

A Guide to Costa Rica Labour Relations Issues

by *Banana Link*

Background

Until the mid-1980s the Costa Rican banana industry was concentrated mostly on or near to the country's Pacific coast. At this time trade union membership in banana plantations was very high (80-100%) and the unions successfully defended their members against attempts by owners to increase work loads and reduce pay. The current conflict between the industry and trade unions has its origins in the early 1980s, although opinions differ as to how exactly the conflict developed.

Trade unions believe that they were provoked by the banana companies – who knew that productivity was decreasing because of exhausted lands - into calling a strike. Plantation owners claimed that trade unionists were making unrealistic demands. Whatever the rights and wrongs of the situation, strike action grew throughout the Pacific region and led, in 1984, to violent confrontations. The industry then relocated to the other side of the country - in the Atlantic coastal zone - where it remains to this day. The strike and the subsequent hardships undergone by workers and their families were documented in a video film (whose authorship was not recorded in the film's credits) entitled "*The Death of a Region*". The film has been used by the institutions who explicitly set out to replace the independent trade unions

The video is not a neutral documentary in which both sides of the argument are presented. Rather it is heavily weighted against the unions and claims that they attempted to destroy the banana industry and the country. The activity of the unions led directly to the mass starvation of workers, according to the video. There is no suggestion that plantation owners themselves might have in any way contributed to the difficulties. Quite the reverse: the industry is presented as working for the good of the country and its development. The video carries a clear message to any workers who see it, which is: "*Do not join a trade union. Trade unions aim to destroy the natural harmony between workers and plantation owners. If you join a union, the same thing will happen as happened on the Pacific coast. The industry will be destroyed and you and your family will starve.*" This video is used by the Solidarismo movement to this day.

The new approach

When the industry relocated it established a new structure for handling relations between workers and management. This new structure involves four types of institution: Solidarista Associations, Permanent Workers' Committees, Individual settlements and the Escuela Social Juan XXIII (John XXIII Social School).

Solidarista Associations (*Asociaciones Solidaristas*)

The Solidarismo movement seeks to promote “workplace harmony” and is explicitly anti-trade union in its ideology. It is based on the idea that employers and employees share the same goals. The movement was first promoted in the banana industry in the early 1980s by a broad alliance of fruit companies, the US embassy and a section of the Catholic church. From the outset, it was designed specifically to combat the strong trade unions in the sector. It is made up of workplace associations which both workers and management are encouraged to join. These are legally recognised bodies enshrined in their own law and are entitled to operate as savings and loans institutions (similar to credit unions). They also function as social clubs, organise sporting activities and produce magazines or newsletters for their members.

When workers join a plantation’s Solidarista association (each association is confined to a single or sometimes a small group of plantations), part of their salary is deducted at source by management and paid into the workers’ saving accounts. These savings should be matched by the fruit company as an advance on funds set aside for severance pay to employees. This means that the plantation is providing workers with a financial incentive to join the association. Workers can apply for loans to finance, for example, the purchase of electrical goods like fridges. Solidarista associations have no official “political” function, nor does the legislation entitle them to undertake any kind of negotiations on behalf of workers as regards, for example, pay and conditions. The ILO has ruled on several occasions that Solidarista associations cannot be considered as social dialogue partners, nor can they play any role in formal labour relations.

Permanent Workers' Committees (*Comités Permanentes*)

In banana (and, more recently pineapple) plantations these committees typically comprise three workers elected by the workforce to represent them in the drawing up of individual settlements and to handle disputes between managers and workers. Permanent Committees (PCs) were envisaged in Articles 504-506 of the country’s Labour Code (*Codigo de Trabajo*) to allow a degree of worker representation in enterprises which were too small (less than 10 employees) for workplace trade unions to be established or to provide a degree of worker representation where trade unions had not yet become established. The use of these institutions by large plantations (50 to 400 employees) was not envisaged by the legislators when the Code was originally drawn up. In Costa Rican law if a third of the workforce join a trade union, that union gains the automatic right to engage in collective bargaining on behalf of all employees in the workplace¹.

In other words, trade unions have the right to meet freely – and without any interference by employers – and represent workers in collective bargaining if they reach the thresholds mentioned. PCs can therefore be seen as temporary structures in situations where trade unions are not established. Although PCs may be involved in disputes they do not have any legal means to challenge management when solutions cannot be agreed. They cannot, for example, call a “work to rule”, let alone strikes. There are no sanctions

¹ This rule applies to the first round of collective bargaining. In subsequent bargaining rounds, there needs to be a majority - 50% plus one – of the workforce in the union.

available to them to protect the interests of workers if they are faced with unreasonable behaviour by management.

The three workers' representatives who form the PC are elected in workplace assemblies without secret balloting. These meetings are usually organised – in work time - by plantation managers and attended by representatives of the management who can therefore observe which workers vote for which candidates. Although workers are able to elect their representatives, the PCs have no independence from management and no legal means to challenge the actions of plantation owners or management. The PCs are nevertheless responsible for signing so-called “individual settlements” with management.

Individual Settlements (*Arreglos Directos*)

Individual Settlements have in most plantations replaced Collective Bargaining Agreements (CBAs) formerly negotiated freely between trade unions and management. In the 1980s, these individual settlements were closely based on previously existing CBAs, often retaining much of their original wording. Individual settlements cover terms and conditions, holiday periods, rates of pay etc.

Whereas CBAs are based on a formal petition by workers and negotiated between workers' representatives (a union) and management, individual settlements are generally drafted by management and handed over for approval by Permanent Committees. As the PCs have no formal powers to challenge management, they are not in a position to insist on changes. In particular, rates of pay, in practice mostly piece rates, are typically set by management without consultation and are seldom questioned by the PCs. There may be some discussion of minor peripheral issues (such as leisure provisions), but the central issues of pay and conditions cannot realistically be challenged. PC members are typically advised by “Promoters” of the Escuela Social Juan XXIII in the process of approval of the 'Arreglo Directo'.

The preamble to all Individual Settlements states explicitly the mutual commitment to Solidarismo.

The John XXIII Social School (*Escuela Social Juan XXIII*)

The 'Escuela' is a Catholic church organisation which exists to promote the church's social doctrine in the plantations. It was founded by Father Claudio Solano, who recently stepped down as Director. The advisory and training services provided to fruit companies are paid for by the companies themselves. The Escuela's promoters play a part in organising events (like trips to the beach), in producing the Solidarista Association magazines, which refer frequently to the Escuela's work on the plantations, in raising charitable money for ex-workers who are in difficulties and in advising the Permanent Committees.

According to some Catholic priests in the Limon area, the Escuela is closely linked to Opus Dei, whose founder Saint Escibano (sanctified by the last Pope) held the view that

workers should obey their betters in a social hierarchy which was part of a God-given natural order. Escribano also made positive comments about both Mussolini and Hitler in some of his writings in the 1930s. Such views do not reflect the mainstream teachings of the Church, whose social doctrine recognises the importance of “responsible” trade unions in providing a counterbalance to the power of potentially unscrupulous employers.

What happens when these four work together?

Workers’ representatives on the Permanent Committees have no training in bargaining with employers and do not have the benefit of any legal or other support, as would a trade union. A 2007 study by the Argentinean academic Professor Adrián Goldin, undertaken for the ILO Committee on the Application of Standards, claimed that in some cases PC members were actually illiterate, making them wholly dependent therefore on the educated “promoters” of the Escuela even for understanding what was written in the individual settlements.

Permanent Committee members are often taken to the Escuela’s seminary in the mountains in order to provide an uninterrupted space to draw up the settlements. The Committee members are not able to consult with other workers and their only sources of advice are the Escuela’s promoters who are paid directly for their services by the plantation management. The companies therefore propose the content of the individual settlements, set up and oversee the election of workers’ representatives and pays for the only advisors available to the Committee members.

A positive interpretation of these arrangements for conducting labour relations (and one to which many plantation owners would subscribe) would hold that these arrangements have been responsible for maintaining “workplace harmony” in banana plantations over the last 25 years (and in the pineapple industry since the 1990s). By which they mean almost no days lost to strikes and no resistance to company-led productivity increases, the decline of real wages or the proliferation of migrant labour, temporary contracts and labour sub-contracting.

These arrangements provide no mechanisms to ensure the protection of the rights and interests of the workforce. The fact that workers are constantly bombarded with reasons why they would not want to join a trade union means that the arrangements, when taken together, amount to a substantive barrier to freedom of association. When the workings of the four institutions are examined it is clear that they contain all the ingredients of an authoritarian system of control.

The magazines produced by the Solidarista Associations are strongly reminiscent of publications produced by totalitarian regimes. They carry articles in which workers express support and enthusiasm for the company’s plans to increase production and in which they undertake to work harder for the greater good of the company. There are articles in which older workers reflect on their past experiences and recall how their lives used to be bad in the old days when they were affiliated to trade unions, but that things had changed once they had become members of the Solidarista association. The magazines report on annual outings organised by Solidarismo and say what fun they

were, how everyone had a good time and they thank the Padre Solano from the Escuela for his help and blessings. There are no discussions, debates or dissenting voices, only a relentless positivity and a reiteration of gratitude towards the plantation's management and the Escuela for making things so good. Signboards at the entrances to plantations announce that the plantation is committed to "*workplace harmony*" and that this peace reigns "*thanks to Solidarismo*".

When it is time to draw up a new Individual Settlement – typically these are for a two-year period - it is the management which drafts the text and presents it as a *fait accompli* to the Permanent Committee. There is no scope to discuss the key issues of pay and conditions and discussions are confined to soft, peripheral issues, like the provision of a new football for the plantation's football team. Should there be any difficulty with the workers' representatives, the promoters of the Escuela are on hand to deal with dissent, backed by the religious authority of the Catholic Church. Should a trade union member be elected to the PC, which is happening more and more frequently, a range of dissuasive measures are applied by management and the Escuela to prevent questioning of wages and conditions in the settlements. There are also documented cases of re-elections being organised to try and get the assembly of workers to vote in non-union PC members.

Where does this leave the trade unions?

Trade union membership is not especially low in Costa Rica as a whole, but it is low in banana and pineapple plantations (less than 10%). There are good reasons for this. The institutional arrangements described above cannot be sustained under Costa Rican law if trade union membership grows to one third of direct employees in any one workplace. The industry has therefore been keen to keep trade union membership at levels which are well below the limit which would require the paternalistic system of maintaining industrial harmony to be replaced by the conventional systems of checks and balances which lies at the heart of industrial democracy.

The industry cannot prevent trade unions from forming – or prevent workers from joining existing unions - as the right to freedom of association ("trade union freedom" in Spanish) is protected by the law. However, they can and do discourage union membership by a number of means:

1. Solidarista associations carry out anti-union propaganda in their meetings, through their publications etc. This ideology is written into Individual Settlements in the first preambular clauses. The overlap which existed between the committee members of the associations and the Permanent Committee is less than in the past, following scrutiny by the ILO and other external bodies.
2. The Escuela is called in when union membership grows beyond a handful of employees and uses its religious authority to warn workers about the dangers of union membership. The video "Death of a Region" from the 1980s is still shown regularly to underline the point.

3. The companies monitor permanently their workforce to detect levels of potential interest in trade unions. Those whose union fees are made by payroll deduction are of course automatically known to the employer. Workers who join a trade union are regularly taken aside by Human Resources managers or trusted foremen/supervisors and advised that union membership is unwise.

4. If union membership starts to grow and looks like it may reach the critical mass, more concerted attempts are made by management to reduce levels, using a number of techniques as follows:

- i. Union members may be threatened with - or be actually given - the most undesirable and lowest paid jobs (such as clearing drainage ditches), or sent to work in isolation from other colleagues on a remote part of the plantation.
- ii. Union members are verbally abused (e.g. being called “sons of whores”) and told that they will be put on a black list, so that they or their family members will never be given work again in the industry.
- iii. Union members may be offered inducements (such as better housing or better jobs) if they disaffiliate from the union. Companies pay the costs of transport and give a day-off without loss of pay to go and disaffiliate in person at the union's offices.
- iv. Mass redundancies, whereby the whole workforce – or a large section of it - are laid off then re-hired on different (sometimes worse) terms and conditions the following day. When these “liquidaciones” occur, trade union members may be told that they will not be re-employed if they remain union members.

To maintain an appearance of compliance with the law, however – and to show curious international buyers that freedom of association is respected - a token presence of union members is tolerated.

From the point of view of the majority of the industry, free and independent trade unions as defined in Costa Rican law and international labour standards represent a threat to this paternalistic and religiously sanctioned system for maintaining “industrial harmony”. Trade union rights are protected under Costa Rican law, but the unions are viewed with distrust, fear or outright hostility by many in the industry.

As already explained, the system of Permanent Committees and individual settlements was designed by legislators to deal with very small enterprises (employing less than the required number to set up a trade union) in order to provide a degree of workplace democracy in small family firms. They were not intended to be used in large-scale enterprises like plantations which directly employ a couple of hundred workers (and which themselves may be part of a group of plantations employing thousands of workers).

Indeed, as explained above, although these mechanisms are used in much larger enterprises where unions have not yet become established, Costa Rican law requires that they be automatically replaced by internationally defined collective bargaining mechanisms whenever trade union membership grows to embrace a third of the workforce. When this threshold is obtained, Permanent Committees and individual settlements have to be replaced with the conventional arrangements of free trade unions and collective bargaining.

Collective bargaining agreements differ fundamentally from individual settlements in that they are negotiated freely between the different parties rather than being imposed by the plantation management. It is the trade unions who draw up with their members from a given workplace, through a union workplace committee, the proposal for the content of a collective bargaining agreement. This proposal is then lodged with the Labour Ministry and the employer then has 30 days in which to respond. Negotiations then proceed until an agreement is concluded.

In the Costa Rican banana and pineapple sector in 2009, there are only two CBAs in existence. There are however dozens of individual settlements (also lodged with the Ministry). This reality is a source of ongoing concern by the ILO, which has made repeated recommendations to the Costa Rican government to fill the legislative loopholes that allow these informal arrangements to dominate labour relations in such major private sector industries.

What does Banana Link propose?

Banana Link is not proposing the wholesale dismantling of the “idiosyncratic” structures which have been established in the Costa Rican banana and pineapple industries. Rather it is proposing that Costa Rican and international law should be properly adhered to in future. This would mean that:

- 1. Solidarista associations should confine themselves to the proper legally sanctioned function of providing credit and loans facilities to workers. They should not be involved in disseminating anti-union propaganda nor in any other “political” activity.**
- 2. The Escuela should confine itself to pastoral care and promoting the social doctrine of the Church, and should withdraw from its paid role in advising Permanent Committees on labour relations matters.**
- 3. Plantation owners and management should desist from threatening trade union members or offering them inducements to disaffiliate from trade unions, and should stop funding the services of the Escuela or ostensibly independent labour relations advisers (who are often former Escuela employees).**
- 4. Retailers sourcing from Costa Rica should make clear in writing to their suppliers that they require compliance with the ILO Conventions and therefore will not**

accept abuse or harassment of trade union members and will be looking for proof that suppliers do not favour of one type of labour relations model over another.

5. We propose to work with major retailer and their auditors to develop practical verification mechanisms based on the above recommendations (by 2010).

What effect will this have?

Where there is “benign paternalism”, workers may be happy to continue with the existing institutional structures and there may be little or no change. However, where the paternalistic institutions are not benign, workers will be enabled to join trade unions without fear. When a certain threshold of membership is reached, collective bargaining will automatically replace the system of Permanent Committees and individual settlements and the power relationship between workers and employers will become more evenly balanced.

How could real change be achieved?

The key to making this work will be for retailers to discuss the situations on individual plantations directly with trade unions. If trade unions report that harassment is occurring such allegations need to be followed up in cooperation with the unions. This presupposes an investigative, process-oriented approach rather than a “box ticking” auditing approach.

Retailers should make clear to the unions that they are serious about defending labour rights, but clearly they cannot take action without there being evidence to support the unions’ claims. If, for example, a union claims that union members were encouraged through inducements or forced with threats to disaffiliate, then an appointee of the retailer (such as an appropriate auditor) needs to meet with the individuals involved and hear their story. If the individuals involved fail to confirm the allegation but the union says that they have been induced by the management not to talk by, for example, giving the workers better housing, then the auditor/investigator needs to examine the housing records to see if the workers were re-housed close to the time when they disaffiliated...and so on.

If a union makes repeated allegations which can never be corroborated, the retailer may want to challenge the union’s interpretation of events in a frank and open discussion with its representatives. Should the union representatives remain adamant in spite of such challenges, the retailer should ask the unions how they think their allegations could be corroborated. Given the duplicitous tactics used by some plantations (according to the unions) and the skill of some of their managers in covering their tracks, corroborating evidence may sometimes be difficult to find. Nevertheless there may be circumstantial evidence which makes the unions’ accounts of events look more plausible than that of the managers.

Where allegations are confirmed or where there is enough circumstantial evidence to make them appear likely, the retailer should confront the plantation owner directly and

call for a cessation to all acts of intimidation (or inducements). Failure to comply should lead to delisting of the supplier with sufficient notice to ensure that the retailer can maintain overall continuity of supplies. Where possible (subject to the constraints of Competition Law) retailers should share information as regards the reason for dropping the supplier with other retailers (e.g. through the ETI database/SEDEX) who are committed to ethical sourcing. This will send a stronger message to suppliers than would be the case if one supermarket drops a supplier, only to be taken up immediately by another, and will provide a strong inducement for suppliers to conform to their own national and to international law.