

WORKERS IN **CUBA** Unions & Labor Relations

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INTRODUCTION

One cannot embark on study of labor policy and labor relations in Cuba without a keen awareness of the polemic surrounding the issue of labor rights in a one party system such as Cuba's. The close relationship between the Cuban Workers Central (CTC), the unions and the Communist Party of Cuba has caused some outside observers to dismiss Cuba's trade unions as nothing more than state or "company unions" fronting for a non-existent labor movement. Such labeling, however, imposes severe limitations on serious exploration of the complexity of labor rights in the Cuban context and consideration of the potential in such a system for unions to give independent voice to workers' interests. Narrowing the frame of reference to a free-market, multi-party system not only poses the theoretical dilemma of presuming no other possibilities; as a methodology, it also lends itself to false comparisons and conclusions that may impede rather than engender more profound examination. What's more, we are cautioned by ample evidence that workers and unions have suffered substantially in various multi-party settings, suggesting that the political system is not *per se* a determinant in the equation of workers' rights and participation in decision-making.

This report starts from the premise that meaningful discussion of the Cuban situation requires, first and foremost, explicit and well-documented information on labor policy, workers' rights and the current and projected dynamics of labor relations. The study explores labor policy and workers' rights and participation within the framework of the Cuban system, paying particular attention to the content and guiding principles of labor policy, how policy is developed, and by whom. Core labor rights are examined, as well as the organization and function of unions as representatives of workers' interests in both the workplace and in the legislative and regulatory process.

Because it is important to place these issues in their contemporary as well as historical context, the report begins with a brief overview of the major transformations which have taken place in Cuba since 1959 and their impact on workers and unions. The section entitled "Trade Unions in Cuba" examines the role and internal functioning of the unions and the CTC, including the relationship between the unions, the party and the government. The remaining sections focus on the specific issues of employment policies and hiring practices, salaries and incentive systems, collective bargaining, grievance procedures, and benefits and social security. Special attention is paid both to the foreign investment sector as well as to the Cuban state enterprises in which a new management and operational system known in Cuba as "perfeccionamiento empresarial" has been gradually introduced since 1998.

Research for this report was conducted between May 2000 and May 2001. The methodology consisted of a comprehensive survey of Cuban labor legislation and regulations,

published literature, interviews, and direct observation of the labor relations process on the shop floor and in workers' meetings. More specifically, the report is based on:

- A comprehensive survey of Cuban labor legislation and regulations from 1959 to the present.
- A survey of published articles and books in Cuba
- Lengthy visits to fifteen workplaces in Cuba in both the production and service industries
- Attendance at local, municipal and national union meetings, including a national conference of union labor lawyers, the national congress of the Union of Service and Commercial Workers and the 18th Congress of the CTC.
- Attendance at meetings of the Cuban Labor Law Society.
- Numerous personal and private interviews with union representatives, national and provincial union leaders, managers, labor lawyers, academics and Cuban officials.
- Innumerable conversations with workers in many sectors, including factory workers, hotel workers, cab drivers, restaurant employees, delegates at union conferences and congresses

A list of all sources, site visits and formal interviews is attached in the Appendix.

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BACKGROUND

Today, as in the 1960s, transforming the economy is considered the most pressing task of Cuba's socialist government. The profound economic crisis precipitated by the collapse of the Soviet Union has forced substantial reforms. Thus since 1990, Cuban socialism has undergone a transition from a highly centralized economic model, patterned after that of the former Soviet Union, to one which maintains but moderates national government control of macro economic policy while introducing decentralized decision-making and management at the micro or enterprise level. Although the effects of the economic decline are still acutely felt, the reform process and the new measures being instituted have begun to improve the circumstances and prospects for Cuban workers. The following is a brief overview of the transformations which define the context of Cuban labor rights and relations as they are unfolding today.

It may seem axiomatic, but it bears stating that when the revolutionary socialist government began to change property relations in Cuba, culminating in the nationalization of virtually all private enterprises in the early 1960s, it inevitably altered labor relations as well. Workers, who were now "owners," participated in the takeover of the nationalized factories, and many suddenly found themselves in the position of managers. The principle of equitable distribution of resources replaced the motivation of private profit, and the new government set about to fulfill the ideal of a "workers state" which presumed the disappearance of contradictions between employer and employee. Sweeping reforms yielded Cuban workers broad universal rights and guarantees not previously enjoyed including:¹

- the right to employment
- equal pay for equal work
- universal social security
- a month's paid vacation
- sick and maternity leave
- free health care and education

More than a decade later, a socialist system modeled after that of the former Soviet Union was implemented based on long range, centralized planning, where management of state-owned enterprises was responsible to carry out centrally determined production plans. In theory—although the dialogue between labor and management was one of cooperation and not confrontation—the role of labor was not passive; labor was to participate in developing and implementing the national economic plan and labor policy, and be actively involved in the

¹ These rights and guarantees are made explicit in the Cuban Constitution of 1976 and expanded in the modifications adopted in July 1992.

efficient organization of work in each enterprise. However, the bureaucratic nature of the centralized planning and administrative institutions that emerged did not create conditions for active participation by workers and unions in policy development or workplace management.

First, the extremely centralized model left little discretion to local enterprise management. The government not only determined prices, allocation of resources and specific production plans for each enterprise; it also established salary ranges and regulated most aspects of work and labor-management relations. Further, since enterprises were funded and losses subsidized from the state budget, neither management nor the unions paid much attention to questions of productivity, quality or cost. Procedures became hierarchical and formalistic resulting in a paternalistic system which limited the development of the unions as protagonists in the formulation of economic policy and the making of workplace management decisions.

In the mid-1980s widespread inefficiency and waste began to take its toll on the economy. Reform of the centralized planning system and the state enterprise, a process known as "rectification of errors," was the core concern of the Third Congress of the Communist Party of Cuba held in 1985, leading the government to experiment with more efficient and flexible management models.² At the same time, the labor unions were urged to take on a more active role in the pursuit of greater efficiency and productivity. However, just as this process began, the disintegration of the Eastern European bloc after 1989 forced more significant transformations, including the dismantling of much of the centralized economic apparatus and a radical shift in the theory of socialist economic development.³

The dimensions of the economic crisis which began in 1990 cannot be overstated: the economy shrank by more than 40% in just four years between 1989 and 1993; dissolution of the socialist trading block affected 85% of Cuba's foreign trade creating severe shortages of food, raw materials, spare parts and other essential imports; and Cuba's energy supply was sliced in half. Survival exacted enormous sacrifice and unity, posing significant challenges to the union movement. However, it has also presented new opportunities to unions to strengthen their participation in the development of national policy and in decision-making in the workplace.

At the outset of the crisis there was no comprehensive, coherent plan for restructuring a socialist economic system. None of the former European socialist countries had attempted to do so. The express objective guiding decisions in the early 1990s was not only the survival of the economy but also the preservation of basic social services and the egalitarian principles

² Such experiments were first introduced in 1987 in production enterprises managed by the armed forces.

³ See, Julio Carranza Valdes, Luis Gutierrez Urdaneta and Pedro Monreal Gonzalez, *Cuba: La Reestructuración de la Economía*, (Editorial de Ciencias Sociales, Havana: 1995).

of distribution which are considered the bedrock of the Cuban revolution. Thus, the government struggled to assure continued free universal health care and education throughout. To its credit, despite acute shortages of resources and supplies, it has succeeded in maintaining and even improving essential health indicators such as impressive low infant mortality rates and quality universal education.⁴ Yet, overall recovery has been slow, impeded by many factors, not the least of which has been the intensification of the United States' economic embargo against Cuba and its extension to third countries.⁵

The critical circumstances precipitated a number of pragmatic measures such as the active pursuit of foreign investment, the legalization of the use of the US dollar as currency alongside the Cuban peso and the expansion of areas of self-employment. In addition, over time more reforms were introduced in all areas of the economy including the reorganization of government economic institutions, introduction of new management systems in state enterprises, restructuring of the banking system and the transformation of fiscal and monetary policy.

Thus, in order to obtain badly needed capital investment, Cuba assertively courted foreign investment in the early 1990s. The first areas targeted were tourism, mining and oil exploration. In 1995, Cuba replaced the 1982 foreign investment law with more flexible legislation that opened all economic sectors to foreign investment, with the exceptions of health care services, education and the military. Nevertheless, Cuba maintained an approval process for new projects that has kept a strong role for government in determining what investments would be accepted.

Over time, foreign investment not only provided a critical infusion of capital and new technology in the targeted enterprises, it also provided the engine for economic recovery in other sectors as well. For example, foreign participation has dramatically expanded Cuba's tourism capacity. Although tourism has brought some negative social consequences, it has been a critical source of essential cash needed to support social services and imports. Since 1990, tourism has increased more than five-fold and is expected to reach 2 million visitors in 2001. In addition, tourism ignited the reactivation of many Cuban industries, which at the end of 2000 supplied 61% of the material needs of the Cuban tourism industry.⁶ Other investments

⁴ Jim Lobe, "Learn from Cuba, Says World Bank," Inter Press Service, April 30, 2001.

⁵ In 1992, the United States adopted the Cuban Democracy Act, known as the "Torricelli Bill" which prohibits US subsidiaries incorporated in third countries from trading with Cuba. These subsidiaries had been an important source of goods, particularly food and medicines. In addition, US government officials and hostile leaders of the Cuban American exile community pressured foreign businesses not to invest in or engage in trade with Cuba. These efforts were codified in the bill signed into law on March 12, 1996, entitled the Cuban Liberty and Democratic Solidarity Act, commonly known as "Helms-Burton," which punishes companies which "traffic" in property which has been nationalized in Cuba.

⁶ Report of José Luis Rodríguez, Ministry of Economy and Planning, to the National Assembly of People's Power as reported in *Granma*, December 23, 2000 at p.4. This percentage continues to increase.

have been equally important. Nickel output has not only recovered but has surpassed pre-1990 production levels and has done so with much greater efficiency and profitability both in the mines jointly operated with Sherritt International, Inc. as well as in the remaining state owned mines.⁷ In addition, domestic oil production and other energy innovations developed with foreign investment have gone a long way to enable Cuba to satisfy its electricity generation needs.⁸

Undoubtedly, the opening to foreign investment has benefited Cuban workers as well as the economy as a whole. Foreign investors must honor the rights guaranteed under existing Cuban labor legislation, and worker income and benefits also tend to be superior in these enterprises than in the state sector. Foreign investment has also challenged Cuba's trade unions to more concretely define their role as counterparts to management and to increase the capacity of local union leaders to represent workers. Although Cuban entities participate in joint ventures, the introduction of foreign partners with their essentially capitalist philosophy and management techniques has presented a different scenario for negotiating collective bargaining agreements. The experience has been important although to date only about 5% of Cuban workers are employed in enterprises with foreign participation.

Another perhaps more important pillar of economic reform has been the decentralization of the state-owned enterprise and the withdrawal of subsidies, thus making management responsible for profitability. As of the end of the year 2000, less than 5% of state enterprises continued to be subsidized.⁹

The new Decentralized Management System known as "sistema de perfeccionamiento empresarial," was introduced in 1998 and is being gradually implemented in state enterprises. The new system changes the concept of the state enterprise as an actor in the national economy. The reforms go well beyond decentralization of decision-making, but for purposes of this report it will be called the Decentralized Management System.¹⁰ Adapted from experiments begun in 1987 in the commercial enterprises managed by the Cuban military, state enterprises are not only self-financing, but management wields much greater autonomy from central government agencies and discretion in decision-making than ever before. Approval for application of the system requires a thorough diagnosis of the company's structure and business

⁷ Since 1994, Sherritt International, Inc. owns 50% of the Pedro Soto Alba Nickel plant in Moa. A report on the impact of the Sherritt investment in Moa is found in the IPS wire report dated September 7, 2000: "Economy-Cuba: Nickel Boom Reverses Mining Town's Fortunes."

⁸ See, Juan Triana Cordovi, "La Economía Cubana en el Año 2000," in *La Economía Cubana en el 2000: Desempeño Macroeconómico y Transformación Empresarial*, Centro de Estudios de la Economía Cubana, April 2001.

⁹ Interview with Hiram Marquetti Nodarse, Havana, Cuba, May 10, 2001.

¹⁰ The reforms extend beyond decentralization of decision-making, introducing new fiscal and accounting systems as well as new concepts of marketing, cost analysis, and other aspects of enterprise organization.

plan as well as creation of accurate accounting systems. Of the slightly more than 3,000 state enterprises, about a third are currently in various phases of preparation. As of May 2001, only 115 had satisfied the requisites for full implementation; approximately 675 were in the final stages of approval.¹¹

Full participation of the unions is considered essential to the process of preparation, approval and implementation of this system. Thus, labor unions, which previously cooperated in the completion of production quotas under a system that tolerated gross inefficiencies, are now expected to be actively involved in deciding how best to lower costs and increase efficiency. Although not creating inherent conflicts of interest between management and labor because both stand to benefit directly by receiving monetary incentives if the enterprise is profitable, the implementation of this system creates greater differentiation in their roles and introduces new and different subjects for discussion and negotiation. The impact can be seen in most aspects of labor relations including the treatment of hiring decisions and salaries, the content and process of approving the collective bargaining agreement as well as changes in grievance procedures.

However, decentralization and autonomy of the state enterprises has not eliminated the role of central economic planning institutions. The Ministry of Economic Planning and other national bodies continue to have responsibility for macro-economic decisions and policy. Among other things, they monitor all economic development and determine fiscal policy, national investment strategies and the allocation of critical national resources. For example, one of the criteria for new investments (whether of national or foreign capital) is to direct them to depressed areas where a large number of workers have been idled. This has been particularly the case in the eastern provinces which suffered the greatest economic contraction and job loss in the 1990s. Further, the Ministry of Labor and Social Security continues to play a central role in establishing salary, employment and other labor policies as well as overseeing the implementation of health and safety regulations.

The process of reform has not been without complications. Some of the economic measures taken in the last decade have created inequalities and troubling contradictions at a time when the vast majority of Cubans struggle to meet basic needs. For example, prior to 1993, it was illegal for Cuban citizens to hold or use foreign currency, and all transactions in Cuba were in Cuban pesos. When hard currency was legalized and the US dollar became the only currency which could be used to purchase many items, there were limited legal ways for

¹¹ "Biggest Change in Cuban Economy," *Granma International*, March 18, 2001, p. 7. The article forecasts 100 enterprises approved by March 31, 2001, but on the first day of the CTC Congress, April 28, it was announced that 115 had been approved.

Cuban citizens to obtain that currency: by receiving it as remittances from relatives abroad, as tips, or payment to those individuals licensed as self-employed workers.¹² As a consequence, most workers in Cuba found themselves disadvantaged vis a vis those who had access to this form of income.¹³ To make matters worse, by 1994, the purchasing power of the peso had dwindled to practically nothing.¹⁴ Although the peso has recovered substantially,¹⁵ it remains extremely difficult for most workers to make ends meet solely on a peso salary.¹⁶ Thus, the emergence of a dual economy has been a bitter irritant to workers with little or no access to hard currency.

Much has been said about the unfairness to professionals paid entirely in national currency, such as doctors, who find themselves worse off than hotel porters who receive tips from foreign tourists. In fact, however, few Cubans in general have regained the standard of living they enjoyed prior to 1990. Moreover, the general disparity between nominal and real salary resulting from the sharp decline of the value of the Cuban peso has added to the contradictions created by the introduction of dual currencies. There is no longer a correspondence between skill or qualifications and remuneration. Thus, the issue of salary which was not generally a high priority consideration in the 1980s, is central to the CTC agenda today.

Cuban economists, union leaders and policy makers alike have recognized the critical importance of linking work contribution to income, and establishing salary as the primary means of satisfying material needs. As a result, workers' salaries are increasingly tied to productivity. About 1.3 million, or about one third, of Cuban workers now participate in pay systems based on productivity that provide monthly incentives above base salary, in many instances in hard currency or its equivalent. Workers who participate in such systems have experienced substantial increases in their monthly income.¹⁷ Although salaries in the public service sector have also been increased, these gains are insufficient. According to the

¹² In addition, artists and artisans could sell their work in US dollars and musicians often earn hard currency when on tour outside Cuba. A few, fortunate enough to have an extra bedroom or two, earn hard currency renting to foreign tourists.

¹³ Although troubling for the inequalities it created, Cuban authorities argue that the introduction of the use of the U.S. dollar in the Cuban domestic economy was essential. Imports had to be paid for in hard currency and the only way to sustain them was to sell them in hard currency as well. The peso not only had no value on the international market, but was highly inflated in Cuba at the time. The purchasing power of Cubans with access to hard currency through remittances from family abroad or earnings in the way of tips or from self-employment was an essential ingredient in mitigating the crisis of currency reserves.

¹⁴ At one point the exchange rate climbed to more than 120 pesos to the dollar.

¹⁵ It is currently exchanged at the rate of 21/1 at official exchange houses. The black market rate is the same as the official rate.

¹⁶ Many workers, particularly in agriculture and tobacco, receive in the range of 1000 pesos a month which is four times the average national salary and more than adequate to provide for basic needs. See the section of this report on Salary and Other Remuneration.

¹⁷ See the section of this report on Salary and Other Remuneration.

government, only sustained economic growth will provide the basis for restoration of prior levels of real income, without introducing the specter of uncontrollable inflation.

Since 1994, the economy has shown a modest but steady recovery, posting an impressive 5.6% growth in 2000 against the backdrop of extremely negative international conditions—specifically, unusually high oil prices and low sugar prices, both of which directly affect Cuba. In addition, Cuba alone among nations suffers the dual punishment of being denied access to the U.S. market, its natural trading partner, as well as to credits from international financial institutions influenced or controlled by the United States. However, as a result of foreign investment, tourism and the ability to reactivate some of its domestic industries, Cuba has begun to increase its exports and its ability to substitute imports.¹⁸ Implementation of fiscal reforms, reorganization of the banking system and the introduction of a tax system also have contributed to recovery. That Cuba not only survived the extraordinary crisis against all odds, but now shows potential for sustained recovery has infused the government (as well as the unions) with optimism for the future of a Cuban socialist model.

Although the economy remains fragile, recovery is visible in various areas which benefit Cuban citizens as a whole. Today, the Ministry of Labor and Social Security reports unemployment at 5.6% nationally, down from approximately 8% reported during the worst years of the crisis. Since 1997, the Cuban peso has stabilized, and more and more goods are offered in the peso market. Blackouts, which once darkened the country for up to 16 hours a day, are no longer the regularly programmed occurrence they were several years ago, and when they do occur, are for relatively brief periods of time. Further, a massive program has provided natural cooking gas to most households that had depended on kerosene and wood for much of the decade. Other improvements can be seen in public services like transportation, sanitation, building repair, telephones, potable water supply, recreation programs and facilities, etc.

Without doubt, the restructuring of the economy has placed new demands on the labor unions. The steady pace of change and reform initiated in the 1990s has obligated the unions to shed the passivity of the 1980s and assume an increasingly active role as advisor and protagonist in both the development and implementation of policy. In the early 1990s when Cuba's survival was put to the test, the Party and the CTC organized public forums for workers to speak out to identify problems and recommend solutions. These open and freewheeling gatherings resembling "town hall" meetings were often televised, and were considered extremely important as vehicles for giving public voice to workers' opinions and to fostering consensus on the country's social and economic direction. Further, when hundreds of factories were forced to close or substantially reduce production in the first half of the 1990s, the unions

¹⁸ See, *La Economía Cubana en el 2000: Desempeño Macroeconómico y Transformación Empresarial*, Centro de Estudios de la Economía Cubana, April 2001.

were directly involved in making decisions about how many and which workers would be idled, helping to place them in new jobs whenever possible.

In the workplace, the decentralization of the economy and centers of decision-making have introduced a new and unfamiliar environment for both labor and management requiring a significant change in the dynamic of labor-management relations. Since solutions to problems are no longer handed down from higher ups, a major challenge has been to change the mentality of both workers and management. Today's circumstances require greater initiative and creativity if the CTC, the unions and workers are to be true partners with management in the process of increasing productivity. Yet, progress in elevating the capacity of shop level leaders to function in the new management systems proceeds slowly and is a constant source of union concern. Another serious problem for the unions is how to deal with work place thefts that continue to threaten economic growth. Sometimes minor pilfering is done by individual workers for the purpose of solving personal needs, but there are also occurrences of organized operations that feed the black market.

As current circumstances open new terrain for action and require innovative responses, the CTC and the unions gear themselves to be full participants. The CTC has strengthened its infrastructure and formed a council of experts from Cuban research institutes to provide technical advice on economic and other issues. In addition, the unions continue to expand their educational and training programs, often inviting experts from inside and outside Cuba. Although the efficient worker who extends him or herself to fulfill on-the-job commitments is held up for emulation by the unions, so is the union leader who dedicates energy to defending workers' interests and engages management whenever necessary.

Faced with challenges to Cuba's survival in the international economy, the Cuban leadership maintains its resolve to develop a sustainable socialist model, which, they argue, will improve conditions for workers and the population as a whole. There is no plan to introduce a market economy based on private enterprise, and any suggestions that Cuba should move in that direction are rejected. When problems emerge or differences of opinion arise, they are debated and analyzed within the framework of socialist policies. The unions, the Party and the government are all committed to pursuing strategies for making Cuba's socialist system more efficient and competitive. Thus, it is the express objective of the Cuban trade unions to prepare both the workers and union leadership to be active proponents of labor policies consistent with that goal.

TRADE UNIONS IN CUBA

Since its founding in 1939, the Cuban Workers' Central (CTC) has been the only legally recognized national organization representing labor in Cuba. Historically, the union movement has strongly defended unity in its ranks: the CTC rejected fierce pressures in the 1940s to purge it of communists and splinter its membership.¹ The consolidation of that unity under a one-party system after 1959 does not represent a break from the tradition of a single national labor organization that began with the founding of the CTC.

Nevertheless, both the content and character of CTC's function and that of its 19 member unions have changed dramatically over the course of the past four decades. The CTC and the unions have a dual role in contemporary Cuba: 1) to further the economic, political and social interests of the country as a whole; and 2) to protect the rights and advance the standard of living of Cuban workers. This duality of objectives is also present in the workplace. As stated in the "Thesis" for the recent Congress of the CTC: "In our socialist society, trade unions play a double role: they represent their members; defend their rights before management; and act in favor of the values, duties and standards that workers must observe so that the work place can function better. This double role is grounded in the concept that workers are both employees and owners."²

Although bureaucratic centralization once posed significant limitations on union initiative, the transformation begun in the 1990s has dramatically changed the environment for labor relations. At this critical moment in Cuban history, Cuban workers are faced with new challenges and opportunities to be significant actors in the development of economic and national labor policy as well as to actively participate in management decision-making in state enterprises.

¹ See, Evelio Tellería, *Los Congresos Obreros en Cuba*. (La Habana : Editorial Ciencias Sociales, 1984). The first Secretary General of the CTC, Lazaro Peña, was an active member of the Communist Party. Although replaced as Secretary General in the 1940s, Peña returned to the leadership of the CTC after 1959 and remained at its helm until 1975.

² Thesis for the 18th Congress of the CTC, par. 69.

Relationship of the Unions to the Party and Government

Fundamental to the Cuban socialist system is the concept of collective social goals. Notions of conflicting interests or “balance of powers” are alien ideas. Moreover, pursuant to Cuban socialist theory, workers are to be the direct beneficiaries of economic development, thus creating a framework for management-labor relations in which both management and labor are equally committed to the same objective: a more efficient, productive economy. It is this unity of purpose and exercise of power which provokes some observers to conclude that Cuban unions have no autonomy or independent capacity to represent Cuban workers.

Accordingly, the Constitution of the Republic of Cuba states that the Communist Party “is the highest guiding force of the society and the State, which organizes and guides common efforts toward the goal of constructing socialism and the advance towards a communist society.”³ As social organizations, the CTC and the national unions adhere to the policies of the Communist Party of Cuba, which the CTC explicitly recognizes in its statutes as the supreme political and ideological force in Cuban society. Although the Party does not govern, administer or legislate, there is a close and interdependent relationship between the government, the unions and the Party.

Closer examination reveals, however, that the CTC, the Party and the government are not synonymous. Thus, the fact that the CTC and the unions both recognize the political guidance of the Party and implement government policies should not be interpreted to mean that they only function to rubber stamp decisions or are merely passive recipients of directives. As a legal matter, the CTC and the unions are created as “autonomous” organizations separate from the Party and government.⁴ Although the strong interrelationship between the unions, the Party and the government may temper traditional notions of autonomy, it also provides channels for union influence in the formulation of national policy, giving voice to workers’ interests. In practice, union influence manifests itself in multiple ways: unions initiate regulatory proposals; they are consulted by both Party and government agencies on all matters concerning labor policy; there is ample union representation at all levels of the Party itself; and union officials are elected members of the national parliament (the National Assembly). In the

³ Constitution of the Republic of Cuba (1992), Article 5.

⁴ Statutes of the CTC (2001), Preamble; Código de Trabajo (1985), Art. 15.

workplace, unions represent workers' interests and views in fulfilling their traditional role as counterpart to management.

As a general practice in Cuba, legislative proposals, which may be initiated by a ministry or other body such as the CTC itself, are circulated to the agencies and organizations with an interest in the subject matter for comment and recommended amendments. Union leaders and government officials alike acknowledge that no legislation related to labor concerns is adopted without first being submitted to the review of the CTC and the corresponding unions.⁵ There are numerous examples where the CTC has had significant, and at times decisive, influence on the content of legislation:

- In 1995, the CTC opposed a provision in the initial draft of the new Foreign Investment Law that permitted direct hiring of workers; the CTC insisted on maintaining a system of contracting workers through state employment entities.⁶ The unions argued that direct hiring could leave workers disadvantaged by the potentially divergent practices of foreign management, and supported instead hiring through a state entity obligated to assure application of Cuban labor law. The final version of the law accommodated labor objections.
- The CTC asked for and obtained a delay in the implementation of the 1994 tax law which would have levied a tax on workers' wages to fund social security.⁷ The law, in fact, requires workers to contribute 5% of their salaries to the fund, but the CTC argued that salaries were still too low to bear this cost and recommended postponing implementation until wages had risen enough to make the contribution affordable.
- Proposed legislation altering the social security system has been returned to the drawing boards over objections raised by the CTC.⁸

⁵ Interview with Miriam Lau, former legal advisor to the Ministry of Labor and Social Security, Havana, Cuba, May 9, 2001.

⁶ The action of the CTC was recounted in numerous interviews with union leaders and government staff. The system of contracting workers for the foreign investment enterprises is discussed further on in this report in the section on Foreign Investment.

⁷ Ley No. 73 (Sistema Tributario), August 4, 1994, Disposiciones Finales, Primero (d).

⁸ The proportion of Cuba's population eligible for retirement has increased substantially putting burdens on the social security system now and in the future. According to union officials, the Ministry of Labor and Social Security proposed raising the retirement age as a measure to ease the burden and pay for the increase in pensions. However, the unions objected since the economy has not recovered sufficiently to absorb all of the workers who have been idled due to the crisis and restructuring process.

- A new Labor Code is currently being drafted through the joint collaboration of the CTC and the Ministry of Labor and Social Security; an early draft, submitted to review at the recent Congress of the CTC, will continue to undergo modification based on active CTC participation.

In addition to its participation in the legislative process, the CTC and the unions engage in continuous dialogue with government agencies at all levels which both keeps them informed of current developments and also provides official channels to press initiatives and to react to government proposals. The secretaries general of the national unions as well as the secretary general of the CTC have the right to participate in the sessions of the Council of Ministers, the highest administrative body in the Cuban government. Union leadership maintains close communication with the ministries which direct the enterprises in their sphere of activity, participating in the weekly and monthly meetings of ministry department heads. Ministry of Labor and Social Security (MTSS) officials report that the CTC has input at all levels of decision-making in the MTSS, which regulates employment policy, salaries and social security. In addition, formal quarterly meetings are held between the leadership of the CTC, the heads of departments of the MTSS and officials of other government agencies to discuss policy and regulatory initiatives of concern to labor.

Consultation between the government and the unions is particularly close in the Cuban health care system. The National Union of Health Workers reviews the national health care budget before it is submitted to the legislature and makes recommendations for priority areas of expenditures. One of the largest, this union has more than 300,000 members, including doctors, nurses, dentists, technicians, maintenance workers, pharmacy workers and other support staff. As the ones most directly involved in the implementation of policies and with first hand experience with issues related to delivery of services, the unions regularly meet with administrators to discuss policy and specific concerns. For example, Cuba has had to pay increasing attention to health costs in order to prioritize use of scarce resources, while assuring quality care. Health workers (including physicians) meet with administrators to analyze issues such as the rational use of diagnostic testing.⁹

⁹ Interview with Dr. Raimundo Navarro Fernández, Secretary General of the National Union of Health Workers; conversations with health care workers at municipal union conferences.

Similar kinds of interrelationships and cooperation can be seen between other unions and ministries. Meetings of the ministry administrative councils are open to the unions, and the head of the corresponding ministry is always invited to attend the national union congresses to discuss industry problems and to respond to concerns raised by the delegates.¹⁰ For example, at the congress of the Union of Commercial, Food and Service Workers held in October 2000, the Minister of Domestic Commerce, Bárbara Castillo, was called upon to address union delegates on issues of expanded application of new salary systems in workplaces and the problem of poor administrators whose ineptness directly affects workers.

In order to increase its expertise and, hence, its capacity to influence policy and represent workers' interests, the CTC has strengthened its infrastructure. In the mid-1990s, it created specialized departments including its own research department, a group specializing in collective bargaining and an expanded legal department. It has convened a council of experts from Cuban research institutes to provide technical advice as well as information and analysis of economic and other issues. The organization continues to broaden its educational and training programs to increase the leadership capacity of local union leaders, often inviting experts from inside and outside Cuba to participate. Together, these facts suggest that the CTC and the unions not only take advantage of the multiple channels available to them to represent the interests of workers, but are also increasing their capacity to articulate that perspective.

The Role of Unions in the Work Place

Reorganization of the state enterprise, in particular implementation of the Decentralized Management System which transforms the enterprise into a semi-autonomous actor in the national economy,¹¹ confers greater authority and discretion on local management and creates greater differentiation in the roles of management and labor, introducing new subjects for discussion and negotiation. The unions are challenged to become effective counterparts, representing workers' interests not only with respect to improved salaries, incentives and work conditions, but also with respect to improving efficiency, productivity and profitability.

¹⁰ For example, union leaders of the National Union of Chemical, Mining and Energy Workers report attending weekly meetings with administrators at the Ministry of Basic Industry where developments and issues of the past week are discussed.

¹¹ The system is known in Cuba as "perfeccionamiento empresarial" or "enterprise perfection."

Guidelines adopted in 1998 for the implementation of the new system in state enterprises¹² outline a prominent role for workers and unions. The preliminary phase in the preparatory process is the development of a diagnostic report on the strengths and assets of the enterprise as well as the problems which must be resolved before it can enter the system. Workers, through union-organized assemblies, participate in this detailed evaluation. If the union believes that the enterprise does not fulfill the requisites for operating in such an autonomous fashion, it can veto implementation of the plan.

The Decentralized Management System also stipulates that unions take a role in the development of all aspects of the business plan which must demonstrate, among other things, that the enterprise has a market for its goods or services, a sound projected cash flow and an efficient allocation of its workforce, including management personnel. National union leadership urge local unions to be particularly involved in the design of the workforce and salary scales. These aspects are obviously important since in many instances profitability may mean cutting or adding to the workforce in a given department. In addition, under the new system the unions must participate more actively in operational decisions.

In a system where individual remuneration and social improvements depend on efficiency, productivity and profitability, workers and their unions have a self as well as a social interest in being capable, active counterparts to the state administration and enterprise management in the search for ways of increasing efficiency and productivity. However, while seeking to make the enterprise more efficient, unions are also expected to seek improvements for workers both with respect to workplace conditions and to income, services and material incentives. Hence, the negotiation of the collective bargaining agreement and the representation of workers in labor disputes has taken on new significance in the decentralized management system.¹³

Without doubt the trade unions play a stronger role in the enterprise today than they did in the 1980s when all institutions suffered from top heavy structures, formalism and highly bureaucratic practices. Since 1998, training workers and union officials to function within the new environment has been a central area of activity for the CTC and the national unions. In fact, capacity-building for shop level leaders to be more dynamic and assertive in their

¹² Bases Generales del Perfeccionamiento Empresarial (anexo a Decreto-Ley No. 187 of August 18, 1998), September 14, 1998.

¹³ These subjects are dealt with in greater detail in other sections of this report.

representation of workers was among the primary topics of discussion at the recent CTC Congress. In addition to training seminars and workshops, the CTC and the national unions have organized a continuous cycle of site visits to check on progress. Both CTC and national union leadership report increasing success in developing capable local leadership, but they also admit that there are still many workplaces where the leadership remains passive and lackluster.

Local union leaders who defend workers and challenge incorrect or illegal management decisions often receive public praise from the union press. A recent article in the weekly newspaper *Trabajadores*, published by the CTC and one of Cuba's three main national newspapers, profiled a young union activist who gained notoriety for challenging management. At the age of 18, Cecilia Valdés took on a supervisor for docking a co-worker a day's pay for not participating in the May Day parade. Since there is no legal basis for this management decision, Valdés persisted until she succeeded in getting the worker her day's pay. The anecdote is significant on many counts. It demonstrates not only that a worker can challenge management, but that she has been praised for doing so even when management had political motives (supposedly "revolutionary") for its actions. Her action was held up as exemplary in the national newspaper as an encouragement to other workers to do the same. As a final tribute to this young woman for her activism, she became the youngest member elected to the CTC National Council at the last CTC Congress.¹⁴

Developing local leadership responsive to workers' needs is often expressed as an ideological necessity as much as a practical matter of better representing workers. Pedro Ross Leal, General Secretary of the CTC, frequently draws the connection between the two when speaking to union meetings. He argues that attending to worker needs and providing vigorous representation is an important way of strengthening socialism. Similarly, making the enterprise more efficient and profitable not only benefits workers but also is the basis for the survival of the socialist system.

However, despite the infusion of socialist ideology in union work and activities, the Party does not oversee or intervene in union matters in the workplace. Numerous workers interviewed were emphatic in their assessment that, in the workplace, the roles of the Party and union are separate and distinct. Thus, it is the union, without participation from the Party, which determines how it will defend workers from what it considers to be unfair management

¹⁴ "Cecilia Valdés, pero no la de Cirilo," *Trabajadores*, May 28, 2001, p. 2.

decisions. Nor does the Party have any role in the collective bargaining process or any other activity of union representation.

Trade Union Structure and Internal Regulations

The CTC, like other social organizations in Cuba,¹⁵ has a vertical national structure consisting of a national office, provincial organizations in all 14 provinces and organizations in large municipalities. There are approximately 4 million workers in Cuba;¹⁶ about 98% are members of one of the national unions. In addition to the national unions, the National Association of Inventors and Innovators (ANIR)¹⁷ forms part of the CTC. Like the CTC, the 19 national unions have vertical structures including a national headquarters in Havana, provincial offices and municipal branches where they have substantial membership.

Union membership is voluntary; but all workers have the right to join. The specific union representing them depends on the industry or sector of their workplace. To an extent, Cuban labor unions are akin to what is known in the U.S. as "wall to wall" unions. For example, members of the National Union of Chemical, Mining and Energy Workers are employed in any number of jobs at enterprises belonging to the Ministry of Basic Industry which include the nickel mines, oil drilling and production, manufacture of rubber products and electricity plants and services. Health care workers and support staff employed by entities under the direction of the Ministry of Public Health, which includes all hospitals, clinics and most health related research and testing laboratories, belong to the National Union of Health Workers. Workers in enterprises related to the cultivation as well as processing and marketing of agricultural products which come under the jurisdiction of the Ministry of Agriculture belong to the National Union of Agricultural Workers, etc.

Financially, the unions and the CTC are independent of state support. They are totally self-financed from monthly dues paid by their members, and receive no subsidy or other material assistance from the government or the Party. Dues are personally paid to a local union official, not automatically deducted from salaries. Monthly dues per worker are on the

¹⁵ Social organizations as described in the Cuban Constitution include the Federation of Cuban Women, the Federation of University Students, the Federation of Middle Level Students, the Organization of Small Farmers, the Committees for the Defense of the Revolution and the CTC. These organizations play an explicit role in the implementation of state policy, but they also provide an important vehicle for participation in the development of policy.

¹⁶ *Anuario Estadístico Cuba 1999*, Oficina Nacional de Estadísticas (2000)

¹⁷ ANIR is a national organization of workers who are designers or inventors by profession or avocation.

average a little under 1% of their monthly salary, although maximum payments cap at 4 pesos a month. Ten percent of dues collected are returned to the local union section for its activities, the largest share goes to the national union to which the local belongs and the remainder to the CTC for its operations.

Annual union budgets pay for staff salaries, supplies and infrastructure as well as activities such as training courses, conferences and social events. The unions also create a fund used to purchase awards for exemplary workers. These awards, known as “estímulos,” range from color television sets and other appliances to fully paid trips to resorts or meals at restaurants, etc. Only union members are eligible to receive these rewards. Resources are tight and pose a limitation on some union aspirations to expand programs and services, upgrade equipment and improve transportation and other facilities. Numerous foreign unions have assisted with modest donations of equipment and supplies.

The CTC and the national unions each have their own legal status and internal regulations. The statutes which govern the CTC are modified and approved every five years at the national congress. Thus, new statutes were adopted at the 18th National Congress of the CTC held in April 2001. A draft was circulated among all union members for discussion six months before the Congress. Although some provisions were modified, there are no substantial differences from the previous statutes.

Broad policy decisions and directions of the CTC and the unions are discussed and adopted at the congresses which convene every five years. In between congresses, the CTC is governed by a National Secretariat, a National Council and a National Committee.¹⁸ The members of the National Committee are elected every five years at the CTC Congress, at which time the Committee elects from among its members the National Secretariat (now 17 members) and the National Council numbering about 50, including all heads of the CTC provincial offices as well as the secretaries general of the national unions. The members elected to these bodies come from leadership ranks of the various national and provincial unions as well as from the CTC itself. Ross, first elected Secretary General of the CTC at the 16th Congress in 1990, is also a member of the Political Bureau, the highest decision-making body of the Party.

¹⁸ The members of the National Council are also members of the National Committee.

Since the Party is the organization which guides and determines national policy, it is undeniable that it concerns itself with who will be elected to the highest level positions of the social organizations, including the CTC. In 1990, about half of the CTC secretariat was replaced, including the Secretary General.¹⁹ From all appearances, the election of Ross to the position of Secretary General of the CTC vacated by Roberto Veiga in 1990 was in fact initiated by the Political Bureau of the Party.²⁰ Evidence suggests he has enhanced the activities and participation of the unions in national policy.

One labor activist recounts having been present at a meeting in 1994 presided over by the Secretary of the Council of Ministers,²¹ Carlos Lage (Cuba's "economic czar"), and attended by the other ministers and Fidel Castro, at which the Minister of Labor and Social Security presented a proposal for placement of workers idled as a result of the temporary closing of many factories due to lack of fuel, raw materials and spare parts. The proposal provided that workers placed in lower paying jobs than those they had previously occupied would receive the lower of the two salaries. Ross, in the name of the CTC, objected and insisted that the workers receive the same salary they had received at their prior jobs unless the new job paid more in which case they should receive the higher salary.²² In the end, a compromise was reached which entitled the worker placed in lower paying jobs to at least 80% of his or her prior salary. Other examples of the CTC's exercise of independence and influence were cited earlier in this section.

Although each national union also has its own statutes and legal status, its regulations conform to the general statutes of the CTC with respect to eligibility for membership, general principles, structure and procedures for election of leadership. All unions have a similar organizational structure. Although management workers may also be members of the union, they cannot stand for union office.

Workers who opt not to join the union nevertheless enjoy all the benefits obtained on behalf of workers with the exception of participation in union programs like the reward system

¹⁹ In many instances, change in membership of the leadership bodies reflects a policy of elevating younger members and women.

²⁰ In 1990, Ross was named director by the Organizing Commission of the 16th Congress since Veiga had moved to another position before the Congress met. Ross was then formally nominated and elected at the 1990 Congress.

²¹ The Council of Ministers is the highest executive committee of the State Administration.

²² Interview with Daisy Samsón, official of the Provincial Union of Chemical, Mining and Energy Workers.

which is funded by union dues. Non-union members are entitled to participate in all worker assemblies called by the union, thus participating in discussions of workplace issues with management as well as election of worker representatives to the local grievance board and similar workplace commissions. They are also covered by the collective bargaining agreement. Union lawyers report they provide assistance or representation to workers in the grievance process without regard to the worker's union membership.

The most grassroots level of union organization is the *sección sindical* (union section), the departmental level union organization. Depending on the size and organization of the work force there may be one or several union sections in a single enterprise, organized within departments or shops. The secretary general of the union section functions something like a shop or department steward in the U.S.

The base level or union section elections, which take place every two and a half years, are the most direct among union elections. Candidates are nominated directly by the workers at a workplace assembly. There is no limit to the number of candidates which may be proposed and there are generally more candidates on the ballot than available positions. Ballots are prepared with all of the names of the candidates nominated at the assembly. Elections are by secret ballot. There are also procedures to recall leaders and replace them.²³ Party membership is not a requisite to hold a union office; and, in fact, the majority of officers in the union sections are not members of the Party.²⁴

Each union section has a minimum of 5 officers, including a general secretary, who have responsibility for such issues as salary, occupational health and safety, union activities, training, etc. These union officers keep their regular jobs and their daily work responsibilities. Cuban law gives them the right to spend work time on union activities. The amount of time depends on what has been agreed to in the collective bargaining agreement. They are not paid any remuneration by the unions.

The trend has been to reduce the size of the union sections to create a closer relationship between union leaders and workers, and to enable the leadership to better represent workers before management. Thus, large workplaces will have a number of union sections. The CTC statutes state that each union section must have a minimum of 10 workers although

²³ CTC Statutes (2001), Arts. 99-100.

²⁴ Interview with Guillermo Ferriol Molina.

the secretary general of the provincial union may authorize a union section with less members in special circumstances.

At monthly worker assemblies organized by union sections, workers receive and analyze reports on the conduct of the business of the enterprise, discuss productivity and other workplace issues, raise complaints and make recommendations to management and union leadership. As noted, they may be attended by union and non-union members alike. These meetings are called monthly by the secretary general of the union section, or at anytime at the request of 25% of the workers. They generally take place after work hours, but in some instances, such as where there is more than one shift, they may be scheduled during the work day.

At one such worker assembly held at a cigar rolling factory in Santa Clara in June 2000, the meeting began with a report of production and earnings presented by the factory manager.²⁵ Workers raised various concerns, including issues related to production efficiency as well as work conditions. They complained about poor ventilation in some parts of the factory and the quality of food preparation in the lunchroom, made a request for management to provide uniforms, and alerted management of the need to purchase better glue to improve production and quality. The manager responded to each of these issues, consenting to some and deferring others for study; in turn, the union representative stated that he would follow up on these concerns in the interim prior to the next assembly. In addition to the monthly worker assemblies, most workplaces have brief daily or weekly morning meetings at which announcements are read or specific urgent issues raised and discussed.

The level of union organization above the union section is the union bureau (*buró sindical*) which has some similarities to the local union in the U.S. A single workplace with more than one union section may have its own bureau or even two or more if there are several large plants. On the other hand, several union sections of various small enterprises in the same commercial or service sector may organize a single bureau. The bureau represents the workers before management in negotiating the collective bargaining agreement, in disciplinary matters and other issues of concern to the workers.

²⁵ It is customary in these factories for readers to read the newspaper or novels over a loud speaker while workers continue rolling cigars. In keeping with this tradition, union meetings also take place while work continues.

Bureau leadership is directly nominated and elected by members of the union sections every two and a half years,²⁶ but unlike the leadership of the union section, bureau officers are professional union staff paid by the provincial unions, and generally do not work in the enterprise. However, they may also continue in their regular jobs in certain circumstances. There are normally six bureau staff: the secretary general (or president) and others who deal with union organization, salary and work organization, worker health and safety, training, workplace efficiency and political work. The decision to form a bureau is made by the provincial union organization.

Close communication and review of union work is carried out by the provincial union organizations as well as by the national union organizations. Frequently, a union section or bureau will call upon the provincial or national leadership to assist in resolving a dispute or to lobby for a change in policy. Moreover, the provincial leadership plays a prominent role in assisting the local bureau members in negotiation of the collective bargaining agreement.²⁷

Development of Internal Policy: The CTC Congress

Each national union as well as the CTC holds a congress every 5 years at which delegates analyze developments of the past five years, raise new issues, elect leadership and debate and adopt resolutions guiding activities for the next 5 year period. Municipal and provincial assemblies and conferences are held between national congresses. The CTC held its 18th Congress at the end of April 2001, but preparations were underway since spring of 2000, beginning with publication of the convocation. The year-long preparations entailed a broad process of discussion and consultation at all levels of the union structure to determine the main issues to be debated and to provide the framework for what is called the "Thesis" or general premises for the Congress.

Preparations

Early in the process, the CTC commissioned a survey of worker opinions, conducted in May and June, 2000. Workers were asked to respond to three questions: 1) what was the greatest achievement of the CTC since the last Congress; 2) what was the area of greatest

²⁶ Bureau leaders may be recalled by the workers' assembly as well.

²⁷ The *convenio colectivo* or collective bargaining agreement is discussed in a separate section of this report. Suffice to say at this point that every workplace or enterprise must enter into a collective agreement with the union. Collective agreements are specific to each enterprise and there is no industry wide agreement although each agreement may share common elements which are worked out between the unions and the ministries.

worker dissatisfaction; and 3) what issues were considered most important for the agenda of the Congress. The questionnaire was filled out collectively in meetings of the union sections. By August 31, 2000, the first results were tabulated with responses from over 66,000 union sections (81.1% of the total).²⁸

With respect to the first question, the majority of workers (53.9%) responded that the preservation of labor unity was the most important achievement of the union movement since 1996.²⁹ The strength of this response may reflect recognition of efforts to prevent widespread disaffection and alienation under the enormous pressures of the economic crisis. It is no secret that the “special period” spawned levels of individualism and social disparity not previously known since the Cuban revolution. Certainly, the union leadership continually expressed the importance of preserving unity throughout this critical time. Apparently, most workers agree that they have been successful.

Not unexpectedly, the greatest dissatisfaction (39.5%) concerned salaries, considered by all to be inadequate. Other concerns focussed on internal union dynamics: problems in the way the local union sections functioned (14.8%); deficiencies in the relationship between national union leadership and local unions (6.5%); and lack of training and preparation of union leadership at the base (5%). Each of these issues has been high on the CTC’s agenda over the past five years and the responses confirm that they remain priorities with union members.

Among the top issues proposed for debate at the Congress was “atención al hombre” or “attention to workers” (41.2%),³⁰ a broad concept which includes improving work conditions, transportation, meal services and other needs of workers and their families such as housing; second in importance was rewards for exemplary workers and monetary incentives (36.1%); also significant, but lower in priority for workers was progress and problems in implementing the new system of decentralized enterprise management (14.1%).³¹ Other issues singled out for

²⁸ “Opinión pública y democracia,” *Trabajadores*, October 30, 2000, p. 6.

²⁹ Other responses to this question included: the political-organizational initiatives of the CTC, like the efficiency assemblies (7.9%); improvements in salaries and work conditions (4.9%); the rescue of the prestige and role of the unions (3.9%); and improvement in the functioning of the union locals (3.7%). Id.

³⁰ A 1996 study of aspects of “attention to workers” considered most important to workers found that work conditions topped the list of worker concerns, well above worker participation in work decisions. Juan Molina Soto, “La Atención al Hombre,” *Cuba: Sociedad y Trabajo*, (Barcelona: Univ. Aut. de Barcelona, 2000).

³¹ Id.

attention at the Congress included internal union organization and effectiveness and collective bargaining.

In the fall, conferences were held in every major municipality to which all the local unions sent representatives to discuss issues and problems specific to workers in that municipality. These delegates were elected by the local union membership. Generally, 250-280 delegates participated in each of these conferences. Scores of such conferences were held throughout the country in September and October. Although the agenda was open for delegates to raise a wide variety of concerns, the leadership also brought specific issues to the forum, such as the application of new systems of linking salary to results of work, the responsibility of the unions to insist on effective management, and approaches to the problem of workplace theft.

Based on these discussions the leadership of the CTC and national union leadership elaborated the Thesis for the 18th Congress which laid out the basic analysis and concerns for debate. Copies of the Thesis were distributed to workers and published in the national weekly newspaper *Trabajadores* in mid-October. Each local union section held a meeting of its members to discuss the Thesis and provided written comments from their discussion of the issues raised.

Content of the Thesis

The Thesis of the 18th Congress of the CTC sets forth the essential themes of the Congress. Although fairly lengthy at 14 pages of printed text, the original version was over 50 pages long. By shortening the text, making it more general and less detailed, the leadership intended to stimulate more discussion than would be generated by the presentation of fully elaborated views.³² Prior to the Congress, the Thesis was discussed in every workplace as well as in municipal and provincial assemblies. Drafts of resolutions to be adopted at the Congress were drawn from these discussions as well as from a series of focussed workshops held prior to the congress. At the Congress itself draft resolutions were reviewed and subjected to further amendments by delegates.

The Thesis is divided into five topics: "The Current Situation" which describes the specific economic and social context in which workers find themselves; "The Struggle of Ideas" which deals with defending the ideology of socialism; "The Battle for Economic Efficiency" which elaborates issues concerning economic policy and salary; "The Trade Union

³² Interview with Guillermo Ferriol Molina.

Organization” which speaks to problems of internal organization and improving union representation of worker interests in the enterprise; and “The Current World of Trade Union Struggles” focussing on the international situation of the trade union movement. Consistent with the political role of the CTC, the Thesis describes the two major tasks which “guide” the Congress in its current historic context: 1) to defend the Cuban Revolution and sovereignty against imperialism; and 2) to work toward the continued recovery of the Cuban economy through efforts to make it more efficient and productive.

Although it does not question the general economic reform strategy of the Cuban government to maintain socialism, the document is quite frank in identifying the deficiencies and problems to be addressed from the union perspective. Reflecting the results of the survey taken over the summer, a high priority of the CTC since the last Congress has been to increase wages by expanding systems which link salary to “work results.” Another priority has been to improve the living and work conditions of workers. Thus, among the primary issues raised for discussion were the need to “strengthen the value of work and its remuneration,” to reverse the decline in social benefits such as housing, transportation and quality of nutrition and to deal with the issue of workplace theft and corruption. With respect to internal union organization, the Thesis recognizes the inadequacy of many local unions to represent and defend worker interests before management and expresses the need to improve the capacity of local leadership.

Although the actual meeting of the Congress formalizes the priorities and directions of the CTC for the coming period, the consultation and dialogue leading up to the national meeting is an integral part of what is called the Congress. In many ways, the Congress was a year-long event culminating in the 3-day Havana meeting of over 1,600 union delegates, April 28-30, 2001. Thus, the content of the resolutions adopted at the Congress emerged from the conferences held in the fall reflecting the themes outlined in the Thesis, including the role of the unions in preventing workplace theft, the problem of inadequate accounting systems at each enterprise which permit theft to go undetected, the implementation of salary systems pegged to productivity, and the continuing need to strengthen union work and the capacity of local leadership to organize and represent workers. In addition, resolving the continuing deficit in housing and transportation services remained high priorities for the workers.

In addition to the union delegates, all ministers and high level government and Party officials attended the Congress. Since solutions to many of the problems require government action, ministers and other officials were called upon to respond to the issues raised. For example, Carlos Lage, Secretary of the Executive Committee of the Council of Ministers, provided an analysis of housing issues and the prospects for expanded construction. At another point, delegates were especially gratified by the government approval of modifications to the maternity leave law which would extend paid leave from 6 months to one year after the birth of the child.³³ Reflecting on the significance of this interaction between the unions and government officials, one young leader of the National Union of Light Industry Workers summed up the importance of the final days of the Congress as the moment when the government responded to the collective national concerns of the unions.

Training of Union Leaders: The Lázaro Peña School

In 1975, the CTC established the Lázaro Peña School in Havana, offering courses and workshops on a wide variety of subjects to union leaders.³⁴ About 2,000 workers attend a variety of courses, seminars and lectures at the school annually. The school, named after the founding leader and first secretary general of the CTC, is funded entirely by the CTC and offers its courses free of charge. The faculty are university graduates.

Today, the basic curriculum consists of a ten week course covering subjects related to international labor rights, economics, labor policy and legislation and labor-management relations. More than 400 workers from all over the country participate in the basic course each year. They are given paid time off from their work centers to take these courses. In addition, specialized seminars are offered on new legislation as well as on specific topics related to the economy such as cost analysis, quality control, etc.

The school also trains union personnel to impart courses to union activists throughout the provinces. These courses are organized by and designed for the individual unions to deal with subjects germane to each specific sector, in addition to seminars or workshops on general topics such as those related to economics, collective bargaining and changes in labor legislation. In 1999, over 100,000 thousand workers participated in these one-week courses.

³³ For a description of maternity benefits, see the section on Benefits and Social Security.

³⁴ The information presented here comes primarily from a lengthy interview with Ermela García Santiago, the director of the Lázaro Peña School in Havana, as well as conversations with union leaders.

Union activists from Latin America also attend courses and seminars at the Lázaro Peña School. The school offers courses in pedagogy to instructors from other Latin American countries to prepare them to give classes at home. About 150 foreign students attend these 2-4 week courses. Other courses are offered to union leaders from all over the world on international economics, labor policy, and the Cuban socialist system. Foreign students pay only their transportation and meal expenses. The other costs are covered by the Cuban national union sponsoring their attendance.

In addition to the programs provided by the CTC, the various ministries have developed training programs for administrators and managers of enterprises entering the Decentralized Management System. Since administrative staff are participating members of the unions, the expertise gained in these programs serves both the enterprise as well as the union. In addition, the Ministry of Basic Industry (MINBAS) and the National Union of Chemical, Mining and Energy Workers jointly developed a pamphlet explaining the basics of the Decentralized Management System which was used to instruct workers in all MINBAS enterprises. As a follow up, additional courses were offered to each shop foreman.³⁵ By the end of 2001, MINBAS expects to have about 160 of its enterprises operating within the new system.

Labor Bar in Cuba

In the early months of 1994, the CTC requested the services of the National Organization of Law Collectives (ONBC)³⁶ to provide specialized legal assistance to the national unions. As a result, a team of labor law specialists was created at one of the collective law offices in Havana. Because of financial restraints, each lawyer has been assigned to provide legal assistance to two national unions. In addition to this team, the national CTC as well as many provincial CTC offices now have in-house counsel to advise them on legal matters. The primary purpose of developing this labor bar was to assist unions to develop and evaluate legislative and regulatory proposals as well as to draft and negotiate collective bargaining agreements and other contracts. One of Secretary General Pedro Ross' closest advisors is the

³⁵ Interview with José Joaquín Rodríguez Taboada, Vice Minister, MINBAS; interview with Deisy Samsón, Secretary General, Provincial Union of Chemical, Mining and Energy Workers, Havana.

³⁶ The collective law offices (bufetes colectivos) constitute a national system of legal services offices which provide representation to individuals in civil and criminal matters. They are self-financed and independent of the court system. For a fuller description, see Debra Evenson, *Revolution in the Balance* (Westview Press 1994).

former director of the National Organization of Law Collectives who helped create the specialized bar.

The creation of this specialized bar has had a significant impact. It has increased the capacity of the unions to articulate a more defined legal perspective and has improved the quality of legal analysis in the area of labor law. Preliminary drafts of the proposed new labor code have been reviewed by these lawyers, who recommended more than 40 modifications. In addition, they are active members of the Labor Law Society of the national bar association, another forum where labor law issues are analyzed. Since most of the members of this Society are academics, judges or in-house counsel to enterprises, the membership of these lawyers provides a stronger union perspective.

These lawyers also lead seminars on labor law to union leaders, particularly those at the shop level. At times, even management send personnel to these training sessions. Because many labor conflicts stem from insufficient knowledge or understanding of the law on the part of one side or the other, it is hoped that such sessions will reduce the number of disputes. The lawyers have also become very involved in assisting individual workers to draft their grievance complaints and in developing and presenting proofs; they may also provide representation to workers who appeal decisions to the courts.

The young lawyers who joined this team made a personal choice to work with the unions and to defend worker interests. Their salaries are derived from the retainer paid to the collective law office by the unions, but they may augment that salary to a degree by taking on individual court representation in labor and non-labor cases.³⁷ Although they generally make substantially less money than other lawyers at the law collectives whose incomes are entirely linked to the number and complexity of cases handled, very few have opted to leave the group to take other, more remunerative jobs.³⁸ Many accounts demonstrate that they strongly identify with their clients and provide vigorous representation.

The initiative of the unions to develop this important resource is reflective of the general strengthening of the capability of the unions to represent worker interests and to

³⁷ Legal services are not free in Cuba. Clients choose the bufete and lawyer they wish to represent them and pay a modest fee of about 25-75 pesos for the services.

³⁸ The restructuring of the economy and the growing number of foreign investment enterprises has expanded opportunities for young lawyers in Cuba. As a result of such increased demand, the law schools have had to substantially increase enrollment.

assume a more active role in policy-making. Yet, the number of lawyers working for the unions is insufficient to meet their needs. Although unions aspire to have at least one in-house lawyer each, current financial restraints make this impossible for now. Thus, they continue to develop the capacity of volunteer non-lawyers such as the Legal Assistance Groups (GAL),³⁹ and of the union leaders themselves to be up to speed on labor legislation.

³⁹ The GAL consists of teams of union members who have developed expertise in labor law organized in the workplace. They provide advice to the unions and to workers, particularly in the case of grievances. For additional discussion on their role, see the section on Grievance Procedures.

EMPLOYMENT AND HIRING POLICIES

This section describes Cuba's employment policy and the hiring and contracting procedures in Cuban state enterprises. Specific issues concerning hiring in the enterprises with foreign partners are dealt with in a separate section of this report.

Employment Policy

One of the basic tenets of the Cuban system is that every person has the right to a job, and that the state has an obligation to provide jobs for everyone able and willing to work, including youth, women and the disabled.¹ Up to 1990, there was virtually no unemployment in Cuba. The collapse of the Soviet bloc, however, resulted in the idling of hundreds of factories because of lack of raw materials, spare parts and energy supplies to keep machinery running. In addition, the government was forced to streamline its inflated bureaucracy, which meant trimming tens of thousands of government workers. For the first time in more than 30 years, Cuba faced a serious employment problem. At the worst point in the crisis, unemployment reached 8%;² at the end of 2000 it was reported to be 5.5%.³

Employment is not left to market dynamics. Development of strategies to deal with unemployment and idled workers is an effort involving several governmental agencies as well as the unions. In the first place, it concerns the Ministry of Labor and Social Security (MTSS) as well the Ministry of the Economy and Planning. The former is directly involved in the analysis and implementation of employment policy and also operates the municipal employment offices; the latter is central to decision-making concerning placement of new state investments to expand employment opportunities. The unions also undertake their own analysis of workforce needs and participate in implementing employment policies and placement of idled workers. Central to the policy is that all workers idled as a result of plant reorganization receive subsidies to support them until they can be re-employed.

Cuba categorizes workers who are idled in three ways: 1) "temporarily laid-off" workers;⁴ 2) "available" or displaced workers;⁵ and 3) unemployed. Workers who are idled

¹ The right to a job is articulated in Article 45 of the Cuban Constitution and reiterated in Article 3 of the Labor Code as one of the fundamental principles upon which the Code is based.

² José Luis Martín Romero and Armando Capote González, "Reajuste, empleo y subjetividad," *Temas*, No. 11, July-September 1997, at p. 77.

³ See, Juan Triana Cordovi, "La Economía Cubana en el Año 2000," in *La Economía Cubana en el 2000: Desempeño Macroeconómico y Transformación Empresarial*, Centro de Estudios de la Economía Cubana, April 2001; "Favorable impacto de la recuperación económica en el empleo," *Trabajadores*, February 19, 2001, p. 3.

⁴ The Cubans refer to these workers as "interrupidos" or interrupted.

⁵ These workers are referred to as "disponibles" or "available."

temporarily because of lack of raw materials, machinery breakdowns or other similar events are considered “temporarily laid-off.” These workers maintain their jobs at the same workplace and continue to receive their salaries during the period of interruption. “Available” workers are those whose jobs have been eliminated because of reorganization of the enterprise (what the Cubans term “redimensioning”) which may result in a reduction of the workforce or the addition of new lines of work for which the current workers are not qualified. These “available” workers, although idled, maintain their link with the enterprise during the time management and the unions look for alternative employment either within the enterprise or outside. Unemployed persons are those who do not have any link to a workplace and are looking for employment.

When thousands of Cuban enterprises were affected by the economic crisis in the early part of the 1990s, either having to curtail or stop operations altogether for long periods of time, hundreds of thousands of Cuban workers became “temporarily laid-off.” For both economic and political reasons, the government decided not to dismiss any of these workers even though they remained idle for months or even years. All were given a subsidy which was a percentage of their salary, and they maintained their link to their workplace. The unions through what is known as the Commission 18,⁶ played a central role in determining who would remain working and who would be idled. Decisions were made on the basis of seniority, the worker’s family situation as well as proximity of home to the work site, since public transportation was severely limited. Some were temporarily placed in agricultural jobs awaiting recovery of their former factory.

In workplaces visited that went through the process of a partial or full, short or long term shutdown, workers described with great emotion the process of making these decisions.⁷ For example, the Empresa Antillana de Acero Havana, a steel manufacturing complex, employed more than 7,000 workers during the peak of production prior to 1990.⁸ Today there are only 3,600 workers. The plant never halted production entirely, but, in 1990, 2 or 3 shops in the plant were eliminated. Although there was some attrition due to retirement, thousands were laid off, all of whom were given assistance in finding employment elsewhere or new

⁶ The name Commission 18 comes from the Resolution which created them in 1990, Resolución 18 (Para la admisión de los Trabajadores al Empleo, Su Permanencia y Promoción, así como para la Selección del Personal a Capacitar), 1990 (MITSS). This Commission, made up of representatives elected by all the workers and representatives selected by the unions, was established to make hiring and promotion decisions.

⁷ Resolución No. 6 (Reglamento para el Tratamiento Laboral y Salarial para los Trabajadores Disponibles), August 18, 1994 (MTSS), Art. 13.

⁸ Notes from visit to this plant, July 3, 2000.

positions in the same plant. The various Commissions 18 (one for each plant) were in charge of retraining and reassignment of workers. In some enterprises, like the refurbished Sarex plant in Santa Clara and the INDAL fish packing plant in Havana, all workers have been re-employed.

As factories and service enterprises began to reactivate operations after 1994, they often did so on the basis of reorganization. A few, like the Cienfuegos oil refinery merged with other enterprises resulting in the elimination of a number of jobs. Here too, the Commission 18 worked to place the affected workers.⁹

The hardest hit provinces were those on the eastern end of the island. Because of the continuing urgency of creating jobs in this region, the government has targeted these provinces for new investment.¹⁰ In a few instances, Ministries have granted loans or credits to individuals to allow them to become self-employed service providers. This has been done recently by the Ministry of Domestic Commerce in some eastern provinces.¹¹ Moreover, since women were particularly affected by the sharp decline in the textile and clothing industries, special efforts have been made by the MTSS to prioritize jobs for women who have been laid off during this period. Although many factories and service enterprises have been reactivated, providing an important source of employment, the largest area of employment expansion in recent years has been in agriculture. Only 5% of the Cuban workforce is employed in foreign investment enterprises, including tourism.¹²

In the last half of the 1990s the employment problem shifted from being primarily one of long term interruption to one of excess workers or "available" workers as the result of the reorganization of state enterprises. When restructuring of the work force and other efficiency measures result in the trimming of workers, the burden is on the enterprise itself to find new positions for those whose jobs are eliminated. At times, the corresponding Ministry becomes involved in creating new employment opportunities. For example, automation of the nickel plants in the city of Moa left a large number of workers idle. The Ministry of Basic Industry (MINBAS) created new service enterprises in the area to provide employment and to provide maintenance and other services to the nickel plants and the general population.¹³

⁹ The Cienfuegos Oil Refinery merged with a petroleum products transport company. The Commission 18 of each enterprise worked together to make employment and placement decisions.

¹⁰ *Trabajadores*, February 19, 2001, p. 3.

¹¹ Interview with José Joaquín Rodríguez Taboada, Vice Minister, MINBAS, August 20, 2001.

¹² Interview with Guillermo Ferriol Molina.

¹³ Interview with José Joaquín Rodríguez Taboada.

Workers who become “available” due to restructuring and who are not placed in new jobs, are entitled to compensation equivalent to 100% of salary for the first month and 60% of salary thereafter for up to three years depending on number of years worked.¹⁴ During this period of time, the worker remains the responsibility of the employer. If no new suitable employment has been found at the end of the relevant period of compensation, payment of the 60% subsidy is transferred to the social security program.¹⁵ In the case of enterprises operating under the Decentralized Management System, the state assumes the payment of the salaries of “available” workers; however, the enterprise undertakes a moral obligation to find employment. Moreover, an enterprise which has applied to enter into this system will not be approved until it presents a plan for reassignment or placement of workers who will become “available” as a result of the new management plan.

Even in the case of enterprises in which there is foreign investment and workers are hired through a state employment entity, the enterprise must indemnify the employment entity for the requisite period of time for the value of the salaries of workers whose jobs are eliminated due to reorganization or efficiency measures.¹⁶ The employment entity in turn pays the worker, who thus receives compensation while the employment entity or other agencies assist in providing training or placement in a new job.

Despite these guarantees and commitment to assure temporary subsidy to displaced workers, economic reforms have introduced a measure of uncertainty previously not part of the work environment. Factors such as redesign of the work force for enterprises in the Decentralized Management System and changes in criteria for employment and promotion place responsibility on the individual worker to obtain and maintain acceptable levels of proficiency. Since 1990, the concept of “idoneidad demostrada” or “demonstrated qualifications” has been applied to both hiring and promotion procedures, replacing sole reliance on seniority. These changes not only impact the individual worker but the union as well, which must respond to workers’ concerns and defend them from arbitrary decisions.

Still, Cuban workers have surprising mobility, particularly in Havana where there are the most employment opportunities. With the exception of university graduates who must perform two years paid social service, workers apply for jobs they want from among the available openings. It is common for workers to move from one position to another for

¹⁴ Resolución No. 6, Art. 13.

¹⁵ The period of compensation depends on the number of years worked. However, a worker who is offered suitable employment and cannot show justification for refusing such employment will lose eligibility for unemployment compensation.

¹⁶ See the section of this report on Foreign Investment.

personal reasons such as convenience of location, professional preference or higher pay. At one research center in Havana, more than 5 of approximately 60 professionals left for other jobs in a 12 period. Most left for higher paying jobs; one returned to the center after transferring to a retail store where he received higher pay. At several manufacturing enterprises visited, unions and management expressed concern over the stability of the workforce. On the other hand, at those enterprises with higher wages and better working conditions, union leaders reported relatively low turn over, and competition among workers for those jobs is increasing.¹⁷

Hiring Procedures

With the exception of enterprises operating with foreign partners,¹⁸ all Cuban workers are hired directly by the enterprises or entities which employ them. Each employee enters into a written contract with his/her employer and may only be dismissed for cause, as recognized in law and based on the terms of the contract. Employment may be permanent or temporary for a fixed period of time, which often occurs when someone is hired to fill in for a worker who is on extended leave or in sectors where employment is cyclical or depends on completion of specific projects.

Some Cuban workers seek employment by applying directly at the plant or entity at which they wish to work; others are referred to work centers by municipal offices of the MTSS.¹⁹ Each municipal office of the MTSS maintains a registry of job openings updated monthly. Employers are required to submit a list of vacancies to this office. People in the job market can consult with the registry or choose to register with the local labor office so that they will be notified of employment opportunities. In addition, employers often publish notices of openings in local newspapers. University graduates and graduates of some technical training schools are generally required to do two years social service as a way of repaying society for the cost of their fully paid education. The placement process for these graduates is coordinated by their educational institution.²⁰

¹⁷ An excess of applicants and low turnover were reported at INPUD, Brascuba and Suchel Camacho. At the Conrado Piña complex, the work force is reported to be fairly stable, but there is higher turnover in the tire plant where working conditions are uncomfortable because of the heat despite reduced work shifts of 6 hours a day and improved ventilation.

¹⁸ See section on Foreign Investment.

¹⁹ Resolución No. 51 (Reglamento para la Aplicación de la Política de Empleo) December 20, 1988, Arts. 6-23.

²⁰ Entities which are designated as those in which graduates may fulfill their social service requirements are assigned graduates who most often are given the opportunity to select among them. Those with the best grades are given first choice.

A small percentage of Cuba's employment opportunities are reserved for disadvantaged workers and are allotted through a centralized priority system administered by each municipal labor office of the MTSS.²¹ This system helps disadvantaged workers enter or re-enter the labor force by giving them priority status for a limited number of job openings at most places of employment.²² Such workers include those who have been laid off, those discharged by the military, partially disabled workers, workers receiving disability or some other form of social security or social assistance benefits, workers with a criminal past who have completed their prison sentence, and graduates of special education programs.²³

Several legislative initiatives create preferential employment opportunities for women.²⁴ Management, together with the union bureau or union section, designates certain positions in which an effort will be made to preferentially employ women.²⁵ In this endeavor management is also required to consider the opinion of the Federation of Cuban Women as to the positions that will be set aside. The proposed positions to be designated as priority jobs for women are presented to the workers' general assembly for a vote.²⁶ Further, the provisions for setting aside certain jobs for women are included in the collective bargaining agreement.²⁷ By law, when jobs designated for women become vacant, an attempt must be made to fill the position with another female employee.²⁸

In addition, Cuba has expanded opportunities for workers with disabilities. Working in cooperation with the Cuban Association of Persons with Physical Limitations (ACLIFIM), the MTSS assists in placing these workers in ordinary employment as well as special workshops. They may also become self-employed artisans or service workers. According to a report of a recent meeting of ACLIFIM, by the end of 2000, 142 special workshops had been created by the Ministry of Light Industry of which 38% of the jobs went to those with physical disabilities resulting in 1,175 jobs.²⁹

Work Contract

The minimum work age in Cuba is 17 years,³⁰ although 15 and 16-year olds may be permitted to work if for some reason they cannot be re-incorporated into the educational

²¹ Resolución No. 51, Art. 6.

²² Ibid., Art. 8.

²³ Ibid., Art. 7.

²⁴ Ibid., Arts. 26-30.

²⁵ Ibid., Art. 26.

²⁶ Ibid., Art. 28.

²⁷ Id.

²⁸ Ibid., Art. 29.

²⁹ "Voluntad de integrarlos plenamente," *Trabajadores*, April 9, 2001, p. 3.

³⁰ Resolución No. 51, Arts. 3, 122.

system.³¹ Full-time students are not permitted to work unless specially authorized to do so.³² The age of eligibility for retirement is 60 for men and 55 for women.

There is no concept of "employment at will"³³ in Cuba. All employees are covered by an individual work contract as well as a collective bargaining agreement which specify aspects of employment, including reasons and procedures for termination. Thus, Cuba's Labor Code stipulates that the employment relationship must be formalized by a written work contract³⁴ between the worker and the management of the enterprise or entity for which he or she works, or with the state employment enterprise in the case of the foreign investment sector.³⁵

Newly hired workers at state enterprises are required to work for a probationary period, the length of which is a highly debated issue among some unions and is subject to the collective bargaining agreement.³⁶ However, disadvantaged workers who are assigned employment centrally by the state through the special programs are not subject to a probationary period.³⁷ At the conclusion of the probationary period, the worker and enterprise enter into a new work contract for either permanent or fixed-term work.³⁸ Management is responsible for providing the appropriate instruction to a worker during the probationary period including a description of job duties, salary and payment schedule, workplace rules, health and safety rules and protections, and disciplinary procedures.³⁹

There are three types of employment contracts specified in the Labor Code: indefinite-term contracts, fixed-term contracts, and contracts for work at home.⁴⁰ The Code also sets out the minimum requisite content of the work contract which includes the duration of the contract, a job description and work performance requirements as well as the employer obligations, such as salary, pay period, length of workday and work schedule, social security benefits, health and safety protections. A signed copy of the contract must be provided to the worker by management.⁴¹

³¹ Ibid., Art. 3.

³² Ibid., Arts. 4, 123-127.

³³ The concept of "employment at will" is a legal concept which permits employers to fire workers without cause if there is no implicit or explicit contract to the contrary.

³⁴ Ibid., Art. 4.

³⁵ See description of the state employment enterprise in the section on Foreign Investment.

³⁶ Although the probationary period is generally about 30 days for most jobs, it can be extended to 180 days for employment that requires a high level of skill or advanced education or training. Resolución No. 51, Arts. 43, 44. The work contract covering the probationary period is much like the contract for fixed-term work. However, either party can choose to terminate the employment relationship during this period.

³⁷ Ibid., Art. 43.

³⁸ Ibid., Art. 46.

³⁹ Ibid., Art. 25.

⁴⁰ Ibid., Art. 33. Contracts for work in the home are reserved for the retired, the disabled, recipients of social assistance benefits and women with extraordinary family responsibilities. Ibid., Art. 102.

⁴¹ Ibid., Art. 32.

Indefinite-term or temporary contracts apply to permanent employment that is at least half-time.⁴² Fixed-term work contracts, not to exceed three years, are used for a range of purposes, such as cyclical and contingent work; specific work required at some distance from the main enterprise location for which it is more economical to contract workers in other cities; substitution for workers on maternity leave; replacement of a worker during a period of short-term disability or job training courses; social service work required of university graduates; military assignments; and work for a specific project that terminates upon the project's completion.⁴³ However, if the worker continues employment for more than 30 days after the expiration of a fixed-term contract, the contract automatically converts to one for indefinite employment, and the worker then has a right to ask for a new contract.⁴⁴

A work contract can be modified by agreement of the parties by adding an addendum to the contract.⁴⁵ It can also be terminated by agreement of the parties or at the initiative of either party, although the employer must have a legal justification for doing so.⁴⁶ If the employer terminates a contract other than for violation of the work rules, it must provide 30 days written notice to the employee.⁴⁷ During this period, the employer is obligated to assist the worker in finding new employment.⁴⁸ Fixed-term contracts and contracts for piecemeal work require fifteen days written notice.⁴⁹ A worker has the right to terminate the contract upon 30 days notice to the employer at the end of which he or she is entitled to receive all accrued pay and vacation benefits.

Thus, Cuban workers cannot be terminated at will, and, in fact, some managers interviewed complain that the law makes it too difficult to dismiss inept workers. In all cases, management must show cause as stipulated by law, such as diminished professional capacity,⁵⁰

⁴² Ibid., Art. 47.

⁴³ Ibid., Arts. 49, 57.

⁴⁴ Ibid., Art. 51.

⁴⁵ Ibid., Art. 67.

⁴⁶ The contract terminates automatically in a number of instances such as the death or retirement of the worker, the dissolution of the enterprise or upon the expiration or completion of the contract. Ibid., Art. 77.

⁴⁷ Ibid., Art. 80. Workers dismissed for infractions of work rules may bring a complaint before the local grievance board. See the section of this report on Grievance Procedures.

⁴⁸ Ibid., Art. 80.

⁴⁹ Ibid., Art. 82.

⁵⁰ Diminished professional capacity refers to reduced or insufficient ability to perform the work either as a result of diminished skill or the introduction of new technology for which the worker does not have the necessary skills or aptitude. In the case of the latter, efforts are made to retrain the worker.

violation of the rules of conduct, failure to comply with the terms of the contract, general layoffs with no possibility of being placed in or trained for an alternate position, or a criminal conviction carrying a prison sentence in excess of six months.⁵¹ In each case of dismissal, the worker has the opportunity to appeal the decision through established grievance procedures.⁵²

If a contract is terminated for violation of work rules or at the initiative of the worker, the worker is entitled to the salary for the work up to that point, accumulated annual vacation pay and any other benefits acquired during employment.⁵³ When a worker's contract is terminated due to diminished performance—and the worker cannot be placed in or trained for an alternate position—he or she is entitled to additional compensation equivalent to two months' salary.⁵⁴

Since all educational programs are free, a worker who takes a paid leave to receive job training must commit to working for a period of time equivalent to double the course duration (not to exceed three years) in order to cover the costs of the course and salary.⁵⁵ If the reincorporated worker quits or is terminated due to a disciplinary violation, he must reimburse the employer for the cost of the course at a rate proportional to the remaining time he would have been required to work,⁵⁶ and, if the worker refuses to return to work after training, he is responsible for the entire cost of the course.⁵⁷

The Hiring Decision

The hiring decision is made differently depending on whether the entity is a state enterprise, an enterprise applying the Decentralized Management System, or an enterprise in which there is foreign investment and certain Cuban enterprises that also contract workers through a state employment entity. Cuban workers at state enterprises that have not yet entered the Decentralized Management System are hired, promoted and fired based on the evaluation of hiring committees known as the "Commission 18."⁵⁸ The Commission 18 is comprised of one representative of management selected by the general manager, one union representative and one worker.⁵⁹ The worker representative is elected by the workers' general

⁵¹ Resolución No. 51, Art. 77. Management can seek the termination of a fixed-term contract for the same reasons as an indefinite-term contract and for the following additional reasons: Return of the worker who was being substituted, elimination of the position, and completion of the work contracted.

⁵² See the section of this report on Grievance Procedures.

⁵³ Resolución No. 51, Art. 43.

⁵⁴ Id.

⁵⁵ Ibid., Art. 94.

⁵⁶ Ibid., Arts. 95, 97.

⁵⁷ Ibid., Art. 96.

⁵⁸ Resolución No. 18, November 9, 1990.

⁵⁹ Ibid., Art. 3.

assembly which includes union and non-union members; the union representative is appointed by the local union leadership.

Under this unique system first established in 1990, workers participate in commissions that determine which workers will be hired, promoted, trained or terminated, as well as which job positions will be eliminated or consolidated.⁶⁰ As noted previously, when thousands of workers were idled as a result of plant closures or downsizing in the first half of the 1990s, these commissions were given the responsibility to determine which workers would continue to work at the plant or enterprise, and which would be transferred to another job position or workplace, retrained, retired or furloughed.⁶¹

Applicants for jobs are evaluated by the commission on the basis of a set of general criteria outlined in Resolution 18.⁶² These criteria include knowledge of the job position, professional or technical training obtained, quality of previous work, efficient use of equipment and materials, work experience, number of years employed at the workplace in question, and adherence to disciplinary rules. Each sector and workplace establishes its own definitions and rules as to professional capacity, and it has been defined differently even within industries.⁶³

The Commission also makes decisions regarding promotions. Workers may challenge a decision by the Commission 18 through established grievance procedures, but only on the basis of a violation of the procedural rules of the Commission. Some labor lawyers and others have criticized the inability of a worker to challenge the Commission's decision on other grounds,⁶⁴ leading some union representatives to argue that evaluation criteria should be specified in the collective bargaining agreement, particularly those for promotion. If management disagrees with the decision of the Commission, it can ask the Commission to reevaluate the worker. However, management must accept the final decision of the Commission.⁶⁵

Every worker's employment history is documented in a file which is maintained for the duration of his or her working life.⁶⁶ Employees have the right to examine their employment

⁶⁰ Ibid., Arts. 1, 6.

⁶¹ Workers at all of the state enterprises visited, with the exception of the day care center in Cienfuegos, recounted stories of the tasks undertaken by the Commission 18.

⁶² Resolución No. 18, Art. 7.

⁶³ Tania Orozco Saez and Aleida Rodríguez Díaz, "Algunas Consideraciones sobre la Idoneidad y Aptitud," paper presented at the Conferencia Jurídica Provincial de la Unión de Juristas de Cuba, Santa Clara, 1999, at 17.

⁶⁴ Ibid. at 41-42.

⁶⁵ Id.

⁶⁶ Resolución No. 12 (Reglamento para la Aplicación de la Política Laboral y Salarial en el Perfeccionamiento Empresarial) December 31, 1998, Art. 129.

file at any time⁶⁷ and are given the file upon retirement or long-term disability.⁶⁸ The file is not only important for its use in evaluating a worker's ability or job performance, but retirement, disability and death pension benefits are all calculated on the basis of this record of employment. The file contains documents such as a copy of the work contract, employment history, schooling and professional training records, periodic work evaluations, social security-related materials, labor merits and demerits⁶⁹ and salary records.⁷⁰ When a worker moves to a new job, he or she is required to present the employment file to the new employer.⁷¹ Thus, each place of employment is required to maintain and regularly update the employment files of all its workers.⁷²

Enterprises Introducing the Decentralized Management System

The introduction of the Decentralized Management System in the state enterprises has significant implications for employment and promotion policies. Here, the Commission 18 has been eliminated, since discretion for hiring and firing decisions rests entirely with management. Not only is management conferred this exclusive authority, but the exigencies of productivity and profitability impose new pressures for efficient use of personnel and new criteria and forms of evaluation. Enterprises can no longer support the inflated rosters of workers tolerated under the previous system and must utilize only the number of workers necessary for efficient operation. Further, absolute privileges of seniority have given way to new criteria known as "idoneidad demostrada" or "demonstrated qualifications." The shift has important psychological as well as economic significance. Workers, who once were secure in their positions as long as they showed up most of the time and complied with work rules, must now strive to continually meet performance requirements.⁷³ As a result, the unions have had to adopt a new perspective on how to protect workers in this changing environment.

Although there is no Commission 18 in which workers participate, the guidelines for the Decentralized Management System specify that management should take into account the

⁶⁷ Id.

⁶⁸ Ibid., Art. 138. Upon a worker's death or exit from the country, the employment file is given to the worker's family.

⁶⁹ The record of any disciplinary action taken against the worker is expunged from the file after a requisite period of one to five years depending on the gravity of the violation.

⁷⁰ Resolución No. 12, Art. 130.

⁷¹ Ibid., Art. 141.

⁷² Ibid., Art. 129.

⁷³ For a discussion of the social and psychological impacts of the introduction of "idoneidad" as the principle criteria for maintaining a job, see José Luis Martín Romero and Armando Capote González, "Reajuste, empleo y subjetividad," *Temas*, No. 11, July-September 1997, pp. 76-78.

opinions of the union, particularly with respect to promotions and dismissal. Further, management at its option may create a Committee of Experts to advise on whether a worker possesses the requisite skills and qualifications for the job. The Committee of Experts is composed of a representative of management, a union representative, two to four workers and a representative of the Young Communist Youth organization.⁷⁴ Although the committee provides its opinion, it does not have decision-making authority. Precisely because workers no longer participate in the actual hiring decisions, the national unions have encouraged locals to specify the criteria for evaluating a workers' performance in the collective bargaining agreement. Moreover, some unions insist that the creation of the Committee of Experts be agreed to in the collective bargaining agreement rather than be left to management discretion.

Thus, although management is given sole authority to make hiring decisions, the unions can and do have a role in the application of employment policies. Not only have they become more active in the specification and application of job qualifications, but they participate with management in drafting internal work rules of the enterprise.⁷⁵ In addition, when there are interruptions in operations due to equipment failures, lack of spare parts or raw materials or other reasons, guidelines require management to consult with the unions in deciding which workers will remain working and which will not.

In contrast to Commission 18 decisions, the decisions of management regarding promotion and qualifications can be challenged before the local grievance board known as the Base Level Organ of Labor Justice (OJLB). Thus, a worker who believes that he or she has been unfairly denied promotion or dismissed for loss of "idoneidad demostrada" can require the administration to defend its evaluation. This recent change puts an additional burden on the OJLB and the courts to enter the arena of assessment of worker skill and performance. It will also require unions to become adept not only in assisting workers claiming unfair treatment, but also in counseling those whose qualifications fall short of objective standards so that the OJLB does not find itself taking on the role of the enterprise's human resources department.

In other respects the contracting process is very similar to other state enterprises: there is a written contract for a fixed or indefinite period of time, the contract contains the same elements, and most newly hired workers will work for a probationary period as established in the collective bargaining agreement. Moreover, the same principles govern dismissal of workers as those applied to other state enterprises.

⁷⁴ Bases Generales del Perfeccionamiento Empresarial, Anexo al Decreto-Ley 187, September 14, 1998.

⁷⁵ Resolución No. 12, Art. 209.

Technical Training and Retraining

In general, Cuba has a highly educated work force in comparison with other countries in the region. Almost every worker has completed at least 9 years of primary and secondary school education and most have graduated from secondary school or have advanced degrees.⁷⁶ Moreover, both the government and the unions recognize the critical importance of elevating the qualifications of the Cuban work force in order to keep the economy competitive and to prevent Cuba from becoming simply the supplier of unskilled labor for foreign manufacturing enterprises. In addition, the introduction of new technology requires corresponding training. The government has begun to concentrate substantial resources to upgrade worker qualifications, and various ministries have developed training programs for both management and workers to increase their proficiency and skills.⁷⁷

The unions also view technical and professional training as one of the corner stones of economic survival. For the first time, a specific resolution directed at such training was adopted at the last CTC Congress. It urged the development and implementation of a national strategy for upgrading worker qualifications, and called on the unions to demand that managers and ministries design programs reflecting the needs of each workplace. The resolution also calls for such demands to be included in all collective bargaining agreements. In addition, the unions seek special retraining programs for workers who lose their jobs as a result of reorganization so that they will be qualified for new areas of employment.

Occupational Health and Safety

The first comprehensive law concerning the health and safety of workers in the workplace was adopted at the end of 1977, also creating the National Institute of Worker Health (INSAT).⁷⁸ The law established systems for evaluating hazards, issuance of regulations and regular inspections both by the MTSS and the unions. Although the study of workplace health hazards and regulations protecting workers from accidents and occupational diseases have existed for many years, the measures and inspections were frequently not implemented adequately or conscientiously. The economic crisis of the last decade only exacerbated the situation, making it increasingly difficult for Cuba to obtain protective clothing, masks, helmets, goggles and other items necessary for protecting workers.

⁷⁶ Interview with Guillermo Ferriol Molina.

⁷⁷ In 1999, MINBAS entered into a two year agreement with a school in Alberta, Canada to train Cuban instructors in advanced techniques in mechanics, automation, instrumentation, soldering and mechanics. As a result, a special school was established in Cienfuegos to train workers from the various ministry enterprises.

⁷⁸ Ley No. 13 (De Protección e Higiene del Trabajo), December 28, 1977. INSAT was first named the National Institute of Workplace Medicine.

In 1999, the CTC began to raise concerns both to the MTSS and to its membership. Meetings with the relevant government agencies were called and the CTC newspaper *Trabajadores* began to publish a steady stream of articles urging both administrators and workers to take action to prevent accidents and to use protective gear to prevent harm from toxic substances, etc. As a result, substantial efforts are being made to train more workers and technicians in the evaluation of hazards and the application of protective measures as well as mechanisms to assure that the regulations are followed by both workers and management. Some European and Canadian unions have helped by donating needed protective gear.

The articles published in *Trabajadores* have been particularly critical of the lapse in attention to worker health and safety, pointing the finger not only at inadequate evaluation of hazards and lax administrators but also at workers who do not comply with safety regulations. According to some analysts, most accidents are caused not by lack of safety devices but by failure to use them or follow correct procedures.⁷⁹ Some have advocated harsher measures against administrators for injuries caused by inadequate safety measures. In one recent case, the administrator of a bus repair shop is being investigated for possible criminal charges arising from the death of a worker.⁸⁰

Moreover, new technology has brought new risks. For example, when the old trunk line telephone center in Santiago de Cuba was replaced in 2001 with a new digitalized plant, workers complained that the chairs used by the phone operators were no longer suitable for sitting stationary in front of computer screens. The union obtained agreement from ETECSA, the joint venture company, to purchase new, more ergonomically adequate chairs. The computerization of offices and work centers has also introduced new concerns for workers who sit in front of the screens all day. Automation of industries has created risks not previously known. According to both the unions and the ministries, worker health and safety is a growing issue in collective bargaining and a particularly important one for the unions in foreign investment companies which introduce new technology.

All Cubans have access to free, comprehensive health services. In addition, many work centers have a doctor on site and some factories have on-site clinics to treat workers for work related and non-work related injuries and ailments. MINBAS has also established a special clinical center for workers who are at risk at the various enterprises under the supervision of

⁷⁹ See, e.g., "La protección e higiene del trabajo no admite satisfacción ni complacencia," *Trabajadores*, April 12, 1999, p. 2; "No basta con la disminución de los accidentes," *Trabajadores*, October 30, 2000; "El asunto no es de números, es de vida," *Granma*, November 29, 2000, p. 4, "Algo más allá de la pura meditación," *Trabajadores*, July 2, 2001, p. 3.

⁸⁰ Interview with Arturo Alarcón, lawyer for the National Union of Transportation Workers.

this ministry. Workers in the areas of mining, petroleum and chemical production as well as energy plants rotate through this clinic for a week or more at a time each year where they undergo tests for possible health affects and receive treatment if needed.

Cuban workers have the right by law to refuse to work in situations that place their life and health at risk, and both union representatives and workers interviewed had asserted this right in specific situations. One union inspector in Santa Clara recounted ordering workers to come down off a roof they were repairing and to stop work because conditions were not safe. Agricultural workers in Cienfuegos also reported that they do not work with pesticides and other similar products if the necessary masks, gloves and other gear are not available. This right was reiterated in a recent interview with the director of the department of occupational health and safety at the MTSS.⁸¹ However, all parties agree that the health and safety measures now in place require both improvement and stricter compliance.

A new campaign to strengthen regulations and increase awareness of workers and management of the need to reduce risks to workers calls for a combined effort by unions, management and government to advance beyond what is already legislated. The unions are organizing an effort between June and December 2001 to evaluate every workplace for hazards and to recommend corrective measures and new regulations. This requires involving both local unions and experts.

Volunteer Programs for Retired Workers

In a growing number of workplaces, groups of retired workers are being invited back. Such programs were initiated at the 17th CTC Congress in 1996. Today, there are some 170,000 retired men and women who voluntarily spend time at their prior work centers.⁸² In some instances, they only participate in social events or in monthly worker assemblies, but in others they may be called on to use their experience to help solve a particular problem or permitted to work one or two days a week or an abbreviated shift. At enterprises where they take on work duties, they are generally organized into special teams of retirees.⁸³ They are not paid wages, but they may participate in the incentive programs and have access to on-site meal, medical and other services.

According to union officials, these programs give retired workers an opportunity to remain active, transmit the benefit of their experience and augment their pensions by the

⁸¹ "No es sancionar, sino prevenir," *Trabajadores*, June 11, 2001, p. 3.

⁸² See, Resolution on "La organización y atención a jubilados y pensionados" adopted at the 18th Congress of the CTC, April 30, 2001.

⁸³ For example, at the Suchel-Camacho plant in Havana, retired workers have formed their own union section to perform specific work at the factory part-time.

monthly incentives. In addition, these retirees organize their own union sections and, thus, remain linked to their former union and its activities. As the Cuban work force becomes disproportionately aged, such programs have significant social as well as economic benefit.⁸⁴ However, in no case do such volunteers replace full-time paid workers.

⁸⁴ See, Alberta Durán and Ernesto Chavez, "Aging in Cuba: Realities and Challenges," *Medicc Review*, Vol. 2, No. 1, 2000 at www.medicc.org.

SALARY AND OTHER REMUNERATION

Salaries in Cuba today are low and have become one of the primary concerns of the CTC. This was not always the case. Prior to the 1990s, most Cuban households had savings and workers had confidence that their salaries or pensions would be adequate to assure a decent standard of living. However, the disappearance of the socialist market in Eastern Europe deprived Cuba of food products as well as consumer goods which it could previously sell to the population at affordable prices in pesos. Now that these goods must be imported for hard currency or produced in Cuba at substantially greater cost than those previously supplied by Eastern Europe, the buying power of the Cuban peso has sharply diminished to the point that ordinary workers struggle to make ends meet on their peso salaries alone. While free market economists argue that the only way to increase wealth is through private enterprise, Cuba's strategy is to increase the efficiency of its state enterprise system as the means to improving the standard of living of the general population.

It is not uncommon for the US press to report Cuban incomes in the equivalent of US dollars. According to such commentaries, a monthly salary of 249 pesos, the average base salary in 2001, translates into about \$12 at the official exchange rate of 21/1. Cubans are quick to admit that the current base peso salary is not sufficient; but it is a distortion to state that an average worker receives the equivalent of \$12 a month, a salary on which no person could survive. As both Cuban and foreign economists point out, when purchasing power and other relevant factors are considered, a Cuban worker's basic income is considerably higher.¹ Some of those factors include:

- Most Cubans own their own homes. By law, rent or mortgage payments to the state may not exceed more than 10% of the salary of one household resident. Thus, assuming that a person earning 249 pesos lived alone, he or she would pay 24 pesos (\$1.15) a month for housing which even in lower income areas of the US would cost anywhere from \$300-600 and usually accounts for 25-30% or more of a US worker's salary. In Cuba, if there is more than one wage earner in the household, the percentage of total household income dedicated to housing is even less than 10%.

¹ See, e.g., Ana Julia Jatar-Hausmann, *The Cuban Way*, (Connecticut: Kuarian Press, 1999).

- Gas and electricity cost about 5-20 pesos a month or the “equivalent” of 25 cents to \$1.00 compared to \$25 or more in the US.
- Local telephone service is about 6 pesos a month (30 cents).
- Each Cuban receives a monthly subsidized food basket worth \$25 or more at minimal prices ranging from 15-20 pesos a month. Although not enough to last the month, it provides basic staples.
- Hot lunches are either provided for free or may be purchased at most work places for about one peso (5 cents) or less.
- Increasingly, work clothes and uniforms may also be provided by the workplace for free or at subsidized prices.
- All health care and education services through university are free, including night school and special skills training programs for workers.

There are other items which should be taken into account as well, such as the number of inexpensive or free sports and cultural events. An analysis factoring in the items listed above demonstrates that Cuban incomes cannot easily be quantified in their equivalent in US dollars. Hence, a calculation of the value of a Cuban worker’s salary simply based on the peso/dollar exchange rate leads to a false comparison.

Although the standard of living for Cubans has fallen dramatically since 1990 in terms of access to consumer goods, Cubans fare well under indices of human development and equity established by the United Nations Development Program (UNDP), ranking among the top 3 countries in Latin America.² This index measures life expectancy, education and cultural development as well as access to basic necessities such as potable water, electricity and health care services. It also takes into account the equitable distribution of resources. In his presentation of the 2000 study of Cuba, Luis Gomez Echeverri, the resident coordinator of the UNDP in Cuba, applauded Cuba’s efforts, during the difficulties of its economic crisis, to maintain “enormous social achievements and equity.”³ Voicing similar praise, World Bank

² Investigación sobre desarrollo humano y equidad en Cuba 1999, Centro de Investigaciones de la Economía Mundial., (UNDP: Havana, Cuba 2000).

³ Presentation by Luis Gomez Echeverri, Resident Representative of the UNDP in Cuba, October 4, 2000.

president James Wolfensohn recently stated, "Cuba has done a great job in health and education."⁴

Nevertheless, although Cuban workers are far better off than workers in maquiladoras in other parts of the region like Mexico and El Salvador, the struggle to make ends meet is the number one issue for most Cubans. The government and Party alike are well aware that for socialism to survive in Cuba in the long run, the system must be able to provide a higher standard of living. As one researcher put it, Cuba has to demonstrate that "socialism does not mean being poor."⁵

Salary Scales and Systems

Salary scales are established by the Ministry of Labor and Social Security (MTSS) and are based on category of worker as well as number of years worked. For decades, the policy of centrally determined salaries sustained equality among workers doing similar jobs. The income differentials between the highest and lowest paid workers, including managers, was not more than 5/1. That differential remains narrow in the government ministries, state enterprises and public service jobs: the average salary of a non-technical production worker in light industry in 2000 was about 245 pesos; the salary of a minister was approximately 550 pesos. By contrast, a recent report reveals that the income differential between the highest paid executives and the average worker in the United States is more than 500/1.⁶ Moreover, in Cuba, differentials are not found among women and men doing similar jobs.

Yet, inequalities have emerged as many Cubans receive income other than wages, such as remittances from family members abroad, tips from tourists or earnings from self-employment or similar independent activities. While the influx of cash from family remittances—frequently estimated to be between \$600-800 million annually—is helpful to the economy, it also creates a significant division between Cubans who receive this support and those who do not. It also tends to undermine the value of work, at least for those who receive substantial amounts.

⁴ Jim Lobe, "Learn from Cuba, Says World Bank," Inter Press Service, April 30, 2001.

⁵ Interview with Hiram Marquetti Nodarse, researcher at the Center for the Study of the Cuban Economy, Havana. May 10, 2001.

⁶ Geneva Overholser, "Executive pay enters the stratosphere," San Jose Mercury News, September 3, 2001.

In response to this situation, current policies have two primary objectives: 1) to link individual income to productivity, permitting higher salaries to workers in profitable enterprises and 2) to raise salaries of workers in the service sector, particularly education and health services. Thus, over the past five to six years new salary systems based on productivity have been introduced in the state enterprises and in enterprises with foreign investment, substantially increasing workers' salaries. As a result, sometimes it is the workers rather than management, who are on the higher end of the income scale.⁷ Moreover, workers in these industries generally earn more than the heads of ministries and other government officials.

Under new salary systems, workers receive monthly incentives above base salary pegged to productivity, efficiency or improved quality; what is called "salary based on results of work." These incentives known as "estimulación" are applied in many enterprises whether or not they have entered the new Decentralized Management System, including state and foreign investment enterprises.⁸ Moreover, if the enterprise shows a profit at the end of the year, a portion of the year-end profits may be distributed to the workers as an extra bonus. Managers may benefit by increases based on profits, but unlike workers, they alone may also find their income reduced if the enterprise shows a loss.

Well over a million or about one third of Cuban workers now receive incentives in one form or another. In most workplaces where such incentives are applied, a percentage of salary above the base salary will be paid to the worker each month in hard currency or in Cuban pesos or a combination of both, depending on the resources of the enterprise. Although enterprises in the new management system have been conferred discretion to determine what systems and percentages will be applied, the application of such systems in other enterprises must be approved by the MTSS. In either case, however, the exact amount and the basis for its payment is an issue to be worked out between labor and management. Generally, a higher percentage above salary is paid to workers who are directly involved in production than to those who have desk or non-production jobs at the same enterprise. The designation of who is a "direct" worker and who is "indirect" is a subject of negotiation with management.

These additional payments above base salary take a variety of forms. Of course, they may be paid in cash. Some enterprises, however, pay hard currency incentives via a debit card

⁷ As one example, good cigar rollers make up to 1000 pesos a month compared to managers who may only make 500-600 pesos.

⁸ As of the end of the year 2000, about 60% of all workers in production enterprises, including agriculture, participated in such systems.

with a certain amount credited to each worker each month. These cards can then be used in stores to buy food, clothing, etc. In still others, workers may be given a group of products every month—what is known as the “jaba” (usually toiletries and household items)—or offered the ability to purchase a variety of goods at below cost.

Often, a combination of incentives is provided at the same workplace. For example, a recent job posting by the Empresa Cubana de Petroleo (CUPET) stated that the company paid 40% “estimulación,” 5% of which would be paid in hard currency by debit card, provided meals at the work place and gave workers a monthly “jaba” of toiletries.⁹ Thus, a worker at CUPET receiving a base salary of 245 pesos a month may also be paid an additional 35% of salary or a total of 330.75 Cuban pesos, plus the ability to purchase goods valued at \$12.25 US, plus a monthly supply of toiletries as well as free daily meals at the workplace.

As a result of the application of these systems, workers in highly profitable enterprises operating in hard currency generally receive a monthly “incentive” of an amount which is more than double that of his or her base salary. Thus, a factory worker whose salary is 200 pesos a month might receive an incentive of 10% additional pay in US dollars. Based on the exchange rate of 21/1, he then will receive an incentive of more than 400 pesos or a total of 600 pesos that month. In others, the percentages may be higher, perhaps 30-40% or as high as 200%, but paid in Cuban pesos. In most enterprises the incentive is paid to the entire workforce in a factory or division; in others the amount of the incentive paid to each worker is based on his or her personal productivity.

As explained in a recent article in *Trabajadores*, the weekly newspaper of the CTC, only workers at enterprises in which productivity and efficiency can support and justify such incentives can look forward to receiving them.¹⁰ For this reason, with the exception of the enterprises in the Decentralized Management System, their application must be approved by the MTSS. They are not perceived or characterized as awards or bonuses; rather, the concept is to make them an integral part of salary. Thus, it is not up to management at the end of the month to decide if the workers will get a “bonus.” Rather, the incentives are built into the planning and organization of the economics of the enterprise, with both management and labor participating in their design, implementation and oversight.

⁹ The advertisement was posted in the Havana weekly newspaper *Tribuna*, May 6, 2001.

¹⁰ *Trabajadores*, December 11, 2000, p. 5.

Workers as well as management may receive such additional payments. Logically, in order to apply such systems, the enterprise must have adequate accounting systems and a sustainable, profitable business. Factors such as efficiency, lower costs and higher quality are key factors as well as the successful marketing of their products and services. Thus, both workers and management have a direct stake in improving the quality and efficiency of production.

The application of these systems has not been without problems. Currently, only about one third of workers nationally participate in such systems although some sectors have been more successful than others. For example, workers in the Commercial, Gastronomy and Service Union expected to have 40% of workers covered by the end of 2000,¹¹ and in the Metal Workers Union over one third participated in mid-2000 with the expectation that 80% would be covered by the end of the year.¹² On the other hand the enterprises belonging to the Ministry of Light Industry report serious difficulties in applying these measures because of problems with raw materials, machinery breakdowns and the marketing of goods produced.¹³

The CTC has called for the expansion of such systems to all areas of the economy and all enterprises. The issue is recurrent at almost all union congresses. The CTC also seeks greater flexibility and creativity in the design and implementation of these systems. Moreover, the CTC is pressing the government to consider these incentives as part of a worker's salary for purposes of calculating social security and other benefits.¹⁴

One important result of the introduction of these systems is that control over worker income is shifting from being exclusively determined by administrative agencies to being determined by the enterprise itself, directly dependent on the ability of management and labor to increase efficiency. In this new environment, the CTC and the national unions must equip both their upper level and shop level leadership to participate effectively in developing and implementing efficient and productive work plans which can support additional payments to workers. Although persistent problems such as interruptions in the supply of materials and the breakdown of equipment may affect productivity, inefficient organization and management

¹¹ *Trabajadores*, September 11, 2000, p. 13.

¹² *Trabajadores*, July 17, 2000, p. 3.

¹³ A recent article in *Trabajadores* reported that in the enterprises under the supervision of the Ministry of Light Industry approved to apply such systems only 17% of workers were able to receive the incentives because of such problems. *Trabajadores*, December 11, 2000, p. 5.

¹⁴ Resolution entitled "El Empleo, el incremento de la productividad y el salario de los trabajadores," paragraph eleven, adopted at the 18th Congress of the CTC, April 30, 2001.

may also be responsible for poor performance. It is for this reason, among others, that the CTC has called for the removal of inept management and exhorts local unions to complain to the relevant ministries when management is ineffective.

Enterprises which have entered into the Decentralized Management System have additional discretion and may raise base salaries for all or specific workers up to three levels above what would normally be paid according to established scales. The application of such increases is subject to negotiation between the union and management in the collective bargaining agreement.

The same flexibility is not present in sectors financed by the national budget or in those organizations which are self-financed like the unions themselves.¹⁵ In 1999, the government increased the salaries of teachers, health care workers and other public service workers. Similarly, musicians' and other cultural workers' salaries were increased in 2000 and increases in state administrative agencies are expected to be implemented in 2001. Yet, these salaries continue to lag behind the income of production workers who participate in the incentive systems. Although the situation can be helped by efficiency and cost saving measures, the government argues that further increases in these sectors are primarily dependent on overall economic growth.

In some instances, however, workers in these sectors have been given awards in the form of appliances and other goods. Some doctors, for example, have been given cars or motorcycles by the government to ease transportation difficulties both during and after work. At the last CTC Congress, delegates applauded proposals to give workers in these areas priority for new housing as well. In addition, workers at ministries may be offered the possibility of purchasing goods at wholesale prices as a way of augmenting the purchase power of their salaries.

With the exception of the incentives paid by posting amounts to worker debit cards or similar programs, all salaries and monetary incentives are paid in cash. Pay envelopes are distributed at each work center on a monthly basis. Despite the severity of the economic crisis during the first half of the 1990s, payroll was always met by every enterprise and work center.

¹⁵ Union staff salaries are paid out of the budget of the national unions and the CTC which is funded by individual dues payments.

Tips

Workers in the tourist sector, from hotel doormen to waiters and cab drivers, receive dollar tips in addition to their regular peso base salaries. In most cases, those involved in direct service who receive the tips share them with other personnel at the same workplace. Each work place has a formula for how much each worker should contribute to a fund for the other workers. For example, cab drivers are expected to contribute a percentage of the tips they receive to the office workers who take the calls and do all of the paper work. The same is true of restaurant workers. Other than these kinds of contributions, workers may keep the tips they receive, and reporting of the total amount of tips received is voluntary. Some restaurants, however, put the gratuity on the bill in which case management has some control over how the tips are distributed among the workers.

In addition to sharing tips among co-workers, employees in the tourism union have initiated a program of donations to the health care system. In particular, hotel workers make sizeable donations to children's cancer wards. In 2000, the tourism workers in the City of Havana alone contributed over \$700,000 to one pediatric hospital.¹⁶ Such donations are voluntary. Although there is considerable peer pressure to contribute, the actual amount of tips received by a worker is known only to him or her; thus, the voluntary generosity of all or most of these workers is apparent by the size of the annual collection. In addition to the monetary donations, some local unions organize visits by workers to the various children's wards as a way of encouraging the workers to identify with the people they are helping. Similar programs of donations have been initiated in other industries where workers receive substantial income above salary.

¹⁶ Interview with Marcia Martinez Quintero, Provincial Union of Tourism Workers, City of Havana, November 16, 2000.

COLLECTIVE BARGAINING

Collective bargaining in Cuba is very different from that in capitalist countries. All Cuban employees are covered by a collective agreement at their work center: not only are the workers at every workplace unionized, but a collective agreement between the union and management in every enterprise or employment entity is obligatory under Cuban law. However, since a broad array of rights in Cuba are protected by national legislation,¹ the areas of bargaining are more limited than in free market economies. Yet, there remain significant items open for negotiation with management and these, as well as new ones which have emerged, have become increasingly important in areas of foreign investment and in state enterprises where the new Decentralized Management System is being implemented.² This section describes the changes which have taken place in collective bargaining in Cuba in the last decade and the process of negotiation and enforcement of such agreements today.

Background

Collective bargaining agreements were first given limited legal recognition in Cuba in 1934³ and later embodied in provisions of the Constitution of 1940. Although the character and breadth of protection given to workers under the collective agreement depended greatly on the strength of each union, such agreements became common practice in those work centers where workers were represented by a union. With the revolution of 1959, the character of such agreements changed dramatically. Collective agreements became universal in all workplaces, but most of the clauses were determined by legislation which granted a wide range of universal legal protections to workers which previously were only obtained, if at all, as the result of negotiations between antagonistic parties. Such national legislation and regulations included not only the universal guaranty of such rights as an 8 hour work day, 30 day paid vacations, social security benefits, free healthcare services on and off the job, maternity leave

¹ For a list of essential rights protected under Cuban law, see the section of this report entitled Background.

² This system, introduced in 1998, is described elsewhere in this report. Briefly, it is a system that reflects the continuing decentralization of economic activity in Cuba. Management in enterprises that have entered into this system have much greater discretion and flexibility in decision-making than management in state enterprises operating under the prior system of centralized planning. This new flexibility and discretion changes the dynamic between management and union in important respects since certain areas previously determined by the supervising ministries are now determined through union/management negotiations.

³ Decree Law No. 446, August 24, 1934.

benefits and other social guarantees, but also established basic salaries for all categories of workers.⁴

The first legislation specifically covering collective bargaining since the Cuban revolution was adopted in 1983.⁵ Decree Law 74 regulates both the content of the collective bargaining agreement (“convenio colectivo”) as well as procedures for approval and enforcement. The law provides an exhaustive list of all the subjects which must be covered by the agreement, including how the workplace will be organized, work schedules and shifts, salaries and pay schedules,⁶ the system of performance bonuses, workplace benefits, etc.⁷ All workers are protected by and must abide by the collective agreement, regardless of whether they are union members or whether they were employed at the workplace at the time the agreement was signed.⁸ No work contract may contain provisions that conflict with the provisions of the collective agreement.⁹

In essence, because of the existence of comprehensive legislative protection and regulation of labor relations, the collective agreements did little more than obligate management to comply with the law. As a result, unions were lax about drafting such agreements, and, in some cases no collective bargaining agreement was even drafted or, if it was, it was a mere formality which once signed was filed away and forgotten about. One labor law professor recounts having given her class an exercise every year in which students were assigned to ask the working members of their household to describe what a collective bargaining agreement was and whether they had ever seen one. In the vast majority of cases the answer was that they did not know what it was and had never seen one.¹⁰ A similar critique was frequently heard at union congresses and conferences. As noted, the lack of such an agreement or a negotiation process did not mean that workers did not enjoy substantial legal protection.

The Impact of Economic Reforms

In recent years, however, decentralization of microeconomic decisions has converted the collective agreement into an important, if not primary, instrument regulating labor-

⁴ For a more detailed description of benefits which Cuban workers enjoy as a matter of law, see the section on Social Security and Benefits.

⁵ Decreto Ley No. 74 (Convenio Colectivo), August 9, 1983.

⁶ Even though salaries were legislated nationally, the salary schedules for each work place were included in the agreement. Some criticized this as unnecessary since management already had a legal obligation to pay the salaries dictated by law, but others stated that it was preferable to have all of management’s obligations included in one document.

⁷ Decreto Ley No. 74, Arts. 8-10.

⁸ Ibid., Art. 6.

⁹ Ibid., Art. 2.

¹⁰ Interview with Professor Eulalia Viamonte, May 10, 2000.

management relations. The policy of creating incentives based on efficiency and earnings opens new areas for worker participation and bargaining. Although the upward limits on salary incentives is established by the government in most state enterprises, the unions may negotiate guidelines for implementation in the work center, including the basis for calculation, requisites for entitlement, evaluation of eligibility, etc. Base salary, itself, is subject to negotiation within specified ranges in the enterprises entering the new Decentralized Management System. Other subjects not dictated by legislation must be bargained for with management, such as transportation services, work clothes, worker training, etc.

Moreover, the collective agreement defines important aspects of worker participation in decision-making and the rights of the union to obtain information about the enterprise. For example, the agreement specifies the union's right to have a representative present at the weekly planning meetings of the management council which includes all department heads. Such provisions embodying worker participation and the obligation of management to report to workers on the financial status of the enterprise are particularly important if labor is to become a true counterpart to management.

Also included in the collective agreement is management's obligation to periodically (usually monthly) report information to the union and workers about the state of production and services, profits, health and safety inspections, any grievance hearings and other developments relating to the various dimensions of the workplace. The agreement also includes provisions related to hiring and promotion procedures, including information about how the Commission 18 or the Committee of Experts¹¹ will function, the duration of probationary periods, and how work performance will be evaluated.

Further, the collective agreement outlines the rights and duties of the parties with respect to a broad range of issues concerning work conditions and quality of life, commonly referred to as "attention to the worker."¹² In Cuba, production enterprises typically provide clothing and shoes to their workers. Virtually every workplace makes lunch and snacks available to workers on site, and many also provide transportation to and from work. Thus, the collective agreement may include provisions which detail management obligations for these services. Of utmost importance to Cuban workers are clauses covering an enterprise plan to provide or assist workers to obtain housing. In addition, it may address what kinds of cultural and recreational activities will be provided by the employer.

¹¹ See the section on Employment and Hiring Policies.

¹² Decreto Ley No. 74, Arts. 9, 10.

Other provisions which have become increasingly significant include the number of hours union officers may spend on union work during the work day and the amount of paid time workers may take off for training and skill upgrading. The latter has special relevance in the reform process of the state enterprise as all workers must receive training in the form of lectures and seminars on subjects such as cost analysis, general accounting, quality control, efficiency techniques, etc., so they can effectively participate in management decisions and develop ways of making the enterprise more productive and profitable. Moreover, as Cuba strives to upgrade its technological capacity, technical training programs are also vital to economic development, and such programs are being expanded throughout the island. Since retired workers increasingly perform voluntary work, participate in social activities and sometimes even have their own section within the workplace union, the collective agreement may contain provisions covering these activities as well.¹³

Drafting and Negotiation

Most places of employment sign a new collective agreement annually or bi-annually.¹⁴ The unions monitor the agreement for compliance on a quarterly basis and it may be amended before it expires if conditions warrant its modification. By law, the process of drafting the collective agreement requires the participation and collaboration of the workers, the union representatives and management.¹⁵ The union takes the first step in this process by identifying problems and issues in the workplace that should be addressed in some form in the new agreement.¹⁶

The initial stage of the drafting and bargaining process may take different routes. Frequently, there are industry-wide issues that are discussed by provincial or national union leaders with the pertinent ministry, the result of which may be an agreement on general measures to be included in the agreement of every enterprise in the sector. In some enterprises, the process is primarily undertaken by local union leaders, but generally the provincial union works with the local union in the final drafting of the agreement to be negotiated with management. Generally, the local union or the provincial union consults with the national office when there is a dispute with management over a clause they are not able to resolve.

¹³ Retired workers who participate in volunteer work at their former workplace, do not receive a salary but may be eligible for monthly incentives, and they join all of the union social activities.

¹⁴ Decreto Ley No. 74, Art. 5.

¹⁵ Ibid., Art. 16.

¹⁶ Aleida Rodríguez Díaz, et al., *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 11.

Regardless of where the process starts, workers (both union and non-union members) are consulted both before and during negotiations. Many workplaces maintain a "problem bank," a repository of workers' criticisms, suggestions and proposals of possible solutions that may be expressed publicly or by anonymous note if they wish. The items for the "problem bank," which often arise during the monthly worker assemblies, may become issues for negotiation in the collective agreement. The workers and the union leadership collectively analyze problems and potential solutions. The union can choose to undertake this analysis with input from management, or not.

After the union has discussed with the workers the provisions to be proposed for inclusion in the agreement, union leaders will meet with management and negotiate how to approach the various issues that both parties put on the table.¹⁷ Based on these negotiations, a preliminary agreement is drafted. If an accord between the parties is not reached during this meeting, the issues of contention are taken to the highest levels of management, which may mean the overseeing ministry, as well as to provincial or national union leadership for further discussion and negotiation.¹⁸

Numerous provisions of the law establish mechanisms for worker participation and approval of the collective agreement. Once an initial agreement is reached between the union and management, a draft of the collective agreement is distributed among the workers and presented at the workers' general assembly for discussion.¹⁹ The union has up to thirty days to bring the draft to a vote at a workers' general assembly. In order to enhance participation, the union must give workers at least seven days to review the draft before convening the assembly to vote.²⁰ In addition, each union section must provide at least 72 hours notice of the general assembly meeting called by the union to discuss the new agreement.²¹ Further, for the vote to be valid, 75% of the workers must be present at this meeting. Workplaces in which it is difficult to convene all workers at once are permitted to discuss and vote on the agreement by shift or department. However, the 75% participation minimum still applies.²²

¹⁷ Decreto Ley No. 74, Art. 17.

¹⁸ Rodríguez Díaz, et al, *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 11.

¹⁹ Decreto Ley No. 74, Art. 18.

²⁰ Id.

²¹ Rodríguez Díaz, et al, *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 12.

²² Id.

If workers at this meeting oppose a particular provision, the union and management have up to thirty days to modify the provision.²³ Once agreement is reached at the upper levels on the contested provisions, the agreement is taken back to the workers for a second vote. If passed by the workers' general assembly, the collective agreement is signed by the highest ranking person from management and the union; it takes effect immediately thereafter.²⁴

Although the agreement may have a term of one or two years, it may be amended at any time before it expires, subject to the approval of management and a majority of the workers according to the same procedures outlined previously for the approval of the original agreement. Such amendments, which are attached as addenda to the agreement, are quite usual. Thus, any time an issue arises which either management or the union wants to include as a binding provision of the collective agreement, they may agree to attach the provision to the collective agreement as an addendum.²⁵ A collective agreement can be terminated only under limited circumstances: once the plan it lays out has been realized; if the workplace ceases to exist; or if the workplace merges with another.²⁶

In the case of foreign investment enterprises, the Employment Enterprise ("Empresa Empleadora") is also party to the collective agreement.²⁷ Its role in the agreement is to bind the enterprise to the hiring and payment procedures as well as to provisions protecting workers from arbitrary dismissal.²⁸ The other provisions concerning workplace conditions and procedures, definition and application of bonus policies, probationary periods, and other specific workplace issues are bargained for with the union. Since foreign investment enterprises are obligated by law to comply with current Cuban labor legislation, workers in these enterprises are covered by the same benefits and guarantees provided in that legislation.

In order to ensure that the agreement is being complied with by all signatories, it must stipulate that both management and the union leadership conduct periodic reviews or "inspections" and report on findings to the workers during workers' assemblies especially convened for this purpose.²⁹ When violations of the agreement are detected, either the union

²³ Decreto Ley No. 74, Art.19.

²⁴ Ibid., Art.21; Rodríguez Díaz, et al, *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 13.

²⁵ Copies of all annexes must be distributed to management and the union. Decree-Law 74, Art. 25, August 9, 1983.

²⁶ Ibid., Art. 26.

²⁷ For further explanation of the Employment Enterprise, see the section of this report on Foreign Investment.

²⁸ The union may enforce the agreement against either of the other two parties.

²⁹ Rodríguez Díaz, et al, *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 13; Decreto Ley No. 74, Art.28.

or management is responsible for notifying the violating party so that the appropriate corrective measures can be taken.³⁰ If the violating party, whether management or the union, refuses to correct the violation, disciplinary action may be initiated as per the labor, administrative or, in cases of very serious violations, criminal laws.³¹

Future of Collective Bargaining in Cuba

Economic reforms have created a new context for labor-management relations in which each one has a specific function and perspective. Under the changing conditions resulting from these reforms and others to come, the content and negotiation of collective agreements have and will continue to change. For example, under the Decentralized Management System, new areas that may be the subject of negotiation include union participation in the process of designing the structure of the enterprise and its staffing patterns as well as in the development of components of the business plan, the budget for and implementation of health and safety equipment, and procedures for determining worker qualifications, among other aspects. In addition, this new system of enterprise management grants greater flexibility in the application of salary ranges to be paid to categories of workers, and the union may bargain over salaries in these ranges.³²

Thus, as the enterprise becomes the arena of critical decision-making affecting its profitability and the prosperity of its workers, the collective bargaining agreement evolves from a redundant formalism into an instrument governing essential aspects of labor-management relations. In view of these changes, both the CTC and the Ministry of Labor and Social Security have begun to propose changes in the legislation regulating the content and procedures for implementing the collective agreement. The CTC has argued that, while legislation which provides universal protections for workers must remain in force, in some areas the legislation should be more general in nature and provide for greater flexibility so that the agreement is better tailored to the circumstances of the particular workplace. Such flexibility or local discretion places greater pressure on the unions to assume a more assertive role in the drafting and negotiation process. In addition, the unions recognize the need to develop independent mechanisms to compel agreement and to assure compliance with and enforcement of these contractual arrangements.³³ At the moment such disputes are taken to supervisory

³⁰ Ibid., Art. 29.

³¹ Rodríguez Díaz, et al, *Algunas Consideraciones Sobre los Convenios Colectivos de Trabajo en Cuba*, at p. 13. See also, Código de Trabajo, Art. 17, 1985.

³² For example, legislation may assign several levels of salary for a specific category of worker and management will have discretion to pay up to two levels above the normal range.

³³ Interview with Guillermo Ferriol Molina.

departments in the ministries, but some union representatives have proposed the creation of an independent arbitration process or other administrative process in cases in which differences cannot be settled by less formal means.³⁴

There is nothing in Cuban law which prohibits unions from striking. The law is simply silent on the subject. However, union officials insist that the commonality of interest between management and labor, as well as the extent of union participation in management and policy decisions, eliminates the premises underlying the exercise of this important right in capitalist systems in which the interests of owners and workers are generally antagonistic. They argue that property relations in Cuba would have to undergo radical change for the right to strike to serve a constructive purpose for Cuban unions. Cuban workers do have and exercise the affirmative right to refrain from working in situations in which the lack of safety protections place their lives or health at risk.

The primary challenge for the unions has been to develop the capacity of workers and unions to be full participants in the collective bargaining process; to perceive, express and obtain the necessary provisions with sufficient clarity to make that participation effective. At the beginning of the decade, Cuban unions and workers had no experience in drafting and negotiating collective bargaining agreements in the context of substantial local management discretion resulting from decentralization. A number of foreign unions and labor organizations have provided assistance to train Cuban labor leaders. For example, the Danish labor movement collaborated in such a program in October 2000. A number of experts were sent to train a group of Cuban labor leaders who would then instruct others throughout the country. The courses covered not only the theory of collective bargaining but simulation practice as well. They also provided materials and training manuals. Spanish, Norwegian and Canadian unions have also collaborated in similar projects. In addition, a number of Cuban labor activists have attended seminars in collective bargaining abroad sponsored by the International Labor Organization.³⁵

Increasing the capacity of union representatives to improve the quality of the collective bargaining process and the resulting agreement is a high priority of the CTC and the national unions. Moreover, it is considered critical to the success of the implementation of the Decentralized Management System. Not only must workers obtain provisions detailing their

³⁴ Id.

³⁵ For example, Deisy Samsón, attended a month long seminar in Italy on collective bargaining agreements sponsored by the ILO. She was one of the negotiators of the collective agreement with Sherritt International when the joint venture in the nickel mine in Moa was established.

participation in management decisions, but they must be able to obtain clauses covering a host of issues concerning work conditions. From all accounts, there is a long way to go to bring local leadership up to speed on the drafting and negotiating process. Thus, provincial and national leadership, as well as labor lawyers, are actively involved in providing consultation to the local unions as well as reviewing the drafts before they are finalized.

In late spring of 2001, the CTC conducted an evaluation of all the collective agreements in enterprises which are in the process of entering this system. Union staff visited each work center to evaluate the progress. The evaluation focuses on 4 points: 1) participation of workers in the process of developing and approving the agreement; 2) correct utilization of basic documents in drafting the provisions of the collective agreements; 3) content of the agreements; and 4) clarity of the drafting sufficient for enforceability of the provisions. The results of this evaluation were not available as of the writing of this report.

However, honing the negotiating process does not translate into placing the union in an antagonistic relationship with management. Efforts to improve the effectiveness of the unions in negotiating the collective agreement as the central instrument ordering labor management relations has not changed the accepted notion that the parties should be guided by a shared social objective: to achieve an efficient and profitable enterprise which contributes to the national economy and welfare. Moreover, both workers and management participate in systems of remuneration which link bonuses or salaries to results or profits. Since the range of these benefits is regulated by law, neither will enjoy a benefit at the expense of the other. That is, management cannot receive a bonus to the detriment of worker incentive programs.

GRIEVANCE PROCEDURES

Since 1959, Cuba has employed a variety of procedures to resolve workers' grievances protesting disciplinary measures or denial of rights. The current system combines elements introduced in the 1960's and 1970's such as worker representation on the hearing boards and the right to appeal decisions to the courts. Thus, today all worker appeals of management decisions whether they be of a disciplinary nature or denial of a benefit such as promotion or leave, are resolved in the workplace by a body known as the Base Organ of Labor Justice (OJLB)¹ that is made up of representatives of the workers, the unions and management.² In addition, either party may appeal to the municipal court to review cases involving severe disciplinary measures and benefits.

The system, described in detail below, is the product of decades of experimentation with different approaches to dealing with workplace disputes between management and workers. It was first implemented on a trial basis in the province of Villa Clara in 1992 and, with some modifications, approved for nation-wide application in 1998. It is the object of continuing evaluation by the unions. With respect to the grievance process, the unions today fulfill several functions: they represent workers in claims of unfair treatment by management; counsel workers whose complaints are perceived to have little merit; and intervene when necessary to prevent infractions of work rules by workers so as to avoid implementation of disciplinary measures. This multifaceted role is considered consistent with the union's dual concern for workers' rights as well as workers' interest in the success of the enterprise.

The First Post-Revolution Procedures

The decade of the 1960s brought constant change in grievance procedures. The first law of labor procedure in Cuba, adopted in March 1960,³ created an administrative process in the first instance before functionaries of the Ministry of Labor with the right to appeal to the

¹ The Spanish name for the grievance body is *Organo de Justicia Laboral de Base* (OJLB).

² Large work centers may have more than one OJLB. Where there are only a handful of workers at a particular work site the OJLB may be located at a site which serves several small centers.

³ Ley No. 759 (*Procedimiento Laboral*), March 11, 1960. Prior to the Revolution there were a variety of systems established at various times. After 1940, workers ostensibly had a variety of administrative and judicial avenues available to air grievances including a petition to a Settlement Commission, to the Ministry of Labor and appeal to the Court of Constitutional Guarantees.

Chamber of Constitutional and Social Guarantees in the courts.⁴ The following year this procedural law was replaced by one which created a Claims Commission at the Ministry of Labor comprised of representatives of labor and management and presided over by an official of the Ministry of Labor. Its decisions were also appealable to the courts. A year later, judicial review was eliminated and all reviews were carried out within the administrative bodies of the Ministry of Labor.

Reflective of other contemporary innovations in popular justice, another system was implemented in 1964⁵ which established Worker Councils in the work centers to hear grievances. Around the same time popular courts presided by lay judges were established to resolve misdemeanors and to hear a variety of local claims.⁶ Thus, the Worker Councils carried forward the idea of citizen participation in legal procedures separate from the ordinary courts. However, unlike the decisions of the popular courts which were not subject to appeal, the decisions of the Worker Councils could be appealed to regional Councils of Appeal and ultimately to a Review Council at the Ministry of Labor.

With the adoption of the 1976 Constitution, the courts were given the exclusive "function to impart justice."⁷ That same year the Ministry of Labor was replaced by the State Committee of Labor and Social Security as part of the new centralized institutions which would govern the economy. The following year, Law No. 77 on Civil, Administrative and Labor procedure was adopted, and by 1978 appeals of all labor conflicts were resolved within the court system with the caveat that it was prerequisite to bringing a case to the courts that it first be heard by the Workers Council made up of 5 workers elected by the workers at the same work center. These decisions could be appealed by either party to the corresponding municipal court and further appeals were permitted to the provincial and supreme courts.

Within two years, this system was further modified and at the beginning of 1980 the Workers Councils only heard disputes involving worker rights and benefits and no longer reviewed grievances resulting from disciplinary measures. Such measures were appealable to the

⁴ Cuban courts are divided into chambers in which judges only hear cases of a particular nature such as criminal cases, civil and administrative cases. The Chamber of Constitutional and Social Guarantees was eliminated in 1973. Today the Labor Law Chamber hears all grievance appeals.

⁵ Ley No. 1166 (Justicia Laboral), September 23, 1964.

⁶ For a discussion of the development of the Popular Tribunals, see Adele Van Der Plas, *Revolution and Justice: The Cuban Experiment* (Amsterdam: Forris Publications, 1987); Luis Salas, "Emergence and Decline of Cuban Popular Tribunals," *Law and Society Review*, Vol 17, No. 4 (1983), pp. 588-612.

⁷ Constitución de la República de Cuba (1992), Art. 120.

courts, but unlike the previous system which suspended application of the disciplinary measure until there was a final court ruling, the measure applied by management remained effective unless and until it was overturned by a court. Thus, a worker who had been unfairly dismissed was idled until a court reversed the dismissal. Decisions of the Workers Councils concerning rights and benefits were also appealable, but in case of appeal they remained suspended until a final court decision. Although this system attempted to create greater uniformity in the resolution of disputes by relying only on the courts to make determinations in the cases of discipline, it was slow and cumbersome and eliminated the participation of the unions and workers. Further, a worker was not permitted an appeal as of right, but only in cases where the unions or the Ministry of Labor approved of the appeal.

Dispute Resolution Today

At the Sixteenth Congress of the CTC in 1991, the unions criticized two major aspects of the grievance procedures: 1) the long delays in achieving final resolution of disputes; and 2) the lack of worker and union involvement in disciplinary cases. In July 1992, an experimental procedure was implemented in Villa Clara province which attempted to combine worker participation and immediacy of resolution. Based on the success of this experience, the CTC resolved at its 1996 Congress to actively campaign for the establishment of a single system of labor justice in which the majority of claims would be resolved in the work centers themselves by bodies in which the workers, unions and management were represented.⁸ In addition, the resolution called for a system that was simple, fast and had procedural guarantees such as appearance of the parties in a public proceeding. After lengthy analysis and evaluation, the Villa Clara experiment became the basis of the legislation adopted in 1997 and implemented in February 1998.⁹

Legislation implementing the new system was the result of a collaborative effort between the CTC, the Courts, the Attorney General, the Ministry of Labor and Social Security (MTSS), and other ministries, including the Ministry of Justice, the Ministry of Sugar, the Ministry of Construction and the Ministry of Basic Industries. Representatives of these

⁸ Article fifteenth of the Resolution on the Reordering of Work, Employment, Salaries, Incentives and Labor Relations. XVII Congress of the CTC, April 27-30, 1996.

⁹ Decreto-Ley No. 176 (Sistema de Justicia Laboral), August 15, 1997.

institutions participated in a commission (Comisión de Trabajo) formed to evaluate the experimental system and to formulate a legislative proposal.¹⁰

As provided in the new law, the OJLB is established in the workplace as the body of first instance in the resolution of all individual labor disputes. Appeals of OJLB decisions are permitted as of right by either the worker or management only in cases of severe disciplinary measures resulting in dismissal or permanent transfer, but either party has a right to appeal any decision involving a dispute over worker benefits or rights. Appeals are taken to the Municipal Court which, under Cuban procedure, undertakes a new review of the facts.¹¹ The Supreme Court will receive appeals only when new evidence has appeared or the petition is based on a claim that the decision below was arbitrary, clearly unjust or without legal basis.¹²

Thus, the current system combines elements of popular justice tracing back to the worker councils of the 1960s and 1970s with judicial oversight to guard against arbitrariness and to assure uniformity of interpretation and application of the law. The rationale for making the workplace the site of primary resolution is to serve the dual purpose of immediacy of resolution and incorporation of worker participation, thus enhancing respect for and transparency of the process. With few exceptions, the system is applicable to all work settings, whether in the public service sector, state enterprises or enterprises with foreign investment or other foreign participation.¹³

Base Organs of Labor Justice (OJLB)

Most workplaces have one or more OJLB depending on the size of the enterprise. Although the OJLBs established in the Villa Clara experiment had five members, the body is now reduced to three members: one elected by the workers at their general assembly in the work place, one chosen by the corresponding union and one selected by management.¹⁴ The panel serves for three years. The union representative need not be a worker at that work center, but

¹⁰ Interview with Justice Raudilio Martín Sánchez, President, Labor Chamber of the Supreme Court, Havana, July 14, 2000.

¹¹ This process is similar to a trial *de novo*, or a new trial, in US legal procedure.

¹² Resolución Conjunta (1997), Art. 53 (MTSS-TSP). This Joint Resolution provides complementary legislation for the implementation of Decreto-Ley No. 176 (1997).

¹³ It is not applicable in the cooperatives (UBPC) or in the mass organizations or to the civilian personnel of the Ministry of the Interior or the Armed Forces or to the enterprises attached to these ministries. Nor does it apply to management personnel of state enterprises who are appointed by respective ministries or by shareholders of corporations.

¹⁴ Decreto-Ley No. 176 (Sistema de Justicia Laboral, 1997, Art. 5. The members of the OJLB are re-elected, renewed or assigned every three years. A substitute is designated for each of these members.

the union receives nominations from the local workers.¹⁵ The OJLBs generally hold sessions on the premises but outside of work hours, and all proceedings are announced and open to the public so that workers not involved may also attend.

The union is charged with the responsibility of setting up the OJLB panel, and according to one expert in Cuban labor law, the union's role has been critical to maintaining respect for the work of the OJLB¹⁶ The president of the OJLB, previously elected by the five-member panel itself, is now elected by the workers' general assembly and may be any of the three members of the panel.¹⁷ Thus, the role of the workers and the unions is central to the functioning of these panels.

The OJLB is the recourse of first instance in all labor disputes. A worker opposed to a disciplinary measure must make his or her claim before the OJLB within 7 days of notification of the measure. In the case of a worker who believes his or her right to a benefit has been violated or that management has not followed correct procedures in making promotional or other decisions, the worker has 180 days from the date on which the violation occurred to file a complaint with the OJLB. There is no formal requisite to bringing a claim to the OJLB. It may be by a simple letter or presented orally to one of the members of the panel who must make a written record of the claim and provide copies to the other members. The claim must consist of a clear and brief description of the facts and the proofs proposed to be presented. A claim properly presented may not be rejected by the OJLB, and the hearing must be convened within 10 days after it is received by the OJLB. Public notice of the scheduled hearing must be posted 72 hours in advance.

In contrast to the model of popular justice of the 1960s,¹⁸ the OJLB must apply written, substantive law. Since none of the members are legal professionals, the MTSS as well as the unions provide training programs in labor law. In addition, the unions have created Groups of Labor Assistance (GAL) to assist in the task. By law, the parties may not be represented by attorneys. However, workers may and often do seek the assistance of union

¹⁵ Id.

¹⁶ Interview with Guillermo Ferriol Molina.

¹⁷ Decreto-Ley No.176, Art. 6.

¹⁸ Lay judges presided in the Popular Courts of the 1960s and made determinations in cases of small claims and misdemeanors without reference to written laws.

officials, lawyers or co-workers in the preparation and presentation of their case. In the event of appeal, the parties may be represented by lawyers before the court.

The parties may submit documentary proof as well present witnesses to support their case at the oral proceedings. After the close of the hearing, the OJLB has five working days to make a formal finding which is provided to the parties in writing setting forth the basis for its decision. In most instances of disciplinary measures, the decision of the OJLB is final since the right of appeal to the Municipal Court is available only to the dissatisfied party in cases where management had fired or permanently transferred the worker to a different job. As previously noted, all decisions in the cases of claims of violation of worker rights are appealable.

In the case of disciplinary measures, the decision of the OJLB is implemented immediately and remains in effect during any appeal. Thus, a suspended worker remains suspended if the OJLB confirms management, until and unless the appeal is successful. However, decisions concerning worker rights are not implemented until the termination of the appeal process. The process is fairly expedited: appeal must be filed within 10 days of notification of the decision of the OJLB; and the Municipal Courts have 24 days to review and make a determination. Either party may petition the Labor Chamber of the Supreme Court within 180 days of the Municipal Court decision.

There is evidence that workers have gotten a fair hearing by the courts. Management has not been upheld in a substantial number of cases. In 1997, when appeal was not as of right and a worker had to have obtained the prior consent of the CTC or the MTSS in order to proceed with the appeal, the municipal courts received 2,292 appeals in disciplinary cases. The courts ruled in favor of management 58.8% of the time and 41.2% in favor of the worker, resulting in reversal in 12% of the cases and reduction of the measure imposed in the rest.¹⁹ In cases of claims of violations of rights, management's decisions were upheld in 61.1% of the cases.

Statistics from 2000 show that workers tend to obtain favorable decisions from the OJLB. The OJLBs overturned disciplinary measures or reduced them in 60.6% of the cases and sided with workers in 56.7% of cases involving claims of violations of benefits or rights. Appeals were pursued in about 25% of the cases. In the more than 7,562 cases appealed, the

¹⁹ Caridad Lafita Navarro, "Hacia donde se inclina la balanza?" (an interview with Antonio Raudilio Martín Sanchez, President of the Labor Chamber of the Supreme Popular Court), *Trabajadores*, August 17, 1998.

municipal courts overturned or modified decisions of the OJLB in 25.8% of disciplinary cases and in 41.7% of those involving benefits and rights.²⁰

Despite the apparent overall improvement in the outcomes for workers, the CTC interprets these statistics as evidence of the failure of union leaders to adequately represent workers before management. According to the CTC, local union leaders should be more effective in convincing management to withdraw or modify unfair or illegal disciplinary measures. The CTC and the national unions have worked to prepare local leaders both to know the legal rights of workers and to challenge management decisions they view as incorrect. In addition, the CTC argues that union leaders should work more closely with workers to prevent infractions leading to discipline. Hence, the objective is to reduce the number of violations and, thus, the number of claims before the OJLB.

Disciplinary Measures and Worker Rehabilitation

Among the unique features of Cuban law governing labor disputes are the provisions specifying what are considered to be violations of work discipline for which a worker may be sanctioned by management, those detailing the disciplinary measures that may be imposed and regulations for the rehabilitation of workers who have been disciplined. The law lists 12 violations for which a worker may be disciplined, including unjustified absence, failure to obey work instructions, failure to observe work rules, negligence, disrespectful conduct in the work place, and failure to comply with health and safety legislation.²¹ Of the measures which may be imposed, the most drastic are dismissal (permanent separation) and permanent transfer to a different and generally lower ranking post. There are, however, many intermediary measures including suspension for 30 days without pay, provisional transfer for a period of up to 30 days, fines up to 25% of one month's salary deducted over a period of time, denial of promotion for a year and public warnings.²² The sanctions for defined infractions are not specified. However, the law requires managers to take into account the nature and severity of the infraction as well as the work history and character of the worker.²³

²⁰ Unpublished evaluation of OJLB for the year 2000 undertaken by the CTC.

²¹ Specific regulations may be developed jointly by management and the unions in each economic sector in accordance with specific conditions.

²² Decreto Ley No. 176, Art. 14.

²³ Id.

Before imposing any disciplinary measure, management must provide the worker with a written description of acts for which he or she is being disciplined as well as the legal basis for the measure, the nature of proof supporting the finding of a violation and an evaluation of the seriousness of the act and its consequences. The notice must also be signed by the person applying the measure.

The application of a disciplinary measure is noted in the worker's employment file. However, that notation and documentation may be expunged after a requisite period has elapsed without incurring another infraction. A worker may achieve "rehabilitation" within one to five years depending on the gravity of the violation, the severity of the measure imposed and whether the worker has committed another subsequent infraction.²⁴ Management may reduce the period of rehabilitation on the recommendation of the union on a case by case basis.

One of the thorniest disciplinary problems for the unions today is that of workplace theft. Although pilfering of state property has always occurred, it is now more widespread and has greater economic significance given the fragile state of the economy. At its 17th Congress in 1996, the CTC demanded application of the harshest measures against workers caught stealing. However, five years of analysis and debate have tempered that position. The unions now take a more prophylactic approach to the problem, seeking more effective administrative controls and security measures to eliminate opportunities for theft and, at the same time, greater preventive work by union leaders with workers perceived to be stealing. The resolution adopted at the 18th Congress specifically states that the disciplinary measure adopted by management should not always be dismissal of the worker in order to give the worker the opportunity to rehabilitate him or herself.

Rights and benefits which are the subject of labor disputes

The most frequent issues of dispute between workers and management regarding rights and benefits concern application of salary incentives, implementation of the concept of "demonstrated qualifications" and questions related to leaves of absence. In each instance, the unions argue that greater clarity in the collective agreement can prevent many such conflicts from arising. Accordingly, if the criteria for participation in salary incentives is clearly laid out, there should be less contention over its correct application. Similarly, conflicts can be

²⁴ Resolución Conjunta No. 1 MTSS-TSP, Art. 62.

avoided over payments due during periods of leaves of absence if the provisions are drafted adequately.

The issue of “demonstrated qualifications,” is particularly complicated because it is less susceptible to precise definition and entails a certain degree of subjectivity, especially when it comes to promotion. In order to reduce the instances of conflict, the unions argue for greater specificity in the detailing of qualifications, both with respect to levels of education and training as well as other skills required by a particular job. The unions have been vigilant in monitoring the application of the concept and intervened in an instance when management resorted to firing a worker for being no longer “qualified” when the real reason for the dismissal was related to conduct and not qualifications. Several workers were dismissed by management for apparent participation in the theft of materials. When the OJLB overturned the dismissal for lack of sufficient evidence of culpability, management, instead of appealing the OJLB decision to the court, dismissed the workers on the basis of having lost “demonstrated qualifications.” Union lawyers appealed the decision and won the case in the Supreme Court which ruled that a worker cannot be dismissed on the basis of loss of qualifications if the grounds are related to conduct and not qualifications.²⁵

Role of the Unions

In addition to designating a representative to serve on the OJLB and providing representation to individual workers, the unions play an active role in the informal resolution of labor disputes. It is the policy of the unions to attempt, whenever possible, to prevent infractions by identifying workers with problems before the situation results in application of disciplinary measures by management.²⁶ Even in cases where a measure is applied, the union may intervene to seek its modification or its elimination. On numerous occasions during site visits, union representatives recounted having convinced management that the measure was inappropriate or that a worker was entitled to the benefit claimed. On the other hand, they also reported having counseled workers that appeal to the OJLB would be fruitless in their specific case in view of evident violations of work rules or lack of basis for the complaint.

²⁵ Tania Orozco Saez and Aleida Rodríguez Díaz, “Algunas Consideraciones sobre la Idoneidad y Aptitud”, paper presented at the Conferencia Jurídica Provincial de la Unión de Juristas de Cuba, Santa Clara, 1999.

²⁶ This policy was reiterated in numerous meetings with local union leaders. See also, Guillermo Ferriol Molina, “La justicia laboral: mucho más que un concepto,” *Trabajadores*, October 9, 2000, p. 3.

According to those interviewed, when an informal resolution was not achieved the worker proceeded with his or her appeal to the OJLB.

In numerous meetings and interviews, union officials, activists and labor lawyers made evident their commitment to represent workers before management whenever such representation seemed warranted. At a December 2000 workshop of members of the Groups of Labor Assistance (GAL) from various provinces, participant after participant spoke of the cases in which he or she had intervened to assure correct application of the law. Members of GAL are union members who volunteer to train workers and members of the OJLB in labor law. None were shy to criticize local union officials who did not adequately represent the workers before management. Based on their experience, they argued for continued training of both the members of the OJLB and union leaders as well as management in both the substantive law and procedure. Some argued as well that the unions should seek a provision in the collective bargaining agreement stating that no disciplinary measure may be imposed by management without first informing the union and providing the union the opportunity to respond before its application.

In addition, lawyers employed by the CTC or by the various national unions devote much of their time attending to individual workers who seek help in labor disputes. Often they assist, free of charge, in the preparation of the claim presented to the OJLB as well as counseling the worker on the submission of proofs. They are often called upon to represent workers when the decision is appealed to the courts.

Union Assessment of the Grievance Procedures

Like other new legislation adopted in the past decade, the system has been the subject of internal scrutiny and commentary. The CTC and the unions monitor the grievance process closely, compiling annual statistics on the number of disciplinary measures imposed, the number of claims filed with the OJLB and the outcomes. They also have surveyed workers to assess satisfaction with the role of the unions in dealing with labor disputes and their representation of workers. The most recent survey shows that 60% of workers interviewed were satisfied.²⁷

Although there seems to be general satisfaction that the OJLB is superior to previous systems, there are also proposals for modification. It has been praised by workers and unions

²⁷ Unpublished evaluation of the OJLB undertaken by the CTC for the year 2000.

because it is more direct and efficient,²⁸ resolving disputes in a relatively short period of time thus cutting the long delays produced by prior procedures which required a worker to first get the approval of the CTC or the MTSS before bringing a complaint to court, plus the time spent in the judicial process itself. Some union leaders suggest that the tripartite nature of the panel has resulted in greater acceptance of the decision of the OJLB, thereby reducing the number of appeals to the courts.

Yet, some Cuban lawyers and labor experts argue that it was a mistake to deny workers legal representation before the OJLB, especially in cases involving benefits which require knowledge of a complex of laws and regulations. Those who defend the decision not to have lawyers represent parties before the OJLB argue that the objective was to design a simpler, less formal process that would not get bogged down in technicalities. They contend that what is needed is further training of workers and union leaders in labor legislation so that they can better represent workers before management as well as before the OJLB.

Moreover, until fairly recently there were relatively few lawyers in Cuba specialized in labor law; nor were workers accustomed to consult lawyers. Prior to 1994, most of the lawyers who had substantial knowledge of labor law worked as legal advisors to enterprise management. Reportedly, even before the revolution there were very few lawyers who defended the rights of workers and, when they did, they were primarily involved in issues of social security or work related accidents.²⁹

The specialized group of labor lawyers formed in 1994 to assist the unions has taken on a significant role in training union leaders and legal advisors (GAL) to represent workers in grievance proceedings. As noted, they may also counsel individual workers on drafting the complaint, and organizing and presenting proofs before the OJLB. In addition, they assist the unions in discussions with ministries concerning appropriate application of disciplinary rules. Yet, even with the addition of this specialized group, there still aren't sufficient numbers of trained labor lawyers to provide legal representation for all workers with claims before the

²⁸ For example, workers at the INPUD plant in Santa Clara emphatically praised the new system on grounds of speed and efficiency.

²⁹ José Julio Carbonell García, "El Abogado Laboralista en Cuba y su Campo de Acción" paper presented at the conference "Globalización e Integración. Impacto en el derecho laboral y seguridad social," Havana, Cuba 1996.

OJLB. These lawyers already have fairly full dockets advising the unions and representing workers in appeals from the OJLB to the courts.

The system provides protection to workers from arbitrary decisions. Not only are workers represented on the boards which first hear the case, but there is a right to appeal in many instances. There is every indication that those involved, including judges, lawyers, union leaders and members of the OJLB are making concerted efforts to improve the process to make it both fairer and more efficient. However, since it was only implemented in winter of 1998 and requires the training of capable dispute resolution boards in each of more than 3,000 work centers, some of which have more than one OJLB, the quality of decision-making is uneven. In an interview for this study, the President of the Labor Law Chamber of the Supreme Court, pointing to a stack of petitions awaiting review, opined that those which are overturned generally come from an OJLB which has yet to gain experience in correctly applying the law and documenting its decision.

SOCIAL SECURITY AND BENEFITS

Although the socialist character of the Cuban revolution was not declared until spring 1961, achieving universal social security and welfare benefits was one of the first priorities of the Cuban government after the defeat of Batista. Prior to 1959, there were 52 different governmental social security programs, in addition to the workers' compensation and workers' maternity regimes.¹ Still, less than half of salaried workers were covered.² The new government completely revamped the social security system, adopting 15 new laws related to social security in 1959 alone. Spending on social security and other social programs increased dramatically.³ That same year, administration of the funding of the social security system was centralized in the Bank of Social Security of Cuba (BANSESCU).⁴ By late 1962, social security coverage had been extended to all Cuban workers, including 250,000 agricultural workers.⁵ Considered an absolute responsibility of the state, rights to social security and social assistance were incorporated into provisions of the 1976 Cuban constitution that remain in effect today.⁶

The first comprehensive law establishing a universal social assistance system, adopted in 1979,⁷ extended benefits to the elderly, the disabled, single mothers and other disadvantaged or vulnerable groups.⁸ It also broadened protections and compensation for salaried workers for all forms of disability, resulting from both work and non-work related illness and accidents, as well as maternity benefits.⁹ A major step toward integrating the country's labor, education, health

¹ Esther Criollo Hidalgo, "La Garantía Constitucional de la Seguridad Social en América Latina," *Revista Cubana de Derecho*, No. 40 (1990), at 22. Although the 1940 Constitution had established social security rights for workers, including protections for disability and unemployment, among others, these were rarely and sporadically enforced for the majority of workers. See "Seguridad Social: La Realidad de un Sueño," *Trabajadores* (July 26, 1999), at 3.

² *Id.*

³ *Id.* Applications for retirement benefits increased from approximately 20,000 in 1959 to 110,000 by mid-1960. Esther Criollo Hidalgo and Ismael Lugo Machado, "Hacer o No Hacer Reformas en la Seguridad Social. El Caso Cubano", paper presented at the III Encuentro Interamericano del Derecho Laboral y Seguridad Social, Havana, Jan. 11-14, 1999, at 3.

⁴ *La Seguridad Social en Cuba*, Conferencia Interamericana de Seguridad Social, Serie Monografías 6 (1994), at 26. BANSESCU funds were also used to provide loans for housing and agrarian reform.

⁵ *La Seguridad Social en Cuba*, at 30.

⁶ Constitución de la República de Cuba (as amended in 1992), Arts. 46-50.

⁷ Ley No. 24 (August 29, 1979).

⁸ *Ibid.*, Arts. 117-136.

⁹ *Ibid.*, Art. 4. Maternity benefits are detailed in Ley No. 1263 (January 14, 1974).

and social security systems, this law remains largely in effect today. Benefits may take three forms: 1) monetary compensation for lost income due to illness, accident and retirement; 2) hospital, medical and rehabilitation assistance available free of charge to all Cuban citizens; and 3) medication and food assistance for the hospitalized worker and medication for the worker who is not hospitalized. Responsibility for administering these benefits is split between the Ministry of Labor and Social Security (MTSS) and the Ministry of Public Health.¹⁰

Retirement Benefits

Retirement age in Cuba is fairly low: 60 for men and 55 for woman.¹¹ With some exceptions, in order to qualify for retirement benefits a worker must have worked a minimum of 25 years.¹² Benefits equal to 50% of salary are calculated on the basis of the highest salary earned in five of the ten years prior to retirement. However, in practice, the average retirement pension is 70% of salary because additional credit is given for every year worked over the minimum 25 years,¹³ and 1.5% is added to the benefits for every year worked past the age of eligibility for retirement. Other bonuses are awarded for exceptional workers as well. The cap is 90% of salary. In addition to the system outlined above, Cuba has five other social security programs for workers in special categories including military personnel, self-employed workers, workers in cooperatives, fisherman and artists.

Benefits are paid on a monthly basis and applications are processed locally in the municipality in which the worker lives. Awards may be contested, first by way of complaint to the municipal director of social security and that decision may be appealed to the provincial court. According to a specialist at the MTSS, it takes an average of 30 to 45 days to receive benefits once an application is filed.¹⁴

Family members of a deceased worker are entitled to pension benefits if at the time of death the deceased was working, was receiving a retirement pension or other benefit for disability, or otherwise qualified for benefits.¹⁵ The family members entitled to survivor

¹⁰ Interview with Orlando Peñate Rivero, Havana, Cuba, June 7, 2000.

¹¹ Ley 24, Art. 68. The retirement age is lower for those workers whose jobs require particular physical or mental exertion (55 years of age for men and 50 for women) if they have worked in such jobs within 12 years of retirement. *Id.*

¹² Exceptions are for those who entered the work force late in life and who qualify after 15 years of work if they work to age 65 and 60, respectively for men and women. *Ibid.* Art. 69.

¹³ Benefits will be increased by 1% or 1.5% depending on the category of worker.

¹⁴ Interview with Orlando Peñate Rivero, Havana, Cuba, June 7, 2000.

¹⁵ Ley No. 24, Art. 85.

benefits include the children under the age of 17,¹⁶ the spouse (legal or common law) and both parents provided that they were economically dependent on the deceased. Generally, the benefits are shared equally. The law encourages spouses to continue working if they are of working age and able to do so. Thus, a surviving wife may choose to continue working and also receive her portion of the pension. However, if she is less than 40 years of age and able to work and not responsible for the care of minor children or aged parents, she will only receive benefits for two years unless she becomes employed at that time.¹⁷ A surviving husband will only be entitled to his wife's pension if he has reached the age of 60 or was disabled at the time of his wife's death.¹⁸

Funding Social Security in the 1990s

Despite the economic crisis ensuing after the fall of the socialist bloc, Cuba has not reduced social security benefits for workers and their families.¹⁹ By the end of 1997, the total number of pensioners was more than 1.4 million and over 7,000 people were receiving social assistance payments, representing 14% of the population.²⁰ However, life on a pension today is extremely difficult since no indexing has been done to adjust pensions to the dramatic drop in purchasing power of the peso.

The government continues to fund social security from the national budget although employers contribute the equivalent of 14% of a worker's base annual salary.²¹ This is about to change. The tax law adopted in 1994 includes a provision obligating workers to contribute 5% of their salaries to fund social security.²² As a result, future financing of the system will be based on a tripartite arrangement with the employers, workers and the national government each making a fixed contribution to the system.

¹⁶ Children over 17 may receive benefits if they are unable to work or were economically dependent on the deceased.

¹⁷ Ley No. 24, Art. 88.

¹⁸ Ibid., Art. 86.

¹⁹ "Seguridad Social: La Realidad de un Sueño," *Trabajadores* (July 26, 1999), at 3.

²⁰ Esther Criollo Hidalgo and Ismael Lugo Machado, *Hacer o No Hacer Reformas en la Seguridad Social. El Caso Cubano*, paper presented at the III Encuentro Interamericano del Derecho Laboral y Seguridad Social, Havana, Jan. 11-14, 1999, at 9.

²¹ Ibid., at 10. Two percent of the 14% contributed to social security by employers actually stays with the employer to cover the administrative costs associated with the social security system. See *La Seguridad Social en Cuba (Edición Actualizada)*, at 70.

²² Ley No. 73 (Ley Tributaria), August 4, 1994.

However, at the time the tax law was adopted, the unions and the CTC successfully argued for suspension of the worker contribution until such time as salaries were sufficient to make contributions feasible. It is projected that in the near future only workers who are employed at enterprises in which the new system of decentralized management has been fully implemented will be obligated to make contributions. Although, by mid-2001 there were 50 enterprises operating under this system, none of the workers are yet paying into the fund. Thus, social security benefits remain a large and growing item in the national budget.

Even at the point that all workers contribute to social security, changes in Cuba's demographics will pose an even greater challenge to the maintenance of the system: the Cuban population over the age of 60 is now more than 13%, almost double that in 1960.²³ The phenomenon is largely due to the success of Cuba's health and educational systems. The average life expectancy of a Cuban today is approximately 75 years,²⁴ one of the highest among developing countries. One of the consequences of providing greater educational and professional opportunities to women as well as public health services assisting in family planning is that Cuba in 2000 had a flat birth rate.

The combination of these factors now creates a significant challenge to the system. Today, the average age of Cuban workers is 34.5 years, but this figure is projected to reach 41.6 years in 2015.²⁵ Further, beginning in the year 2013, it is estimated that 100,000 people will retire annually, compared to 60,000 a year currently.²⁶ At a time when the economy is struggling to employ those who are able to work and to increase wages, there are no easy solutions to funding and maintaining the system. The aging of the population has many social consequences in addition to the obvious one of how to fund the benefits. Specialized health and assistance services as well as family support programs will have to be expanded.

The problem is under intense review, but as of the writing of this report no consensus has emerged on how to resolve it. According to one CTC official, a draft of revisions to the social security law proposed by the MTSS was sent back to the drawing boards because of objections from the unions. This proposal would have raised the age of retirement over time in

²³ See, Alberta Durán and Ernesto Chavez, "Aging in Cuba: Realities and Challenges," *Medicc Review*, Vol. 2, No.1, 2000 at www.medicc.org.

²⁴ Centro de Investigaciones de la Economía Mundial, *Investigación Sobre Desarrollo Humano y Equidad en Cuba 1999*, (UNPD 2000), p. 199.

²⁵ *La Seguridad Social en Cuba (Edición Acualizada)*, at 68.

²⁶ Interview with Orlando Peñate Rivero, Havana, Cuba, June 7, 2000.

order to 1) increase the fund and 2) reduce the number of claimants. One of the unions' concerns was the potential impact on unemployment. Another measure being considered is to increase the incentives currently paid to those who work beyond retirement age. Another plan being reviewed would reduce the hours of work in some sectors, thus creating more employment opportunities.

Disability Benefits

Cuba does not have a workman's compensation system; rather workers automatically are entitled to both short-term and long-term disability benefits for both work and non-work related illness and accidents. The percentage of salary paid depends on whether the cause of disability is work related or not: it is higher for work related illness or accidents. Moreover, most factories have medical clinics on site and some have special occupational health clinics. The Ministry of Basic Industry, for example, has created such a clinic outside Havana where all workers who are exposed to chemicals or other toxins are sent one week a year for a thorough check up.

Maternity Leave and Benefits

Maternal health and childcare are high priorities in Cuban social policy.²⁷ Reflecting both the state's concern for pregnant women and their babies as well as the goal of achieving equality for women in the workplace, Cuba not only provides women and children comprehensive prenatal and postpartum health services but also has one of the most advanced maternity leave laws in the world.²⁸ Current law guarantees a fully paid leave of 18 weeks (6 before birth), plus the option of an extended leave at 60% until the child is one year old, with the right to return to the same job at the end of the leave.²⁹ A woman is obligated to stop working in her 34th week of pregnancy. Women are also given six days (or 12 half-days) paid

²⁷ Infant mortality in Cuba in 2000 was only 7.2 per 1,000 live births, much lower than many urban centers in the United States. *Anuario Demográfico de Cuba 2000*, Oficina Nacional de Estadísticas, p. 63, 2001.

²⁸ The term of the leave has been extended several times over the last four decades. The Working Woman Maternity Law adopted in 1974 expanded benefits granted in 1963, providing for 18 weeks of fully paid leave, 6 to be taken before the birth of the child. An additional non-paid leave up to one year after childbirth could also be taken with the same guaranty of returning to her original job. In 1992, paid leave after the birth of the child was extended an additional twelve weeks at 60 percent pay.

²⁹ Ley No. 1263 (Sobre la Maternidad de la Mujer Trabajadora), *Gaceta Oficial*, January 16, 1974 as amended by Resolución No. 11, April 30, 2001 (MTSS).

leave to visit a clinic for prenatal care before birth and one day paid leave a month during the child's first year for pediatric checkups.³⁰

Although Cuba has continued to expand its generous leave policy since the 1960s,³¹ working women raised complaints prior to and during the recent CTC Congress concerning the cost of individual child care and the desire of many women to take care of their infants through the first year. Prior law permitted paid leave for up to 30 weeks total (18 weeks at full pay and the remainder at 60% of salary) for leave taken before and after birth with guaranty of return to the same job. Since state-run subsidized day care centers only accept children over one year of age, women needed assistance to be able to care for their infants themselves until they reached eligible age for day care. It was at the 18th CTC Congress, itself, that the government announced the new measure giving mothers the option of additional leave up to one year after birth at 60% pay. The additional leave will alleviate the burden of child care until the child reaches the age of placement in day care. Although maternity leave does not affect eligibility for social security or disability benefits, women on maternity leave do not accrue vacation benefits, nor do they participate in the various monthly incentive programs.

There is some concern among women that these benefits may dissuade managers from employing women in key posts where prolonged temporary substitution is not as easy as in lesser skilled jobs. Certainly, the pressure to make enterprises more efficient and profitable could influence hiring and promotion decisions related to women of child-bearing years. On the other hand, 60% of technical workers in Cuba today are women. Further, the support shown for working mothers by the government and unions should provide a subjective, in addition to a legal, barrier to such discrimination which is so clearly contrary to public policy.

³⁰ Ibid., Arts. 12-13.

³¹ The first post-1959 law providing maternity benefits was adopted in 1963 and these benefits were later expanded in 1974 and 1990. Ley No. 1100 (Ley de Seguridad Social), March 27, 1963.

FOREIGN INVESTMENT

Introduction

Like a number of other socialist countries, Cuba adopted legislation which permitted foreign investment in joint ventures with state enterprises. Cuba did this in February of 1982,¹ several years before the Soviets took similar steps. However, it was not until 1990, when the economy began a sharp decline, that Cuba actively began to court foreign investment in the form of joint ventures.² At the beginning, Cuba attracted such investments primarily to expand facilities for international tourism, but it has since sought and obtained investment in other diverse areas including mining, energy production, light manufacturing and marketing. As an indication of the importance of these investments, in 1992 Cuba gave them constitutional recognition in order to provide a measure of security to investors.³

The 1982 law permitted only one form of foreign investment: a joint venture between a foreign company and a Cuban entity in which the Cuban party was to retain at least 51% control.⁴ In order to expand investment, a new foreign investment law was adopted in 1995 to broaden investment opportunities and modalities. The 1995 law permits not only such joint ventures, but also majority and wholly owned foreign companies as well as contracts of economic association between Cuban enterprises and foreign companies.⁵ Moreover, it expands the definition of investment to include both direct and indirect investment through stocks and other securities.⁶ In addition, it opens opportunities for foreign investment in all sectors of

¹ Decreto-Ley No. 50 (Sobre la Asociación Económica entre Entidades Cubanas y Extranjeras), *Gaceta Oficial Ext.*, February 15, 1982.

² Julio Carranza Valdés, et al, *Cuba: La Reestructuración de la economía*. (Habana: Editorial Ciencias Sociales, 1995). pp. 155-156. For a complete description of the law and its provisions, see Jean G. Zom and Harold A. Mayerson, "Cuba's Joint Venture Law: New Rules for Foreign Investment," *Columbia Journal of Transnational Law*, Vol. 21 (1983), p. 273.

³ Constitución de la República de Cuba (1992), Art. 23.

⁴ In practice, on occasion, the percentage of foreign ownership was approved at levels above 50%.

⁵ The distinction between joint ventures, or "mixed enterprises" as they are called in Cuba, and other economic associations which include both Cuban and foreign participation lies in the fact that the former establishes a juridical personality distinct from the investor partners whereas the formation of an economic association is a contractual relationship in which the contracting parties remain independent juridical persons. The contracts of economic association are used primarily in areas of promotion, packaging, distribution and import services. Ley No.77 (Inversión Extranjera), September 5, 1995, Arts.13 and 14.

⁶ Ley No. 77, Art. 11.

the Cuban economy with the exception of health services, public education and the military. In response to criticisms of the 1982 law, the 1995 law introduced more flexibility in the rules regulating economic associations formed under the law and the process of approval.

As of the end of 2000, there were 392 joint ventures and economic associations functioning in Cuba. However, as Cuba becomes more selective, pursuing larger, targeted investments as opposed to small investments, the number of such agreements with foreign companies has diminished: 58 investments were approved in 1999 as compared to 34 in 2000.⁷ A new modality of economic association introduced at the end of 2000, the cooperative agreement, provides for 3 to 5 year contracts by which a foreign company may guaranty assets such as raw materials, technology or equipment in the production process in return for exclusive foreign distribution rights during the term of the agreement. The foreign party to such a contract, however, does not share in the profits of the enterprise, which remains entirely state owned and managed.

The CTC and the unions, aware of the impact such investment might have, became involved in the early stages of the drafting of the 1995 law and continue to monitor and participate in policy developments. Early drafts of the 1995 law prompted the CTC to make a number of proposals and counterproposals concerning issues related to worker rights and labor relations. Specifically, the CTC rejected a provision which would have permitted direct hiring by the foreign investment enterprises and insisted that all hiring of Cuban workers be done through a Cuban employment agency. Moreover, the CTC insisted that no concessions be made to the foreign investors with respect to compliance with labor laws and that the new law explicitly obligate the foreign investment enterprises to fully comply with them.⁸ Further, the CTC requested that a provision be added which would assure legal protection for inventions and innovations developed by Cuban workers employed by foreign investment enterprises.⁹

A number of labor officials recounted some fears that foreign investors would not respect Cuban labor law, thus creating a difficult situation for the government at a time of economic crisis. However, these fears have not materialized, and experience has demonstrated that Cuban workers are both the direct and indirect beneficiaries of such investment. Nevertheless, foreign investment enterprises operate somewhat differently than state owned

⁷ The new areas of investment include the production of construction materials and paint.

⁸ Interview with Guillermo Ferriol Molina; Leonel González González.

⁹ Ley No. 77, Art. 36.

enterprises, a difference that affects both individual workers and unions. For one thing, the indirect hiring and payment processes that operate in foreign investment enterprises introduce a new element in the employment relationship. In addition, the unions have had to prepare themselves to deal with foreign managers, who bring different experience and perspectives to the work center.

Labor Relations

Currently, only about 5% of the Cuban work force is employed in the foreign investment enterprises,¹⁰ and all are represented by a national union that organizes a union local in each workplace. To date, Cuba has made no concessions to foreign investors in the way of exceptions to the application of its labor legislation, and the same labor and social security legislation that applies to Cuban state enterprises applies to companies in which there is foreign investment whether they be mixed enterprises—that is, jointly owned or enterprises in which the foreign partner only provides management personnel.¹¹ Thus, without exception, every enterprise in which there is foreign participation must honor all the rights Cuban workers enjoy, such as a month's paid vacation, fully paid maternity leave and sick leave, application of occupational health and safety regulations, etc.

In addition, foreign investment enterprises cannot deviate substantially from the legislated salary ranges for specific job categories, which means that workers receive salaries comparable to, or somewhat better than, those of workers in similar jobs in the state sector. Workers also receive other material incentives such as additional pay tied to productivity, goods and meals. In the tourism industry workers receive tips in addition to their base salaries. Management must also enter into a collective agreement with the union and permit union officers to carry out their union activities at the work place and to organize monthly meetings of workers. In addition, as in Cuban state enterprises, a union representative is invited to attend meetings of the management council of the enterprise to both obtain information and to provide input.

In the area of labor relations, it is the practice of indirect hiring through a state employment agency that has been the primary subject of debate in Cuba and the object of criticism from outside and from some investors. Although attractive to management, the CTC

¹⁰ Interview with Guillermo Ferriol Molina.

¹¹ Ley No.77, Art. 30.

rejected the proposal for direct hiring, citing concerns for the protection of workers, respect for the role of the unions and fears that direct pay in hard currency would sharpen inequality of income among Cuban workers. Thus, the final text of the 1995 law provides that Cuban workers, with the exception of high level management personnel, must be contracted through a state owned employment agency known as the Employment Enterprise ("Empresa Empleadora").¹²

Employment Enterprise

The primary functions of the Employment Enterprise (EE) are to screen and select applicants, enter into a contract with the individual workers that it supplies to the hiring enterprise, and act as the entity responsible for paying the workers.¹³ Thus, the EE, which has its own legal status as an enterprise, signs a contract with the foreign investment enterprise by which it commits to recruit and supply the qualified workforce requested. In addition to paying the Cuban workers, the EE administers all worker benefits and maintains their employment files. With the exception of tourism enterprises, the OJLB¹⁴ charged with resolving worker grievances is established in the EE rather than in the work center.¹⁵

The EE takes many forms, the structure and operation of which vary from industry to industry. For example, in instances of investment in an existing Cuban company, the Cuban partner of the joint venture may take on the responsibilities of the EE, and generally, at least initially, the same workers are hired in the mixed enterprise who worked at the Cuban company before the investment deal was made. Thus, when a Spanish company purchased shares in Habanos S.A., the Cuban cigar distribution company, the Cuban partner became the EE. In the nickel industry at Moa, a specific EE was established to provide the work force for the mines

¹² In special circumstances the enterprise may seek authorization to contract all workers directly. The Cuban telephone company, ETECSA, is a mixed enterprise which has been given authorization to hire all of its employees directly.

¹³ Resolución No.3 (Reglamento sobre el Régimen Laboral en la Inversión Extranjera), May 24, 1966 (MTSS), Art. 8.

¹⁴ The Base Organ of Labor Justice (OJLB) is the workplace based board which hears worker grievances. Its structure and function as well as appeal procedures are described the section on Grievance Procedures of this report.

¹⁵ In the case of hotels, the OJLB is organized in the workplace. Interview with Marcia Martinez Quintero, Director of Labor Affairs at the Provincial Union of Tourism Workers, City of Havana.

co-owned by Sherritt International. The positive experience with the EE in Moa lead to the decision to make it the EE for the state owned factory as well as for the joint venture.

On the other hand, the tourism industry has a different system altogether. It has established training centers that prepare candidates for the various jobs in the industry. Several centralized employment entities screen and refer workers for all tourism enterprises, both those with foreign participation as well as the state-owned enterprises in the industry. Thus, all Cuban hotel and restaurant workers serving the international tourism trade are hired indirectly through an EE.

Generally, the EE has a small administrative staff of 7-14 workers depending on the size of the industry served. Its staff consists of a director, secretarial and clerical staff, and staff skilled in human resources work who screen and evaluate applicants. The EE receives and interviews prospective workers and maintains rosters of qualified applicants. It may also have to recruit workers. In addition, it administers the unemployment benefits that are due to laid off workers and oversees programs necessary to retrain workers who remain on their roster.

Defenders of the EE state that it benefits both the employer as well as the workers. The employer benefits because it is assured the supply of a qualified work force and is relieved of the burden of administering social security, sick leave and other benefits. The workers benefit because the EE defends their interests and provides protection in the event they are dismissed by the enterprise or the enterprise folds. Further, along with the union, the EE takes responsibility to assure that Cuban labor law and the collective bargaining agreement are honored.

Salaries and Benefits

The salaries of the Cuban workers are paid by the enterprise to the EE in hard currency on the basis of a ratio determined by the MTSS during the negotiation process;¹⁶ the EE, in turn, pays the workers in Cuban pesos according to established pay scales. That the employer pays the salaries in hard currency and the worker receives his or her pay in Cuban pesos is not perceived by the unions as unfair to the workers. Although the base salaries of workers in the foreign investment sector are generally a little higher than their counterparts in the state

¹⁶ Resolución No.3, Art. 11. By law, a Cuban company in which there is foreign participation may not operate in Cuban pesos but only in hard currency. Workers on the other hand are paid in Cuban pesos.

sector, the policy serves to maintain a degree of parity among all Cuban workers who do the same or similar jobs.

A number of foreign investors complain that they are paying a premium well above the value of the labor force since what is paid in hard currency is higher than a 1 to 1 ratio of dollars to pesos. The rate paid in hard currency is based on average salaries paid for comparable jobs in the region, although the additional remuneration paid as monthly incentives may raise the actual labor costs above that of the region average. The differential value between what the enterprise pays in hard currency to the EE and what the worker receives in Cuban pesos is passed on to the government to fund universal services such as health care and education, and as such functions as a kind of tax.¹⁷ In addition, the foreign investment enterprises pay an employment tax which funds social security benefits.

Despite receiving base salaries in Cuban pesos, many Cubans seek work in foreign investment enterprises for the other perks and benefits they offer. Workers at such enterprises generally enjoy incomes superior to the average Cuban worker because of the virtually universal practice of giving monthly hard currency incentives (“estimulación”) above base salary. The regulations for this system are determined by the Council of Ministers,¹⁸ and issued as written agreements setting forth the maximum hard currency incentives for direct workers (those involved in production) and indirect workers (those primarily working in administrative positions). Regulations implemented in 2000 placed the maximum at 10% for direct and 8% for indirect workers.¹⁹ These limits are subject to change as the situation warrants.

Thus, at the Suchel-Camacho factory in Havana, which produces perfumes, deodorants and cosmetics, direct workers now receive monthly incentives above salary of up to 10% of their salary if the collective production and efficiency goals are met. The incentives are paid in hard currency. According to the secretary general of the union bureau at the factory, in 1999, the average monthly incentive received was \$13.80 (US); it was expected to be higher in 2000. Based on a conversion rate of 21/1, such hard currency incentives may represent more than

¹⁷ The EE maintains a portion of this differential to fund its operating expenses.

¹⁸ The Council of Ministers is the highest administrative body in the Cuban government.

¹⁹ Interview with Marta Camacho, Ministry of Foreign Investment and Economic Cooperation.

twice the value of a worker's monthly peso salary.²⁰ A similar percentage bonus of 10% for direct workers and 7% for indirect workers was received in the year 2000 at Brascuba, the joint venture cigarette manufacturing plant in Havana. On the average, 87% of workers at this plant receive monthly incentives.²¹

A recent report on the nickel industry in the city of Moa describes the dramatic improvement in income and benefits enjoyed by the plant workers as a result of participation of the Canadian company Sherritt International in one of the state run nickel mines.²² Salaries in general are higher, and the steady increase in production and profitability has yielded substantial gains to workers who now reportedly receive on average the equivalent of \$36 (US) a month in addition to their regular salaries and other perks. The company built new headquarters for the union and has made other contributions to improve the infrastructure of the city. In addition, the state run nickel mine located in the same city has benefited from the experience at the joint venture; investment in modern, automated equipment and new management have substantially improved its production and profitability, resulting in considerably higher salaries and benefits to its workers as well.²³

Moreover, since enterprises with foreign participation generally have greater and more fluid resources, they often provide Cuban workers perks such as transportation to and from work, work clothes, meals, improved work conditions, access to more advanced technology, etc. Visits to the Suchel-Camacho,²⁴ Brascuba²⁵ and Indal²⁶ plants in Havana, all of which are joint-ventures or have some foreign investment, demonstrated that work conditions were better than in the majority of state enterprises visited if only because the plants had been modernized, facilities enhanced and new equipment installed. All had clean well-kept dining facilities for workers who could purchase hot lunches at very modest prices (1 peso or less), medical facilities (clinics on site) and work clothes provided by the employer. Further, workers at tourism

²⁰ For example, a worker who receives a bonus of 10% of his monthly salary of say 300 pesos would receive \$30 which in 2000 was equivalent to 630 pesos.

²¹ Interviews at the Brascuba plant, July 11, 2000.

²² "Nickel Boom Reverses Mining Town's Fortunes," IPS wire service, September 7, 2000.

²³ Id., Interview with José Joaquín Rodríguez Taboada, Vice Minister, Ministry of Basic Industry.

²⁴ Suchel-Camacho is a joint venture between Cuban and Spanish companies which produces perfumes and cosmetic products for the Cuban and foreign export markets.

²⁵ Brascuba is a Brazilian/Cuban company which produces cigarettes. It employs new, up to date technologies.

²⁶ Indal is a Cuban fish packing company which has a small division financed by an Italian investor which makes and markets gourmet specialty items for the European market.

enterprises receive or participate in the distribution of tips which constitutes a significant income advantage.²⁷

Although wages paid to workers remain relatively low in Cuba,²⁸ the introduction of such investment has served to improve conditions and incomes, not only for workers in these enterprises, but for all Cuban workers. First, these businesses tend to pay higher base salaries plus substantial incentives, but, more importantly, they have contributed to the general recovery of the economy which has permitted the government to increase salaries in many public sector jobs, particularly health and education. In addition, the growth of these enterprises, especially in the tourist industry, has helped spur recovery of Cuban enterprises which, in turn, translates into increased income for workers in those sectors.²⁹ For example, Cuban state enterprises have steadily taken over supply of the needs of the tourist industry, jumping from supplying 35% of the products and services consumed in 1999 to over 60% in 2000, and the percentage is expected to continue to increase substantially by the end of 2001.

Hiring and Firing Procedures

Although a worker is legally contracted by the EE, he or she is for all intents and purposes an employee of the enterprise that supervises and evaluates his or her work. The EE serves only to recruit, screen and refer workers, and to administer salary and benefits. The definition of duties and responsibilities, evaluation and supervision are the exclusive domain of the foreign investment enterprise.

In general, a worker interested in working in an enterprise in which there is foreign participation applies to the corresponding EE which keeps a docket of qualified workers for the enterprises it serves. The worker is interviewed by EE staff, and his or her work history is checked. If there is an appropriate opening for which the worker is considered qualified, he or she is then referred by the EE to fill the opening at the mixed enterprise. In most cases, depending on the terms of the contract between the enterprise and the EE, the final decision as to whether the worker will be hired or not lies with the personnel department of the enterprise

²⁷ Hotel and restaurant workers as well as taxi drivers who receive tips give a portion of them to a fund for the workers who are not the direct recipients like kitchen and desk workers.

²⁸ The value of Cuban salaries is much higher than a simple conversion of peso to dollar suggests. See the section of this report on Salary and Other Remuneration.

²⁹ The policy of linking wages to production as a means of increasing wages is being applied where possible throughout the economy and has had the effect of increasing income for a substantial number of workers in the state sector.

and not with the EE, even though the worker formally signs an employment contract with the EE detailing the qualifications and conditions of employment.

Although the system is designed to maintain parity among Cuban workers and to identify those most qualified for the jobs in this sector, there have been problems of corruption in the hiring process. Some have complained that without personal connections it is impossible to obtain a job in the foreign investment sector, and in some cases even pay-offs have been made to those in position to accept applicants. As a result of such complaints in the tourism industry, the EE was reorganized and controls tightened to eliminate these practices. Similar measures have been taken in other sectors as well. Yet, the perception persists that without connections, it is unlikely that a worker will be hired in these enterprises.

Once hired, the worker's duties are defined and he or she is supervised by the enterprise managers who make decisions regarding internal promotions and disciplinary measures. Together with the union, management also establishes the work rules. Thus, even though a worker formally signs an employment contract with the EE specifying the qualifications and conditions of employment, the employment relationship is primarily with the enterprise where he or she works.

Depending on what the collective bargaining agreement says with respect to the probationary period for the position in question, the new employee will work for 30-180 days on a probationary basis.³⁰ The enterprise may return the worker to the EE during the probationary period for whatever reason. However, a worker who remains at the end of the probationary period may only be sent back to the EE for cause as spelled out in the collective bargaining agreement.³¹

If the enterprise sends the worker back without sufficient cause, such as a disciplinary violation, it must pay indemnification to the EE which in turn indemnifies the worker for the lost salary.³² This may occur in the case of reorganization of the workforce. Further, if a worker is returned for cause such as diminished performance, not only will the worker continue to receive his or her salary but the EE is obligated to try to qualify or train the worker or find another position in the same industry. As in state enterprises, if the worker is laid off for reasons beyond his control, i.e., a reduction in the work force, the worker will receive this

³⁰ Resolución 3, Arts. 11-12.

³¹ Ibid., Art. 15.

³² Ibid., Art. 19.

compensation for up to 4.5 years.³³ If it is for diminished or poor performance, he will receive this compensation for two months. According to the CTC, very few workers have been returned to the EE for lack of qualifications.³⁴

The grievance procedures followed by the EE are the same as those applied in the state sector although the composition of the OJLB is slightly different in that it is composed of four members: a representative of the union, a representative of the workers, a representative of the management of the EE and a representative of the management of the foreign investment enterprise.³⁵ As in the state sector, if a worker is fired and appeals to the OJLB and the OJLB finds that the worker was unfairly fired or transferred, the enterprise will be obligated to take the worker back. According to a CTC official,³⁶ this has happened on occasion in the tourism industry. The decisions of the OJLB concerning dismissal or demotion of a worker as well as those concerning rights to a promotion or benefit may be appealed to the courts by either party.

Enterprises in which there is foreign participation must also follow the same promotion practices of Cuban state enterprises. Thus, all openings must first be offered to present staff. If a current worker qualifies for a position which has opened up or is being offered, he or she must be given an opportunity to apply before someone from the outside may be hired. As in the state sector, the worker who has been denied a promotion and believes that improper procedures were used in the decision-making may take the complaint to the OJLB at the EE to review the case. Positions may only be offered to foreign nationals in the case of senior executives and technical positions for which there is no qualified Cuban worker available.

Collective Bargaining Agreement

In accordance with Cuban labor law, each enterprise must sign a collective agreement with the corresponding union. The collective bargaining agreement is similar in basic content to that negotiated and signed with state enterprises in the system of Decentralized Management with the exception that there is a third party to the agreement, the EE. Thus, it is negotiated by the union, the EE and the management of the enterprise. The role of the EE in the

³³ The length of time depends on the number of years worked prior to the lay off.

³⁴ Interview with Guillermo Ferriol Molina.

³⁵ Resolución 3, Art. 50.

³⁶ Interview with Guillermo Ferriol Molina.

collective bargaining process is to assure that the agreement contains clauses concerning the form of pay as well as the obligation of the enterprise to indemnify the EE in the event a worker is dismissed without sufficient cause as outlined in the contract. The EE is then obligated to compensate the worker pursuant to Cuban law.³⁷

As in state enterprises, the primary concerns of the union are the provisions dealing with job qualifications, work regulations, hours, incentives, promotion processes, occupational health and safety rules and other conditions of work. The process of negotiation and acceptance is the same as that which governs collective agreements in state enterprises. Further, workers through the union, have the right to enforce the agreement against both the enterprise and the EE. In the event of non-compliance, the union would take its complaint first to management and then to the supervising ministry.

When the first joint ventures were established in the early 1990s, the unions had virtually no experience negotiating such agreements. One Cuban union negotiator with the National Union of Chemical, Mining and Energy Workers, which negotiated the collective agreement at the joint venture in Moa, recalls that the union was uncertain where to begin or what to ask for.³⁸ At that time, collective agreements were still pretty pro forma in Cuba. The union received a copy of the collective bargaining agreement between a Canadian union and a joint venture in Canada in which Cuba had investments. However, this agreement was of little use. Not only was it in English, but it contained provisions obligating management to things already compelled by law in Cuba and lacked many prerogatives which workers have obtained in Cuba such as participation in management meetings and access to information about the status of the business and its projections. In the end, the union feels it obtained a satisfactory agreement and reports a very good working relationship with management.³⁹

Role of the Union

There are no separate unions for workers in the foreign investment enterprises; rather workers may join the national union representing workers in that sector. For example, the

³⁷ The benefits due to workers as a result of lay offs are discussed in the section on Employment and Hiring Policies.

³⁸ Interview with Deisy Samsón, Provincial Union of Chemical, Mining and Energy Workers. In 1994, Samsón was an official of the national union.

³⁹ Id.

National Union of Chemical, Mining and Energy Workers, represents the workers in the joint venture nickel mines as well as those at the wholly state-owned mines; the National Union of Hotel and Tourism Workers represents workers at all tourist installations, etc. As a consequence, workers in the industry or sector are fully aware of conditions and circumstances from one enterprise to another regardless of its ownership.

Further, the union maintains the same activities and structure within the foreign investment enterprise as it does in the state enterprise. That is, a union section (the shop level unit) is formed which represents workers before management and organizes the monthly workers' assemblies. In addition, the union section and the corresponding bureau and regional union officials participate in the drafting of the collective bargaining agreement and monitor its enforcement. Moreover, as in state enterprises, the union is invited to send a representative to attend all meetings of the management council or board of managing directors, and management is obligated to attend the monthly workers' assemblies and to respond to issues raised by the union. Thus, the union is informed of the financial condition of the company as well as other aspects of the business and given an opportunity to be heard by management.

For example, at the Brascuba cigarette manufacturing plant the main issues for workers when the plant began operation were those related to transportation to and from work, equipment maintenance and the problem of dust from cigarette production requiring increased ventilation on the shop floor. These were brought to the attention of management after the plant opened in 1996, and over time, management has resolved them.⁴⁰

With experience, the unions appear to have become more assertive and have even been able to force changes in management when they feel the situation warrants such strong action. Several years ago, workers at the Parque Central Hotel complained that the foreign managers discriminated against workers on the basis of skin color and age and also applied inappropriate management techniques. The unions brought the issue to the owners and succeeded in having the management personnel responsible for the violations replaced.⁴¹

⁴⁰ Conversation with workers at Brascuba.

⁴¹ Interview with Marcia Martinez Quintero, Director of Labor Affairs at the Provincial Union of Tourism Workers, City of Havana

Impact of Foreign Investment on Labor Rights

There is a clear and strong commitment both on the part of the government and the unions to assure that foreign investment does not have a negative impact on the rights of Cuban workers. To the contrary, such investment has helped the economy in general and yielded benefits both to the individual workers employed by these enterprises as well as to the society as a whole. Rather than antagonistic, the union response to foreign investment may be described as one of both acceptance and vigilance. Discussions with union officials revealed awareness of the responsibility of both the unions and the government to guaranty the protection of Cuban workers and to assure that foreign investors comply with Cuban labor legislation. At the same time, there is recognition of the importance of the profitability of these enterprises for the national economy. Thus, while workers have an interest in improving both work conditions and benefits, it is in everyone's interest that these enterprises be efficient, well run and profitable.

Since the thrust of economic policy is to recover and develop the Cuban state owned enterprises, Cuba has become increasingly cautious in approving foreign investments. Although decision-making and negotiations related to foreign investment have been decentralized to a degree, it is not likely that Cuba will change its policy of requiring careful review and government approval of investment proposals. While new investments continue to be approved, and foreign investment will remain an important long term aspect of Cuban economy policy, the primary goal of the economic strategy is the recovery and growth of the state enterprises, not the expansion of foreign investment.

APPENDIX

A. US LABOR ADVISORY PANEL

(Affiliation is for identification purposes only)

Robin Alexander, Esq., Director of International Labor Affairs, United Electrical, Radio and Machine Workers of America (UE), Pittsburgh, PA.

Marjorie Allen, AFSCME, Washington, D.C.

Alan Benchich, President, UAW local 909, Detroit, MI.

Lance Compa, Senior Lecturer, School of Industrial and Labor Relations, Cornell University, Ithaca, New York.

Jeff Faux, Director, Economic Policy Institute, Washington, D.C.

Polly J. Halfkenny, General Counsel, United Electrical, Radio and Machine Workers of America (UE), Pittsburgh, PA.

Richard Levy, labor law attorney, New York, NY.

Carole Travis, Director SEIU Illinois Council, Chicago, IL.

B. LIST OF WORK PLACES AND ENTERPRISES VISITED

BrasCuba, S.A., Havana

Centro de Diseño Ingeniería (CEDIN), Cienfuegos

Círculo Infantil Constructores del Futuro, Cienfuegos

Empresa Antillana de Acero, Havana

Empresa Cultivos Varios Juraguá, Cienfuegos.

Empresa Conrado Piña, Havana

Empresa de Mantenimiento, Construcción y Reparación, Havana

Empresa de Textiles, Santa Clara

Fabrica de Tabaco, LV-9, Santa Clara

INDAL, Empresa Pesca Caribe, Havana

INPUD, Santa Clara

POLIGOM, Santa Clara

Puerto Escondido, Special Works Projects, Province of Havana

Refinería de Cienfuegos, Cienfuegos

SAREX, Santa Clara

Suchel Camacho, S.A., Havana.

C. INTERVIEWS

In addition to meetings with workers, union officials and managers during site visits, and innumerable informal conversations with workers, union officials, labor lawyers and ministry officials, as well as attendance at various union conferences and congresses, the report is based on information obtained in interviews with the following persons:

Patricia Arenas, researcher, Center for Psychological and Sociological Studies, Havana.

Arturo Juan Alarcón Cardenas, lawyer for the National Union of Transportation Workers and the National Union of Public Administration Workers

Marta Camacho, Director of Negotiations, Ministry of Foreign Investment and Economic Cooperation, Havana

Ramón Cardona Nuevo, Member of the National Secretariat of the CTC

Luis Manuel Castaneda Smith, member of the National Secretariat of the CTC

Guillermo Ferriol Molina, Director of Labor and Social Affairs, National Office of the CTC

Ermela García Santiago, Director of the Lázaro Peña School, Havana

Susana Gil Dias, lawyer for the National Union of Health Workers

Leonel González González, Member of the National Secretariate of the CTC

Gretel Hernández Oliva, lawyer at the Ministry of Labor and Social Security

Labor Lawyers at the Bufete Colectivo Salvador Allende, Havana

Miriam Lau Valdés, Director of the Office of International Relations, Ministry of Labor and Social Security

Hiram Marquetti Nodarse, researcher, Center for the Study of the Cuban Economy, Havana

Antonio Raudilio Martín Sanchez, President of the Labor Law Chamber of the Supreme Court of Cuba and President of the Cuban Society of Labor Law

Marcia Martínez Quintero, Director of Labor Affairs at the Provincial Union of Tourism Workers, City of Havana

Ana Gloria Mendoza, Member of the Secretariat of the Provincial Union of Chemical, Mining and Energy Workers, City of Havana

Dr. Raimundo Navarro Fernández, Secretary General of the National Union of Health Care Workers

Orlando Peñate Rivero, special advisor, Ministry of Labor and Social Security, Havana.

Lydia María Ramos Fernandez, lawyer for the National Union of Construction Workers

Aleida Rodríguez Díaz, lawyer, Provincial Office of the CTC, Santa Clara

Lucio Rodríguez Díaz, Member of the Secretariat of the National Union of Construction Workers

José Joaquín Rodríguez Taboada, Vice Minister, Ministry of Basic Industry

Pedro Ross Leal, Secretary General of the CTC

Deisy Samsón, Secretary General, Provincial Union of Chemical, Mining and Energy Workers, City of Havana

Roberto Santana Lozano, Member of the National Committee of the CTC

Eulalia Viamonte Guilbeaux, Professor of Labor Law, Faculty of Law, University of Havana

D. LIST OF CUBAN UNIONS

National Union of Agricultural and Forest Workers
Sindicato Nacional de Trabajadores Agropecuario y Forestales

National Union of Chemical, Mining and Energy Workers.
Sindicato Nacional de Trabajadores Químico, Minero y Energético

National Union of Civilian Workers of the Armed Forces
Sindicato Nacional de Civiles de las FAR

National Union of Commercial, Gastronomical and Service Workers
Sindicato Nacional de Trabajadores del Comercio, la Gastronomía y los Servicios

National Union of Communications Workers
Sindicato Nacional de Trabajadores de las Comunicaciones

National Union of Construction Workers
Sindicato Nacional de Trabajadores de la Construcción

National Union of Cultural Workers
Sindicato Nacional de Trabajadores de la Cultura

National Union of Education and Sports Workers
Sindicato Nacional de Trabajadores de la Educación y el Deporte

National Union of Food Workers
Sindicato Nacional de Trabajadores de la Alimentación

National Union of Health Workers
Sindicato Nacional de Trabajadores de la Salud

National Union of Hotel and Tourism Workers
Sindicato Nacional de Trabajadores de Hotelería y Turismo

National Union of Light Industry Workers
Sindicato Nacional de Trabajadores de la Industria Ligera

National Union of Merchant Marine, Port and Fishing Workers
Sindicato Nacional de Trabajadores de la Marina Mercante, Puerto y Pesca

National Union of Metal and Electronic Workers
Sindicato Nacional de Trabajadores Metalúrgicos y Electrónicos

National Union of Public Administration Workers
Sindicato Nacional de Trabajadores de la Administración Pública

National Union of Science Workers
Sindicato Nacional de Trabajadores de la Ciencia

National Union of Sugar Workers
Sindicato Nacional de Trabajadores Azucareros

National Union of Tobacco Workers
Sindicato Nacional de Trabajadores Tabacaleros

National Union of Transportation Workers
Sindicato Nacional de Trabajadores del Transporte

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- Ley No. 1022 (Sobre la Administración del Sistema Laboral), 1962
- Ley No. 1166 (Justicia Laboral), September 23, 1964
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- Ley No.77 (Ley de la Inversión Extranjera), September 5, 1995
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CUBA SOCIALIST, semi-annual review

F. TABLES

Distribution of Workers by Economic Sector 1999

Total Workers	3,826,300	100%*
Agricultural and Fishing	917,600	24%
Mining	22,300	1%
Manufacturing	637,100	17%
Energy and Water	67,500	2%
Construction	208,100	5%
Services and Tourism	487,000	13%
Transportation and Communications	181,100	5%
Finance and Real Estate	67,700	2%
Public and Personal Services	1,222,900	32%

*Percentages do not add to 100% because of rounding
Source: Anuario Estadístico de Cuba 1999

Distribution of Workers by Category And Gender

Category of Work	All	Men	Women
Total Number of Workers	3,826,300	62.6%	37.4%
Production Workers	1,924,300	81.3%	18.7%
Professionals	1,000,000	35.9%	65.1%
Administrative	159,000	15.6%	84.4%
Service	58,000	11.8%	50.2%
Managerial	295,000	68.9%	31.1%

Source: Anuario Estadístico de Cuba 1999