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# NOTES AND COMMENTS

## Resolution of Industrial Grievance Disputes Under Soviet Labor\* Law

### I. INTRODUCTION

A revolution in socialist labor practice is currently taking place among the workers of Poland. In August 1980, Polish workers staged an historic and dramatic strike against their socialist employer,<sup>1</sup> the state.<sup>2</sup> Regardless of the reasons motivating the strike, the important fact is that socialist laborers resorted to striking to settle their dispute with their employer rather than negotiating an agreement. The existence of a strike under a socialist system is not itself revolutionary. Although far from commonplace in socialist states, strikes have occurred from time to time.<sup>3</sup> Yet, the continuing labor unrest in Poland

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\* (Editor's note: For the purposes of this Comment, the author will use the American spelling, "Labor." In any direct quote, or in the title of manuscripts with the British spelling, "Labour" will be dutifully copied.)

1. "Socialism" is defined as "any of various theories or social and political movements advocating or aiming at collective or governmental ownership and administration of the means of production and control of the distribution of goods . . . ." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2162 (1976). To many people, socialism is merely the inverse of capitalism, which allows private ownership of the means of production. See discussion of socialism vs. capitalism in H. BERMAN, JUSTICE IN THE U.S.S.R. 152-67 (1963, rev. ed.) [hereinafter cited as BERMAN, JUSTICE IN THE U.S.S.R.]. To Professor Berman, socialism means "the planning and operating of the economy by the state." *Id.* at 346. Under this definition of socialism, the state plans and operates every part of the economy. The public is the owner of the means of production and the state is the agent that runs the economy. Thus, the state is the employer of all elements in the economy, including the labor force. When the workers strike, they strike against the state. An industrial strike in a socialist system is therefore different in nature than a strike in a capitalist system. See § VII *infra*.

2. Original protests began in early July and concerned increases in food prices. The industrial strikes in Gdansk commenced August 14, 1980. They spread to several other cities within the next week. See N.Y. Times, Aug. 19, 1980, at 8, col. 3; N.Y. Times, Aug. 20, 1980, at 1, col. 6; N.Y. Times, Aug. 30, 1980, at 1, col. 6.

3. A history of labor strikes in East European socialist states is outlined in *Boston Globe*, Aug. 8, 1980, at 8, col. 5. For reports of a widespread strike which took place in 1962 in southern Russia, see Boiter, *When the Kettle Boils Over*, 13 PROBLEMS OF COMMUNISM 33-43 (Jan.-Feb. 1964) [hereinafter cited as Boiter]; J. KOLASKY, TWO YEARS IN SOVIET UKRAINE 190-93 (1970) [hereinafter cited as KOLASKY]. A strike among dockworkers in the Ukrainian port of Odessa in 1961 is reported in N.Y. Times, Jun. 25, 1961, at 2, col. 6. The most recent industrial strike reported in the western press occurred in the summer of 1980 in the Togliatti automotive assembly plant in Gorky. See N.Y. Times, Jun. 18, 1980, at 31, col. 3. *But see* the official Soviet response to these reports in N.Y. Times, Jul. 7, 1980, at 14, col. 3; 32 Current Digest of the Soviet Press [CDSPP] no. 25, Jul. 23, 1980, at 9, col. 1.

is significant because the Polish workers believe that it is necessary to threaten and conduct strikes against the State in order to win concessions.

The events which have occurred in Poland since the first strikes in the Lenin Shipyard in Gdansk,<sup>4</sup> on August 14, 1980,<sup>5</sup> raise the question of how socialist states settle legitimate disputes that arise between workers and management.

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Unconfirmed reports of strikes are revealed in an interview by Paul Langner with Vladimir Borisov, one of the founders of the tiny Soviet free trade union, the Free Interprofessional Association of Workers. The Russian acronym for this organization is *SMOT*. Borisov told of a strike among the coal miners of Vorkuta, a mining center near the northern end of the Ural Mountains, which was in progress on the date of the interview in mid-March 1981. He also knew of other strikes in the very recent past, including those which took place (1) in Nikel, a nickel smelting center northwest of Murmansk near the Norwegian border; (2) in Vyborg, northwest of Leningrad, where workers struck because of police brutality inflicted on some of their fellow workers; (3) in Leningrad itself where the strike centered on objections to especially cruel treatment of prisoners assigned to work alongside the strikers; and (4) in the Togliatti automobile plant where several assembly lines were stopped as workers sat down on the job. *See* Boston Globe, Mar. 16, 1981, at 9, col. 1.

In addition, Solidarity, the Polish free trade union, reported that it had heard of a strike in the Soviet Union in which the strikers reportedly demanded an independent trade union. *See* N.Y. Times, Sep. 9, 1981, at 1, col. 1.

4. Most important for the purposes of this Comment is the continuing labor unrest itself. *See, e.g.,* N.Y. Times, Sep. 30, 1980, at 7, col. 1; N.Y. Times, Nov. 26, 1980, at 1, col. 3; N.Y. Times, Mar. 21, 1981, at 1, col. 3; N.Y. Times, Mar. 28, 1981, at 1, col. 6. *TIME*, Jul. 20, 1981, at 37; *TIME*, Aug. 10, 1981, at 36; *TIME*, Aug. 17, 1981, at 34; and *TIME*, Aug. 31, 1981, at 30. On October 28, 1981, millions of Polish workers staged a nationwide general strike. *See* N.Y. Times, Oct. 29, 1981, at 1, col. 3. This unrest is of import because it points up the inability of the two sides to reach agreement on contested matters.

An important result of the strikes in Poland is that the right to form a free trade union is officially recognized by the Polish government. *See* N.Y. Times, Aug. 21, 1980, at 1, col. 6. The Polish workers also won the right to strike. *See* N.Y. Times, Aug. 31, 1980, at 1, col. 6. Notwithstanding the recognition of the right to strike, the Polish legislature, the *Sejm*, came very close to officially banning strikes for a limited period during the spring of 1981. *See* NEWSWEEK, Apr. 20, 1980, at 46.

Other significant events which are traceable to the unrest include a shake-up in the higher echelons of both the Polish United Workers' Party, the controlling party in Poland, and in the Polish government. Party leader Edward Gierek was replaced by Stanislaw Kania. *See* NEWSWEEK, Sep. 15, 1980, at 46. The Prime Minister, Edward Babiuch, lost his position to Jozef Pinkowski. *See* N.Y. Times, Aug. 25, 1980, at 1, col. 6. Pinkowski in turn was replaced by Gen. Wojciech Jaruzelski. *See* NEWSWEEK, Feb. 23, 1981, at 38. Six of Pinkowski's ministers were fired with him. *Id.*

At a special Party Congress held in July, 1981, even more changes were made in the hierarchy of the Party. Former Party leader Edward Gierek and former Prime Minister Edward Babiuch were expelled from the Party. *TIME*, Jul. 27, 1981, at 30. In addition, only four incumbent members of the Politburo, the highest body in the Party, were re-elected to the new Politburo. *TIME*, Aug. 3, 1981, at 35. And fewer than ten percent of the outgoing Central Committee, the Party's main administrative unit, were re-elected to the expanded 200-seat body. *Id.*

Stanislaw Kania, himself elevated to Party boss as a result of the labor unrest, was removed in October, 1981. N.Y. Times, Oct. 19, 1981, at 1, col. 5. His replacement was Gen. Wojciech Jaruzelski, the Prime Minister. *Id.* Jaruzelski retained his government post along with his new Party position. *Id.*

5. For a brief chronology of the events in Poland from July 1, 1980, when meat price increases became effective, until August 30, when an agreement was signed by the Polish government and the striking workers, *see* N.Y. Times, Aug. 31, 1980, at 16, col. 6.

The fact that labor unrest in Poland has continued into the present<sup>6</sup> illustrates the depth of the problem which faces socialist employers in Poland and elsewhere. Poland's leaders claim that a general strike is suicidal and that it would cause the entire economy to collapse.<sup>7</sup> The Polish free trade union, Solidarity,<sup>8</sup> asserts that union rights are not respected, and that until these rights are treated with proper gravity by the state, a strike will continue to be possible.<sup>9</sup>

The struggle between the Polish workers and the State does not exist in a vacuum. Events in Poland have been monitored carefully by a number of countries, including the United States,<sup>10</sup> the U.S.S.R.,<sup>11</sup> and some nations of Western Europe.<sup>12</sup> Although there are several reasons for the careful attention being given to Poland by the Soviet Union, one important reason is that the leadership in the Kremlin has similar difficulties at home and seeks to minimize the effect of Polish labor unrest on Soviet workers.<sup>13</sup> If there were ways for Soviet workers to resolve satisfactorily any and all disputes with their employer, the State, there would be no need for a strike similar to those in Poland during 1980-1981. Adequate channels for settlement of grievance disputes would obviate the need for recourse to a strike.

This Comment will investigate the dispute resolution machinery in the pre-eminent socialist state, the Union of Soviet Socialist Republics.<sup>14</sup> In theory,

6. See note 4, *supra*.

7. See Boston Globe, Mar. 25, 1981, at 1, col. 1; Boston Globe, Mar. 30, 1981, at 1, col. 3.

8. The right to form a free trade union was officially recognized by the Polish government in an agreement signed on Aug. 30, 1980, see N.Y. Times, Aug. 31, 1980, at 1, col. 6; NEWSWEEK, Sep. 8, 1980, at 30. To the Polish government, Solidarity has become more than a trade union should be. It has become a political opposition group. See 33 CDSP no. 5, Mar. 4, 1981, at 7, col. 2 (translating and condensing an article published in both *Pravda* and *Izvestia* on Jan. 30, 1981). The support for Solidarity is widespread among the Polish people. Members of the Polish United Workers' Party (PUWP) have joined Solidarity. See 32 CDSP no. 49, Jan. 7, 1981, at 4, col. 1. According to one estimate, up to one-third of the membership of Solidarity consists of members of the PUWP. See NEWSWEEK, Apr. 13, 1981, at 62. Solidarity's leader, an electrician by trade, is Lech Walesa. For an excellent discussion of the man and his ideas, see an interview by Oriana Fallaci with Walesa in Boston Globe, Mar. 15, 1981, at 1, col. 4.

Solidarity held a national congress in September, 1981. The five-day meeting called for more voice in management by workers and a national referendum. TIME, Sep. 14, 1981, at 53. Solidarity also sent a message to other trade unions in Eastern Europe urging them to become independent labor unions, as Solidarity is. N.Y. Times, Sep. 9, 1981, at 1, col. 1.

9. N.Y. Times, Mar. 22, 1981, at 1, col. 1.

10. Boston Globe, Dec. 10, 1980, at 17, col. 1.

11. Boston Globe, Nov. 25, 1980, at 1, col. 6. See reports of Soviet military maneuvers held near the Polish border in September, 1981, during the national congress of Poland's free trade union. N.Y. Times, Sep. 6, 1981, at 10, col. 1; N.Y. Times, Sep. 10, 1981, at 3, col. 4.

12. Boston Globe, Aug. 20, 1980, at 8, col. 1.

13. N.Y. Times, Aug. 19, 1980, at 1, col. 1.

14. The author has focused on the Soviet Union for a number of reasons. It was the first socialist state and, therefore, holds a unique position among the other socialist states in terms of defining and implementing socialism. The U.S.S.R.'s labor code has undergone some major changes in the area of dispute resolution since it was published in 1918, see, e.g., § IV *infra* and, to

disputes between labor and management are impossible under socialism;<sup>15</sup> however, such conflicts do occur. The causes and types of these labor disputes will be investigated. Another important facet of the problem is the nature of the parties to labor disputes. Hence, the author will consider the positions both of management and of the worker who is typically guilty of labor rules violations. In addition, the author will delineate the unique role played by the trade union under socialism.

An elaborate scheme to resolve grievance disputes has been established under Soviet labor legislation.<sup>16</sup> Since major reforms in this legislation have

a certain extent, the laws of the Soviet Union often are adopted in the codes of other socialist states.

15. According to Soviet ideology, no generalized conflict is possible between workers and management under socialism because this is by definition a nonantagonistic society, where the differentiation between the two categories is no class-cleavage anyway, as it is under capitalism. Managers constitute no separate social class, but merely a stratum of the working class belonging, as do the workers, to the trade unions. By this theory, any conflict can therefore only be a case between certain specific individuals within a certain specific enterprise. It can never take on the character of class conflict, nor can it be broadened by class solidarity to result in collective types of action, such as strikes.

A. BRODERSEN, *THE SOVIET WORKER: LABOR AND GOVERNMENT IN SOVIET SOCIETY* 81 (1966) [hereinafter cited as *BRODERSEN*].

In the Soviet Union where labour relations are founded on comradely cooperation, no antagonistic labour conflicts exist between employees and management. After all, both parties are equally interested in improving production performance, socialist labour discipline, conditions of work and recreation, and amenities for housing, shopping and cultural entertainment.

V. GLAZYRIN, V. NIKITINSKY, N. MAKSIMOVA & A. YARHO, *SOVIET EMPLOYEE'S RIGHTS IN LAW* 166 (1978) [hereinafter cited as *GLAZYRIN & NIKITINSKY*]. For other comments on the non-antagonistic relations between labor and management under socialism, *see id.*

Soviet theory holds that in a system of public ownership of the means of production there are no contradictory class interests to cause labor conflicts. During an interview filled with propaganda, and in answer to a question about protection of workers against violation of their rights, an officer of long standing in one of the union central committees protested, "You always forget there is no one to be protected against."

E. C. BROWN, *SOVIET TRADE UNIONS AND LABOR RELATIONS* 179 (1966) [hereinafter cited as *BROWN*].

A reason for the theoretical absence of conflict between labor and management is the merging of interests encouraged by the regime:

In the Soviet system the managers are state officials; the labor unions are state organs. The director of a state economic enterprise belongs to the union local. Both the director and the union chairman are almost invariably members of the Communist Party. In addition, both management and labor receive government assignments and orders concerning rates of wages, standards of output, funds for social insurance, and hours and conditions of work in general. By such means the Soviet state seeks to merge the conflicting interests, and even the conflicting functions, of management and labor into a larger harmony.

BERMAN, *JUSTICE IN THE U.S.S.R.*, *supra* note 1, at 346.

16. In the Soviet political system, the national legislative body of the U.S.S.R. is the Supreme Soviet. U.S. BUREAU OF LABOR STATISTICS, *DEPT OF LABOR, LABOR LAW AND PRACTICE IN THE U.S.S.R.* 5 (BLS Report No. 270, 1970) [hereinafter cited as *USBLS, LABOR LAW IN THE U.S.S.R.*]. The Supreme Soviet meets infrequently, generally for two brief sessions a year during which time it adopts the budget and approves laws proposed by the Council of Ministers, the Ex-

been made, the author will undertake a brief examination of the historical development of dispute resolution in the U.S.S.R.

Under current law, there are three agencies empowered to hear labor cases: the Commission on Labor Disputes, *Kommissiya po Trudovym Sporam*, the local factory union committee, *Fabrichnii, Zavodskii Mestnii Komitet*, and the civil (People's) courts. The author will discuss the composition, jurisdiction, rules of procedure, method of decision-making and the routes of appeal from decisions of each of these agencies. Apart from these bodies, the author will discuss several other avenues of dispute settlement which are available in the Soviet Union. Workers can attempt direct negotiation with management or they can write letters which are critical of management to their unions or to the newspapers. Management can refer a dispute to a quasi-judicial body<sup>17</sup> in the plant for resolution. Independent judicial officers, known as procurators, also have the power to intervene. The author also will examine strikes in the Soviet Union, in particular the legality and causes of, as well as responses to, work stoppages. Finally, the author will address the future of strikes as a tool in the hands of Soviet workers, and the extent to which Soviet workers have been affected by the strikes in Poland.

## II. LABOR DISPUTES IN A SOCIALIST STATE

### A. Causes

In a socialist state, the interests of workers and management theoretically coincide. Yet, disputes between these groups still exist. A primary reason for such conflicts is an imperfect meshing between goals and the methods of achieving those goals. V.I. Lenin, the founder of the Soviet State, realized that even under socialism, there would be difficulties with labor disputes:

[I]n view of the inevitable rise of narrow departmental interests and excessive departmental zeal, this circumstance is bound to

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ecutive Branch of the Soviet Government. *Id.* Between sessions, the Supreme Soviet's largely ceremonial functions are performed by a Praesidium which is composed of members drawn from the Supreme Soviet itself. *Id.* The Praesidium may issue decrees which are often later ratified by the full Supreme Soviet at its semi-annual sessions. *Id.*

Legislation setting out the grievance resolution procedures is contained in *Decree of the Praesidium of the Supreme Soviet of the U.S.S.R. of January 31, 1957*. This *Decree* was ratified on February 24, 1957, by the *Statute on the Procedure for the Consideration of Labor Disputes, 1957 VEDOMOSTI VERKHOVNOGO SOVETA SSSR, [VED. VERKH. SOV. SSSR] no. 4, item 58 (Feb. 24, 1957)* [hereinafter cited as *1957 Statute on Labor Disputes*]. This statute was reformed by the *Statute on the Procedure for the Consideration of Labor Disputes, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325 (May 29, 1974)* [hereinafter cited as *1974 Statute on Labor Disputes*].

17. This body is the Comrades' Court, discussed at length in § VI.C *infra*. There has been sharp criticism of the Comrades' Courts in the Soviet press for the failure of these courts to insure hearings which are more than complaint sessions. See *Judges or Comrades?* 10 SOV. LAW & GOV'T 141-54 (Fall 1971) [hereinafter cited as *Judges or Comrades?*].

create a certain conflict of interests in matters concerning labour conditions between the masses of workers and the directors and managers of the state enterprise, or the government departments in charge of them.<sup>18</sup>

However, such narrow departmentalism is not the only explanation of the roots of Soviet worker-management disputes. Many Soviet analysts have observed remnants of capitalistic consciousness in either or both workers and management,<sup>19</sup> and have indicated that such remnants are the seeds of discontent. The underlying capitalistic consciousness, according to this analysis, manifests itself in self-seeking, egotistical tendencies on the part of certain less responsible workers who try to do less work and get paid more for it.<sup>20</sup> Similarly, vestiges of capitalism<sup>21</sup> appear in bureaucratic attitudes of individual managers and executives who ignore public opinion, are intolerant of criticism, and try to rid themselves of troublemakers.<sup>22</sup>

There are other causes of labor disputes in the Soviet Union. Inadequate knowledge and faulty application of labor legislation due to the lack of understanding are two often-cited causes of disputes.<sup>23</sup> Inefficient production organization and poor factory administration are other factors which contribute to labor disputes.<sup>24</sup> Finally, there is a growing activism among Soviet workers, who are responding to efforts to inform them of relevant labor dispute legislation.<sup>25</sup> As a result of these efforts, workers are learning of their rights and are developing the ability and willingness to stand against management by airing their grievances rather than remaining silent.<sup>26</sup>

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18. V. I. LENIN, 33 COLLECTED WORKS 186 (1976).

19. M. MCAULEY, *LABOUR DISPUTES IN SOVIET RUSSIA, 1957-1965*, at 135 (1969) [hereinafter cited as MCAULEY].

20. R. LIVSHITZ & V. NIKITINSKY, *AN OUTLINE OF SOVIET LABOUR LAW* 194 (1977) [hereinafter cited as LIVSHITZ & NIKITINSKY].

21. In Soviet terminology, these vestiges are referred to as "survivals of the past." *Id.* MCAULEY, *supra* note 19, at 136.

22. LIVSHITZ & NIKITINSKY, *supra* note 20, at 194.

23. *Id.* GLAZYRIN & NIKITINSKY, *supra* note 15, at 167; Piatakov, *Labour Administration by the State and Trade Unions in the U.S.S.R.*, 85 INT'L LAB. REV. 558, 570 (1962) [hereinafter cited as Piatakov].

24. MCAULEY, *supra* note 19, at 135-36. Weakness shown by the Polish government in dealing with potential problem areas lies at the root of the recent labor unrest in Poland, according to Gus Hall, General Secretary of the Communist Party, USA. See *Prawda*, Aug. 31, 1980, at 5, excerpted and translated in 32 CDSP no. 33, Sep. 17, 1980, at 5, col. 1.

25. N. ALEKSANDROV, *SOVETSKOE TRUDOVOE PRAVO (SOVIET LABOR LAW)* 326-27 (1959) [hereinafter cited as ALEKSANDROV], cited in Brown, *Interests and Rights of Soviet Industrial Workers and the Resolution of Conflicts*, 16 INDUS. & LAB. REL. REV. 254, 255 n.4 (1963) [hereinafter cited as Brown, *Resolution of Conflicts*]; GLAZYRIN & NIKITINSKY, *supra* note 15, at 167.

26. This last factor is paradoxical. As noted by the dean of Soviet labor law experts, Professor Aleksandrov, an increasing communist education of the workers should tend to decrease the number of disputes as workers come to appreciate their duties as well as their rights. Thus, the workers should be less likely to give management a reason to punish them. However, the beneficial aspects of this education seem to be outweighed by the activism it produces among the workers. ALEKSANDROV, *supra* note 25, at 326-27.

## B. *Types of Disputes*

Not all disputes between workers and management can be presented by workers through formal channels for resolution. Certain disputes must be settled outside the system through informal channels. The basic distinction is between those disputes which arise out of the establishment or modification of working conditions and those which result from the application to already-existing conditions of relevant regulations.<sup>27</sup>

Disputes which relate to the formulation of working conditions are referred to as "non-litigious" (*neiskoviye*) disputes because the dispute cannot be settled through the formal resolution machinery; rather, settlement must be achieved outside the established system.<sup>28</sup> The questions raised in such disputes are not directly regulated by law, decree, governmental decision or collective agreement.<sup>29</sup> The problems focus on the establishment of certain new rights rather than the alleged infringement of pre-existing rights. Non-litigious disputes are most often handled in an informal manner, and the majority of these are settled at the workshop level.<sup>30</sup> If such non-litigious disputes cannot be settled at this level, they are appealed to higher union and management bodies.<sup>31</sup>

Disputes resulting from the application of existing working conditions are called "litigious" (*iskoviye*), because these conflicts are settled through formal procedures.<sup>32</sup> Litigious disputes involve the demand for restitution of a right that has been violated by the opposing party<sup>33</sup> and most often are connected with specific features of production.<sup>34</sup>

## C. *Parties to Labor Disputes*

### 1. The Worker

According to a recent Soviet sociological study,<sup>35</sup> the typical worker who breaks rules, and thus is subject to disciplinary measures, is a man under thirty years of age who has not completed his secondary education, who has worked

27. Brandt, *Trade Unions in Soviet Russia*, 9 CHITTY'S L. J. 233, 235 (1960) [hereinafter cited as Brandt]; BROWN, *supra* note 15, at 202; Zawodny, *Grievance Procedures in Soviet Factories*, 10 INDUS. & LAB. REL. REV. 532, 534 (1956) [hereinafter cited as Zawodny].

28. LIVSHITZ & NIKITINSKY, *supra* note 20, at 205-06.

29. *Id.* at 205; Zawodny, *supra* note 27, at 534.

30. MCAULEY, *supra* note 19, at 171.

31. BROWN, *supra* note 15, at 202.

32. *Id.*

33. Zawodny, *supra* note 27, at 535.

34. LIVSHITZ & NIKITINSKY, *supra* note 20, at 198. Examples of such litigious and non-litigious disputes might be helpful at this point. Non-litigious disputes include disagreements over output norms, rates, job classifications, wage levels and the length of the work-week. Such disputes generally arise in connection with the conclusion of the collective contract. Litigious disputes include those revolving around payment for overtime, during idle time or while temporarily transferred to another job, and for dismissal for cause. See USBLS, *LABOR LAW IN THE U.S.S.R.*, *supra* note 16, at 33.

35. 32 CDSP no. 35, Oct. 1, 1980, at 15-16.



at the plant for less than three years, who has average or even high qualifications and who abuses alcohol.<sup>36</sup> This last factor is important because it seems to explain the fact that males, more often than females, break labor rules.<sup>37</sup> On the other hand, women tend to violate certain specific rules such as by arriving late for work or by leaving early to do the family errands.<sup>38</sup> Women are also more likely to disobey management's orders.<sup>39</sup> A close link exists between violations of the labor discipline and the conditions and organizations of labor at the factory.<sup>40</sup> In a given month, 45 percent of all absenteeism occurs in the first ten-day period, 28 percent in the second, and 27 percent in the third.<sup>41</sup>

## 2. Management

The Soviet factory director bears certain similarities to his counterpart in an American plant,<sup>42</sup> but his role in industry is quite different from the role of the American. The Soviet factory director is responsible, not to a board of directors, but to the State.<sup>43</sup> He is, in effect, a representative of the State and must protect the State's interests.<sup>44</sup> The director protects the State's interests by having a conscientious attitude toward "human relations" in the plant.<sup>45</sup> The qualities sought in a plant director include a good knowledge of the technical aspects of the industry, a congenial working relationship with his subordinates and, above all, an ability to fulfill the State-ordered production plan.<sup>46</sup>

The management hierarchy is composed of a number of tiers. At the lowest

36. *Id.* at 16.

37. Soviet men have a near monopoly on inebriation, and are two to three times more likely to break factory rules than women. See Pravda, *Spontaneous Workers' Activities in the Soviet Union*, in INDUSTRIAL LABOR IN THE U.S.S.R. 340 (A. Kahan & B. Ruble eds. 1979) [hereinafter cited as Pravda].

38. *Id.*

39. ABRAMOVA, *DISTIPLINA TRUDA (DISCIPLINE OF LABOR)* 42 (1969); L. BLIAKHAM, A. ZDRAVOMYSLOV & O. SHKARATAN, *DVIZHENIE RABOCHEI SILY NA PROMYLSHLENNYKH PREDPRIIATIIAKH (TURNOVER OF THE LABOR FORCE IN INDUSTRIAL PLANTS)* 61 (1965); Sviridov, *Distiplina truda - vazhneishii faktor organizatsia obshchestvennogo truda (Discipline of Labor - The Most Important Factor in the Organization of Social Labor)*, in SOVETSKOE GOSUDARSTVO I PRAVO, no. 12, 15 (1967), cited in Pravda, *supra* note 37, at 362 n.44.

40. 32 CDSP no. 35, Oct. 1, 1980, at 16, col. 1.

41. *Id.* This is a result of "storming," the practice of working overtime during the final week of a given month in order to fulfill the month's production quota. The workers, having exerted themselves so strenuously during the last part of one month, then relax and take time off during the first part of the following month. This absenteeism causes the plant to fall behind in its monthly quota, so "storming" near the end of the month is again necessary in order to fulfill the plan. See generally H. SMITH, *THE RUSSIANS* 215-22 (1976).

42. BROWN, *supra* note 15, at 175.

43. *Id.*

44. *Id.*

45. *Id.* at 175-76. In Soviet parlance, this is referred to as protecting "the collective" - state, management and workers. *Id.*

46. *Id.* at 176. The descriptions of a good director given by a director himself, and by a group of factory committee chairmen are illuminating. The director expressed his opinion of the requirements of a good manager as follows:

He must know the economics of the industry and the technology, and put all his life into education, mastering the knowledge of the industry. He must not be rude to subordi-

level is the foreman who is responsible for a production section.<sup>47</sup> Above the foreman are the shift and chief foremen.<sup>48</sup> Above them, in charge of the shop, is the shop superintendent who is directly responsible to the chief engineer.<sup>49</sup> The chief engineer is the overall production manager.<sup>50</sup> These management personnel are recruited both from within the plant, allowing an individual to climb progressively up the management ladder, and from institutes of higher education.<sup>51</sup> Before the Second World War, when technical training was not as widespread as it is today,<sup>52</sup> the common practice in the Soviet Union was to promote from within.<sup>53</sup> This policy provided potential managers with better knowledge of the everyday problems of production, as well as with workers' attitudes, behavior and grievances.<sup>54</sup> However, a movement towards recruiting management personnel directly from educational institutes has recently been taking place even if these new managers have little or no training in management techniques or personnel administration.<sup>55</sup>

A final note concerning the role of Soviet managerial personnel should be made. Since directors are employees of the State, there is considerable movement between government service and industry.<sup>56</sup> This job-switching occurs in both directions.<sup>57</sup> Also, since directors are often members of the Communist Party,<sup>58</sup> movement back and forth between industry and the Party commonly occurs.<sup>59</sup> Positions in government or party work and those in industry may even be held contemporaneously.<sup>60</sup>

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nates, must be able to mix with them, know their life, their requests, their problems, think constantly of ways to improve their life. And he must never forget the state plan, not only for the year, but monthly, weekly. All this must be combined in one man.

*Id.*

The union men gave a worker's view of a good director:

First, he must fulfill the plan. Second, he must work with the people, take their suggestions seriously, know the life of the people and their needs. He must create all good conditions for labor in the factory. Most directors were workers or came from poor workers' families, and it is rare if a director has not worked up. So a good director may be "chosen" by the people. There are no conflicts between a good director and the workers.

*Id.*

47. MCAULEY, *supra* note 19, at 63.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 64.

52. *Id.* at 65.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* For example, "The chief engineer at one Leningrad factory had risen from foreman to director, then to the department of technology in the *sovarkhoz* [the regional economic administrative unit]; he was now back on the production side to try to improve an enterprise which was having problems." *Id.*

57. *Id.*

58. BERMAN, JUSTICE IN THE U.S.S.R., *supra* note 1, at 346.

59. MCAULEY, *supra* note 19, at 65.

60. *See id.*, in which the author notes that the director of the *firma* (plant or factory) visited was also a member of the administration of the *sovarkhoz*.

### III. THE ROLE OF THE TRADE UNION UNDER SOCIALISM

According to Lenin, the role of the trade union under socialism is vastly different from its role under capitalism.<sup>61</sup> Theoretically, the purpose of the socialist union is not only to protect the interests of the workers, but also to participate in the management of production.<sup>62</sup> Unions found their role redefined during the initial decade of Soviet control.<sup>63</sup> This redefinition was designed to accommodate the modification of the function of the union in Soviet society.<sup>64</sup>

Establishment of joint bodies to set production quotas and to arbitrate disputes was an important step taken by the U.S.S.R. in making unions partners with management.<sup>65</sup> Such a body, a Rates and Conflicts Commission (*Rastsenocho-Konfliktnaya Kommissia, RKK*) was established at every enterprise in which there was a trade union organization.<sup>66</sup> With the introduction of centralized state economic planning,<sup>67</sup> the "rate" aspect of the *RKK*

61. Under capitalism, the function of the trade unions is inseparable from the proletariat's class struggle against capitalist exploitation and the restriction of the working people's rights. In this struggle, the workers are opposed by all the might of capital and of the bourgeois state apparatus. Where socialism is concerned, however, the trade unions' protective function is an expression of a "non class" economic struggle "against bureaucratic distortions" in the Soviet apparatus . . . and "exaggerated departmental zeal" . . . on the part of individual economic managers who are sometimes inattentive to the needs of the working people and to their living and working conditions.

32 CDSP no. 38, Oct. 22, 1980, at 5, col. 1 (citations omitted).

62. "Participation in the management of production is inseparable from a realization of the trade union organization's original and basic function of protecting the working people's rights and interests, in the most literal and direct sense of the word." *Id.*

63. See generally I. DEUTSCHER, *SOVIET TRADE UNIONS* (1950) [hereinafter cited as DEUTSCHER]; M. DEWAR, *LABOUR POLICY IN THE USSR, 1917-28* (1979) [hereinafter cited as DEWAR]; M. GORDON, *WORKERS BEFORE AND AFTER LENIN* (1941) [hereinafter cited as GORDON]; S. SCHWARZ, *LABOR IN THE SOVIET UNION* (1952) [hereinafter cited as SCHWARZ]; J. SORENSON, *THE LIFE AND DEATH OF SOVIET TRADE UNIONISM, 1917-1928* (1969) [hereinafter cited as SORENSON].

64. Brandt, *supra* note 27, at 234. Hazard suggests that "such a change . . . could not but be reflected in the labour law. It was but a step to make of the trade unions an arm of the government." *Id.*

65. This step was taken within the Labor Code of 1922 itself. Four years earlier, in 1918, the first Labor Code had been passed. See MCAULEY, *supra* note 19, at 11. In 1922, a more comprehensive Code was enacted, the Labor Code of 1922. *Id.* For background on the Code, see ZHEMCHUZHNIKOVA, *VOPROSY TRUDA (QUESTIONS OF LABOR)*, no. 1, 23 (1923), cited in MCAULEY, *supra* note 19, at 11 n.1. For the Labor Code of 1922, see *Kodeks Zakonov o Trude RSFSR 1922 goda (Code of Laws on Labor, RSFSR, 1922)*, 1922 SOBRANIYI UKAZOV RSFSR [SOB. UK. RSFSR] no. 70, item 903 [hereinafter cited as 1922 LABOR CODE], cited in Zawodny, *supra* note 27, at 533.

66. Zawodny, *supra* note 27, at 538. If an enterprise was too small to have a trade union committee on its premises, several factories of roughly the same size in the same locale could, with the help of the trade union central office, organize a group *RKK*. *Id.*

67. Virtually all parts of the Soviet economy are owned and operated by the government. All state-owned enterprises are controlled by the government and the Communist Party through agencies and officials at the all-union (federal), republic and local levels. USBL, *LABOR LAW IN THE U.S.S.R.*, *supra* note 16, at 5. Soviet economic planning and administration is highly cen-

disappeared.<sup>68</sup> No longer did the unions participate in setting quotas; their function became ensuring fulfillment of the quotas set for them. The RKK was left primarily with arbitration of disputes between labor and management.<sup>69</sup> At the same time, however, the unions were instructed not to take positions in defense of the interests of their members which would be contrary to those of management.<sup>70</sup> The unions have heeded this directive,<sup>71</sup> and their action, or rather inaction, has led to sharp criticism by workers.<sup>72</sup>

That the unions tended towards complementary rather than contradictory positions vis-a-vis management,<sup>73</sup> especially after 1928,<sup>74</sup> is not surprising. The role of trade union activities is based on the concept of the non-antagonis-

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tralized, with basic policy decisions being made by the Party leadership. This policy is then carried out by central government agencies. *Id.*

The economy is managed on the basis of national plans which are drafted and supervised by the central government. These are the "Five-Year Plans." The first Five-Year Plan began in 1928, and the Soviet Economy is currently being administered by the 10th Five-Year Plan. *See id.* at 6-7; BROWN, *supra* note 15, at 2-3.

68. R. CONQUEST, *INDUSTRIAL WORKERS IN THE U.S.S.R.* 180 (1967) [hereinafter cited as CONQUEST *INDUSTRIAL WORKERS*]; SCHWARZ, *supra* note 63, at 184.

69. *See* text accompanying notes 113-20, *infra*.

70. J. HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 221 (1980) [hereinafter cited as HAZARD].

71. Knight, *Why Workers Want to Flee U.S.S.R.*, U.S. NEWS & WORLD REPORT, May 29, 1978, at 57 [hereinafter cited as Knight]. According to the prosecutor for the Moldavian Soviet Socialist Republic, the unions' compliance with the ideal of not pursuing narrow workers' interests has led some managers to the belief that they can push the unions around. 32 CDSP no. 39, Oct. 29, 1980, at 9, col. 1.

72. *See, e.g.*, comments to the effect that union leaders always agree with management against the workers, in Knight, *supra* note 71, at 57. For worker criticism of the unions, *see* statements such as:

The trade unions and the party administration (in the Soviet Union) are in fact like Janus: one body and two faces. The two work together . . . to keep a tighter grip on the workers and make them do what they're told to do.

Trade union rights exist on paper in the Soviet Union, but how are they implemented and interpreted by the Soviet authorities? The official trade-union movement in the USSR is state-controlled, differing very little from their corporate fascist equivalent in Nazi Germany, fascist Italy, and Franco's Spain. The links that the union has with the secret police and the role it plays in controlling the working mass was overtly displayed when Alexander Shelepin was the official head of the trade-union movement in the USSR.

quoted in AFL-CIO NEWS, Oct. 6, 1979, at 2, col. 1.

73. *See, e.g.*, the reasons for the merging of union and management goals, outlined by Professor Berman, *supra* note 15.

74. It is easy to understand how the elimination of private enterprise in 1927 resulted in the new theory as to the purpose and functions of the trade unions. Since the state is the instrumentality of the workers, the workers are only helping themselves when they direct their unions to press for greater production. Since there were no elements in society with any interests contrary to their own, management became merely the agent of the workers in organizing the mechanism to make production possible. Therefore, the workers utilized, in theory, their trade unions as their enlightened and tutored leadership to show them how to make the best possible use of that which management had prepared for their benefit.

Brandt, *supra* note 27, at 235.

tic nature of relations between labor and management.<sup>75</sup> Hence, the enhancement of production is for the good of the workers,<sup>76</sup> regardless of the immediate impact on union members of union acquiescence in management policy.<sup>77</sup> The extent of union and management cooperation in the U.S.S.R. has led to a situation now in which "the most important role of the unions is in support of the administration's aim of increasing output."<sup>78</sup>

Socialist unions are also in the delicate position<sup>79</sup> of defending the rights of their members while attempting impartially to enforce the labor legislation.<sup>80</sup> Since 1933,<sup>81</sup> the unions have had the duty of supervising enforcement of labor legislation.<sup>82</sup> They assumed these supervisory functions from the People's Commissariat of Labor which was disbanded that year.<sup>83</sup> In assuming the responsibilities of the former ministry of labor, the unions have been adopted by the Soviet policy-makers as the new labor ministry.<sup>84</sup> The unions' labor legislation enforcement role has expanded to the point that, second only

75. Zawodny, *supra* note 27, at 536; BRODERSEN, *supra* note 15, at 82.

76. See, e.g., a discussion of the concept of "dual functioning" trade unions (*i.e.*, unions that enhance production and protect workers at the same time), in Ruble, *Soviet Trade Unions: A Changing Balance in Their Functions* (Fall 1977) (Ph.D. diss., University of Toronto, Canada), cited in Ruble, *Factory Unions and Workers' Rights*, in *INDUSTRIAL LABOR IN THE U.S.S.R.* at 80 n.2 (A. Kahan & B. Ruble eds. 1979) [hereinafter cited as Ruble, *Factory Workers' Rights*].

77. Zawodny, *supra* note 27, at 536.

78. D. LANE & F. O'DELL, *THE SOVIET INDUSTRIAL WORKER* 37 (1978) [hereinafter cited as LANE & O'DELL] (emphasis in original).

79. Hazard speaks of the "unusual position in which the labor union has been placed in the U.S.S.R." HAZARD, *supra* note 70, at 221.

80. This duty of the unions was emphasized in a resolution passed in 1971 by the XXIVth Congress of the Communist Party of the Soviet Union. The resolution stated that one of the primary functions of the unions was to more closely supervise the rules and standards governing the protection of labor and occupational safety. Ivanov, *New Codification of Soviet Labour Law*, 108 *INT'L LAB. REV.* 143, 160 (1973) [hereinafter cited as Ivanov].

81. *Id.*

82. *Fundamental Principles of Legislation of the U.S.S.R. and of the Union Republics Concerning Labor*, arts. 96 & 104, 1970 *VED. VERKH. SOV. SSSR*, no. 29, item 265 (Jul. 22, 1970) [hereinafter cited as *Fundamental Principles of Labor*]. For a translation into English of the *Fundamental Principles of Labor*, see 22 *CDSP* no. 34, Sept. 22, 1970, at 1, col. 1. The *Fundamental Principles of Labor*, consisting of fifteen chapters and one-hundred and seven articles, embody an attempt to present "the first unified, national statement of basic principles to cover labor legislation and labor relations for all wage and salary workers. . . ." See Brown, *Fundamental Soviet Labor Legislation*, 26 *INDUS. & LAB. REL. REV.* 778, 781 (1972-1973) [hereinafter cited as Brown, *Fundamental Soviet Legislation*]. For a discussion of the position occupied by the *Fundamental Principles of Labor* in overall Soviet labor legislation, see Ivanov, *supra* note 80, at 145-47. For a good discussion of the *Fundamental Principles of Labor* themselves, see Brown, *Fundamental Soviet Legislation, supra*. For a compilation of the labor statutes of the U.S.S.R. and all the union republics, see I. TAIT'S, *KODECSI ZAKONOV O TRUDE SOYUZNIKH RESPUBLIK (SOPOSTAVITEL'NIYE TABLITSY)* [CODE OF STATUTES ON LABOR OF THE UNION REPUBLICS (COMPARATIVE TABLES)] (1975).

83. Ivanov, *supra* note 80, at 160.

84. HAZARD, *supra* note 70, at 221. Part of this responsibility is the right to initiate legislation which is vested in the All-Union Central Council of Trade Unions. *Fundamental Principles of Labor*, art. 96, 1970 *VED. VERKH. SOV.*, no. 29, item 265 (Jul. 22, 1970). For a discussion of the role played by the unions in helping to draft legislation, see Brown, *Resolution of Conflicts, supra* note 25, at 258-60.

to the courts,<sup>85</sup> they are now the most important agency for disciplining workers.<sup>86</sup> The unions also are responsible for disciplining senior employees who disregard the rights of other workers.<sup>87</sup>

The unions work hard to protect the interests of their members,<sup>88</sup> especially in the areas of preserving worker rights to a labor contract and to a proper wage.<sup>89</sup> The unions often go to great lengths to defend the workers, even accompanying a worker to court to insure that the rights of the worker are not treated lightly.<sup>90</sup> The actions taken by the unions in defense of workers have created an expectation among many workers that their unions will protect them.<sup>91</sup> Management, wary of tangling with the unions,<sup>92</sup> will usually choose to settle a dispute at the Commission on Labor Disputes<sup>93</sup> where management has a voice in the result.<sup>94</sup>

Another important role played by Soviet trade unions is the promotion of worker social welfare. One group of western commentators notes that, within very narrowly defined limits, the Soviet trade unions have improved the living

85. The unions have independent authority in certain areas pertaining to the enforcement of labor legislation and the settlement of labor disputes. See Khitrov, *The Role of Management and Workers in Raising the Efficiency of Soviet Industry*, 111 INT'L LAB. REV. 507, 520 (1975) [hereinafter cited as Khitrov].

86. BRODERSEN, *supra* note 15, at 82. An indication of the importance of the unions in resolving disputes and of the deference shown by the courts to unions' decisions is that, although both workers and management have the right to appeal decisions of the local union committee to court, the judge will, in the normal course of events, accept the decision of the union committee. Ruble, *Factory Workers' Rights*, *supra* note 76, at 60.

87. In the first half of 1972 alone, at the request of the unions, 559 persons were removed from their posts for failure to comply with the legislation governing the protection of workers in Kazakhstan alone. See Ivanov, *supra* note 80, at 160. For a collection of cases in which objectionable directors were removed at the insistence of the unions, see Brown, *Labor Relations in Soviet Factories*, 11 INDUS. & LAB. REL. REV. 183, 199 n.40 (1957) [hereinafter cited as Brown, *Labor Relations*]; Brown, *Resolution of Conflicts*, *supra* note 25, at 269-70.

88. V. ZAICHKOV, USSR: TRADE UNION ACTIVITY 84 (1977) [hereinafter cited as ZAICHKOV].

89. Ruble, *Factory Workers' Rights*, *supra* note 76, at 79.

90. ZAICHKOV, *supra* note 88, at 84. In court, the union representative has the right to familiarize himself with the materials of the case, to raise any objection, to provide explanations, to present evidence and to engage in any other lawful activity. *Id.* It is said that the unions do not go to court for their members often enough. See Brown, *Resolution of Conflicts*, *supra* note 25, at 273.

91. According to a Soviet analyst, it is not uncommon to hear workers threatening, quite confidently, to go to the unions to settle a conflict. V. SMOLIARCHUK, OKHRANA TRUDOVYKH PRAV RABOCHIKH I SLUZHASHCHIKH (THE DEFENSE OF LABOR RIGHTS OF WORKERS AND EMPLOYEES) (1970) [hereinafter cited as SMOLIARCHUK], cited in Kiralfy, *Labor Law Reform Since the Death of Stalin*, in CONTEMPORARY SOVIET LAW: ESSAYS IN HONOR OF JOHN N. HAZARD 165 (D. D. Barry ed. 1974) [hereinafter cited as Kiralfy].

92. HAZARD, *supra* note 70, at 222.

93. See § V.A *infra*.

94. Another explanation for this fact might be that, because union leadership has been so thoroughly absorbed into the state apparatus, state managers ordinarily do not fear bias against them in the KTS hearings. HAZARD, *supra* note 70, at 221-22; BROWN, *supra* note 15, at 210-11. In fact, a union committee chairman claimed that "management usually gives up at the first step." *Id.* at 211.

and working conditions of their members.<sup>95</sup> Even though the Soviet trade unions have abandoned the role of defending the rights of workers against the rights of the employer,<sup>96</sup> the unions still retain certain welfare promotion functions through which they attempt to better the condition of their members.<sup>97</sup>

#### IV. HISTORICAL DEVELOPMENT OF DISPUTE RESOLUTION LEGISLATION

##### A. Pre-1928

The law of labor dispute resolution in the U.S.S.R. is based on Section V of the 1922 Labor Code.<sup>98</sup> The Labor Code was published during the period of the New Economic Policy in Soviet Russia,<sup>99</sup> and some of its provisions reflect the more relaxed official attitude toward unions at that time.<sup>100</sup> In particular, unions were expected to be agencies relatively independent of the state and of the Party,<sup>101</sup> working to better the conditions of their members.<sup>102</sup> An important vehicle for achieving this end was the right to strike.<sup>103</sup> Although the unions were not denied this right,<sup>104</sup> they were exhorted to use a strike only as a last resort,<sup>105</sup> when all other means of achieving their rightful claims were exhausted.<sup>106</sup>

95. *Id.* DEUTSCHER, *supra* note 63; MCAULEY, *supra* note 19; L. DE BELLCOMBE, *LES CONVENTIONS COLLECTIVES DE TRAVAIL EN UNION SOVIETIQUE* (1958); T. LOWIT, *LE SYNDICALISME DE TYPE SOVIETIQUE* (1971); Morrell, *Communist Unionism: Organized Labor and the Soviet State*, (1965) (Ph.D. diss., Harvard University, 1965), *cited in* INDUSTRIAL LABOR IN THE U.S.S.R. 80 n.4 (A. Kahan & B. Ruble eds. 1979) [hereinafter cited as Morrell].

96. BRODERSEN, *supra* note 15, at 82.

97. For a discussion of the role the union plays in protecting the welfare of its members, *see* Madison, *Trade Unions and Social Welfare*, in INDUSTRIAL LABOR IN THE U.S.S.R. 85-115 (A. Kahan & B. Ruble eds. 1979).

98. 1922 SOB. UK. RSFSR, no. 70, item 903.

99. The New Economic Policy (NEP) lasted from 1921-1928. DEUTSCHER, *supra* note 63, at 66. It provided for a mixed, socialist-capitalist economy. *Id.* at 59. A degree of private enterprise was readmitted to the economy. DEWAR, *supra* note 63, at 102. NEP was "an attempt to rebuild and expand the economy on the basis of both public and private ownership, to curb the very serious inflation and re-establish a stable currency." MCAULEY, *supra* note 19, at 10.

100. Brandt, *supra* note 27, at 234.

101. DEUTSCHER, *supra* note 63, at 67.

102. *Id.* Brandt, *supra* note 27, at 234.

103. GORDON, *supra* note 63, at 93; DEWAR, *supra* note 63, at 102 n.3; SORENSON, *supra* note 63, at 219.

104. DEUTSCHER, *supra* note 63, at 72; DEWAR, *supra* note 63, at 102.

105. DEWAR, *supra* note 63, at 103; INT'L LABOR ORGANIZATION, *THE TRADE UNION SITUATION IN THE U.S.S.R.* 63 (1960) [hereinafter cited as ILO, *THE TRADE UNION SITUATION*].

106. *Id.* at 64; DEUTSCHER, *supra* note 63, at 72; DEWAR, *supra* note 63, at 105. Just because the unions were encouraged to find means other than strikes of resolving disputes does not mean that no strikes were called by the unions during NEP. For example, in 1921-1922, 102 strikes involving 43,000 workers were reported. SORENSON, *supra* note 63, at 219. In 1924, 267 strikes involving 42,000 workers were reported. *Id.* In 1925, there were 186 strikes involving 43,000 workers; however, none of these strikes were sanctioned by the unions. *Id.* In 1926, 32,900 workers participated in 327 strikes, and in 1927, 20,100 workers in 396 strikes. *Id.* The first half

## B. 1928-1957

With the period of rapid industrialization that was initiated in 1928 in the U.S.S.R.,<sup>107</sup> certain changes were necessary. In order to build a successful socialist state in the shortest possible time, protracted work stoppages had to be kept to a minimum.<sup>108</sup> Therefore, while the strike as a means of settling legitimate disputes was not outlawed *per se*, the unions cooperated with the State in limiting its use.<sup>109</sup> Although there are indications that strikes were not illegal as late as 1929,<sup>110</sup> no major strikes have been called by the unions since the days of the New Economic Policy.<sup>111</sup>

More important than the question of legality of strikes during this period was the institution of the *RKK*.<sup>112</sup> The *RKK* was intended to set the performance quota of the enterprise in which the *RKK* was located by obtaining agreements between the management and the union.<sup>113</sup> The *RKK*'s functions in this area became superfluous in 1928 with the introduction of central economic planning by the state.<sup>114</sup> Thus, after 1933, the *RKK*'s duties were limited to "familiarization of the workers with the norms, mobilization of workers for their fulfillment, and similar tasks."<sup>115</sup> The substance of the rates and norms could only be considered if they violated the collective agreement.<sup>116</sup>

The *RKK* within a given factory was composed of equal numbers of union representatives and of management.<sup>117</sup> Not a sitting body, the *RKK* was assembled anew for each dispute brought before it.<sup>118</sup> All possible benefits of stability and predictability in decision-making were therefore lost. Appeal from a decision of the *RKK* was brought before a higher union body, such as the city- or republic-wide union authorities,<sup>119</sup> or, in some cases, the courts.<sup>120</sup> The *RKK* did not effectively handle the disputes which arose throughout

of 1928 saw 90 strikes involving 8,900 workers occur. *Id.* The strike was not a universally successful weapon for the workers, however. In 1926 and 1927, the workers won approximately one-third and lost two-thirds of the strikes held. *Id.*

107. GORDON, *supra* note 63, at 98.

108. See generally Brandt, *supra* note 27, at 234.

109. ILO, THE TRADE UNION SITUATION, *supra* note 105, at 64.

110. *E.g.*, strike funds were protected, implying the legality of strikes. See Decree of January 23, 1929, cited in ILO, THE TRADE UNION SITUATION, *supra* note 105, at 63.

111. USBLs, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 33.

112. For a good discussion of the workings of the *RKK*, see Zawodny, *supra* note 27, at 538-541; MCAULEY, *supra* note 19, at 20-26.

113. *Id.* at 13.

114. See text accompanying notes 67-69, *supra*.

115. CONQUEST, *supra* note 68, at 180.

116. *Id.*

117. Zawodny, *supra* note 27, at 538.

118. *Id.*

119. *Id.* at 547. Int'l Labor Organization, *Industrial Relations in the U.S.S.R.*, 17 IND. & LAB. 344, 344 (1957) [hereinafter cited as ILO, *Industrial Relations*].

120. Zawodny, *supra* note 27, at 542-43; Brown, *Labor Relations*, *supra* note 87, at 199.



Soviet industry.<sup>121</sup> Therefore, in 1957, the machinery for resolving these conflicts was overhauled.<sup>122</sup>

### C. *The Reform of 1957*

By the Decree of January 31, 1957,<sup>123</sup> the Supreme Soviet, the legislature of the U.S.S.R., established a new system for settling disputes.<sup>124</sup> Under this Decree, assuming that a worker was not able to resolve his problem through informal channels,<sup>125</sup> he could turn to the committee within the factory authorized to hear labor disputes, the *Kommissiya po Trudovym Sporam (KTS)*. Like the *RKK* which functioned before it, the *KTS* is composed of equal numbers of management and union representatives.<sup>126</sup> Appeals are first routed to the factory union committee.<sup>127</sup> A worker can then appeal a decision of the union committee to the courts.<sup>128</sup>

The major objective of this reform was "to enable any worker to obtain, in dubious and controversial cases, everything he is entitled to, speedily and without red tape."<sup>129</sup> This change also brought the resolution machinery much closer to the individual worker.<sup>130</sup> The new procedures placed much of the final decision-making power in the hands of a union committee at the factory<sup>131</sup> rather than leaving this power in the hands of union authorities<sup>132</sup> who are far removed from the controversy and from the parties involved.<sup>133</sup> The design of decision-making in local hands was to provide more protection for the individual worker.<sup>134</sup> A local union is less apt merely to go along with man-

121. Brown, *Labor Relations*, *supra* note 87, at 199; ILO, *Industrial Relations*, *supra* note 119, at 344-45.

122. CONQUEST, *INDUSTRIAL WORKERS*, *supra* note 68, at 180; ILO, *THE TRADE UNION SITUATION*, *supra* note 105, at 62.

123. Decree of the Praesidium of the Supreme Soviet of the U.S.S.R., January 31, 1957. The Decree was ratified by the *1957 Statute on Labor Disputes*, 1957 VED. VERKH. SOV. SSSR, no. 4, item 58.

124. Brown, *Labor Relations*, *supra* note 87, at 200.

125. LIVSHITZ & NIKITINSKY, *supra* note 20, at 199; GLAZYRIN & NIKITINSKY, *supra* note 15, at 171. See § VI *infra*.

126. LIVSHITZ & NIKITINSKY, *supra* note 20, at 197; CONQUEST, *INDUSTRIAL WORKERS*, *supra* note 68, at 180.

127. LIVSHITZ & NIKITINSKY, *supra* note 20, at 200.

128. GLAZYRIN & NIKITINSKY, *supra* note 15, at 175.

129. Trud, Feb. 14, 1957, translated in 9 CDSP, no. 7, Mar. 27, 1957, at 36-37.

130. Ruble, *The Soviet-American Comparison: A High Risk Venture*, 2 COMP. LAB. LAW. 247, 254 (1977) [hereinafter cited as Ruble, *Comparison*]; ILO, *Industrial Relations*, *supra* note 119, at 345.

131. Brown, *Labor Relations*, *supra* note 87, at 200.

132. USBLS, *LABOR LAW IN THE U.S.S.R.*, *supra* note 16, at 34.

133. *Id.*

134. *Id.* Kahl, *The Worker*, 14 PROBLEMS OF COMMUNISM, no. 1, 97 (Mar.-Apr. 1965) [hereinafter cited as Kahl].

agement<sup>135</sup> than are the higher union bodies which function "more as management-minded agents of the government than as representatives of the workers."<sup>136</sup>

#### D. *The Legislation of 1974*

Labor procedures were further refined on May 20, 1974 when the Supreme Soviet adopted a resolution that brought the settlement machinery still closer to the worker.<sup>137</sup> This reform created shop *KTS*s to which most disputes are referred, with appeal to shop union committees.<sup>138</sup> If the dispute is such as to have enterprise-wide ramifications, the dispute can be taken directly to the enterprise *KTS* and, then, can be appealed to the enterprise union committee.<sup>139</sup> This reform changed the former procedure which had, generally, resulted in a bypass of the shop institutions by replacing those procedures with the more direct approach of the factory-wide institutions.<sup>140</sup> Due to the movement of the dispute resolution to a position which is more proximate to the worker, the worker theoretically should receive fairer treatment because the people on the shop *KTS* and on the union committee would tend to know the facts of and the parties to the dispute better than would the enterprise-wide bodies.<sup>141</sup>

### V. THE FORMAL RESOLUTION MACHINERY

When a worker has a litigious dispute with management, he may present it for resolution through the procedures established by law.<sup>142</sup> Any non-litigious dispute must be dealt with in a less formalized manner.<sup>143</sup> The labor legislation empowers three bodies to hear labor disputes: The Commission on Labor Disputes (*KTS*), the local factory union committee (*Fabrichnii, Zavodskii Mestnii Komitet, FZMK*), and the civil (People's) courts.<sup>144</sup> After outlining the formal procedures for dispute resolution, this Comment will discuss informal routes of settlement.

135. Brown, *Labor Relations*, *supra* note 87, at 200.

136. *Id.*

137. *1974 Statute on Labor Disputes*, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

138. Int'l Labor Organization, 1975 SOC. & LAB. BUL. 11 (1975).

139. Ruble, *Comparison*, *supra* note 130, at 254-55.

140. *Id.*

141. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 34.

142. See distinction between litigious and non-litigious disputes, § II.B *supra*.

143. See § VI *infra*. An aggrieved worker is required to try to settle his complaint directly with management. *1974 Statute on Labor Disputes*, para. 12, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

144. *1974 Statute on Labor Disputes*, para. 1, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

### A. *The Labor Disputes Commission (KTS)*

If an aggrieved worker cannot resolve his dispute through informal channels,<sup>145</sup> he will turn to the court of compulsory first instance<sup>146</sup> for hearing labor disputes, the *KTS*. The *KTS* is established at all Soviet workplaces<sup>147</sup> where a trade union committee or union organizer is elected.<sup>148</sup> In any workplace too small to have even a union organizer, a worker can take his case directly to a People's Court.<sup>149</sup>

#### 1. Composition of the *KTS*

The *KTS* is a sitting body composed of equal numbers of permanent representatives from both union and management.<sup>150</sup> This composition assures that neither side has an unfair advantage over the other in deciding cases. In those shops with fewer than fifteen employees and, thus, no shop committee<sup>151</sup> the union organizer and director of the enterprise comprise the *KTS*.<sup>152</sup> In the remainder of the workplaces, the members of the *KTS* are selected in the following manner: trade union representatives are appointed by resolution of the union committee,<sup>153</sup> and management's representatives are appointed by order of the head or general manager of the enterprise.<sup>154</sup>

The usual number of members of the *KTS* ranges from four to six,<sup>155</sup> except in those small shops where only the union organizer and director comprise the board.<sup>156</sup> The size of the *KTS* is mutually agreed upon by both sides.<sup>157</sup> The posts of chairman and secretary rotate between the two sides at each sitting<sup>158</sup> and at no time may representatives of the same side hold both of these positions.<sup>159</sup> This procedure is one mechanism within the dispute resolution legis-

145. *Id.*

146. GLAZYRIN & NIKITINSKY, *supra* note 15, at 170.

147. LIVSHITZ & NIKITINSKY, *supra* note 20, at 197.

148. GLAZYRIN & NIKITINSKY, *supra* note 15, at 169.

149. *Id.* at 176.

150. *1974 Statute on Labor Disputes*, para. 3, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325;

D. LANE, *Politics and Society in the USSR* 312 (1970) [hereinafter cited as LANE].

151. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 34 n.53.

152. *1957 Statute on Labor Disputes*, para. 7, 1957 VED. VERKH. SOV. SSSR, no. 4, item 58.

153. *1974 Statute on Labor Disputes*, para. 3, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

154. *Id.* The union members are elected to serve for one-year terms, with the possibility of reelection. See MCAULEY, *supra* note 19, at 140. The management representatives are appointed to act "permanently." This is to prevent the director from sending different individuals to each sitting, and from appointing a new representative and then demanding a new hearing. *Id.*

155. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 34 n.53.

156. *1974 Statute on Labor Disputes*, paras. 3, 6, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

157. *1974 Statute on Labor Disputes*, para. 3, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

158. *1974 Statute on Labor Disputes*, para. 7, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; BROWN, *supra* note 15, at 204.

159. *1974 Statute on Labor Disputes*, para. 7, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 197. In addition, the chairman and secretary for the next session are named by the two sides during the current sitting. These persons are responsible

lation which attempts to provide maximum protection to the worker by allowing for a minimum advantage to either side at the *KTS* hearing.

## 2. Jurisdiction of the *KTS*

The *KTS* hears any case involving a dispute between labor and management unless other procedures exist for handling the specific type of conflict involved.<sup>160</sup> The disputes taken to the *KTS* usually concern specific features of production.<sup>161</sup> However, a number of types of disputes are specifically excluded from the competence of the *KTS*.<sup>162</sup>

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for preparing the convening of the next session. *Id.* The technical services required by the commission (*e.g.*, clerical work, keeping of files, preparation of the minutes and publication of extracts from the minutes) are provided by the enterprise. A clerical worker, appointed by the management, handles these duties. *1974 Statute on Labor Disputes*, para. 8, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

160. Piatakov, *supra* note 23, at 570-71, *see* § VI *infra*.

161. The disputes which fall within the jurisdiction of the *KTS* and which are specifically named in the Decree of January 31, 1957 are:

- a.) the application of established output norms and rates, and also labor conditions ensuring the fulfillment of output norms;
- b.) dismissal or transfer to other work;
- v.) payment for idle-standing or rejects;
- g.) payment for doing work of different qualifications;
- d.) payment of unfinished work on piece-rates;
- e.) payment for time of absence from work;
- jh.) payment for overtime;
- z.) the right to a bonus and its amount as envisaged by the established system of payment;
- i.) payment when norms are not fulfilled;
- k.) amount of payment for probation period;
- l.) monetary compensation for unused leave;
- m.) the issue of special ("protective") clothing and special food, and, in appropriate cases, the payment of monetary compensation in lieu;
- n.) deductions from wages for material damage caused to the enterprise, establishment or organization;
- o.) the payment of discharge grants.

*1957 Statute on Labor Disputes*, para. 10, 1957 VED. VERKH. SOV. SSSR, no. 4, item 58; *CONQUEST, INDUSTRIAL WORKERS*, *supra* note 68, at 181-82.

162. The following disputes fall outside the *KTS*'s jurisdiction:

- a.) the dismissal, reinstatement and transfer of certain responsible workers and employees, and the imposition of disciplinary penalties on these persons. The list of responsible persons, appended to the *Decree of January 31, 1957*, includes the heads of enterprises, chief engineers, etc., and also the heads of workshops, senior foremen and foremen, etc.;
- b.) the imposition of disciplinary penalties on persons who come within the scope of the statutes on discipline (*i.e.*, on the railways, river and sea transport, etc.);
- v.) the establishment of salaries and wage-rates;
- g.) the alteration of the personnel establishment;
- d.) the computation of the worker's period of labor service for the purpose of social insurance or other rights and privileges;
- e.) the provision and allocation of housing, and also the satisfaction of the everyday needs of the workers.

*1957 Statute on Labor Disputes*, para. 11, 1957 VED. VERKH. SOV. SSSR, no. 4, item 58; *CONQUEST, INDUSTRIAL WORKERS*, *supra* note 68, at 180.

The *KTS* is competent to hear cases brought by any worker in the factory, with the exception of workers in specified industries who are subject to a higher discipline,<sup>163</sup> whether the worker is a member of the union or not.<sup>164</sup> Those officials who are themselves part of management<sup>165</sup> cannot submit their disputes to the *KTS*, but must appeal to their superior administrative agencies for settlement.<sup>166</sup>

### 3. Rules of Procedure

A worker who has a grievance need not worry that his claim will lapse with time, as there is no time limit for application to the *KTS* for resolution of a claim.<sup>167</sup> However, once a complaint has been filed with the *KTS*,<sup>168</sup> that body has five days within which to hold a hearing on the dispute.<sup>169</sup> During these five days the *KTS* must carry out all necessary preparatory work.<sup>170</sup>

The *KTS* must arrange to hear the dispute outside of working hours.<sup>171</sup> If the enterprise is so large as to have a shift rotation system, the hearing is held at a time when the worker involved and any witnesses are free.<sup>172</sup> This procedure also allows all other interested workers to attend and to hear the case. All hearings must be held in the presence of the concerned worker,<sup>173</sup> unless he agrees in writing to allow a hearing *in absentia*.<sup>174</sup> In the case of repeated

163. Mining, transport (both rail and water), communication, and occupations in higher education, the artistic world, the civil service and the Procuracy. See USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 19, 34; MCAULEY, *supra* note 19, at 132 n.2.

164. V. KOROTKOV & M. YU. GOLDSHTEIN, CHTO NUZHNO ZNAT' RABOCHIM I SLUZHASHCHIM O TRUDOVYM ZAKONODATEL'STVE [WHAT WORKERS AND EMPLOYEES SHOULD KNOW ABOUT THE LABOR LEGISLATION] 333 (1963) [hereinafter cited as KOROTKOV & GOLDSHTEIN].

165. For example, these positions range from foreman up to the director of the enterprise. See USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 33.

166. Brown, *Resolution of Conflicts*, *supra* note 25, at 272 n.90.

167. 1974 *Statute on Labor Disputes*, para. 13, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

168. The trade union committee, or where that organization does not exist, the union organizer, is responsible for accepting petitions to the *KTS*. 1974 *Statute on Labor Disputes*, para. 12, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; GLAZYRIN & NIKITINSKY, *supra* note 15, at 171.

169. 1974 *Statute on Labor Disputes*, para. 14, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. "These rules are intended to ensure a swift and objective resolution of disputes and safely protect the rights of employees." GLAZYRIN & NIKITINSKY, *supra* note 15, at 171.

170. *Id.* at 172.

171. 1974 *Statute on Labor Disputes*, para. 15, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; BROWN, *supra* note 15, at 204.

172. 1974 *Statute on Labor Disputes*, para. 5, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199.

173. 1974 *Statute on Labor Disputes*, para. 16, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. "This gives him the opportunity personally to put his point of view and present his evidence." GLAZYRIN & NIKITINSKY, *supra* note 15, at 172.

174. 1974 *Statute on Labor Disputes*, para. 16, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. LIVSHITZ & NIKITINSKY, *supra* note 20, at 199. The importance of hearing the evidence against oneself and of confrontation of witnesses is recognized also in the American judicial system. See,

absence by the worker, the *KTS* can decide to disallow the claim,<sup>175</sup> but the worker may bring the same complaint again.<sup>176</sup> The *KTS* has the power to summon witnesses,<sup>177</sup> to charge individuals with carrying out technical checks and inspecting the books,<sup>178</sup> and to call for records and accounts to be submitted by the management.<sup>179</sup> As these procedures reflect, the *KTS* can hold a full investigative hearing before reaching its decision. The exercise of this power is another measure by which a proper result, upholding the rights of workers, can be achieved.

*KTS* hearings are open to any interested worker.<sup>180</sup> The aggrieved worker can challenge any member of the board for cause.<sup>181</sup> If there is a challenge to a board member, the hearing is adjourned until the challenge is settled.<sup>182</sup> If a management representative is challenged, management decides whether in fact the member is prejudiced.<sup>183</sup> If it is a union member who is challenged, the union decides the question.<sup>184</sup> Although every member of the *KTS* need not be present at every hearing,<sup>185</sup> if only a part of the full body hears a case, the number of representatives of each side allowed to participate at the meeting is likewise limited. There must be equal representation between union and management at these hearings.<sup>186</sup> This requirement insures an even-handed decision. The worker has the right to amend and to supplement his demands at any time, even as the hearing progresses.<sup>187</sup> The worker also has the right to question witnesses and to demand that he be allowed to

*e.g.*, U.S. CONST. amend. VI, and general notions of procedural due process, U.S. CONST. amend. V.

175. *1974 Statute on Labor Disputes*, para. 16, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199.

176. *Id.*

177. *1974 Statute on Labor Disputes*, para. 17, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; ILO, *Industrial Relations*, *supra* note 119, at 347.

178. *1974 Statute on Labor Disputes*, para. 17, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199.

179. *1974 Statute on Labor Disputes*, para. 17, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; USBLs, *LABOR LAW IN THE U.S.S.R.*, *supra* note 16, at 35.

180. *Id.*

181. *1974 Statute on Labor Disputes*, para. 18, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

Arbiters in any dispute have to be absolutely impartial. Therefore, if the employee has any doubts about the objectivity of any member of the committee, *he has the right to object to the person's presence at the start of the meeting*. Grounds for objection might be that the applicant is on bad terms with a member of the labour dispute committee.

GLAZYRIN & NIKITINSKY, *supra* note 15, at 172 (emphasis in original).

182. *1974 Statute on Labor Disputes*, para. 18, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199.

183. *1974 Statute on Labor Disputes*, para. 18(a), 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199; BROWN, *supra* note 15, at 204.

184. *1974 Statute on Labor Disputes*, para. 18(b), 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199-200; BROWN, *supra* note 15, at 204.

185. GLAZYRIN & NIKITINSKY, *supra* note 15, at 169-70.

186. *Id.* at 170.

187. *Id.* at 173.

familiarize himself with any document.<sup>188</sup> Procedural requirements for hearing cases before the *KTS* are replete with safeguards designed to uphold the rights of the worker, while at the same time reaching the proper result.

#### 4. Decisions

Any decision of the *KTS* must be reached by agreement among all members who heard the case.<sup>189</sup> These decisions are binding on the parties when announced<sup>190</sup> and do not need to be confirmed.<sup>191</sup> However, the *KTS* must have a legal basis for its decision,<sup>192</sup> and it must announce the reasoning behind its decision.<sup>193</sup> The *KTS* is obliged to keep minutes of each sitting.<sup>194</sup> If no agreement is reached, the proposals of each side must be included in the minutes and a note made that agreement was, in fact, not reached.<sup>195</sup> An extract of the minutes is delivered by post<sup>196</sup> to the worker within three days of the hearing<sup>197</sup> and the minutes themselves are posted in a conspicuous spot in the workplace for the information of the rest of the workforce.<sup>198</sup> By having the minutes thus available, workers can learn of specific disputes and their resolutions. The case of an individual, in this way, can have meaning for the entire workplace.

If a decision has been reached, management is obliged to fulfill the requirements of that decision within ten days,<sup>199</sup> unless a shorter time is specified in

188. *Id.*

189. 1974 *Statute on Labor Disputes*, para. 19, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Piatakov, *supra* note 23, at 570.

190. LIVSHITZ & NIKITINSKY, *supra* note 20, at 200.

191. ILO, *Industrial Relations*, *supra* note 119, at 347.

192. 1974 *Statute on Labor Disputes*, para. 19, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. The decision must be based on either the current labor legislation, the collective agreement, the contract of employment, the rules of the enterprise, or the relevant regulations or instructions. LIVSHITZ & NIKITINSKY, *supra* note 20, at 200; Piatakov, *supra* note 23, at 571. *But see* Matey, *Essential Traits of Socialist Labour Codes*, 2 COMP. LAB. L. 191 (1977), in which the author argues that: "The social bodies — arbitration commissions — apart from indispensable knowledge of outlines of labour law, base their decisions on social and moral norms, on principles of social cooperation and human relations at work, or knowledge of the working environment and factual data."

*Id.* at 203.

193. 1974 *Statute on Labor Disputes*, para. 19, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Piatakov, *supra* note 23, at 571.

194. 1974 *Statute on Labor Disputes*, para. 20, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 200.

195. 1974 *Statute on Labor Disputes*, para. 20, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 200; ILO, *Industrial Relations*, *supra* note 119, at 347.

196. 1974 *Statute on Labor Disputes*, para. 20, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; ILO, *Industrial Relations*, *supra* note 119, at 347.

197. 1974 *Statute on Labor Disputes*, para. 20, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 200.

198. 1974 *Statute on Labor Disputes*, para. 20, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Piatakov, *supra* note 23, at 573.

199. 1974 *Statute on Labor Disputes*, para. 32, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Piatakov, *supra* note 23, at 571.

the decision itself.<sup>200</sup> Should management fail to comply with the decision, the worker can approach his factory union committee for a document having the effect of a writ<sup>201</sup> which obliges the director to comply. Should this document be insufficient to compel management's compliance, the worker may turn to the bailiff of the People's Court for a writ ordering compliance.<sup>202</sup> The worker has a full month in which to obtain the document from the union committee<sup>203</sup> and three more months in which to proceed to the court bailiff.<sup>204</sup>

##### 5. Appeals from a Decision of the *KTS*

If no agreement has been reached by the *KTS*, the worker has the right to appeal to the factory union committee.<sup>205</sup> In addition, should the *KTS* decide against the worker, he has an automatic right to appeal the judgment to the union committee.<sup>206</sup> Management has no such right to appeal a judgment rendered against it<sup>207</sup> because management's own representatives agreed to the decision.<sup>208</sup> This greater access to appeals for the worker is another vehicle by which the rights of workers are protected. However, although the avenues of appeal are open to dissatisfied workers, only a small percentage of cases actually proceed to the union committee from the *KTS*.<sup>209</sup>

200. *1974 Statute on Labor Disputes*, para. 32, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Zaichikov, *supra* note 88, at 83.

201. *1974 Statute on Labor Disputes*, para. 33, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; BROWN, *supra* note 15, at 206.

202. LIVSHITZ & NIKITINSKY, *supra* note 20, at 203.

203. *1974 Statute on Labor Disputes*, para. 5, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; KOROTKOV & GOLDSHTEIN, *supra* note 164, at 344; ILO, *Industrial Relations*, *supra* note 119, at 348.

204. ILO, *Industrial Relations*, *supra* note 119, at 348.

205. *1974 Statute on Labor Disputes*, para. 21, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. The worker has ten days in which to appeal. *Id.*

206. *1974 Statute on Labor Disputes*, para. 22, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. *See also* "In the case of disputes over disciplinary penalties, workers may protest on the ground of the facts, or the severity of the penalty, or incorrect procedures." BROWN, *supra* note 15, at 209.

207. LIVSHITZ & NIKITINSKY, *supra* note 20, at 200. *But see* Ruble, *Comparison*, *supra* note 130, at 255.

208. BROWN, *supra* note 15, at 205.

209. According to one study, no more than ten to twenty percent of all decisions of the *KTS* are appealed to the *FZMK*. *See* McAULEY, *supra* note 19, at 152. Several reasons explain this fact. The most straightforward explanation is that workers win at the *KTS* and need not go to the *FZMK* for protection of their rights. According to McAuley, results favorable to the worker were achieved in anywhere from 44 percent of the decisions in one city for a given period, up to 70 percent of the decisions in another city and at a different time. *Id.* at 156. Of those decisions which are appealable to the *FZMK* (*i.e.*, where there has been no agreement or where the decision was against the worker), the probable reasons for the low number of *KTS* decisions appealed to the *FZMK* are twofold: 1) the worker has brought a spurious claim or one on which he was unsure of winning and hence when he is denied relief, he willingly drops the matter, and 2) the worker, being denied by the union representatives on the *KTS*, is persuaded of the probability of being turned down by the full *FZMK*. *Id.* at 157.



### B. *The Local Factory Union Committee (FZMK)*

The second agency established by legislation to hear labor disputes is the local union committee, the *FZMK*. A worker who disagrees with the decision of the *KTS* can resort to the *FZMK*.

#### 1. Composition

The size and composition of the *FZMK* varies from enterprise to enterprise, but the number of representatives generally ranges from seven to twenty-one.<sup>210</sup> Both manual and non-manual workers, as well as technical and engineering staff, are represented on the *FZMK*.<sup>211</sup> Through the union committee, the Soviets, therefore, have made an attempt to get a representative cross-section of the workforce involved in the dispute resolution process.

#### 2. Jurisdiction

The *FZMK* is empowered to hear any case in which the *KTS* could not reach agreement or with which a worker disagrees.<sup>212</sup> Its jurisdiction is appellate only, and the *FZMK* is forbidden to hear a case presented by a worker that has not been presented first to the *KTS*.<sup>213</sup> The *FZMK* need not even wait for a worker to appeal<sup>214</sup> but has the power to reverse an illegal decision of the *KTS* in response to a protest made by the Procurator<sup>215</sup> or on its own initiative.<sup>216</sup>

#### 3. Rules of Procedure

A worker who is dissatisfied with a decision rendered by the *KTS* has ten days, from the date he receives official confirmation from the minutes of that commission's meeting, to present his appeal to the union committee.<sup>217</sup> The

210. Khitrov, *supra* note 85, at 521.

211. *Id.*

212. 1974 *Statute on Labor Disputes*, para. 23, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; *Statute on the Rights of Factory, Plant and Local Trade Union Committees*, art. 19, 1971 VED. VERKH. SOV. SSSR, no. 31, item 382 (Sept. 29, 1971) [hereinafter cited as *Factory Statute*], translated in 23 CDSP no. 39, Oct. 26, 1971, at 15-18.

213. KOROTKOV & GOLDSHTEIN, *supra* note 164, at 340-41.

214. *Factory Statute*, art. 19, 1971 VED. VERKH. SOV. SSSR, no. 31, item 382.

215. 1974 *Statute on Labor Disputes*, para. 25, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; *Fundamental Principles of Labor*, art. 88, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; *Factory Statute*, art. 19, 1971 VED. VERKH. SOV. SSSR, no. 31, item 382.

216. 1974 *Statute on Labor Disputes*, para. 25, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; *Fundamental Principles of Labor*, art. 88, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; *Factory Statute*, art. 19, 1971 VED. VERKH. SOV. SSSR, no. 31, item 382. This means that the *FZMK* may *ex officio* review all decisions for legality. See Kiralfy, *supra* note 91, at 172.

217. 1974 *Statute on Labor Disputes*, para. 21, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. However, failure by an employee to meet this requirement does not mandate refusal by the *FZMK* to hear the case. The *FZMK* must investigate the reasons for the failure and, if they are valid, the case is to be heard. See LIVSHITZ & NIKITINSKY, *supra* note 20, at 200.

*FZMK* must then handle the case within seven days.<sup>218</sup> The union committee has a longer period during which to hear a case than does the *KTS* because the *FZMK* generally meets every ten days on a regular basis.<sup>219</sup> Appeals must be heard by a quorum of two-thirds of the entire *FZMK*.<sup>220</sup> The expanded time period, therefore, makes it more probable that such a quorum could be assembled to hear the case.

The rules for a hearing before the union committee are virtually identical to those for a meeting of the *KTS*.<sup>221</sup> Hearings *in absentia* are valid only with the written consent of the concerned worker.<sup>222</sup> Management is invited to be present and to give its opinion. The committee may hear any evidence that it deems relevant.<sup>223</sup>

#### 4. Decisions

After consultation, the union committee decision is taken through passage of a resolution, by majority vote.<sup>224</sup> This resolution either upholds the decision of the *KTS* or renders a new decision in the matter.<sup>225</sup> A decision of the union committee, as that of the *KTS*, must have a basis in law or in the labor contract.<sup>226</sup> A resolution must be communicated to management and to the concerned worker within three days after the hearing.<sup>227</sup> Although the *FZMK* is empowered only to satisfy, or to reject, the worker's specific demands,<sup>228</sup> there are reported cases where, at the insistence of the union committee, a particularly poor director has been replaced.<sup>229</sup> If the case involves pecuniary claims, *e.g.*, back pay claims, the precise sum of money due the worker must be set out in the resolution.<sup>230</sup>

218. 1974 *Statute on Labor Disputes*, para. 26, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 201; GLAZYRIN & NIKITINSKY, *supra* note 15, at 174.

219. MCAULEY, *supra* note 19, at 146 n.2.

220. *Id.* BROWN, *supra* note 15, at 205.

221. MCAULEY, *supra* note 19, at 146.

222. 1974 *Statute on Labor Disputes*, para. 27, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 201.

223. MCAULEY, *supra* note 19, at 146.

224. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 35; LIVSHITZ & NIKITINSKY, *supra* note 20, at 201.

225. 1974 *Statute on Labor Disputes*, para. 25, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 201.

226. 1974 *Statute on Labor Disputes*, para. 28, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 201.

227. 1974 *Statute on Labor Disputes*, para. 29, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 202.

228. 1974 *Statute on Labor Disputes*, para. 25, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; GLAZYRIN & NIKITINSKY, *supra* note 15, at 174.

229. Brown, *Labor Relations*, *supra* note 87, at 199.

230. 1974 *Statute on Labor Disputes*, para. 28, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. If the *FZMK* orders reinstatement of a worker who has been dismissed or transferred to another post and management refuses to comply, the *FZMK* may decide that the worker should receive the remuneration due him for the entire period of his displacement. ILO, *Industrial Relations*, *supra* note 119, at 348.

As with the decisions of the *KTS*, resolutions of the *FZMK* must be followed or appealed within ten days, unless a shorter period is specified.<sup>231</sup> Of course, management is required to comply.<sup>232</sup> If a worker is confronted with an uncooperative director, he can ask the union committee to issue a document compelling compliance by the director.<sup>233</sup> As a last resort, the worker can go to court and have the bailiff issue a writ against the disobedient director.<sup>234</sup>

### 5. Appeals

The decision of the *FZMK* is not final. Both parties have the right to appeal the union committee's resolution to the People's Court.<sup>235</sup> The grounds for an appeal by management are more narrow than those allowed for an appeal by workers. This greater access to appeals in the system is another safeguard to protect workers. Management can complain only in the event of a misapplication of law to the case;<sup>236</sup> laborers can appeal on the grounds that they do not agree with the decision.<sup>237</sup> Either party has ten days in which to press its appeal.<sup>238</sup>

The worker is not limited to an appeal to the courts. He may appeal to a higher union body.<sup>239</sup> If this body agrees with the worker, it can bring pressure on management by requesting ministerial action.<sup>240</sup> If the govern-

231. 1974 *Statute on Labor Disputes*, para. 32, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 202.

232. GLAZYRIN & NIKITINSKY, *supra* note 15, at 174.

233. 1974 *Statute on Labor Disputes*, para. 33, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; LIVSHITZ & NIKITINSKY, *supra* note 20, at 202. This action assumes that no appeal has been taken by either.

234. ILO, *Industrial Relations*, *supra* note 119, at 348. This drastic measure need not be taken. One union committee was faced with a manager who disobeyed both the *KTS* and the *FZMK* in their decisions that a worker should be paid a certain sum of money. Rather than turn to a court or to any other higher authorities, the union simply went to the state bank that held the accounts of the enterprise and had the worker paid directly from the funds of the enterprise. See BROWN, *supra* note 15, at 209.

235. 1974 *Statute on Labor Disputes*, paras. 30-31, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; Ruble, *Comparison*, *supra* note 130, at 255.

236. 1974 *Statute on Labor Disputes*, para. 31, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; E. JOHNSON, AN INTRODUCTION TO THE SOVIET LEGAL SYSTEM 200 (1969) [hereinafter cited as JOHNSON]; LIVSHITZ & NIKITINSKY, *supra* note 20, at 202.

237. 1974 *Statute on Labor Disputes*, para. 30, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325; *Fundamental Principles of Labor*, art. 88, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265.

238. 1974 *Statute on Labor Disputes*, paras. 30-31, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325. According to one study, this right to appeal by management is more useful in theory than in practice, as the courts almost always will uphold a decision of the *FZMK* which supports the position of the worker. See Ruble, *Comparison*, *supra* note 130, at 255. This proposition means that "the right of management to appeal a union committee's decision is *de facto*, although not *de jure*, abrogated." *Id.*

239. Ruble, *Comparison*, *supra* note 130, at 255.

240. *Id.* Since the director of a plant is a state employee, see § II.C.2 *supra*, he is responsible to his superiors in the government bureaucracy. See BROWN, *supra* note 15, at 180. For reported cases where this intervention by the union authorities was responsible for resolving the dispute, see *id.* at 136-38.

mental bureaucracy is unresponsive, the union may turn to the Communist Party Committee.<sup>241</sup> The Party can influence the ministerial officials to force the factory management to correct the situation.<sup>242</sup> Should this procedure fail, the worker may turn the case over to the legal staff of the union's regional council which is empowered to take the case to court.<sup>243</sup> If the union itself will not help the worker, he can apply to the Office of the Procurator for assistance.<sup>244</sup>

### C. *The People's Court*

#### 1. Composition

The third formal structure for resolving labor disputes is the People's Court.<sup>245</sup> Cases at the district level<sup>246</sup> are heard by three persons: a professional judge<sup>247</sup> and two non-professional "people's assessors."<sup>248</sup> The professional judges are elected by the general populace, for terms of five years, by

241. Ruble, *Comparison*, *supra* note 130, at 255.

242. *Id.*

243. *Id.*

244. *Id.* See discussion of the role of the Procurator, § VI.D *infra*.

245. *1974 Statute on Labor Disputes*, para. 1(v), 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

246. The district (city) court is the lowest tier in the general court system. See 10 SOV. STAT. & DEC. 101 (Winter 1973-1974).

247. The judge is professional only in the sense that his job is full-time rather than a two-week per year sitting in the court, as with the people's assessors. R. CONQUEST, JUSTICE AND THE LEGAL SYSTEM IN THE U.S.S.R. 29 (1968) [hereinafter cited as CONQUEST, LEGAL SYSTEM]. The only requirements for eligibility imposed by the legislation for election as a judge are that the candidate possess the right of suffrage and that he be twenty-five years of age. *Fundamental Principles of Legislation on Court Organization of the USSR and of the Union and Autonomous Republics* [hereinafter cited as *Fundamental Court Organization*], art. 29, 1971 VED. VERKH. SOV. SSSR, no. 33, item 332, translated in 10 SOV. STAT. & DEC. 102 (Winter 1973-1974). There is no requirement of legal training. However, previous experience as a people's judge is valued highly. In 1965, 76 percent of those elected as such judges in the U.S.S.R. had prior experience as a judge. See BYULLETEN VERKHOVNOGO SUDA SSSR, no. 1, 1966, at 5, cited in CONQUEST, LEGAL SYSTEM, *supra* at 27. However, the overall level of training is not impressive. In 1965, only 80.9 percent of the people's judges elected had received a higher legal education. *Id.*

248. People's assessors are referred to as "jurymen" by certain Soviet analysts. See LIVSHITZ & NIKITINSKY, *supra* note 20, at 203. But see criticism of this reference to assessors as jurymen, because such a label implies a comparison between the role of the assessor with that of the jury member of bourgeois justice systems, in 32 CDSP no. 35, Oct. 1, 1980, at 19, col. 1.

Conquest gives a very good description of the assessor:

The people's assessors date back as an institution to 1917. Their resemblance to a jury begins and ends with the fact that they are not part of the judicial establishment; that they serve only for a period of two weeks in the year over a period of five years; and that they are not paid a salary. They are more akin to non-professional co-judges. . . .

At present, panels of people's assessors are attached to all courts, up to and including the USSR Supreme Court. . . . People's assessors elected to People's Courts perform their service within a two-year period; those elected to higher courts, within a five-year period. Despite the people's assessors' formal responsibility for assisting in arriving at a verdict, they normally have little or no legal training. . . .

secret ballot.<sup>249</sup> The people's assessors are chosen for terms of two-and-a-half years at general meetings held at both workplaces and residences of the people within a given district.<sup>250</sup> The assessors have the same authority at court hearings as the judges,<sup>251</sup> but they normally leave the active conduct of the hearing in the hands of the judge.<sup>252</sup> Assessors are called upon to serve no more than two weeks per year unless a matter they are handling extends beyond that time.<sup>253</sup>

## 2. Jurisdiction

The People's Courts have both original and appellate jurisdiction in matters concerning labor disputes. Original jurisdiction is narrow and includes those cases brought by a worker whose workplace is too small to have its own union committee,<sup>254</sup> requests for reinstatement by workers who have been dismissed by management without approval by the trade union,<sup>255</sup> and those disputes concerning management decisions taken with the trade union committee's consent.<sup>256</sup> Workers who occupy job positions named in a special list,<sup>257</sup> such as higher management officials, may not appeal to the People's Court but must submit their disputes to higher administrative bodies.<sup>258</sup>

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The people's assessors normally attend court for not more than two weeks in the year, during which period they retain their wages at their normal place of work, or if they are not workers or employees, other financial arrangements are made (hitherto existing regulations provided for the payment in such cases of a daily allowance of 10 roubles). In the event of the temporary absence of a People's Court judge (by reason of sickness or leave) his duties are assigned by the district Soviet to one of the people's assessors. The procedure for the recall of people's assessors is the same as that for judges.

CONQUEST, LEGAL SYSTEM, *supra* note 247, at 29-30 (citations omitted).

249. CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1977) [U.S.S.R. CONST. (1977)] art. 152. This is the third constitution for the U.S.S.R. See a brief history of the two earlier constitutions of the U.S.S.R., and a history of the constitutions of the Soviet Union's predecessor, the R.S.R.S.R. in L. GRIGORYAN & Y. DOLGOPOLOV, FUNDAMENTALS OF SOVIET STATE LAW 27-49 (1971). Although the judges are theoretically elected by the people, one analyst suggests that they are in fact hand-picked by the Communist Party. See USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 19.

250. U.S.S.R. CONST. (1977) art. 152. The voting is by a show of hands. *Id.*

251. U.S.S.R. CONST. (1977) art. 154. *Fundamental Court Organization*, art. 30, 1971 VED. VERKH. SOV. SSSR, no. 33, item 332.

252. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 19. *But see* criticism of this analysis, in 32 CDSP no. 35, Oct. 1, 1980, at 19, col. 1.

253. *Fundamental Court Organization*, art. 31, 1971 VED. VERKH. SOV. SSSR, no. 33, item 332.

254. GLAZYRIN & NIKITINSKY, *supra* note 15, at 176.

255. HAZARD, *supra* note 70, at 222. As a Soviet student of labor law notes:

First, experience and sociological studies show that the more a labour dispute affects a person's vital interests, the more likely he is to appeal for help to the courts. This circumstance is taken into account in the legislation: disputes affecting the paramount labour rights of employees are examined directly in the courts.

GLAZYRIN & NIKITINSKY, *supra* note 15, at 175.

256. International Labor Organization, *Statute on the Procedure for the Consideration of Labor Disputes*, 1975 SOC. & LAB. BUL. 11, 12 (1975). The worker would receive no benefit in turning for assistance to the union in this last situation because the union has acted already.

257. 1974 *Statute on Labor Disputes*, para. 41, 1974 VED. VERKH. SOV. SSSR, no. 22, item 325.

258. *Id.* See also text accompanying notes 165-66, *supra*.

The appellate jurisdiction of the People's Court is much broader than its original jurisdiction. Appellate jurisdiction includes all cases brought to the court by workers who are dissatisfied with the decision of the factory union committee.<sup>259</sup> The error cited by the worker can be one of fact or of law.<sup>260</sup> On the other hand, management can make an appeal to the People's Court, but only based on an alleged error of law by the *FZMK*.<sup>261</sup> Finally, should the Office of the Procurator determine that a genuine right has been violated and that neither party has taken the case to court, this office can initiate an appeal in the People's Court.<sup>262</sup>

### 3. Rules of Procedure

A worker who has been dismissed illegally may apply to the People's Court for a hearing within thirty days of his dismissal.<sup>263</sup> Otherwise, he loses his right to go to court.<sup>264</sup> If he is appealing from an adverse judgment of the *FZMK*, the worker has ten days from receipt of the union committee's decision in which to appeal.<sup>265</sup> The court does have discretion to decide whether it will accept claims that are late, if a satisfactory reason is given.<sup>266</sup> All cases taken to the People's Court are submitted to the district court in which the enterprise is located.<sup>267</sup> The court then has ten days<sup>268</sup> from the time it accepts a case to prepare for it, conduct hearings and pass judgment.<sup>269</sup>

259. LIVSHITZ & NIKITINSKY, *supra* note 20, at 203.

260. *Id.*

261. *Id.*

262. *Id.* Ruble, *Comparison*, *supra* note 130, at 255.

263. P. P. GUREYEV & P. I. SEDUGIN, *LEGISLATION IN THE USSR 226 (1977)* [hereinafter cited as GUREYEV & SEDUGIN].

264. GLAZYRIN & NIKITINSKY, *supra* note 15, at 176.

265. MCAULEY, *supra* note 19, at 209.

266. *Id.* KOROTKOV & GOLDSHTEIN, *supra* note 164, at 351.

267. GLAZYRIN & NIKITINSKY, *supra* note 15, at 176.

268. This is the usual time limit. *Id.* However, it is up to the Union-Republic to set its own limits. A Union-Republic in the Soviet Union is analogous to a state in the United States in that it is a sovereignty separate from the federal whole. For the rights and duties of the Soviet Union-Republics, see U.S.S.R. CONST. (1977) arts. 70-81.

There are fifteen Union-Republics comprising the U.S.S.R. They are: the Russian Soviet Federated Socialist Republic (R.S.F.S.R.); the Ukrainian Soviet Socialist Republic; the Byelorussian Soviet Socialist Republic; the Uzbek Soviet Socialist Republic; the Kazakh Soviet Socialist Republic; the Georgian Soviet Socialist Republic; the Azerbaijan Soviet Socialist Republic; the Lithuanian Soviet Socialist Republic; the Moldavian Soviet Socialist Republic; the Latvian Soviet Socialist Republic; the Kirgiz Soviet Socialist Republic; the Tajik Soviet Socialist Republic; the Armenian Soviet Socialist Republic; the Turkmen Soviet Socialist Republic; and the Estonian Soviet Socialist Republic. U.S.S.R. CONST. (1977) art. 71.

Those republics which have adopted the *Code of Labor Laws of the RSFSR*, as have both the R.S.F.S.R. and the Uzbek S.S.R., allow a five-day time limit for the court to hear a labor case. See KOROTKOV & GOLDSHTEIN, *supra* note 164, at 351. Most republics which have not adopted this Code allow the longer seven-day to ten-day period. *Id.* For complaints of illegal dismissal, however, courts in all the Union-Republics must handle the cases within five days of receipt of the complaint. *Id.*

269. GLAZYRIN & NIKITINSKY, *supra* note 15, at 176. If the worker leaves the district, by accepting employment elsewhere for example, the court has twenty days to try the case. *Id.*

A worker may make his appeal to the court either orally or in writing.<sup>270</sup> He is relieved of all costs involved in going to court.<sup>271</sup> On the other hand, if management appeals from an adverse judgment of the union committee, management is required to pay court costs.<sup>272</sup> In situations in which management appeals, the court often allows the trade union to send a representative to defend the rights of the worker.<sup>273</sup> These rules and procedures are designed to give a worker greater confidence in the court as the true defender of his rights. In theory, workers will then turn to the courts more readily and the interests of workers will be better served.

#### 4. Decisions

After hearing a case, the People's Court makes a decision by majority vote.<sup>274</sup> The two non-professionals can prevail over the judge, as none of the three has a voting advantage over the others.<sup>275</sup> A decision goes into effect ten days after its pronouncement unless a stay pending appeal is granted by the district court.<sup>276</sup>

In a case involving a vital interest of the workers, such as reinstatement after illegal dismissal, immediate compliance by the enterprise is required,<sup>277</sup> even where an appeal has been taken. In cases of particular hardship, the court can order the enterprise to pay the worker up to one month's wages immediately.<sup>278</sup> In most other cases where a worker has been reinstated, the court may rule that the worker be paid his average wage for the entire time of his enforced absence from work,<sup>279</sup> up to a limit of three months' pay.<sup>280</sup> If the enterprise is required to reimburse back wages, the court can, in its discretion,

270. Piatakov, *supra* note 23, at 572.

271. *Id.* LIVSHITZ & NIKITINSKY, *supra* note 20, at 204.

272. MCAULEY, *supra* note 19, at 240.

273. Brown, *Resolution of Conflicts*, *supra* note 25, at 273; Zaichikov, *supra* note 88, at 84. The union representatives have the right to acquaint themselves with the materials of the case, to raise objections and to present evidence. *Id.* Should the union decide not to support the worker in court, he is not left to fend for himself, as any legal aid required by a worker in court will be provided free of charge by the bar itself. LIVSHITZ & NIKITINSKY, *supra* note 20, at 204. How often this happens in practice is another question entirely and one about which there is little data.

274. *Id.* at 203.

275. Cases in which the people's assessors overrule the judge are only rarely reported, and even then, the situations suggest that they are exceptions. CONQUEST, LEGAL SYSTEM, *supra* note 247, at 28. However, when such cases are reported, the idea that these examples should be followed by other normally all-too-passive people's assessors is generally implied. *Id.* On the other hand, there are also reported cases in which a judge illegally overrules both assessors and records a judgment in the face of two dissenting opinions. *Id.*

276. KOROTKOV & GOLDSHTEIN, *supra* note 164, at 352-53.

277. *Fundamental Principles of Labor*, art. 92, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; MCAULEY, *supra* note 19, at 209.

278. Piatakov, *supra* note 23, at 572.

279. *Fundamental Principles of Labor*, art. 92, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; GUREYEV & SEDUGIN, *supra* note 263, at 226.

280. *Fundamental Principles of Labor*, art. 92, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; GLAZYRIN & NIKITINSKY, *supra* note 15, at 178.

impose personal liability on the manager who is guilty of the illegal dismissal.<sup>281</sup> However, while the manager would have to reimburse his enterprise for any payments made to the employee due to the illegal dismissal,<sup>282</sup> there is a maximum on the amount he would have to pay.<sup>283</sup>

This penalty is not the only one which a People's Court can impose on a manager guilty of violating the rights of his workers. In addition, the court has the power to issue a "personal injunction" against the director, notifying superiors in higher administrative bodies of the director's illegal acts.<sup>284</sup> The manager could be removed for gross violations, thereby protecting other workers in the future.<sup>285</sup> For the most flagrant abuses of worker rights, a manager can be subjected to a criminal trial with a potential maximum penalty of one year's corrective labor.<sup>286</sup>

## 5. Appeals

Decisions of the People's Court are appealable to a higher court.<sup>287</sup> If either party to the case, or the Procurator, feels that the district court made an error of law,<sup>288</sup> that court's decision is appealable within ten days<sup>289</sup> to the regional court. As with the earlier appeal, if the worker is making the appeal, he pays no costs. Management, on the other hand, pays all court costs when it appeals.<sup>290</sup>

281. *Fundamental Principles of Labor*, art. 93, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; GLAZYRIN & NIKITINSKY, *supra* note 15, at 178; GUREYEV & SEDUGIN, *supra* note 263, at 226-27.

282. *Fundamental Principles of Labor*, art. 93, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265; GLAZYRIN & NIKITINSKY, *supra* note 15, at 178; BROWN, *supra* note 15, at 218. According to one study, only nine percent of over 95,000 rubles in back pay was reimbursed by management officials. *See id.* at 217.

283. The limit is not supposed to exceed the equivalent of three month's wages for the director. *Fundamental Principles of Labor*, art. 93, 1970 VED. VERKH. SOV. SSSR, no. 29, item 265.

284. MCAULEY, *supra* note 19, at 209.

285. *Postanovleniye Plenuma Verkhovnogo Suda SSSR*, no. 13, Sept. 13, 1957, BYULETEN VERKHOVNOGO SUDA SSSR, 1957, no. 5, § 19, *cited in* MCAULEY, *supra* note 19, at 209 n.3.

286. *Id.* at 209.

287. Article 151 of the Soviet Constitution provides:

In the USSR there are the following courts: the Supreme Court of the USSR, the Supreme Courts of Union Republics, the Supreme Courts of Autonomous Republics, Territorial, Regional and city courts, courts of Autonomous Regions, courts of Autonomous Areas, district (city) people's courts, and military tribunals in the Armed Forces.

U.S.S.R. CONST. (1977) art. 151. Within their respective city limits, the Moscow and Leningrad city courts have the status of regional courts. They are courts of second instance which exercise judicial supervision over People's courts in city districts. For People's courts located in the Moscow and Leningrad regions, the superior tribunals are the Moscow and Leningrad regional courts. *See* 10 SOV. STAT. & DEC. 101 (Winter 1973-1974).

288. PIATAKOV, *supra* note 23, at 572.

289. *Id.* Certain Union-Republics allow a longer time for appeals to be taken; the Turkmen S.S.R. grants a two-week period for appeals, the Georgian, Uzbek and Azerbaijan S.S.R.'s each permit fifteen days for appeal. KOROTKOV & GOLDSHTEIN, *supra* note 164, at 352; MCAULEY, *supra* note 9, at 240 n.1.

290. MCAULEY, *supra* note 19, at 240.



The regional court has three options in handling a case brought to it on appeal: (1) it can adopt the lower decision, (2) it can quash the lower court decision and return the case for rehearing in the district court, or (3) under a special provision, it can repeal the district court's decision and replace it with a new decision.<sup>291</sup> The appellate court can only render a new decision that is based on the evidence presented in the district court. If the regional court hears any new evidence that would require a new decision, it must remand the case to the district court without passing judgment.<sup>292</sup> However, should the appellate court rule that the district court based its decision on an inappropriate section of the legislation, the appellate court may repeal the lower decision and issue its own decision.<sup>293</sup> The judicial hierarchy in the U.S.S.R. is similar to that in the American court system. Appeals from the regional court are taken to the Union-Republic supreme court and, finally to the Supreme Court of the U.S.S.R.<sup>294</sup>

## VI. INFORMAL RESOLUTION OF LABOR DISPUTES

The three bodies empowered by Soviet labor legislation to hear disputes are not designed to decide all possible conflicts which arise throughout Soviet industry. A large category of disputes is specifically outside the competence of the *KTS*, *FZMK* and People's Court. These non-litigious disputes must be resolved in other, less formal ways. Informal methods to be used by the worker have been institutionalized in at least two forms: (1) the holding of a direct negotiation between worker and management and, (2) the writing of critical letters to the unions or to newspapers.<sup>295</sup> In addition, two other agencies, the Comrades' Court and the Office of the Procuracy, are competent to handle certain labor cases.<sup>296</sup>

### A. *Direct Negotiations*

When a worker believes that his rights have been violated in some manner by management, he will usually turn, in the first instance, to his foreman or other direct supervisor.<sup>297</sup> Where there is a simple mistake or misunderstanding, discussion will usually settle the problem. The worker can present his complaint to the foreman informally and need not present his grievance in

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291. *Id.* at 240-41; Piatakov, *supra* note 23, at 572.

292. MCAULEY, *supra* note 19, at 241.

293. *Id.*

294. *Id.* at 242-43.

295. *See* § VI.A, B *infra*.

296. *See* § VI.C, D *infra*.

297. USBLS, *LABOR LAW IN THE U.S.S.R.*, *supra* note 16, at 34. This is a mandatory first step in the resolution process. *See* 1957 *Statute on Labor Disputes*, para. 12, 1957 *VED. VERKH. SOV. SSSR*, no. 4, item 58.

writing.<sup>298</sup> Once the superior is aware of the problem, he is expected to make a judgment as to the competing rights and to resolve the disagreement promptly.<sup>299</sup>

If the worker cannot get satisfaction from his immediate supervisor, he proceeds to his trade union group organizer,<sup>300</sup> the lowest-ranked union functionary in the shop. This organizer intervenes, on behalf of the worker, between the worker and the foreman.<sup>301</sup> The worker has the right to be present at any discussion between the foreman and the organizer.<sup>302</sup> If this second attempt at settlement fails, the representative of the shop union committee meets, informally, with the shop manager.<sup>303</sup> It is uncertain whether the worker has a right to attend this meeting.<sup>304</sup> Thus, this process is designed to iron out any simple misunderstandings quickly and smoothly.

Only after the worker has taken these preliminary measures is he allowed to present his case to the *KTS*.<sup>305</sup> The *KTS* will hear only those cases involving a true dispute and will not hear those involving an oversight or misunderstanding.<sup>306</sup> Before approaching the *KTS*, however, a worker may attempt to have higher union bodies intervene for him with the manager.<sup>307</sup> According to several Soviet workers, though, the assistance of the union is often ineffective because the union leaders are overruled by members of the Communist Party.<sup>308</sup>

### B. *Writing Critical Letters*

Workers with complaints about the management of their enterprise are allowed, and even encouraged,<sup>309</sup> to write directly to their unions. Over a four-year period, the highest union body in the U.S.S.R., the All-Union Central Council of Trade Unions (AUCCTU),<sup>310</sup> received roughly 400,000 such

298. Zawodny, *supra* note 27, at 544.

299. GLAZYRIN & NIKITINSKY, *supra* note 15, at 171.

300. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 34. The post of group organizer is similar to the shop steward in American labor organizations. See Zawodny, *supra* note 27, at 544.

301. USBLS, LABOR LAW IN THE U.S.S.R., *supra* note 16, at 34.

302. Zawodny, *supra* note 27, at 544.

303. *Id.* BROWN, *supra* note 15, at 206.

304. Zawodny, *supra* note 27, at 544.

305. See *1957 Statute on Labor Disputes*, para. 12, 1957 VED. VERKH. SOV. SSSR, no. 4, item 58; LIVSHITZ & NIKITINSKY, *supra* note 20, at 199.

306. GLAZYRIN & NIKITINSKY, *supra* note 15, at 171.

307. See text accompanying notes 239-44, *supra*.

308. *Labor's Woes in "Workers' Paradise,"* 87 U.S. NEWS & WORLD REPORT, Oct. 8, 1979, at 71.

309. Pravda, *supra* note 37, at 342-43.

310. For a description of the role played by the Central Council of Trade Unions (CCTU), see BROWN, *supra* note 15, at 80-81:

As leader of the mass organization of Soviet workers, the CCTU has a responsible posi-

letters.<sup>311</sup> Workers also write to newspapers that are published by the unions (*Trud*) and by the Party (*Pravda*). The volume of this mail is enormous.<sup>312</sup> While it is true that not every letter contains a complaint, roughly twenty to fifty percent of the letters received are critical of management.<sup>313</sup>

There is a special institution of worker-correspondents in the Soviet press, and these correspondents perform a dual function. They both agitate at the local level and help the people express themselves to the Party and to the government.<sup>314</sup> These *Rabkori* (*Rabochiye Korrespondenti*) are recruited primarily from the ranks of Party members, *Komsomols* (the Communist Youth League) and other activists at state enterprises.<sup>315</sup> The *Rabkori* represent a "network of non-professional correspondents."<sup>316</sup> Their work is coordinated and tied to the task of building communism through Party-sponsored, large scale assemblies of lay journalists.<sup>317</sup>

However, these semi-professional journalists are not the only workers who send in complaints. Common workers also write to the papers themselves; sometimes in groups, sometimes individually.<sup>318</sup> On the whole, letters signed by individuals complain of single rather than of multiple wrongs; most often, they deal with such things as violations of workers' rights and retail deficien-

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tion in Soviet society. Although led by directives of the Communist Party and headed by prominent party members, it also speaks for workers at high levels of the party and government when policies are being considered. It issues authoritative instructions to all union organizations. It joins government agencies in issuing decrees and regulations.

Major functions of the CCTU . . . include the control, direction and leadership of all the unions, and, on the other hand, relations with government and public affairs. On intra-union matters the CCTU determines the structure and staffs of all union organizations and approves their budgets, checks on their work and gives them instructions. It establishes trade union schools and publishes books and periodicals at its own press. In the public sphere, the CCTU is entitled to participate in working out the national economic plan and to receive reports from all government and administrative agencies. It has the right to take part in the preparation and consideration of all governmental decisions affecting labor, and has responsibilities in the administration and enforcement of labor law.

*Id.* (citations omitted).

311. *Id.* at 225.

312. *Trud* reported that it received 313,556 letters in 1963 alone. This was almost 5,000 more than in 1962. *Id.*

313. *Pravda*, *supra* note 37, at 343.

314. For a general discussion of the role of the press in the Soviet Union, see B. Ramundo, *They Answer (To) Pravda*, 1964 U. ILL. L.F. 103 [hereinafter cited as Ramundo]. For a discussion of the work done by the worker-correspondents, see *id.* at 109-10.

315. *Id.* at 109.

316. Finn, *Experience of a Soviet Journalist* 17 (Research Program in the U.S.S.R., Mimeo. Series No. 66, 1954) at 9, cited in Ramundo, *supra* note 314, at 109 n.51.

317. *Id.* at 109. See *Iz odnogo kresla v drugoye* [From One Armchair to Another], *Pravda*, Oct. 12, 1963, at 2, cited in Ramundo, *supra* note 314, at 109 n.54.

318. In one study, of the letters published, approximately forty-five percent were written by a single worker, forty percent were authored by a group of five or fewer workers and the remaining fifteen percent came from larger groups. See *Pravda*, *supra* note 37, at 347.

cies.<sup>319</sup> Group letters tend to concentrate on working and living conditions, as well as the organization of labor and of production.<sup>320</sup> The five most frequently cited problems concern factory conditions, organization of labor and production, income and standards of living, management performance and trade union performance.<sup>321</sup>

### C. *The Comrades' Court*

The Soviets' view the Comrades' Court<sup>322</sup> as an educational body rather than as a punishment-dispensing body.<sup>323</sup> Hence, there is an emphasis on informality and the use of social pressure<sup>324</sup> on a recalcitrant worker by his peers to induce him to conform to societal norms.

#### 1. Composition

The Comrades' Court is a body composed of members of the collective<sup>325</sup> who sit in judgment of their peers.<sup>326</sup> Members of the Comrades' Court are elected for terms of two years at general meetings of the collective.<sup>327</sup> The size

319. *Id.*

320. *Id.*

321. *Id.* at 344.

322. There is no All-Union (*i.e.*, federal) Soviet legislation governing the work of the Comrades' Court, so for the purposes of this Comment, the *Statute on the Comrades' Court of the Russian Soviet Federated Socialist Republic* [hereinafter cited as *Statute on Comrades' Court*], 1977 VEDOMOSTI VERKHOVNOGO SOVETA RSFSR [VED. RSFSR], no. 12, item 254 (Mar. 24, 1977), will serve as the model statute.

323. See, *e.g.*, *Statute on Comrades' Court*, art. 1, 1977 VED. RSFSR, no. 12, item 254, and statements such as the following:

Comrades' courts do important work in socializing citizens in the spirit of irreconcilability to violations of Soviet laws and the norms of communist morality. They promote a strengthening of labor discipline, the protection of socialist property, and the struggle against hooliganism, drunkenness, and other antisocial behavior. Successes in their activity are explained principally by the fact that they rest on the force of public opinion, which can exercise a profound socializing influence.

N. Bashkatov, *The New Statute on Comrades' Courts*, 17 SOV. L. & GOV'T 44, 44 (Summer 1978) [hereinafter cited as *Bashkatov*].

This education can be rough on undisciplined workers, as Professor Brown attests:

Managers and union officers described the extreme embarrassment of workers thus openly criticized by their fellows and how they would swear "Never again." One director offered a worker in a disciplinary case the choice of going to the People's Court, the regular lowest court of law, or to the Comradely Court in the plant, and he chose to take his chance in the People's Court.

Brown, *Labor Relations*, *supra* note 87, at 194. For criticism of the Comrades' Courts, see *Judges or Comrades?*, *supra* note 17.

324. Brown, *Labor Relations*, *supra* note 87, at 194.

325. The collective means both at the workplace and at the apartment complex. See *Statute on Comrades' Courts*, art. 2, 1977 VED. RSFSR, no. 12, item 254.

326. Brown, *Labor Relations*, *supra* note 87, at 194.

327. *Statute on Comrades' Courts*, art. 5, 1977 VED. RSFSR, no. 12, item 254. The election procedures, in detail, are as follows: candidates are proposed by the Communist Party, the *Komsomol* (Communist Youth League), trade-union and other social organizations, and by individual citi-

of a given court will vary, as each electorate decides the size of its own court.<sup>328</sup>

## 2. Jurisdiction

Comrades' Courts have jurisdiction over labor matters involving unexcused absence from work,<sup>329</sup> late arrival to or early departure from work<sup>330</sup> and other breaches of labor discipline.<sup>331</sup> These courts also hear cases involving failure to observe safety regulations.<sup>332</sup> They are prohibited from hearing cases of violations of the law or of civil disputes in which disciplinary or administrative penalties may be assessed.<sup>333</sup> Also, once a court decision on the matter has already been handed down, including that of another Comrades' Court having valid jurisdiction, the Comrades' Court may not hear the case.<sup>334</sup>

Cases may be initiated in the Comrades' Court by any one of various agencies<sup>335</sup> or by the court itself.<sup>336</sup> Management has the right to refer any instance of a breach of discipline to the Comrades' Court rather than to impose a penalty.<sup>337</sup> Indeed, it is common for a director to turn a case over to the Comrades' Court at the factory for resolution rather than to dismiss a worker for unexcused absence from work.<sup>338</sup> In those cases where a Comrades' Court judges itself incompetent to hear the dispute, due either to the complexity of the case or because a criminal prosecution is indicated, it will render a decision to that effect and turn the case over to the appropriate agency for resolution.<sup>339</sup>

zens. Bashkatov, *supra* note 323, at 45. The lists of candidates are posted beforehand so that people have a chance to familiarize themselves with the names. *Id.* The trade-union committees call a meeting to elect the courts at the enterprises and offices. *Id.* The date of the election is publicized well in advance. *Id.* Participants at the meeting can have the name of any candidate stricken from the ballot, provided a good reason is offered. *Id.* In addition, new candidates may be proposed. *Id.* If such a challenge is made, the meeting decides, by majority vote, whether to support or to reject the proposed removal of candidates. *Id.* Persons are elected to the court if they receive more votes than all other candidates combined and more than half the votes of those present at the meeting. *Id.*

328. *Statute on Comrades' Courts*, art. 5, 1977 VED. RSFSR, no. 12, item 254. However, the court cannot consist of fewer than five members. *Id.*

329. *Statute on Comrades' Courts*, art. 7(1), 1977 VED. RSFSR, no. 12, item 254.

330. *Id.*

331. *Id.*

332. *Id.* art. 7(2). Most often, cases of absenteeism, faulty work and minor acts of damage to the factory are heard by the Comrades' Court. *See* Kiralfy, *supra* note 91, at 165. There are occasional cases of drunkenness at home and of petty hooliganism connected with behavior outside the factory which a Comrades' Court will hear. *See* MCAULEY, *supra* note 19, at 192.

333. *Statute on Comrades' Courts*, art. 8, 1977 VED. RSFSR, no. 12, item 254.

334. *Id.*

335. The FZMK, art. 10(1), *id.*; state organs, art. 10(2), *id.*; cooperative agencies, art. 10(3), *id.*; and private citizens, art. 10(5), *id.*

336. *Id.* art. 10(6). It is rare for the court to bring a case on its own initiative, however. *See* B. Ramundo, *The Comrades' Courts of the Soviet Union*, 25-26 (International Affairs Division, U.S. Army, Judge Advocate General) (undated, unpublished report in Harvard Law School Library) [hereinafter cited as Ramundo, *Comrades' Courts*].

337. *Statute on Comrades' Courts*, art. 7, 1977 VED. RSFSR, no. 12, item 254.

338. Kahl, *supra* note 134, at 96.

339. *Statute on Comrades' Courts*, art. 17, 1977 VED. RSFSR, no. 12, item 254.

### 3. Rules of Procedure

Comrades' Courts are empowered to hear all cases, other than those involving petty hooliganism or speculation, within fifteen days from the time that they are submitted to the court.<sup>340</sup> The hearings are held after working hours so that the entire collective may attend.<sup>341</sup> This regulation ensures maximum participation by the community in the hearing and resolution of cases. Each case must be heard by a minimum of three members of the court.<sup>342</sup> Any member of the court may be challenged for cause.<sup>343</sup> The accused has the right to attend.<sup>344</sup> A judgment delivered after a hearing held in the absence of the worker is invalid unless it is the second time the worker has failed to appear without a good reason.<sup>345</sup> Once again, this requirement is intended to ensure the feeling that justice has been done because an accused has had the opportunity to face the charges, witnesses and evidence against him. A Comrades' Court cannot hold a hearing on a matter unless it has ample evidence of the guilt of the offender.<sup>346</sup> Emphasis on ascertaining guilt is so great that Comrades' Court judges are exhorted to arrange for the offender to confess his misdeeds publicly at the trial and to ask forgiveness.<sup>347</sup>

340. *Id.* art. 11. Cases of petty hooliganism and speculation must be tried within ten days. *Id.*

341. *Id.* art. 13.

342. *Id.*

343. *Id.* The court decides the challenge itself. *Id.*

344. *Id.* art. 14.

345. *Id.*

346. BERMAN, JUSTICE IN THE U.S.S.R., *supra* note 1, at 280.

347. *Id.* The atmosphere at a Comrades' Court trial may be described as informal to the point of the hearing being a kangaroo court. The following description of a Comrades' Court hearing sent in a letter to the editor of the national literary magazine, *Literaturnaia Gazeta*, is highly illuminating:

Not long ago I had occasion to be present at a meeting of the comrades' court of Housing Operation Office No. 16 of Moscow's Bauman District. A statement by Citizeness Kh-va accusing the M-v couple of unseemly behavior ("They curse, threaten, put garbage in the soup . . .") was being considered. M-v is a young scholar — an art specialist. I am his research director, and naturally I am not at all indifferent to how he conducts himself in his home life.

However, what was called a "court" left the most painful and oppressive impression.

It immediately became clear that the whole fuss between the "parties" had flared up because a room had become available in the apartment and had been assigned by the district executive committee to the M-vs, while Kh-va demanded that others be put in it. But the members of the comrades' court refused to take any notice of this whatever. From the very outset, they did not hide their open hostility to the "defendants." No proof of misconduct by the M-vs was present. The court became nothing more or less than an indecent kitchen scandal, a "domestic spectacle," an inciting of the meanest passions. Representatives of the community of the institute at which M-v works were hampered when they spoke and were interrupted by interjections such as: "See, he found a lawyer," "He's defending his own," "Fine him ten rubles. . . ."

The M-vs were found guilty . . . of covering their table in the kitchen with a bright tablecloth, decorating it with a vase of flowers, hanging on the wall pictures "of monuments of old Russian antiquity," and, as the document said: "In this situation, Citizeness Kh-va could not make use of the kitchen." It would be funny if it were not so sad.

As a consequence, the judges handed down the following decision: "For the unwor-

#### 4. Decisions

After a full hearing on the case, during which members of the collective voice their opinions both as to the dispute and as to the parties involved,<sup>348</sup> the court adjourns to decide the issues. Decisions require a majority vote by the court members participating in the hearing of the case.<sup>349</sup> The Comrades' Court is required to render a statement of the nature of the case, the reasons for its decision and the measure of discipline to be enforced,<sup>350</sup> or, a statement of acquittal of the person brought before the court.<sup>351</sup>

Once a Comrades' Court has handed down its decision, the parties must comply. In this sense, the decision is self-implementing. Should the parties not abide by the decisions, the Comrades' Court can refer the case to the People's Court for a check on the legality of the decision.<sup>352</sup> If the decision is held to be valid, the People's Court is empowered to order execution of the judgment by the bailiff.<sup>353</sup> If the ruling is held to be invalid, the People's Court can advise the appropriate union committee<sup>354</sup> of the defect so that the *FZMK* can suggest a rehearing.<sup>355</sup> When a People's Court orders execution of the Comrades' Court's decisions, a concept similar to *res judicata* applies and the case may not be reheard.<sup>356</sup> Once a Comrades' Court passes judgment, the case may not be reheard except in one situation. If the decision is contrary to the facts of the

thy behavior of the highly educated M-vs to the neighbor sharing the apartment, the elderly woman Kh-va, we declare a public censure of the M-vs, to be published in the local press and to be sent to their place of employment."

*Judges or Comrades?*, *supra* note 17, at 141-42. For another description of a Comrades' Court hearing, see *Zawodny*, *supra* note 27, at 542.

348. See, e.g., the case of Kh-va accusing the M-vs of unseemly behavior, in *Judges or Comrades?*, *supra* note 17, at 141-42.

349. *Statute on Comrades' Courts*, art. 15, 1977 VED. RSFSR, no. 12, item 254. The decision of the Comrades' Court is not a judicial act; rather, it is "the application of either a moral or a legal norm by society." See V. Igitov, *O Prirode Mer Vozdeistviia Primeniaemykh Obshchestvennostiu v Oblasti Okhrany Obshchestvennogo Poriadka (On the Nature of the Measures of Influence Used by Society in the Area of the Defense of the Social Order)*, SOVETSKOE GOSUDARSTVO I PRAVO, no. 11, 1963, at 112, cited in Ramundo, *Comrades' Courts*, *supra* note 336, at 31-32. When reaching a decision, a Comrades' Court is supposed to be guided by the legislation in force, the *Statute on Comrades' Courts*, and its own sense of public duty. *Statute on Comrades' Courts*, art. 15, 1977 VED. RSFSR, no. 12, item 254.

350. *Id.* art. 15. The court can demand a public apology of the offender, *id.* art. 16(1), issue a warning to him, *id.* art. 16(2), issue a social rebuke, *id.* art. 16(3), or issue a social reprimand in writing, *id.* art. 16(4), and impose a maximum fine of ten rubles, *id.* art. 16(5). In extreme cases, the court may suggest to management that the worker be transferred to a lower-paying job. *Id.* art. 16(6).

351. Bashkatov, *supra* note 323, at 47.

352. *Statute on Comrades' Courts*, art. 20, 1977 VED. RSFSR, no. 12, item 254.

353. *Id.*

354. At enterprises and institutions, the work of the Comrades' Court is guided by the local union committee. Bashkatov, *supra* note 323, at 49.

355. *Statute on Comrades' Courts*, art. 20, 1977 VED. RSFSR, no. 12, item 254.

356. Ramundo, *Comrades' Courts*, *supra* note 336, at 35.

case or to the existing legislation, a rehearing may be suggested by the appropriate union or local soviet executive committee.<sup>357</sup>

### 5. Appeals

The parties may appeal the decision of the Comrades' Court.<sup>358</sup> An appeal must be made within seven days from the date on which the Comrades' Court's decision is given.<sup>359</sup> Appeal is taken either to the *FZMK* or to the executive committee of the local soviet which has the duty of supervising the particular Comrades' Court.<sup>360</sup> Submission of such an appeal automatically halts implementation of the decision.<sup>361</sup> The body reviewing the decision has the right to cancel that decision and to send the case back to the Comrades' Court for a rehearing or for a dismissal of the proceedings.<sup>362</sup> As with any decision of the *FZMK*, either the worker or management may present an appeal to the People's Court.<sup>363</sup> This ensures "a dependable guarantee of undeviating adherence to the laws by the courts in question."<sup>364</sup>

### D. *The Role of the Procurator*

Along with the quasi-judicial Comrades' Courts, another judicial officer is involved in the labor area. Although the Procurator is not named in the labor dispute resolution legislation, his responsibility in this area should not be overlooked.<sup>365</sup> The Procurator holds a position similar to that of an American district attorney,<sup>366</sup> with the important difference that the Procurator is not

357. *Statute on Comrades' Courts*, art. 20, 1977 VED. RSFSR, no. 12, item 254.

358. BROWN, *supra* note 15, at 209.

359. Bashkatov, *supra* note 323, at 47.

360. *Id.*

361. *Id.* at 48.

362. *Id.*

363. See text accompanying notes 235-43, *supra*.

364. Bashkatov, *supra* note 323, at 48.

365. For example, whenever a labor case is taken to court, a procurator is required to be present. JOHNSON, *supra* note 236, at 201. Also, a considerable percentage of the complaints brought to the procurator's office are labor disputes. See Ruble, *Factory Workers' Rights*, *supra* note 76, at 63, citing unpublished Soviet data summarizing the activities of the U.S.S.R. and R.S.F.S.R. Procurator. Intervention in labor cases by the procuracy is quite effective in protecting workers. See note 383, *infra*.

366. For a discussion of the Soviet Procuracy, see Boim, "Ombudsmanship" in the Soviet Union, 22 AM. J. COMP. L. 509, 509-14 (1974) [hereinafter cited as Boim]; Rakitin, *Labour Inspection in the USSR*, 104 INT'L LAB. REV. 289, 302-04 (1971) [hereinafter cited as Rakitin]; J. N. HAZARD, I. SHAPIRO & P. MAGGS, *THE SOVIET LEGAL SYSTEM* 63-65 (1963).

For a discussion of the role of the procurator in another civil law jurisdiction, France, see R. DAVID, *FRENCH LAW* 59-61 (1972), reprinted in J. MERRYMAN & D. CLARK, *COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS* 498-500 (1978) [hereinafter cited as MERRYMAN & CLARK]. In Italy, the equivalent of the procurator is the public attorney. See Vigoriti, *The Role of the "Ministère Public" in Civil Proceedings: Italy*, Italian National Reports to the IXth International Congress of Comparative Law, Tehran, at 269-88 (1974), reprinted in



subordinated to the executive branch of government.<sup>367</sup> The functions of the Procurator in the Soviet Union are twofold: (1) to exercise general supervisory power over the administration of justice, and (2) to scrutinize the observance of law by organs of the State as well as by individual citizens.<sup>368</sup>

The Procurator's role in labor disputes was originally established by an order, promulgated by the Attorney General of the U.S.S.R. on May 28, 1938,<sup>369</sup> calling for the exercise of initiative "whenever the interest of the state or working masses are involved."<sup>370</sup> The Procurator can accept cases referred to him by disgruntled workers either before or after the *KTS* and *FZMK* have ruled.<sup>371</sup> He may argue on the worker's behalf before these bodies, or, he may take a neutral, state-interest position.<sup>372</sup> If a People's Court, in a particular case, decides that the state's or a worker's rights have been impaired, that court is empowered with discretion to invite the Procurator's participation in the case.<sup>373</sup> The Procurator may also intervene without an invitation from the court.<sup>374</sup> Indeed, whenever a labor case goes to court, a Procurator is required to be present.<sup>375</sup> The Procurator has the power to appeal a decision of the People's Court to the regional court,<sup>376</sup> but his appeal may be rejected by the appellate court. The Procurator can also appeal decisions of the *KTS* or *FZMK* to higher organs of the trade unions, thereby bypassing the court entirely.<sup>377</sup>

A Procurator intervenes to protect either the rights of the worker or the rights of the State.<sup>378</sup> His function is to assist in making a correct decision, not

MERRYMAN & CLARK, *supra*, at 501-07. For the part played by the equivalent of the procurator in Germany, see MERRYMAN & CLARK, *supra*, at 507-08.

367. The independence of the procuracy is guaranteed by the Soviet constitution. See U.S.S.R. CONST. (1977) art. 168. *But see* Boim, *supra* note 366, in which the author argues:

The *Prokuratura* is neither prepared nor designed — by law, by Party decisions or by its own principles or structure of responsibility — to defend the citizen *against* the State and Government even in cases of clear violation of explicit laws or civil rights. As a part of the state apparatus, it constitutes *an instrument of the regime*, not of justice. Like the other Soviet state and public institutions, the *Prokuratura* depends upon the Party in all its actions, acts under the Party's supervision, and is accountable to the Party for its day-to-day activities.

*Id.* at 511 (emphasis in original).

368. *Fundamental Court Organization*, art. 14, 1971 VED. VERKH. SOV. SSSR, no. 33, item 332.

369. Zawodny, *supra* note 27, at 543.

370. *Id.*

371. Ruble, *Comparison*, *supra* note 130, at 255.

372. BROWN, *supra* note 15, at 205.

373. Zawodny, *supra* note 27, at 543.

374. *Id.* The procurator has the right to institute a civil case in court on behalf of a person, even against the will of that person. See Berman, *The Educational Role of the Soviet Court*, 21 INT'L & COMP. L.Q. 81, 85 (1972) [hereinafter cited as Berman, *Educational Role*].

375. JOHNSON, *supra* note 236, at 201.

376. He may make this appeal independently of the will of either party. See *RSFSR Code of Civil Procedure*, art. 327, cited in Berman, *Educational Role*, *supra* note 374, at 85 n.21.

377. MCAULEY, *supra* note 19, at 147.

378. BROWN, *supra* note 15, at 205.

to influence the judge in any way.<sup>379</sup> If the city Procurator believes that the local courts have made an incorrect decision, he can request the republic-wide Procurator to appeal the case to the republic supreme court.<sup>380</sup> This process can proceed to the apex of the judicial hierarchy, with the Procurator-General of the U.S.S.R. petitioning the Supreme Court of the Soviet Union to review a given case.<sup>381</sup>

A Procurator may also impose sanctions on an offender. He may issue warnings, make representations, demand disciplinary or administrative action, raise the question of an offender's material liability, or institute criminal proceedings.<sup>382</sup>

The Procurator's potential in resolving conflict between labor and management should not be underestimated.<sup>383</sup> However, the Procurator only accepts a small percentage of cases brought before him.<sup>384</sup> One rationale, given by the Soviets, for this failure to defend vigorously the rights of workers is that there are time constraints on the Procuracy which prevent it from adequately investigating each case.<sup>385</sup> Another reason given is insufficient training among local procurators.<sup>386</sup> Perhaps the best explanation lies in the inherent inability of a body, such as the Procuracy, given the Soviet system within which it operates, to stand behind an individual in a conflict with the State.<sup>387</sup>

379. JOHNSON, *supra* note 236, at 202. For a good example of the way a procurator will usually conduct himself at an ordinary hearing, *see id.* at 201-02.

380. MCAULEY, *supra* note 19, at 243.

381. *Id.*

382. A warning is the most common form of sanction. *See* Rakitin, *supra* note 366, at 303. It consists of a written document requiring that the infringement in question be remedied. *Id.* A representation is a written instruction by which the appropriate organs or officials are required to take specified steps to remove the cause of an illegality and prevent its reoccurrence. *Id.* Disciplinary and administrative action is usually restricted to cases of systematic or gross infringements where there is no basis for criminal proceedings. *Id.* Should the procurator determine that a person is materially liable for damage caused by an infringement of the law, he may handle the matter by means of a representation or a special order, or may bring an action in a subordinate court. *Id.* at 304. If the procurator determines that an indictable breach of labor legislation has occurred, once he has arrived at the full circumstances of the offense, he may immediately institute criminal proceedings by means of an appropriate order. *Id.* Criminal prosecution is rare given the plentitude of ways to deal with offenders. *Id.*

383. *See* Ruble, *Factory Workers' Rights*, *supra* note 76, at 63, *citing* unpublished Soviet data summarizing the activities of the U.S.S.R. and R.S.F.S.R. Procurators. In Leningrad, for the year of 1961 alone, of 100 civil cases reviewed upon request of the procurator, results favorable to the worker were achieved in 98. *See* MCAULEY, *supra* note 19, at 243 n.2. But criticism of the office of the procurator has been voiced for his failure to see that a salesman, ordered reinstated by a court, was promptly put back to work. The result was that the employee was out of work for eleven months. 28 CDSP no. 13, Apr. 28, 1976, at 21, col. 1.

384. In Leningrad, during the early 1960's, approximately twenty-five to thirty percent of the decisions of the People's courts were appealed to the procuracy, but no more than ten were actively pursued by that office per year. *See* MCAULEY, *supra* note 19, at 243.

385. *Id.* at 243 n.1.

386. *Id.* at 243.

387. *See* note 367, *supra*.

## VII. THE QUESTION OF STRIKES

Generally, when negotiation and arbitration are insufficient to reach agreement on a disputed matter between a worker and his employer, another avenue available to the worker is to withhold his labor from his employer. Normally, though, a strike is used only as a last resort by workers.<sup>388</sup>

The use of the strike weapon by workers to resolve a dispute with management occurs in the Soviet Union as it does in other industrial nations. However, major differences exist. First, in the Soviet Union, the use of a strike by workers in a labor dispute is not considered an acceptable way of resolving the conflict.<sup>389</sup> Second, because the Soviet Union has a socialist economic system with the State having ownership of the means of production, any job action by workers against their employer is, in reality, directed at the State itself.<sup>390</sup> This fact is vitally important because it changes the nature and effect of strikes by workers against their socialist employers. What would ordinarily be a private matter between an individual group of workers and an individual employer becomes a very public dispute between workers and the State. The very character of the conflict takes on political overtones perceived as a challenge by individuals to the legitimacy of the State. The official Soviet reaction to, and treatment of strikes is thus the result of ascribing a political nature to what is essentially an economic event.

### A. *Legality of Strikes*

Nowhere in Soviet legislation is the legality or illegality of strikes mentioned.<sup>391</sup> Given the extended nature of the rights expressly protected by the Soviet constitution,<sup>392</sup> the absence of any mention of the right to strike is illumi-

388. MCAULEY, *supra* note 19, at 12.

389. Pravda, *supra* note 37, at 349-50.

390. BRODERSEN, *supra* note 15, at 81-82.

391. Brandt, *supra* note 27, at 235.

392. Citizens of the U.S.S.R. have the right to work, U.S.S.R. CONST. (1977) art. 40, the right to rest and leisure, *id.* art. 41, the right to health protection, *id.* art. 42, the right to maintenance in old age, in sickness, and in the event of complete or partial disability or loss of the breadwinner, *id.* art. 43, the right to housing, *id.* art. 44, the right to education, *id.* art. 45, the right to enjoy cultural benefits, *id.* art. 46, a guaranteed freedom of scientific, technical, and artistic work, *id.* art. 47, the right to take part in the management and administration of state and public affairs and in the discussion and adoption of laws and measures of All-Union and local significance, *id.* art. 48, the right to submit proposals to state bodies and public organizations for improving their activity, and to criticize shortcomings in their work, *id.* art. 49, a guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations, *id.* art. 50, the right to associate in public organizations that promote their political activity and initiative and satisfaction of their various interests, *id.* art. 51, a guaranteed freedom of conscience, *i.e.*, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda, *id.* art. 52, a guaranteed inviolability of the person, *id.* art. 54, a guaranteed inviolability of the home, *id.* art. 55, a guaranteed privacy, including that of correspondence, telephone conversations, and telegraphic communications, *id.* art. 56, and the right

nating. The official attitude toward strikes by workers is, perhaps, best summed up by a statement made in 1922 during the 11th Congress of the Communist Party:<sup>393</sup> "[N]either the Communist Party, nor the Soviet Government nor trade unions can forget and conceal from the workers . . . that strike action in a State with a proletarian government can be explained and justified exclusively by bureaucratic deformations of that state and by remnants of capitalism."<sup>394</sup> Strikes are not explicitly outlawed in the Soviet Union. They do not need to be outlawed because, under Soviet theory, they are impossible:

According to Soviet theory strikes are not only not legitimate, they are by definition inconceivable and cannot happen since the commanding authority against which they would ultimately be aimed — the state itself — is identical with the working class; and for workers to strike against themselves would be nonsensical.<sup>395</sup>

The official Soviet attitude is reflected by rhetoric that strikes are *ne nado, ne mozhno*: not necessary, not possible (or permitted).<sup>396</sup> The reason that strikes are considered not necessary is that so many other avenues are available to obtain satisfaction that workers simply will not resort to the extreme position of calling a strike. A worker can turn to the *KTS*, *FZMK*, People's Court or Procurator if he has a problem. Likewise, he can talk out the disagreement with management or complain to his union or to the press. Where there are so many other ways to get satisfaction, a worker should never need resort to a strike.

### B. Causes of Strikes

Whether a strike is necessary or even possible in Soviet theory is immaterial. Strikes do occur in the U.S.S.R.<sup>397</sup> The causes of most of the reported strikes are economic.<sup>398</sup> For example, lack of adequate supplies of consumer goods sparked strikes and riots in the Rostov region of southern Russia in 1962.<sup>399</sup> Similarly, the shipping of butter abroad, when it was in

to lodge a complaint against the actions of officials, state bodies and public bodies, *id.* art. 58. However, article 59 of the Soviet constitution states that "Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations." *Id.* art. 59. The duties and obligations of Soviet citizens are outlined in *id.* arts. 60-69.

393. This statement was made during the period of the New Economic Policy and the unions were allowed more freedom at that time than ever since. See text accompanying notes 98-106, *supra*. This rather extreme attitude is, perhaps, even more meaningful now.

394. ILO, THE TRADE UNION SITUATION, *supra* note 105, at 63.

395. BRODERSEN, *supra* note 15, at 81-82. This is a "piece of sophistry, but nevertheless a crucial Soviet doctrine." *Id.* at 82.

396. BROWN, *supra* note 15, at 233.

397. See note 3, *supra*, for a summary of reports of strikes.

398. See, e.g., table of causes of strikes and riots, by period, in Pravda, *supra* note 37, at 349.

399. Boiter, *supra* note 3, at 37.

short supply at home, resulted in strikes in Odessa in 1963.<sup>400</sup> At other times, the causes have been similar to those which traditionally have precipitated American labor strikes, *i. e.*, low pay,<sup>401</sup> the lowering of the piecework rate,<sup>402</sup> or the disregard for the rights of in-plant union committees.<sup>403</sup>

### C. Responses to Strikes

The response by the authorities to a work stoppage is always swift. If a strike is accompanied by rioting, the local militia, often backed by regular army troops, is called out to quell any disorders.<sup>404</sup> Where such drastic action is not necessary, other tactics are used to alleviate the situation which caused the strike.<sup>405</sup> Often, where complaints center on scarce food supplies, adequate amounts of what had just recently been impossible to locate and purchase suddenly appear.<sup>406</sup> Worker complaints about violations of the labor laws are often followed by special drives to insure compliance with the law.<sup>407</sup> Similarly, when a reduction in piecework rates sparks the stoppage, such rates are often rescinded as a means of remedying the undesirable situation.<sup>408</sup> In one case, the workers resumed work only upon the firing of the manager and their receipt of supplemental pay.<sup>409</sup> However, the official response has been modified in recent years. According to an exiled Soviet labor union leader, "[the] authorities give into the demands of the workers, and later, over a long time, they arrest the leaders."<sup>410</sup> By removing the core of discontented members of the labor force, the regime seeks to inhibit labor unrest in the future. How effective these steps will be in preventing a future strike is an open question.

### D. Outlook for the Future of the Strike in the U.S.S.R.

Although conditions appear to be ripe for widespread labor unrest in the

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400. This strike concerned the shipping of butter to Cuba when there was a shortage in Odessa. N.Y. Times, Jun. 25, 1961, at 2, col. 6.

401. KOLASKY, *supra* note 3, at 190.

402. Such a strike led to widespread rioting in Rostov in southern Russia. *See id.* at 190-93; Boiter, *supra* note 3, at 33-43.

403. *Id.* at 37.

404. KOLASKY, *supra* note 3, at 191.

405. BROWN, *supra* note 15, at 237.

406. Boiter, *supra* note 3, at 35.

407. BROWN, *supra* note 15, at 235.

408. Boiter, *supra* note 3, at 38.

409. BROWN, *supra* note 15, at 234. Other tactics employed by the authorities include: strict instructions to local party, government and trade union organs to correct the mistakes and shortcomings which gave rise to the unrest, Boiter, *supra* note 3, at 35; denunciation in the press of callous officials (usually unnamed) for such things as the poor food supply, disregard of labor laws, poor housing conditions, or whatever the specific situation involved, *id.*; dispatch of a high Communist Party official for on-the-spot investigation, *id.*; or dismissal of one or more officials either as the real culprits or as scapegoats. *Id.*

410. Boston Globe, Mar. 16, 1981, at 9, col. 1.

U.S.S.R.,<sup>411</sup> it is not clear whether there will be any such unrest at all,<sup>412</sup> nor whether strikes similar to those in Poland would be successful in winning the workers' demands. In the first place, workers in the U.S.S.R. have great difficulties in organizing. Many workers feel isolated and are afraid of each other,<sup>413</sup> as the system pits individuals against one another.<sup>414</sup> The story of one worker who tried to protest unsafe working conditions is illustrative of the problems facing workers who try to organize and to demand changes from the authorities.

In 1969, Aleksei Netytin, a mining engineer and Communist Party member, led a protest over dangerous working conditions in the mines of Donetsk.<sup>415</sup> The petition was ignored, Netytin was fired and the other workers were forced to renounce their signatures.<sup>416</sup> Netytin went to the Norwegian Embassy in Moscow with an appeal to the International Labor Organization.<sup>417</sup> He was arrested, declared insane and put in a psychiatric hospital for eleven years.<sup>418</sup> Upon his release in 1980, Netytin went to see a psychiatrist who is a member of a group investigating the abuse of psychiatry in the Soviet Union. This doctor, Anatoly Koryargin, pronounced Netytin completely sane.<sup>419</sup> Netytin then arranged for foreign correspondents to meet the miners in Donetsk. These workers complained about the conditions both in the mines and in general. Three days after the meeting between the foreigners and the miners, Netytin was again arrested.<sup>420</sup> He has since been returned to a psychiatric hospital.

Also illustrative of the probable official attitude toward; and reaction to, a future strike is the response to a free, independent trade union which came into existence in January, 1978. The Charter of the Free Trade Union Association of Soviet Workers<sup>422</sup> was signed in Moscow on February 1, 1978.<sup>423</sup> The Charter was signed by one hundred and ten people, and a note was added that "there are a number of other colleagues who have asked that for the time being their names be withheld."<sup>424</sup> This organization was closed down by the

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411. See broadcast by Anne Garrels on ABC, WORLD NEWS TONIGHT, Feb. 6, 1981 [hereinafter cited as ABC].

412. One expert predicts relative stability, at least for the 1980's. See Smith, *Will Soviet Workers "Take to the Streets" in the '80's?* 89 U.S. NEWS & WORLD REPORT, Aug. 11, 1980, at 46-47.

413. ABC, *supra* note 411.

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

421. NEWSWEEK, Nov. 9, 1981, at 29.

422. J. JOYCE, WORLD LABOR RIGHTS AND THEIR PROTECTION 178 (1980).

423. AFL-CIO News, May, 1978, *cited in id.*

424. *Id.* at 178-80.

authorities and its leaders either put in jails or in psychiatric hospitals.<sup>425</sup> The successor to the Free Trade Union Association of Soviet Workers was the Free Interprofessional Association of Workers (*SMOT*)<sup>426</sup> which likewise was eliminated by the regime.<sup>427</sup>

At the outset, a strike may appear to win the workers' demands from the government. Given the new Soviet response to strikes, however, such a victory may be pyrrhic. If the authorities methodically remove the leadership from among the workers, in theory there will be no one to direct the workers in the future. The workers might find themselves in a worse situation than that in which they started. Seeing these tactics used by the authorities, the worker is not at all certain that only the strike leaders will be hurt. The reaction to strikes in the past has often been brutal.<sup>428</sup> A fear among the workers exists that any job action in the future will bring similar results.<sup>429</sup>

#### E. *Effect of the Recent Labor Unrest in Poland on Soviet Workers*

The degree and extent to which Soviet workers have been affected by the events in Poland since August, 1980 remain unclear. Soviet workers are certainly aware of these events. A number of miners interviewed by one western correspondent admitted knowledge of the situation in Poland, but also expressed fear at the thought of supporting their Polish brothers.<sup>430</sup> Contacts have been reported between the Polish free trade union, Solidarity, and the two-hundred-member Soviet free trade union.<sup>431</sup> This awareness among Soviet workers causes many analysts of the situation to believe that the Soviet leaders are contemplating an invasion of Poland. The Soviets state that their concern is to stabilize the situation in Poland, but history shows that the true Soviet goal may be to crush the free union movement both in Poland and within the U.S.S.R.<sup>432</sup> Free union activity in the Soviet Union corresponds to periods of liberalization in sister socialist states,<sup>433</sup> the last high point occurring during the "Prague Spring" of 1968.<sup>434</sup> After the Warsaw Pact invasion of Czechoslovakia in August, 1968, the union movement in the U.S.S.R. declined sharply.<sup>435</sup> A crushing of Solidarity in Poland would therefore probably mean

425. AFL-CIO News, Oct. 6, 1979, at 1, col. 2.

426. *Id.*

427. AFL-CIO News, Sept. 22, 1979, at 8, col. 1.

428. For example, the army was called out to quell the disorders in the Rostov area in 1962. There were a number of persons killed, including boys who had climbed trees to get a better view of the square in which the workers were demonstrating. *Boston Globe*, Mar. 16, 1981, at 9, col. 1.

429. ABC, *supra* note 411.

430. *Id.*

431. *Boston Globe*, Mar. 16, 1981, at 9, col. 1.

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

a similar crushing of the free union movement inside the Soviet Union.<sup>436</sup>

### VIII. CONCLUSION

In theory, there can be no disagreement between a worker and his employer under socialism because the worker owns the means of production and, hence, is his own employer. However, legitimate disputes between labor and management do occur in the Soviet Union. The Soviet Union has developed an elaborate system for resolving grievance disputes, but this system is designed to resolve only a limited type of dispute. All other disagreements must be settled outside the normal channels, through informal negotiation or through the application of pressure from superiors in the governmental bureaucracy on the parties to the dispute. Both management and the trade unions, the two bodies most often involved in labor disputes, play roles under socialism quite different from those of their counterparts under capitalism. Management, being part of the state apparatus, must further the state's goals of increased production. Likewise, the unions play a dual role by protecting certain rights and interests of their workers while, at the same time, spurring production.

The Soviet Union has established three separate agencies to hear labor cases. Two of these bodies exist in the workplace itself and are composed in whole, or in part, of workers. The goal of these two bodies is to clear up any misunderstanding which is causing a problem. The People's Court is the third agency to hear labor disputes. This court is located on the lowest tier of the general court system. Important cases are brought to the People's Courts so that a correct reading of Soviet legislation can be applied to the situation and all the rights of the workers can be protected. Also, a worker can turn to other institutions. Most notable among these latter bodies are the newspapers. Bad publicity can serve as a powerful stimulus for action on the part of management. Another agency is the Comrades' Court, a group of persons drawn from a collective, which uses peer pressure and moral persuasion to discipline workers. Finally, the Procurator may intervene to insure a proper result.

A strike never has been accepted by Soviet authorities as a legitimate means of resolving a dispute between labor and management. When strikes occur, they are most often sparked by economic concerns among the workers. The official reaction has been both swift and harsh, but evidence indicates that tactics are changing.

The recent events in Poland have not gone unnoticed nor unheeded by Soviet workers. Many of the underlying causes of the unrest in Poland exist in the Soviet Union. However, institutional inhibitions exist against organizing to protest bad working conditions. Because of these mechanisms, an aggrieved

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436. This is the fear among certain Soviet labor leaders. *See id.*



worker is limited in his choice of ways of settling his dispute with management. This is likely to continue at least into the near future. The Soviet worker is not able, as his Polish brothers have been, to unite with his fellows to force change on the government through collective protest.

The costs to the workers of not being able to use their most powerful weapon is a loss of certain freedoms and perhaps a lower standard of living. The cost to the regime, however, of allowing such collective protest, potentially could be widespread labor unrest. This is a cost not likely to be risked by the Soviet Union's leadership at this or any time, since such unrest would make the U.S.S.R. itself the most dangerous country in the eastern bloc to the Soviet overlords. According to one Soviet labor leader: "One can always invade a country like Hungary, Czechoslovakia or Poland. But one can be sure no one will invade the Soviet Union to settle labor disputes. So, from that point of view, it is the most dangerous country."<sup>437</sup>

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437. Vladimir Borisov, in an interview *in Boston Globe*, Mar. 16, 1981, at 9, col. 1.