

Protection Contracts: what are they and what do they mean for workers in Mexico?

Labour laws in Mexico and the way they are applied by the government and employers result in collective agreements being reached at an enterprise between a “ghost” union (sindicatos de papel) and an employer with no reference to the workers they cover. These agreements are known as protection contracts (contratos de protección).

These contracts do not have to be published or made accessible, not even to members of the union or the workers covered by the agreement. In fact, in most cases, the workers have no knowledge of being represented by any union and when they have tried to request a copy of the “ghost” agreement they have been sacked.

Protection contracts are not a small problem limited to a few isolated cases. Mexican labour lawyers estimate that the vast majority of all collective contracts concluded in Mexico are protection contracts.

To further compound this problem, the structures and bureaucratic and administrative regulations created by the Mexican government prevents or at least further hinders the emergence of independent, democratic unions.

Mexican law provides for more than one union in an enterprise, however in reality this is rarely the case. The corrupt and anti-democratic system and the anti-union style of management make it impossible for genuine unionization and affiliation of workers.

The system is perpetuated because trade unions must apply for recognition to the relevant conciliation and arbitration board (junta de conciliación y arbitraje – JCA), which is composed of representatives of the government, employers and the existing “ghost” unions. The members of the JCAs have a vested interest in maintaining the status quo and create many hurdles against the registration of a new independent union.

Hence, in practice it is virtually impossible to replace a “ghost” union even if it is not supported by the employees it claims to represent. Worse still, workers that seek to establish an independent union are frequently subjected to reprisals, intimidation, threats, violence, dismissals and blacklisting.

When establishing a new enterprise, many companies conclude a protection contract with a “ghost” union before the first employee is even hired, effectively preventing employees from choosing the trade union of their preference. In most cases, these “ghost” unions belong to a corporate lawyer who has officially registered the union. These “ghost” unions are a legal simulation which defraud workers of their rights and represent a real obstacle to freedom of association. The “ghost” unions go on to make a profit and earn money from the unprotected workers with companies paying between 1 to 3.5 per cent of the workers’ salaries to the owners of this “ghost” union.

The system of protection contracts is widely used by Mexican companies to prevent independent unions from forming, particularly in the export processing zones or maquiladoras, where thousands of workers are concentrated. Many transnational companies from the U.S., Japan and Europe implicitly accept to use this system in Mexico, even companies reputed for their good working relations with trade unions in their home country.

The great majority of protection contracts do not benefit workers because the agreed conditions are the minimums required by law. In practice protection contracts exist to specifically protect the employers' interests and are used to prevent independent unions from forming and to prevent the possibility of workers taking action, such as strikes, to protect workers' interests. Protection contract also enable employers to further exploit and violate the rights of workers in the absence of a union defending their interests and maintain political and economic control over the workers.

The International Metalworkers' Federation (IMF) regards protection contracts and the impact they have on workers as a violation of the right to freedom of association as enshrined in International Labour Organization Convention 87, since there is no question here of a decision freely made. Although the system of protection contracts has also been criticized by many labour lawyers in Mexico itself, the Mexican government has made no serious attempt to abolish it and to properly implement the principles of ILO Convention 87.

Challenging the status of protection contracts is a controversial issue in Mexico as they are supported by local and federal government authorities and many existing trade union organizations. Of the high number of protection agreements, most involve the three largest Mexican trade union federations. These unions use protection contracts to prevent other unions from forming or negotiating a collective contract, giving complicit support to widespread corruption of the official Mexican trade union system.

The IMF has been following the situation in Mexico with concern for sometime. In response to continuous complaints from workers, trade unions in the process of formation, existing trade unions and non-governmental and human rights organizations, the IMF decided to lodge a complaint with the ILO Committee on Freedom of Association.

The complaint (ILO Case No. 2694) was lodged by the IMF President in February 2009 and outlines how the labour laws and the way they are interpreted in Mexico are in violation of ILO Convention 87, a convention which all member countries are obliged to respect and one that Mexico has specifically ratified. You can see a copy here: <http://www.imfmetal.org/index.cfm?id=622&l=2&cid=18937>

The complaint sets out how the system of protection contracts is used in Mexico to deny workers their right to freedom of association and cites several examples. While the complaint was lodged last year and will take some time to be considered by the ILO Committee on Freedom of Association, the problems continue in Mexico.

For example, the workers at Johnson Controls in Puebla decided to improve their working conditions and exercise their right to the freedom of association. They now want to join the Mexican Miners' Union (SNTMMSRM), but leaders of the CROM trade union who have a protection contract at the enterprise are physically intimidating and threatening the workers in the plant and on their way home and have begun a campaign to discredit the miners' union in an attempt to discourage workers from joining it. See more here: <http://www.imfmetal.org/index.cfm?id=622&l=2&cid=21915>

Meanwhile, the Mexican Petroleum Company (PEMEX) continues its fight to crush the National Union of Technical and Professional Workers (UNTyPP). After two attempts by the government and company to deny workers the right to form their own independent union as outlined in the complaint to the ILO, the UNTyPP was registered on December 16, 2009 and

its leadership was officially recognized for the period March 18, 2008 to March 17, 2012, with the potential to represent 30,000 workers.

Following the successful court battle, when workers showed up at work, however, they were told they would have to sign two documents. One was a petition calling for the cancellation of the union's legal registration. The other was a resignation from the new union. When workers refused to sign, they were violently driven from the workplace and fired. See more here:

<http://www.imfmetal.org/index.cfm?c=22560&l=2>

The rights of these workers and many more are violated on a daily basis in Mexico through the use of protection contracts and the system in place that supports them. IMF will not rest while these workers' rights are violated and will continue to fight for the right to freedom of association in Mexico. The IMF is also actively supporting two campaigns in Mexico against protection contracts:

Campaña Internacional contra los Contratos Colectivos de Protección Patronal en México
Weblink: <http://ccpp.iiec.unam.mx/ini.html>

International Tribunal on Trade Union Freedom
Weblink: <http://tribunaldelibertadsindical.blogspot.com>