

Obligación sindical de rendir cuentas

Trade Union Obligation to be Accountable

Prestação de contas da união

DOI: <http://dx.doi.org/10.23913/ricsh.v6i11.122>

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Resumen

Los sindicatos, regulados por las normas laborales y las normas burocráticas, tienen en el texto constitucional el fundamento de su existencia. Las leyes que los regulan les obligan a rendir cuentas a sus agremiados.

Las disposiciones jurídicas expedidas recientemente en México, relativas a la transparencia y accesos a la información pública, incluyen a los sindicatos como sujetos obligados a transparentar y permitir al acceso a su información en el caso de recibir y ejercer recursos públicos.

En este artículo se analiza qué son los recursos públicos, si los sindicatos realmente los reciben y si la obligación de transparentar y permitir el acceso a su información es jurídicamente correcta.

Palabras clave: sindicatos, transparencia, obligación.

Abstract

Labor unions, regulated by labor standards and bureaucratic rules, have as the foundation of their existence the constitutional text. The laws that regulate them force them to be accountable to their members.

The legal provisions recently issued in Mexico, regarding transparency and access to public information, include the unions as subjects forced to be transparent and allow access to their information in the case of receiving and exercising public resources.

In this article, it is analyzed what public resources are, if the unions really receive them and if the obligation to make them transparent and allow access to their information is legally correct.

Key words: labor unions, transparency, accountability.

Resumo

Sindicatos, as normas de trabalho regulamentados e regras burocráticas estão na Constituição o fundamento da sua existência. As leis que regulam os obrigam a prestar contas aos seus membros.

Normas legais emitiu recentemente no México, sobre transparência e acesso à informação pública, incluindo os sindicatos como requerido para ser transparente e permitir o acesso às suas informações no caso de receber e guardar recursos públicos assunto.

Este artigo discute como são recursos públicos, se os sindicatos realmente são e se a obrigação de ser transparente e permitir o acesso a sua informação é legalmente correto.

Palavras-chave: sindicatos, obrigação de transparência.

Fecha Recepción: Agosto 2016

Fecha Aceptación: Diciembre 2016

Introduction

In Mexico, Alberto Trueba Urbina mentions among the antecedents of syndicalism "the particular society of mutual aid ... later it was considered that the cooperative system of consumption was more beneficial than the mutualist. On September 16, 1872, the first association of a professional type was founded, a circle of workers "(Trueba Urbina, A., 1981, p.351).

This organization came to count in its rows, in October of 1874, with more than eight thousand workers, mostly craftsmen and workers of yarns and fabrics. On March 5, 1876, the Confederation of Workers' Associations of the United Mexican States was founded, which strengthened the unity of the workers. In 1890, it became the Supreme Order of Mexican Railroad Employees, the Union of Mexican Mechanics, The Mexican Caldereros Brothers Society, the Mexican League of Railroad Employees and others. In Cananea the Liberal Humanity Union was founded and in Orizaba, Veracruz, the Great Circle of Free Workers; Both agencies were the protagonists of the Cananea and Río Blanco strikes. In 1911 the Typographic Confederation of Mexico was constituted. In 1912, the Labor Department was founded and the House of the World Worker was established, which in 1913 demanded (Lastra Lastra, J.M., 2002, p.38) "for the first time in the country, Of May, the eight-hour day and the Sunday rest "(Trueba Urbina, A., 1981, p.352).

The political Constitution in force in the country was promulgated on February 5, 1917, after the celebration of the Constituent Congress in the city of Querétaro, during December 1916 and January 1917. Of these debates are those celebrated on 12, 19 and December 23, 1916, in which labor matters were discussed, to be elevated to constitutional rank in article 123, for the first time in the world.

From the political struggle of the bureaucrats, which had been updated among other legal systems in the Cardenista Statute, was included as essential to the category of rule written in the Constitution, reason why Article 123, by constitutional reform¹ Was made up of two Sections: Section A on which Labor Law is based, and Section B, which is the foundation of Federal Bureaucratic Law.

¹ Diario Oficial de la Federación (DOF), 5 de diciembre de 1960.

Both sections guarantee the right of workers to form trade unions.

The General Law on Transparency and Access to Public Information (LGTAIP)² and the Federal Law on Transparency and Access to Public Information (LFTAIP)³ include unions as subjects required to be transparent and allow access to their information in the case of receiving and exercising public resources.

Accountability is defined as the permanent obligation of the agents or agents to inform their constituents or principals of the acts they carry out as a result of a delegation of authority that is carried out by means of a formal or informal contract and which implies sanctions in Case of non-compliance. The principals or principals also supervise the agents or agents to ensure that the information provided is reliable (Ugalde, L.C., 2015, p.14).

Transparency is a feature that opens the information of political and bureaucratic organizations to public scrutiny, through classification and dissemination systems that reduce the costs of access to government information. However, transparency does not imply accountability to a specific addressee, but rather the practice of placing information in the 'public display case' so that those interested can review it, analyze it and use it as a mechanism to sanction In case there are any anomalies inside. Transparency is an instrument of a global accountability system, but it would be inaccurate to use it as a synonym for that (Ugalde, L.C., 2015, p.14).

Accountability is a subject of very recent study in Mexico from a political science perspective. From a historical perspective,. . . The constitutions of 1824 and 1857 defined the importance of organizing and controlling power. The former separated power and adopted mechanisms of checks and balances, such as the presidential veto or the call to accounts that Congress could make to the executive branch. The one of 1857 granted great powers to Congress to hold the executive accountable (which was an obstacle to the governability of the country) and established, for the first time, the constitutional existence of individual guarantees. The principles of what is now known as horizontal

² DOF, 4 de mayo de 2015, sin reforma.

³ DOF, 9 de mayo de 2016, una reforma del 27 de enero de 2017.

accountability were incorporated into the institutional life of our country (Ugalde, L.C., 2015, p. 49).

Since the Constituent Assembly of 1917, the expression 'accountability' was part of the language in parliamentary debates, albeit to a limited extent, according to records in the Chamber of Deputies. The National Development Plan of the Ernesto Zedillo administration proposes a deep effort that provides for a clear form of accountability and ensures that those who, in the exercise of a public responsibility, transgress the law or the norms of public service performance, are Sanctioned according to the law. Vicente Fox's National Development Plan followed up on the theme; The government is obliged to establish the mechanisms and instruments that allow it to inform and to account to the citizens, the other powers and each one of the orders of government (Ugalde, L.C., 2015, p. 51).

On September 1, 2012, President Felipe Calderón presented to the Congress of the Union a preferential initiative to reform the Federal Labor Law.

The initiative of the Executive wanted to democratize the unions and promote transparency. With respect to the first aspect, the initiative added article 364 bis. In this same vein, the initiative stated in article 371, section IX, that the statutes of trade unions should contain: 'number of members of the board and procedure for their election, which must be by direct, secret and free vote' (Anzures Gurria, JJ, 2014, p.27).

On the issue of trade union transparency, the Executive's initiative sought to strengthen the accountability of trade union directives through various measures, mainly contained in article 373. Among other things, it was envisaged that The union shall deliver to all unionized workers a summary of the results of the administration of the trade union property and that the accountability shall include at least the status of income from trade union dues and other goods and their destination (Anzures Gurría, J.J., 2014, pp. 27-28).

Regarding this union obligation, Dr. Maria Patricia Kurczyn Villalobos, commissioner of the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), stated that "when unions receive public resources, the right of any person , Not necessarily a worker, to request information on its use and destination. He also stated that in the Federal Transparency Law that will be discussed at the Congress, together with the current

General Transparency Law, the procedures will have to be reconciled in order for trade unions to comply with transparency obligations (Aristegui News "Sindicatos must be held accountable Constitutional: INAI. ", September 2, 2015. <http://aristeguinoicias.com/0209/mexico/sindicatos-deben-rendir-cuentas-por-obligacion-constitucional-inai/>Consultado: 3 de junio de 2017).

Method

This article is a documentary research that analyzes the methodology of legal research and the various legal instruments related to the obligation that has been given to unions in Mexico to be accountable for transparency in the exercise of public resources.

The steps that correspond to a documentary research were elaborated: elaboration of the work plan (where the topic is chosen and delimited), hypothesis writing, elaboration of the work plan and identification of preliminary consultation sources. Subsequently the elaboration of source dates and worksheets, which were analyzed and drafted the article, developing the conclusions that were considered pertinent (Cfr.: Hernández Estévez y López Durán, 1998, 65 y sigts.; Baena, 1998, 13 y sigts.; Rojas Soriano, 1979, 68 y sigts.)

Results

Normative Context

Unions

The Political Constitution of the United Mexican States (CPEUM)⁴ Regulates in Title Six, Work and Social Security, Article 123, both in Section A and in Section B, respectively, of trade unions, consisting of workers who provide a subordinate personal service, or Particular patterns or the powers of union.

With respect to the workers who render this personal service subordinate to the municipalities of the different states of the country, as well as to the states themselves, the CPEUM establishes in the numerals 115, fraction VIII and 116, fraction VI, respectively, an express reference to the Article 123.

⁴ DOF 5 de febrero de 1917, reformada 229 ocasiones, al 20 de enero de 2017, la más reciente el 15 de agosto de 2016.

These social guarantees contained in the Mexican Constitution are developed in the statutory laws.

On the workers who render a personal service subordinated to the particular employers and to the decentralized organisms of the three levels of government,⁵ The unions are regulated in the Federal Labor Law (LFT),⁶ In Title Seven, Chapters I and II, in the numbers 354 to 357.

As for the workers who render a personal service subordinate to the powers of the union, it is the Federal Law of the Workers at the Service of the State (LFTSE) that regulates the unions, in Title Four, of the Collective Organization of Workers And of the General Concisions of Work, Chapter I, article 67.

Local bureaucratic laws, in compliance with articles 115 and 116 of the CPEUM, regulate the individual and collective legal relationship established between the workers and the corresponding governmental unit, as well as the competent jurisdictional organs and the applicable procedural rules. In the country there are thirty-one state and three municipal legal systems.

It should be mentioned that the regulation of the obligation of accountability by the unions is imprecise and, in some cases, is only found in the statutes.

For example:

- Law of the Workers at the Service of the Powers of the State and Municipalities of Baja California Sur.⁷ It provides that it is the obligation of the union to provide the reports that, in compliance with the Law, request the Court of Conciliation and Arbitration, without making reference to the members.
- Law of the Workers at the Service of the Public Institutions of the state of San Luis Potosí.⁸ It stipulates that it is the duty of the union to comply with the request for reports sent by the State Court of Conciliation and Arbitration, insofar as it concerns the actions

⁵ Jurisprudencia 1/96 del Pleno de la Suprema Corte de Justicia de la Nación. *Semanario Judicial de la Federación y su Gaceta*. Tomo III, febrero de 1996, p. 52, registro 200199.

⁶ DOF 1 de abril de 1970, reformada 27 ocasiones al 20 de enero de 2017, la más reciente el 12 de junio de 2015.

⁷ Boletín Oficial del Gobierno del estado de Baja California Sur, 23 de febrero de 2004, reformada en dos ocasiones, la más reciente el 31 de julio de 2012.

⁸ Sección segunda del Periódico Oficial del estado de San Luis Potosí, 8 de enero de 1996, reformada en nueve ocasiones, la más reciente el 10 de junio de 2014.

inherent to the union, as well as others that indicate its respective statutes and regulations of the matter.

- Law of the Workers to the Service of the City council of the Municipality of Puebla.⁹ It establishes as an express obligation of the union to inform at least every three months its state members that they keep the union's finances and the application of the resources.

In addition to the legal personality that labor legislation and bureaucratic legislation grant to unions, the Federal Civil Code (CCF)¹⁰ Recognizes them as moral persons in articles 25, section IV, 26, 27 and 28, of the Second Title, Moral Persons, Book First, People.

The Civil Codes of the federal states of the country also recognize the union as a moral person.

As an example they are mentioned:

- Civil Code of the State of Mexico,¹¹ Establishes in the Second Book of Persons, in Title Three, Corporate Legal Persons, in paragraph 2.10, that are considered collective legal persons to those recognized by federal laws and other entities of the republic. From the above it is clear that the unions have the character of collective legal person.
- Civil Code for the free and sovereign state of Morelos,¹² regulates as collective juridical persons the trade unions, professional associations and others referred to in sections XVI, section A and X, section B of article 123 of the Federal Constitution, article 61, Chapter II, of the Legal Persons Collective, in the First Title, of the Legal Persons, of the Second Book, of the Persons.

Accountability

Federal, local, labor and bureaucratic unions are required to be accountable to their members.

⁹ Periódico oficial del estado de Puebla, 11 de diciembre de 2013; no ha sido reformada.

¹⁰ DOF en cuatro partes los días 26 de mayo, 14 de julio, 3 y 31 de agosto de 1928. Reformado en 53 ocasiones, al 20 de enero de 2017, la más reciente el 24 de diciembre de 2013.

¹¹ Periódico oficial, Gaceta del Estado de México, 7 de junio de 2002, reformado 46 ocasiones, al 20 de enero de 2017, la más reciente el 26 de septiembre de 2016.

¹² Periódico oficial del estado de Morelos, 13 de octubre de 1993, reforma más reciente del 11 de diciembre de 2008.

The LFT provides in paragraph 373 that the union's board of directors, in the terms established by its statutes, must render to the assembly every six months at least a full and detailed account of the management of the trade union assets. Accountability should include the status of income from union dues and other goods, as well as their destination. This obligation is not mandatory.

With regard to the LFTSE, article 77 regulates the obligations of trade unions, among which is to provide the reports requested by the Federal Court of Conciliation and Arbitration and article 80 provides that the union directive is responsible before This and with respect to third persons in the same terms that are the presidents in the common law. Although the LFTSE does not expressly contain the obligation of the unions to be accountable to their members, this is established in the corresponding statutes.

In similar terms, this obligation is regulated in local bureaucratic regulations.

The LGTAIP stipulates in paragraph 6 that this is a legal order of public order and general observance throughout the Republic, in the matter of transparency and access to information and whose purpose is to establish the principles, general bases and procedures to guarantee the Right of access to information held by any authority, entity, body and agency of the Legislative, Executive and Judicial branches, autonomous bodies, political parties, trusts and public funds, as well as any natural person, moral or trade union that receives and Exercise public resources or perform acts of authority of the Federation, Federal Entities and municipalities.

This law establishes in paragraph 70 that in federal and federal law it must be considered that the obligated subjects make available to the public and keep updated, in the respective electronic media, according to their faculties, attributions, functions or social object , As appropriate, information at least on the topics, documents and policies, including, in relation to trade unions, the general conditions of employment, contracts or agreements regulating the labor relations of basic personnel or Trust, as well as public economic resources, in kind or donations, that are delivered to the unions and exercised as public resources.

This provision is complemented by articles 78 and 79, which relate, in labor matters, with the provisions of numeral 40 of the Organic Law of the Federal Public Administration (LOAPF),¹³ (STPS), as well as articles 365 bis, 371, 373, 391 bis, 523, 614, 617 and 621 of the LFT, in relation to the Obligation of the labor authorities to make public the information concerning the registration of trade unions, collective labor contracts and internal labor regulations, which are fulfilled in the electronic pages of the STPS (Secretariat of Labor and Social Security <http://www.gob.mx/jfca> Consulted: February 1, 2107) .

In these same terms, the Second Chamber of the Supreme Court of Justice of the Nation (SCJN) issued two isolated theses, in which it maintains that articles 391 bis and 365 bis, in relation to the publicity of collective labor contracts, register Of trade unions and their statutes, do not violate articles 6, 16 second paragraph and 123, Section A, constitutional fraction XVI.¹⁴

This obligation is also regulated in local labor matters in relation to the local dependence on labor and social welfare, whose denomination may vary according to the federal entity in question, and the Local Conciliation and Arbitration Boards.

Federal bureaucratic matters are related to what is indicated in numerals 118 to 124C of the LFTSE, which are fulfilled in the matter of transparency on the website of the Federal Court of Conciliation and Arbitration (TFCA). (Federal Court of Conciliation and Arbitration, <http://tfca.gob.mx/en/TFCA/> Accessed: February 13, 2017).

This same obligation is regulated in relation to the local courts in matters of state and municipal bureaucracy in the states of the country.

In the case of non-compliance of the obligated parties, the LGTAIP regulates measures of urgency and sanctions in articles 201 and 209.

¹³ DOF 29 de diciembre del 1976. Reformada en 55 ocasiones, la más reciente el 19 de diciembre de 2016.

¹⁴ Tesis: 2a. CII/2014 (10a.) Segunda Sala. *Gaceta del Semanario Judicial de la Federación*. Décima Época. Libro 11, octubre de 2014, Tomo I, p. 1096. Registro: 2007572 y Tesis: 2a. CI/2014 (10a.) Segunda Sala. *Gaceta del Semanario Judicial de la Federación*. Décima Época. Libro 11, octubre de 2014, Tomo I, p. 1105. Registro: 2007579.

The LFTAIP provides in article 1 that is a legal order of public order and aims to provide what is necessary at the federal level, to guarantee the right of access to public information held by any authority, entity, body and agency of the Legislative and executive powers, autonomous bodies, political parties, trusts and public funds, as well as any individual, moral or trade union that receives and exercises federal public resources or acts of authority, under the terms established by the CPEUM and the LGTAIP.

Paragraph 74 establishes that in respect of the specific obligations that must be met by natural or legal persons who receive and exercise public resources or perform acts of authority must be in accordance with Chapter IV of Title Five of the General Law. The unions that receive and exercise public resources must keep the relevant information of articles 70 and 79 of the General Law up to date and accessible on the respective websites.

This ordinance also regulates, in the case of non-compliance, measures of urgency and sanctions, in numbers 174 and 187, respectively.

The National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), issued an agreement approving the list of subjects obligated to the federal level, in terms of the LGTAIP, which contains 882 obligated subjects, among Which include 147 unions. (National Institute of Transparency, Access to Information and Protection of Personal Data. DOF ACUERDO ACT-EXT-PUB/02/05/2016.2 Sindicatos. Nos. 60100 a 60256. http://dof.gob.mx/nota_detalle.php?codigo=5436061&fecha=04/05/2016 Consultado: 15 de febrero de 2017).

Public resources

Every human being has the obligation to perform a lawful activity that allows him to obtain the satisfactions that are required so that his needs and those of his family disappear. This activity has been transformed over time, until it reaches the economic complexity it has today.

Likewise, the State, the governments, in order to fulfill the attributions and obligations that they have consigned in the constitutional and legal documents, require income.

State revenues are divided into two groups: those derived from state assets and activities, and those derived from the exercise of powers inherent in sovereignty.

Tax revenues are taxes, social security contributions, duties, special contributions or improvements, taxes or ancillary contributions.

Financial income is borrowing, issuance of currency, issuance of public debt bonds, amortization and conversion of public debt, monetary and renegotiation, devaluation. Products and rights, expropriations, seizures, nationalizations, privatization.

The term public resources is used to define all the revenues that the State receives, of whatever nature, in order to finance public expenditure. This income can be taxes, tax and special contributions.

The CPEUM refers to various concepts in this area: public resources, economic resources, federal resources, monetary resources, ordinary resources, resources of the Federation, resources of the Budget of Expenditures of the Federation, resources of the Powers of the Union, in various articles.

The Federal Law on Administrative Responsibilities of Public Servants (LFRASP),¹⁵ Refers to the concept of federal public resources in numerals 2 and 8.

The State's Asset Liability Act (LRPE),¹⁶ uses the expression resources, with reference to budgetary resources in numbers 6, 11 and 35.

The Federal Law on Responsibility of Public Servants (LFRSP),¹⁷ Refers in paragraphs 2 and 7 to the expression federal resources, in paragraph 5, federal resources, and in article 47, resources.

The term illicit income is mentioned once in numeral 84.

The Federal Budget and Fiscal Responsibility Law (LFPRH)¹⁸ Refers to different expressions: federal public resources, budget resources, budgetary resources, resources remaining, exercise of resources and resources accumulated in various articles. The expression income is also used in various numerals.

¹⁵ DOF 13 de marzo del 2002, reformada en 12 ocasiones, la más reciente el 18 de diciembre de 2015.

¹⁶ DOF 31 de diciembre de 2004, reformada en dos ocasiones, la más reciente el 12 de junio de 2009.

¹⁷ DOF 31 de diciembre de 1982, reformada en 14 ocasiones, la más reciente el 18 de julio de 2016.

¹⁸ DOF 30 de marzo de 2006, reformada en 11 ocasiones, la más reciente el 30 de diciembre de 2015.

The Law on Audit and Accountability of the Federation (LFRCF)¹⁹ Uses the expressions: resources, public resources, federal public resources, budgetary resources in various numerals. The expression income is also used in different articles.

The Federal Expenditure Budget for Fiscal Year 2017 (PEF)²⁰ Also uses the concepts of income and expenses.

The Federation Income Tax Act for Fiscal Year 2017 (LI)²¹ Uses the same concept the income.

But none of these normative provisions defines what is meant by public resources or equivalent income or expressions or similar, so it must be understood by public resources to those riches that accrue in favor of the State to fulfill its purposes and that in such character enter in its treasury.

Miscellaneous reviews

The Plenary on Administrative Matters of the First Circuit of the Judiciary of the Federation issued jurisprudence, in which it is argued that it is public information that is in the possession of Petróleos Mexicanos and its subsidiary bodies regarding public resources delivered to the Union Of Oil Workers of the Republic of Mexico for contractual labor benefits in favor of their workers.

To the above is added the jurisprudence²² Of the Second Chamber of the SCJN in which it is held that the annual amount of the trade union dues of the workers of Petróleos Mexicanos, which form part of the union's assets, is not public information.

¹⁹ DOF 18 de julio de 2016, sin reforma.

²⁰ DOF 30 de noviembre de 2016, sin reforma.

²¹ DOF 15 de noviembre de 2016, sin reforma.

²² Tesis: 2a./J. 118/2010 (10a.) Segunda Sala. *Semanario Judicial de la Federación y su Gaceta*. Novena Época. Tomo XXXII, agosto de 2010, p.438. Registro: 164033.

On the other hand, the INAI has manifested itself, having resolved in 2016, 47 review resources (PULSO LABORAL <http://elpulsolaboral.com.mx/sindicatos/8146/aprieta-inai--indicados> Consulted: February 13 2017) filed by citizens who are not satisfied with union responses to requests for public information, including the Mexican Oil Workers' Union (STPRM), the National Union of Workers of the National Autonomous University of Mexico, the National Union of Workers Of Workers of the Education (SNTE) and Union of National Vanguard of the Workers of the Secretariat of Communications and Transports.

Similarly, the commissioners of INAI itself have stated that "unions have an obligation to declare, to be transparent, to be accountable in all those expenses they have of the public resources that they can receive for any reason, in any way We are talking about the quotas of the workers, that is the union's patrimony and on that we have nothing to do. " The Sun of Mexico. <https://www.elsoldemexico.com.mx/mexico/210865-desde-hoy-sindicatos-obligados-en-rendir-cuentas> Consulted: January 17, 2017).

Discussion

Trade unions generally receive their employers, in compliance with collective bargaining agreements, law contracts and general conditions of employment, which in these documents are indicated as intended for the union to comply with its members With benefits such as Mother's Day, Children's Day, holiday dates, scholarships, discounts for orthopedic appliances and ophthalmic equipment, personal loans and others.

The employers in this area are obligated are those of decentralized agencies and those of the federal and local public administration, which, in compliance with the corresponding budget of expenditures, receive resources destined to comply with these labor and bureaucratic obligations.

Therefore, at the moment when the unions receive the indicated resources, these become part of their patrimony, along with the quotas that cover the members, as well as prizes of sweepstakes, donations, bequests and inheritances of which they could be Beneficiaries.

Consequently, those forced to transparency and accountability are the patterns mentioned above and not the unions, which only have this obligation with their members.

In the event that this is otherwise, also individuals who at some point receive reimbursements in relation to their tax return should adhere to criteria of transparency and accountability, since the reimbursement is made of public resources.

Conclusions

From the foregoing, it is concluded that the normative provisions that bind the unions to transparency and accountability to INAI and third parties should be repealed.

Equally, the obligation of the unions to be accountable to their members must be encouraged and, in case of non-compliance, the sanctions that are statutorily applicable should be applied.

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