July 2021 report, the IMLEB also pointed to the urgent need for increased support for capacity building for

workers, stating: "Unless significant additional resources are devoted to supporting workers to exercise these rights, the historic opportunity presented by Mexico's labor reform is unlikely to achieve its goals."[78]

Both the Canadian and US governments have earmarked considerable funding for technical assistance and capacity building in Mexico, including for unions and civil society organizations, but it is too soon to know whether and how these funds and associated programs will make an impact on workers' awareness of their associational rights and their willingness and ability to participate in the democratization of trade unionism in Mexico.

Lastly, it is important to remember that the CBA legitimation process is not the only opportunity workers will have to participate in democratic voting activities. Under the reformed Federal Labour Law, they also have the right to elect their union leaders and to vote on revisions to the CBA. As workers exercise these new rights, it is hoped that a new culture of trade union democracy and authentic.

[78] IMLEB Report, July 7, 2021, p. 39, *Op. cit*. Footnote 17.

APPENDIX: CBA LEGITIMATION VOTES BY STATE, SEPTEMBER 2019 – APRIL 30, 2021

Total Number of Contracts Voted On = 1,300