

Freedom of association and the right to bargain collectively



A primer for workers in Mexico

Maquila Solidarity Network (MSN) | July 2016

This booklet was prepared by the Maquila Solidarity Network (MSN) for use by women's, trade union and labour rights organizations and apparel brands and manufacturers as a resource for workers on their right to freedom of association and collective bargaining under international labour standards, Mexico's Federal Labour Law, and the codes of conduct of international brands and multi-stakeholder initiatives.

MSN is a Canada-based labour rights organization that collaborates with Mexican women's, trade union and labour rights organizations in promoting greater respect for workers' rights in global supply chains.

MSN also participates in and acts as the secretariat for the Mexico Committee of the Americas Group, a multi-stakeholder forum of international apparel brands, the Fair Labor Association (FLA), the Global Union IndustriALL and MSN working together to promote and support globally competitive and socially responsible apparel and footwear industries in the Americas.

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For more information on MSN's work in support of freedom of association in Mexico, visit: www.maquilasolidarity.org/en/ourwork/freedomofassociation

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WORKER RIGHTS

What is freedom of association?

Freedom of association is a fundamental human right of all people in all countries. In the field of employer-employee relations, freedom of association is the right of workers and employers to form or join their own associations in order to promote and defend their respective rights and interests.

What is the right to unionize?

The right to unionize is the right of workers to join or form a union of their free choice in order to exercise their labour rights and bargain collectively with their employer on the terms and conditions of employment. The right to unionize also includes the right to not be discriminated against, dismissed or threatened with dismissal on the basis of your decision to join or form a union or for your past or current union activities.

Mexico's Federal Labour Law (LFT) and the Conventions of the International Labour Organization (ILO) guarantee the exercise of these three rights – freedom of association, the right to unionize, and the right to bargain collectively.

What is the right to bargain collectively?

This is the right of workers to join together through a union and negotiate with their employer about workplace conditions, salaries, benefits, work shifts, days of rest and other issues that affect their working lives. The purpose of collective bargaining is to establish the wages, benefits and rights of workers that go beyond the minimum guaranteed by law, as well as the procedures for resolving issues between workers and management when they arise. By engaging in collective bargaining, the workers and the employer are in a better position to overcome any given problems at the workplace before they become more serious.

What is a collective bargaining agreement (CBA)?

A collective bargaining agreement (CBA) is a written agreement negotiated and signed by a union and an employer that defines the terms and conditions of employment.

According to Article 391 of Mexico's Federal Labour Law (LFT), a CBA should include, at minimum:

- Salary amounts (for each position)
- Work shifts
- Days of rest and vacations
- Provisions for worker training
- Composition and functions of the joint worker-management commissions

If the CBA doesn't include provisions defining salaries, it doesn't go into effect. If it doesn't include provisions on work shifts, days of rest and vacations, the minimum standards established by the Federal Labour Law shall prevail (LFT, Article 393). Collective agreements cannot contain rights that are less favourable to workers than those established in the Law (Articles 56 and 394).

Although the right of workers to negotiate a CBA with their employer is enshrined in Mexico's Federal Labour Law and the Conventions of the ILO, in practice many CBAs in Mexico are negotiated and signed without the affected workers' knowledge or consent, and the provisions of those agreements seldom provide significantly greater rights or benefits than are already guaranteed by law. These simulated CBAs are often referred to as "protection contracts."

According to the global union IndustriALL, an authentic collective bargaining agreement is one in which the workers covered by the agreement have freely chosen their bargaining representatives, are consulted on the provisions of the agreement, and have an opportunity to ratify it.

The rights and benefits contained in a CBA are applicable to all employees at a worksite, even those workers who are not members of the union (LFT, Articles 396, 184). Revisions to the Federal Labour Law now require the publication of collective bargaining agreements by Conciliation and Arbitration Boards (LFT, Article 391). It is important that all workers receive a copy of the collective bargaining agreement and are familiar with the rights and benefits to which they are entitled under the CBA.

TOOLS TO PROTECT WORKERS' RIGHTS

The Federal Labour Law and freedom of association

Mexico's Federal Labour Law recognizes the right of workers to freedom of association, the right to unionize, the right to collective bargaining and the right to strike (Article 2).

The Federal Labour Law also states that no one can be required to become a member of a union (Article 358). However, the Law is contradictory on this point. Article 395 states that a CBA can include an "inclusion clause" requiring that only workers that are members of the union that holds title to the CBA can be hired. However, workers that were hired before the CBA was signed cannot be required to be members of the union, and workers that are expelled from or decide to resign from the union cannot be dismissed for that reason.

The Law states that:

- A minimum of 20 workers can form a union, if they choose to do so (Article 364).
- Once workers have formed a union, the employer is obligated to sign a collective bargaining agreement (Article 387).
- If the employer refuses to sign a collective bargaining agreement, or to agree to engage in a review of the agreement every two years, the workers have the right to strike (Article 358).

The Law also recognizes the right of workers to form temporary coalitions in order to defend their common interests (Article 355). In some cases, workers have formed temporary coalitions in order to negotiate with their employer to resolve specific issues, particularly in situations where there is not a functioning union or joint worker-management commissions.

Worker-management joint commissions

The Federal Labour Law requires that each workplace must have four joint worker-management commissions:

- A joint commission on profit sharing (Article 125)
- A joint commission on occupational health and safety (Article 509)
- A joint commission on training and productivity (Article 153 I and E)
- A joint commission on company rules and regulations (Article 424 I)

Article 391 states that the collective bargaining agreement must contain the rules for the establishment and functioning of the commissions that are consistent with the Law. The purpose of the mixed commissions is to analyze and seek agreement on issues that arise in the workplace regarding the annual profit-sharing bonus, health and safety hazards and preventive measures, worker training, company policies on work shifts, production targets and bonuses, etc.

It is important that workers know who their representatives are on the joint commissions and what problems have been identified and any decisions made to correct them.

IMPORTANT CHANGES TO THE FEDERAL LABOUR LAW

Some of the reforms that were made to the Federal Labour Law in 2012 increase protections for workers' right to freedom of association.

For example:

- Union statutes must establish that the election of union leaders take place by secret ballot (Article 371 IX).
- Union statutes must include a definition of the internal mechanisms through which leaders can be held accountable to the membership. If this regulation is not complied with, a complaint may be filed with the Conciliation and Arbitration Board (Article 371 XIII).
- Each union's registration, statutes, internal policies and collective bargaining agreements shall be made available by the Conciliation and Arbitration Board (Articles 365 Bis, 391 Bis).
- Workers who are not members of the union that holds title to the CBA can no longer be dismissed because of the existence of an exclusion clause for dismissal in the CBA (Article 395).
- There will be an increase in financial penalties for employers that interfere with workers' right to unionize (Article 992).



International instruments

International institutions, such as the International Labour Organization (ILO) and the United Nations (UN), have adopted a number of Declarations and Conventions that recognize freedom of association, the right to unionize, and the right to bargain collectively.

Two important international labour conventions of the ILO are:

- Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87)¹
- Convention on the Right to Organize and Collective Bargaining, 1949 (No. 98)²

Convention 87, ratified by Mexico in 1950, states that worker organizations have the right to draft their own statutes and administrative rules and to freely elect their leaders without any interference by the state.

Convention 98, which has not yet been ratified by Mexico, states that workers should enjoy adequate protection from any act of discrimination in hiring or dismissal, and that worker organizations should enjoy adequate protections against any act of interference by the employer, including encouraging the formation of worker organizations that are dominated by employers or by employer organizations.

Although Mexico has not yet ratified ILO Convention 98, it is still obligated to protect the worker rights enshrined in this Convention.

Why? The ILO Declaration on Fundamental Principles and Rights at Work states that all member countries, including Mexico, are expected to promote and realize the fundamental rights defined in Conventions 87 and 98, whether or not they have signed those specific Conventions.

¹ www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232

² www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO

Brands, codes of conduct and freedom of association

Most major international clothing and sportswear brands have adopted public policies concerning respect for specific labour and human rights. These policies are commonly known as codes of conduct.

Codes of conduct are adopted by brands to publicly express the company's commitment to respect labour, environmental and social rights. Factories that produce these brands' products also are expected to comply with these commitments. Many codes of conduct have a specific clause, as well as more detailed guidelines, on freedom of association.

Codes of conduct are meant to complement and reinforce, rather than replace, national labour laws.

The majority of company codes of conduct not only require employers in their supplier factories to comply with national labour and environmental laws and regulations, but also with other standards, particularly those of the ILO, where they are stronger than national law, applying the principle that the higher standard will prevail.

While the contents of different codes of conduct may vary, the current trend is for code standards to be consistent with the standards set out in ILO Conventions.

Codes of conduct of companies whose products are made in Mexico are another tool that can be used to ensure respect for labour rights.

For examples of codes of conducts for some brands sourcing in Mexico see: www.maquilasolidarity.org/es/codigos-de-conducta-de-algunas-marcas-produciendo-en-mexico



The use of “protection contracts” in Mexico to limit workers’ right to freedom of association and collective bargaining is an endemic practice that contravenes ILO’s Convention 87 and 98 and the FLA’s Workplace Code of Conduct and Monitoring Benchmarks.

– FLA Guidance Memo, February 14, 2012

Multi-stakeholder Initiatives

Many international apparel companies are members of forums called “multi-stakeholder initiatives” (MSIs) that also include trade union and/or other civil society organizations. Members of MSIs attempt to work together to seek solutions to labour rights issues in supplier factories, including those in Mexico. Two examples of MSIs are the Mexico Committee of the Americas Group and the Fair Labor Association (FLA).

The international brands that participate in the Mexico Committee are requesting that their suppliers provide information to workers on the names of the union that has signed the CBA at their workplace, the federation to which it is affiliated and the representatives of that union. They are also requesting that workers be provided with a copy of the collective bargaining agreement. In addition, they are encouraging their suppliers to adopt their own policies in favour of freedom of association and the right to bargain collectively and to effectively communicate the policy to all workers.

The Fair Labor Association (FLA) -- which includes companies, North American universities, and civil society representatives as members -- has many of the same policies. For example, its code implementation guidelines (called Benchmarks) state that “employers shall make available a copy of their collective bargaining agreement to all workers and other interested parties.”³

Although not technically a multi-stakeholder initiative, because it does not include companies as members, the Worker Rights Consortium (WRC) also requires that suppliers of apparel products to North American universities and municipal governments comply with minimum labour standards, including respect for freedom of association, the right to unionize and the right to bargain collectively.⁴

³ www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf
See p. 22 for section on freedom of association.

⁴ www.workersrights.org/Freports/monitoring.asp

SUMMARY

- Freedom of association, the right to unionize, and the right to bargain collectively are universally recognized human rights. Mexico's Federal Labour Law and the Conventions of the International Labour Organization (ILO) guarantee the exercise of these three rights.
- There is extensive national and international law that guarantees the exercise of these rights. The violation of these laws is taken very seriously by the international community.
- ILO Conventions assert that all workers and employers have the right to freely establish associations that promote and defend their respective rights and interests.
- Reforms to the Federal Labour Law promise that workers will have greater access to information about their collective bargaining agreements (CBAs) and the internal activities of the union that has negotiated the CBA.
- Leading international brands are encouraging supplier factories to inform the workers about the union that has signed the CBA and of the names of this union's representatives, and are requesting that workers receive a copy of their collective bargaining agreement.
- Collective bargaining agreements should never contain inferior rights or establish conditions that are less favorable to workers than those established by law.

