

LABOR RELATIONS IN LATIN AMERICA

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American firms wishing to expand in Latin America are invariably interested at the very beginning in three important questions:

First: What kind of organization is most advantageous—should they organize a local company or a U. S. domestic subsidiary to be qualified in the foreign country and to operate as a Western Hemisphere trade corporation, and should the parent company be qualified abroad, should they operate as a joint venture with local capital, or through an agency?

Second: Taxation.

Third: Labor conditions: availability, efficiency, social benefits and industrial relations generally.

We shall deal with labor.

Labor legislation in Latin America is fairly recent. Although certain laws and regulations were in force in some of those countries during the first quarter of this century, the real development has taken place, generally speaking, in the last twenty-five years. The awakening to the need of such legislation did not begin to be noticed until after the end of the first World War. Unrest produced by injustices and hardship existing in labor conditions, the ideal of attaining social justice to bring about happiness and universal peace, and other factors arising from the aftermath of that war and proclaimed in the Peace Treaties of 1919 brought about, in the 1920s, in Latin America, the rumblings of new leaderships under which political pressure raised the standard of labor protection.

Pursuant to the ideals set forth in the labor clauses of the Peace Treaties of 1919, the International Labor Office was taken over by the League of Nations. In 1946 it entered into relationship with the United Nations as a specialized agency pursuant to Article 63 of the charter of the United Nations. It has been active in directing international attention to the fields of labor relations and labor standards. At the present time seventy countries, including all of the Latin American countries except one, are members of this intergovernmental agency. There is no doubt in my mind that the work of this organization was influential in bringing to the limelight the necessity of improving labor conditions. From 1919 to date it has held numerous international conferences attended by labor leaders, employers' representatives and government officials from all parts of the world. From 1919 to last year it has approved 104 conventions or revisions thereof dealing with the improvement of living and working conditions. These conventions were, from time to time, submitted for ratification to 73 nations, with varying results. The United States has ratified only eight of them, dealing mostly with standards in maritime employment. Cuba has ratified 58, while Bolivia has ratified only six. Ratification in some cases took place several years after the

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conventions were submitted. Even after ratification, the conventions did not become generally operative until supplemented by local legislation making adjustments to local conditions and providing penalties.

In almost every case, the development of labor legislation in Latin America has been piecemeal and it is only in recent years that a few of those countries have codified their legislation on the subject.

In most Latin American countries you will find laws or regulations covering labor contracts, minimum wages, hours of work, overtime, workmen's compensation, vacations with pay, women's and minors' labor conditions, health and sanitation, freedom of association and protection of the right to organize, strikes, lock-outs, conciliation and arbitration, right of dismissal, severance pay, etc.

In addition to the benefits and protection provided by law, it is not unusual to find in collective bargaining agreements between employers and labor unions additional benefits providing for housing, maintenance, commissaries, recreational facilities, retirement and others.

An American firm wishing to expand in Latin America must expect to find labor legislation along the lines of our own in many respects and should familiarize itself with the manner in which such legislation is applied. It should then inquire as to unusual provisions of that legislation, such as profit sharing, restrictions on dismissal of employees and agents, severance pay, and others.

Another point of interest to an American firm wishing to expand in Latin America is the cost to it of labor benefits. This, of course, has to be ascertained in each country. In the course of the years during which this legislation has been in force, local business men have learned to calculate percentages. Only a couple of weeks ago, while I was in Colombia, I heard business men estimate that the cost of labor benefits in that country amounted to 35% of the payroll. This cannot be taken as a constant percentage inasmuch as the benefits may vary according to the nature of the business. And, of course, I have only referred to Colombia. Such percentage may be higher or lower in other countries.

Since time does not permit a discussion of the labor laws of each of the twenty countries to the South of us, I have selected Cuba, Colombia, Mexico and Venezuela, not only because they have developed the field considerably but because their legislation contains certain provisions not generally applied elsewhere.

Let us examine the labor legislation of Cuba.

Up to 1932 the labor legislation of Cuba was very sketchy and covered only workmen's compensation, Sunday rest, dockworkers, and a few other topics. Since that time profuse enactments have come forth, covering practically every phase. The law now defines labor contracts and workers (which includes those who perform either manual or intellectual labor); it excludes from this classification the directors, managers or representatives of the employer who hold positions of trust. I should

note parenthetically that the latter group is not excluded in Mexico from the benefits of the Mexican labor legislation, provided that they are not an integral part of the enterprise and are not linked with the economic results of its activity.

Labor contracts may be written or unwritten; they may be individual or collective; the statute provides compulsory terms and allows the parties to agree on others not specifically prohibited and not against public policy; there are provisions relating to working hours and wages; there is a commission which fixes minimum wages for different types of labor; no discrimination in wages is permitted on account of sex for like work.

One of the peculiar provisions of Cuban labor laws is that employment can be terminated only for the good and sufficient causes defined in the law. This right of permanency in employment is guaranteed by the Constitution. This is one of the most criticized and troublesome provisions. Employers have found that in its application it is next to impossible to dismiss a worker. Proceedings must be had to justify the dismissal. The worker has a right to complain to the Department of Labor of Cuba and almost invariably does so. The results have varied according to the labor policies of the administration in power at the time and according to liberal or restrictive interpretations. I venture to say that in the past the decision in the majority of the cases has favored the worker. Of course, the employer can resort to the courts for a judicial review. If the worker is ordered reinstated, the employer must pay his wages from the time he was separated until reinstatement.

The law provides for apprenticeship contracts; it also regulates and provides for workmen's compensation, collective bargaining agreements, strikes and lock-outs, conciliation and arbitration, vacations with pay, working hours, women's and minors' labor conditions, etc.; there are commissions at the different ports whose duties are to regulate labor conditions and wages of dockworkers; the law provides maternity payments to pregnant women workers during several weeks before and after the birth of a child. Another special provision in Cuban law relates to the nationalization of labor. That is to say, that with very few exceptions only Cubans can be employed. If any enterprise needs the services of a foreign technician, it must apply to the Labor Department for a permit. It must show that it has inquired in government unemployment agencies and that there is no qualified Cuban available; it must also advertise; and when the permit is granted it will be for a specified period of time and on condition that a Cuban be trained. If the training has not been accomplished during the time of the permit, it may be extended.

Another aspect of interest to an American firm wishing to expand in Cuba is that of retirement of workers. There are many retirement and pension funds created by law, some of which are for the benefit of particular professions or trades and others are for specific industries. Both employers and workers contribute to these funds and the contributions are not standard.

A further provision of Cuban law which must be of great concern to American firms going into Cuba is that relating to the dismissal of representatives, agents or distributors appointed for the introduction, sale or distribution of foreign products in Cuba. Such representatives, agents or distributors cannot be dismissed, except for one of the "good and sufficient" causes specified in the regulations. These causes are very limited. If the representative, agent or distributor is dismissed without cause, the foreign firm will not be allowed to open its own office and the appointment of a new representative, agent or distributor will not be recognized. This question has come up in many cases and in most of them the foreign concern has had to settle with the former agent in order to be free to appoint a new one.

Labor legislation is a matter of public policy and therefore a worker cannot waive his rights. He may, however, make a settlement regarding any privileges which have accrued to him, provided his rights are generally protected.

There is a special part in the Supreme Court of Cuba where appeals in labor cases are heard and decided.

Colombia has created special labor courts. There are a number of labor courts in several cities of each Department (equivalent to our States), an appellate court in the capital of each Department and a superior court of last resort in Bogota.

After going through the usual piecemeal legislative process on labor matters, Colombia finally enacted a Labor Code which went into effect on January 1, 1951. Article First of the Code states that its main purpose is to attain justice in the relations between employers and workers within the spirit of economic coordination and social balances; the Code is applicable to all persons regardless of nationality and all legal distinctions between intellectual and physical labor are abolished; therefore, it applies both to laborers and to employees; the Code guarantees the right to organize trade unions and to strike; labor legislation is a matter of public policy, the rights granted by it cannot be waived, and in case of conflict or doubt regarding the application of labor legislation, the interpretation most favorable to the worker shall apply.

The Code provides for individual labor contracts and their minimum conditions. A labor contract terminates with the expiration of the contractual or presumptive term, with the termination of the work contracted and by reason of legal causes specified in the Code. If the contract is not for a fixed term, the parties may reserve the right to terminate it at any time upon notice. If the employer terminates the contract unilaterally, he must pay the worker, as unrealized profits, his unearned wages for the remainder of the contractual or presumptive term. If upon the termination of the contract the employer does not pay the wages and benefits to which the worker is entitled, he must pay a penalty of one day's wages for each day of default, unless the employer has the right

to withhold, and if there is no agreement as to the amount due or if the worker refuses to accept payment, the employer may avoid payment of the penalty by tendering to the Labor Judge the amount which he thinks is due, pending a decision by the labor courts.

And here I may be permitted to give you an instance of the importance of getting good advice in the observance of these laws: an American concern with headquarters in your neighboring state of Indiana, had an agent in Colombia for the distribution of its products and later decided to terminate his services. Nothing was done to settle the benefits to which the agent was entitled under Colombian law. After some time the agent brought an action in the lower labor court, no tender was made by the employer, the claim was prosecuted to a decision which was rendered in favor of the agent, an appeal was taken therefrom to the appellate labor court, which affirmed the decision, and a final appeal was taken to the superior labor court which also affirmed. The benefits claimed by the agent in his complaint amounted to the equivalent of about \$2,500. With the passage of several years and since no tender had been made, the lower court issued execution for the full amount of the claim plus the penalty and interest, with the result that the defendant was faced with a judgment for the equivalent of nearly US \$19,000.

The right of an employer to choose its personnel is limited by the requirement that a certain percentage of Colombian nationals be employed. That is to say, 90% of the labor and 80% of the management personnel or specialists must be Colombians. This rule is subject to certain exceptions in the cases of highly technical personnel, but only for the time necessary to train Colombian personnel.

The Code regulates the matter of wages and salaries, which may include board, lodging and clothing, hours of work, compensation for night work and overtime; and prohibits the employment of minors under sixteen in night work, except when engaged for domestic service. Sunday is a compulsory day of rest with pay, and work is permissible on Sundays and holidays only when it cannot be interrupted or when designed to satisfy immediate necessities such as public services, the sale or preparation of drugs and foods, domestic service and the service of private chauffeurs. Every worker who has completed one year's service is entitled to fifteen days' vacation with pay. Vacations may be accumulated over a period of two years, but in the case of foreigners, technicians, specialists and those occupying positions of trust they may be accumulated up to four years. The law provides for compensation in the case of labor accidents, occupational sickness, etc. In case of the death of the worker by reason of labor accident or occupational illness, his next of kin will receive an amount equivalent to two years' salary. Workers are also entitled to compensation for non-occupational illness. Every employer who has one or more permanent workers must freely supply to them, every six months, a pair of shoes and overalls or other garment adequate to their

work. Every pregnant woman worker is entitled to an eight-week leave of absence with pay about the time of the birth of the child. Employers must pay the expenses of burying workers to the extent of one month's pay. In case of dismissal, the worker is entitled to one month's salary for each year of service as separation pay. Every worker engaged by an enterprise with a capital of 800,000 pesos or over is entitled, upon reaching the age of 55 if male, or 50 if female, after twenty years of service, to a monthly pension for life equivalent to 75% of the average of the salary earned during the last year of service. Such pension may not be less than 60 pesos Colombian currency nor exceed 600 pesos. Likewise, a worker employed by an enterprise having the capital mentioned, who is disabled, must also receive medical, pharmaceutical, surgical and hospital assistance up to six months.

Enterprises having the capital just mentioned must provide schools for workers' children.

There are further provisions for group life insurance to be taken by any employer with a payroll of 1,000 pesos per month or over, to cover the death of workers whatever the cause. The insurance for a worker must be equal to one month's pay for each year of service. The beneficiaries must be the spouse, children and parents. In the absence of these compulsory beneficiaries, the worker may designate another. The company may become self-insurer if its capital is not under \$100,000 pesos and it obtains a permit from the Department of Labor.

The Code contains special provisions for workers in certain enterprises, such as construction, petroleum, banana, mining, agricultural and others.

It also provides that these social benefits cannot be waived by the worker, cannot be attached and are exempt from taxation.

The second part of the Code deals with labor unions, collective bargaining, the right to work, strikes, arbitration, etc.

The Mexican Revolution which commenced in 1910 was motivated not only by political factors but also by social and economic unrest. As early as 1914 labor legislation was enacted in the states of Jalisco and Veracruz which, although somewhat rudimentary in comparison with the modern legislation now in effect, nevertheless represents the start in this field in Mexico. In the Federal Constitution of 1917 great attention was given to the question of adequate protection of the working class. Article 123, in its 31 subdivisions, sets forth in considerable detail the bases of the Mexican Labor Law. In general the constitutional provisions were made self executing on the whole, in advance of the labor legislation which was later to be enacted. Most of the labor legislation was in the early years left to the several states in Mexico but in 1929 the necessity of a uniform labor legislation for the whole country was felt and the constitution was amended so as to grant the Federal Congress the exclusive power of legislating in this field, the legislation of the

states being thereby repealed. Nevertheless, the application and enforcement of the law was divided between the federal and local authorities in that provision was made for local as well as federal labor boards. The Federal Labor Law was enacted in Mexico in 1931 and, as amended, is the law presently in effect. In passing, it may be noted that the Mexican Labor Law has served as a model which the legislators of various other Latin American countries have copied to a greater or lesser extent, both as to the constitutional provisions and as to the Mexican Federal Labor Law.

Among the constitutional provisions are found some regulating the right of association of the workers, strikes, collective labor contracts, certain social welfare provisions and others concerning the protection to be accorded to women and to minors, as well as provisions regulating the rights of the individual worker in the event of dismissal, and others concerning minimum salary, overtime, profit sharing, workmen's compensation, settlement of labor disputes, placement of workers and the like. The Federal Labor Law, in nearly 700 articles, further elaborates upon the basic constitutional provisions.

As previously stated, the Mexican Constitution provides for profit sharing. In brief, the constitution states that in all agricultural, commercial, manufacturing or mining enterprises, the worker shall have the right to participate in the profits and that the fixing of the participation shall be carried out by special commissions appointed in each municipality subordinate to the central board of conciliation and arbitration established in each state. These special commissions have not been established as yet. Consequently, the Supreme Court has held that the constitutional provisions relating to profit sharing are not self-executing and that until the commissions are appointed, the workers have no enforceable right to share in the profits of the enterprise. Several of the Mexican states attempted to make this constitutional provision effective but such state legislation was struck down by the Supreme Court inasmuch as the states no longer have jurisdiction to legislate in the field of labor law. At different times there has been considerable agitation on behalf of profit sharing by the Mexican labor movement and it would seem to be not at all unlikely that action in this regard will eventually be taken by the federal government. The present constitutional provisions have been criticized because they provide for the apportionment of profits by local commissions and it has been contended that such a system would result in regional discriminations and inequalities. One solution suggested has been that the constitution be amended to provide for action upon a national scale with appropriate provision for the making of adjustments from one region to another. Of course, apart from any legal enactment making profit sharing mandatory, the labor unions may seek to obtain this class of benefits on their own initiative. It may be noted that the Brazilian Constitution also provides for profit sharing, but, as in the case of Mexico, it has not yet been implemented and put into effect.

The Labor Law provides that when a collective labor contract has been entered into by two-thirds of the employers and of the unionized workers of a specific branch of industry and in a particular region, it shall be obligatory for all the employers and workers of the same type of industry in the particular region if the executive issues a decree to this effect. In such case it is then often termed a "contract-law".

Control over the dismissal of workers is a question of the greatest importance in Mexico in the field of labor relations. The principle of the permanency of the worker in his employment is fundamental in Mexican labor legislation.

Subdivision 22 of Article 123 of the Constitution provides that an employer who discharges a worker without just cause shall be obliged, at the option of the worker, to carry out the contract of employment or to indemnify him with the amount of three months' salary. Subdivision 21 of the same Article provides that if the employer refuses to submit the controversy to arbitration or to accept the award rendered by the Labor Board, the labor contract shall be terminated and the employer shall be obliged to indemnify the worker with the amount of three months' salary, in addition to the "liability resulting from the dispute". When the issue of reinstatement was first presented to the Supreme Court of Mexico it held that the worker could compel his reinstatement in the employment. Subsequently, the court reversed its prior decision and held that the worker could not compel his reinstatement on the ground, *inter alia*, that the obligation to reinstate the worker is an obligation to perform an act which, upon failure to comply therewith, becomes an obligation to pay the damages resulting from such failure. It should be noted in this connection that our doctrine of specific performance is not clearly recognized under Mexican law.

The Labor Law of Venezuela now in force is that of November 3, 1947. It contains a system of labor regulation by statute. However, it does not forbid employment contracts arrived at by free negotiation which grant labor benefits above the minimum set by the statute.

The outstanding provision of Venezuelan labor law which deserves special attention is that referring to profit sharing.

The law requires every business or enterprise to distribute among all its workers (both laborers and employees) at least 10% of the net profits obtained up to the end of the respective fiscal year. In computing net profits for the purpose of distribution the following deductions from gross income are to be made:

1. The general expenses of the business,
2. Interest on invested capital at a rate not to exceed 6% per annum,
3. 10% of the balance remaining, which percentage is to be set aside as a reserve fund.

The amount distributable is 10% of the remainder.

The share of each employee is determined in proportion to the

amount of his salary or compensation during the fiscal year. Such share may not exceed his salary or compensation for two months.

Distribution of profits must be made within two months of the date on which the general balance sheet for the respective fiscal year has been drawn up. Of the amount of profits to which each employee is entitled 75% shall be paid directly to him and the 25% remaining, when it amounts to 50 Bolivares or more, shall be deposited by the employer in the name of the employee in the "Banco Obrero" (Workman's Bank) or in some other banking institution designated by the Federal Executive. Individual accounts must be opened in such banking institution for each employee entitled to profit sharing and the deposits shall be considered savings deposits, not subject to attachment, transfer or withdrawal.

The employee may authorize the employer to deposit in addition, all or part of the 75% directly payable to him.

The deposits may be withdrawn only when they amount to 2,000 Bolivares or after five annual deposits have been made. Employees, however, may withdraw amounts absolutely necessary: a) for the payment in whole or in part of the purchase price of a home or farm; and b) in case of the total and permanent disability of the employee, duly established. Upon the death of an employee, his heirs may immediately withdraw the sums deposited in the name and for the account of such employee.

The Federal Executive, if he deems it advisable, may order the employer to make direct payment to employees of the total amount to which they may be entitled, instead of making the deposits provided for. He may also order that any enterprise which has not shown profits must distribute premiums or bonuses among its employees in the manner and to the amount which the Federal Executive may determine, but not to exceed the maximum amount fixed for enterprises which have earned profits.

Within three months following the close of the fiscal year each enterprise must submit to the Labor Office a report in duplicate showing the amount due each employee by way of profit sharing, together with the amounts paid and the amounts deposited, with the respective proofs or vouchers thereof.

Offsetting of losses in one year against profits in a subsequent year is not authorized with respect to profit sharing.

A majority of the employees may apply to the Labor Office for an examination and verification of the respective inventories and balance sheets of the employer; and the Labor Office may appoint one or more examiners to verify the accuracy of the data submitted by the employer. In practice many employers pay two months' wages to all workers and thus avoid examination of their books.

It seems unnecessary to go into the details of other benefits granted

by this statute for the protection of labor. It may be sufficient to say that it contains the usual provisions relating to labor contracts, working days, hours of labor, wages, domestic servants, women's and minors' labor, labor unions, arbitration, separation pay, sickness and maternity insurance, etc. Although the statute requires an employer to compensate employees for occupational diseases and accidents, and to this end the employer must carry insurance, it also provides that where the compulsory social security law has been put into effect by executive decree, the provisions of this law will prevail over the insurance provisions of the labor law. Compulsory social security must include occupational risks. The statute contemplates that special laws and decrees will extend the benefits of the compulsory social security law to old age, disability, maternity and death not caused by occupational accidents and illnesses, but such laws and decrees have not yet been promulgated. At the present time the compulsory social security law of 1940 and its regulations of 1944, as amended in 1946, are in force only in the Federal District of Venezuela (which includes the city of Caracas) and adjacent regions.

From the foregoing you will see that labor relations in Latin America follow patterns not entirely unknown to us, and under those patterns large and small foreign and national enterprises are doing business with such success as the merit of the operation justifies and meeting their labor problems as they arise.