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RESEARCH ARTICLE

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## THE AGUASCALIENTES LABOR CONCILIATION CENTER— GENUINE LABOR JUSTICE OR JUST MORE OF THE SAME? (PART II)

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### ABSTRACT

This article explores how the newly established Labor Conciliation Center of Aguascalientes, Mexico (Centro de Conciliación Laboral de Aguascalientes, CCLEA), administers labor justice in employer–employee disputes within the state’s enterprises, in response to the new labor law introduced through the 2019 Federal Reform. Attention is directed to the degree to which justice is delivered by the state’s current labor regulatory institution—the CCLEA, now under the authority of the Judicial Branch of the State Government—in comparison with its predecessor, the Local Board of Conciliation and Arbitration (Junta Local de Conciliación y Arbitraje, JLCA), which operated in alignment with the interests of the state’s Executive Branch. In essence, the article addresses the hypothesis previously posed, namely whether the administration of labor justice in the state of Aguascalientes changed with the establishment of the CCLEA. From the analysis, it is concluded that the creation of the CCLEA marked the beginning of genuine labor justice for workers—characterized by being quick and efficient. Such characteristics had never been observed during the era of the JLCA, the body previously responsible for regulating labor–management conflicts in the state.

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## INTRODUCTION

This article presents the perspective of public officials from the Labor Conciliation Center of the State of Aguascalientes (CCLEA), as well as that of labor lawyers who handle cases related to labor disputes, highlighting how they perceive the novel way labor judges administer justice. The discussion focuses on how labor justice was administered in the JLCA and how it is now implemented by the Aguascalientes Labor Conciliation Center. Relevant conclusions concerning the transformation of labor justice in the state were reached through a review of qualitative empirical data drawn from interviews with a public official who is part of the Labor Conciliation Center—specifically, a clerk assigned to one of the four labor courts—and with three labor lawyers in Aguascalientes (all with more than 25 years of experience in labor matters, including within the now-superseded JLCA). Accordingly, the central themes developed in this study focus on highlighting the comparative structure and functions of labor regulatory institutions in the state. Particular attention is given to the *style of conflict resolution and the administration of justice* in the current CCLEA regarding workers’ claims. In addition, the study addresses how union-related disputes are resolved, including matters of union registration, collective bargaining, strike notices, and strike outbreaks in the state. In this context, the interviewees cited in the article requested anonymity to protect the confidentiality of their views.

For the purposes of the study, a methodology of articulated reconstruction of historical events was employed, along with in-depth semi-structured interviews as the primary research technique. Nomenclature used to differentiate each of the interviewees is as follows: the *secretary-instructor assigned to a labor court* is referred to as SIAJL #1. Meanwhile, the labor lawyers from the state of Aguascalientes are identified as ALE #1, ALE #2, and ALE #3, with the acronym standing for Abogado Laboralista del Estado (State Labor Lawyer).

**Structure and Functions of Labor Regulatory Institutions in Aguascalientes: JLCA vs. CCLEA:** By presenting a qualitative comparison based on the accounts of key informants, this section aims at understanding the structures and functions of the two labor regulatory institutions in the state: the JLCA and the CCLEA. The first objective of this research is to determine the extent to which the oldest legal structures regulating the relationship between capital and labor in the state of Aguascalientes have been transformed. The second objective is to examine how the style of resolutions of labor disputes in the state has changed. Together, these two objectives complete the analysis proposed from the beginning of the study and lead to the conclusion that a qualitative transformation happened in matters of labor justice in Aguascalientes, though not in union freedom. In this latter domain, significant vestiges of protection unionism remain, which resulted in collective bargaining processes continuing to function largely as acts of simulation.

**The Structure and Functions of Labor Regulatory Institutions in Aguascalientes:** An initial step in comparing the structures and functions of the labor regulatory institutions in the state of Aguascalientes—the JLCA and the CCLEA—is to incorporate the perspectives of those who have worked in both institutions, whether as advisors in labor disputes or as public officials. However, to understand the current historical process, it is first necessary to provide some historical context. The Federal Labor Law in Mexico is among the most complex and comprehensive in matters of labor justice worldwide. This law has been amended on several occasions and, in most cases, was intended to guarantee the unrestricted respect of workers' rights—although, in practice, the opposite often occurred. In 2011, the Federal Labor Law was subject to a reform that appeared to guarantee certain rights for workers but proved to harm them. The list of such harms is nearly endless: freedom of association (virtually impossible for authentic unions to achieve), the resolution of workers' claims systematically favoring employers (through delaying tactics designed to pressure workers into withdrawing their cases), and, in addition, the consolidation of an unjust pension system (requiring more years of service, imposing high fees from insurers, and providing workers with barely a third of what they had earned during their active working lives).

It was not until 2019 that a far-reaching labor reform was enacted, which made it possible to establish, among other things, greater union activity within companies and an incipient process of collective bargaining. The reform aimed to ensure that workers' claims could be resolved quickly, without requiring them to wait for years for a final ruling (if such a ruling was ever issued by labor judges). On the union side, the reform also sought to guarantee that newly formed unions could promptly obtain a *Certificate of Representativeness*<sup>1</sup>, particularly so that labor claims, strike notices, or strikes would be recognized as lawful. Reforming the Federal Labor Law, once approved by both legislative chambers in 2019, went through several stages of implementation, as the new conciliation centers appeared at different times across different regions of the country. It was not until 2022 that the Labor Conciliation Center was established in Aguascalientes. The reform was distinctive in that both labor regulatory bodies—the JLCA and the CCLEA—operated concurrently in resolving workers' claims, both under the same legal framework of the reformed Federal Labor Law. The distinction lay in the fact that the JLCA was limited to handling labor and union disputes registered up to 2018, while from 2019 onward, all newly admitted cases were to be resolved by CCLEA. The only other difference between the two regulatory institutions was that the registration of new unions was done by the Federal Center for Conciliation and Labor Registration (Centro Federal de Conciliación y Registro Laboral de Aguascalientes, CFCRL) in Aguascalientes. The following section presents selected interviews with key informants whose insights contributed to an understanding of both the interview findings and the current statistical data. These accounts also demonstrate the extent to which the functions and structures of labor regulatory institutions in the state of Aguascalientes have changed in the realm of labor justice. Analysis begins with an interview conducted with the instructor secretary assigned to one of the four labor courts in the state (SIAJL #1<sup>2</sup>). It is worth noting that this interviewee was the only public official willing to participate in the study. Regarding the differences between the structures and functions of labor regulatory institutions in the state—the JLCA, the CCLEA, and the CFCRL—the interviewee indicated that no such distinctions exist. What was emphasized, however, is that the functions formerly performed by the JLCA (the administration of labor justice through

labor courts, as stipulated in Article 523 of the Federal Labor Law) are now implemented by labor courts. In other words, the administration of labor justice shifted from being under the authority of the State Executive Branch to the State Judiciary. The first major step in transforming labor regulatory institutions in the state was marked by this change. Nowadays, labor justice must go through specific filters before reaching litigation. For instance, at the CCLEA, labor disputes are first received, and an attempt is made to reach an agreement between the parties (pre-trial labor agreements). Only when no settlement is achieved does the case proceed to litigation between employer and worker. Such a shift explains the decline in cases categorized as pre-trial labor agreements (previously out-of-court labor agreements under the JLCA), which resolve matters such as unjustified dismissals, voluntary resignations, reinstatements, indemnifications, contract revisions, wage increases, and profit-sharing. The interviewee further emphasized that any dispute admitted by the CCLEA must strictly attempt conciliation before proceeding. If workers reject the proposed terms, the judge issues a Certificate of Failure to Conciliate, which is also the case for union disputes at the Federal Center for Conciliation and Labor Registration (CFCRL) in Aguascalientes. This document allows the conflict to proceed to formal litigation.

As a result, matters like contract registration, regulatory agreements, and strike notices now advance directly to the enforcement stage. This adjustment helps genuine unions avoid procedural delays in securing legal recognition, among other benefits. Circumstances may vary depending on the case. For example, in a union dispute handled by the CFCRL, if the judge observes that the parties have reached an agreement and a ruling is issued but the employer ignores it, the judge proceeds directly to a final and binding judgment. In such cases, the employer is penalized for each day of noncompliance with the ruling (failure to deliver the agreed financial settlement to the worker), moving immediately to asset seizure and enforcement. This means that judges at the CCLEA now bypass the intermediate steps that had been required for decades at the JLCA—a total of five stages: filing the claim (by the union or the worker), responding to the claim, presenting evidence, examining evidence, submitting closing arguments, and finally issuing a ruling. In other words, five procedural stages once required for workers to obtain a judgment have been eliminated. Currently, at conciliation centers, labor judges first invite the parties to pursue an initial conciliation (pre-trial labor agreement). If at this stage the worker considers the terms (e.g., the employer's proposed payment) unfair, the judge issues a Certificate of Failure to Conciliate. With this document, the worker may then initiate a formal lawsuit against the employer. At this point, the judge once again invites the parties to reach a new agreement, followed by an enforcement of judgment. Should the employer still fail to comply with this new settlement, the judge orders the seizure of the employer's assets so that the worker not only recovers the agreed sum but also receives additional compensation for each day of noncompliance by the employer. (See interview with SIAJL #1).

P: What is the difference between the organizational structure of the Local Conciliation Boards, the Federal Conciliation Board, and the newly established Labor Conciliation and Registration Center and State Labor Conciliation Center?

L: I do not know if it is appropriate for me to make this comment, but from my point of view, I do not even know if there really is a difference. The thing is that the labor conciliation centers, both federal and local, are figures that didn't exist before. They're new figures, new authorities created in Article 523 of the Federal Labor Law. They simply didn't exist. Now, the main function of the conciliation and arbitration boards was, or rather used to be, to deliver justice. That is what the labor courts do now. What the boards did before is now what the labor courts do. The big difference is that it shifted from the Executive Branch [delivering justice] to the Judicial Branch. But the conciliation centers didn't exist before. Their creation is basically a filter. That's the important thing here—it is a filter that gives both the employer and the worker the chance, before going to trial, to go through conciliation. It is a requirement, in fact. If you do

<sup>1</sup> Document certifying the legal status registration of a union before labor regulatory institutions.

<sup>2</sup> This secretary is part of a court or corresponding body within the Judiciary of the state of Aguascalientes. In this setting, labor justice is administered once the pre-judicial stage of labor conciliation between employer and worker in a labor dispute at the Conciliation Center has been completed. That is, if the parties in conflict do not reach an agreement and a Certificate of Failure to Conciliate is issued, the case then proceeds to a labor claim trial to be resolved by a judge of the Judiciary. Once the arguments of both parties in the dispute have been presented, the judge issues a final and binding ruling.

not go through there, your claim will never be admitted. You must prove that you followed that step, and if no agreement is reached, then a document is issued, the Certificate of Failure to Conciliate. That's like the pass that lets the claim be admitted. So, it is not really a matter of difference but of having new figures that didn't exist before. The Conciliation Center's role is only to conciliate. And in the case of the Federal Center, to handle registrations—collective labor agreements, workplace rules, and so on. But mainly, conciliation is the main task: trying to resolve disputes between workers and employers without going to trial. If no agreement is reached, nothing happens. But if they do reach an agreement, the peculiar thing is that the agreement is elevated to the category of a final and binding judgment (*sentencia ejecutoriada*). That means if it is not complied with, there's no need to go through the whole ordinary trial process—filing the claim, answering, presenting evidence, examining evidence, making arguments, issuing judgment, and then executing. From the Conciliation Center's point of view, this is a very essential function they were given: to create agreements. And once an agreement is made, it gets elevated to the level of a final and binding judgment. What that means is that if it isn't complied with, the case automatically goes to the labor court. But at that point, you do not have to prove anything anymore—you just go to demand compliance with that agreement. And from there, you go straight to enforcement, straight to the end of the process.

And that's a big advantage. Because many times, when a penalty is included for noncompliance—by the employer—it is not just the settlement amount they owe, but the settlement plus a daily penalty for every day of noncompliance. So, the judge goes straight to seize assets, to enforce the agreement, just like that. (SIAJL #1). With this new labor legal process for resolving workers' disputes through labor judges, decades of labor injustice were overcome. Workers had long endured endless labor claims before the JLCAs, which in most cases ended in withdrawals on the part of the workers. The following interview with a labor lawyer in the state of Aguascalientes reflects a similar perspective on the transformation of the structure and functions of Mexico's labor regulatory institutions—shifting from the Local Conciliation and Arbitration Board to the newly established State Center for Labor Conciliation of Aguascalientes (CCLEA). This interview not only corroborates what was argued by the Judicial Branch's labor court clerk but also highlights how the influence once exercised by the constitutional governor of Aguascalientes over JICA rulings in union matters has disappeared—something that no longer occurs in the CCLEA. When considering the interviewee's view regarding state interference in labor and union matters, three distinct actions can be identified in different processes: jurisdictional processes (exercising judicial functions), conciliation processes (in cases of disputes), and the registration of unions (handling applications for the registration of company unions). That is, by order of the local executive authorities, control over labor and union issues in the state had to be maintained. In this case, the interference of the State Executive in labor matters, over time, according to the interview, led to what the author of this article calls *labor tranquility (first stage)*, which is nothing other than worker control (already examined by the author). Such labor tranquility consisted of governors intentionally handling matters related to union registrations (the registry function) as well as overseeing the conciliation process. Only the authorities of the local conciliation boards were to resolve issues related to labor disputes (both individual and collective) in accordance with labor law. The above was aimed at creating a simulation of labor justice among the working population, while the underlying objective was to contain the labor movement in Aguascalientes. Thus, if we highlight the role played by the constitutional governors in labor and union matters, with the support of the authorities of the local conciliation boards, it becomes evident that their actions were framed in terms of maintaining labor tranquility. It can be observed that this social actor assured foreign investors that they would face no conflicts with unions, since the latter would not exist within their companies—an arrangement known

as protection contract unionism.<sup>3</sup> As a result, no collective bargaining actions would be performed by unions in these companies. At its core, this was what labor peace or labor tranquility truly meant: a simulated union life in the state, something unprecedented worldwide (see ALE #1). On the other hand, the same interviewee concludes that it is now the Federal Center for Labor Conciliation and Registration of Aguascalientes (CFCL) that handles union registration matters, leaving the resolution and conciliation of individual disputes to CCLEA. Of particular importance, according to this interviewee, is the conciliation process itself, since the number of cases resolved at the JICA of Aguascalientes compared to the new Labor Conciliation Center is nearly three times higher.

JC: Are you interested in me providing some context about what has happened, and then concluding with what we have personally been able to perceive in practice?

P: Yes, of course.

**JC: Labor courts should have transitioned into the Judicial Branch—in other words, the branch to which they should naturally belong is the Judiciary. T**

hey do not belong to it because, after the Revolution, it was decided otherwise. So now we have taken them out of the Executive. The conciliation boards, apart from being a jurisdictional authority, also had a registral function. That is, they oversaw registering unions, collective labor agreements, and internal workplace regulations. In addition, they had a conciliatory role. They performed a triple function: jurisdictional, conciliatory, and registral, particularly in matters of a collective nature—unions, collective agreements, and workplace regulations.

What the reform [to the Federal Law] decides, in what I consider to be a rather clever design, is how the Executive wanted to continue participating in this area to maintain a form of control over labor policy. Why do I call it labor policy? Because it is the policy that determines whether there will be investment or not—since it allows them, for instance, to offer investors “labor peace” [the interviewee refers here to the JICA authorities]. So, [the State Executive Branch says, in effect]: ‘OK, let us divide the responsibilities of the Board according to their functions. I will keep the registral function, I will keep the conciliatory function, and I will leave you strictly the matter of disputes, which is the part of jurisdictionally resolving a trial—and that goes to the Judiciary.’

And so [now referring to the conciliation centers], conciliation centers and labor judges were created. That is the substantial change we see today. Now, the conciliation centers continue to be the ones that register unions—in particular, at the federal level, the Federal Center for Conciliation and Labor Registration. And at the local level, they are limited strictly to handling individual conciliations, which is the area we understand to be of interest.

Now, what results has this had? Evidently, in this first stage, it has had good results, at least statistically. I have first-hand data. Recently, I conducted research to prepare a lecture for the State Judiciary. So, what is the situation? The conciliation numbers previously handled by a conciliation board—I'll put it another way. If you look at the total number of disputes at the local level, under the local conciliation and arbitration boards, many were resolved through out-of-court labor agreements, without the dispute becoming a formal conflict. And then the total of the cases, whether resolved by settlement, withdrawal, or arbitration award (*laudo*), added up to about 5,500 to 6,000 cases annually. With the new system, as of the beginning of this year, with 2023 data, we are talking about around 16,000 to 17,000 conciliation requests at the local center alone. This means that the local center is now receiving 16,000 to 17,000 cases, which it resolves

<sup>3</sup> See books such as *Contratos colectivos de protección en Aguascalientes* and *La construcción del control obrero e industrialización en Aguascalientes: contribución al análisis de la localización industrial*, among others.

immediately—either by reaching a settlement or by sending them on to jurisdictional litigation with a Certificate of Failure to Conciliate. From a statistical standpoint, this clearly demonstrates... (ALE #1). As both interviews show, the primary objective of the Conciliation Center is to ensure that labor disputes are addressed and resolved almost immediately, thereby preventing judges from engaging in delaying practices in the resolution of conflicts between capital and labor—especially to avoid rulings that fail to favor capital interests. However, regarding union matters, the JLCA was deprived of the authority to register unions linked to foreign investment. In this way, the political role played by the state government in controlling the labor movement through protection contracts (the simulation of unions within companies), which were offered to foreign direct investment as a guarantee of labor peace or worker control, ceased to exist with the establishment of the Federal Centers for Conciliation and Labor Registration in Aguascalientes.

The following interview with another labor lawyer displays a similar opinion concerning the new procedure followed by the offices of the Labor Conciliation Center of the State of Aguascalientes, particularly in cases of non-compliance and/or violations of workers' labor rights by employers. This opinion highlights how the resolution procedure was performed in the JLCA of Aguascalientes (which was nearly the same throughout Mexico), and how it now operates in the conciliation centers. In the days of the JLCA, the process began with a hearing stage aimed at reaching an agreement: the conciliation stage. However, if no agreement was reached, the case could move on to a second stage—the worker's labor claim and/or defenses by the employer. In other words, if there was no conciliatory act between the parties, the worker could then proceed to ratify the claim against the employer or, if necessary, modify it. This was the procedure workers followed when no agreement was reached. By contrast, the same interviewee explains that there are now specialized CCLEA bodies who oversee conciliation proceedings, where conciliation itself is the main priority. That is, if no agreement is reached due either to the employer's refusal or the employer's failure to attend the summons issued by the conciliation judge (in the pre-trial labor agreement stage), then the conciliator is obliged to admonish the employer (through corrective and disciplinary measures) and issue the worker a *Certificate of Failure to Conciliate*<sup>4</sup>, enabling the worker to initiate a labor lawsuit. On the other hand, the interviewee also points out (in contrast to how the JLCA handled this same stage) that the parties involved in the conflict must appear in person at the conciliation center, since the conciliator does not allow legal representatives of either party to attend at this stage (particularly those of the employers). This prevents the pre-trial labor agreement process from being prolonged, a situation that traditionally benefited employers (see ALE #2).

P: One of the elements that attracts considerable attention is the transition in labor matters after the 2019 Labor Reform, during the administration of President Andrés Manuel López Obrador—particularly regarding the functions that emerged with the creation of the labor conciliation centers, specifically in the state of Aguascalientes. In this case, one of the issues that is remarkable is the difference in functions and structure between the labor regulation institutions in the state, the JLCA and the CCLEA. What is your opinion on this?

D: There are significant differences. Under the procedure prior to the 2019 reform, there was a first hearing before the Conciliation and Arbitration Board, which included a conciliation stage. Then it would move on to the stage of filing a claim and presenting exceptions. An attempt was made to reconcile the parties; if that failed, the worker would ratify the claim—or, in some cases, modify it, though the usual step was to ratify it—and the employer would then respond at that point. What happened if the parties—for example, the worker—did not attend the conciliation stage? Well, the law said they would simply be deemed unwilling to enter into any conciliation agreement,

period. And if the employer failed to appear at the conciliation stage? The same: they would be considered unwilling to engage in conciliation, and that was the end of it.

The procedure changed. Specialized conciliation bodies were created with that sole function, staffed with people who are continually trained to help reach conciliatory agreements between the parties. The employer is summoned, and now the rules are different. If the employer fails to appear at conciliation, it no longer just means they are deemed unwilling to reach an agreement—they are fined for not attending, and, in addition, the worker is issued a Certificate of Failure to Conciliate, enabling them to file a claim. This conciliation is pre-trial, but mandatory.

If the worker requests that the employer be summoned on a given date and time but then does not attend, the claim is simply archived. If the time limit has not yet expired, the worker may request another conciliation. But if the deadline has passed, they will no longer be able to file a claim, because presenting that Certificate of Failure to Conciliate is an essential requirement to do so, and it will not be issued if the case was archived. So, the sanctions are different now, due to the mandatory nature of conciliation. The parties must appear, talk, and if they cannot reach an agreement, then a Certificate of Failure to Conciliate is issued. At that point, the worker can file a claim. But they must have gone through the conciliation process personally, because no one can appear on their behalf or represent them; they must attend in person. If they do not, they may even lose the opportunity to file a claim. This reform placed a strong emphasis on conciliation, and I think it is working. I do not have reliable statistics, but the last time I spoke with someone at the Conciliation Center, a few months ago, I asked what percentage of cases were being settled, and they told me it was between 80 and 82%. That is quite a high percentage. (ALE #2)

By observing the interview with this labor lawyer regarding the overall legal process of a labor lawsuit in a company before the CCLEA, it becomes clear why the current statistical trend is higher than what was achieved during the time of the JLCA in the state. This is especially true in the area related to out-of-court labor agreements, which today are the pre-trial agreements handled by the CCLEA. Finally, we have the opinion of a third labor lawyer interviewed for this research. In this case, the opinion focuses on and is interpreted around various issues related to the performance of the JLCA in comparison with the CCLEA—particularly concerning the tasks and functions performed by both institutions, the degree of labor justice they achieved, their autonomy, and, above all, the lack of labor justice delivered by the first of the aforementioned institutions. Concerning the organizational structure of the JLCA, this interviewee states that, since it was structured around “small tribunals” in which information about each “labor dispute” case could be accessed by those working within the institution, there was the possibility that the labor legal process could become “somewhat tainted,” in the words of this legal professional. Such a practice was common among those responsible for delivering labor justice in the state. On the other hand, the interviewee mentions that with the CCLEA these same tasks are now done independently in terms of the procedures of labor justice by the presiding judge. In this case, the interviewee believes that each labor dispute must now adhere to more “clear and precise” rules, insofar as every stage established by law must be exhausted. Such was not the case according to the way those in charge of labor justice at the JLCA operated.

Finally, the interviewee alludes to an important point for legislators in the Mexican Chamber of Deputies and Senate (in 2019), at the time of reforming labor legislation in Mexico: the creation of financially and administratively independent labor regulatory institutions, separated from both the federal and state executive powers. The Conciliation Center, being autonomous from the State Executive, has ensured that other powers cannot intervene in the decisions of those administering labor justice: a separation of political power from the Judicial Branch in labor matters. Therefore, current governors can no longer influence labor judges at the conciliation centers in favor of employers. With

<sup>4</sup> Legal document that the worker must obtain in order to proceed to a labor claim trial against the employer.

this development, it can be affirmed that the power of interference long exercised by union corporatism and state corporatism (particularly by state governors) in labor matters to the benefit of employers has been limited (as the second interviewee rightly pointed out).

P: What is the difference between the former local conciliation and arbitration boards and the Federal Center for Conciliation and Labor Registration, as well as the State Labor Conciliation Center?

J: The boards, as such, operated in small tribunals that were familiar with both mediations, and at a certain point, they became the same. Why? Because it was the authority that knew the conflict it had to resolve and, at a given moment, had to mediate. In this way, it could be said—or I can even state now—that the process could become somewhat “tainted.”

The creation and existence of the centers [Labor Conciliation Center] bring benefits for all parties. First, because the participation of the center is independent of the procedure. The rules are very clear, very precise. The centers are support mechanisms that must remain impartial in all proceedings. They certify that the parties appeared and exhausted the stage required by labor law to initiate a trial, or else, they formalize agreements within their jurisdiction that bring an end to the conflict. So, of course, these are two different things—the existence of a board or a center—but these centers, I repeat, bring many benefits compared to what we were doing in the past.

P: In terms of autonomy, both in the centers and in the local boards, with respect to other powers, which have more institutional autonomy?

J: The issue here is the following: the conciliation and arbitration boards, strictly speaking, belonged to the Executive Branch. Today, the labor conciliation centers are independent from the labor courts. That gives us the possibility of having greater clarity and autonomy so that things can be resolved differently. In this way, the political interference that used to exist in the conciliation and arbitration boards disappears. (ALE #3)

The following section presents the perspective of experts in union matters regarding issues related to the conduct of the authorities responsible for administering union justice in the state (specifically within the JLCA and the Federal Center for Labor Conciliation and Registration in Aguascalientes).

***The New Approaches to Resolving Union Conflicts in Aguascalientes by the CFCRL:*** This section examines the actions of the JLCA of Aguascalientes and the current Federal Center for Labor Conciliation and Registration (CFCRL) concerning the admission and registration of unions in companies located within the state. In particular, the focus is on highlighting the degree of transformation in union matters and union life within companies in the state following the 2019 Labor Reform—particularly whether it disrupted the two dominant forms of unionism in Aguascalientes: collective protection contracts (managed by pro-PRI labor centrals) and protectionist unions<sup>5</sup> (also led by PRI-affiliated labor centrals).

***The Registration of Unions in Aguascalientes, Mexico (Before and After 2019):*** The issue of union registration in Aguascalientes—and throughout Mexico—inevitably leads to the notion of collective protection contracts and protectionist unions. These two forms of unionism dominated the political and labor landscape within companies in the state. Both styles of unionism were widely practiced in Aguascalientes for more than 40 years, largely due to the role played by the JLCA in shielding local and foreign companies from confrontational unions, acting under the directives of state governments.

Therefore, the previous issue leads us to examine: What are collective protection contracts, and what is the nature of a protectionist union, starting from the moment it is registered with the JLCA of Aguascalientes? It is worth noting that, in the first case, it was the JLCA that admitted a collective labor agreement without verifying the existence of a union within the company. At first, collective protection contracts were compared to ghosts (a mythology of the existence of spiritual beings): supposedly existing, although with a never-verified existence. Something similar occurred with collective protection contracts registered before the JLCA, whose existence could not be confirmed because no one had access to the institution’s database. Entrepreneurs and unions in Aguascalientes and across the country never acknowledged the existence of such contracts, as they did not want society to discover the collusion that had been established over decades among local governments, employers, and labor centers. With this corrupt practice, employers had the underlying objective of avoiding a union with which to effect collective bargaining, and thus, to avoid legal conflicts with workers. The first study about protection contracts was one that highlighted their legal dimension, explaining that the underlying objective of protection contracts was to prevent strike notices and strike actions. Cela M. Moheno, by describing the process of such contracts, documented this type of unionism in Mexico. The government participated in the process by admitting the registration of a union (through the JLCA), done by a labor center at the request of an employer, so that no genuine union would exist within companies (Moheno, 1999, p. 157). There are also those who have characterized protection contracts from the perspective of studies on corporatism in Mexico, considering them as new forms of unionism in the country, with specific tasks and committed actors, each involved in pursuing mutual goals and benefits. This is the work of Dr. Alfonso Bouzas and M. M. Gaytán (Bouzas, J. A. & Gaytán, M. M., 2001, pp. 49–50).

According to these theorists, protection contracts may arise even before a company is established, relying on Article 923 of the Federal Labor Law, which prevented strike calls from happening. It should be recalled that only legally registered unions may call a strike, and if any individual worker attempts to do so, the JLCA authorities disregard such actions, dismissing the alleged strike petition. On the other hand, another study identifies a different use of protection contracts within the sphere of labor–union relations, specifically as a worker control mechanism: protectionist unions within companies. It is well established that protection contracts are concluded without the knowledge or participation of workers and that, in most cases, they are unaware not only of the existence of a collective agreement in their company but also that it has been registered with the JLCA by a supposed union. The role of unions operating within companies—particularly their potential incorporation into the state’s corporatist union structure—remained uncertain. Known as protectionist unions, such organizations prioritized the defense of employers over the representation of workers. Rather than holding assemblies or engaging in collective bargaining, they functioned without leadership alternation, remaining in power through employer support. Experts Daniel Gutiérrez Castorena and Pablo Gutiérrez Castorena provide a detailed account of this form of unionism (Gutiérrez & Gutiérrez, 2011: 238).

Another book highlights the actual existence of collective protection contracts in Aguascalientes and provides an estimate of those corresponding to protectionist unions. Conducted in the city of Aguascalientes by Dr. Daniel Gutiérrez Castorena and Mtro. Jesús Ramírez, this study employed a three-step strategy: first, reviewing the number of collective bargaining agreements registered with the JLCA for companies operating in the state; second, verifying whether unions were present in each of the companies mentioned; and third, determining whether any genuine union activity took place. In general terms, the study revealed that 65.5% of collective agreements in Aguascalientes were collective protection contracts, while the remainder corresponded to protectionist unions (Gutiérrez & Ramírez, 2006: 85). This work not only dispelled doubts regarding the existence of protection contracts but also clarified the true

<sup>5</sup> This term refers to the type of unionism that serves the interests of and provides protection to employers against any union action by workers.

function of protectionist unions: to safeguard and promote the employer's interests.

Finally, it is necessary to mention another JLCA practice concerning its refusal to register genuine unions that truly represent workers. Such was the case of KS Mexicana in Aguascalientes, where JLCA authorities employed delaying tactics in the union registration process. This case illustrates the stance taken by labor authorities toward workers' demands to organize within the company through a trade union—an effort that was never recognized by the JLCA (Íbid., 2000: 245). Thus, the aforementioned documents reveal the stance adopted by the JLCA for many years concerning union registration and its role in fostering the simulation of unions within companies. Such issue constitutes the core of the present research, as the aim is to determine whether union life in Aguascalientes was transformed following the influence of the new legal framework introduced by the 2019 Reform of the Federal Labor Law in Mexico, particularly regarding free unionization and collective bargaining. Following is a display of perspectives from several experts in labor law in the state of Aguascalientes on the admission and registration of unions at the Federal Center for Conciliation and Labor Registration. Also included are the interviewees' views on the autonomy of labor regulatory institutions with respect to the federal and state executive branches, particularly concerning the registration of unions formed after the arrival of foreign direct investment in the state.

Regarding the admission of a union, both at the JLCA and at the Federal Center for Conciliation, the situation has changed completely. Whereas at the JLCA of Aguascalientes, up until 2019, the process of union registration could follow two distinct paths: one characterized by prolonged delays in the case of genuine unions representing workers, and another involving expedited registration when the union originated from a PRI-affiliated labor center (such as the CTM, CROC, or CROM, among others). In the latter case, these federations were the ones registering the ownership of a collective labor agreement (a protection contract for a company) recently established in the state. As previously mentioned, the process of registering a union is now faster at the Federal Center for Conciliation and Labor Registry in Aguascalientes. Furthermore, this institution may admit applications for the creation of more than one union, provided the legal requirements are met. In such cases, the legitimacy of a union's entitlement to the collective labor agreement depends on which organization has the largest number of affiliated workers. Only this union is authorized to review the collective agreement and to engage in collective bargaining with employers. The underlying objective of this new registration process was the elimination of protection contracts. While this aim appears to have been achieved in practice, protection contracts largely reemerged in the form of protectionist unions.

When reviewing the opinion of the interviewed secretary instructor from a labor court in Aguascalientes, it is noted that the Federal Center for Conciliation and Labor Registry implements a new procedure for the registration of company unions in the state. Under this system, unions seek to obtain legitimacy (by meeting all the requirements) to be granted a Certificate of Representativeness. With this legal document issued by the CFCRL, the union(s) may review the collective labor agreement and engage in collective bargaining. The secretary also explains how this same process was implemented by the JLCA, with the difference that once a union achieved legitimacy (by fulfilling all the requirements), it was granted a *Toma de Nota*, the document required to review collective labor agreement and its negotiation. The distinction between the two processes of union registration and legalization—Certificate of Representativeness and *Toma de Nota*—by these two regulatory institutions lies in the fact that the former allows for the creation of multiple unions within a single company, whereas the latter did not. P: Are the records of the number of collective labor agreements in companies public under this new labor framework?

L: As far as I understand, the Federal Labor Law requires that all this information be made public through the official portal, as provided by

the law, and there should be a section on the Federal Center for Conciliation and Labor Registry's website where this type of information is published.

P: For example, if there are 150 companies with a considerable number of workers, must each of them have a registered union?

L: Yes. If there is a union, it must be legitimized for that purpose—only a union with legitimacy can enter a collective labor agreement. It must receive the Certificate of Representativeness from the Federal Center for Conciliation and Labor Registry, and once that legitimacy has been granted, it is the union that can request the employer to enter into a collective labor agreement or, at the appropriate time, request the revisions of existing agreements.

P: Is the *Toma de Nota* that was previously issued by the Local Conciliation Boards still required to obtain registration?

L: The law requires that certain legal requirements be met; once these are fulfilled, the union may file the registration request. However, the only union that will be legitimized is the one holding the Certificate of Representativeness—that is what it is called now. (SIAJL #1)

In another section of the interview, the secretary elaborated on the situation encountered by the JLCA with respect to its autonomy in rendering decisions on labor disputes, as well as on matters related to the registration of unions and the extent of influence exercised by state governors over the institution. He further discussed the degree of institutional independence currently granted to the CCLEA and the CFCRL from both the local and federal executive branches.

In the first part of the interview, the secretary in question states that the autonomy of the newly established Local Conciliation Center and the Federal Center for Conciliation and Labor Arbitration contains certain questionable elements. Above all, this concerns issues related to the Executive Power—both local and federal—since these authorities are responsible for appointing the officials charged with enforcing the Federal Labor Law. According to the interviewee, this circumstance creates a degree of vulnerability for both institutions in the exercise of their mandate to administer labor justice in the state. However, he also clarifies that such a situation has not hindered the timeliness of dispute resolution within either of the labor regulation institutions. He further notes, nevertheless, that there are differences between the current practices of the JLCA and those of the CCLEA.

In this case, it is essential to emphasize that the secretary frames the issue of autonomy (both for the conciliation centers and for the local and federal labor boards) in terms of official appointments, rather than in relation to rulings on labor justice. For example, during the era of the JLCA, strikes did not usually last long because they did not reach the required level of justification. The JLCA tried to prevent strikes at all costs on behalf of the unions. These were tasks assigned to the JLCA by the state government. In contrast, the new conciliation centers have the independence not to be pressured by the state government in matters of union disputes, even if this autonomy is limited to decision-making and separate from both federal and local executive branches (see SIAJL #1).

P: What level of autonomy do the labor authorities of the local and federal conciliation centers have with respect to the executive branches of state governments?

L: Each institution has its own functions, and in this case it is the governor who appoints the director. Of course, there are procedures for hiring more staff, but in the end, everything depends on the Executive—the State Executive is the one that pays the salaries of all the employees in the State Conciliation Center. In the federal centers, appointments are made by the federal government, through the Executive Branch.

In that case, it is the President of the Republic. There is a selection process with filters, candidates take exams, they get approved and then hired, but the payroll still comes from the Federal Executive in the federal conciliation centers.

From what I have seen, they are allowed to do their work. There is a law that must be followed. But that dependence still exists, and that is one of the criticisms of the reform: why did that not change? If the labor reform already transferred the administration of justice from the conciliation and arbitration boards to the labor courts, then why were not the conciliation centers also transferred to the conciliation bodies that belong to the state or federal judiciary? That has been a big criticism of the reform. It would have made sense to transfer them as well, so that autonomy could exist.

P: Follow-up question: Can the Executive Branch, in terms of autonomy, interfere with the process of resolving labor disputes?

L: In the Judiciary, that part really is autonomous, because the Executive and the Judiciary each do their job separately. Now, going back to part of the previous question, it is true that the conciliation center depends on the Executive Branch, but it is also true that the center is governed by the Federal Labor Law and, of course, by its Organic Law. The Federal Labor Law sets strict time limits — for example, a conciliation process cannot go beyond 45 days. And if there are one or two extra hearings, that must be justified.

P: Which did not exist before.

L: Exactly, there were not such limits before. Now there can be one, two, or even three conciliation hearings between employer and worker, but they must be justified. If no agreement is reached in the first hearing, the center issues a Certificate of Failure to Conciliate, which then serves as a pass to take the case to the Judiciary and file a lawsuit.

P: And is there also a set time limit for a resolution once it reaches that stage?

L: Yes. The trials do have timeframes. The Federal Labor Law has always set deadlines that must be respected for the administration of justice.

Q: I had understood that it did not really work that way, with the local and federal boards...

A: There is an important point we cannot overlook: the conciliation boards, both local and federal, they did what they could with what they had. If we look back at the Federal Labor Law of 2012, and even the one from 1980 that governed until 2012, the timeframe set for resolving a case was a maximum of six months. In reality, cases often took three, four, five, even seven years, because the boards were not given enough staff, infrastructure, or the material resources needed to comply with the deadlines established by law. That lack of support—both in personnel and resources—unfortunately led to delays. This is an issue that has been emphasized to the Judiciary even before the reform began: they must provide enough courts, enough staff, so that what happened does not happen again. If you do not give them the necessary personnel, the same thing will repeat itself—the legal deadlines will not be respected. Fortunately, up to this point, I can say based on experience and on feedback from external lawyers who litigate in the courts, there is a huge difference. A very big difference. The administration of labor justice has been dignified with the labor courts compared to how it was under the conciliation boards. (SIAJL #1)

On the other hand, the autonomy of labor regulation institutions in Aguascalientes is only partial, depending on the case. Matters related to *union registration* must be addressed by the Federal Center for Conciliation and Labor Registration, which falls under federal authority. In contrast, cases involving labor disputes (such as workers' claims) must be resolved through the local Judiciary, specifically by a labor judge in the State Center for Labor Conciliation. The reason why the interviewee makes such distinction between labor conflict resolution and union registration is, according

to him, to offer foreign investors what he calls labor tranquility.<sup>6</sup> (see ALE # 1). So now this function has been removed from the Executive Branch. Unlike a judge, who only performs a jurisdictional function—hears a dispute and rules in favor of one of the parties—the conciliation and arbitration boards had a broader role. In addition to acting as a jurisdictional authority, they also performed a registral function, handling the registration of unions, collective bargaining agreements, and internal workplace regulations. They also had a conciliatory role. In other words, the boards combined three functions: jurisdictional, conciliatory, and registral, especially concerning collective matters such as unions, collective agreements, and workplace rules.

The reform represented a significant modification, in what I would consider a rather ingenious design. It reflects how the Executive Branch still sought to maintain a degree of control over labor policy. By “labor policy,” I mean the set of rules and mechanisms that make it possible—or not—for investments to come in, since authorities can offer investors what is perceived as *labor tranquility*. The idea was to divide the functions of the boards: the Executive Branch retained the registral and conciliatory roles, while the strictly jurisdictional function of resolving labor disputes was transferred to the Judiciary. This led to the creation of conciliation centers and labor courts. That is the substantive change currently in place.

Today, conciliation centers continue to handle union registration—especially at the federal level through the Federal Center for Conciliation and Labor Registration. At the local level, however, the centers focus exclusively on conciliation. This division is where, as I understand it, the main interests lie. And what has this caused? At least in the early stages, the outcomes have been positive from a statistical standpoint. Based on data I recently gathered for a presentation at the State Judiciary, under the old conciliation and arbitration boards, the total number of local labor disputes—including out-of-court labor agreements and trials, resolved either through settlement, withdrawal, or ruling—amounted to about 5,500 to 6,000 cases annually. Under the new system, however, in 2023 alone, the Local Conciliation Center received between 16,000 and 17,000 requests for conciliation. Each of these cases was either resolved by reaching a settlement or, if no agreement was reached, referred to the labor courts with a Certificate of Failure to Conciliate. In statistical terms, that is a substantial increase. (ALE #1) There is one point where this labor lawyer does acknowledge changes in the role of judges, particularly with respect to jurisdictional, registral, and conciliatory functions. In practice, these functions are now done differently: jurisdictional and conciliatory matters are handled by the State Center for Labor Conciliation, while the Federal Center for Labor Conciliation is exclusively responsible for registral cases. This distinction highlights how, in the case of the JLCA of Aguascalientes, the fact that it exercised all three functions allowed it to issue partial rulings that favored local employers, as the authors cited at the beginning of this section have noted. By contrast, under the new conciliation centers, the registral procedures that once enabled the JLCA to authorize protection contracts are no longer permitted (although the issue of protection unions remains unresolved).

However, the labor lawyer identified as ALE #2 believes that the State Center for Labor Conciliation does, in fact, enjoy autonomy from the Local Executive Branch in matters concerning individual labor claims. However, he cannot affirm with certainty that the same degree of autonomy applies in cases involving collective labor claims handled by the labor judges of the Judiciary (see ALE #2).

P: How much autonomy are the labor conciliation centers showing with respect to the State Executive Branch?

<sup>6</sup> Assuring the foreign investor that they will not encounter problems with local unions—a tradition that the author has extensively discussed in various published articles and books.

D: Formally, they are considered fully autonomous bodies, meaning they do not depend on any branch of government. However, we face the same problem that often arises with this type of body, as was the case with the former conciliation boards, which were also independent bodies: the issue of the budget. Who approves the budget? Well, the Chamber of Deputies. And who distributes it? The Executive Branch. To what extent does that affect the functioning of the centers? Well, I can say that in my personal experience, in labor cases I handled—most of the time supporting workers and sometimes representing employers—I have not seen the Conciliation Center act in a biased way. Some people, workers or employers, did complain that they were being pushed too hard toward conciliation. They would tell me, “*Well, they’re forcing me to settle, I think they’re on the employer’s side.*” Or, from the employer’s side: “*I think they’re siding with the worker.*”

But from what I have seen, based on my own experience, I perceive an impartial attitude. That is, obviously their role is to conciliate, and sometimes they may be more insistent than would be ideal, but ultimately, they are just doing their function. I have not yet had to handle a collective dispute, where some political interests might come into play. But in individual cases, I do not see any bias, and I do not see that the centers’ budgetary dependence has affected the way they operate. (ALE #2)

When asked about the difference in functions and autonomy between the JLCA and the Labor Conciliation Center regarding other local authorities, this labor lawyer explained that the JLCA was indeed entirely dependent on the Local Executive Branch. This meant that governors could influence the type of rulings issued in workers’ claims. He further noted that, in practice, the decisions of labor judges could become “tainted in the process,” in his own words. By contrast, with the Conciliation Center, in his view, the resolution of labor claims is now transparent. He also emphasized that, in this new arrangement, labor disputes are being mediated autonomously at the Conciliation Center, free from outside influence (see ALE #3).

P: What is the difference between the JLCA and the CCLEA?

J: Let us start by pointing out some very important factors. The boards operated as small tribunals that handled both mediation and resolution, and at times they ended up overlapping. Why? Because the same authority that had to resolve the conflict was also the one mediating it. This meant that, in practice, things could become somewhat “tainted.” The creation and existence of the Conciliation Center, however, benefits all parties. First, because the Center’s participation is independent of the trial process. The rules are very clear and precise. Centers are support mechanisms that cannot take sides in any proceeding. They simply certify that the parties appeared and experienced the stage required by the Labor Law before starting a trial, or they facilitate agreements within their competence that put an end to the conflict. So, these are two very different things—the existence of a board versus a center—but the centers, I repeat, bring many benefits compared to what was done in the past.

P: In terms of autonomy, between the centers and the local boards, regarding other government branches—who had more autonomy in resolving labor claims?

J: Conciliation and arbitration boards clearly belonged to the Executive Branch. Today, the conciliation centers are independent from the labor courts, which allows us to have greater clarity and autonomy in resolving matters differently. In this way, the hidden interference disappears (ALE #3).

In general, the following can be stated concerning the style of resolving union-related matters in the Federal Center for Conciliation and Labor Registration (CFCRL) in Aguascalientes and the registration of unions within companies.

With the operation of the CFCRL, union matters are no longer subject to interference from other branches of power, ending collusion

between the state government, employers, and labor federations that had previously prevented the creation of genuine unions that truly represented workers in companies. According to the interviews with key informants, the autonomy of the CFCRL concerning the governors of Aguascalientes is partially true, except for the fact that its director is appointed by the state government. In reality, the reformed Federal Labor Law (*Ley Federal del Trabajo*, LFT) includes sanctions for labor authorities who fail to fulfill their duties and obligations, whether by action or omission. Such sanctions are enforced by the Federal Judiciary. Aside from this possible scenario, the CFCRL functions as an institution that contributes to union justice in areas such as union registration, contract reviews, ownership of collective labor agreements, internal regulations, union elections, among others.

## CONCLUSION

The types of rulings issued by labor regulatory institutions in Aguascalientes, and in Mexico as a whole, were entirely determined by their dependence on the State Executive Branch. This reality shaped the actions of labor judges and mediators to such an extent that they could not administer labor justice for workers without the prior approval of the state governor. In other words, administration of labor justice shifted, six-year term after six-year term, according to the will of the sitting governor. Previous studies have shown how, depending on the political party affiliation of the governor in office, the scope and direction of labor justice could be defined by the Executive Branch. In one administration, labor disputes could be resolved in accordance with Mexican Labor Law, while in the next, the very same judges might administer labor justice in ways that aligned with employers’ interests. By interviewing leaders of labor centers, the author has previously documented how one governor introduced a new method of distributing collective labor agreements to labor centers in Aguascalientes—an action that is illegal in Mexico. This broke with the decades-long tradition of exclusively benefiting the state’s trade union corporatism in the allocation of collective agreements to protect foreign investments recently located in the state (all of this in relation to union freedom, linked to the issue of illegal union registrations in the JLCA).

Starting in 2019, with the labor reform to the Federal Labor Law, the creation of new institutions responsible for administering labor justice—now under the Judiciary—namely, the Local Labor Conciliation Center and the Federal Center for Conciliation and Labor Registration at the local level, reshaped the handling of worker claims and changed the way unions could be registered. Such development transformed the delivery of labor justice, making it faster and more efficient. It also brought greater transparency to the union registration process in both the state and the country, effectively eliminating protection contracts. The progress in labor justice and union freedom mentioned above led to the weakening of union corporatism, particularly in terms of controlling and subordinating workers to the interests of employers. However, this was not the case regarding the internal dynamics of unions that recently emerged in Mexican companies following the elimination of protection contracts. In this area, the 2019 Labor Reform did not succeed in fostering greater democracy within unions, nor did it generate greater legitimacy for unions, and it was far from having a positive impact on the representation of union committees in companies. Said remaining tasks are to be addressed by unions themselves to promote genuine union representation in the state. It should be noted that these issues cannot be resolved through new labor laws; rather, they must be achieved by the union committees within each company.

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