



Let's talk

Labor Secretary Miguel Romero invites all sides to sit and hammer out a labor-reform deal now.

To be introduced after the next elections

By Jaime Santiago pages 16-20

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Urgent plea

Labor reform may be dead until after the elections, but that isn't stopping Labor Secretary Miguel Romero from pushing for a defining dialogue in the coming months

BY JAIME SANTIAGO
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Labor reform is dead, you thought? Well, certainly in the Legislature, whose leaders have made clear they won't entertain major reform legislation from the executive branch before the elections.

"The time for that debate has past," said Senate President Thomas Rivera Schatz.

For Labor Secretary Miguel Romero, the time for the debate is just getting started, and he is staking his remaining time in the department largely on the fate of the process.

"I will promote this dialogue until my last day in office," he told CARIBBEAN BUSINESS during an exclusive interview. "We need to confront the issue once and for all."

Romero, a master labor-conflict mediator (see related story on page 20), said he will convene all interested parties to the table to hammer out an agreement on labor reform that can then be introduced come January 2013 by whomever wins the November 2012 elections.

By taking advantage of the time now, he reasons, the elected governor and Legislature can get right to it and proceed with legislation without having to wait for months of dialogue then.

"I think we should start discussions with all involved sectors now," Romero said. "If we don't legislate, at least we can engage in participation by all parties affected by these laws."

CARIBBEAN BUSINESS checked with the folks who presumably would sit at the table, and most of them responded favorably to the notion.

Yes, they will sit and talk, but Romero is the first to be under no illusion. Positions are firm on all

sides, and it will take every bit of his mediating skills to elicit sufficient flexibility to strike a deal.

"Obviously, there will be factions that will oppose any changes. We will never have 100% consensus on this," he acknowledged. "But the discussion is essential to any resolution. Everyone involved—the private sector, government and labor leaders—has to be included."

UNDETERRED

A broad cross-section of business leaders, economists, financial experts and government officials have said a revision of these laws, to temper them to today's realities and help boost employment levels in the local economy, is urgently needed.

Then-candidate Luis Fortuño included reform as one of the principal planks in the New Progressive Party platform when he ran in 2008. He prioritized other issues and failed to move on labor, leaving the private sector and a few lawmakers to try isolated bills, but to no avail.

As recently as last month, Sen. Lucy Arce, chairwoman of the Labor, Veterans Affairs & Human Resources Committee, presented Senate Bill 2085, which would have extended employees' probation period from three months to up to two years. The bill was passed by the Senate, sent to the House, but then recalled by the Senate and sent back to the committee for reconsideration—yet another sign that action on reform won't happen so close to an election.

Undeterred, Romero is asking, at the very least, for a joint resolution supporting his dialogue.

"I believe we need a joint solution on the issue. Discussions should be for a fixed period and all parties involved should reach an agreement

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before the electoral process begins. This will allow legislation to be passed during the early part of the next administration. Politically, this is the kind of sensitive issue you have to deal with during the first year of a term."

Vicente Sánchez, president of the Puerto Rico Products Association (PRPA), couldn't agree more.

"This isn't an easy issue to tackle, but it can be done," he said. "It should be a win-win situation for all parties involved, and the only way to accomplish this is by including everyone in the conversation and acknowledging opposing needs and arguments."

William Riefkohl, executive vice president of the Puerto Rico Manufacturers Association (PRMA), said the association also will participate. "We are always ready to be part of any constructive dialogue on this and any other issue that involves improvement of the local economy."

So is Manuel Reyes Alfonso, executive vice president of the Chamber of Food Marketing, Industry & Distribution. "We understand a revision of labor laws is much needed. We also have no problem being part of this dialogue, but there has to be a will and conviction by all involved to reach an agreement and make the necessary changes. During the past administration [of Popular Democratic Party Gov. Aníbal Acevedo Vilá], a similar effort was made and nothing ever came from the dialogue. Our concern is going through the process once again with no guarantee of results. There is no such thing as neutrality on this issue. All parties have to realize that everyone will have to give a little to reach consensus."

Although not in favor of changes that would take away workers' acquired benefits, labor leaders said they are willing to join the dialogue.

"It is our understanding that in any modern society, dialogue among all sectors is imperative. If that dialogue occurs and we are invited, we will be there expressing our position on the subject," said Manuel Perfecto, president of the United Workers Union (UGT by its Spanish initials).



"This isn't an easy issue to tackle, but it can be done," said Vicente Sánchez, president of the Puerto Rico Products Association, agreeing to engage in the dialogue proposed by the Labor Department. "It should be a win-win situation for all parties involved."

One key player expressed some misgivings. "Our position on this issue is that before we start any conversations about revising the law, we need to understand the reasons why we need to do it," said Oscar Ramos, labor adviser to the Senate president.

"The global economy presents new challenges, and the only way a country can successfully insert itself in that economy is by enhancing its productivity and competitiveness."

—Puerto Rico Labor Secretary Miguel Romero

"So close to the next elections, political agendas by the various sectors will affect any dialogue, and we don't think consensus will be reached. The only way to move forward on this issue is for the private sector to present credible studies that show our labor laws are, in fact, a deterrent to job creation and how reform would help create new ones."

Jorge Capó, labor lawyer at O'Neill & Borges and chairman of the labor committee at the Puerto Rico



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Chamber of Commerce (PRCC), disagrees.

"We don't need additional studies on this issue," Capó told CARIBBEAN BUSINESS. "If invited to participate in a dialogue on the subject, the chamber will participate," he said. "On the other

hand, we must be careful that this dialogue doesn't delay the process even more. What we need is the will from the Legislature to precede with the discussion of proposals so specific issues and possible agreements can be reached."

CONSTITUTIONAL PATERNALISM

Conceived some 70 years ago to protect agricultural laborers from abusive practices, labor laws in Puerto Rico tend to be of a paternalistic nature, establishing

generous, European-style benefits such as vacation time, sick leave, severance pay, holiday provisions, overtime pay, paid jury duty, paid maternity leave of several months, breast-feeding time off, an automatic Christmas bonus, among other benefits.

In case of termination (unless totally justified, such as for stealing), employees receive compensation—starting at nine weeks and growing to many months—based on years of service.

Puerto Rico employees today have more labor benefits mandated by law than workers in any other U.S. jurisdiction or a majority of countries in the world.

The result has been increased labor costs and a regulatory patchwork that many employers find hard to navigate. While past economic bonanzas have dwarfed these increased costs, the current recession has been unforgiving, forcing many businesses to go under or leave the island.

Business leaders have long claimed that many local laws are unnecessary today, as opposed to the 1940s, because federal labor laws have since granted the same or superior protection to employees.

Historically, Puerto Rico legislators have copied U.S. mainland regulations and expanded the benefits locally.

Many say local lawmakers craft legislation to cater to employees rather than employers because, in political terms, they can win much more support by passing laws that benefit hundreds of thousands of workers, rather than hundreds of business owners.

This populist approach by lawmakers, supported by a large majority of the population, stems from a long legal tradition and cultural norm.

"The Constitution was conceptualized with workers' rights and protections as a priority," Romero said. "That is when the eight-hour workday was established, instead of the 40-hour week established at the federal level," a distinction that grants workers in Puerto Rico greater chances for overtime pay, since they don't have to wait until they work 40 hours.

"The Puerto Rico Supreme Court,"

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he continued, “has gone as far as saying that when no specific law applies to a labor issue, the conflict in question is to be resolved in workers’ favor because the laws protect them and are of a compensatory nature. So, this is clearly a system built institutionally and culturally to protect workers. The challenge is to do so while striking the proper balance with economic growth so businesses can grow and workers can have the jobs and wage levels they want and need.”

One way to do that, Capó argues, is to renounce some rights under agreement or contract. “There are exceptions when legislators have prohibited the renouncing of some rights, such as the eight-hour workday, the minimum wage and Law 80 [amended in 2005 by Law 128], which requires employers to pay severance to terminated employees, but these are few.”

A good example of renouncing a right, he added, is the right to privacy. “The Constitution states this is everyone’s right but, in most cases, employers can look into their employees’ computer systems and monitor their use. This is permitted under a contractual agreement. At some point, the employee must have signed a release form.”

KEEP ACQUIRED RIGHTS

“Our onerous labor laws promote unemployment,” PRMA’s Riefkohl said. “Populist legislation only adds to the cost of doing business in Puerto Rico, making it hard to attract new investment to the island. The effect is that fewer jobs are created. We aren’t suggesting that all acquired benefits be eliminated, but some areas, such as having flexible work hours, the Christmas bonus and probation period, should be revised.”

On the latter, Riefkohl added, “perhaps the issue isn’t the amount of time for the probation period as much as the extremely onerous severance pay. Before 2005, when the law was revised and the severance pay drastically increased, there were no concerns about the probation period. Employers could pay it whenever they had to dismiss an employee. Now, it is such an expensive proposition that companies are afraid to hire additional employees, curtailing new



In the absence of labor reform, Romero is pushing the department’s many job-creating incentives, such as those he claims worked for the W Retreat & Spa Vieques Island, where training funds allowed the employer to hire [more] local workers.

job creation. On the other hand, we also believe any changes should only be for new employees. Acquired benefits shouldn’t be removed from those who already have them. New rules should apply to new hires.”

PRPA’s Sánchez agreed. “A solution might be to implement changes to the law in a way that protects the acquired benefits of those who already have them, but the new laws would apply to all who are hired after labor reforms become law. This way, by normal attrition over time, the old laws would end and the reforms would continue.”

PRCC’s Capó adds: “The changes we are proposing won’t have an impact on anyone who is now working in the labor force. Our position is that from now on, any labor-law amendment should be implemented on all new employees. These changes will help create new jobs, which will assist unemployed people enter the labor force. New jobs aren’t being created because of the high costs that current laws represent to employers. These costs represent a risk. The higher the risk, the less inclined a business will be to hire more people. If you reduce that risk, things would be different. Unemployed people have no benefits. I am sure each one of them would be willing to accept a job with a reduction in the current benefits provided by local labor laws. Puerto Rico’s laws offer much more protection than any U.S. state, yet many people on the island are moving stateside to look for employment. The federal labor laws protect employees in the States,

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—Manuel Perfecto, president of the United Workers Union

and in Puerto Rico.”

The union sector feels these laws aren’t the real issue affecting local economic growth.

“There is a widespread perception that for Puerto Rico’s economy to grow, be competitive in the global arena and create new jobs, acquired benefits have to be taken from local laborers,” UGT’s Perfecto said. “This is a fallacy. What really is needed are good, effective government incentives that attract new investments to the local economy. Once that is accomplished, the government has to ensure that any new company coming to Puerto Rico complies with its contractual agreements. In many cases in the past, this didn’t happen, and the government did nothing about it.”

NO REFORM? TRY INCENTIVES

While the economy won’t get a boost from labor reform, the labor secretary is promising job creation through various incentives for the private sector.

“The Labor Department must

evolve to meet new challenges in today’s ever-changing economy,” Romero said. “Our responsibility not only is to provide protection to the working class; but the department needs to also help strengthen Puerto Rico’s economic environment to create new job opportunities for the people. The global economy presents new challenges, and the only way a country can successfully insert itself in that economy is by enhancing its productivity and competitiveness.”

While the main responsibility for Puerto Rico’s economic development and job creation lies with the Economic Development & Commerce Department, the Labor Department contributes with job-creation incentives.

“Prior administrations used the department’s work incentives to create or help maintain government jobs. The income generated from private-sector employers’ payments to the Labor Department were used to subsidize the public-sector payroll,” he said. “Our administration is using

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these funds to help create jobs in the private industry through various incentive programs.”

The incentive programs mainly focus on employee-training subsidies to the private sector.

The Labor Promotion Department manages the wage incentives offered by the Labor Department under Law 52 of 1991 and Law 80 of 1980. A special fund is used to promote job opportunities in occupations with demand in the labor market. These funds are known as the incentive Program for Job Creation (PJC).

“The funds under this program are mainly directed at beneficiaries of the unemployment insurance program and people registered with the Employment Services Office at the Labor & Human Resources Department,” Romero told CARIBBEAN BUSINESS. “It also funds a training and employment program that includes elderly people.”

According to Labor Department statistics, 3,007 new jobs were created during fiscal years 2009 and 2010 with funds from the PJC. During the current fiscal year, 3,030 jobs were incentivized using PJC funds, and another 1,292 jobs were created using funds from the local economic-stimulus plan.

“From 2009 to present, the department has created 11,280 new jobs using Workforce Incentive Act [WIA] funds,” Romero said. “This has been done through our 15 area locations that include the 78 municipalities in the WIA system. Furthermore, we have supported the creation of 6,118 positions through our On the Job Training Program.”

Romero gives specific examples of new job promotions the Labor Department helped create during these past years.

“W Retreat & Spa Vieques Island is a good example of these funds at work,” Romero told CARIBBEAN BUSINESS. “Prior to its opening, the Labor Department provided funds to the hotel to train its new employees. This allowed the employer to hire local workers without bringing in existing employees from other jurisdictions. As a result, from day one, all employees were local. We also have provided these incentives with other smaller hotels in the San Juan-metropolitan area.” ■

Dialogue can proceed without legislative OK

While Romero is free to convene all interested parties, lawmakers aren't as optimistic

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Puerto Rico Labor Secretary Miguel Romero doesn't need a legislative resolution to lead a group that would decide changes to Puerto Rico's labor laws, legislators said.

House Majority Leader Carlos “Johnny” Méndez and Senate Labor & Veterans Affairs Committee Chairwoman Lucy Arce said Romero can, on his own initiative, promote talks between labor unions and business organizations aimed at easing labor laws in an effort to create jobs.

“He doesn't need a resolution to start a dialogue,” Méndez said.

As if to remind Romero, the two lawmakers reiterated that the Legislature is in no mood to amend labor laws, because to do so could cause unnecessary confrontation that might affect next year's election—even though Romero isn't asking for legislative action on the laws themselves, but rather for members of the House and Senate simply to join the dialogue.

Arce cautioned that it would be nearly impossible at this time to move forward on labor-reform negotiations because unions aren't going to accept any changes that could hinder workers' acquired benefits.

She knows this firsthand. In a recent effort to help create jobs for inexperienced workers, Arce introduced legislation to extend the probationary period of newly hired workers from three months to one year. The Senate passed the bill with an amendment extending the period to two years. However, when the bill was in the House, Senate President Thomas Rivera Schatz yielded to public pressure and asked the lower



Sen. Lucy Arce cautioned that it would be nearly impossible to move forward because unions aren't going to accept any changes that could hinder acquired benefits.

chamber to send the bill back to the upper chamber. The bill's future is now uncertain.

“[Labor unions] don't want to hear anything,” she said.

The House, early this year, tried to compile all labor laws into one code in an effort to start the process to ease local labor laws, but the whole idea was put on the back burner amid public pressure.

During hearings early this year on the proposed Labor Code, Romero said he proposed creating a group through a joint resolution that would handle the thorny issue of changing labor laws.

“Our position before the Legislature was to create a participatory group with the clear and specific mission, and a deadline, to determine which areas could be changed and updated,” he said.

Romero noted such participatory groups often have reached a consensus on solutions to controversial problems such as the ailing government pension system.

“Gov. Luis Fortuño created a group to work on a bill that would help resolve the fiscal crisis in the commonwealth pension system,” he said.

Romero said Puerto Rico needs to update its labor laws to conform with its new economic reality and make the island more competitive.

“If labor reform, or the Labor Code, turns into a struggle between the private sector and the unions, the reality is that no group is going to agree on what we are doing,” the Labor secretary said. “I believe we have to bring forth the discussion of this subject, see what areas need change and do it.” ■

Master mediator

If anyone can bring all sides to an agreement, it is Romero

BY JAIME SANTIAGO
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For Labor Secretary Miguel Romero, an accomplished labor lawyer prior to joining the government, mediating labor-related conflicts has become a way of life.

"Mediation is a voluntary process," Romero said. "The parties have to voluntarily agree to participate. In my case, I have been asked to be the mediator and everyone involved has accepted. To get that acceptance, you need credibility. I enter a negotiation process without any preconceived ideas and try to be open and honest with all involved. As long as you maintain credibility, you have the ability to negotiate."

His most recent major victory came during a dispute between the Puerto Rico Aqueduct & Sewer Authority (Prasa) and its labor unions.

At stake was a change to employees' job descriptions that would allow them to take on additional responsibilities and perform a wider array of tasks when needed.

Employee brigades working on, say, sewer pipes wouldn't work on anything else. If they were in the field and detected a problem with anything that wasn't a sewage issue, they would need to notify a brigade working on the other technical area and wait for them to show up.

That created inefficiencies that cost the corporation money and



hurt service to citizens. Water was lost and not invoiced. Leaking water caused street erosion, and private companies had to be hired if Prasa brigades were unavailable.

A solution was needed that would protect the corporation's already weak finances, while guaranteeing employees their positions and salaries.

Four committees had been created to analyze operational issues in this and other areas, looking for efficiencies that would allow Prasa to be more effective and profitable so employees' demands could be met.

With all parts entering a constructive dialogue in good faith, the issue was resolved.

"When negotiating, all parties have to look for common ground to begin conversations in good faith. If that can't be found, negotiations are destined to fail," Romero said. ■





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