

Strengthening Collective Bargaining and Freedom of Association as a Strategy to Face the International Economic Crisis: Experiences from the Region

In preparing for this presentation, and in listening to the representative of the United States on the previous panel, I was reminded of important labour history that is taught to every student of labour law, industrial relations and social policy in my country - namely, the fact that the labour systems in place in the United States and Canada were a product of Great Depression in the 1930s. This was the only global economic downturn in modern times more severe in terms of length and impact than the current international crisis.

At that time, the link between promoting economic stability and growth and addressing the associational activities of workers was recognized. This recognition produced labour systems based on principles of industrial justice and industrial stability that are with us today. The relationship between economic progress and collective action continues to be an important subject of discussion in the context of promoting cooperative efforts by employers and workers to find solutions to economic challenges locally, regionally, and globally.

Employers support freedom of association and the value of collective bargaining – in fact, these broad principles have enjoyed tripartite support within the ILO for decades. Employers themselves associate within employer and industry associations for purposes of collective bargaining and influencing labour and economic policies. ILO Convention No. 87, which sets out the fundamental principles of freedom of association in the labour context, continues to be of utmost importance to employers for the promotion and defence of their interests and as an institutional guarantee for the existence and functioning of free and independent employers' organizations.

Of course, employers may not always agree with workers and governments over the meaning and implications of the principles of freedom of association and collective bargaining, and the manner in which collective action is sometime carried out. For example, as has already been discussed, there is currently a vigorous debate at the ILO and elsewhere about the relationship between strikes, freedom of association and collective bargaining. There is also a debate about the freedom from forced association, which employers believe is an important element of freedom of association. And there is debate about the nature and extent of collective bargaining, particularly given

the tremendous diversity of domestic systems.

For present purposes, however, suffice it to say that the core concepts of freedom of association and collective bargaining – namely, the freedom to organize, the freedom to engage in meaningful dialogue on workplace issues, the freedom to achieve consensus and reach agreements on workplace issues, the freedom to express views and opinions, and the freedom to do these things without undue interference – are matters that enjoy broad support within CEATAL.

Employers are also concerned about the need to achieve economic efficiencies and productivity to ensure sustainable enterprises. Such considerations must be at the core of collective engagement and bargaining.

A new element today, which was not in place in the 1930's, is the "global" context in which most employers now operate. Many employers have significant operations and workforces in multiple countries. This adds complexity to the mix, since operating in multiple jurisdictions necessarily means that an employer will have to deal with different legal systems, different workplace

cultures and, occasionally, many, many different unions.

Even local employers are impacted more directly than ever before by globalization, facing competition and economic pressures from thousands of miles away.

In a very real way, this global aspect of business creates unprecedented pressures and complexities for employers – and also necessarily for workers and unions. Collective agreements and collective bargaining systems cannot be insulated from such pressures and complexities.

Against this backdrop, the question becomes: *can collective bargaining and/or freedom of association serve as tools to strengthen the ability of enterprises to be more competitive and efficient and to create more decent jobs?*

Some have argued that dealing with employees collectively through trade unions and/or associations is an impediment to strengthening productivity and efficiency and creating jobs. On this thinking, employers are better off going it alone, acting

unilaterally and efficiently.

And it would be naïve to dismiss this argument since we know that either side in collective bargaining can make unreasonable demands, take dogmatic or ideological positions, and work to frustrate the possibility of an agreement. That is the nature of a system that encourages or even requires the workplace parties to agree, and permits them to resort to economic pressure tactics in the face of disagreement – it may not be possible to move forward, or moving forward may come at a very high price.

What is encouraging, however, is that if employers and workers share common goals – to improve competitiveness and productivity, to preserve and create jobs, and to share the benefits of success equitably from the CEO to front line workers – then freedom of association and collective bargaining can contribute to generating the ideas and solutions to achieve those goals.

In fact, the past four years of the economic crisis have produced numerous examples throughout the Americas of private sector employers and unions working cooperatively, often with the

support of government, to make fundamental changes in the workplace to meet economic challenges. The auto sector is one example that comes to mind.

In the region, we have seen innovative approaches to freedom of association and collective bargaining that reflect the recognition of the link between economic sustainability and collective engagement.

For example, numerous companies have adopted codes of conduct as part of their Corporate Social Responsibility initiatives that recognize commitments to freedom of association and collective bargaining. These are unilateral actions that do not necessarily have a legal impact, but they do reflect a public recognition by some companies that collective bargaining is not an impediment but, rather, is a precondition, to economic growth.

Perhaps even more interesting are trends in International Framework Agreements, or “IFAs”, negotiated and signed voluntarily by employers and trade unions and applied to a company’s global operations. IFAs are becoming more prevalent, and many reflect a commitment to freedom of association and collective bargaining. While an IFA may not be appropriate for all enterprises, it is interesting to see that

where they exist they often reference the foundational importance of meeting economic challenges through collective engagement.

Let me discuss some examples.

1) Ford's 2012 IFA

In April 2012, Ford became the first major American company to enter into an IFA. The global union signatory is the International Metalworkers (IMF), which just merged with the chemical workers to form IndustriALL, now the largest global union.

The first set of principles set out in the IFA concerns freedom of association and collective bargaining. The IFA specifically acknowledges that these principles can contribute to the “achievement of business competitiveness.”

Freedom of Association and Collective Bargaining

The achievement of business competitiveness, employee involvement and employment security are positively influenced by good relations and mutual trust between employees and management within the Company. This requires the on-going cooperation of management, unions, works councils, employee representatives and employees, ensuring that social dialogue at Ford be characterized by mutual respect and understanding. Procedures for information and consultation provide the opportunity for issues to be raised by either the management or employee representatives to ensure that the views of both parties are fully understood.

Ford recognizes and respects its employees' right to associate freely, form and join a union, and bargain collectively in accordance with applicable law. The Company will work constructively with employee representatives to promote the interests of our employees in the workplace. In locations where employees are not represented by a body of employee representation/ unions, the Company will provide opportunities for employee concerns to be heard. The Company fully respects and supports workers democratic right to form a union and will not allow any member of management or agent of the Company to undermine this right or pressure any employee from exercising this right.

Notably, Ford makes several other commitments in the IFA, including a commitment to provide timely information to employee representatives, to remain neutral in organizing campaigns, and to encourage its suppliers to recognize and comply with the principles set out in the IFA.

In connection with the IFA, Ford also agreed to create a “Global Information Sharing Forum” with the Union to monitor and implement the IFA. This Forum meets once a year, and is intended to function much like a works council – as a forum for dialogue and information sharing.

2) Banco Do Brasil IFA

The IFA that the Brazilian bank Banco do Brasil entered into with UNI (the service workers global union) in 2011 is also a helpful

example. Banco do Brasil is one of several Brazilian companies to enter into an IFA in the last four years. This trend suggests that South American multinationals are beginning to view voluntary initiatives like an IFA as an important labour relations and business tool.

In terms of the substance of the IFA, the first substantive paragraph on page 1 essentially states that the reason the parties are entering into the IFA is to deal with the competitiveness and efficiency challenges posed by the globalizing financial system.

The IFA then proceeds to commit Banco do Brasil to social dialogue, freedom of association, and collective bargaining, with mechanisms for mutual engagement and monitoring of implementation.

3) PSA Peugeot-Citroen IFA and its “World Works

Council”

Another interesting example of an innovative approach to developing new *processes* of collective employee action and engagement at a global level can be found in the 2010 IFA between Peugeot-Citroen (the French car maker) and the IMF. This IFA creates a permanent system of employee-management consultation at both the national and international level across the company’s global operations.

This IFA, like those at Ford and Banco do Brasil, specifically references the importance of collective engagement in the search for solutions to economic challenges.

To this end, the IFA creates a “Social Observatory” at the national level, composed of representatives from local unions and management in each country where Peugeot has 500 or more employees (this would include Brazil and Argentina). The purpose of the Social Observatory is to monitor implementation

of the IFA at the local level.

At the global level, the IFA enlarged an existing European Works Council to create a “World Works Council,” which includes union representatives and management from *all* countries in which the company has 500 or more employees. In doing so, Peugeot effectively committed itself to a system of global employee consultation and information sharing regarding company issues.

Conclusions

The IFAs at Ford, Banco do Brasil and Peugeot represent innovative global approaches to collective engagement premised on the link between freedom of association, collective action, and economic progress. They reflect recognition amongst employers, workers and trade unions that collective engagement should be directed at finding solutions to respond to the challenges of the economic crisis.

The Role of the IACML/OAS and their Bodies in Promoting Freedom of Association and Collective Bargaining

There are obviously significant challenges throughout the region to freedom of association for both employers and workers. Many of these have been discussed already.

Challenges create opportunities, however – specifically, opportunities to share experiences and best practices, learn from successes and failures, and ultimately strengthen labour systems throughout the region. Leveraging such opportunities is the core purpose of the IACML.

So, what is the role of the IACML and the OAS in promoting freedom of association and collective bargaining? To some extent, this raises philosophical questions about the nature and purpose of the IACML and OAs. It also raises practical considerations of what reasonably can be accomplished through regional initiatives.

It must be recalled that labour laws are heavily influenced by national social, economic and historical experiences. One size certainly does not fit all when it comes to systems of collective bargaining and freedom of association. Each country has its own unique approaches based on its own economic development, resources, and collective traditions. Moreover, each workplace and collective bargaining relationship itself has unique features. This means that solutions in one country, or even in one workplace, will not necessarily be transferrable to other countries and other workplaces.

Still, it should be possible to share, and learn from, experiences and innovations at the local, national and regional levels. The strength of the IACML process is that it is tripartite, with the involvement of government, workers (through COSATE) and employers (through CEATAL). It is also self-directed in the sense that all three social partners contribute to the agendas and activities of the IACML, and participate in those activities.

This leads to an important first point about the role of the OAS and the IACML - the promotion and strengthening of tripartism and social dialogue. Institutionalizing social dialogue at the local, national and regional levels provides a foundation for collective bargaining at the enterprise level, since social dialogue creates partnerships between employers and workers, trust, and forums where differences can be discussed constructively. So we would encourage the IACML to continue its longstanding interest in, and commitment to, social dialogue.

In addition, the IACML has long been committed to horizontal cooperation, facilitating a process whereby countries work together to improve their labour administration systems and modernize their labour laws. Horizontal cooperation implies that knowledge and experience can be transferred between countries, which participate voluntarily as equal partners in the search for improved governance. The assumptions underlying

the IACML are two fold: (1) each country has something to offer to the others based on its unique experiences; and (2) each country can learn from the experiences of the others.

So, in a nutshell, the IACML's role in promoting freedom of association and collective bargaining should be to facilitate cooperative activities that inform governments, employers and workers about best practices in the region. To a great extent, this can be accomplished by the IACML and the RIAL continuing to focus on important regional issues while building into its work certain aspects related to freedom of association and collective engagement. Let me offer some examples.

1) Mediation and Conciliation

The IACML – perhaps through the RIAL – should continue its work promoting capacity building in labour administration. This could include further work in the areas of conciliation and mediation services offered by Ministries of Labour. This issue was in fact addressed in 2005 during the XIV IACML - I recall those discussions and how interesting and helpful they were.

[We would suggest that a further seminar or workshop be organized addressing developments in national and local conciliation and mediation systems. Ongoing engagement and information gathering could also occur on the subject - this may already be occurring through the RIAL].

From the employer perspective, professionalizing and expanding mediation and conciliation services should be a priority since these processes are of utmost importance in avoiding industrial conflict and reaching collective agreements. At the point where collective bargaining appears to be at an impasse, and a strike or lockout is imminent, the assistance of a neutral, professional and expert mediator can make all the difference. I, myself, have been involved in numerous collective bargaining processes where a work stoppage has been averted through the assistance of a mediator.

Notably, in many countries in the region, the completion of mediation and/or conciliation is a precondition to legal strikes and lockouts, evidencing the importance of neutral third party assistance.

Providing affordable, professional support to employers and workers to reach consensus and agreements has obvious social

and economic benefits. The Ministers of Labour, working jointly with employers and workers, should be able to develop best practices that could be adopted by all countries.

In particular, consideration should be given to neutral, third party intervention not only when impasses arise in collective bargaining, but also earlier in the process when issues arise that could lead to disputes or bargaining impasses. Best practices directed at proactive assistance “sooner rather than later” should be a focus.

2) Innovative Collective Engagement Mechanisms for Sustainable Enterprises

As I discussed in my presentation earlier today, employers and workers are developing innovative approaches to facilitate collective engagement. In many cases, this will differ from the standard collective bargaining that occurs under local or national laws. Collective engagement can occur regionally and globally through innovations like IFAs. It may include the provision of timely information and consultation on important workplace issues.

There is a growing trend toward Corporate Codes of Conduct and International Framework Agreements or “IFAs” that recognize the inherent value of freedom of association and collective bargaining, but acknowledge that associational and collective activities must be directed foremost to assuring the sustainability of the enterprise and job preservation and growth. This potentially provides fertile ground for consideration of emerging best practices and innovations in the region. The OAS, through its strong support of the Private Sector Forum and civil society initiatives, already has the capacity to engage in monitoring and supporting such best practices and innovations. The IAMCL can and should work to foster the exchange of ideas on this issue.

[One important contribution could be further research within the region or perhaps a workshop focusing on the economic relationship between freedom of association, collective bargaining and economic growth. If collective engagement, whether through classic collective bargaining or innovative consultation, does indeed lay the groundwork for productivity and competitiveness, then this should be addressed through the development of best practices and case studies.]

3) Youth

One of the great strengths and resources of the Americas is the relatively young population in the region, which ensures a ready supply of young entrepreneurs, professionals and workers eager to take leadership positions on both the government, employer and worker sides of the tripartite relationship. The approaches and expectations of young people tend, in our experience, to generate innovative approaches to issues like freedom of association and collective engagement. Often, the standard or 'expected' way of doing things is challenged by young people, and new ideas emerge.

We would therefore urge the Ministers of Labour, on their own initiative and through the IACML and OAS, to continue focusing on issues of education, skills development and entrepreneurship for young people. The principles of freedom of association, cooperation, engagement and innovation must be taught and passed on to future generations.

4) Informal Economy

The informal economy is a constant challenge to development in the region, since so many workers remain beyond the reach of

formal regulation. In many countries, initiatives to support and enhance freedom of association and collective bargaining will have only a limited impact, since workers in the informal economy will be beyond the reach of such initiatives.

The IACML should continue its good work studying the dynamics that lead to, and perpetuate, informal employment in the Americas. This is because a basic precondition to meaningful freedom of association and collective engagement is that workers are participating in the formal economy through employment relationships that are actually – not theoretically – regulated by prevailing labour and employment laws.

If we do not make greater efforts to address the issue of informality in our local and regional economies, then we are effectively ignoring a significant number of workers and employers.

Conclusion

These are just some of the issues that have been under consideration for some time within the IACML, and which lend themselves to linkages with freedom of association and collective bargaining. The role of the OAS and the IACML, in

our view, is to support social dialogue regionally, nationally and locally to explore these linkages and, of course, others.