



September 25, 2012

The Honourable Lisa Raitt, MP (CPC)
Minister of Labour
House of Commons
Ottawa, Ontario K1A 0A6

E-Mail: lisa.raitt@parl.gc.ca

RE: Mexico government labour law reform proposal

Dear Minister,

On behalf of the 3.3 million members of the Canadian Labour Congress, I am writing to draw your attention to the recent announcement by out-going president Felipe Calderón that he has designated an extremely regressive labour law reform proposal for consideration under a new “preferential” fast track process which according to Mexican analysts, may be improper as noted in the attached article from La Jornada 9/6/2012, p.14.

Provisions of this proposed legislation violate the requirements of International Labour Organization (ILO) Conventions 87 and 98 on Freedom of Association and Collective Bargaining as well as the mandate in Article 2 of the North American Agreement on Labor Cooperation (NAALC) that the parties “provide for high labour standards and shall continue to strive to improve those standards.”

The proposed law reform would result in a drastic decline in current worker rights and protections. It would cheapen the cost of labour while providing further cover and protection for the system of traditional undemocratic control that is the heart and sustenance of the employer protection contract system. In the words of Arturo Alcalde Justiniani, one of Mexico’s most respected labour attorneys, this would result in “the death of independent trade unionism in Mexico” by effectively eliminating the already difficult openings through which groups of workers can obtain representation by the union of their choice.

Among other things, the law would violate rights of freedom of association by making the procedural requirements for obtaining a representation hearing or exercising the right to strike so onerous that they effectively negate such rights. For example, workers seeking to change from a corrupt to a democratic union would have to file documents that include their names and a certification from the employer regarding their status as employees. Given the routine practice, reflected in “exclusion clauses,” of firing any worker who seeks to form an independent or democratic union, this is tantamount to guaranteeing the discharge of such workers prior to an election, with obvious consequences.

.../2



Another requirement would mandate that workers obtain a certification from the labour board in order to petition for an election. Since the labour boards in Mexico are tripartite and virtually always include representatives of the confederation to which the incumbent belongs, it is unthinkable that such permission would actually be granted.

A final requirement worth noting is that once an election petition has been filed, no other proceeding can take place until at least a year has elapsed. While such a bar may serve a useful purpose in some countries, in Mexico it is already standard practice for corrupt unions to file multiple petitions to delay election proceedings to provide time for the discharge and intimidation of workers in order to prevent a victory by an independent union. This proposed provision provides a perfect opening for further collusion among corrupt unions through the filing of successive petitions, precluding democratic unions from ever obtaining an election.

The new proposals would also severely undercut job security by removing existing protections for workers that limit sub-contracting, temporary and short term contracts. In addition, they would undercut worker protections against unjustified discharge, limiting back pay to one year and further penalizing workers for delays in legal proceedings for reinstatement that are beyond their control.

The renewed attempt to force approval of this proposal is particularly egregious when viewed in context. Anti-union policies have escalated in Mexico as both companies and the various levels of governments utilize traditionally undemocratic trade unionism as a battering ram against democratic trade unions, using violence and intimidation to impede the free exercise of trade union association, imposing undemocratic contracts on behalf of employers, and blatantly disregarding the recent recommendations of the International Labour Organization, described below.

It has been estimated that some 90% of union contracts in Mexico are contracts imposed on the worker, where an employer selects the union that it prefers and workers have no choice. The widespread use of such contracts and their violation of fundamental union rights was raised by IndustriALL, then International Metalworkers' Federation, in complaint no. 2694 submitted to the ILO in 2009.

Recommendations put forward by the Committee on Freedom of Association and approved by the ILO's Governing Body in the spring of 2011 called on the Mexican government to examine the issue of Protection Contracts. Specifically, the ILO called on Mexico to investigate and report back to the Committee regarding: "(1) the questions relating to the trade union security clauses, "exclusion clauses", which were declared unconstitutional by the Supreme Court and which may give rise to the kind of situations contemplated in the complaint; (2) questions relating

to the minimum representativeness of trade unions in order to bargain collectively; and (3) the alleged lack of impartiality of the conciliation and arbitration boards (JCAs) and the allegedly excessive length of their proceedings.”

The Committee stated that it “firmly expects that a dialogue will take place with the most representative national workers’ and employers’ organizations, as well as the six organizations that are complainants in this case or that have supported it.” It also stated clearly that it “trusts that legislative and other measures will be taken in the near future to strengthen protection against anti-trade union practices in breach of collective bargaining principles.”

Instead of social dialogue, the Mexican government has intensified its crack down on independent unions and Freedom of Association. While there are numerous examples of such practices, the most glaring example is this recent proposal for labour law reform that would, in effect, make the already dire situation faced by Mexican workers far worse.

If Mexico is to participate in international free trade and investment agreements, it should be held to well-established international standards. Wreaking havoc on workers’ rights should not be tolerated. I encourage you to take up this matter with your Mexican counterpart in regular and forthcoming NAALC consultations.

Sincerely,



Kenneth V. Georgetti
President

c.c. CLC Officers and Assistants
The Honourable Diane Ablonczy, Minister of State of Foreign Affairs
CLC Executive Committee
ITUC HTUR
TUCA HTUR
Thomas Mulcair, NDP Leader
Bob Rae, Liberal Interim Leader