‘EL RODIN’

SITRAP INFORMATION BULLETIN

Produced by the SITRAP Union

We have received many queries from men and women workers regarding the difference between a DIRECT SETTLEMENT and COLLECTIVE BARGAINING AGREEMENT. In this leaflet, we aim to provide this information by briefly comparing these two negotiating tactics.

Article 504 of the Labour Code states that employers and workers can resolve any conflict by means of a DIRECT SETTLEMENT, involving only the parties concerned and any arbitrators. It also declares that workers can form a permanent workers' committee in each work place consisting of no more than three members. They are responsible for raising with the employers any worker issues. The employers, or representatives acting on their behalf, are obliged to deal with these matters at the earliest opportunity.

However, if the employer does not fulfil this obligation, they are only required to pay a ridiculously small fine - and that's if the permanent committee is brave enough to report any abuses in the first place. This basically summarises what the Labour Code says about a Direct Settlement.

According to section 505 of the Labour Code, a record must be made of any details of a signed settlement and sent to the Ministry of Labour within 24 hours of its agreement. The Ministry simply has to check it to make sure it contains the minimum guarantees to protect the workers' rights.

The Ministry of Labour has no power to oblige the employer to conform to a Direct Settlement.

The Direct Settlement has no legal status, so whether it is respected or not is down to the goodwill of the employer.

Although most of the permanent committees which sign Direct Settlements are acting in good faith and in the best interests of their workers, they lack basic negotiating skills due to

lack of training and advice. In addition, they do not have the necessary independence to be able to study and process the complaints without interference from the employer.

For this reason, Direct Settlements are not recognised by the International Labour Organisation (ILO) as a legal means of collective bargaining. The Constitution does not even make reference to permanent committees or Direct Settlements.

Direct Settlements are a tactic used by employers to control their workers, keep them from organising themselves as a group and also make it easy to suppress their rights. They take the few guarantees that we have and deregulate them so their representatives can then erase or compromise them using legal loopholes in the Legislative Assembly.

Here are just a few examples of guarantees that were fought for by workers in the past but were then lost because of direct settlements signed by permanent committees.

* Holiday leave, which increased depending on the number of years worked. For every year, the worker was entitled to more days. Some collective bargaining agreements even allowed for thirty working days holiday leave when the worker had worked more than eight years.

* Every worker had the right to a monthly medical appointment. The day would be paid for by the employer at the average rate of pay if the appointment was in the area, and would amount to three days' pay if the worker had to seek medical attention in a different area.

* All workers had the right to take time off to have a monthly doctor's appointment. Their absence would be paid at the average wage if it was in the same region, and could include up to three days payment if the worker had to leave the region.

* In situations where workers were unable to work due to a disability – recognised by either the Costa Rican Department of Social Security (CCSS) or Costa Rica's National Insurance Institute (INS) - the employer paid an allowance for this condition, so that the worker would receive the average wage. This made up for the fact that both the aforementioned insurance companies only paid a percentage of the disability allowance, so the employer would pay the rest.

* Each time that the national council for wages put forward a change in the minimum wage, the employer had to apply it to all piecework, labour contracts, and tasks - in other words, all the salaries were increased, as this was what had been negotiated in the collective bargaining agreements. Also, apart from these pay rises, from time to time they would also negotiate additional increases so that all workers enjoyed a fairer rate of pay.

* The employer gave leave at the average rate of pay in the following cases: a) four

working days for a worker getting married, b) three days for close family illness, c) three days for the birth of a worker's children, d) three days for the passing of a partner or close family member (the time granted was flexible depending on the particular circumstances), e) when the worker was denied medical treatment by the INS or the CCSS, they were allowed three days to solve the problem, f) court summons were given whatever time was needed, g) for work being suspended in the case of force majeure or circumstances which affected the safety of the worker or his or her home, the employer paid leave at the average rate of pay up to a maximum of eight days.

* When the employer implemented new tasks or modified current ones, the worker's salary was not reduced given that before and after the work was carried out, there would be a formal debate with the Union.

* When the employer asked workers to come in during their time off, or work on festival days, they paid these days at the average wage plus 50%, and in some instances, collective bargaining agreements were able to reach a 75% increase on the wage earned by the workers that day.

Collective Bargaining Agreements

According to section 54 of the Labour Code, a collective bargaining agreement involves a round of negotiations that are held between one or more trade unions and several employers. The aim is to regulate the working conditions and other matters relating to work. These collective bargaining agreements are legally recognised and their rules should be applied to all existing collective or individual contracts.

Every collective bargaining agreement should include, as a minimum requirement, a list of all the rules related to the guarantees for unions which are established in the International Labour Organisation (ILO) convention, and ratified by our country.

Section 58 of the labour code states:
In a collective bargaining agreement, everything related to the following must be specified:

A) The intensity and quality of the work
B) The working day, break times and holidays.
C) Salaries
D) The different professions, jobs, activities and places where they are carried out.

For a collective bargaining agreement to be possible, a union must exist in which at least 33% of the workers are members. In other words, a third of the workers on the estate or in the company in question. This is stated in section 56 of the Labour Code.

The leaders of the Trade Union Committee on each plantation are elected by union

members, without any influence on the part of the company. This is done totally independently and democratically; the only requirement is that candidates are loyal, honest, and prepared to defend and improve the rights of all men and women workers.

Once elected, the Board of Directors of the trade union give them the appropriate training and teach basic negotiating skills.
The trade union leaders, lawyers and teachers are all paid out of the union funds. Therefore, they only act in the interests of the workers.

To ensure the effective participation of all the workers, a meeting is held where they can make all their needs, worries and requests known. Based on this information, the project for the Collective Bargaining Agreement is drawn up. Once it has been finished, it is handed in to the employer so it can then be negotiated.

Present in the negotiation stage on the part of the workers are the union committee, members of the board of directors of the union, and if necessary, professionals who have been hired by the union. The employer is represented by a negotiating committee. There are always civil servants from the Ministry of Labour present, whose role it is to keep records and serve as mediators. Article 62 of the political constitution states that collective bargaining agreements signed between the employers and workers are legally binding.

Some examples:

If, in the collective bargaining agreement, it is decided that the company must pay a worker benefits taking into account all the time they have worked there, even if it is 10 or 20 years, it becomes legally binding and must be respected. The company has no option but to comply with such an agreement.

If in the collective bargaining agreement, it is agreed that every time the National Council on minimum wages decide a new rate, that that rate will be applied to every worker on that plantation, and/or any extra percentage that may also be agreed, then it is obligatory for the company.

If there is any violation of the collective bargaining agreement by the company, then the trade union can appeal to the Labour Court , simply by presenting evidence that this collective bargaining agreement exists and is authentic. Once checked, the judge simply orders it to be followed. Let us emphasise that a collective bargaining agreement has the force of law.

The collective bargaining agreement is recognised by the ILO and the constitution as a fundamental right of the workers.

The political Constitution, International Conventions (including the ILO), laws, the Catholic Church - in effect, the whole civilised world, recognises a Collective Bargaining Agreement as the ideal way to defend and improve the labour rights of men and women workers.

Explaining in more detail the huge difference between a Direct Settlement and a Collective Bargaining Agreement is beyond the scope of this leaflet. However, with this basic introduction we hope to help workers answer any questions they have on this matter.

FRIENDS AND COLLEAGUES - HAVE YOU EVER ASKED YOURSELVES...

…why companies have paid and given all kinds of benefits to the promoters of the Social School Juan XXIII for 30 years so that they dialogue with workers? Just. Why does this school still enjoy the support of companies on some plantations?

…why the training still given to the permanent committees is being controlled by using people hired by companies?

…why the Union gets no support from companies?

…why the employer still does everything possible to negotiate Direct Settlements and not Collective Bargaining Agreements?

…why after nearly 30 years negotiating Direct Settlements, workers continue to lose rights and guarantees, in addition to earning less money?

…why salaries get lower and lower, day after day, even though employers are demanding more quality and assigning more work?

Don't you think we need a union which has the real power to represent the men and women workers?

JUDGE FOR YOURSELVES!

DEAR COMRADE:

IF YOU BELIEVE THAT WE SHOULD IMPROVE THE SOCIAL AND ECONOMIC CONDITIONS AS WELL AS THE WORKING ENVIRONMENT OF WORKERS -

JOIN NOW!

TOGETHER WE CAN FIGHT FOR A COLLECTIVE BARGAINING AGREEMENT IN THE WORKPLACE.

IT IS TIME WE OPENED OUR EYES.

WE CAN NO LONGER BE CHEATED.

WE CAN NO LONGER BE MANIPULATED.

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SITRAP

Founding member of the Social Centre Juanito Mora Porras (CSJMP in Spanish)

Founding member of the National Federation of Agribusiness and Allied Industries (FENTRAG in Spanish)

Member of the Coordinating Body of Latin American Banana and Agro-industrial Unions (COLSIBA in Spanish)

The European Network of *'Acción Bananera'* (EUROBAN)

-International Union of Food and Agricultural Workers (IUF)

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