

Subject: Labor Lawyers
Date: November 19th, 2011
Interviewer: Milli Lake
Edited by: Chelsey Sobel

NOTE: This is not a transcript. This document comprises interview notes from the interview conducted with Lucia Rosales and Bessie Rocio in San Pedro Sula, Honduras, on November 19th, 2012. We hope to provide a direct transcript in Spanish and English as soon as resources become available.

Start by stating your names and where you work.

I am Lucia Rosales (LR), and I was formerly at the Ministry of Labor. Now I have my own private practice.

I am Bessie Rocio (BR), and I am currently legal counsel at the Ministry of Labor.

What kind of law do you practice?

LR: I take administrative cases in labor cases.

BR: I also take primarily labor related cases. They are mostly economically related, for example when a worker is fired or resigns from their position.

What kind of cases/complaints do you see most often?

LR: In the time I was in the Ministry, the most frequent cases were maquila cases where the factory would close and the workers wouldn't receive benefits.

BR: I see primarily cases where the workers are working more than the legally mandated work day up to twelve hours. Also there are cases where the factory will fire their workers in a verbal notice and not a written notice.

LR: The other issue is the right to freedom of association and unionization. Sometimes workers are fired for this.

How do the majority of your clients find you?

LR: I see people who are my clients and they will find me and I will represent them. And Bessie is in the Labor Ministry and that is how the workers are represented.

With regard to your private practice, do you know how your clients find you in the first place? How do you initially get into contact with them? Did they just phone you or find your number; do they come through a union or through a friend?

LR: I get references through [a friend] and she will give my name to the workers and they will call me or sometimes people know me through their friends.

Could you tell us what you do once you receive a labor violation or a client phone call? What is your process?

LR: I meet with the worker and find out what the labor violation was. Then we go to the labor ministry to file a complaint.

What is the process of the Labor Ministry? When does that complaint reach the labor ministry?

LR: An inspector is assigned to the case and will work with the company and worker.

BR: It depends on the case. In the majority of cases we try to resolve them without going too much into the process. If we can't, then we will take more steps. We use a written document to write down complaints from all sides.

LR: If you want to go to court, you need to have a report of this type from the labor ministry.

Then what happens after you've received the act? What is the next step?

BR: It depends on the case. Sometimes there is a settlement when there is a report and it can be resolved with an inspector. For example, when there is a right to termination benefits, we need to work it out and send it to the judge or some can go and find an independent lawyer.

What percentage of cases resolve in positive settlements within the Labor Ministry? For instance, not going to court or taking the case further? How frequent is it?

BR: Going to a judge is very infrequent. There are many steps before that. For example, meetings between the workers and the companies come first.

LR: About 70% are resolved favorably in the labor ministry

What do these kind of successful resolutions look like? Does this mean that workers receive compensation from the company? What kind of resolutions do you see?

LR: Typically the companies will pay. For example, if workers work for five years for a company, they only have two months to claim their [inaudible].

Do most of these cases get filed by individual workers or brought to you by unions or groups of workers?

LR/BR: In both forms

Is it roughly half and half? How many individuals? How many groups?

LR: When a factory closes, it is typically a group claim. If that's not the case, then it is more likely to be individuals filing claims.

BR: Eventually the individuals will form into groups.

Could you tell us the profile of the workers that come to you? What is the typical character that brings cases to you? What age? What background? What kind of employment? Where are they from?

BR: About 25 to 35 is the average age, but as old as up to 40 years old. There are many industries, such as: manufacturing, commerce, and the service industry, that are represented.

How educated are they? Are they aware of the law and their rights?

LR: The unions usually have given them training about their rights

Do you often get people who come to you who don't know anything about the law or their rights?

LR: In some cases, it's true they are not familiar with their rights and have waived them and lost them without realizing.

Are there some industries that complaints are likely to be resolved than others? Which industries have the most complaints?

BR: Security firms and cleaning firms have more than others.

LR: There are many from the maquilas, and commerce too.

In the maquila industry, are there still around 70% cases resolved successfully at Ministry of Labor?

LR: There are good maquilas and bad maquilas where workers' rights violations occur. Some have better rights than others. Sometimes American investors are more respectful, but the problems are when those investors leave the country and close the factory in the middle of nowhere.

How much interaction do you have with the factory owners at the labor ministry, such as from China, Canada and United States? Do you have to interact with those people a lot?

BR: We do not only specific inspections, but we also have regularly schedules general inspections. We are in communication with these people that own the factory on a regular basis to see if there problems or not.

Do you ever initiate action yourself because you find a violation in these inspections before a worker brings it to you? When you find a labor violation has taken place, do you ever

initiate action against the factory employee or factory owner or does the worker have to bring the case to you?

BR: Not necessarily. When we see something during inspection then there is no need for the worker to make a claim at the labor ministry. If there are a lot of claims from the same company, then we pay special attention to check those factories.

LR: When a company finds a violation, the Honduran labor code states that these must be resolved within three days.

Can you often resolve cases within three days?

BR: Sometimes yes and sometimes no.

LR: For bigger companies, it is not a big deal to pay a fine.

When you inspect factories, do you give them notice before you come? Do you get an accurate picture of the factories when you inspect it? When the factories know you are coming, do the factory owners make sure the factories look good and the rights of workers are protected?

BR: For general inspections, no we don't notify them and when a worker notifies us, we don't let the factory owner know ahead of time.

So you're confident that you get an accurate picture of what is going on in that factory?

LR: I don't know how it is now, but before we had problems getting access to the factories. Sometimes we would go with the police to let us get in and inspect the factory.

And is that still the case in your experience at the Ministry of Labor?

BR: The amount of claims from maquilas have gone down but the same problem still exists

Is this a more common problem within the Chinese or Asian owned factories rather than the US or Canada owned factories or is it from across the board?

BR: It's more common with the Asian investors and rarely American investors.

Why did the maquila claims go down recently?

LR: One of the reasons is that the brands are doing more private auditing. And the code of conduct obligates the brands to do this. This can be helpful to the workers.

BR: Right now people are doing more preventative inspections and they do the inspections really well. It's better to do it before than after. It is successful in preventing conflicts.

Do you get the sense that conditions in the maquilas have improved?

BR: Yes, I can say they have.

What interaction does the ministry of labor have with the brands? Do you have any interaction with the brands themselves?

BR: Very little. We don't have a close relationship with them.

How about the unions? Could you tell us a little bit about your relationship with the unions?

BR: Our relationship with the unions is very close. We work with them hand in hand. If there is a union in the factory we are investigating, we consult with them about the violations and collective bargaining agreements. The Ministry of Labor is a mediator between the company and the workers.

Could you tell us about a typical day in your job at the Ministry of Labor? What happens when you come in? What kind of work do you do on a day-to-day basis from morning to night?

BR: In my case, I have appointments scheduled when I get to work. Sometimes we have an audience with workers and inspectors, and we write reports that describe what is going on in these particular cases. I work closely with the inspectors. We get together and talk about the cases and what we need to do to resolve these claims.

How many people work at the Ministry of Labor?

BR: 56

How many claims or cases are processed per week or month?

BR: Because there are a bunch of different departments, I am not sure.

How many claims within the maquila industry would you deal with within a month?

BR: Maybe about 10 cases a month, but in my case it is a bit less.

Do you feel you have enough staff to process all the cases you get, or do you feel that the staff there is overworked?

BR: No, we don't have enough resources. There are only 18 inspectors. This is the biggest industrial zone and we don't have enough resources.

LR: In Central America there are these types of problems, like in Guatemala. They don't have enough resources. Also the office here, even if it's the most industrialized part, they have to rely

on the capital for funding for the office and inspectors just don't have enough resources. They don't have their own vehicles, money to travel with and this limits the capacity to do all the work they have before them. In Dominican Republic, they have vehicles so they can travel around easily, but for Central America it's a different situation.

When you have a claim, for example a termination case, how do you get the factory bonus to pay the money? Is that difficult for you?

LR: It is very difficult

Can you tell us a little about why and how?

BR: Many say in actuality the economic recession is bad, it is really hard, and there are problems in our country. "I want to pay, but I simply can't pay." There is a culture of noncompliance. People are supposed to pay but they simply don't. They have the resources to pay but they don't.

But still in the majority of cases, you are successful in the end?

LR: Yes

BR: In the majority of cases they come to an agreement, but workers often ask for something and only receive a part of it. If the worker needs something, they will take a price lower than what is worth.

When the employer says they can't pay, how do you persuade them to pay in the end? Do you write them letters, but do you have to go in person to persuade them?

LR: They declare bankruptcy. In some of the cases the factory owners flee the country and the workers get absolutely nothing, but in other cases the workers claim stuff. Sometimes the factory owners will leave stuff but it will only cover 30% of the workers.

[End Tape]