

## UNION IN CONNECTION WITH MAQUILADORAS IN BAJA CALIFORNIA

Through this document we briefly analyze the current legal dispositions applicable to the Collective Labor relationships between Employers and Unions, focusing on the corresponding and applicable jurisdictions.

### **Employer-Employee relationships.-**

Employer-employee relationships may be of either an individual or a collective nature.

Labor relations are deemed as collective when occurring between the employer and a union. Said relations are governed by Collective Bargaining Agreements (“CBA”) that may include the company as whole or only certain areas thereof. These agreements must be ratified with the Local or Federal Conciliation and Arbitration Board, as appropriate. The clauses of a CBA dealing with salaries are negotiated on a yearly basis, and the entire agreement is negotiated every two years (salaries, benefits, and administrative matters).

Generally, negotiation implies an increase in the monetary aspects and amendments of the administrative matters of the agreement.

Negotiations may be requested directly with the employer or through the Labor Board by means of strike notice.

Labor authorities participate to prevent workers from going on strike, offering alternatives with the assistance of conciliators, and executing all of the agreements reached in writing.

In general terms, the labor situation in Mexico is secure, and no risk exists in creating new jobs or maintaining those already existing.

### **Brief Union Background.-**

Over the last decade, Mexican labor environment has suffered significant changes as a consequence of a shift in the government's position towards Unions and the relationship between the same and the employers.

Originally, up to the 1980's, Mexico's labor authorities gave great support to what were normally known as "official Unions", mainly represented by those Unions which worked under the auspices of the Confederación de Trabajadores de México (CTM). At one point, this federation represents over 70% of the total unionized workforce in Mexico

Other federations of Unions, specially those known as independent Unions, which generally work under smaller federations and which main characteristic was their alleged desire to recover the prerogatives and rights that Mexican workers had lost over the course of the years, did not have enough national represent to represent a real challenge either for the government or the employers.

In recent years, however, Mexico's government has tried to diversify and pulverize the power of the main federations of Unions (CTM, CROC, CROM, UNT, etc.), in order to avoid that any single federation obtains a significant force that can give them too much leverage over the government and/or the employers. This has translated in the fact that while CTM has steadily lost its preeminence, no other federation has become significantly more powerful than the other and in fact, each of them has specific strong points, depending on the branch of activity or state in which they are operating

In this regard, it is important to stress the fact that in our experience, all federations and Unions (with the probable exception of the Frente Auténtico de Trabajadores, FAT, which is a very radical group of independent Unions that represent around 50,000 workers all over Mexico) present good options for representing workers who render services for foreign and domestic companies alike.

Consequently, in our practice we work with diverse Unions all over Mexico and have found out that most of them do understand the business needs of our clients and do not present any obstacles for the adequate operation of the same, as long as the company honors the rights and benefits that Unionized workers are entitled to receive under the CBA that may be in place at any given operation.

Notwithstanding the aforementioned, the way in which Unions handle themselves depends on the state or municipality in which the company is planning of establishing. For example, Mexico City, Guadalajara, Monterrey and southern Mexico usually have a much stronger and active Union presence that you may find in many of the northern states, although even in Border States, you may find diverse scenarios.

For example, in Ciudad Juárez, Chihuahua, which with Tijuana, Baja California, is one of the largest cities in Mexico, you have a very mild Union activity and virtually, companies operate without having to worry about CBA; however, in other border towns (such as Matamoros, Tamaulipas) you have a very strong Union presence, where a single federation (CTM) virtually monopolizes all CBA, that have to be executed under the terms and conditions that the Union directly proposes to the company.

We must keep in mind that all of the advantages and disadvantages of Unionization are true throughout Mexico and that as in any other subject, the current conditions may dramatically

change, although recent developments give us confidence that everything will continue under the current status for years to come.

### **Labor Authority's Jurisdictions.-**

In order to determine if a company is subject of a Federal or Local Labor Jurisdiction, it is necessary to review its main business purposes and activities. This is determined by the Federal Labor Law (FLL), which in articles 527 and 529 establishes that:

*“Article 527. The applications of the Labor Standards are the responsibility of the Federal Authorities, with respect to:*

*I. Industrial Sectors:*

*...12. Automotive, including mechanical or electrical auto parts.”*

*“Article 529. In cases not detailed by articles 527 and 528, the application of the labor standards is the responsibility of the Authorities of the States.”*

### **Unions' Classifications.-**

In accordance with the FLL, there are five different types of Labor Unions, which are the following:

- 1.- **Sector Unions:** formed by workers of the same profession, sector or specialty;
- 2.- **Company Unions:** conformed by workers that render services in the same company;
- 3.- **Industrial Unions:** constituted by workers that render their services in one or more companies of the same type of industry;
- 4.- **Nationals by Industry Unions:** organized by workers that render their services in one or several companies in the same type of industry, installed in one or more States; and usually, the Unions classified as Nationals by Industry are named “Federal Unions”, while the remaining types of Unions described herein are considered “Local Unions”. Likewise, these Unions (Federal Unions) are usually those who negotiate bargaining agreements with companies subjected to the federal jurisdiction, depending of the main purpose or activity of the company as described in article 527 of the FLL.
- 5.- **Various Professions Unions:** created by workers of diverse professions.

The registry and legal existence of a Union is conditioned to its registry before the corresponding State or Federal Labor, depending of its classification and characteristics above mentioned.