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IN A study of British labor, André Philip contrasted what he termed *"le Trade Unionisme"* of England with *les syndicats professionels* of France. So foreign did he deem the British concept of trade unionism to his French readers that, in speaking of British trade unions, he preferred not to use the French term.[1]

The distinction between Anglo-American and French trade unionism is one of substance. Instead of primarily seeking improvement of working conditions within the existing social order as in Great Britain and in the United States, dominant working-class philosophy in France, since the days of Gracchus Babeuf, the first French Socialist,[2] has been class-conscious and revolutionary; its influence has made itself strongly felt upon the trade union movement.[3] Always susceptible to contem-

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The following abbreviations are used in the footnotes of this article:

B. L.—Bulletin des Lois

Bul. Min. Trav.—Bulletin du Ministère du Travail

Bul. Spéc. Déc. J. P.—Bulletin Spécial des Décisions des Juges de Paix et Tribunaux de simple police

C. Tr.—Code du Travail

D. H.—Dalloz, Recueil hebdomadaire de jurisprudence

D. H. Rev. Jur.—Dalloz Hebdomadaire, Revue Juridique

D. P.—Dalloz, Jurisprudence générale; Recueil périodique et critique de jurisprudence, de législation et de doctrine

Journal J. P.—Journal des Juges de Paix

J. O.—Journal officiel

J. P.—Juge de Paix

R. D. P.—Revue de droit publique et de la science politique

Rev. Pol. et Parl.—Revue politique et parlementaire

S.—Sirey, Recueil général des lois et des arrêts

S. C. A.—Superior Court of Arbitration

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[1] GUILD SOCIALISME ET TRADE UNIONISME (1923). See also LE PROBLÈME OUVRIER AUX ÉTATS-UNIS (1927), passim, where the term "unions" instead of "*syndicats*" is used to designate American labor unions.

[2] Bernstein, "Babeuf and Babouvism," 2 SCIENCE AND SOCIETY 29, 166 (1937-1938).

[3] DOLLÉANS, HISTOIRE DU MOUVEMENT OUVRIER, 1830-1871, p. 179 et seq.

porary socialist philosophy, trade unions in the 1890's turned from the doctrines of Karl Marx, which had found favor in the last quarter of the nineteenth century, to syndicalist thought,[4] which, in the interests of revolutionary objectives, discountenanced support of political parties. Under the sway of this school of thought, trade union officials were even prohibited by union rules from taking legislative office.[5] Labor legislation was similarly considered a concession dangerous to working class militancy and to the attainment of fundamental working class aims.[6]

With increasing trade union interest in the immediate betterment of working conditions and in social reform, the influence of the syndicalist school of thought gradually diminished.[7] The Great War brought about its collapse, and following the War the labor movement split between left-wing elements, which now embraced communism, and the more moderate elements, which became frankly reformist under predominantly Socialist leadership. The latter, so as to avoid entanglement in doctrinal disputes, continued the syndicalist tradition of independence from political parties. Only recently, with trade union adherence to the Popular Front in 1935, accompanied by agitation for the enactment of broad social reforms, has there been any apparent, possibly short-lived, change in attitude.[8]

The doctrinal complexion of French trade unionism has not failed to affect the development of French labor relations and French labor law. Trade unions have in the past not been intent in the pursuit of collective bargaining as an end in itself,[9] and not until after 1920 did

(1936). For a recent history of French trade unionism, see CLARK, A HISTORY OF THE FRENCH LABOR MOVEMENT (1910-1928) (1930).

[4] HUMBERT, LE MOUVEMENT SYNDICAL 17, 74 et seq., 90 et seq. (1912).

[5] HUMBERT, ibid., 77-79; Déhove, "Le syndicalisme et les partis politiques en France de 1879 à nos jours," 12 L'ANNÉE POLITIQUE FRANÇAISE ET ÉTRANGÈRE 358 (1937); 13 ibid., 24 (1938).

[6] HUMBERT, LE MOUVEMENT SYNDICAL 15-17, 91 (1912). For the extreme revolutionary syndicalist viewpoint, see PELLOUTIER, HISTOIRE DES BOURSES DU TRAVAIL 53 et passim (1902).

[7] HUMBERT, LE MOUVEMENT SYNDICAL 93 et seq. (1912).

[8] ZÉVAÈS, LE PARTI SOCIALISTE de 1904 à 1923, pp. 200-209, 226 (1923); Déhove, "Le syndicalisme et les partis politiques en France de 1879 à nos jours," 12 L'ANNÉE POLITIQUE FRANÇAISE ET ÉTRANGÈRE 358 at 389-393 (1937), for the relations between the C. G. T. and the Socialist Party after the War. When the labor movement was reunited in 1935 (infra, p. 1027), the principle that trade union officials should not hold elective office was continued in the by-laws of the new C. G. T.; certain federations, however, have permitted their officials to become members of the Chamber of Deputies.

[9] In 1910 the trade union convention of Toulouse expressly rejected the use

they seek protective legislation.[10] The strike weapon has not infrequently been used in the form of the general strike or the strike with political objectives. Neither the closed shop nor the check-off is sought as an essential trade union objective. The issue of craft versus industrial unionism in the sense that it is known in the United States does not exist in France. Such rivalry as there exists is a rivalry of political creeds.

Thus, for many years two important national federations of trade unions, bodies analogous to the A. F. of L. or C. I. O., were in existence—the *Confédération Générale du Travail* (C. G. T.), largely socialist in sympathy, and the communist *Confédération Générale du Travail Unitaire* (C. G. T. U.), which reunited with the C. G. T. in 1935.[11] Two other national federations exist in France—the *Confédération Française des Travailleurs Chrétiens* (C. F. T. C.), under the influence of the Catholic Church,[12] and the *Confédération des Syndicats Professionels Français* (C. P. F.), composed of so-called independent unions, organized under employer influence,[13] which reject recourse to strikes.

The degree of trade union organization today is very high. In 1936 there were five and a half million trade unionists (excluding the C. P. F., which refuses to disclose its membership), equal to about fifty-five per cent of the working population.[14] This large membership

of collective agreements. HUMBERT, LE MOUVEMENT SYNDICAL 91 (1912); Fuchs, "The French Law of Collective Agreements," 41 YALE L. J. 1005 at 1006 (1932). The reformist trade unions, as in the printing trades, saw in the collective agreement an important means of improving the workers' condition. HUMBERT, supra, 92-93.

[10] The Socialist party, however, has always urged social legislation, and has been supported by an important minority among the trade unions. HUMBERT, LE MOUVEMENT SYNDICAL 76-77 (1912); ZÉVAÈS, LE PARTI SOCIALISTE DE 1904 À 1923, pp. 30-46 (1923).

[11] In 1934, before the reunion, the relative strength of the C. G. T. and the C. G. T. U. was estimated at 800,000 and 200,000 members respectively. Déhove, "Le syndicalisme et les partis politiques en France de 1879 à nos jours," 12 L'ANNÉE POLITIQUE FRANÇAISE ET ÉTRANGÈRE 358 at 394 (1937).

[12] Millet, "Le syndicalisme dissident ou les rivaux de la C. G. T., Part III, La Confédération Française des Travailleurs Chrétiens," LE TEMPS, April 1, 1938.

[13] Millet, "La C. S. P. F.," LE TEMPS, April 16, 18, 20 and 22 (1938).

[14] Statistics of French trade unions membership are very incomplete. In 1931 the total number of organizable employees, including white-collar and agricultural workers, was 12,621,245. 52 ANNUAIRE STATISTIQUE DE FRANCE 10-12 (1936). But many workers are foreigners or North African natives (1,406,000), who are difficult to organize. At the end of 1936 the membership of the C. G. T. was generally estimated at 5,000,000; that of the C. F. T. C. at 500,000. As to the S. P. F., see reference cited supra, note 13; its weakness in the elections of "délégués ouvriers" (infra, p. 1059) probably indicates a small following. The membership of the C. G. T. fell about

was chiefly the result of the impulse to organization given by the Popular Front victories, and represented a vast increase over the previous high—1,846,047 in 1925.[15]

Despite differences in broad trade union objectives, trade union law in France in its initial phases has had a marked similarity to the analogous Anglo-American body of law, except that the labor injunction is as unknown in France as in England and that labor activity considered undesirable is usually suppressed by police measures rather than by statute or court decree. More recent French legislation protecting collective bargaining and providing for mediation and arbitration, has adopted a different approach to labor problems.

This paper discusses: (1) the legal status of trade unions, established by statutory provisions for compulsory registration; (2) the extent to which the right to organize is recognized; (3) the law relating to strikes, boycotts and picketing; (4) collective labor agreements; and (5) compulsory mediation and arbitration of industrial conflicts.

I

THE LEGAL STATUS OF TRADE UNIONS—INCORPORATION

In France trade unions must register. This requirement was imposed by the Trade Union Act of 1884,[16] which confers rights and imposes obligations similar to those of business corporations in the United States. This statute, however, like the British Trade Union Act of 1871, was not intended as a regulatory or restrictive measure but constituted the first comprehensive recognition of trade unions by law.[17]

10 to 15% during 1938, but its recent successes in elections of workers' delegates and of lay judges in the labor courts indicate that its influence considerably exceeds its membership.

[15] 49 ANNUAIRE STATISTIQUE DE FRANCE 58 (1933). For criticism of these figures, which are compiled by the Minister of Labor, see LOUIS, HISTOIRE DE LA CLASSE OUVRIÈRE EN FRANCE 401 (1927), who estimates the joint strength of the C. G. T. and the C. G. T. U. at over 2,400,000 at the beginning of 1920 before the schism; at 550,000 in 1921; at 1,000,000 in 1925; and at 1,195,000 in 1926. The membership of the C. F. T. C. before 1936 is generally estimated at between 100,000 and 200,000. The higher figure of the Minister of Labor for 1925 includes organizations which did not actively pursue trade union aims. Ibid.

[16] Act of March 21, 1884, 28 B. L. (Ser. 12) 617 (1884), now C. Tr. III, art. 1 et seq.

[17] On the British act, see Rothschild, "Government Regulation of Trade Unions in Great Britain: I," 38 COL. L. REV. 1 at 24 (1938); for the French act: PIC, TRAITÉ ÉLÉMENTAIRE DE LÉGISLATION INDUSTRIELLE, 5th ed., (hereinafter cited as "Législation Industrielle"), ¶¶ 344, 345 (1922).

Prior to 1884, trade unions in France had passed through a checkered history not dissimilar to the history of trade unions in Great Britain. The French Revolution led to passage in 1791 of the Loi Le Chapelier,[18] a statute intended to secure newly-won economic freedom and to prevent return to the restrictions upon the right to engage in business and the regulations upon its pursuit which the craft guilds and royal decrees had imposed. To this end, the statute, like the combination laws in England, prohibited combinations seeking to further the economic interests of their members.[19] Although on its face directed against all groups, the statute was invoked almost exclusively against workers,[20] and subsequent legislation embodied in the Penal Code was frankly discriminatory, particularly in singling out as guilty of the crime of conspiracy workers combining to raise wages.[21] Thus, although a combination of employers to lower wages was unlawful only if the reduction sought was deemed both unjust and unreasonable, no similar qualification relieved workers' groups from punishment for seeking to increase their wages.[22]

Despite suppression under this legislation trade unions in France, as in England, proved to be a force which the law could not destroy; Napoleon III, sixty years later, turned to the unions for support in his efforts to combat the rising republican movement.[23]

[18] Act of June 14-17, 1791, 3 LOIS ET ACTES DU GOUVERNEMENT 287 (1806).

[19] Ibid., arts. 2, 4. The organizers of unlawful combinations were punishable by fine and suspension of political rights. Ibid., art. 4. Public officials were prohibited from accepting or replying to petitions of such combinations. Ibid., arts. 3, 5.

[20] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶¶ 328, 329 (1922).

[21] Act of October 6, 1791 (4 LOIS ET ACTES 350), II, arts. 19-20, which declared illegal combinations both of landowners and of agricultural workers to affect wages, and made imprisonment of the latter a mandatory punishment but of the former discretionary. Similar inequality of treatment appears in the Act of Nivôse 23, Year II (1794) (8 LOIS ET ACTES 233), punishing combinations of workers in paper factories but not combinations of employers. See also Act of April 12, 1803, arts. 6-8 [14 DUVERGIER, COLLECTION DES LOIS 192 (1826)], embodied in the Code Pénal in 1810 as arts. 414-416. Cf. ibid., art. 12, re-establishing workers' identification cards, and the Act of December 1, 1803, art. 7 [Duvergier, op. cit., 457], permitting the employer to retain the card of a worker until advances against wages were repaid; both acts were repealed in 1890. LOUIS, HISTOIRE DE LA CLASSE OUVRIÈRE EN FRANCE 42 (1927). Cf. also Code Civil, art. 1781 (repealed in 1868), making parole evidence given by an employer as to agreed wages conclusive unless rebutted by writing.

[22] This distinction as well as the discrimination in punishment (imprisonment from one to three months for workers and up to five years for their leaders, fines or imprisonment not exceeding one month for employers) were abolished by the Act of November 27, 1849. 4 B. L. (ser. 10) 489 (1850).

[23] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 339 (1922); HUMBERT, LE MOUVEMENT SYNDICAL 5, 6 (1912).

As an inducement for labor's support, Napoleon III in 1864 abolished the crime of conspiracy.[24]

The penal law, however, still rendered illegal unlicensed associations such as trade unions,[25] and although Napoleon III had relaxed rigid enforcement of the law, the precarious regime of administrative toleration proved to be of short duration. The First International and the Paris Commune led to a statute in 1872 prohibiting associations affiliated with or sympathetic to the First International.[26] Trade unions were again prosecuted as illegal associations and dissolved by the courts.[27] Prosecutions did not cease until the final triumph of the French Republic in 1877 brought to power a succession of liberal governments. From 1880 on, trade union legislation was on the order of business of the Chamber of Deputies,[28] leading ultimately to the Trade Union Act of 1884. The act, together with comprehensive amendments adopted in 1920 to clarify and extend the scope of trade union activity,[29] remains to this day the charter of the French trade union movement.

A. *The Provisions of the Trade Union Act*

The Trade Union Act repealed in its entirety the Loi Le Chapelier and specifically repealed as to trade unions the provisions of the Penal Code directed against unlicensed associations.[30] Trade unions were for the first time given a legal status, provided they registered. The compulsory character of registration may be explained by the character

[24] Act of May 25, 1864, 23 B. L. (ser. 11) 733 (1864), embodied in Code Pénal, arts. 414, 415. The crime of conspiracy was replaced by that of interfering with the right to work. Article 416 (since repealed) punished boycotts and similar acts.

[25] Code Pénal, arts. 291-294, as implemented by the Act of April 10, 1834, 6 B. L. (ser. 9) 25 (1834). Workers' organizations were punishable as illegal associations. Cass. crim. (Feb. 25), D. P. 1866.1.89; Cass. crim. (Feb. 7, 1868), S. 1869.1.42.

[26] Act of March 14, 1872, 4 B. L. (ser. 12) 248 (1872), abrogated by the Association Law of 1901, art. 21, 63 B. L. (ser. 12) 1273 (1901). For the history of the First International, see ZÉVAÈS, LE PARTI SOCIALISTE DE 1904 À 1923, pp. 230-244 (1923).

[27] Trib. Corr. Lyon, affd. Lyon (May 28, 1874), D. P. 1875.2.65 (dissolving the metal workers union). Administrative action was also taken to prevent formation of trade unions or dissolve those in existence. HUMBERT, LE MOUVEMENT SYNDICAL 6, 7 (1912). Employers' associations, however, remained unmolested. 11 DALLOZ, RÉPERTOIRE PRATIQUE, "Syndicat Professionnel," ¶ 4 (1925).

[28] The first proposal was introduced as a government measure by Tirard on November 22, 1880, and was the basis of the statute of 1884. PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 345 (1922).

[29] Act of March 12, 1920, 12 B. L. 1084 (1920).

[30] Act of March 21, 1884, art. 1, 28 B. L. (ser. 12) 617 (1884).

of French law relating to associations, which then conceived of the right to organize as a special privilege to be granted by the state in its sole discretion. At the time no group of more than twenty persons could lawfully organize unless it first received a special permit from the state. Manifestly trade unions could not be organized upon such a basis, especially at a time when they were usually regarded with disfavor. Consequently, to a French legislature seeking to legalize trade unions, the only practical solution compatible with existing legal concepts was to permit the "licensing" of these organizations as a matter of right through provisions for registration.[31]

A second and subsidiary reason that registration was made compulsory was a desire on the part of the legislature to avoid the formation of secret societies. This viewpoint was expressed in a well-known statement by Waldeck-Rousseau, as Minister of the Interior.[32]

The Trade Union Act applies to organizations of employers as well as to organizations of employees. In France, as well as in England, both types of organization are considered trade unions. The more important employers are organized in a national federation, the *Confédération Generale de la Production Française* (C. G. P. F.).[33]

A trade union may be formed by persons engaged in the same or similar type of work or by persons whose work contributes to the making of the same product.[34] Upon its formation, the trade union must register by filing, with the mayor of the locality, copies of the union's by-laws and the names of its officers and directors. Any change in the by-laws or in the officers or directors must similarly be filed. A copy of the registration statement must be transmitted by the mayor to the district attorney.[35] Federations as well as their local branches must register, and federations must in addition state the names and principal officers of their component unions.[36]

The law does not prescribe the contents of trade union by-laws, except that the by-laws of a federation must make formal provision

[31] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 348 (1922). The principle permitting formation of associations without formality was not recognized until the Associations Law of 1901. The Act of 1884 constitutes a compromise between the Senate, which favored restrictive regulation, and the Chamber of Deputies, which favored registration only for trade unions desiring corporate rights. Report by M. Lagrange, J. O. Doc. PARL. CH. 580 (1884).

[32] J. O. DÉB. PARL. SÉN. 202-203 (1884).

[33] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 349 (1922).

[34] Ibid., ¶ 361; C. Tr. III, art. 2.

[35] C. Tr. III, art. 3.

[36] C. Tr. III, arts. 24, 25[1]. Federations enjoy all rights of trade unions. C. Tr. III, art. 26.

for the manner in which its component unions shall be represented upon its board of directors (*conseil d'administration*) and at conventions.[37]

These are the sole requirements incident to registration, and upon compliance therewith the trade union is legally in existence. There is no provision for the manner of selection of officers, except that they must be French citizens and that a person who has been convicted of a crime as a result of which he would lose his right to vote is not eligible for office.[38] Nor is there any provision for auditing of accounts or for publication of financial statements as in England. On the other hand, unlike the British law, the French statute is compulsory; no unregistered organization can be a trade union nor have the rights and privileges conferred upon trade unions as such.[39] Furthermore, the French statute imposes definite restrictions upon the membership of trade unions and upon the scope of trade union activity.

1. *Restrictions upon Trade Union Membership*

The most important limitation upon trade union membership is the prohibition of trade unions composed of civil service employees. This class of employees is not permitted to belong to trade unions. The limitation is found not in any express provision of the statute but in its judicial construction. In interpreting the statutory definition of trade unions, the courts have held that civil service employees cannot be considered persons engaged in industry or commerce. Their status has been deemed different from that of other employees because of their relationship to the state and the security of tenure and pensions guaranteed them by statute.[40]

[37] C. Tr. III, art. 25^2.

[38] C. Tr. III, art. 4, as amended by the decree-law of November 12, 1938, art. 18, J. O. 12869 (Nov. 1938).

[39] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 357 et seq. (1922). An unregistered trade union is a legal association under the Association Law of 1901, 63 B. L. (ser. 12) 1273 (1901), but it has none of the rights of a trade union and may not affiliate with other trade unions. Trib. Corr. Seine (Jan. 13), GAZ. PAL. 1921.1.87. To state that as a result the same system as in Great Britain prevails [PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 360 *in fine* (1922)] seems incorrect. In Great Britain, unregistered trade unions are considered "trade unions" and the practical advantages of registration are minor. See Rothschild, "Government Regulation of Trade Unions in Great Britain: I," 38 COL. L. REV. 1 at 34 et seq. (1938). In particular it seems that unregistered as well as registered trade unions can sue in Great Britain, but an unregistered association cannot sue in France.

[40] Conseil d'État (Jan. 13, 1922), D. P. 1923.3.33, the first decision of the Conseil d'État; Trib. corr. Seine 1903, GAZ. TRIB. 1903.2(2d).227; Cass. crim.

Attempts have been made to confer the right of unionization upon civil service employees.[41] In support of such a measure it has been urged that civil service employees, like other workers, have important economic interests to protect, that their working conditions and the working conditions of employees in other industries are closely interdependent and, finally, that denial of the right to organize because of the special trust alleged to attach to the status of civil service employees may set a precedent for denial of this right to workers in industries performing services whose uninterrupted continuance is deemed a paramount consideration.[42] In 1920 such a measure failed of passage because of a conflict over its terms between the Chamber of Deputies and the Senate, and the question was reserved for the new civil service law,[43] which has long but vainly been awaited.

The judicial rationale which has denied the right of civil service employees to organize has been deemed inapplicable to government employees in traditional state industries such as railroads and the tobacco and match monopolies;[44] upon similar reasoning it would likewise appear inapplicable to government employees in the more recently nationalized arms and aviation industries. Furthermore, under the general Associations Law of 1901, civil service employees, just as other groups, may form their own associations which, although not entitled to the rights and privileges of trade unions, particularly affiliation with other trade unions, can technically represent their members.[45] The right of organization under the Associations Law, however, has not been widely exercised by civil service employees, principally

(May 14, 1908), D. P. 1909.1.133; Paris (Oct. 27, 1910), D. P. 1911.2.329, affd. Cass. civ. (Mar. 4), D. P. 1913.1.321. For a review of legal opinion on this question, see Berthélemy, note, D. P. 1923.3.33.

[41] As part of the amendments to the Trade Union Act of 1884. PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 373 (1922). The right to organize was proposed for civil service employees performing purely ministerial tasks as distinguished from those in positions of authority; the right to strike, however, was to be denied. Berthélemy, note, D. P. 1923.3.33 at 34.

[42] Capitant, note, D. P. 1911.2.329. As to British civil service employees, cf. Rothschild, "Government Regulation of Trade Unions in Great Britain: II," 38 COL. L. REV. 1335 at 1380-1381 (1938).

[43] See Act of March 12, 1920, art. 9, 12 B. L. 1084 (1920).

[44] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 369 (1922); CAPITANT ET CUCHE, PRÉCIS DE LÉGISLATION INDUSTRIELLE, 4th ed., 85 (1936). Cf. Conseil d'Etat (Jan. 4, 1924), D. P. 1926.3.9.

[45] Conseil d'Etat (Dec. 10, 1909), D. P. 1911.3.113; Berthélemy, note, D. P. 1923.3.33; Capitant, note, D. P. 1911.2.329; PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 373 (1922).

because a large proportion who are in sympathy with the dominant trends of trade unionism consider it an injustice to be deprived of direct association with other trade unions.

Indeed, despite the law, powerful civil service associations which claim to be trade unions and are affiliated with other trade unions have long played an important role in French economic life.[46] Sporadic attempts to combat these unions by proceedings for their dissolution and by disciplinary measures against their leaders[47] have failed to impair their influence or to prevent actual recognition by the Government.

In addition to prohibiting civil service unions, the statutory definition of trade unions in effect precludes certain types of industrial union. The limitation upon union membership to persons in the same or similar type of work or persons whose work contributes to the making of the same product does not prevent a union composed, for instance, of building trades workers, for the work of all contributes to the construction of buildings. Furthermore, clerical workers in different industries may affiliate, for their work is deemed "similar."[48] But the limitation upon union membership has been construed to prohibit organization within the same union of manual workers and office or clerical employees.[49] No significant problem is raised by these decisions, because even though certain types of employees may not affiliate in the same union, they may by express authorization of the statute affiliate nationally or locally through membership in the same federation.[50]

2. *Limitations upon Trade Union Objects and Activities*

The statute limits the objects for which trade unions can be formed to "the advancement of economic, industrial, commercial and agricultural interests."[51] It has been decided that under the statute trade

[46] The Fédération des Fonctionnaires, affiliated with the C. G. T., counts among its members about one-third of the French civil servants. Official recognition is extended to the Teachers' Union in various matters such as promotions, etc.

[47] See cases supra, note 40; punishment of individuals for participation in activities such as the civil service strikes of 1934 and 1935 for higher salaries, or the general strike of November 30, 1938, have been the frequent practice.

[48] Conseil d'État (July 10, 1908), D. P. 1910.3.36. But cf. Conseil d'État (Aug. 3, 1907), D. P. 1909.3.42.

[49] Conseil d'État (May 28, 1909), D. P. 1911.3.37.

[50] C. Tr. III, arts. 24, 25[1].

[51] C. Tr. III, art. 1; PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶¶ 383, 384 (1922).

unions cannot engage in purely political activity and cannot penalize their members for failure to take part in such activity.[52] There has been no decision, however, upon the legality of political agitation in furtherance of economic interests.[53] Nor has the legality of political contributions by trade unions been passed upon. The question is academic because, as previously explained, trade unions in France discountenance support of political parties.

Regardless of legality and abstention from party politics, trade unions have played an important role in French political life, and the government has abstained from challenge.[54] Their political importance was emphasized in recent years when they affiliated with the Popular Front and provided the needed mass support for its first government.

Condemnation of the furtherance by trade unions of political objects involves condemnation of the furtherance of religious objects, since if the definition of permissible trade union purposes is held to exclude the one, by parity of reasoning it must exclude the other.[55] Too technical a view of permissible trade union purposes would logically endanger the existence of the important body of trade unionists organized under Catholic influence in the *Conféderation Française des Trævailleurs Chrétiens.*

For the furtherance of permissible trade union purposes, the Trade Union Act confers wide powers on trade unions, subject only to the qualification that they cannot engage in commercial ventures for profit.[56] They may acquire and dispose of real and personal property to an unlimited amount. They may sue or be sued as an entity.[57]

[52] Cass. civ. (Nov. 16, 1914), S. 1917.1.81 (worker excluded for refusal to participate in May Day demonstration). But cf. Cass. civ. (June 15, 1937), D. P. 1938.1.23. Political associations of workers (such as the Amicales Socialistes) can be formed under the Associations Law of 1901.

[53] Trib. corr. Seine (Jan. 13), GAZ. PAL. 1921.1.87, leaves this point open. In favor of legality, see PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 384 (1922).

[54] Prior to the War, dissolution of the C. G. T. was often demanded by its opponents, but the government refused to act. HUMBERT, LE MOUVEMENT SYNDICAL 67 et seq. (1912). Except for the dissolution of the C. G. T. in 1921, the post-war governments have followed the same course.

[55] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 384 (1922). Cf. the case of the Association professionelle des patrons du Nord, called Notre Dame de l'Usine, Cass. crim. (Feb. 18, 1893), D. P. 1894.1.26 (dissolving employers' trade union admitting members of the clergy and promoting pilgrimages).

[56] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶¶ 385, 386 (1922).

[57] C. Tr. III, arts. 10, 11. Labor unions consider the right to sue a valuable method of enforcing their own and their members' rights. Replies of Georges Buisson, assistant secretary to the C. G. T. and Renée Petit, of the Department of Labor,

They may publish union newspapers and maintain and support widely different services, such as employment agencies, schools, institutions for medical aid, laboratories. They may create pension and insurance funds for their members, finance low cost housing and garden projects, support producers' and consumers' co-operatives.[58] Finally, the statute specifically recognizes trade unions as the appropriate body for consultation in all matters affecting labor.[59]

B. *The Operation of the Trade Union Act*

Although the legislature, in passing the Trade Union Act of 1884, considered that it was conferring benefits upon labor,[60] and although labor did not definitely oppose its enactment, the statute was viewed by labor with mixed feelings. Such benefits as it conferred were accepted as a matter of course—nothing more than labor's due. The limitations imposed by the act, however, were viewed with suspicion. The Socialists resented the separation of political activity from trade union functions, and labor in general feared the administrative supervision that might ensue.[61] The first point of criticism disappeared when trade unions soon afterwards fell under the sway of syndicalist doctrines. The second point of criticism disappeared as it became evident that the statute was not to be used as a police measure. Indeed, registration has always been a formality and cannot be denied to a union whose papers are in order. It is granted as a matter of course, and practically no trade unions have failed to comply with the statute. Such violations as have occurred in this respect are generally ascribed to lack of familiarity with the law.[62]

to questionnaire by Mr. Sobernheim. See also CAPITANT ET CUCHE, PRÉCIS DE LÉGISLATION INDUSTRIELLE, 4th ed., 125 (1936), to the effect that most suits on collective agreements prior to 1936 were brought by labor unions.

[58] C. Tr. III, arts. 12-14, 16.

[59] C. Tr. III, art. 17.

[60] Report by M. Lagrange, J. O. Doc. Parl. Ch. 580 (1884); J. O. Déb. Parl. Ch. 739, 741 (1884); J. O. Déb. Parl. Sén. 196, 202 et seq. (1884). Opponents of registration were more sceptical. J. O. Déb. Parl. Ch. 739, 740, 741 (1884). Senator Trarieux was quoted as having said that three-fourths of the trade unions would not survive registration. Ibid. 738.

[61] HUMBERT, LE MOUVEMENT SYNDICAL 11 et seq. (1912). At the outset, only 280 trade unions registered; 587 refused. Ibid., 12. That extension of labor's rights was merely labor's due was still the prevalent attitude at the time of the 1920 amendments to the Trade Union Act. See excerpts from trade union newspapers quoted in the summation of the State's attorney. Trib. corr. Seine (Jan. 13), GAZ. PAL. 1921.1.87.

[62] Reply by Buisson to questionnaire, supra note 57.

Failure to register subjects the officers and directors of the trade union to a fine and the unregistered trade union, which is legally nonexistent, can be dissolved in court proceedings at the instance of the district attorney.[63] But only one case has been found in which any of these penalties has been applied.[64] The same penalties attach to failure to observe the registration statute in other respects. These penalties, too, have rarely been invoked. There are only a few instances in which trade unions have been dissolved,[65] only one of which deserves special mention,—the case of the C. G. T.[66]

The proceeding for the dissolution of the C. G. T. followed after the general and railroad strikes of 1920, which had been organized by the C. G. T. After these strikes had been defeated, the government instituted a proceeding to dissolve the C. G. T. upon the grounds that it had failed to register changes in its by-laws and in its officers, that it had permitted civil service organizations to affiliate with it, and that it had engaged in political activity, including agitation for nationalization of the railroads and against continued French intervention in the Soviet Union. The C. G. T. was dissolved upon all three grounds, but on the question of political activity the court rested its decision upon the illegality of that activity only in so far as it was directed against French foreign policy.

Although the case was a *cause célèbre*, in fact it had no substantial effect for immediately afterwards, incidental to the split of the French labor movement into Communist and Socialist wings, two new national federations were formed—the new C. G. T. and the C. G. T. U. The recent general strike of November 30, 1938, although it likewise encountered the bitter hostility of the government, had no similar consequences. Indeed, since the case of the C. G. T., no instance of dissolution under the Trade Union Act has been found.

[63] C. Tr. III, art. 54; PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 359 (1922). The question whether an unregistered trade union could be dissolved, being a nonentity, was not entirely free from doubt. Ibid. Due to the Associations Law of 1901, the question is academic.

[64] Bourges (May 1), D. P. 1902.2.412.

[65] Cass. crim. (Feb. 18, 1893), D. P. 1894.1.26; Trib. corr. Villeneuve-s.-Lot (June 29, 1892), D. P. 1894.2.5 (alleged agricultural trade union as social club); Paris, D. P. 1894.2.8 (same, shielding pari-mutuel betting).

[66] Trib. corr. Seine (Jan. 13), GAZ. PAL. 1921.1.87.

II

THE RIGHT TO ORGANIZE

The Trade Union Act of 1884 conferred legal status upon trade unions but did not of itself suffice to enable trade unions to obtain recognition by employers. Nor were trade unions at the time sufficiently strong to prevent discharges or refusal to employ because of union activity; consequently discrimination against union workers was frequent.[67] Although the statute contained a measure of protection for non-union employees by declaring that a trade union may not prevent members from resigning at any time,[68] the statute was silent upon the right to organize. The gap in the law was to some extent bridged by the courts, which interpreted the statute not only as legalizing trade unions but also as protecting the right to join trade unions. Without such a right, reasoned the courts, the statute would have been devoid of meaning.[69]

The newly recognized right, however, was in conflict with the long-established freedom of the employer to hire and fire.[70] In an attempt to resolve the conflict and to delimit the scope of each right, the courts applied the doctrine of *abus de droit*[71]—a doctrine known to Anglo-American jurisprudence as malice—which prohibits the doing of an otherwise lawful act if the purpose is deemed solely that of injuring another. Application of this doctrine has led the French courts to inquire into the motives of the person whose act is challenged as "malicious": an act is held justifiable if it is found motivated by a desire to advance legitimate economic interests, unjustifiable if it exceeds the necessities of the situation or if it is otherwise found motivated by a desire to injure. This rule of law necessarily involves a balancing of rights in terms of economic justification and the manner of its application will inevitably depend upon the social predilections of the particular judge who is required to pass upon a given state of facts. It has led to inconsistent decisions and, since the question of motive has been held to be one of fact which the Court of Cassation

[67] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 350 (1922).

[68] C. Tr. III, art. 8.

[69] Trib. com. Epernay (Feb. 28, 1906), D. P. 1908.2.73; see also language of J. P. Bordeaux (Dec. 14, 1903), aff'd. Cass. req. (Mar. 13, 1905), D. P. 1906.1.113 at 114: "employers will not be permitted to argue: 'It is always in our interest to injure labor unions;' the courts will not heed such words of economic struggle. . . ."

[70] Planiol, note, D. P. 1906.1.113.

[71] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 307 (1922), and literature cited in note 1 thereof.

cannot review, there is some conflict in lower court decisions as to the scope of the right to organize.

On the one hand the courts, in protecting the right, have denied the right of an employer to discharge employees merely because they belong to a trade union[72] or attend trade union meetings.[73] In these cases the courts award damages against the employer who has denied the right to organize. The principle has been applied to protect from discharge others attempting to defend the interests of their fellow workers.[74] It has been extended to prohibit systematic refusal to hire trade unionists.[75] Nor does the charge by an employer that his experience with unions has been unsatisfactory because his union employees had struck justify a subsequent refusal to employ trade unionists.[76] Finally, it is stated as a principle that a promise exacted by an employer from his employees that they will not join a union—the yellow-dog contract—is invalid unless justified by exceptional circumstances.

This principle was established by a decision of the Court of Cassation in 1915 in a suit brought against the Casino of Nice by the local musicians' union.[77] In the contract with its musicians the Casino had inserted a clause that any of them joining a union would be required to pay 500 francs as liquidated damages. The musicians' union sued the Casino, charging that the clause interfered with the union's right to organize and therefore adversely affected its economic interests. The Casino sought to justify the clause by the frequency of strikes in Riviera resorts and the threat of strikes specifically directed against it by the trade union. The Court of Cassation stated unequivocally that in principle the yellow-dog contract was invalid. It held, however, in affirming a decision of the Court of Appeals of Aix,[78] that under unusual circumstances the clause could be justified. These circumstances had been found by the lower courts in the unsettled labor

[72] Cass. civ. (May 27, 1910), D. P. 1911.1.223; Cass. civ. (Mar. 20), D. H. 1929.266; Trib. civ. Lille (Nov. 12, 1906), D. P. 1908.2.73; J. P. Moreuil, GAZ. PAL. 1936.2.651; J. P. Tarascon, SEMAINE JURID. 1938.532. Damages may be recovered by the trade union for the injury to its prestige. Cass. civ. (Mar. 20), D. H. 1929.266.

[73] Cass. civ. (Mar. 20), D. H. 1929.266.

[74] Cass. civ. (May 27, 1910), D. P. 1911.1.223 (lay judge in labor court); Trib. civ. Briey, JOURN. J. P. 1936.397 (worker dismissed for criticizing on behalf of fellow workers private insurance fund maintained by employer); Trib. civ. Seine (April 17), D. H. 1937.326 (workers delegate).

[75] Cass. civ. (June 27, 1904), D. P. 1906.1.112; Trib. com. Epernay (Feb. 28, 1906), D. P. 1908.2.73; J. P. Sully, BULL. SPÉC. DÉC. J. P. 1937.363.

[76] Trib. civ. Lille (Nov. 12, 1906), D. P. 1908.2.73.

[77] Cass. civ. (Mar. 9, 1915), D. P. 1916.1.25.

[78] Ct. App. Aix (Dec. 21, 1910), D. P. 1911.2.385.

conditions in the locality, in the seasonal nature of the business, and the consequent ruinous effects of a strike upon the defendant. The findings were held by the Court of Cassation to justify a yellow-dog contract.

If carried to a logical extreme this decision would in effect have denied the right of unionization to seasonal workers generally, who doubtless could have been met by substantially the same argument everywhere.[79] But the case has not had the importance which might have been expected, and the principle that yellow-dog contracts are illegal has prevailed over the exception.[80]

The doctrine of *abus de droit* which has thus outlawed the yellow-dog contract as a device to maintain an open shop has led to invalidation in principle of the closed shop. But again the wide margin of discretion exercised by the courts has led to a decision which, if logically applied, would have justified most closed shop contracts. In the famous case of *Raquet v. Syndicat d'Halluin* decided in 1916,[81] non-unionists, upon being discharged pursuant to a closed shop contract, sued the union involved, charging that the contract unlawfully coerced them into joining the union. As in the case of the musicians of Nice, the Court of Cassation stated a principle in unequivocal terms—this time that the closed shop was illegal, except in unusual circumstances. Again, however, the unusual circumstances having been found by the lower courts, the Court of Cassation held the findings to justify the particular contract. The closed shop contract in question had been upheld by the lower courts because it had terminated a long strike, was confined geographically to the city of Halluin and was limited in time to six years.

Again the decision has not in practice had the signal effect that might have been expected. On the contrary, a recent case has held the closed shop illegal under virtually indistinguishable circumstances.[82] In that case an employers' association had signed a closed shop agreement with a bona fide trade union. Both were sued by a so-called "independent" union in existence at the time of the contract, which alleged that the contract interfered with its right to organize. The Court of Appeals of Lyons held that the contract was ipso facto illegal. In rejecting without consideration the possibility that the agreement

[79] Planiol, note, D. P. 1916.1.25.

[80] Reply to questionnaire, supra, note 62.

[81] Cass. civ. (Oct. 24) D. P. 1916.1.246, affirming Ct. App. Douai, ibid.

[82] Lyon (Jan. 19), D. H. 1938.140. For earlier decisions, holding the closed shop contract valid, if limited in time, see Trib. civ. Bordeaux (Dec. 14, 1903), S. 1905.2.17, inferentially affirmed Cass. civ. (June 27, 1904), D. P. 1906.1.112; Trib. civ. Seine (Oct. 18), GAZ. PAL. 1912.2.532.

might have been justified under the circumstances, its decision seems clearly in conflict with *Raquet v. Syndicat d'Halluin.*

These decisions have not seriously affected French labor because the closed shop contract is not among its important objectives.[83] Moreover, collective agreements usually apply to all workers, regardless of whether they are affiliated with the union with which the agreement is made. Finally, recent legislation, discussed below,[84] provides for the extension of collective agreements by decree to all employers and employees in given industries and regions. In determining what agreements shall be so extended the Minister of Labor, in order to avoid imposing compulsory unionization where employers and employees have not agreed to it, has refused to extend closed shop provisions, an additional factor depriving them of importance.[85]

The doctrine of *abus de droit* has been employed by the French courts to combat not only the closed shop but also what are considered other forms of undue coercion upon employees by trade unions in the pursuit of the right to organize. In the leading case of *Joost v. Syndicat de Jallieu*[86] the plaintiff, who had refused to join a trade union, had been discharged upon the union's threat of a strike if his employment was continued. Judgment for the trade union upon the ground that it was doing nothing more than threaten a lawful act was reversed by the Court of Cassation, which held that the right of an employee to abstain from joining a trade union was paramount to the right of a trade union to organize.

Through application of the doctrine of *abus de droit* the courts have thus implemented the Act of 1884 both in protecting the right to organize and in preventing what are deemed abuses. The only remedy, however, is a civil action for damages, a lengthy and expensive procedure in which relief is uncertain and of doubtful efficacy. Indeed, the inefficacy of the remedy was recognized at an early date, and legislation to protect the right to organize by means of penal statutes has several times been proposed in the Chamber of Deputies.[87]

[88] But cf. letter by Mr. Labbé, secretary-general of the Paris Exposition of 1937, to the contractors asking them to employ only union labor. See GERMAIN-MARTIN, LES DANGERS ECONOMIQUES ET SOCIAUX DU CONTROLE DE L'EMBAUCHAGE 9 (1937).

[84] Infra, p. 1056 et seq.

[85] Chapsal, "Les conventions collectives et leur extension," 177 REV. POL. ET PARL. 442 at 452 (1938).

[86] Cass. civ. (June 22, 1892), S. 1893.1.41, reversing Ct. App. Grenoble, ibid. See note Jay, ibid., defending the lower court decision on the ground that the trade union's action was merely corollary to its right to organize the workers.

[87] Planiol, note, D. P. 1906.1.113, proposal Bovier-Lapierre in 1898 (criminal penalties), proposal Waldeck-Rousseau in 1899 (civil sanctions).

In 1936 some indirect legislative protection was given.[88] This legislation requires extendible collective agreements to contain a provision recognizing the right of collective bargaining, usually in the following form:

> "the employers recognize the freedom of opinion of their workers and their right to organize. . . .
> "The employers undertake not to consider union affiliation in making decisions as to hiring, conduct and distribution of work, in measures of discipline, or in lay-offs."[89]

More recently the proposed Chautemps Labor Code[90] would have prohibited employers from hiring more than ten per cent of their employees from private employment agencies and would have required that the remaining ninety per cent be employed through public agencies, which are prohibited from discriminating against union workers. The Code would have penalized by a fine or imprisonment dismissal for union activity and would have required in the case of all discharges that the employer state the true reason for the discharge. The shift of the parliamentary majority to the right has made passage of these provisions of the Code unlikely.

III

STRIKES, PICKETING AND BOYCOTTS

Strike tactics in France differ somewhat from strike tactics in the United States. Thus, picketing is not as frequent a practice in France. A substitute has been a form of boycott—the blacklist. Furthermore, although in the United States trade unions are in most jurisdictions at least theoretically subject to suit for damages, questions relating to lawful conduct in labor disputes have in the past been presented chiefly in actions for injunctions. In France, the labor injunction is unknown, and although trade unions may without question be sued for damages, such suits in France are almost as infrequent as in the United States. Consequently there is lack of a comprehensive body of case law relating to strikes, picketing and boycotts. Much must therefore be left to inference from the relatively few decided cases and from applicable general principles of law.

[88] C. Tr. I, art. 31 vc.

[89] Accord Matignon, between the C. G. T. and the C. G. P. F. (principal organization of employers), June 7, 1936, art. 3, reprinted PROUTEAU, LES OCCUPATIONS D'USINES EN ITALIE ET EN FRANCE (1920-1936) 126, note 2, at 127 (1938).

[90] LE TEMPS, Jan. 30, 1938, p. 4, parts I, II. For the employers' viewpoint, see GERMAIN-MARTIN, LES DANGERS ECONOMIQUES ET SOCIAUX DU CONTROLE DE L'EMBAUCHAGE (1937).

A. *Strikes*

Although prior to 1884 trade unions were deemed illegal associations, the right to take concerted action in matters relating to wages (*droit de coalition*) was at least theoretically recognized when the crime of conspiracy was abolished in 1864 by Napoleon III.[91] In practice, however, the right to strike thus conceded was virtually nugatory, since practically all acts to render a strike effective, and indeed the very threat of a strike, were illegal under article 416 of the Penal Code, which punished workers who combined to interfere with the employer's business or with the right to work. Article 416 was repealed in 1884,[92] and strikes and otherwise lawful acts in furtherance thereof are no longer punishable as crimes.

Nor is any form of strike specifically made illegal by statute. The courts, however, have directly or indirectly imposed liability in several types of case:

First: The courts uphold the validity of a commitment not to strike, or to arbitrate before a strike, sometimes found in collective agreements, against the argument that it is in conflict with public policy, and impose liability for its breach.[93]

Second: The arbitration statute of 1936, without imposing any specific penalty or prohibition, requires arbitration of certain types of labor dispute before any strike.[94] A question has been raised as to the effect of the statute upon the right to strike,[95] despite a legislative intent that the right should remain unimpaired.[96]

Third: The courts impose liability for strikes deemed "malicious"

[91] Supra, at note 24.

[92] Act of March 21, 1884, art. 1, 28 B. L. (ser. 12) 617 (1884).

[93] E.g., Trib. req. Mulhouse (June 28, 1923), D. P. 1925.1.1; Trib. civ. Lyon (May 5), D. H. 1937.496, affd. Lyon (Nov. 5, 1937), D. H. 1938.12; Bordeaux (Nov. 5, 1935), S. 1936.2.159, charging trade union, having entered anti-strike agreement, with duty to exhort workers not to strike.

[94] Act of Dec. 31, 1936, art. 1, J. O. 127 (Jan. 1937).

[95] Trib. civ. Nantes (Nov. 4, 1937), D. H. 1938.32; Trib. civ. Toulouse (Nov. 9, 1938), D. H. 1939.30. In accord: Cuche, D. H. 1939, Revue de Jurisprudence, 1, 3. Contra: Pic, "De l'accord Matignon à la loi du 31 decembre 1936," 170 REV. POL. ET PARL. 446 at 463 (1937); Pic, "Le nouveau statut du travail et le redressement national," 178 ibid., 24 (1939). The existence of a strike clearly does not bar recourse to or continuance of arbitration proceedings. Superior Court of Arbitration, nos. 70, 81, 85, J. O. Annexe 1073 (1938). See Lalou, "La grève, faute contractuelle," D. H. 1939, Chronique 13, suggesting that a strike before recourse to the arbitration statute be deemed a breach of a collective agreement, even though an anti-strike clause may not have been included. Cf. note 93, supra.

[96] An amendment specifically prohibiting strikes was overwhelmingly defeated. J. O. DÉB. PARL. CH. SESS. EXTRAORD. 3196, 3197 (1936).

under the doctrine of *abus de droit.*[97] Thus, the exercise of the right to strike may be held unlawful if it comes in conflict with rights of an employer or of non-union employees which are deemed paramount. However, only one type of case has been found in which this doctrine has been applied—the strike to compel discharge of non-union employees.[98]

The right to strike will be upheld if the purpose of the strike is one for which trade unions may be formed under the Trade Union Act—that is, if the strike is deemed for the purpose of advancing "economic, industrial, commercial or agricultural interests."[99] Both sympathetic and general strikes are legal. The Trade Union Act, however, relates only to the purposes for which trade unions may be formed and, although trade union activity is limited to these purposes, it does not necessarily follow that strikes for other purposes must be considered illegal.[100] It is often assumed that purely political strikes are illegal,[101] but the question has not been authoritatively decided.

Fourth: The courts have imposed liability in connection with strikes in still another manner. Collective agreements or local usage almost inevitably require some form of notice prior to termination of an employment contract and, by statute, failure to give notice entails

[97] PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 308 (1922).

[98] E.g., Montpellier (Feb. 20, 1908), S. 1909.2.249; Bordeaux (April 24), GAZ. PAL. 1929.1.776. Cf. Cons. Prud'h. Seine (April 22), D. H. 1937.391 (strike in restaurant during dinner hour termed "malicious").

[99] C. Tr. III; art. 1. Cass. civ. (June 9), D. P. 1896.1.582 and cases, note 101, infra. See 6 PLANIOL ET RIPERT (ESMEIN), TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 806, note 2 (1930); Pic, note, D. P. 1932.2.89.

[100] Wahl, "De la responsabilité civile en matière de grève," 7 Revue trimestrielle de droit civil 613 at 631, 637 (1908). Cf. CORNIL, LE DROIT PRIVÉ 131 (1924), suggesting that a political strike may be justified by a lawful purpose, such as defending the constitutional government against insurrection (referring to the general strike, which defeated the so-called "Kapp Putsch" against the German Republic in 1920).

[101] Grenoble (Nov. 19, 1920), GAZ. PAL. 1921.1.128; Trib. civ. Le Havre (Dec. 4, 1920), ibid., 38. The Court of Cassation has never had occasion to pass directly on this question. A strike in furtherance of political activities, e.g., cessation of work on May Day [Cass. civ. (June 15, 1937), D. P. 1938.1.23] may be distinguished from steps taken by a trade union in furtherance of the same purpose. S. 1917.181, supra note 52.

Political strikes have not been infrequent: e.g., the general strike of Feb. 12, 1934, as a demonstration against the Rightist riots of Feb. 6, 1934. Frequently, professional and political motives are inextricably intertwined, as in the railroad and general strikes of 1920. Trib. corr. Seine (Jan. 13), GAZ. PAL. 1921.1.87. The same charge of illegality was made against the general strike of Nov. 30, 1938. Prime Minister Daladier before the Chamber of Deputies, LE TEMPS, Dec. 11, 1938, p. 3

payment of indemnity.[102] Strikes may, and often do, take place without the proper notice, which may frequently be as long as two weeks. In the case of such strikes the courts both hold the employees liable for the statutory indemnity upon suit of the employer[103] and deny the employees' right to reinstatement[104] upon the ground that through the strike they have terminated their employment.[105] Thus the strike, while held lawful, is construed as a termination of the employment relationship.[106]

These cases have been criticized upon the ground that employees participating in a strike do not intend to terminate the employment relationship but on the contrary seek to continue it upon different terms.[107] The courts have now begun to recognize this fact. The Court of Cassation has recently held that cessation of work on May Day may not of itself terminate the employment relationship.[108] Moreover, the courts have interpreted agreements not to penalize workers after a strike as recognition by the employer of the continuance of the employer-employee relationship throughout the strike.[109]

Fifth: The sit-down strike[110] is generally declared illegal as a

[102] C. Tr. I, art. 23; PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 1193 et seq. (1922). Notice of the strike is effective as a notice of termination of the employment contract. Cass. civ. (Mar. 24), D. P. 1924.1.209.

[103] E.g., Cass. réq. (Mar. 18, 1902), S. 1903.1.465; Cass. civ. (Mar. 24), D. P. 1924.1.209; Trib. civ. Seine (June 14), D. H. 1937.415.

[104] E.g., Cass. civ. (May 15), D. P. 1907.1.369; Cass. civ. (June 15), S. 1937.1.268. This means, of course, that the employee is not entitled to indemnity from the employer for discharge.

[105] E.g., Cass. civ. (Jan. 24), S. 1927.1.107; Cass. civ. (June 15), S. 1937.1.268.

[106] For a recent decision, see Cass. soc. (Nov. 17, 1938), D. H. 1939.23. The earlier cases are collated and discussed in Rouast, note, D. P. 1938.1.23. A few lower court decisions are contra: e.g., Trib. civ. Lille, GAZ. PAL. 1907.1.419.

[107] Planiol, note, D. P. 1904.1.289; PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶¶ 310-313 (1922), and literature there cited. But cf. Colin, note, D. P. 1907.1.369.

[108] Cass. civ. (June 15, 1937), D. P. 1938.1.23. Cf. Cass. civ. (Nov. 16, 1927), D. P. 1928.1.33 (short stoppage of work to attract attention of management to grievances not a "strike" and therefore not breach of employment contract).

[109] Cass. soc. (Nov. 3, 1938), D. H. 1939.4; see also Cass. civ. (Nov. 16, 1927), D. P. 1928.1.33 (agrement to rehire). The question came up frequently as a result of such clauses in the Accord Matignon, supra note 89, and subsequent agreements terminating strikes. E.g., J. P. Brive, 79 BUL. SPÉC. DÉC. J. P. 26 (1937); Cons. Prud'h. Rive-de-Gier, ibid. 28; Cons. Prud'h, Thonon, ibid., 110; J. P. Montfort-l'Amaury (Oct. 29), GAZ. PAL. 1936.2.624. Contra: J. P. St. Vallier, 79 BUL. SPÉC. DÉC. J. P. 30 (1937); cf. as to the inapplicability of the Accord Matignon to subsequent strikes, J. P. Baccarat, ibid., 22.

[110] For a thorough discussion of the French sit-down strikes of 1936, their antecedents and causes, see PROUTEAU, LES OCCUPATIONS D'USINES EN ITALIE ET EN FRANCE (1920-1936) 91 et seq. (1938). Sit-down strikes had occurred in other

trespass.[111] While employers who have suffered from sit-down strikes have tried to collect damages from the trade union or from individual employees,[112] they have chiefly attempted recovery from the municipality where the sit-down strike occurred under a statute rendering municipalities liable for mass violence,[113] and from the state for failure to take appropriate action to evict the sit-down strikers.[114]

The state's liability, which is enforceable in the administrative tribunals, may be based upon a charge of negligence of the police or of their abuse of discretion in not acting.[115] To this charge it is a defense that eviction of the strikers would have resulted in serious disturbance and bloodshed.[116] However, under unusual circumstances the state

European countries, particularly among miners in Poland, Czechoslovakia and Great Britain. Ibid., 91-93. The first French sit-down strikes in 1936 were isolated occurrences (Breguet factory in Le Havre, Latécoère factory in Toulouse over dismissal of workers for not having worked on May Day). Ibid., 108-110. The French sit-down strikes in 1936 were not a typical or permanent phenomenon. In June 1936, 12,148 strikes, involving 1,830,938 strikers, took place, of which 8,941 were sit-downs. By July, the respective figures were 1688 strikes, with 176,947 workers and 618 sit-downs; in August, 518 strikes with 55,963 workers and 193 sit-downs. 43 BUL. MIN. TRAV. 357 (1936). Also see ibid., p. 512.

However, the sit-down strike seems, at least for the moment, to have retained a place among French labor's weapons. There were still 731 sit-downs out of 2,642 strikes in 1937 and 84 sit-downs out of 512 strikes in the first six months of 1938. 44 ibid., 229, 526 (1937); 45 ibid. 63, 193, 330 (1938).

[111] For general expressions to this effect, see Trib. civ. Seine (May 1), D. H. 1937.390; Cons. Prud'h. Seine (April 22), ibid. 391; J. P. Le Raincy, 79 BUL. SPÉC. DÉC. J. P. 101 (1937). Upon the theory of trespass many courts have summarily ordered eviction of sit-down strikers. E.g., Trib. civ. Pau (July 9), GAZ. PAL. 1936.2.237; Trib. civ. Seine (July 21), D. H. 1936.533. See MORILLOT, LES OCCUPATIONS D'USINES ET LEURS CONSEQUENCES JURIDIQUES (1936).

[112] E.g., Trib. civ. Seine (référés, July 21, 1936), D. H. 1937.391.

[113] Act of April 5, 1884, 28 B. L. (ser. 12) 368 (1884), as amended by Act of April 16, 1914, art. 106, [1914] B. L. 1082.

[114] DUEZ, LA RESPONSABILITÉ DE LA PUISSANCE PUBLIQUE (1927). For discussion as to the State's liability in respect of sit-down strikes, see HOCHE, LA RESPONSABILITÉ DE L'ÉTAT ET DES COMMUNES DANS LES GRÈVES D'OCCUPATION, esp. 127 et seq. (1937). Jèze, "Responsabilité de l'administration pour la réparation des dommages causés par le refus de prêter le concours de la force publique," 53 REVUE DE DROIT PUBLIC ET DE LA SCIENCE POLITIQUE (R. D. P.) 498 (1936); "Actions en responsabilité pour dommages causés par des occupations d'usines," 54 R. D. P. 355 (1937); Appleton, note, D. P. 1938.3.65.

[115] Conseil d'État (June 3), D. P. 1938.3.65 (É't. Pellet); Hoche, supra, 160 et seq.; Jèze, 53 R. D. P. 498 (1936), cited note 114, supra. The state is also liable before administrative tribunals for inaction of the police in not executing a judgment. Conseil d'Etat, supra (Soc. La Cartonnerie, etc.); prior to this decision the point was doubtful. Cf. Hoche, supra, 219 et seq.

[116] Conseil d'État (June 3), D. P. 1938.3.65 (Soc. La Cartonnerie, etc.).

may nevertheless be liable under the doctrine of *risque social* established by the Conseil d'Etat in the *Case of Couitéas.*[117]

Municipal liability, which is enforceable in the civil courts, is imposed, regardless of fault, for injury to persons or property resulting from a crime committed by a mob assembled in a public place, if the commission of the crime was accompanied by force or violence;[118] under this statute the state is liable to the municipality for part of the recovery.[119] Enforcement of the statutory liability, however, is rendered difficult because all the statutory requirements are rarely found in the same case.[120] Thus workers, having lawfully entered the factory, may simply cease work, in which event the requirement of a public assembly has not been met. Where only a small number of workers participate in the occupation of the factory, they may not be held a mob. Again, the statutory requirement of the commission of a crime is not always fulfilled. However, this requirement will be fulfilled by such acts as forcible entry,[121] injury to machinery or perishable merchandise, or interference with the right to work by violence or threats.[122]

A recent decision of the Court of Appeals of Douai would seem to facilitate recovery. A brewery sued the City of Lille and the French Government for 82,000 francs as damages for the loss of stored malt, a perishable merchandise, due to a sit-down. Judgment dismissing the complaint because of the absence of violence was reversed by the Court of Appeals, which took judicial notice that factory occupations generally constitute a serious disturbance of public order, demonstrated by the fear of bloodshed which led to the inaction of the authorities. This was held sufficient to constitute the equivalent of mass violence.[123] The decision, if followed, may result in heavy liability upon municipalities and the state; its only limitation appears to be the necessity

[117] (Nov. 30) D. P. 1923.3.59; HOCHE, LA RESPONSABILITÉ DE L'ÉTAT ET DES COMMUNES DANS LES GRÈVES D'OCCUPATION 59 (1937).

[118] Act of April 5, 1884, 28 B. L. (ser. 12) 368 (1884), as amended by Act of April 16, 1914, [1914] B. L. 1082.

[119] Ibid., art. 108.

[120] Trib. civ. Lille (Mar. 6), 54 R. D. P. 140 (1937); HOCHE, LA RESPONSABILITÉ DE L'ÉTAT ET DES COMMUNES DANS LES GRÈVES D'OCCUPATION 93, 95 (1937). Cf. Ct. App. Rouen (Mar. 18), 54 R. D. P. 355 (1937), for dicta favorable to recovery.

[121] J. P. Le Raincy, 79 BUL. SPÉC. DÉC. J. P. 101 (1937), citing Trib. civ. Bar-le-duc, (1926); J. P. St. Florentin, ibid., 369.

[122] Trib. corr. Bordeaux (July 11), GAZ. PAL. 1936.2.252. But see Ct. App. Amiens (Nov. 30, 1938), D. H. 1939.138.

[123] (Dec. 12, 1938), D. H. 1939, Sommaires, p. 9.

to prove specific damages, the plaintiff's claim for 20,000 francs as general damages being rejected by both lower and appellate courts.[124]

B. *Picketing*

Such picketing as exists in France usually takes place at the factory. Its legality seems to be assumed and it has been handled as a police problem.[125]

The Penal Code punishes interference with the right to work by means of violence, fraud or threats.[126] But despite indications to the contrary in a lower court decision,[127] the general opinion seems to be that picketing per se would not fall within the terms of the statute.[128]

C. *Boycotts*

The boycott in the form known in the United States as pressure upon a third party in order to induce him to terminate relations with an employer deemed unfair appears to be relatively unknown in France. Whether such a boycott would be lawful would probably depend upon whether it was deemed "malicious."[129]

In the form of the blacklist (*mise à l'index*), the boycott is perhaps one of the most typical weapons in French labor disputes. The blacklist is a notice, usually widely publicized through handbills, posters and newspapers, by trade unions to their members and others, exhorting them not to work for a employer deemed unfair, or not to work with designated employees. Since 1884 the blacklist is no longer a crime.[130] Whether it will be considered tortious depends again upon

[124] Accord: Ct. of App. Rouen (Mar. 18), 54 R. D. P. 355 (1937).

[125] KOUDSI, LE DÉLIT D'ATTEINTE À LA LIBERTÉ DU TRAVAIL 50-51 (1934). It has been contended that the adoption of the sit-down strike technique was motivated in part by a desire to avoid conflicts with the police on the picket line. PETIT, LES CONVENTIONS COLLECTIVES DU TRAVAIL 56 (1937), citing GUIGUI, LE DROIT DE GREVE (ed. C. G. T.). Cf. De Brouckère, "Les occupations d'usines," LE PEUPLE (Brussels) Jan. 12, 1938.

[126] Code Pénal, arts. 414, 415; CAPITANT ET CUCHE, PRÉCIS DE LÉGISLATION INDUSTRIELLE, 4th ed., 48-50 (1936); Lyon (July 8, 1931), D. P. 1932.2.89 and note Pic, ibid. While penal laws may always be used oppressively, it has been stated that they have not materially affected trade union activity. Reply Buisson and Reply Petit to questionnaire supra, note 57.

[127] Trib. corr. Provins (July 10, 1907), D. P. 1908.5.14.

[128] Trib. corr. Nantes (July 27), D. H. 1937.563; Trib. corr. Senlis (Feb. 3), D. H. 1938.223. The distinction is essentially between peaceful picketing and that which is not deemed peaceful. Trib. corr. Senlis, supra, distinguishing earlier cases on that basis. See Trib. corr. Seine (Oct. 26, 1938), D. H. 1939.15.

[129] Cf. PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 308, note 1 (1922).

[130] Act of March 21, 1884, art. 1, 28 B. L. (ser. 12) 617 (1884), repealing Code Pénal, art. 416. Pic, ibid., ¶¶ 304-305.

the doctrine of "malice." The test is the degree of publicity which the court deems necessary to give legitimate effect to the trade union's campaign.[131] If the employer resorts to publicity of his own, however, a correspondingly increased amount of publicity may be given by the trade union through the blacklist.[132] Otherwise, publicity must be restricted to trade union members[133] and to the town where the dispute takes place.[134] The notice may not attack an employer in any capacity other than as employer—for example, as a candidate for public office.[135] Moreover, the blacklist is illegal if in furtherance of an attempt to impose an illegal closed shop.[136] It has also been held illegal in connection with a strike which was discontinued because the strikers, having found other jobs, gave up their claim to reinstatement.[137]

IV

COLLECTIVE AGREEMENTS

French labor law is possibly most highly developed in relation to collective agreements. Its growth may be considered in three phases: (a) a period in which the collective agreement was treated in the courts like any other contract, with the result that its effectiveness was limited by principles applicable to contracts generally; (b) a period beginning in 1919 in which the legislature sought to promote collective bargaining by freeing collective agreements from limitations which had thus been imposed by the courts, and (c) the present period dating from 1936 in which, with the enactment of legislation to give collective agreements meeting prescribed conditions the force of law, the government has employed the collective agreement as an instrument for the regulation of industrial relations.

A. *The Collective Agreement in the Courts*

Agreements regulating working conditions made between a trade union, or group of trade unions, and an employer, group of employers, or employers' association, have been enforceable in France at least since the Trade Union Act of 1884, when trade unions were recognized

[131] Cass. req. (Jan. 25), D. P. 1905.1.153.
[132] Ibid.
[133] Paris (Feb. 5), D. P. 1901.2.427.
[134] Trib. civ. Douai (May 7, 1902), D. P. 1903.2.329.
[135] Nîmes (Jan. 30, 1907), D. P. 1908.2.171.
[136] Cf. Trib. corr. Charleroi (Belgium) (July 30, 1910), D. P. 1911.2.187.
[137] Paris (Feb. 5), D. P. 1901.2.427.

as legal entities.[138] Although there was nothing in the Trade Union Act relating specifically to collective agreements,[139] the courts held that such agreements were within the general statutory purposes of trade unions because furthering the economic and professional interests of their members.[140] The agreements were not deemed affected by doctrines of restraint of trade, except in connection with the closed shop.[141] The terms of the collective agreement were considered incorporated in the individual contracts of employment and enforceable as part thereof, but in 1893 the Court of Cassation decided that a trade union could not sue to enforce the terms of the agreement since it was held a mere agent of its members.[142] The trade union was not considered a party in its own right and was denied a status in the courts in application of the French maxim: *"Nul en France ne plaide par procureur."* Under this decision the enforceability of the collective agreement meant only that each individual trade union member could sue on behalf of himself for such damages as he may have suffered because of the breach of the agreement. The principle upon which the decision was based likewise precluded a representative action.

Denial of the trade union's right to sue rendered it practically impossible to compel observance of such agreements by action in the courts, since the individual worker would seldom bring such an action because of fear of discharge and because of the expense. The denial of the right involved an inconsistency in reasoning. If the power of a trade union to enter into a collective agreement is sustained because the agreement represents a furtherance of its legitimate purposes, the trade union should clearly have the right to protect its interests directly. Upon this reasoning, the lower courts subsequently, without reference to the early and isolated decision of the Court of Cassation, upheld the right of a trade union to sue upon the collective agreement.

These decisions construe the agreement as a contract to regulate

[138] PETIT, LES CONVENTIONS COLLECTIVES DU TRAVAIL (hereinafter cited as Petit) 12 et seq. (1937). Agreements existed before 1884 (in the printing trades 1879, millinery manufacturers 1881). Ibid. However, enforceability was sometimes denied. Trib. civ. St. Etienne (1875), ibid. p. 12.

[139] Since 1920, however, the statute specifically authorizes trade unions to make such agreements. C. Tr. III, art. 15.

[140] See Lyon, affg. Trib. civ. St. Étienne (Mar. 10, 1908), D. P. 1909.2.33, affd. Cass. req. (July 26, 1909), S. 1910.1.71.

[141] Cass. civ. (June 27, 1904), D. P. 1906.1.112. An isolated lower court decision of the Trib. corr. Marseille (Petit, p. 15) seems to question the validity of collective agreements without fixed duration. For a practical solution of this difficulty, see D. P. 1909.2.33, supra note 140.

[142] Cass. civ. (Dec. 12, 1893), D. P. 1894.1.241, reversing Trib. corr. Charolles.

terms and conditions of employment to be included in the individual contracts of employment. But the agreement is not itself deemed an employment contract.[143] One consequence is that it is enforceable in the civil courts, instead of in the labor court, as in the case of contracts of employment.[144] A more important consequence is that under these decisions the trade union still could not sue for breach of individual contracts of employment.[145] Although it could obtain specific performance of the collective agreement, it could only recover damages for such injury as it could show to its economic or professional interests.[146] Manifestly such a showing was very difficult, and successful suits by trade unions frequently resulted in only nominal damages. The net result was to leave the individual employee much in the position in which he had been placed by the Court of Cassation, with the enforceability of collective agreements largely illusory.

Other serious limitations were also read into the collective agreement as employers resisted their enforcement. Even though the courts incorporated the collective agreement into individual contracts of employment, at the same time they upheld the validity of individual contracts containing less favorable terms and conditions,[147] relegating the trade union to a largely illusory suit for damages for breach of the collective agreement.[148] The collective agreement was not deemed of sufficient consequence as a matter of public policy to preclude the making of individual contracts in conflict therewith.

Furthermore, by reason of ambiguous court decisions, uncertainty prevailed as to which employers were bound by collective agreements made by employers' associations. The rules of these associations seldom provided specifically for collective agreements, but such agreements were nevertheless frequently negotiated and executed in their name by their executives.[149] Questions arose as to whether the association itself had in fact authorized the collective agreement, and indeed as recently as 1936 a nation-wide agreement for the employees of provincial banks was declared unenforceable because the executive of the

[143] Lyon (Mar. 10, 1908), D. P. 1909.2.33, affd. Cass. réq. (July 26, 1909), S. 1910.1.71.

[144] Trib. civ. Beauvais (Oct. 20, 1911; Mar. 29, 1912), D. P. 1912.2.294; Cass. civ. (Jan. 4), S. 1928.1.86.

[145] Lyon (Mar. 10, 1908), D. P. 1909.2.33, affd. Cass. réq. (July 26, 1909), S. 1910.1.71.

[146] Capitant, note, D. P. 1909.2.33.

[147] Cass. civ. (Aug. 2, 1911), D. P. 1912.1.76.

[148] Trib. civ. Beauvais (Oct. 20, 1911; Mar. 29, 1912), D. P. 1912.2.294.

[149] Nast, notes, D. P. 1911.1.201; D. P. 1912.2.289.

association which had made the agreement was found without actual authority to do so.[150] Again, even if the association was empowered to make the agreement, the courts were inclined to exonerate individual employers unless they were found to have ratified. In 1910 the Court of Cassation held that if employers who did not specifically authorize a particular agreement remained members of the association after its execution, their continued membership would be deemed an implied ratification.[151] But the very next year the Court of Appeals of Paris, in an ambiguous opinion, exonerated from liability an employer who had voted against a collective agreement, apparently without reference to his having continued as a member of the contracting association.[152]

The law as it stood was highly unsatisfactory from the trade union standpoint and in 1919, as a result of the impulse given to collective bargaining after the Great War, a statute, first introduced in 1910, was enacted, designed on the one hand, to nullify the effect of the court decisions and, on the other hand, to codify the entire law relating to collective agreements.

B. *Collective Agreements under the Statute of 1919*

The 1919 statute adopts the later judicial view that collective agreements constitute a general regulation of labor conditions and should be enforceable as such. Pursuant to this view it empowered trade unions, individual employers and even informal groups of employees, such as strike committees, to enter into such agreements.[153]

The collective agreement must fulfill certain formal conditions. It must be in writing and filed with the clerk of the labor court, or with the justice of the peace of the district where the agreement was executed or of districts agreed upon. Unless the agreement is filed, it is unenforceable. And if it fails to provide to what localities or enterprises it is applicable, it is enforceable only in the district in which it is filed.[154] The sole penalty for failure to file the agreement is unenforceability, a defect which can be cured any time prior to suit.[155]

The statute contains elaborate provisions as to the duration of collective agreements enacted as a result of the *St. Étienne Railroad*

[150] Cass. civ. (Oct. 19), D. H. 1937.581; Cass. civ. (Oct. 19), S. 1937.1.334 (same agreement).

[151] Cass. civ. (July 7, 1910), D. P. 1911.1.201.

[152] Paris (Feb. 16), D. P. 1912.2.289.

[153] C. Tr. I, art. 31 et seq., (act of March 25, 1919), [1919] B. L. 692.

[154] C. Tr. I, art. 31d. Under article 2 of the Act of June 24, 1936 [J. O. 6698 (June 1936)], a copy must also be filed with the Minister of Labor.

[155] Cass. civ. (May 1), D. P. 1923.1.66.

case,[156] where a collective agreement negotiated with a street railroad failed to specify any time limit. The defense that the agreement was therefore unenforceable in an action by the trade union to compel specific performance was rejected by the court, which held that the parties must have intended the agreement to last the full fifty-year period of the company's franchise. The 1919 statute limits the period of collective agreements to five years.[157] The parties must fix the time of expiration either by date or by limitation to a particular enterprise; [158] if the agreement is not so limited, it is deemed terminable upon one month's notice unless the parties prescribe a different period.[159]

The statute further provides that if there are several parties on one side of a collective agreement, a notice given by one such party is ineffective unless others also give notice.[160] On the other hand, if the proper notice is given, it is binding upon the members of the organizations giving the notice even if individual employment contracts may not have expired.[161]

After an agreement for a designated period has expired, if it contains no provisions for renewal or final termination, it automatically continues in force upon a month-to-month basis.[162] This provision encourages the continuation of the collective bargaining relationship. On the other hand, it tends to freeze the provisions of existing collective agreements: if more favorable terms are sought, both the trade union and the employer can be met with the threat of complete termination of the existing relationship and with the possibility of refusal to negotiate upon the ground that the existing agreement obviates any necessity for doing so.

The 1919 statute is particularly important in reversing previous judicial construction of the effect of a collective agreement. In the first place, although not preventing trade union members from suing or intervening on their own behalf, it specifically enables a trade union to sue for damages suffered by its members provided the members have, after being notified of the action, not opposed its institution.[163] It is sufficient notification if a meeting has been called to authorize the institution of litigation, even though individual members on behalf of whom the suit is brought do not attend the meeting.[164] In addition, the trade union can intervene in any suit upon a collective

[156] Lyon (Mar. 10, 1908), D. P. 1909.2.33.
[157] C. Tr. I, art. 31g, i.
[158] C. Tr. I, art. 31e.
[159] C. Tr. I, art. 31f[1], m.
[160] C. Tr. I, art. 31f[2].
[161] C. Tr. I, art. 31m[3].
[162] C. Tr. I, art. 31h.
[163] C. Tr. I, art. 31v[1].
[164] Cass. civ. (May 1), D. P. 1923.1.66.

agreement brought by any party if the members of the trade union might be affected.[165] As to non-members, however, the trade union is still deprived of power to sue even though the collective agreement covers non-union workers whose rights may be affected by the litigation.[166]

The statute also nullifies prior case law by outlawing individual contracts of employment in conflict with terms of a collective agreement where both parties to the individual contract are bound by the collective agreement, either directly by having been parties thereto, or indirectly through being members of an organization which was a party.[167] The effect of this provision is to prohibit individual employment contracts upon less favorable terms than those contained in the collective agreement. However, it has been suggested that the acceptance of less favorable terms by individual trade union members may under certain circumstances amount to opposition to the institution of an action by the trade union in their name to enforce the collective agreement.[168]

If only one of the parties to an individual contract of employment is bound by the collective agreement, there is only a presumption that its terms apply to the employment contract.[169] This presumption has been seriously restricted by the courts, which require employees to demand that the collective agreement be applied to them and to protest noncompliance.[170] Moreover, the presumption has been held inapplicable in the frequent and important situation where the employer's factory is unionized after the collective agreement has been made; the individual contracts of employment continue in effect even though the employees become bound by the collective agreement through joining the union.[171]

In codifying the right of a trade union to sue upon collective agreements, the statute also contains an interesting provision conferring upon members of a trade union who are bound by the agreement the right to sue fellow-members who have breached the agree-

[165] C. Tr. I, art. 31v[2]; e.g., Trib. civ. St. Nazaire (July 21, 1922), D. P. 1925.2.1.

[166] Cass. civ. (May 1), D. P. 1923.1.66.

[167] C. Tr. I, art. 31q; e.g., Cass. civ. (June 23), D. H. 1938.561; LE TEMPS, Dec. 29, 1937.

[168] Pic, note, D. P. 1925.2.1.

[169] C. Tr. I, art. 31r.

[170] PETIT, p. 46.

[171] Trib. civ. Seine (Mar. 25), D. H. 1937.295; Trib. civ. Seine (May 29), ibid. 404.

ment.[172] Although this provision does not appear to have been invoked, it raises the question whether damages may be recovered for unfair competition through, for instance, receiving or paying wages upon a scale different from that prescribed in the collective agreement. The statute further imposes a duty on parties to the agreement not to do anything to prevent the carrying out of the agreement in good faith, but no party is considered a guarantor that the agreement will be fulfilled except to the extent that he specifically undertakes its performance.[173]

The statute removes ambiguities as to who is bound by the collective agreement. The parties bound include not only parties to the agreement and those who have specifically authorized its execution, but all members, present and future, of organizations who are parties. To escape liability, a member of an organization who does not wish to be bound must resign within eight days after execution of the agreement—three days in the event that the agreement settles a strike.[174] However, although members become bound, they may thereafter still withdraw from the agreement. If the agreement is on a month-to-month basis, they may terminate the agreement as to themselves by resigning from the organization which is a party upon one month's notice, regardless of the action taken by the organization.[175] If the agreement is of longer duration, they may also terminate the agreement upon one month's notice unless they previously elected to be bound for its full term.[176]

As subsequently amended, the statute authorizes trade unions to elect to join the agreement regardless of the consent of the other parties.[177]

The statute does not prescribe the contents of a collective agreement except that, by definition, it must regulate labor conditions.[178] In an attempt to speed up production, the Daladier Government has

[172] C. Tr. I., art. 31u.

[173] C. Tr. I, art. 31s. For the view that a sudden strike violates the obligation against interference with performance of an agreement, see PIC, LÉGISLATION INDUSTRIELLE, 5th ed., ¶ 1244 (1922).

[174] C. Tr. I, art. 31k. For details, see Fuchs, "The French Law of Collective Labor Agreements," 41 YALE L. J. 1005 at 1018-1021 (1932).

[175] C. Tr. I, art. 31n.

[176] C. Tr. I, art. 31l[4].

[177] C. Tr. I, art. 31j, as amended by Act of June 24, 1936, art. 3, J. O. 6698 (June 1938).

[178] For decisions on the validity of miscellaneous clauses in collective agreements, see RAYNAUD, LE CONTRAT COLLECTIF EN FRANCE, Part III (1921).

recently outlawed provisions limiting piece-work, the use of labor-saving devices, and similar restrictions.[179]

C. *Collective Agreements under the Statute of 1936*

The statute of 1919 was enacted in the belief that if the collective agreement was recognized as a legal means of regulating industrial relations and perfected as such, it would find increasing use. Those entertaining this belief were disappointed.[180]

The degree of acceptance of collective bargaining has always varied widely throughout France. Before the Great War industrial relations in certain industries were largely governed by collective agreements—notably in the printing trades and in mines, increasingly in the building trades and in the metallurgical and textile industries, and to some extent among agricultural and lumber workers. In other industries, however, collective bargaining was chiefly a local matter, often conducted by workers' groups rather than by national trade unions, and the degree of its acceptance differed widely from one enterprise to another and from one section of the country to another.[181]

During the Great War the government saw in collective bargaining a means of allaying increasing labor unrest in munitions and other war industries. Under the direction of Albert Thomas, Socialist Minister of Munitions and subsequently the first president of the International Labor Office, collective bargaining was encouraged as a means of settling disputes.[182] During this period there was a great increase in the number of collective agreements. This growth continued immediately following the War, but thereafter there was a marked falling off in collective bargaining, and by 1927 new collective agreements were few.[183] The reasons for the decline remain obscure. The period was characterized by weakness and absence of militancy on the part of trade unions, possibly attendant upon the economic depression beginning in 1930, the accompanying deflationary policies of the government and marked hostility of employers.[184]

[179] Decree-law, Nov. 12, 1938, art. 10, J. O. 12862-12863 (Nov. 1938).

[180] PETIT, p. 55.

[181] RAYNAUD, LE CONTRAT COLLECTIF EN FRANCE 35 et seq., 52 et seq., 83 et seq. (1921); Fuchs, "The French Law of Collective Labor Agreements," 41 YALE L. J. 1005 at 1007-1008 (1932).

[182] RAYNAUD, LE CONTRAT COLLECTIF EN FRANCE 30 (1921).

[183] PETIT, pp. 53-54 (99 agreements in 1928, 72 in 1930, 20 in 1933, 29 in 1935).

[184] PROUTEAU, LES OCCUPATIONS D'USINES EN ITALIE ET EN FRANCE 101-105 (1938); CAPITANT ET CUCHE, PRÉCIS DE LÉGISLATION INDUSTRIELLE, 4th ed., 123 (1936), charge the reluctance of employers to make agreements to (a) lack of trade

Increasing demands for renewal of collective bargaining were climaxed in the strikes of May 1936. They were followed by an attempt of the Popular Front Government to strengthen collective bargaining by a new approach. Without in any way superseding the 1919 statute insofar as it applied to collective agreements evidencing a relationship between the parties only, the new legislation was designed to use the collective agreement as a more general means of stabilizing industrial relations.[185] On the one hand, the government saw in the agreement a possible method to adjust demands and settle grievances between employers and employees represented no longer directly but through their organizations. On the other hand, the government envisaged the collective agreement as a method of preventing employers from undermining wage standards and of stabilizing labor costs.[186] The resulting legislation has as its main principle the extension by administrative order, throughout an industry, either in a given region[187] or nationally, of collective agreements negotiated by groups deemed representative of employers and employees in the industry affected.[188]

union power to enforce compliance by workers because of trade union representation of only a minority of workers, and (b) lack of financial responsibility of trade unions. The National Economic Council gave two reasons for employer-resistance: unstable economic conditions and failure of workers to abide by the agreements. 42 BUL. MIN. TRAV. 55 et seq. (1935). See also Brèthe de la Gressaye, "Les contrats collectifs du travail," 3 GAZ. PRUD'H. 201 (1936). PETIT, p. 55, sees difficulty in that only part of industry is bound by the higher labor standards contained in collective agreements.

[185] An interesting attempt to reach this result without legislation by inducing the courts to hold collective agreements binding upon non-parties as local usage failed because of the resistance of the Court of Cassation. Lower court decisions were favorable. Trib. civ. Narbonne (1905), PETIT, p. 20; Trib. civ. Seine (June 2), GAZ. PAL. 1908.2.217; Cons. Prud'h. Marseille (Sept. 23, 1930), S. 1932.2.148. Contra: Cass. civ. (March 6, 1911), S. 1914.1.154, Cass. civ. (May 28, 1919), D.P. 1920.1.45, Cass. civ. (Feb. 11), S. 1929.1.208 (involving same employer as S. 1932.2.148). See also Fuchs, "The French Law of Collective Labor Agreements," 41 YALE L. J. 1005 at 1029-1032 (1932).

[186] Brèthe de la Gressaye, "Les contrats collectifs du travail," 3 GAZ. PRUD'H. 201 at 203 (1936). Compare the title of the 1919 statute: "Collective agreements" with that of the 1936 act: "Regulation of the employer-employee relationship through collective agreements" (De l'organisation professionelle des rapports entra employeurs et employes par conventions collectives). "The extension procedure affords a means of putting to an end competition with those who voluntarily undertake to improve working conditions." Communication dated April 14, 1939, from the Minister of Labor to Mr. Sobernheim.

[187] A region may be an administrative district (such as a county), a city, or a natural region (e.g., "the Adirondacks"). PETIT, pp. 111-113.

[188] C. Tr. I, art. 31va. The determination as to which industry is affected is sometimes left to mere inference; e. g., "Glovemakers of Grenoble" meant only makers

To be extendible the collective agreement must be made by an organization of employers and an organization of employees. An agreement with an individual employer will not suffice, regardless of his importance in the industry.[189] The statute contemplates negotiation of a collective agreement through a commission presided over by the Minister of Labor or his representative. The commission is selected by the minister upon application of an employer or labor group, which designates the area for which the collective agreement is sought.[190] The "most representative" groups for this area are entitled to representation upon the commission, and the minister may appoint as many representatives of different groups as he deems proper, whether among rival unions or among different crafts or sections of the industry to be covered by the agreement. The criteria which the minister has adopted in selecting representatives include the length of existence of the organization seeking representation, the extent of its membership, and the regularity with which it has functioned in the past.[191] The minister's decision upon representation can be appealed to the Conseil d'État. In practice, however, few conflicts over representation have arisen.[192]

If the commission succeeds in negotiating an agreement, the minister can extend it by order provided it meets certain conditions. It must be specifically limited in time or terminable upon a month's notice.[193] It must contain provisions protecting freedom of opinion and the right to organize. It must establish minimum wages and prescribe

of leather gloves. PETIT, p. 110. Craft disputes as to the scope of the industry to be included are rare. See Trib. civ. Seine, May 15, 1937, where wagonmakers claimed to be in the wood and not in the steel industry, cited PETIT, p. 111.

[189] Superior Court of Arbitration, no. 724, LE TEMPS, Jan. 11, 1939.

[190] C. Tr. I, art. 31va.

[191] Circular letter by Minister of Labor to Prefects, Aug. 17, 1936. J. O. 9392 (Sept. 1936). The term "most representative" was derived from the formula to determine representation in the Council of the International Labour Conference (Treaty of Versailles, art. 389, subd. 3), and was interpreted by the Permanent Court of International Justice as permitting multiple representation. Advisory Opinion, Perm. Ct. Int. Just., Ser. B, no. 1 (1922). The term already appeared in the Act of April 9, 1932 [J. O. 3978 (April 1932)], amending art. 39[5] of the Act of July 25, 1919, [1919] B. L. 2326, regulating membership on commissions supervising professional education.

[192] Cf. Conseil d'Etat (May 13), D. H. 1938.440, where an organization of foremen were held entitled to separate representation from other technical and clerical employes. Conflict as to representation of "independent" unions seems rare; for an instance, see LE POPULAIRE, Oct. 26, 1928 (in the Département Nord); cf. Conseil d'Etat (July 17, 1936), 43 BUL. MIN. TRAV. 534 (1936), for such a conflict under the Acts of 1919-1932, supra note 191.

[193] C. Tr. I, art. 31 vc[1].

periods of notice for termination of individual contracts of employment. It must make rules governing apprenticeship, a prerequisite usually satisfied by mechanical reference to existing statutes. It must provide methods for modification or amendment and must define a procedure for speedy settlement of disputes arising during the terms of the agreement.[194] All disputes not so settled must be arbitrated pursuant to rules established by the agreement within the framework of the Arbitration Act, discussed below, and the agreement must name a standing panel of arbitrators.[195]

The 1936 statute originally provided that collective agreements must make provision for the election of workers' delegates to present individual grievances. Subsequent decree laws, however, generalizing the institution of workers' delegates and regulating their functions and the mode of their election, probably worked an implied repeal of this provision.[196] In any event, the chief importance of the election of workers' delegates today would seem to be to measure the relative strength of trade unions.

The statute does not specifically authorize the extension of collective agreements which have not been negotiated by a commission. But there would seem to be no reason why these agreements should not also be extendible if the parties are otherwise qualified and the provisions of the statute otherwise observed, and in practice they appear to have been extended without question.[197]

An agreement meeting the conditions prescribed in the statute can be extended at the instance of a party to the agreement or of a non-party or by the Minister of Labor upon his own motion;[198] no instance of the last course is known.[199] Notice by publication must be

[194] C. Tr. I, art. 31 vc[1], nos. 1, 3-8. As to the protection of the right to organize, see supra, notes 88, 89; art. 31 vc[2] authorizes inclusion in the collective agreement of provisions more favorable than granted by statute, e.g., as to family subsidies.

[195] Act of March 4, 1938, arts. 2-4, J. O. 2570 (Mar. 1938).

[196] Art. 31 vc[1], no. 2, was superseded by decree-law of Nov. 12, 1938 (Title I) [J. O. 12868 (Nov. 1938)]; for a general discussion of the history of the institution and its functioning prior to recent amendment, see ANDRÉ, LES DÉLÉGUÉS OUVRIERS (1937); a major problem, now settled, was the absence of a provision for secret elections. See Brèthe de la Gressaye, "L'élection des délégués d'usine," 3 GAZ. PRUD'H. 307 (1936). The customary unit of election is the "shop" (atelier) (ibid., at 308), a factor contributing to the infrequency of craft disputes; see decree-law, supra, art. 3.

[197] Circular letter, Aug. 17, 1936, J. O. 9392 (Sept. 1936); Chapsal, "Les conventions collectives et leur extension," 177 REV. POL. ET PARL. 442 at 443 (1938).

[198] C. Tr. I, art. 31vd.

[199] See Chapsal, "Les conventions collectives et leur extension," 177 REV. POL. ET PARL. 442 at 446 (1938).

given to all interested parties of the proposed extension and they may then present arguments.[200] If the minister grants the application for extension, the collective agreement then applies to all persons engaged in the particular industry or geographical area covered by the agreement.[201] All employers bound must post a complete copy of the extended agreement in the same manner as other statutory regulations must be posted, and failure to do so subjects the employer to a fine, or imprisonment in the case of a second offense.[202]

Originally no sanctions were imposed for failure to observe the agreement, enforcement being thus a matter of civil suit.[203] The statute was subsequently supplemented by decree to entrust supervision to factory inspectors and to provide for small fines against employers failing to observe the wage-scale agreed upon. These fines are dependent in amount upon the number of workers involved, but they cannot exceed three thousand francs even in case of a repeated offense and can only be imposed if the Minister of Labor chooses to prosecute.[204]

After an agreement has been extended, no individual contracts of employment in conflict therewith can be made. Since under the 1919 statute a collective agreement by a trade union binds its members, an agreement made by a national union supersedes prior agreements made by local organizations.[205] It has been suggested that an extension order cannot impair vested rights in individual contracts of employment executed prior thereto,[206] but the suggestion would seem inconsistent with the policy of the statute.

The statute does not contain any provision as to the date as of which the extension order operates, merely stating that the extended agreement must be given full effect. Any question concerning retro-

[200] C. Tr. I, art. 31ve.

[201] C. Tr. I, art. 31vd[1].

[202] C. Tr. I, art. 31vd[2], added by decree-law of May 2, 1938, art. 15 [J. O. 4951 (May 1938)]; C. Tr. I, art. 99, as amended by the same decree-law art. 15.

[203] C. Tr. I, art. 31vg[1], added by decree-law of Nov. 12, 1938, art. 19 [J. O. 12869 (Nov. 1938)], provides for direct enforcement of members' rights by trade unions; as to trade unions not bound by the agreement itself, it extends the right granted under C. Tr. I, art. 31vd[2], which permits trade unions only to interfere in a suit brought by a party to enforce the agreement, and renders unnecessary adherence to the agreement under C. Tr. I, art. 31j.

[204] C. Tr. I, art. 99c, as added by decree-law of May 2, 1938, art. 17 [J. O. 4951 (May 1938)].

[205] Cf. Cass. civ., LE TEMPS, Dec. 29, 1937.

[206] Demogue, "Étendue d'application du contrat collectif de travail," 4 GAZ. PRUD'H. 247 at 251 (1937).

activity has been settled by an opinion of the Conseil d' État that the extension of an agreement operates only from the date of the decree.[207]

The extension of a collective agreement ipso facto comes to an end either upon the termination of the underlying agreement or by alteration of the extended agreement by the original parties. The extension can also be terminated by a new order of the Minister of Labor, upon the ground that the agreement is no longer consonant with economic conditions, or, in the case of multiplicity of parties on either side, upon its denunciation by one of the representative employer or employee organizations which was a party to the agreement. The order terminating the extension can only be issued upon notice and upon compliance with other conditions upon which an extension order can be issued.[208]

The decision of the Minister of Labor extending a collective agreement or terminating its extension is appealable to the Conseil d'État; but because of the wide margin of discretion allowed the minister there would appear to be little chance of reversal.[209] An important influence in the minister's decisions has been the National Economic Council, an official advisory body composed of representatives of the economic life of the nation.[210] The minister is compelled to take this body's advice into consideration although he is not bound to follow it.[211]

The council has approved the extension of collective agreements providing for preferential re-employment of workers laid off because of restrictions in operations, or because of illness or of military service, provided the preferential status is limited in period to a maximum of two years; it has also approved extensions providing for more favorable working conditions than those stipulated in safety and similar statutes. On the other hand, the council has advised against the extension of a large number of provisions. Thus it has advised against the extension of agreements providing for the closed or preferential shop and against provisions prohibiting the employer from hiring through

[207] PETIT, p. 165 (July 28, 1937); in accord: Cass. civ. (Feb. 9), 45 BUL. MIN. TRAV. 211 (1938).

[208] C. Tr. I, art. 31vf, as modified by decree-law of May 2, 1938, art. 14, J. O. 4951 (May 1938). For an example of revocation upon the initiative of the Minister of Labor, see LE TEMPS, Jan. 25, 1939 (to rescind nation-wide extension, by decree of Aug. 3, 1938, of the collective agreement in the aviation industry).

[209] PETIT, pp. 181-182; but see Conseil d'Etat (July 22), D. H. 1938.535.

[210] Created by Act of April 29, 1926, art. 134 [J. O. 4927 (April 1926)], now governed by Act of March 19, 1936 [J. O. 3186 (March 1936)]. Representation on the council is fixed by decree of Nov. 12, 1938 [J. O. 13009 (Nov. 1938)].

[211] C. Tr. I, art. 31ve[1].

an employment agency or through advertising. It has advised against extending collective agreements providing for a sliding wage-scale dependent upon the cost of living, prohibiting the employment of persons receiving government pensions, or prohibiting employees from working for other employers, prohibiting subcontracting. In the case of all these provisions, the opposition of the council has been based upon the ground that imposing such conditions upon non-parties to the collective agreement would be oppressive.

The National Economic Council has also advised against extension of other provisions upon the ground that they do not fall within the employer-employee relationship. Thus it has advised against extension of provisions prohibiting tipping, arguing that tips are a matter affecting the relationship of the employee to the patron rather than to the employer. In practically all occupations in which employees receive tips, however, the tips represent compensation contemplated by the employer-employee relationship. The council has further advised against extension of provisions for closing hours and provisions for price-fixing for personal services, such as by barbers. In each case these provisions were included in the original collective agreement because of competition between those operating with employees and those operating without, and a labor problem was therefore present to which the National Economic Council failed to give weight. Nevertheless, its advice has been followed by the Minister of Labor in every case that has been found.[212]

However, even if certain provisions of a collective agreement are not extendible, either because of the statute or because they are found undesirable by the National Economic Council, other parts of the agreement may nevertheless be extended. Originally there may have been some question about partial extension, but the practice is now generally recognized.[213]

D. *Working of the Statute of 1936*

The statute providing for the extension of collective agreements has undoubtedly served as an important stimulus to collective bargaining. Subsequent to its enactment 950 collective agreements were executed within three months. Between June 1936, the effective date

[212] Reference to the advisory opinions referred to in the text is made in PETIT, pp. 135 et seq., and Chapsal, "Les conventions collectives et leur extension," 177 REV. POL. ET PARL. 442 at 451 et seq. (1938); see arbitral award no. 114, J. O. Ann. Feb. 3, 1938.

[213] Chapsal, supra, 445-446; e.g., Extension Order, J. O. 3993 (April, 1938).

of the statute, and September 1938, a total of 5,159 collective agreements were negotiated. However, the total number of these agreements which have actually been extended has been relatively small. During the same period only 267 extensions were granted. The industries in which the greatest number of extended agreements are in force include, in order of importance, the textile and metallurgical industries, the building trades and road construction, the chemical industry and transportation. Very few agreements are nation-wide, and as of December, 1938 only 17 such agreements had been extended. The industries in which these agreements were negotiated include aviation, printing trades, entertainment and banking.[214]

Conclusion of nation-wide agreements is sought by trade unions, which see them as a means of preventing evasion of local agreements and attacks upon the wage structure. They are resisted by employers, who fear inflexible wage-scales. In practice, however, wage clauses in nation-wide agreements are either fixed by zones, permitting local differentials, or left for determination to local supplemental agreements.[215]

There has been a tendency toward standardization of collective agreements which has been strengthened by the opinions of the National Economic Council. Thus, the clause guaranteeing freedom of opinion and the right to organize to all employees is found in virtually the same form in all such agreements.[216]

The new statute has been hampered by hostility encountered in its operation. Welcomed by labor, which sought to make wide use of it, its application has been resisted by employers. Nor did the statute solve initial difficulties in negotiation of new agreements, and the failure to afford such a solution ultimately led to the enactment of legislation providing for compulsory mediation and arbitration of collective conflicts.

V

MEDIATION AND ARBITRATION

The desirability of arbitration in labor disputes was recognized early by the French legislature. In 1892 a statute was enacted providing for mediation and arbitration of collective disputes upon request

[214] 45 BUL. MIN. TRAV. 433 et seq. (1938). There were two extension orders in 1936, 105 in 1937, 271 in 1938. The number of orders does not necessarily indicate the number of agreements extended, since several orders may be issued in respect of but one agreement, relating to amendments or termination.

[215] Chapsal, "Les conventions collectives et leur extension," 177 REV. POL. ET PARL. 451 at 454 (1938).

[216] Ibid.; see quotations in the text, supra, p. 1042.

of either party.[217] But administration of the law was placed in the hands of the justices of the peace, who were poorly equipped for such a function. In addition, participation in the proceedings was purely voluntary and the adverse publicity supposed to result from a refusal to arbitrate or to comply with an arbitral award did not prove a sufficient sanction.[218] On the whole, the statute was little used and then chiefly to solve relatively minor conflicts.[219] Parties who desired arbitration frequently preferred their own arbitrators, a process facilitated by the legalization of arbitration agreements under the collective agreement statute of 1919,[220] or sought direct arbitration by the authorities. The latter method was employed particularly to solve the large-scale conflicts arising in the second half of 1936, when members of the government were continually engaged in the settlement of industrial conflicts. Even as late as 1937 the then Prime Minister, Camille Chautemps, while in the midst of other pressing problems, was called upon to settle a conflict in the Goodrich factories by personal intervention.[221]

Out of the governmental practice of mediation and arbitration grew ultimately a project for a comprehensive statute.[222] The project was submitted to the leading employee and employer organizations —the C. G. T. and the C. G. P. F.—the government intending that these organizations should negotiate on the procedure and that a proposition agreed upon by them jointly should be submitted to Parliament for enactment. In November 1936, however, the negotiations were broken off by the employers, who charged that continuing strikes, accompanied by sit-downs, made further negotiations impossible, while

[217] C. Tr. IV, art. 104-118.

[218] Cf. C. Tr. IV, art. 114, providing for official publication by the mayor.

[219] RÈGLEMENT AMIABLE DES CONFLITS COLLECTIFS DU TRAVAIL, ENQUETE ET DOCUMENTS (ed. by the Director of the Ministry of Labor), pp. 9 et seq., 17-18 (1924). The statute gradually fell into disuse. 20,743 strikes occurred in France between 1893 and 1920 but the statute was resorted to prior to strike in only 232 cases, and strikes were avoided in only 132. After a strike broke out, the statute was used on the average in 24.89% of all strikes between 1894 and 1906, but the percentage fell to 16.96% for the years 1907-1914, and to 7.35% for 1915-1920. Out of a total of 4,279 instances, employers refused to mediate in 1,279 cases, and refused to arbitrate after failure of mediation in 218 cases, workers in 81 and 65 cases respectively. Only 1,991 conflicts were settled. During the same period the law was applied in only 90 of 444 conflicts, classified as "important" (i.e., involving more than 2000 workers).

[220] C. Tr. I, art. 31x.

[221] LE TEMPS, Jan. 7, 1938, p. 3.

[222] J. O. DÉB. PARL. CH. DÉP. SESS. EXTRAORD. 3170 (1936) (Report by M. Paulin).

the unions claimed that the charge was a mere pretext and that the employers did not want an arbitration law. The government thereupon submitted its own project to Parliament.[223] Although strongly supported by labor[224] and adopted by a large majority of the Chamber of Deputies, including part of the moderate opposition,[225] it met with firm resistance in the conservative Senate. The conflict between the two Houses was ultimately solved by a compromise, which permitted the Cabinet to provide for arbitration proceedings by decree to be valid until the end of the Summer Session of 1937.[226] As part of the compromise the Chamber yielded an important point by limiting the applicability of the law to conflicts in industry and commerce, excluding agriculture.[227]

Pursuant to the powers granted under this statute, decrees following the original government plan were issued by the Minister of Labor. They provided for three steps in mediation, the first before a district commission composed of local employer and trade union representatives, the second before a national mediation commission appointed by the Minister of Labor for the industry in which the dispute occurred, the third before a commission composed of representatives of national employers' and workers' organizations. These commissions all represented successive attempts to mediate, failing which the conflict was to be arbitrated, in the first instance before arbitrators selected by the parties, then before a super-arbitrator chosen by the arbitrators,[228] or, in case of disagreement, by the Prime Minister.[229]

It soon became obvious that the machinery thus devised was far too clumsy and complicated. Obstructive tactics, such as failure to appear or appoint an arbitrator, virtually brought proceedings to a standstill.[230] There were no penalties whatever.

[228] Ibid., 3170, 3179-3180 (Prime Minister Léon Blum).

[224] J. O. DÉB. PARL. DÉP. CH. SESS. EXTRAORD. 3171 (1936) (Report by M. Paulin); see also ibid., 3183 (Meck, dép.); ibid., 3190 (Croizat, dép.).

[225] J. O. DÉB. PARL. CH. DÉP. SESS. EXTRAORD. 3237 (1936) (443 to 114, about 110 moderates voting for the law). The bill is found in J. O. DOC. PARL. CH. DÉP. SESS. EXTRAORD. 894 (1936-1937).

[226] Act of Dec. 31, 1936, J. O. 127 (Jan. 1937); for comment, see Debré, D. P. 1938.4.4.

[227] The same issue arose in 1938. Cf. Act of March 4, 1938, art. 7^2, J. O. 2570 (Mar. 1938), promising a special statute before April 15, 1938. The Senate, however, refused to act on the statute which the Chamber of Deputies had passed.

[228] Decree of Jan. 16, 1937, J. O. 706 (Jan. 1937).

[229] Ibid., art. 11.

[230] Circular letter of Sept. 30, 1937, by Minister of Labor to Prefects, J. O. 11258 (Oct. 1937); see Savatier, "Les rayons et les ombres d'une expérience sociale," D. H. 1938, Chronique III, p. 9.

In July 1937, the French Parliament, faced with pressing economic problems and not having found time to enact a permanent statute, extended the existing decrees and powers of the Cabinet;[231] the latter then attempted to simplify the machinery, particularly by abridging the mediation proceedings.[232] After a further extension[233] the original statute of 1936 was comprehensively amended by statute enacted on March 4, 1938. It is these two statutes, as implemented by decrees and subsequently amended by the decree laws of November 1938,[234] which prescribe the present procedure for mediation and arbitration.

A. *The Machinery*

1. *Procedure by Collective Agreement*

Under the new statute of 1938 chief emphasis is placed upon machinery provided by the parties in collective agreements.[235] The general framework for the provisions to be included in such agreements is established by statute.

As already stated, a collective agreement to be extendible must provide for mediation and arbitration. Specifically, the collective agreement must provide that any dispute not otherwise settled shall be mediated before a commission under the chairmanship of the prefect in the district where the dispute arises. If the parties fail to apply for mediation, the prefect can initiate the proceedings of his own accord.[236] If the mediation fails, the commission must frame a statement of the issues and these issues must be arbitrated by arbitrators selected from a panel named in the collective agreement.[237] If the arbitration fails, the arbitrators must select a super-arbitrator and, if they fail to do so, the super-arbitrator is chosen by the prefect or, if the dispute involves more than a thousand workers or the collective agreement covers more than one district, by the appropriate Cabinet Minister.[238] Anyone is eligible to serve as arbitrator except a party or

[231] Act of July 18, 1937, J. O. 8164 (July 1937); art. 2^2 introduced an obligation to determine the arbitrable points, supervision being entrusted to the factory inspector.

[232] Decree of Sept. 18, 1937, J. O. 10748 (Sept. 1937).

[233] Act of Jan. 11, 1938, J. O. 586 (Jan. 1938), extending the validity of the existing decrees to Feb. 28, 1938.

[234] J. O. 2570 (Mar. 1938) (hereinafter cited as Arbitration Act, 1938), as amended by decree-law of Nov. 12, 1938, J. O. 12866 (Nov. 1938).

[235] General Instructions of June 1, 1938, by Minister of Labor, J. O. 6252 (June, 1938).

[236] Arbitration Act, 1938, art. 2 [cf. C. Tr. I, art. 31vc[1], no. 6, supra, at note 195].

[237] Ibid., art. 3.

[238] Ibid., art. 5.

its officers.[239] Super-arbitrators must be chosen from the high government and judicial officials composing the Grand Corps d'État;[240] a panel of such officials must be named by the parties at the time of the collective agreement or shortly thereafter, and if none is selected, the panel is named by the president of the appropriate Court of Appeals with the advice of the prefect.[241]

To avoid a recurrence of previous experiences, the statute requires each step in mediation and arbitration to last no longer than eight days and the entire conflict to be solved within one month.[242] Responsibility for observance of this procedure rests upon the administrative officials.[243]

2. *Procedure in the absence of collective agreement*

If the collective agreement contains the basic provisions prescribed by statute, details are left to the discretion of the parties. But where a dispute is not governed by a collective agreement with such provisions,[244] the statute requires that the dispute be mediated and arbitrated under a procedure established by decree.[245] This procedure does not differ substantially from that required in connection with collective agreements; but because the parties have not of their own accord agreed upon the machinery, a greater role of intervention is given the authorities.

The dispute must be mediated in the first instance before a district mediation commission,[246] whose members are appointed annually by the prefect from lists submitted, in the case of labor by representative trade unions, and in the case of employers by the local Chambers of

[239] Superior Court of Arbitration (hereinafter referred to as S. C. A.) no. 335, J. O. ANN. 1508 (1938). The decisions of the S. C. A. are published quarterly in the appendix to the Journal Officiel (Arbitration Act, 1938, art. 15^6) and are referred to by numbers.

[240] Act of Dec. 31, 1936, art. 4, J. O. 127 (Jan. 1927). As to who may be super-arbitrators, see S. C. A., nos. 67, 78, 85, J. O. ANN. 1075, 1085, 1090 (1938), upholding eligibility of engineers in Post Office department.

[241] Arbitration Act, 1938, art. 4.

[242] C. Tr. I, art. $31vc^1$, no. 8, added by Arbitration Act, 1938, art. 1.

[243] General Instructions of June 1, 1938, by Minister of Labor. J. O. 6252 (June 1938).

[244] Arbitration Act, 1938, art. 7^1, i.e., either in the absence of provisions for arbitration or where parties to the dispute are not covered by the same collective agreement or where employees of certain public contractors (concessionaires public) are involved. As to the last, see also Decree of April 20, 1938, arts. 13-16, J. O. 4605 (April 1938).

[245] Decree of April 20, 1938, J. O. 4605 (April 1938).

[246] Ibid., art. 2^2.

Commerce. The prefect determines which organizations are most representative of labor and is given discretion to apportion representation among them.[247] Conflicts of national importance or involving large numbers of workers or several districts must be referred by the prefect to the appropriate Cabinet Minister, at whose instance the dispute may be mediated before a national mediation commission[248] appointed annually from lists of representatives of the national employer and employee organizations of the business affected.[249]

The parties must appear before the mediation commission in person except under unusual circumstances such as illness. No provision is made for appearance by counsel, but a party may always be assisted by a member of his professional organization.[250] The mediation commission has no power to compel attendance but, if the party who requests mediation does not appear, the case is deemed withdrawn;[251] if the respondent fails to appear, the mediation is deemed a failure and the case proceeds to arbitration.[252]

The mediation commission can consider only points submitted by the petitioner or by the prefect.[253] If the mediation succeeds, the agreement of the parties is made a matter of record.[254] If it fails, a statement of the issues must be prepared by the commission[255] and arbitrators must be appointed by the parties within two days.[256] If the parties fail to appoint arbitrators, they are appointed by the prefect or the minister from standing panels.[257] The procedure upon failure of the arbitrators to agree is analogous to that in the case of arbitration provided by collective agreements.

Either party may be heard before the arbitrators and submit documents, but no party is entitled to see any document submitted by

[247] Ibid., art. 3; Order of May 20, 1938, J. O. 5741 (May 1938).

[248] Ibid., art. 2^3.

[249] Ibid., art. 4; Order of April 23, 1938, J. O. 4698 (April 1938).

[250] Ibid., art. 5; a party may also be represented by a fellow-employee or a fellow-officer.

[251] Ibid., art. 7^1.

[252] Ibid., art. 8^1 (by inference); cf. Decree of Sept. 18, 1937, art. 2, J. O. 10748 (Sept. 1937).

[253] Decree of April 20, 1938, art. 2, J. O. 4605 (April 1938).

[254] Ibid., art. 6; the agreement is formally communicated by the mediation commission to the parties and the Minister of Labor.

[255] Arbitration Act, 1938, art. 9^1; decree of April 20, 1938, art. 7^2, J. O. 4605 (April 1938).

[256] Decree of April 20, 1938, art. 8. If the respondent has failed to appear before the mediation commission, he must be given an opportunity upon notice to appoint an arbitrator.

[257] Ibid., art. 9.

the other party.[258] Before the super-arbitrator, on the other hand, the parties are not entitled to be heard; the super-arbitrator need hear only argument by the arbitrators.[259]

3. *The Superior Court of Arbitration*

In the case both of arbitration pursuant to collective agreements and of arbitration in the absence of collective agreements, the award of the super-arbitrator can be reviewed by the Superior Court of Arbitration, a tribunal presided over by the vice-president of the Conseil d'État.[260] This tribunal was created as a result of complaints by employers against awards of super-arbitrators after the Court of Cassation had held that it was without jurisdiction to review arbitral awards.[261]

The arbitration court reviews only questions of law: namely, lack of jurisdiction, chiefly because the conflict was not arbitrable, a subject hereafter discussed; excess of jurisdiction, such as that involved in deciding matters not submitted or in granting unwarranted remedies; and non-compliance with law, such as failure to observe procedural prescriptions.[262] Not every procedural irregularity constitutes reversible error. Thus, a failure of the mediation commission or the arbitrators to prepare a statement of the issues will not suffice for a reversal.[263] On the other hand, the lack of an opinion by the super-arbitrator will render his award void,[264] as will non-observance of the require-

[258] S. C. A. no. 1, J. O. ANN. 1079 (1938); to the contrary Arbitration Act, 1938, art. 11^1. Cf. circular letter of March 22, 1937, of Minister of Labor. J. O. 3417 (March, 1937).

[259] Arbitration Act, 1938, art. 11^1; S. C. A. nos. 229, 555, J. O. ANN. 1505, 1523 (1938).

[260] Arbitration Act, 1938, arts. 13, 14; decree of April 3, 1938, J. O. 4040 (April 1938); the S. C. A. is composed of four members of the Conseil d'Etat, two members of the Court of Cassation, and two high retired officials. It has lay members only upon an extraordinary appeal by the Minister of Labor upon the merits. Arbitration Act, 1938, art. 14^2.

[261] Cass. civ. (Dec. 7), D. H. 1938.18, holding the rules governing private arbitrations inapplicable. The Soc. La Nourylande, appellant in the Court of Cassation, has fought the arbitration award rendered against it with perseverance worthy of better causes. It simultaneously appealed to the Conseil d'État, which rendered its decision only after enactment of the Arbitration Act of 1938, and declined jurisdiction because of appealability to the S. C. A. LE TEMPS, June 11, 1938. It also successfully contested suit upon an award in the Labor Courts. Trib. civ. Compiègne (1938), SEMAINE JURID. 491.

[262] Arbitration Act, 1938, art. 13^3.

[263] S. C. A. no. 63, bis, J. O. ANN. 1090 (1938). See also S. C. A. no. 110, ibid.: failure to observe three-day time limit upon arbitrators under art. 12^2 does not justify reversal. Nor is award void for failure to file it with the courts under art. 15, S. C. A. no. 48, J. O. ANN. 1088 (1938).

[264] S. C. A. no. 130, J. O. 1091 (1938) (violation of art. 13^1).

ment that, if requested, he must render a preliminary and separate decision upon the arbitrability of the case before proceeding to the merits.[265]

Except in the case of an appeal taken by the Minister of Labor, who may appeal independently, appeals to the arbitration court must be taken within three days after the award and the court must dispose of the case promptly; in no event can its decision be postponed for more than eight days after the appeal has been taken.[266]

The Superior Court of Arbitration, if it reverses an award, appoints a new super-arbitrator, and if his decision is again reversed, it must refer the case to a "special master" for report, upon which the court must act finally.[267]

B. *Arbitral Awards*

Under the statute, arbitrators and super-arbitrators are governed by the same rules. They must decide legal issues according to law and economic issues according to equity. They must make an award upon all issues properly presented to them and upon issues subsequently presented as a result of the conflict under arbitration,[268] such as dismissal of strikers who had struck as the result of the original conflict[269] or subsequent dismissals in the same enterprise due to the same cause as the one presented for arbitration.[270]

Although arbitrators can interpret their own awards upon a subsequent arbitration,[271] they cannot render interlocutory decisions. This was decided by the Superior Court of Arbitration in a series of cases in which the same super-arbitrator had before him a large number of wage disputes involving public utilities in different cities. In order to study the problem as a whole and to seek a constructive and permanent solution applicable generally (which would have been impossible within the week allowed by statute for his decision), he sought to render temporary awards, but they were all vacated by a decision of

[265] S. C. A. no. 82, J. O. ANN. 1089 (1938); no. 237 bis, ibid. 1104 (violation of art. 12^1).

[266] Arbitration Act, 1938, art. 13.

[267] Arbitration Act, 1938, art. 14^3; as amended by decree-law of Nov. 12, 1938, J. O. 12866 (Nov. 1938). The S. C. A. refers cases to junior members of the Conseil d'Etat for hearing. Decree of April 5, 1938, art. 6, J. O. 4040 (April 1938).

[268] Arbitration Act, 1938, art. 9; S. C. A. nos. 184, 184 bis, tev, J. O. ANN. 1103 (1938).

[269] S. C. A. no. 154, J. O. ANN. 1102 (1938).

[270] S. C. A. no. 464, LE TEMPS Sept. 3, 1938.

[271] S. C. A. no. 257, J. O. ANN. 1505 (1938). But he cannot modify his award. S. C. A. no. 67, ibid., 1075.

the Superior Court of Arbitration, which held that the statute authorized only final decisions.[272]

The statute is silent upon the nature of the awards which arbitrators may render but it was intended to enable them to settle disputes equitably.[273] A great variety of awards have been made. The arbitrators may order reinstatement of persons dismissed.[274] However, they may not order the discharge of strike-breakers, upon the theory that it is the employer's concern to arrange for the method in which he wishes to comply with the award.[275] The employer is thus given the privilege of retaining strike-breakers and discharging others not involved in the original conflict. The arbitrators can also order the payment of indemnity to employees who for some reason have not been reinstated.[276] They may order the reopening of factories closed because of the conflict.[277] If a conflict arises upon a demand for a collective agreement, they cannot order the parties to conclude an agreement, but they must make an award regulating the labor conditions which are thereafter to obtain.[278] Before doing so, they may give the parties an opportunity to bargain collectively and to enter into an agreement.[279]

If the award is one interpreting an existing collective agreement or fixing wages between parties bound by a collective agreement, it may be given the force of such an agreement by filing it with the proper authorities, and if the award settles a conflict between parties qualified to enter into an extendible collective agreement, the award may be made binding upon all concerned in the same manner as an extendible collective agreement.[280] The arbitrators can also determine,

[272] S. C. A. nos. 172, 180, 188, J. O. ANN. 1295 (1938); nos. 195, 213, 215-218, ibid., 1296; nos. 219, 220, ibid., 1297; no. 222, ibid., 1298.

[273] Act of Dec. 31, 1936, art. 5^{3}, J. O. 127 (Jan. 1937); cf. Arbitration Act, 1938, art. 9^{3}; S. C. A. no. 27, J. O. ANN. 1099 (1938). The term "arbitrators" is hereafter used to designate both arbitrators and super-arbitrators.

[274] S. C. A. no. 97, J. O. ANN. 1078 (1938). They may also give preference to a workers' delegate. S. C. A. no. 81, J. O. ANN. 1073 (1938).

[275] S. C. A. no. 25, J. O. ANN. 1271 (1938).

[276] S. C. A. nos. 270, 271, J. O. ANN. 1493 (1938). They may also be given preference in rehiring for a limited time. S. C. A. no. 303, J. O. ANN. 1477 (1938).

[277] S. C. A. no. 63 bis, J. O. ANN. 1096 (1938).

[278] S. C. A. no. 14, J. O. ANN. 1074 (1938); no. 1, ibid., 1079; no. 110, ibid., 1091.

[279] S. C. A. no. 375, J. O. ANN. 1283 (1938).

[280] Arbitration Act, 1938, art. 18. Art. 4 of the decree-law of Nov. 12, 1938, J. O. 12866 (Nov. 1938), prevents the employer from changing conditions established in an award for three months without the consent of the trade union which was a party thereto.

in the case of conflicts over representation on a collective bargaining commission, whether the organizations before them are representative organizations entitled to execute an extendible agreement.[281]

The arbitrators cannot disregard existing collective agreements.[282] But they may apply the broad doctrine of *imprévision*. This was decided by the Superior Court of Arbitration in a case where the effects of the recent Spanish Civil War upon a neighboring region in France were held insufficiently drastic to warrant non-enforcement of the collective agreement, the court thus reserving to itself the power to determine what circumstances warrant disregard of the collective agreement.[283] The doctrine of *imprévision* has been applied chiefly to permit wage revisions in keeping with the rising cost of living.[284] The statute now recognizes the propriety of such revisions of the collective agreement, but limits them by an arbitrary provision that to justify revision, there must be an increase of more than five per cent in the cost-of-living index over a period of more than six months since the last demand for a wage increase, or over a lesser period if the index rises more than ten per cent. However, automatic wage-increases dependent upon the cost-of-living index are prohibited if it is found that industry cannot afford them, thus making labor's rights dependent upon economic conditions in the particular industry.[285] The statute does not provide for wage-revisions because of a fall in the cost-of-living index.[286]

[281] S. C. A. nos. 121, 121 bis, J. O. ANN. 1268 (1938); no. 375, ibid., 1283. However, if the Minister of Labor has appointed a commission (under C. Tr. I, art. 31va), the arbitrators cannot act as an appellate court, in the place of the Conseil dÉtat (supra, p. 1058). S. C. A. no. 557, LE TEMPS Nov. 19, 1938. Nor can the arbitrators appoint a commission. S. C. A. no. 253, ibid.

[282] But they may make an award regulating labor conditions to replace collective agreements upon their termination. S. C. A. no. 484, LE TEMPS, Oct. 13, 1938; S. C. A. no. 674, ibid., Dec. 18, 1938. If a collective agreement, concluded for a definite period, has still a considerable time to run, no demand for revision will be entertained. S. C. A. no. 726, ibid.

[283] S. C. A. (Oct. 24, 1938), D. H. 1939.25. The doctrine of "imprévision" had previously been held applicable to collective agreements. Lyon (Mar. 10, 1908), D. P. 1909.2.33; cf. Cass. civ. (June 17, 1937), 45 BUL. MIN. TRAV. 82 (1938).

[284] See, e.g., super-arbitral awards nos. 143, 163, J. O. ANN. Feb. 3, 1938.

[285] Arbitration Act, 1938, art. 10. Wage increases may not exceed the rise in the cost-of-living index. S. C. A. no. 214, J. O. ANN. 1475 (1938). Wage increases have been denied under this exception in a number of cases; e.g., S. C. A. no. 108, J. O. ANN. 1078 (1938); no. 98, ibid. 126; no. 185, ibid. 1280. A wage increase may be made dependent upon a similar increase in other enterprises in the industry. S. C. A. no. 516, LE TEMPS, Oct. 19, 1938.

[286] However, some arbitral awards reducing wages have been rendered. It has also occurred that after a reversal for procedural error, a different super-arbitrator

C. *Enforcement of Awards*

The 1936 statute did not contain any provision for enforceability of arbitral awards;[287] they could be enforced only by suit in the courts and only by the parties thereto.[288] Analogously to the old rule relating to collective agreements, an award could not be enforced by a trade union on behalf of its members even though the union was a party to the award. Although the arbitrators had the power to attach sanctions, such as fines, for non-compliance with their awards, the exercise of this power was narrowly circumscribed by the Superior Court of Arbitration, which held that arbitrators could only punish non-compliance taking place within a specific period.

These limitations upon the enforcement of awards were largely removed by subsequent legislation.[289] An arbitral award may now be made subject to execution by filing it with the appropriate civil tribunal.[290] Furthermore, a trade union may now enforce the award in a civil action on behalf of its members in the same manner as a collective agreement.[291] Fines for non-compliance may now be imposed either upon a party or a member of a group which was a party to the award, but they may not exceed one thousand francs per day.[292] Contrary to the decision of the Superior Court of Arbitration, fines may now be imposed regardless of how long after the award non-compliance occurs.

In the case of an employee, failure to observe the award is deemed a breach of his contract of employment, justifying immediate discharge.[293] A non-complying employer is ineligible for three years to membership in the Chamber of Commerce and to certain professional public offices. What is more serious, such an employer may not obtain public contracts, unless relieved of this penalty in the public interest.[294] No instance of the application of these recent penalties has been found.

upon the second hearing has granted a lesser wage increase than was granted upon the first, although no new facts were introduced, and the award has been made retroactive so as to compel repayment of wages representing the difference between the two awards. LE POPULAIRE, Aug. 20, 1938.

[287] Act. of Dec. 31, 1936, art. 6, J. O. 127 (Jan. 1937), declared the award "obligatory" and unappealable.

[288] Trib. civ. Seine (1938), SEMAINE JURID. 491 II.

[289] S. C. A. no. 56, J. O. ANN. 1101 (1938).

[290] Arbitration Act, 1938, art. $15^{4,5}$.

[291] Decree-law of Nov. 12, 1938, art. 5 [J. O. 12866 (Nov. 1938)] and C. Tr. I, art. $31vg^{2}$, as amended by decree-law of Nov. 12, 1938, ibid., relating to extended awards.

[292] Decree-law of Nov. 12, 1938, art. 6, J. O. 12866 (Nov. 1938).

[293] Iibid., art. 8.

[294] Ibid., art. 7.

D. *Collective Labor Conflicts*

The law requires mediation and arbitration only in the case of "collective labor conflicts."[295] It does not define this term.

When the 1936 statute was debated, suggestions were made on the one hand to limit the scope of the statute to conflicts arising out of the applicability or interpretation of collective agreements,[296] and on the other hand to define the term as any economic or legal conflict likely to give rise to a strike or lockout.[297] The first definition was rejected as too narrow; the second as so wide as to be meaningless.

In determining their jurisdiction of particular disputes, arbitrators virtually adopted the latter formula, enabling them to take jurisdiction over practically every dispute. Thus it was said that if a conflict affected the whole personnel so as to cause a strike, or if it raised a question of general principle, the conflict was "collective" within the meaning of the law.[298] This broad application of the statute evoked the hostility of employers, who as a group had never been friendly to the Arbitration Act. They objected particularly because under the formula jurisdiction was conferred over individual dismissals if employees chose to make them an issue; the union was thus given too great an influence over employer-policy, they argued.[299]

Partly as a result of their protests, the Superior Court of Arbitration was created in 1938 to define the jurisdiction of arbitrators in an authoritative manner.[300] Almost immediately it rejected the original formula[301] and defined a collective conflict as a dispute arising out of the applicability or interpretation of collective agreements[302] or the demand for such agreements,[303] or as a dispute affecting general

[295] Act of Dec. 31, 1936, art. 1, J. O. 127 (Jan. 1937).

[296] Amendment Vallette-Viallard, J. O. DÉB. PARL. CH. DÉP. SESS. EXTRAORD. 3196 (1936).

[297] Art. 2 as proposed by Senate Committee on Industry and Labor, J. O. Doc. PARL. SÉN. SESS. EXTRAORD. 510 (1936).

[298] Award no. 104, J. O. ANN. Feb. 3, 1938.

[299] GERMAIN-MARTIN, LES DANGERS ÉCONOMIQUES ET SOCIAUX 13-14 (1937).

[300] Supra, p. 1069. During the debate it was made clear that recourse to the Superior Court of Arbitration was to be limited to questions of law relating chiefly to jurisdiction. Déb. Parl. Ch. (Feb. 17, 1938), LE TEMPS, Feb. 19, 1938 (Prime Minister Chautemps). The original project provided for recourse to the Conseil d'Etat. Ibid., Jan. 30, 1938.

[301] S. C. A. no. 85, J. O. ANN. 1090 (1938).

[302] S. C.A. no. 128, ibid., 1082; no. 129, ibid., 1083.

[303] S. C. A. no. 41, ibid., 1072.

interests of employees as a group, such as a wage question for all in a given category.[304]

Technical distinctions were established respecting dismissals. A dispute is arbitrable if the dismissals affect general rights of employees, such as the right to organize.[305] Under these rulings it has been held that refusal to reinstate after the General Strike of 1938 is arbitrable.[306] While the super-arbitrator must make an express finding as to whether a collective right was violated by dismissal,[307] the conflict ceases to be arbitrable where the dismissal was justified by misconduct on the part of the employee, even though the employee was then exercising a collective right which might have been the subject of arbitration.[308] Thus, misconduct on the part of an employee may deprive him and his fellow-employees of the right to arbitrate, and industrial strife may thus be promoted through inapplicability of the statute. Furthermore it has been held that if discharges, without discrimination, are the result of curtailment of production or reorganization of an enterprise, they cannot be arbitrated.[309] However, the Superior Court of Arbitration has recently held that demands for adjustments of work, such as for a stagger-system, create an arbitrable conflict.[310]

E. *Working of the Arbitration Act*

The mediation procedure which compels the parties to negotiate without a solution being imposed upon them has resulted in the settlement of a large number of disputes by agreement. During the first few months of operation, out of 3496 disputes, 2889 had been settled by mediation;[311] on April 30, 1938, out of a total of 9631 disputes brought to the attention of prefects since January 1, 1937, 3432 had

[304] S. C. A. no. 24, ibid., 1081; no. 149, ibid., 1083. The intervention of a trade union does not of itself render the conflict collective. S. C. A. no. 163, ibid., 1091.

[305] S. C. A. no. 5, ibid., 1087; no. 118, ibid., 1076 (dismissal of workers' delegate); no. 168, ibid., 1091 (activity in elections).

[306] Award de Ségogne on jurisdiction (Jan. 14, 1939), LE POPULAIRE, Jan. 17, 1939; the subsequent award on the merits decided against reinstatement. LE TEMPS, Jan. 18, 1939, affd. S. C. A., Feb. 15, 1939, D. H. 1939.186.

[307] S. C. A. no. 15, J. O. ANN. 1087 (1938).

[308] S. C. A. no. 191, ibid., 1104; no. 400, ibid., 1294 (violence against fellow employee executing unlawful order of employer); but cf. S. C. A. no. 46, ibid., 1283, upholding award which ordered reinstatement of strikers prosecuted for violations of Penal Code, art. 414 (interference with right to work). Thus the equitable discretion of the arbitrators in such cases appears to be very broad.

[309] S. C. A. no. 155, ibid., 1091.

[310] S. C. A. nos. 528, 593, LE TEMPS, Oct. 15, 1938; Cour Supérieure d'arbitrage (Oct. 12, 1938), D. H. 1939.10.

[311] J. O. DÉB. PARL. CH. DÉP. 1937, p. 1778 (Lebas, Minister of Labor).

been settled even before formal recourse to mediation commissions, and 2610 were settled by mediation.[312]

During approximately the same period of fifteen months, 1514 super-arbitrators were appointed by the Prime Minister, it appearing that the arbitrators only rarely agreed upon a super-arbitrator.[313] Since March 1938, 1489 super-arbitrators have been appointed by the Minister of Labor and 177 by the Superior Court of Arbitration after the reversal of a prior award. Super-arbitrators have rendered 2175 awards; only 101 awards have been rendered by arbitrators and only 35 awards by super-arbitrators chosen by the parties.[314]

Compared with the success of mediation, the success of arbitration as measured by the degree of voluntary observance of awards is more difficult to determine. The complaint that trade unions and individual workers do not observe the awards, which has been raised by opponents of the Arbitration Act, was peremptorily answered by Prime Minister Chautemps during debate in January, 1938, over the extension of the statute. Chautemps said:

> "The arbitration law, contrary to what is said, has rendered the greatest service to the country. 75% of conflicts are settled before district commissions. Out of 850 super-arbitrations to which the Prime Minister has had recourse, only about 50 have not been executed. And I want to say . . . that out of 53 cases of non-compliance . . . in only 10 cases could the blame be laid . . . upon labor unions."[315]

CONCLUSION

Recognition of collective bargaining cannot of itself solve all the substantive problems of industrial conflict. The employer and the trade union can be brought face to face and compelled to bargain collectively, but their bargaining may be fruitless because of disagreement over terms. Even with acceptance of collective bargaining, some additional machinery for the solution of industrial conflicts may prove necessary.

In Great Britain this solution was found without the necessity for active government intervention. There, collective agreements were ultimately evolved containing elaborate machinery for the peaceful settlement of disputes through mediation and arbitration. In France,

[312] 45 BUL. MIN. TRAV. 318-319 (1938).

[313] Ibid., 320-321. Among 100 super-arbitrators who rendered awards during April and May 1937, 85 were designated by the Prime Minister and other cabinet members, and only 5 by agreement of the parties. J. O. ANN., Feb. 3, 1938.

[314] 45 BUL. MIN. TRAV. 321, 431-432 (1938).

[315] J. O. DÉB. PARL. CH. DÉP. SESS. EXTRAORD. 1937, p. 3469.

on the other hand, a similar voluntary solution proved unsuccessful, and two measures of far-reaching consequence urged by labor to overcome employer-resistance to collective bargaining were ultimately enacted.

The first of these measures results in the extension by administrative order, throughout an entire industry, of collective labor agreements negotiated by representative employer and employee organizations, bringing about standardization of labor costs and elimination of both unfair competition in labor differentials and the "run-away shop." The second measure attempts to assure the peaceful settlement of all "collective labor conflicts" through compulsory mediation and arbitration.

Appraisal of these recent measures is difficult because their functioning at any one time is so closely related to the current political and social balance of power. French labor found such measures desirable because it believed itself sufficiently strong, politically and socially, to control the operation of these measures and to prevent their use as instruments of oppression. Similar measures now favored by employers in the United States are at present either not favored, or actively opposed, by American labor upon the ground that they may impede trade union organization, the current chief objective of American labor. Experience shows that in the face of such opposition labor legislation cannot be successful. But with the right to organize effectively assured and genuinely accepted, the American labor movement may extend its objectives and seek or agree to a solution for industrial conflicts similar to the solution which has been attempted in France.