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The Mexican Labor Law

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THE MEXICAN LABOR LAW†

JOSEPH M. CORMACK* AND FREDERICK F. BARKER**

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1. HISTORICAL BACKGROUND

Mexican labor law may be said to date from the Revolution of 1910. The desire of the laboring classes for better conditions was one of the causes of the revolt against the Díaz régime, the chief cause being the hunger of the peasant for land. "It was the contrast between the care of horses and the care of men, that is said to have engendered in Emiliano Zapata the spark of revolt."¹ Even

†[This is the fourth of a series of articles on Mexican law by these authors. The three previous articles were: Barker and Cormack, *The Mercantile Act: A Study in Mexican Legal Approach*, 6 SOUTHERN CALIFORNIA LAW REVIEW, 1 (1932); Cormack and Barker, *The Mexican Law of Business Organizations*, 6 SOUTHERN CALIFORNIA LAW REVIEW, 187 (1933); Barker and Cormack, *Mexican Civil Organizations under the New Code*, 7 SOUTHERN CALIFORNIA LAW REVIEW, 195 (1934). Subsequent articles will appear in future issues of the REVIEW.—Ed.]

The authors desire to express their indebtedness to the Honorable Señor Agustín Haro y T., Oficial Mayor of the Department of Labor of the Mexican Government, and to Mr. Eyley N. Simpson, Senior Associate in Mexico of the Institute of Current World Affairs.

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¹Gruening, *Mexico and Its Heritage* (1928), 141.

in connection with the land, the owners objected rather to the loss of their serfs than of their acres.² The oppression of the Indians for centuries is well known as a matter of general history.³ In order to secure cheap labor, the Spaniards imported Negro slaves to such an extent that the safety of the government was threatened.⁴

In 1865, the French agronomist Burnouf, speaking of agricultural conditions, wrote:

"I have seen men struck with switches until they bled; I have literally put my fingers in the scars; I have fed families, dying of hunger, and led to work under the whip of the majordomo; I have seen men dying of exhaustion, charged with chains, dragging themselves into the open in order to end their lives under the eye of God, then thrown into a hole like dead dogs. The *hacendado* speculates even on the food of these wretched people, and on the rag which half covers them. He compels them to buy from him all their provisions, and at a price higher than that of the town market; he sells them, at usurious rates, all the poor fabrics they need, so that, when the account is settled, the Indian does not receive a *real*, for fourteen hours of labor. It is, therefore, inevitable that the Indian gets deeper and deeper into debt . . . Under this system, there is not a native family but owes at least a hundred pesos."^{5a}

In the same period another author, comparing the condition of city workers with the debt slavery of the peon, writes:

"In the capital the same system is used in the bakeries, where the workers never leave the shop except to hear mass on feast days, and then always accompanied by an overseer who never lets them out of his sight."^{5b}

As to conditions under Díaz, Gruening writes:

"Under the industrial invasion of the late nineteenth century, facilitated by the Porfirian peace, the oppression of the workers became aggravated. The great physical improvements in the Mexican plant—railroads, port works, textile mills, factories, the adaptation of the raw products of the *haciendas* to the commercial needs of the outside world—were made possible by the negligible cost of labor. Foreign capital, asking no questions but those related to its security and profits, poured in lavishly. The Mexican mass, existing under conditions which varied from absolute slavery, as in Yucatán and in the Valle Nacional in Oaxaca, to milder conditions of peonage, carried the load. It was held in this serfdom by physical force and mental control, by the army, and by the clergy. . . .

²Paraphrasing, Gruening, *Mexico and Its Heritage* (1928), 145.

³Priestley, *The Mexican Nation, a History* (1930), 62, 67-68, 73-76, 82-83, 94, 110, 116, 120, 123, 138, 140 & 144-145.

⁴Priestley, *The Mexican Nation, a History* (1930), 56-57, 82, 126, 146 & 184. For a time there were more Negroes than whites (*ibid.*, 57, 82 & 126), and revolts of Negro slaves occurred. *Ibid.*, 56, 126, 146 & 184.

^{5a}Quoted, in slightly different translation, Reinach-Fousse-magne, Charlotte, *Impératrice du Mexique*, 222; requoted, Gruening, *Mexico and Its Heritage* (1928), 123.

^{5b}Pimentel, *Memoria Sobre la Situación de la Raza Indígena*, 202; quoted, in slightly different translation, Gruening, *Mexico and Its Heritage* (1928), 335.

"Hours ranged from nine to fourteen. Wages averaged from twenty-five to seventy-five centavos a day and were diminished by fines, the obligation to buy from the company store and by exorbitant rents charged for the company-owned hovels in which the worker was compelled to live. If he lost a limb in the unprotected machinery, he was turned out to beg. If he lost his life, his family lost its hovel. The penal code prevented any effective attempt at improvement. Art. 925 of the Penal Code of 1872 punished with arrest and fine 'those who make a tumult or riot, or employ any other method of physical or moral violence for the purpose of raising or lowering the wages of the workers, or who impede the free exercise of industry and labor.' In 1907 textile operatives toiling for thirteen hours in the damp, hot, lint-filled rooms, humbly petitioning for better conditions were 'locked out'—to be starved into submission. When at Río Blanco, in Vera Cruz, a group maddened by hunger raided the company store, troops massacred two hundred men, women, and children. Some who escaped immediate slaughter were hunted down in the hills. Others were sent to the dungeons of San Juan de Ulloa.

"Over these theoretically free workers hung the constant menace of downright slavery. A word from the foreman, and a troublesome workman found himself under arrest, to swell the next labor consignment to the hot lands. Many a *jefe político* [political chief] dealt directly with 'Pancha' Robles, a notorious woman of Tuxtepec, who bought the *enganchado* [hooked one] at \$40 pesos [*sic*] a head and sold him for \$65 pesos [*sic*] delivered at the plantation. A contract apparently engaged him for but six months at so much a day. But when he sought to collect wages he was told of his debt for transportation or clothes. If he protested he was whipped. If he ran, the police who hunted him down were charged to his account. His entrapment was symbolic of the plight of all labor. The peon spawn was predestined. Caught for life—toiling, sweating, diseased, half-starved, swarming in rubbish-huts or in *casas de vecindad* [tenement houses], tenements that would shame a self-respecting pig—his only solace lay in the lethe of the *copita* [the wine cup] and in the promise of a better existence in the next world.

"Even for those in direct contact with the aristocracy, life was a bitter grind. An American visitor to Monterrey in the last Díaz decade noted that the cook of the household who came at seven in the morning and left at eleven at night, was paid ten pesos monthly, while 'faithful sewing girls work twelve hours a day for twenty-five cents, Mexican money.'"⁶

Under the Díaz régime there were germs of labor organizations, hardly more. In this connection Gruening says:

"Various labor organizations, mutualistic in character, existed before the fall of Díaz. An organization of mechanics was formed in Puebla in 1900. The railway workers were partly organized but when in 1908 they sought to strike the Government sent them back with the threat of shooting the leaders. In 1903 the textile workers of Orizaba

⁶Gruening, *Mexico and Its Heritage* (1928), 211 & 335, citing, at the end, McGary, *An American Girl in Mexico*, 21. The authors are indebted to The D. Appleton-Century Company for permission to make the extensive quotations from Gruening inserted in the text.

formed a benevolent society. There were other groups but to all intents organized labor was non-existent."⁷

Madero, the first revolutionary president (1911-1913), was interested only in establishing a political democracy and left the industrial system unchanged.⁸ During his administration, however, the Díaz ruthlessness was absent, and it was possible for workers to meet and organize.⁹ Because of this, reactionary business interests supported General Victoriano Huerta (1913-1914), and under him there was a return to rigid suppression of labor groups.¹⁰ Workers formed themselves into "red battalions" in the fight against Huerta, and in 1915 the revolutionary cause again triumphed.¹¹ Even during the period of military campaigns, various decrees were passed abolishing peonage and in other respects endeavoring to alleviate the condition of the workers.¹² However, Carranza, who then became president, and continued as such until his death in 1920, was not sympathetic with organized labor.¹³ Obregón, who succeeded him, was friendly to labor, and Calles and his successors have been more so.¹⁴

Notwithstanding the unsympathetic attitude of President Carranza, the revolutionary aspirations of labor found expression in the Constitution of 1917. Article 123 of that document is the Magna Charta of labor in Mexico. It consists of thirty detailed subsections, twenty-six of which are within the scope of this paper.¹⁵ They are carried forward into the present Labor Law, and will be discussed in connection with the various matters to which they relate. Article 4 of the Constitution guarantees freedom to engage in any form of economic activity, except professions specially controlled by the State. Article 5 prohibits compulsory labor and contains detailed provisions which will be discussed. It has been pointed out by a Mexican writer, that the fundamental purpose in the formation of Article 123 was to establish bases of protection for the laboring class against the capitalist and, at the same time, to establish, as one of the functions of the State, its intervention in labor problems to end a condition of social injustice; and the same writer points out that this is indicated by the term "Labor Law," in use in Mexico, as distinguished from "Industrial Law," employed in Europe.¹⁶

Article 123 provided that the federal congress, and the legislatures of the various States, should enact labor legislation, not contravening the provisions therein set forth.¹⁷ Immediately upon the promulgation of the Constitution,

⁷Gruening, *Mexico and Its Heritage* (1928), 336, n.2, by permission of D. Appleton-Century Company.

⁸The Department of Labor was established in 1911, and, with slight interruptions, has been at work ever since.

⁹Gruening, *Mexico and Its Heritage* (1928), 336.

¹⁰Gruening, *Mexico and Its Heritage* (1928), 336.

¹¹Gruening, *Mexico and Its Heritage* (1928), 338.

¹²Gruening, *Mexico and Its Heritage* (1928), 99.

¹³Gruening, *Mexico and Its Heritage* (1928), 509.

¹⁴Gruening, *Mexico and Its Heritage* (1928), 509.

¹⁵Subsections 15, 28, 29 & 30 relate to health and accident provisions, exempt property, insurance and co-operatives to build workers' homes.

¹⁶Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), iv, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

¹⁷Transitory Article 11 provided that the labor provisions of the Constitution should be in force in the meantime.

conflicts arose between capital and labor in regard to their rights under its provisions.¹⁸ The state and federal¹⁹ governments therefore hurriedly enacted labor laws. These statutes differed widely in scope and in character, some radically favoring labor and others emphasizing the protection of capital.²⁰ As was to be expected, this legislation contained defects resulting from inexperience and haste.²¹ A detailed discussion of it will not be attempted.²²

The uncertainties resulting from this mass of conflicting state legislation led both capital and labor to desire a uniform law of national application.²³ The tendency toward federalization was strengthened, as the labor movement grew in strength, by the increasing number of sympathetic strikes, which "changed many labor disputes, and almost all those of regional importance, into conflicts transcending the bounds of any unit of the federation."²⁴ In fact, through finding itself, of necessity, arbiter in such struggles, the federal government already was developing a system of national labor jurisprudence.²⁵

In 1929, the Constitution was amended to permit the federal congress to pass a labor law of national application.²⁶ The proposed national labor law then became the subject of very careful consideration by capital and labor, "both of whom set forth for the first time in Mexico, and with absolute freedom, their points of view."²⁷ A draft was prepared by experts, "of known revolutionary affiliation."²⁸ After approval by President Gil, it was submitted to most complete discussion in a great national convention of representatives of capital and labor, both Mexican and foreign, which lasted four weeks.²⁹

As was to be expected, in view of the background of political history, the

¹⁸Secretaría de Industria, Comercio y Trabajo, Departamento del Trabajo, Nota Final (1930 [sic]), 1219, published as a supplement to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

¹⁹For the Federal District and Territories.

²⁰Secretaría de Industria, Comercio y Trabajo, Departamento del Trabajo, Nota Final (1930 [sic]), 1220, published as a supplement to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

²¹Secretaría de Industria, Comercio y Trabajo, Departamento del Trabajo, Nota Final (1930 [sic]), 1220, published as a supplement to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

²²The various state laws, and the law governing the Federal District, have been collected by the Secretaría de Industria, Comercio y Trabajo, Departamento del Trabajo, in a 1255-page volume, under the title, *Legislación del Trabajo de los Estados Unidos Mexicanos*, published in 1928. The Department has suggested that the collection of laws should be supplemented by a study of the customary law of labor. Nota Final, 1220, published as a supplement to the collection.

²³Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), vi, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

²⁴Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), v, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

²⁵Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), vi, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

²⁶Const., Arts. 73(10) and 123(29) being amended. Decree of Aug. 31, 1929, *Diario Oficial*, Sept. 6, 1929.

²⁷Enrique Delhumeau, Praxedis Balboa, and Alfredo Inarritu, forming the Commission which prepared the draft of Federal Labor Code, in letter of transmittal, v, published as a preface to *Proyecto de Código Federal de Trabajo* (official ed. 1929).

²⁸Emilio Portes Gil, *Exposición de Motivos* (1929), xi, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

²⁹Emilio Portes Gil, *Exposición de Motivos* (1929), xi, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

discussion in the national congress was overwhelmingly pro-labor. The employers complained:

"The circumstance that in Congress not a single voice is raised in favor of capital, even when the deputies are disposed to listen to its representatives, is clear proof that capital and labor, in the discussion as well as in the application of a law of equilibrium, are very far from meeting each other on a footing of equality in defense of their rights."³⁰

The new Labor Law, as it was finally enacted and became effective August 28, 1931, contains much to protect the worker and little to aid the employer. This is in keeping with the world-wide tendency to protect by law the economically defenseless. It will be recalled that such an endeavor was evident in the later stages of the development of the Roman law. While the law now under consideration may differ in degree, in the protection afforded the worker, from labor legislation in other countries, those in charge of its preparation endeavored to be fair to capital as well as to labor, and in its final form it contains a number of provisions which were originally suggested by employers' groups as substitutes for more radical proposals.

The chief external influence upon the development of Mexican labor law has been French, commencing with the French law of March 2, 1884, legalizing labor unions, and the law of 1890, granting a cause of action for abrupt discharge.³¹ The American influence upon Latin American evolution, in this as in other ideological fields, has been negligible. In Latin America, as in Russia and throughout the rest of the world, the American influence has been mainly in the realm of industrial efficiency.

The political background is manifest throughout the provisions of the new law. The pro-labor attitude of the government is forcefully set forth in Gruening's description of strikes,³² inserted at the beginning of Section 24 of this article.^{32a} A Chilean author has stated recently that the labor movement "is more important and more highly organized in Mexico than in any other country in Latin-America."³³ The employers made the stock type of objections to the new law—that it would increase the cost of production to such an extent as to make competition with foreigners impossible, that capital would be discouraged from investing in productive enterprises, and that consequently those who desired to work would be deprived of opportunities to do so.³⁴ Because of difficulties which would be encountered in terminating labor contracts, once entered upon,

³⁰Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 5.

³¹Stumberg, Guide to the Law and Legal Literature of France (1931), 155. An excellent survey of the French labor legislation is to be found in the work cited, at pages 153-162.

³²Gruening, Mexico and Its Heritage (1928), 357-358.

^{32a}*Infra*, p.281.

³³Moisés Poblete Tronscoco, The Mexican Federal Labour Code, 27 International Labour Review (Geneva), 631 & 638 (1933).

³⁴Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 1-5, 9-11, 14, 16 & 21-22; Proyecto del Código Federal del Trabajo, con los Comentarios y Sugestiones hechos al mismo por la Comisión nombrada por las Asociaciones Patronales (1928), Anexo Núm. 2, Memorandum Sobre Las Condiciones Económicas Actuales de México, con Relación a la Industria y al Comercio. It was even suggested that enterprises already in existence would be compelled to close. Grupo Patronal, *op.cit.*, 21.

it was predicted that overtime and temporary work would cease.³⁵ Due partly to the force of these objections, there is a strong current³⁶ movement in Mexico, as elsewhere throughout the world, toward the erection of tariff barriers against foreign trade.

It often has been pointed out that labor law is peculiarly customary in origin. Principles developed by capital and labor, through the play of economic forces governing their relations, are later crystallized into law. This is illustrated in Mexico by the character of the provisions of the national collective contract of one hundred eighteen articles,³⁷ governing, throughout the country, the relations of capital and labor in the textile industry, the largest industrial activity in the Republic. The contract was approved by a joint convention of representatives of capital and labor, which held its first session October 6, 1925, and its last March 18, 1927. The regulations governing the Mixed Commissions set up under the contract consist of 34 articles,³⁸ and the tariffs of piece work compensation developed in the application of the contract cover 163 printed pages.³⁹ The contract is still in force.^{39a}

The Mexican labor law has less connection with the main body of the law than have the labor laws in other countries. This is because of the complete absence of recognition of any rights on the part of labor until after the Revolution of 1910. The labor law was a late and sudden development, and the Codes are still comparatively out of harmony with it. The Mexican jurist Toledano has developed this point:

"The absence of [juridical] technique isolates the labor law from the common law [the main body of the civil law] still more in our country than in others, as a consequence of which it is the latter which must be changed to overtake the former, contrary to what has occurred in countries with a European juridical structure."⁴⁰

The history of the labor movement in Mexico has been epitomized by Gruening:

"The street-car workers' story is in a sense the Mexican labor epic to date. Oppression, strivings, repression, conflict, defeat, conflict, victory, setbacks, failure through inexperience, betrayals, internal

³⁵Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 22.

³⁶March, 1934.

³⁷Published, together with piecework tariffs, and other material, by the Secretaría de Industria, Comercio y Trabajo, Departamento del Trabajo, under the title *Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares* (1927). Illustrations of exteriors and interiors of a considerable number of Mexican textile factories are to be found in the publication.

³⁸*Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares* (official ed. 1927), 63.

³⁹*Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares* (official ed. 1927), 85-247.

^{39a}Decree of Jan. 2, 1934, *Diario Oficial*, Jan. 6, 1934.

⁴⁰Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), iv, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

squabbles, personalism, and finally success—the achievement of dignified, body and soul sustaining employment, in which labor and capital can meet on a basis of mutual obligation, respect, and service.”⁴¹

The government is still pro-labor. The present tendency, however, is for power to be transferred from the labor unions to the government itself. If the ideals of the present national leaders prevail, the course of future development will be a lessening of disputes between capital and labor, and a gradual peaceful blending of their interests into those of a classless society. It should be added that at the present writing⁴² the Mexican press is full of reports of labor troubles. The question is now being discussed whether a threatened general sympathetic strike is outside the purview of the Labor Law. This will be considered later.⁴³

2. SCOPE OF APPLICATION

All workers by hand or brain, or both,⁴⁴ throughout the country, except government employees,⁴⁵ are within the Act.⁴⁶ The law has been held to apply even to a general agent in charge of landed properties.⁴⁷

Freedom to enter into any form of economic activity is guaranteed.⁴⁸ Liberty in connection with commerce in, or transportation to, centers of labor is protected.⁴⁹

None of the provisions of the law favoring the workers are waivable.⁵⁰ Cases not provided for in the law, or regulations pursuant thereto, are to be dis-

⁴¹Gruening, *Mexico and Its Heritage* (1928), 364, by permission of D. Appleton-Century Co. An excellent detailed study of the history of the Mexican labor movement is presented by Gruening, at pages 335-390. Many specific labor disputes, and the activities of various national labor organizations, are discussed. Each of the leading industries is considered separately.

⁴²March, 1934.

⁴³*Infra*, Section 24 of this article.

⁴⁴Labor Law of Aug. 18, 1931, *Diario Oficial*, Aug. 28, 1931, Art. 3. Future citations of the law will give only the article numbers. This study covers changes in the law up to March 1, 1934.

⁴⁵Article 2 states that the relations between the State and its employees will be governed by civil service laws. Article 123(18) of the Constitution states, among other things, that strikes are not lawful, in case of war, when they relate to establishments or services which are branches of the government. It is stated also that workers in the military factory establishments of the government are not comprehended within the foregoing provision, because of their resemblance to the national army. The last provision evidently contemplates their control by military law. These clauses of the Constitution, and the considerations which should govern the relations between the State and its employees, are discussed, in connection with proposed labor law provisions of a different character, in Emilio Portes Gil, *Exposición de Motivos* (1929), xiii-xv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

⁴⁶Arts. 1-5. Articles 4 and 5 contain provisions in regard to the representatives who will bind employers in dealing with workers, and in regard to who are to be considered employers.

⁴⁷To make the case stronger against the application of the Labor Law, the activities of the agent were conducted in a city other than that of the residence of the employer, an attorney. The case came before the court on a jurisdictional question. *Juez Segundo de Primera Instancia del Ramo Civil de Torreón v. Junta Central de Conciliación y Arbitraje de Aguascalientes*, 4 *Revista General de Derecho y Jurisprudencia* (Mexico), 447 (Supreme Court, Aug. 7, 1933).

⁴⁸Arts. 6-8; Const., Art. 4.

⁴⁹Arts. 11 & 13. They can be made subject only to governmental regulations and such charges as are expressly permitted by law.

⁵⁰Arts. 15 & 22(4); Const., Art. 5(5th par.) & 123(27).

posed of in accordance with custom or usage, or, in the absence of such, pursuant to the principles to be derived from the Labor Law, the principles of general jurisprudence which are consistent with the Labor Law, and equity.⁵¹ It has been suggested that the terms "custom" and "usage," as used in the law in this connection, include precedents established by labor boards.⁵² As will be seen later, no appeal lies to the courts should a board refuse to follow such precedents. A Mexican jurist has suggested that the most important principle outside the Labor Law in the present connection is that of unjust enrichment, for example, in connection with services rendered pursuant to a contract which the law declares to be void, or in excess of the hours permitted by the law.⁵³

3. PRINCIPAL FEATURES

An eight-hour day or seven-hour night is established. Under special circumstances, overtime work, not to exceed three hours in one day or three times in a week, is permitted. One rest day to each six work days is required. Each worker is given a paid vacation of six days a year. Employed mothers receive a paid rest period of eight days before delivery and one month thereafter.

A contract of labor can be terminated only pursuant to subsequent agreement or for just cause, and under certain circumstances the worker is then entitled to one month's salary. The penalty for wrongful discharge is three months' salary, or compliance with the employment contract, at the option of the worker. One hired for a limited period can be dismissed only in case the employer is able to establish that the need for his services has ended.

The employer of workers belonging to a syndicate is required, upon their request, to enter into a collective contract with them. A "closed shop" clause is valid. An employer may waive his rights under the law, but not so the workers. If the parties are unable to agree, a labor board fixes the terms of the contract. Appeal from the boards to the courts is possible only upon jurisdictional grounds. The boards are not required to proceed in accordance with legal rules of evidence, or to have evidence introduced to support their findings.

Lockouts are lawful only after prior approval by a labor board, granted upon the ground that excess of production makes necessary suspension of work to maintain prices on a profit-making basis. A board may declare a strike lawful if called to obtain the enactment or revision of a collective contract, or to accomplish equilibrium among the various factors of production, harmonizing the rights of labor with those of capital. A strike called in sympathy with a lawful strike is itself legal. If a board finds that a strike, duly declared, and for a lawful purpose, has been occasioned by fault on the part of the employer, he must pay the workers their salaries during the period of suspension. During a duly declared strike for a lawful purpose, strikebreakers may not be employed. A strike must be declared by a majority of the employees of the business. An illegal strike, persisted in, leads to termination of the contracts of employment.

⁵¹Art. 16.

⁵²Enrique Calderón, annotation to Art. 16 (Calderón's 2d ed. 1931).

⁵³Enrique Calderón, annotation to Art. 16 (Calderón's 2d ed. 1931).

At the end of the law are fourteen separately numbered transitory articles making the necessary provisions for putting the new law into operation.

4. INDIVIDUAL CONTRACT⁵⁴

All permanent⁵⁵ industrial⁵⁶ labor is required to be covered by a written contract,⁵⁷ which must contain certain specified provisions.⁵⁸ Each party is entitled to a copy.⁵⁹ An oral contract must be proved by the testimony of two witnesses, who may be fellow workers.⁶⁰ Temporary workers employed verbally are entitled to request a written statement of account every fifteen days.⁶¹ If either party refuses to sign a written contract after an agreement has been reached, the other may compel him to do so before a labor board.⁶² The want of a written contract, when such is required by law, or of any of the provisions which it should contain, will not deprive the worker of any rights conceded to him by law or the contract, as the defect is considered the fault of the employer.⁶³ It is presumed that there is a contract if services are rendered.⁶⁴ In the absence of express stipulations, the situation is governed by the Labor Law and suppletory standards.⁶⁵

It is not possible to contract for services for a limited period unless the work to be done is of such a character that its duration will be limited.⁶⁶ In

⁵⁴Arts. 17-41. [Footnotes in connection with titles give only the sections of the Labor Law collected under the corresponding heading or headings, and do not include constitutional provisions or scattered sections of the Labor Law which will be referred to.]

An individual contract of labor is defined as one by which one person binds himself to render to another, under his direction and in subordination to him, a certain service in return for an agreed compensation. Art. 17. It has been suggested that the word "direction" (*dirección*) in this provision should be interpreted to imply control of a technical or detailed character, and "subordination" (*dependencia*) to mean such a relationship within the economic order as establishes permanent employment relations between the parties. Enrique Calderón, annotation to Art. 17 (Calderón's 2d ed. 1931), citing Mexican and French authors.

⁵⁵Temporary work for a period not exceeding sixty days, and the completion of a defined task for less than 100 pesos, regardless of the time involved, are excepted. Art. 26(3 & 4).

⁵⁶Oral contracts are permitted for domestic service and for farm labor, except, as to the latter, in the case of rural workers furnished homes by their masters and referred to in the Law of Endowments and Restitution of Lands and Waters, of Mar. 21, 1929, Art. 14(6). Art. 26(1 & 2).

⁵⁷Art. 23.

⁵⁹Art. 23.

⁶⁰Art. 27.

⁵⁸Arts. 24 & 25.

⁶¹Art. 28.

⁶²Art. 31(2d par.). While the law is not specific, presumably this provision is to be applied only to contracts which the law requires to be in writing. This is indicated by the context set forth in the first paragraph of the article.

⁶³Art. 24(1st par.).

⁶⁴Art. 18.

⁶⁵Art. 18.

⁶⁶Art. 24(3) provides: "The contract of labor may be executed for a limited time only in those cases in which the formation of such contract results from the nature of the service which is to be rendered." Art. 39 is to the same effect. Art. 37, following closely the language of Const., Art. 5(5th par.), provides: "The contract of labor is binding only for the period previously agreed, without the power to exceed one year in prejudice of the worker." Presumably the last quoted provision is to be applied only to those cases in which the law permits the execution of contracts for limited periods.

While contracts to perform specified pieces of work are expressly permitted (Arts. 24(3) & 39), it seems clear that such agreements are valid only to satisfy temporary needs. The precedents established by the labor boards before the enactment of the new law make it clear that employers, even in classes of work where it would be feasible to do so, will not be permitted to use such contracts to retain a limited discretionary right to discharge employees. The boards held, when attempts were made to use such contracts in that way, that they represented an attempt to enable the employers to discharge workers without the indemnity provided by law, and that they constituted an endeavor to have the workers waive their irrenounceable rights. Enrique Calderón, annotation to Art. 39 (Calderón's 2d ed. 1931), citing board decisions.

the absence of such a provision in the law, employers could, by the execution of contracts covering only short periods, in effect discharge employees at will. Therefore some sort of statutory provision is necessary if tenure of employment is to be protected, and unreasonable discharges prevented, which is one of the leading purposes of the Act. On the other hand, the employers strenuously objected to being deprived permanently of power to discharge a worker except upon the establishment of certain facts. They protested that the provision cited tended to establish the principle that "the contract of labor is perpetual, or at least, that it is to exist, independently of the will of the employer, while the work which is the subject of the contract lasts."⁶⁷ In drafting other such legislation, a compromise between the two points of view would seem to be desirable.

No contract can exceed one year, to the prejudice of the worker.⁶⁸ This protection of the employee makes more striking, by way of contrast, the difficulty noted which is encountered by the employer who desires to terminate contracts. Neither this nor any of the other provisions of the law favoring the worker can be renounced,⁶⁹ but there is nothing to prevent the employer from waiving his rights. Contract stipulations in conflict with the provisions of the law, unless consisting only of a waiver of his rights by the employer, are void.⁷⁰ No contract can prevent a worker from entering into any form of economic activity, either permanently or temporarily.⁷¹ The Act provides that the contract binds the parties to that which is agreed, and to those consequences which are in conformity with good faith, usage or the law.⁷² The contract may be changed only by mutual agreement or pursuant to a labor board decision.⁷³

When an enterprise is sold, the labor contracts remain in force.⁷⁴ Both buyer and seller are liable for compliance therewith for six months, and thereafter only the buyer is liable.⁷⁵ Special requirements are imposed in connection with contracts for services to be rendered outside the country, or over one hundred kilometers from the worker's residence.⁷⁶ There are also special provisions relating to mines which lack reserve deposits, and to contracts to reopen mines.⁷⁷

⁶⁷Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 25.

The contract of employment of an employee occupying a position of direction, inspection, or financial responsibility is terminated if he loses the confidence of his employer. Art. 126(10). If he was promoted from a position on the seniority roster, he must be returned to his old place, unless grounds for discharge exist.

⁶⁸Art. 37.

⁶⁹Arts. 15 & 22(4); Const., Arts. 5(5th and 6th pars.) & 123(27g & 27h).

⁷⁰Art. 22. A stipulation for a tour of duty which is inhumane, by reason of being notoriously excessive, or dangerous to the worker, is null. Art. 22(7). Other requirements set up only in this section will be discussed elsewhere.

Const., Art. 123(27g), provides that a worker can not renounce his rights to workmen's compensation benefits or to damages because of non-performance of contract of employment or his discharge therefrom.

⁷¹Const., Arts. 4 & 5.

⁷²Art. 33. The same article provides that, if the contract does not specify the service to be rendered, the worker shall be obligated only to perform services compatible with his powers, aptitudes, state or condition, and of the kind involved in the undertaking in which the employer is engaged.

⁷³Art. 115. Calderón interprets this section as applying only to individual contracts. Enrique Calderón, annotation to Art. 115 (Calderón's 2d ed. 1931).

⁷⁴Art. 35.

⁷⁵Arts. 29 & 30; Const., Art. 123(26).

⁷⁶Art. 35.

⁷⁷Art. 40. Such a labor contract may be for a certain time or for a certain piece of work, or may provide for the investment of a certain amount of capital.

The continuance of the employment contracts upon the sale of an enterprise is an illustration of the tendency, inherent in any labor law, to change the position of the worker from one of contract to that of status. It may be said to be a step toward a new form of feudal organization of society, the enterprise here taking the place of the land. The worker is regarded as a component part of the assets and liabilities, and as such his rights and obligations pass with the business. Such a tendency is observable elsewhere in the modern law. It is to be expected that a spirit of status will pervade the application of all the provisions of a labor law. The Mexican legal mind makes an interesting theoretical recognition of this, in conceiving that a worker obtains a special status through having secured an employment contract designed to provide him with work, so that, in this capacity, *as a third party* he is to be protected by reason of the contract which he has entered into. This conception affords the key to what is, to the common law reader, otherwise an inexplicable problem of terminology. Article 6 of the Labor Law provides that the exercise of the right to labor may be restrained, by competent legal authority, in two classes of cases, one being where the rights of a third party are attacked. Article 7 states that the rights of a third party are attacked when an attempt is made to substitute another worker for one who has been discharged without the proper ruling by a labor board, or when a master refuses to reinstate a worker who has been absent with permission or by reason of sickness or *vis major*.

5. COLLECTIVE CONTRACT⁷⁸

A collective contract is one between one or more syndicates of workers and one or more employers, or one or more employers' syndicates.⁷⁹ In the Labor Law, the term "syndicates" (*sindicatos*) is applied to all organizations of employers or workers. If the workers are syndicalized, the employer is required to enter into a collective contract with them.⁸⁰ Twenty workers are the minimum number who can form a syndicate.⁸¹ The terms of the collective contract will, if necessary, be fixed by a labor board. If there are a number of syndicates, the contract is to be entered into with the one having the largest number of members.⁸² If there are syndicates composed of workers divided along trade lines, the contract is to be entered into with all the syndicates, if they can agree among themselves.⁸³ Otherwise a separate contract is to be executed with each.⁸⁴ The contract is required to be in writing, and a copy must be deposited with the proper labor board.⁸⁵ The contract applies to all employees of the enterprise, whether syndicalized or not.⁸⁶ In selecting employees, preference must be given to syndicate members.⁸⁷

⁷⁸Arts. 42-67.

⁷⁹Art. 42.

⁸⁰Art. 43.

⁸¹Art. 238.

⁸²Art. 43. Such a contract may not provide for terms less favorable to the workers than those of any other contract within the same enterprise.

⁸³Art. 43.

⁸⁴Art. 43.

⁸⁵Art. 45. No legal effects follow from the contract until these requirements have been complied with. The contract is required to cover certain specified points.

⁸⁶Art. 48. Except those performing executive or administrative functions. While in Art. 48 it is stated only in permissive form that they may be excluded from collective contracts, the positive prohibition in Art. 237 against their participation probably prevails. Castorena, *Manual de Derecho Obrero* (1932), 233, §275.

The draft of the Labor Law, as submitted to Congress, provided, contrary to European precedents, that the benefits of a collective contract should extend only to workers who are syndicalized, in order to encourage them to become members. Emilio Portes Gil, *Exposición de Motivos* (1929), xxiii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

⁸⁷Art. 111(1).

In connection with collective contracts, statutory provisions designed to prevent employers from taking advantage of workers are of comparatively little importance, as the labor leaders in charge of the syndicates see to it that the workers are protected. Article 22 of the Labor Law, setting forth a list of null stipulations, applies only to individual contracts, but a shorter list in Article 123(27) of the Constitution applies to collective contracts as well. It must be remembered also that, under no circumstances, can workers renounce any of the rights or advantages given them under the law,⁸⁸ although employers may. Therefore any stipulations in a collective contract conflicting with any of the provisions of the Labor Law would be void, as far as the workers are concerned.

A "closed shop" provision is valid;⁸⁹ but neither this nor any other provision of the contract may operate to the prejudice of workers already employed, who are not syndicate members.⁹⁰ When the law was under consideration, the employers objected that a "closed shop" clause, without limit as to time, is "contrary to public policy, because it signifies the indefinite or perpetual renunciation of liberty, on the part of the employer as well as of the workers."⁹¹

A "yellow dog" contract between an employer and unsyndicalized workers—i.e., one binding them not to join any workers' organization—would be invalid, because contrary to the spirit of the provision of the law⁹² requiring preference to syndicate members in granting employment. Such reasoning from the spirit of the principle contained in a statute is permissible in Latin American jurisprudence. The common law practice of using a fine-tooth comb to discover ways to restrict the operation of a statute is not followed in Mexico. It is paradoxical that, on the other hand, there does exist in the Latin American jurisprudence such a restrictive tendency when reviewing court decisions as precedents, in which field the common law is more liberal in searching for the general principles involved. The explanation is that in Latin America the Codes are interpreted in the light of legal principles laid down by commentators, rather than by any adherence to judicial precedents.

All rights arising out of a collective contract may be enforced by the syndicate.⁹³ Individuals involved may enforce their own rights if they have sustained individual damage.⁹⁴ The dissolution of a workers' syndicate, or the withdrawal of an employer from an employers' syndicate, does not affect the contract obligations.⁹⁵

A collective contract may be for a definite or for an indefinite period, or for certain work;⁹⁶ but under the Constitution it may not be for more than one year, to the prejudice of the workers.⁹⁷ Contrary to the spirit of the constitutional provision, the Labor Law provides that a collective contract is subject to revision every two years, at the request of 51 per cent. of the parties on either side.⁹⁸

⁸⁸Art. 15; Const. Arts. 5(5th par.) & 123(27g & 27h).

⁸⁹Art. 49.

⁹⁰Art. 49. An exception to this will be noted in regard to railroad workers in connection with preservation of seniority after layoffs. Art. 186. Consult Section 20, of this article, *infra*.

⁹¹Grupo Patronal de la República, Observaciones y Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 26.

⁹²Art. 111(1).

⁹³Arts. 52 & 54.

⁹⁴Art. 53.

⁹⁵Arts. 50 & 51.

⁹⁶Art. 55.

⁹⁷Const., Art. 5(5th par.).

⁹⁸Art. 56. The changes to be made will, if necessary, be determined by a labor board. Article 115, conferring an unlimited right to request revision, should be interpreted to apply only to individual contracts. Calderón, annotation to Art. 115 (Calderón's 2d ed. 1931).

When a collective contract has been signed by two-thirds of the employers and two-thirds of the syndicalized workers⁹⁹ in a certain branch of industry in a certain region,¹⁰⁰ a governmental decree may extend it to all other establishments in that branch of industry in the region.¹⁰¹ This is in accordance with European precedents.¹⁰² A contract thus extended is known variously as an "obligatory collective contract," a "regional contract," or a "contract-law" (*contrato-ley*).¹⁰³ A procedure is provided whereby the parties involved may be heard before such a decree is issued.¹⁰⁴ The provisions of a collective contract so extended prevail against contrary provisions in any collective contracts which may have been executed previously in the region, except insofar as the contracts already executed may contain provisions more favorable to the workers.¹⁰⁵ The employers objected strenuously to this exception, upon the ground that it would place the employer who had previously executed such a separate contract at a serious disadvantage in competition, as he would have to comply with the provisions of the regional contract and also with the more burdensome ones of his own, and upon the further ground that the inequalities among the workers thus permitted would nullify "the high aims of securing social peace through establishing equal conditions of remuneration of labor."¹⁰⁶ As the more favorable contract provisions already in force represent rights conferred by contract and not by law, they may be waived by the workers.¹⁰⁷ An employer failing to abide by the wage or work period provisions of a regional contract may be punished by severe fines.¹⁰⁸ A decree creating a regional contract may not be made effective for more than two years, but subsequent decrees of extension for like periods are permitted.¹⁰⁹

The outstanding example of a collective contract, as also of one extended by governmental decree, is the national contract of the textile industry, already

⁹⁹Art. 58. The article cited provides for signature of the contract "by two-thirds of the employers and syndicalized workers." It seems clear that the sense of the provision is that the employers and workers shall be figured separately. The relative number of the employers normally will be so slight that otherwise they would be practically deprived of any participation in the decision.

Figuring the percentage upon the number of workers represents a victory for the employers in the formation of the law. It had been proposed that the requirement be two-thirds of the employers and of the syndicates. The employers objected that this would enable a group of small employers and syndicates to make possible an extension of the contract over the great majority of the workers. Grupo Patronal de la República, Observaciones y Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 27.

¹⁰⁰The employers argued that the use of the word "region" (*región*) prevented the extension of a collective contract to the entire country. Grupo Patronal de la República, Observaciones y Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 27-28. In practice this hypercritical objection has been disregarded.

¹⁰¹Art. 58. President Gil upheld the constitutionality of the compulsion exerted upon the minority, on the ground that the Constitution recognizes collective persons and that the protection of society as a collective person is here involved. Emilio Portes Gil, Exposición de Motivos (1929), xxv-xxvi, published with Proyecto de Código Federal de Trabajo (official ed. 1929).

¹⁰²Emilio Portes Gil, Exposición de Motivos (1929), xxv, published with Proyecto de Código Federal de Trabajo (official ed. 1929).

¹⁰³Alfonso Teja Zabre, sub-title applied to Arts. 58-67 (Zabre's ed. 1931); as to contract-law, Enrique Calderón, annotation to Art. 63 (Calderón's 2d ed. 1931).

¹⁰⁴Arts. 59-62.

¹⁰⁵Art. 63.

¹⁰⁶Grupo Patronal de la República, Observaciones y Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 28.

¹⁰⁷Enrique Calderón, annotation to Art. 63 (Calderón's 2d ed. 1931).

¹⁰⁸Art. 674.

¹⁰⁹Art. 64.

discussed.¹¹⁰ Under earlier legislation, a bakers' contract was made obligatory throughout the Federal District, which embraces the City of Mexico and vicinity.¹¹¹ At least one presidential extension of the textile contract was made over the noisy protests of a substantial minority of the workers.¹¹² The textile contract provides for a trial period of employment of thirty days,¹¹³ thus giving the employer an important advantage not accorded him under the law. In view of the provisions of the Labor Law in regard to discharge of employees, and the fact that a worker can not renounce any of his rights, it seems that such a provision is now technically illegal.

6. SHOP AGREEMENTS¹¹⁴

The Labor Law provides for publication to the workers, through posting about the plant, of a considerable body of specified¹¹⁵ information in regard to their rights and duties. The rules set forth are to be in accordance with the prevailing collective contract, or, in the absence of such contract, are to be prepared by representatives of the employer and the employees.¹¹⁶ In addition, the employer may frame technical and administrative regulations for the conduct of the work.¹¹⁷ A copy of the shop agreement must be deposited with the proper labor board.¹¹⁸ The terms will, if necessary, be fixed or amended by the board.¹¹⁹

If the agreement permits suspension from work as a disciplinary measure, the period may not exceed eight days, and neither such suspension nor any notation of fault on the part of an employee is permitted to occur except after prior proof of the wrongful act, with intervention in behalf of the worker by a delegate of his syndicate, or, in default of such, by some other labor representative.¹²⁰

In the national textile collective contract it is provided that the number of members of any committee representing the workers shall not exceed six.¹²¹ It may not be amiss to suggest that this seems to be a case where six is a committee and more is a riot.

7. SUSPENSION OF CONTRACTS¹²²

The most important fact to be noted here is that, in general,¹²³ the employer who desires to suspend operations must first secure the approval of a labor

¹¹⁰Consult, Section 1 of this article, *supra*, and footnotes #37 and 39a. By Decree of Nov. 1, 1933, Diario Oficial, Nov. 23, 1933, a collective contract was made obligatory for one year in the baking industry of the city of San Pedro, Coahuila. By another decree of the same dates a collective contract was made obligatory for two years upon the nixtamal mills of the city of Ciudad Guzmán, Jalisco.

¹¹¹Emilio Portes Gil, *Exposición de Motivos* (1929), xxv, published with Proyecto de Código Federal de Trabajo (official ed. 1929).

¹¹²Oposición Para Ir a la Huelga, Excelsior, Mexico City, Jan. 15, 1933.

¹¹³Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares (official ed. 1927), Art. 12.

¹¹⁴Arts. 101-105. ¹¹⁵Art. 102. ¹¹⁶Art. 101. ¹¹⁷Art. 101. ¹¹⁸Art. 105. ¹¹⁹Art. 105. ¹²⁰Art. 102(9).

¹²¹Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares (official ed. 1927), Art. 71.

¹²²The exceptions being accident, *vis major*, contagious disease and death or incapacity of the employer. Arts. 116(5, 7 & 8) & 118.

board,¹²⁴ and legal proceedings before labor boards run true to form in not being noted for expedition.¹²⁵

Assuming that the employer is able to establish the facts to the satisfaction of the labor board, the provisions of the law are designed to make possible a total or a partial¹²⁶ suspension, if it is physically or financially impossible to continue the business on a profit-making basis.¹²⁷ The owner never can suspend from mere choice. If he lacks raw materials, he must show that this is not due to his fault.¹²⁸ If he lacks funds, he must also establish clearly (*plenamente*) that it is impossible for him to secure them.¹²⁹ If he relies upon inability to make profits, he must be able to show that this condition is well known and manifest (*notoria y manifiesta*).¹³⁰

Suspension of a business does not end the employment contracts.¹³¹ When work is resumed, notice must be given the former employees, in accordance with methods approved by the labor board, and they must be taken back if they apply within the period fixed by the employer, which can not be less than thirty days after the recommencement of work.¹³² In the national textile contract, previously referred to,¹³³ it is provided that workers' posts shall be held open for them for fifteen days after the ending of a period of suspension.¹³⁴ Here again the workers were willing to contract for a stipulation less favorable than that permitted under the irrenounceable provisions of the law.

There is no time limit upon the obligation to re-employ a worker absent with consent or by reason of sickness or *vis major*.¹³⁵ The employers have contended that the worker's right should terminate at the end of three or six months.¹³⁶

8. ENDING OF CONTRACTS¹³⁷

One of the strongest objections made by the employers already has been referred to, namely, that, as to nearly all¹³⁸ contracts, they were deprived of any power ever to discharge a worker without proving charges.¹³⁹ The Con-

¹²⁴Art. 118(2d par.).

¹²⁵Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 5 & 14.

¹²⁶Art. 117.

¹²⁷Art. 116(1-4).

¹²⁸Art. 116(1).

¹²⁹Art. 116(2).

¹³⁰Art. 116(4).

¹³¹Art. 119.

¹³²Art. 120. Calderón holds that the labor board should, if possible, fix the length of the period of suspension in its order of approval. Enrique Calderón, annotation to Art. 119 (Calderón's 2d ed. 1931). He is clearly correct in stating that in any event the workers could later request the board to rule that the causes of the suspension had ceased to operate.

¹³³Consult Section 1 of this article, *supra*, and footnote #37.

¹³⁴Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares (official ed. 1927), Art. 11 (last par.).

¹³⁵Art. 7(2). In connection with the workmen's compensation provisions, a time limit of one year is placed upon the obligatory re-employment of a worker absent because of accident or occupational disease. Art. 318. If such a worker can not perform his original task, he is to be given other work if possible. Arts. 319 & 320.

¹³⁶Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 23 & 38-39.

¹³⁷Arts. 57 & 121-128.

¹³⁸The exceptions being where services are temporary in nature (Arts. 24(3) & 39, consult Section 4 of this article, *supra*, and footnote #66, and the discussion *infra* in the instant Section), and where an employee occupying a confidential position loses the confidence of his employer. Art. 126(10), consult footnote #67, *supra*.

¹³⁹Arts. 7(1) & 121-122; Const., Art. 123(22); Section 4 of this article, *supra*; Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de

stitution provides that a worker who is wrongfully discharged, or who justifiably leaves his employment because of wrongful conduct on the part of the employer, is entitled, at the worker's option, to three months' salary *or to performance of the labor contract*.¹⁴⁰ As performance of the contract means to retain the employee, the discharge does not operate to remove him except by his consent. The employers protested that "practically the contract of labor is perpetual for the employer, and renounceable at any time by the worker."¹⁴¹ In the national textile contract, it is provided that in case of wrongful discharge the worker shall be re-employed and paid for the time lost.¹⁴²

It has been noted that services can be engaged temporarily only when such is their nature.¹⁴³ This means that even to lay off a temporary worker, although engaged in advance for a limited period, the employer must be able to prove, to the satisfaction of a labor board, that the need for the services was temporary. The employers argued that this would make them unwilling to take on temporary help and that thus the amount of available work would be reduced.¹⁴⁴

The Labor Law lists a considerable number of causes, more than a score of which have to do with fault on the part of the employee, which may bring the contract of employment to an end.¹⁴⁵ Failure of the employee to work diligently does not appear among them, but could, in certain cases, possibly be brought under the provision against disobedience of the employer or his representatives without just cause.¹⁴⁶ Failure to work diligently is punishable by a fine of from 5 to 100 pesos.¹⁴⁷ Discharge is permitted for analogous causes which are as serious as those mentioned,¹⁴⁸ and continued loafing would seem to

Ley Federal del Trabajo (1931), 25 & 39. Also 3 Anexos to Proyecto del Código Federal del Trabajo, con los Comentarios y Sugestiones Hechos al Mismo por la Comisión Nombrada por las Asociaciones Patronales (1931): Núm. 1, Memorandum Sobre la Conveniencia de Modificar el Artículo 123 de la Constitución Política de los Estados Unidos Mexicanos, 3; Núm. 6, Maximiliano Camiro, Memorandum Sobre la Terminación del Contrato de Trabajo Celebrado por Tiempo Indefinido, 1-9; Núm. 9, Maximiliano Camiro, Memorandum Sobre Legislación del Trabajo en los Estados Unidos Mexicanos, 11-12.

¹⁴⁰Const., Art. 123(22). If the employer submits to the arbitration of a labor board, and the worker elects to return, the Labor Law, in Article 122, specifically provides for the payment of wages for the period of unemployment until restoration. The penalties in case the employer refuses to submit to arbitration will be discussed in Section 28 of this article, *infra*. The employer, by refusal to submit to arbitration, can not substitute the penalties for that act for compliance with the worker's constitutional right to reinstatement. Consult the authorities cited in footnote #457, *infra*.

Under Art. 7(1) of the Labor Law, the wrongfully discharged employee's rights (as a "third party," consult Section 4 of this article, *supra*) are attacked when another worker is substituted for him, or an attempt is made to do so. Under Art. 6 he is entitled to an injunction against this.

¹⁴¹Asociaciones Patronales, Memorandum Sobre la Conveniencia de Modificar el Artículo 123 de la Constitución Política de los Estados Unidos Mexicanos, 3, Anexo Núm. 1 to Proyecto del Código Federal del Trabajo, con los Comentarios y Sugestiones Hechos al Mismo por la Comisión Nombrada por las Asociaciones Patronales (1931).

¹⁴²Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares (official ed. 1927), Art. 82. This provision will not operate to deprive the worker of his constitutional right to elect to receive three months' wages in lieu of re-employment.

¹⁴³Arts. 24(3) & 39; Section 4 of this article, *supra*. While a collective contract may be for a fixed period (Art. 55), termination of a collective contract without the execution of a new one throws the workers back upon their rights as individuals.

¹⁴⁴Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 18-19 & 26.

¹⁴⁵Arts. 57, 121 & 126.

¹⁴⁷Arts. 113(1 & 2) & 683.

¹⁴⁶Art. 121(11).

¹⁴⁸Art. 121(16).

come under this provision. A labor board has authority to require the insertion of failure to work diligently as a ground for discharge in a collective contract. Any ground specified in a contract which is not contrary to provisions of the Constitution or of the Labor Law is valid.¹⁴⁹

Physical or mental incapacity, and manifest inability of the employee to do the work, are recognized as sufficient causes,¹⁵⁰ the employee discharged to receive one month's salary.¹⁵¹ A similar payment is to be made if an extractive industry exhausts its materials,¹⁵² or in case of bankruptcy or judicial liquidation.¹⁵³ If the business is lawfully closed for some other reason, no payment to the workers is required, but if the owner establishes a similar enterprise within a year he must re-employ his former help or pay them three months' salary, at their option.¹⁵⁴ In case of technological discharge, that is, by reason of improved methods or machinery, which is permitted, the workers are to receive whatever amount is specified in their contract, or, in the absence of such agreement, three months' pay.¹⁵⁵

Absences from work are recognized as ground for discharge only when they amount to three in a month.¹⁵⁶ Injuries to property, unless intentional,¹⁵⁷ must be serious, and due entirely to the negligence of the worker.¹⁵⁸ Conduct endangering safety must be due to inexcusable negligence.¹⁵⁹ Habitually coming to work drunk or under the influence of a drug is cause for discharge.¹⁶⁰

The Labor Law also contains a list of acts on the part of the employer which will justify the worker in rescinding the contract of employment.¹⁶¹ In such event, the worker is entitled to three months' pay, without prejudice to any other contractual or statutory claims which he may have.¹⁶² One of the grounds mentioned is reduction of the worker's pay without his consent or the decision of a labor board.¹⁶³ If a worker quits his employment without being able to establish one of the grounds mentioned, he is subject to the "corresponding civil liability."¹⁶⁴ Unless the employer finds it difficult or impossible to replace him, the amount of this liability would seem to be negligible. It may also be assumed

¹⁴⁹Art. 126(2). The article cited does not set forth the qualification inserted in the text.

¹⁵⁰Art. 126(9).

¹⁵¹Art. 126(next to last par.).

¹⁵²Arts. 57(5) & 126(5).

¹⁵³Art. 126(7). If the contract is ended by reason of accident or *vis major*, and insurance against the loss is collected by the employer, the workers receive three months' salary (Arts. 57[last par.] & 126[last par.]) and the employer is required either to restore the enterprise in proportion to the insurance received or to pay the workers corresponding indemnity. Art. 126(12).

¹⁵⁴Arts. 57(next to last par.) & 126(next to last par.).

¹⁵⁵Art. 128.

¹⁵⁶Art. 121(10).

¹⁵⁷Art. 121(5).

¹⁵⁸Art. 121(6).

¹⁵⁹Art. 121(9). If intentional, it would be a threat, under Art. 121(2).

¹⁶⁰Arts. 121(13) & 114(4). These articles have been interpreted to mean that occasional drunkenness justifies only compulsory temporary abstention from work. Luis Rivera Flores, contra Empresa de los Ferrocarriles Nacionales de México, expediente: 15/930/1305, Jurisprudencia de la Junta Federal de Conciliación y Arbitraje, Jurisprudencia de la Junta Especial No. 2, Revista de Derecho Industrial, vol. 1, no. 2 (April, 1931), digested, annot. to Art. 114(4) (Zabre ed. 1931).

¹⁶¹Arts. 57, 123 & 127.

¹⁶²Art. 124; Const., Art. 123(22).

¹⁶³Art. 123(8).

¹⁶⁴Art. 125.

that normally the possibility of successful enforcement by the employer would be negligible. "Black lists" are prohibited.¹⁶⁵

9. OBLIGATIONS OF EMPLOYERS¹⁶⁶

The Labor Law contains a separate chapter listing additional obligations of employers, consisting of forty-three provisions.¹⁶⁷ Only those of special interest will be mentioned. There is a general provision that the employer must show the workers due consideration, abstaining from ill-treatment by word or deed.¹⁶⁸

The more important provisions have to do with relations with the syndicates, especially the imposition of the much discussed "check-off," that is, collection by the employer of union dues.¹⁶⁹ The employers objected that this compelled them to play the unpleasant rôle of "Englishman," a slang expression used to denote a collector of debts.¹⁷⁰ They argued also that the necessity for this method of collection proved that the syndicalization of the workers was not voluntary, and that it would tend to make the syndicates unpopular and to subject them to suspicions of improper alliances with the employers.¹⁷¹

Syndicalized workers must be preferred in granting employment.¹⁷² Readjustments of personnel are to be carried out in accordance with the provisions of the applicable collective contract.¹⁷³ In the absence of such, rights of seniority are to be respected, and, when other conditions are equal, syndicalized workers are to be preferred, so that they may remain employed.¹⁷⁴ This emphasizes again the influence which the law exerts in favor of syndicalization as a matter of social policy.

Workers are permitted to be absent, after due notice to the employer, upon governmental or syndicate duties, provided that the number of workers so involved is not large enough to interfere with the prosecution of the enterprise.¹⁷⁵ Their places are reserved for them for four years.¹⁷⁶ The worker loses his pay for the time of the absence, unless he makes up the time lost with an equal period of actual labor.¹⁷⁷ Employers are forbidden to influence workers in

¹⁶⁵Art. 112(7). While the Labor Law provision literally applies only to a black list of former employees of the same enterprise, it may be assumed that the principle involved would be applied to prohibit any other black list.

¹⁶⁶Arts. 111 & 112.

¹⁶⁷Arts. 111 & 112.

¹⁶⁸Art. 111(13).

¹⁶⁹Art. 111(19 & 20). Including not only syndicate dues, but deductions for co-operatives and savings institutions formed by the syndicates.

¹⁷⁰Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 12.

¹⁷¹Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 5 & 12-13. It was said that when employers had voluntarily agreed to deduct syndicate dues there had been numerous objections from individual workers. *Ibid.*, 37. It was also contended that the requirement was unconstitutional, because in violation of Art. 5, providing that "no one shall be obligated to render personal services without just compensation," and Art. 16, providing against non-judicial molestation of any person in his possessions. *Ibid.*, 12 & 37.

¹⁷²Art. 111(1).

¹⁷³Art. 111(22).

¹⁷⁴Art. 111(22).

¹⁷⁵Art. 111(11).

¹⁷⁶Art. 111(11). Temporary employees to take their places are permitted during that period. At its expiration such employees become permanent. The employers asked to have the period reduced to two years. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.

¹⁷⁷Art. 111(11). The employers objected to the last clause, upon the ground that it could easily be interpreted to mean that the employer was obligated to furnish the extra work. They contended that it should be expressly stated that the extra work was at the will of the employer. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.

regard to syndicate matters.¹⁷⁸ In rural districts, unoccupied space must be offered to the syndicates for rental.¹⁷⁹ As stated, "black lists" are prohibited.¹⁸⁰

Former workers who have served satisfactorily are entitled to preferential employment.¹⁸¹ An employee who leaves is entitled to a written testimonial.¹⁸² Pieceworkers are entitled to be compensated for time lost through fault of the employer.¹⁸³

Employers whose establishments are situated apart from villages or cities, or who have more than one hundred employees, are required to provide comfortable and hygienic dwellings for their workers.¹⁸⁴ The annual rent to be collected is limited to 6 per cent. of the assessed valuation.¹⁸⁵

Under the Constitution all employers, without limitation, are required also to furnish schools, hospitals and other necessary community services.¹⁸⁶ However, the constitutional provision is not self-executory, and under the Labor Law the obligation is limited to furnishing elementary schools when the place of work is situated in rural centers more than three kilometers from any town, and the number of children of school age exceeds twenty.¹⁸⁷ The teachers and curriculum are selected by the government, and the teachers must be paid not less than those employed in similar government schools.¹⁸⁸ Large employers must maintain a limited number of workers' fellowships for technical, indus-

¹⁷⁸Art. 112(3).

¹⁷⁹Art. 111(18). In the absence of such space, syndicates are permitted to use a portion of that set apart for workers' lodgings. The employers objected, in regard to the provision set forth in the text, that the syndicates would nearly always be able to find some place which was at least temporarily unoccupied, and that when once taken up by a syndicate it became permanently unavailable for the purpose for which constructed. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.

¹⁸⁰Art. 112(7). This provision is discussed in footnote #165, *supra*.

¹⁸¹Art. 111(1).

¹⁸²Art. 111(14).

¹⁸³Art. 111(16). The employers felt that this would give rise to numerous arguments. They suggested that their responsibility should be limited to furnishing the necessary materials and tools, unless prevented by *vis major* or some other cause independent of their will. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.

¹⁸⁴Art. 111(3); Const., Art. 123(12). Governmental regulations in regard to the time and method of compliance with this provision are provided for in the Labor Law (Art. 111[31]), although the Constitution does not place any limitation upon the obligation. Const., Art. 123(12).

The employers objected that this provision sets up an economic reform which experience has shown to be impossible to accomplish; also that executive rulings upon similar provisions in the past had resulted in their unequal application throughout the country. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 34. Such a provision appears in the national textile contract. Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute y Trabajos Similares (official ed. 1927), Art. 52.

¹⁸⁵Art. 111(3); Const., Art. 123(12). The employers may, in addition, collect their expenses in connection with repairs, taxes, the furnishing of water and other such matters. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 34. A provision in accordance with the terms of the law appears in the national textile contract. Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute, y Trabajos Similares (official ed. 1927), Art. 52.

¹⁸⁶Const., Art. 123(12).

¹⁸⁷Art. 111(8).

¹⁸⁸Art. 111(8), as amended by decree of Jan. 10, 1934, Diario Oficial, Jan. 20, 1934. The federal government is referred to. The prevailing policy is that all education shall be non-religious.

trial or practical studies.¹⁸⁹ Under certain circumstances an employer whose plant has a rural location is required to reserve an area for the establishment of municipal services.¹⁹⁰

10. OBLIGATIONS OF WORKERS¹⁹¹

Another chapter¹⁹² imposes a more limited list of obligations upon the workers, punishable by fine of from five to one hundred pesos.¹⁹³ Only a few will be mentioned. There is a general obligation to perform the service agreed, with the proper diligence and care, and in the form and at the time and place agreed.¹⁹⁴

All differences arising with the employer must be submitted to the proceedings set out in the Labor Law.¹⁹⁵ Workers must not suspend their labors, even though they remain at their posts, except in connection with a duly declared strike, and then they must abandon their place of work.¹⁹⁶ There must be no absence from work, except for just cause or with consent of the employer.¹⁹⁷ Workers must submit to compulsory physical examination.¹⁹⁸ Propaganda of any sort during working hours, within the establishment, is prohibited.¹⁹⁹ Upon termination of employment, rural workers and miners must surrender homes furnished by the employer within a month; other workers, within fifteen days.²⁰⁰

11. WAGES AND FINANCIAL PROVISIONS²⁰¹

The Constitution provides:

"The minimum salary which the worker shall enjoy shall be that which is considered sufficient, taking into account the conditions of each region, to satisfy the normal necessities of the life of the worker, his education, and his decent pleasures, considering him as the head of a family. In every agricultural, commercial, manufacturing, or mining enterprise, the workers shall have the right to a share in the profits"²⁰²

¹⁸⁹Art. 111(21). The award may be to the child of an employee. An employer of from 400 to 2,000 workers is required to maintain one fellowship; over 2,000, three. The fellowship holder must later accept employment in the enterprise, with appropriate compensation, for at least two years.

¹⁹⁰Art. 111(9); Const., Art. 123(13). Here again, the requirement of the Labor Law is less exacting than that of the Constitution. The former limits the obligation to rural centers of work with more than 200 inhabitants and situated not less than five kilometers from the nearest center of population. The space reserved must be not less than 5,000 meters square.

¹⁹¹Arts. 113 & 114. ¹⁹²Arts. 113 & 114. ¹⁹³Art. 683. ¹⁹⁴Art. 113(1 & 2).

¹⁹⁵Art. 113(7 & 8). ¹⁹⁶Art. 114(6). ¹⁹⁷Art. 114(2). ¹⁹⁸Art. 113(9). ¹⁹⁹Art. 114(9).

²⁰⁰Art. 113(13). The 15-day period as to certain employees represents a partial victory for the employers. They ask to have the proposed 30-day period reduced to 8, which they said was customary. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 37-38. The national textile collective contract allows a month. Convención Colectiva de Trabajo y Tarifas Mínimas de Aplicación en la República, para las Fábricas de Hilados y Tejidos de Algodón, Estampados, Lana, Bonetería, Yute, y Trabajos Similares (official ed. 1927), Art. 52. Being more favorable to the workers than the statutory provision, it may operate under the Labor Law.

²⁰¹Arts. 84-100.

²⁰²Const., Art. 123(6). The Labor Law adds that there shall be taken into consideration the providing of the necessary resources for the worker's subsistence during the weekly days of rest when he will not receive a salary. Art. 99. The law also provides that in the case of rural workers the various elements of subsistence furnished by the master shall be taken into account. Art. 99. The minimum wage may not be the subject of set-off or deduction. Art. 100.

These provisions of the Mexican Magna Charta of labor, Article 123 of the Constitution of 1917,²⁰³ envisaged a sweeping economic reform, and are in harmony with the spirit of the current American "new deal." Until stirred to emulate the example of the rich neighbor to the north, practically nothing was done under these provisions. Action is now²⁰⁴ being aggressively taken in accordance with them. The whole matter is, however, in the realm of current economics rather than of law.²⁰⁵ The Constitution provides for the setting up of special commissions to fix minimum wages and arrange for the sharing of profits.²⁰⁶ Apart from this, the labor boards have complete control over the amount of wages.²⁰⁷

There can be no discrimination as to wages because of age, sex or nationality.²⁰⁸ Wages must be equal under like conditions.²⁰⁹ The wages of manual laborers must be paid at least once a week, and of all other workers at least every fifteen days.²¹⁰ Overtime pay must be double.²¹¹ All payments of wages must be in cash.²¹² Full pay is required during the legally prescribed holidays and vacations.²¹³

Wages may not be paid in a shop or in a place of recreation, eating or drinking, unless the workers are employed there.²¹⁴ No obligation can be imposed upon employees to purchase articles of consumption at any particular shop or place.²¹⁵ No charges for securing employment are permitted,²¹⁶ and the Labor Law directs the executive departments to establish free employment agencies.²¹⁷

²⁰³Consult Section 1 of this article, *supra*.

²⁰⁴March, 1934.

²⁰⁵Former President Calles, one of the great living world figures, stated to Professor Irving Fisher, in October, 1933, that a study of ten States showed an average wage of 50 *centavos* (14 cents, United States currency) a day, and that he felt that this amount should be doubled. *New York Times*, Oct. 22, 1933.

President Rodriguez recently stated: "Although a few sections have shown advanced trends, it must be admitted that salaries are so low that the standard of national life has hardly emerged from the lamentable situation in which it was during the colonial epoch. I wish to emphasize the bitter truth of two concrete realities: 1. In various zones of the country, tractors have been retired from service because it is cheaper to till the soil with Egyptian plows. 2. Owners of ox teams and mule teams charge lower prices for transportation than buses, trucks, or railroads." He urges a minimum daily wage of from one to three pesos, in different sections of the country, to be graduated upward in future years. *Christian Science Monitor*, Boston, Sept. 12, 1933.

²⁰⁶Const., Art. 123(27b).

²⁰⁷Const., Art. 123(9), as amended, Decree of Oct. 28, 1933, *Diario Oficial*, Nov. 4, 1933. The pertinent provisions of the Labor Law are cited in note 421, *infra*.

²⁰⁸Arts. 22(5) & 86; as to sex and nationality, Const., Art. 123(7).

²⁰⁹Art. 86; Const., Art. 123(7).

²¹⁰Arts. 22(9) & 87. As to manual workers, Const., Art. 123(27c).

²¹¹Art. 92; Const., Art. 123(11). Except in case of imminent danger to life or to the existence of the enterprise. Art. 75.

²¹²Art. 89; Const., Art. 123(10). Merchandise, credit memoranda, tokens and other substitutes for money are expressly prohibited.

²¹³Art. 93. The employers argued that at least this burden should not be imposed "during the present moments of general crisis." Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 32.

²¹⁴Arts. 22(10) & 88; Const., Art. 123(27d). Article 88 of the Labor Law provides that payment must be made at the place of employment unless there is an express agreement to the contrary.

²¹⁵Arts. 22(11) & 112(1); Const., Art. 123(27e).

²¹⁶Const., Art. 123(25). Art. 112(2) of the Labor Law provides that employers may not receive payments from workers for granting employment, or in connection with the conditions thereof.

²¹⁷Art. 14.

Only the individual worker himself is responsible for debts contracted by him with his employer, and such debts are not valid in an amount exceeding one month's salary.²¹⁸ Deductions may be made by employers from wage payments only because of errors, losses or injuries by workers, previous advance or excess payments, the purchase of articles produced by the enterprise or rents.²¹⁹ These deductions can be made only by express agreement with the worker, and must not total more than 30 per cent. of the excess over the legal minimum wage.²²⁰ Deductions by way of fine are expressly prohibited.²²¹

Special formalities are required for any assignment of wages to a third party,²²² and any settlement or agreement between the employer and the worker must be executed before a labor board.²²³ There is no garnishment of wages,²²⁴ and in case the employer is sued by the worker there can be no set-off.²²⁵ Wages earned within a year, and workers' claims for damages, are preferred in bankruptcy, receivership, succession, attachment and garnishment proceedings.²²⁶ It is not necessary, however, for workers to intervene in such proceedings in order to collect their wages. They may apply to a labor board, which is authorized to transfer to them sufficient property to satisfy their claims.²²⁷

12. HOURS AND VACATIONS²²⁸

An eight-hour day,²²⁹ a seven-hour night,²³⁰ and a seven-and-a-half-hour "mixed" tour of duty²³¹ are established. Persons rendering domestic services in homes are permitted a greater number of day hours.²³² By previous agreement, the eight-hour period may be distributed over a larger number of day hours; and the forty-eight-hour week may be arranged so as to give Saturday afternoon off, or in any equivalent manner.²³³ To take care of industries where continuous operation is required, it is provided that the executive departments,

²¹⁸Art. 34; Const., Art. 123(24). These provisions are designed to eliminate peonage and the practice of charging the worker's debts against the other members of his family. The employers raised the question whether the constitutional provision applied to liabilities incurred by workers, such as through injuries to property, or errors or defaults in collections by them. Contending that it did not, they asked that the provision in the Labor Law be limited to debts "by way of loans." Grupo Patronal de la República, *Observaciones y Sugeriones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 25.

²¹⁹Art. 91. Advance payments may not bear interest.

²²⁰Art. 91. The employers objected that the 30% provision would make it impossible for them properly to collect the rents of the houses they were required to furnish the workers, and the other charges to be expected. Grupo Patronal de la República, *Observaciones y Sugeriones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 31.

²²¹Arts. 22(12) & 91; Const., Art. 123(27f).

²²²Arts. 90-91 & 96.

²²³Art. 98.

²²⁴Art. 95; Const., Art. 123(8).

²²⁵Art. 95; Const., Art. 123(8).

²²⁶Art. 36; Const., Art. 123(23).

²²⁷Art. 97. ²²⁸Arts. 68-83.

²²⁹Art. 69; Const., Art. 123(1).

²³⁰Art. 70; Const., Art. 123(2).

²³¹Art. 71. A "mixed" tour of duty must contain less than three and a half night hours, otherwise it is considered night work. Art. 71. Night work is that from 8 P.M. to 6 A.M. Art. 68.

²³²Art. 69. Since the Constitution, in Article 123(1 & 11), does not contain any such exception, a contract to that effect would be unenforceable, and it would be technically possible to maintain a suit in the courts for double pay, under Article 123(11) of the Constitution for the excess time over eight hours. The labor boards would not have jurisdiction, because outside the Labor Law. From a practical standpoint such a constitutional provision not carried forward into the Labor Law may be disregarded. This reasoning is applicable in other connections where it is not set forth.

²³³Art. 69. This is in conflict with the letter of Const., Art. 123(1).

after first hearing employers and workers, shall issue whatever regulations are necessary to adapt the provisions of the law to the necessities of particular industries or forms of work.²³⁴ When employees are unable to leave the establishment during the periods for rest and meals, time allotted for such purposes may not be deducted in computing the work periods.²³⁵ There is a general provision that any contract stipulation calling for a tour of duty which is inhumane, because notoriously excessive, is void.²³⁶

Overtime work is permitted only under special circumstances.²³⁷ Even then it may not exceed three hours a day, and may not occur more than three times a week.²³⁸ There is no limit in cases of imminent danger to life or to the existence of the enterprise.²³⁹

At least one day of rest to each six of work is required.²⁴⁰ Each worker after one year's service is entitled to an annual paid vacation of at least four work days, and after two years to at least six, in either case unjustified absences to be deducted from the vacation period.²⁴¹ Three paid holidays each year are also obligatory.²⁴²

13. WOMEN AND CHILDREN²⁴³

Women and children must be given the same pay as men for the same work.²⁴⁴ With parental consent, children are permitted to go to work at twelve,²⁴⁵ a lower age than in most countries. Up to sixteen they are limited to six hours.²⁴⁶ Women and children under sixteen may not perform work of the following kinds: overtime; unhealthful; dangerous; night industrial; nor in commercial establishments after 10 P.M.²⁴⁷

Minors of both sexes, even though not emancipated, are given full capacity in regard to the execution and performance of labor contracts.²⁴⁸ A married woman does not need the consent of her husband, in connection with either the labor contract²⁴⁹ or syndicate matters.²⁵⁰ Working children of twelve may

²³⁴Art. 83. The Constitution does not expressly provide for this. Const., Art. 123(1, 2 & 11).

²³⁵Art. 73. The employers objected that a tour of duty is nothing but the quantity of time actually spent working, and that therefore this provision should be stricken out. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 29.

²³⁶Art. 22(7); Const., Art. 123(27a).

²³⁷Art. 74; Const., Art. 123(11).

²³⁸As to the three-hour provision, Art. 74 and Const., Art. 123(11). The constitutional provision adds that overtime must not occur on more than three consecutive days. Art. 74 of the Labor Law is more strict, providing that it must not occur more than three times within a week.

²³⁹Art. 75. The Constitution does not contain this exception.

²⁴⁰Art. 78; Const., Art. 123(4). When the nature of the enterprise is such as to require continuous work, the parties are to agree as to which shall be the rest days of the various workers after six consecutive days of work. Arts. 78 & 81.

²⁴¹Art. 82.

²⁴²Art. 80—the dates being May 1st, September 16th and December 25th.

²⁴³Arts. 106–110.

²⁴⁴Arts. 22(5) & 86; as to women, Const., Art. 123(7).

²⁴⁵Arts. 20 & 22(3); Const., Art. 123(3).

²⁴⁶Art. 72; Const., Art. 123(3).

²⁴⁷Arts. 22(2 & 6), 72, 76–77 & 106–109; Const., Art. 123(2).

²⁴⁸Art. 19.

²⁴⁹Art. 21. Castorena says: "In the working class the married woman always has worked, and never has obtained authorization [from her husband] to do so." Manual de Derecho Obrero (1932), 232, §273.

²⁵⁰Art. 241.

join syndicates, but may not participate in the administration or direction under sixteen.²⁵¹

For three months prior to delivery, prospective mothers are not to perform labor which requires considerable physical effort.²⁵² For eight days before delivery and one month thereafter, they are given a rest period with full pay, preserving their position and all seniority rights.²⁵³ If still unable to resume work, they may, in the absence of agreement to the contrary, take as much additional time as may be necessary, without pay, preserving their position and all rights.²⁵⁴ During the period of lactation mothers are entitled to two extra rest periods daily, of one half hour each.²⁵⁵

14. MORALS

Gambling resorts, houses of assignation and establishments for the drinking of beverages containing an alcoholic content in excess of five per cent. are prohibited in all centers of work, and within four kilometers of any work center situated apart from villages or cities.²⁵⁶ Women and children under sixteen may not work in resorts for the consumption of intoxicating liquors.²⁵⁷ Minors under sixteen may not be employed in houses of assignation.²⁵⁸

15. APPRENTICES²⁵⁹

The apprenticeship of the Middle Ages, when the youth lived with his master, who assumed a position *in loco parentis*, has largely disappeared.²⁶⁰ In many industries, the present splitting up of the various steps in production creates detailed operations such that the process as a whole does not lend itself to the comprehension of the worker.²⁶¹ Technical instruction is more and more undertaken by the State.²⁶² Apprenticeship tends to degenerate into a method of securing cheap labor.²⁶³ There is here special need to make effective the general purpose of the Labor Law to protect those who would otherwise be defenseless.

Protection is afforded the apprentice chiefly by the provision that he is to be examined each year, or whenever he requests it, by a board, to determine whether he has attained the proficiency necessary to enable him to perform the work in which he is being trained,²⁶⁴ thus bringing the apprenticeship to a close.²⁶⁵ The apprenticeship relation is subject to the general principles of

²⁵¹Art. 239.

²⁵²Art. 110; Const., Art. 123(5).

²⁵³Arts. 79 & 94; Const., Art. 123(5). The employers argued that too much protection to women would deprive them of work. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 30 & 33.

²⁵⁴Art. 110.

²⁵⁵Art. 79; Const., Art. 123(5).

²⁵⁶Art. 12; Const., Art. 123(13).

²⁵⁷Arts. 106-107.

²⁵⁸Art. 106.

²⁵⁹Arts. 218-231.

²⁶⁰Castorena, Manual de Derecho Obrero (1932), 181, §194.

²⁶¹Castorena, Manual de Derecho Obrero (1932), 185, §201.

²⁶²Castorena, Manual de Derecho Obrero (1932), 185, §201.

²⁶³Castorena, Manual de Derecho Obrero (1932), 181, §195.

²⁶⁴Art. 227.

²⁶⁵Termination of the apprenticeship is not expressly stated, but is clearly to be inferred. The obligation of the employer, in Art. 224(1), to furnish instruction, would, for example, thereafter be meaningless.

the Labor Law, including those relating to minors, except insofar as expressly negated.²⁶⁶ The compensation of the apprentice may consist wholly or entirely of maintenance.²⁶⁷ In case of wrongful discharge, or termination of the contract by the apprentice because of improper conduct on the part of the master, the apprentice is entitled to damages in an amount equal to his compensation for a month and a half.²⁶⁸

In order to eliminate the familiar practice of preventing youths in sufficient number from learning trades,²⁶⁹ it is made obligatory upon employers and workers in each industry to admit apprentices in a number not less than five per cent. of the total number of workers.²⁷⁰ The children of syndicalized workers of the enterprise are to be preferred when apprentices are engaged.²⁷¹ Upon conclusion of his period of instruction, the former apprentice is entitled to preference in the filling of vacancies which may occur.²⁷² On railroads and ships apprentices must be at least sixteen years old.²⁷³

16. PREFERENCE FOR MEXICANS

Ninety per cent. of the workers in any enterprise must be Mexicans.²⁷⁴ The percentage must be figured separately for each class of technical and of non-technical workers.²⁷⁵ A labor board may permit the percentage to be temporarily reduced in regard to the technical workers.²⁷⁶ If the total number of employees is less than five, the percentage is reduced to eighty.²⁷⁷ Directors, executives, managers and superintendents are excepted from these provisions.²⁷⁸ All doctors must be Mexicans.²⁷⁹ Mexicans must also be preferred, when other conditions are equal, in granting employment.²⁸⁰

All orders and directions to workers must be given in Spanish,²⁸¹ and all foremen and other employees dealing directly with the workers must speak and understand Spanish.²⁸² Wages may not be affected by nationality.²⁸³

17. SMALL INDUSTRIES²⁸⁴

Small industries, and the special classes of work to be described in the following sections of this article,²⁸⁵ are subject to the general provisions of the law except insofar as expressly excepted.²⁸⁶ Only points of special interest will be referred to.

²⁶⁶Art. 222; Castorena, *Manual de Derecho Obrero* (1932), 182, §195 *bis*. The contract of apprenticeship is required to cover certain specified points. Various periods of instruction, with different rates of compensation, are contemplated. Arts. 218-220, esp. Art. 220. Obligations of the master and the apprentice are listed. Arts. 223-226.

²⁶⁷Art. 224(2).

²⁶⁸Art. 226.

²⁶⁹Emilio Portes Gil, *Exposición de Motivos* (1929), xxviii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

²⁷⁰Art. 221. If there are fewer than twenty workers, one apprentice is nevertheless required.

²⁷¹Art. 221.

²⁷²Art. 224.

²⁷³Art. 231.

²⁷⁴Art. 9. Six months were allowed to comply with this provision. Transitory Art. 2d.

²⁷⁵Art. 9. The employers complained that the provision in regard to classes of technical workers was too vague and would give rise to many controversies. Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 24.

²⁷⁶Art. 9.

²⁷⁷Art. 9.

²⁷⁸Art. 9.

²⁷⁹Art. 10.

²⁸⁰Art. 111(1).

²⁸¹Art. 10.

²⁸²Art. 10.

²⁸³Arts. 22(5) & 86; Const., Art. 123(7).

²⁸⁴Arts. 206-217.

²⁸⁵Sections 18-21 of this article, *infra*: domestics, seamen, railroads, farms, grazing and forests.

²⁸⁶Art. 41.

Two varieties of small industries are largely excepted from the provisions of the law. Family shops (*talleres familiares*), being those where the workers are the wife, descendants or wards of the master, are entirely freed, except as to health and hygiene.²⁸⁷ Home work (*trabajo a domicilio*), where raw materials and articles to be used in manufacture are delivered to persons who work without supervision, is freed, except as to health and hygiene, and a requirement that the piecework rate must not be less than that given for similar work in a factory.²⁸⁸

Other small industries are defined as those which employ less than ten workers, if they use power-driven machinery, or, if no such machinery is used, less than twenty.²⁸⁹ They are not required to give annual vacations,²⁹⁰ and a labor board may reduce their workmen's compensation payments to as low as 20 per cent. of the amounts provided for the larger industries.²⁹¹ The purpose of the law here obviously is to favor the small struggling enterprise as against large industry, and to adapt the legal requirements to its comparative weakness.

18. DOMESTICS²⁹²

Domestic services unless rendered in homes are not subject to any special provisions.²⁹³ Domestic of either sex in homes are excepted from the provisions of the Act in regard to hours.²⁹⁴ They must be afforded an opportunity to attend night schools.²⁹⁵ In case of an illness which is not chronic they are entitled to one month's salary, and the employer must either provide them with medical care until cured or place them in some charitable institution.²⁹⁶ In case of death, the employer must pay the expenses of burial.²⁹⁷ These provisions relate to illness and death outside the field of workmen's compensation, and do not lessen the rights of domestics within that branch of the law.²⁹⁸

19. SEAMEN²⁹⁹

The contract of maritime service must be executed in quadruplicate, one copy being filed with a labor board and another with the Captain of the Port.³⁰⁰ The term of service may be for a definite or for an indefinite period, or by the voyage.³⁰¹ The seaman must be returned to the port where taken on, or to a port specified.³⁰² Wages may be different for the same services when rendered on ships of different categories.³⁰³ The owner must bear the expense of transmitting funds from the crew to their families, when the ship is in foreign

²⁸⁷Arts. 208 & 211-212. The Law of Family Relations is important here. Castorena, *Manual de Derecho Obrero* (1932), 197, §218, citing Arts. 52-53, 57-58, 72-74, 240 & 244-245 of said law.

²⁸⁸Arts. 207 & 213-214. Special reports are required from those giving out the work. Arts. 215 & 217.

²⁸⁹Art. 206.

²⁹⁰Art. 210.

²⁹¹Art. 209.

²⁹²Arts. 129-131.

²⁹³Art. 129.

²⁹⁴Art. 69.

²⁹⁵Art. 130(4).

²⁹⁶Art. 130(3).

²⁹⁷Art. 130(5).

²⁹⁸Castorena, *Manual de Derecho Obrero* (1932), 194, §214.

²⁹⁹Arts. 132-173.

³⁰⁰Art. 137.

³⁰¹Art. 138.

³⁰²Art. 138.

³⁰³Art. 142. This is not considered a violation of the principle, set forth in Article 123(7) of the Constitution, that for like work the wages must be the same. The constitutional principle is carried forward into Article 86 of the Labor Law.

countries.³⁰⁴ A strike may be declared only when the ship is in port.³⁰⁵ A few provisions relate only to river and interior navigation.³⁰⁶

20. RAILROADS³⁰⁷

Only Mexican workers may be employed, except that in executive posts the foreign personnel which is necessary may be used, and in technical or administrative positions foreigners are permitted when no Mexicans are available.³⁰⁸ Except as to those occupying posts designated in the collective contract as confidential,³⁰⁹ promotions are to be based upon physical capacity, efficiency and seniority, as prescribed in the contract.³¹⁰ By agreement, the hours constituting a day's or night's work may be divided into not more than three shifts, separated by limited intervals.³¹¹ Wages for the same services may vary when rendered upon lines or branches of unequal importance.³¹² Workers near the age of pensioning are not to be discharged because of slight faults.³¹³

21. FARMS, GRAZING AND FORESTS³¹⁴

Rental contracts are not governed by the Labor Law,³¹⁵ except that workmen's compensation payments to laborers working for a tenant are to be apportioned between the landlord and tenant.³¹⁶ The workers habitually employed³¹⁷ must be furnished homes and land, subject to a number of detailed regulations.³¹⁸ Wages must be paid on the estate where the services are rendered.³¹⁹ Vacations are to be governed by the provisions of the labor contract.³²⁰ Special provisions in regard to hours are conspicuous by their absence.³²¹

22. WORKMEN'S COMPENSATION³²²

Workmen's compensation provisions are included in the Labor Law.³²³ In the preparation of this portion of the law, the principal statutes of the kind throughout the world, and the experience of the various branches of industry in the different climates of Mexico, were considered,³²⁴ and the provisions are drawn up along familiar lines. To one not a member of the medical profession, they would seem to cover, insofar as employment is concerned, "every ill that human flesh is heir to." Forty occupational diseases are listed,³²⁵ and 242 varieties of partial disability,³²⁶ both subject to administrative amplification.³²⁷

³⁰⁴Art. 161.

³⁰⁵Art. 170.

³⁰⁶Art. 171.

³⁰⁷Arts. 174-189.

³⁰⁸Art. 175.

³⁰⁹Art. 174.

³¹⁰Art. 177. The ambiguity in the text is a reflection of that in the Act.

³¹¹Art. 180.

³¹²Art. 181. See footnote #303, *supra*.

³¹³Art. 185.

³¹⁴Arts. 190-205.

³¹⁵Art. 191.

³¹⁶Art. 192.

³¹⁷Art. 190.

³¹⁸Arts. 196-197 & 201-205.

³¹⁹Art. 198.

³²⁰Art. 200.

³²¹Castorena, *Manual de Derecho Obrero* (1932), 200, §221.

³²²Arts. 284-327.

³²³Arts. 284-327. Workmen's compensation is provided for in Const., Art. 123(14), and Const., Art. 123(27g) avoids any waiver of rights to compensation.

³²⁴Emilio Portes Gil, *Exposición de Motivos* (1929), xxxix, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

³²⁵Art. 327.

³²⁶Art. 326.

³²⁷Art. 323.

Employers are required to take out compensation insurance with a Mexican company.³²⁸ Subject to the approval by a labor board of the necessary guaranties, an agreement may be entered into for the payment of other amounts, either throughout life or for a limited period, which will be equivalent to those called for by the law.³²⁹

23. SYNDICATES³³⁰

The term "syndicate" refers to organizations of employers as well as of workers.³³¹ The Constitution guarantees to both the right to unite in defense of their respective interests.³³²

The members³³³ of an employers' syndicate must be engaged in the same branch of industry.³³⁴ In regard to workers' syndicates, in framing the Labor Law, the existing varieties of organizations were accepted.³³⁵ It is therefore provided that they may be of the following kinds:

(1) Guild (*gremial*), formed of those engaged in the same profession, trade, or kind of work;

(2) Enterprise (*de empresa*), formed of those engaged in different professions, trades or kinds of work, but employed in the same industrial enterprise;

(3) Industrial (*industrial*), formed of those engaged in different professions, trades or kinds of work, and employed in two or more industrial enterprises;

(4) Diverse-trade (*de oficios varios*), formed of workers in different trades, permitted only when the number of workers in the same trade in a municipality is less than twenty.³³⁶

The tendency is away from guild organizations.³³⁷ Federations and confederations of syndicates may be formed.³³⁸ The minimum number of members of a workers' syndicate is twenty.³³⁹ Workers performing executive or administrative functions may join,³⁴⁰ but can not participate in collective contracts with employers.³⁴¹ Foreigners may belong, but can not be directors.³⁴²

The by-laws are required to cover the points which have been found by experience most likely to give rise to disputes.³⁴³ Syndicates must register with the labor authorities³⁴⁴ and make reports to them.³⁴⁵ A syndicate is required to have a board of directors, which must render to the general assembly of members, at least semi-annually, a complete and detailed account of the administra-

³²⁸Art. 305.

³²⁹Art. 306.

³³⁰Arts. 232-257.

³³¹Art. 232. Whether of the same or of different professions, trades or kinds of work.

³³²Const., Art. 123(16). And to form syndicates, professional associations, etc. *Ibid.* Const., Art. 28(3d par.), exempts organizations of workers from the charge of being monopolies.

³³³The minimum number is three. Art. 238.

³³⁴Art. 238.

³³⁵Castorena, *Manual de Derecho Obrero* (1932), 230, §270.

³³⁶Art. 233. The features which combine to distinguish diverse-trade syndicates are, in addition to the requirement as to the number of workers in the municipality, that they are limited to skilled workers and that the members may be employed in two or more enterprises which are not industrial.

³³⁷Castorena, *Manual de Derecho Obrero* (1932), 230, §270.

³³⁸Art. 255. Any agreement limiting withdrawal is void. Art. 256. They must register with the federal Department of Labor. Arts. 255 & 257.

³³⁹Art. 238.

³⁴⁰Art. 237.

³⁴¹See footnote #86, *supra*.

³⁴²Art. 240.

³⁴³Art. 246. Castorena, *Manual de Derecho Obrero* (1932), 237, §282.

³⁴⁴Arts. 242-245.

³⁴⁵Art. 248.

tion of the funds.³⁴⁶ This requirement can not be waived.³⁴⁷ It is provided that syndicates may enforce collective contracts against their members,³⁴⁸ but in general the relations with the members are not covered by the law.³⁴⁹

Duly registered syndicates are legal entities³⁵⁰ and are bound civilly by the acts of their boards of directors, when acting within the scope of their authority.³⁵¹ Syndicates may acquire personal property, and buildings used immediately and directly to further their objects.³⁵² They may form co-operatives and savings institutions.³⁵³ In general they may perform any acts designed to promote the economic or cultural well-being of their members,³⁵⁴ except that they may not engage in activities for profit,³⁵⁵ and may not take part in religious or political activities.³⁵⁶ Upon dissolution, the assets are distributed in accordance with the by-laws.³⁵⁷ In the absence of provision therein, they pass to the federation to which the syndicate belonged, and, lacking such, to the State.³⁵⁸

Theoretically, workers are left entirely free to join syndicates or not.³⁵⁹ Those who have followed this study thus far will realize that, even under the provisions of the law, to say nothing of the economic and human aspects of the situation, this freedom is largely illusory.³⁶⁰ Added to all this must be considered the prevailing overwhelmingly pro-labor attitude of local political leaders and of the government. Public opinion is still divided, but the tendency is pro-labor. Any stipulation for a fine in case of withdrawal from a syndicate is void,³⁶¹ but the collective contract is expressly permitted to provide for the discharge from their employment of workers withdrawing or dismissed from the syndicate.³⁶²

³⁴⁶Art. 250. Other organs than those referred to in the law may be formed by a syndicate. Castorena, *Manual de Derecho Obrero* (1932), 237, §283.

³⁴⁷Art. 250.

³⁴⁸Art. 52(3).

³⁴⁹Emilio Portes Gil, *Exposición de Motivos* (1929), xxi, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

³⁵⁰Art. 247.

³⁵¹Art. 252.

³⁵²Art. 247.

³⁵³Art. 111(20). Castorena, *Manual de Derecho Obrero* (1932), 235, §278 & 241, §290.

³⁵⁴Castorena, *Manual de Derecho Obrero* (1932), 239, §246.

³⁵⁵Art. 249(2). Upon doing so they would become mercantile organizations, subject to the Commercial Code. Co-operatives and savings institutions are not within this prohibition (Art. 111[20]), as they are considered merely means to effect economies.

³⁵⁶Art. 249(1). It will be realized that the abstinence from politics is more technical than real. It is also expressly provided that syndicates must not use violence against workers to compel them to become syndicalized, and must not foment tortious acts against persons or property. Art. 249(3 & 4).

³⁵⁷Art. 254.

³⁵⁸Art. 254; Emilio Portes Gil, *Exposición de Motivos* (1929), xxxiv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929). Art. 253 provides bases for dissolution. Art. 430 also provides generally for dissolution by a labor board. This aspect of the law is open to difficulties. Castorena, *Manual de Derecho Obrero* (1932), 242, §293.

³⁵⁹Arts. 49 & 234.

³⁶⁰Castorena, *Manual de Derecho Obrero* (1932), 229, §267. Syndicates may appear before the labor boards in defense of the individual rights of their members. Art. 460; consult footnote #445, *infra*.

³⁶¹Art. 235.

³⁶²Art. 236. The employers asked to have a provision inserted prohibiting syndicates from "using coercion upon employers to compel them to discharge workers or to refuse them work without justifiable cause." The reason given for the request was the prevalence of abuses committed through direct action against employers to compel them to discharge or to deny employment to certain workers, on the ground of non-syndicalization or of membership in other syndicates. Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 41.

24. STRIKES³⁶³

Common law readers approaching the subject of strikes in Mexico should be furnished with a description of what a strike means under an actively friendly government. Gruening, speaking of Mexican labor struggles, says:

"The technique of these strikes is important, for it should be understood that government backing and not labor strength has been the real deciding factor in virtually every one of them. When a strike is declared the strikers plant labor's red and black flag—*la bandera rojinegra*—in the doorway of shop or factory. The flag acts not merely as announcement but as an effective padlock. None may come or go, striker or non-striker. Federal troops enforce this labor fiat. That these forces are to preserve order and prevent sabotage or other damage to the owner's property incidental to the strike is the allegation. Their truer purpose is to support the strikers.

"While under Díaz the Government invariably sided with capital, now in the majority of cases the shoe is on the other foot. And whereas in the United States a foreign labor agitator is deported for activities deemed against 'our form of government,' in Mexico it is the foreign capital agitator, the superintendent who violates constitutional provisions and refuses to comply with the labor laws, who may have Article 33, the constitutional article which gives the president the power 'to expel from the republic forthwith, and without judicial process, any foreigner whose presence he may deem inexpedient,' applied to him—a policy both nationalistic and popular. Of course the ill-fated foreign manager or foreman who 'gets thirty-three-ed,' may be no more guilty of any real offense than many a luckless alien worker in the United States whom a chance remark or reputation for 'radicalism' has made an object of suspicion and persecution. In many strikes not only is the factory embargoed, but the company's private offices situated elsewhere are likewise beflagged—even when there may not be a single striking employee within. The courts alone through an *amparo* may give relief. Prevented from hiring strike-breakers and also deprived of access to files, mail, telephone, the manager has little choice but to yield; and as the constitution provides that he must pay the strikers' wages when the strike has been 'lawful,' which it can almost always be declared to be, the mounting indemnity makes quick yielding desirable. It is the employer not the worker who is 'starved out' in a long drawn-out strike."³⁶⁴

The right to strike is guaranteed by the Constitution.³⁶⁵ The Labor Law

³⁶³Arts. 258-276.

³⁶⁴Gruening, *Mexico and Its Heritage* (1928), 357, by permission of D. Appleton-Century Co. While Gruening wrote prior to the passage of the new Labor Law, conditions in this regard are much the same under the present Act.

³⁶⁵Const., Art. 123(17). Castorena points out that under the constitutional provision (Art. 123[20]), since conflicts between capital and labor must be submitted to the decision of a labor board, logically the right to strike should have been abolished. He feels that the country is not ready for such a step, as it would place upon the labor board too great a responsibility for, and control over, the economic system. Castorena, *Manual de Derecho Obrero* (1932), 273, §318. President Gil states that the constitutional arbitration is "a semi-obligatory arbitration, and [that] the strike in itself is not a right, but a means of coercion which the Constitution recognizes, and to which it gives juridic life in order to make

places certain regulatory restrictions upon this right. A strike must be declared by a majority of the workers in each enterprise involved,³⁶⁶ and must be for one of the following purposes, as stated in the law:

"1. To accomplish equilibrium³⁶⁷ between the various factors of production, harmonizing the rights of labor with those of capital.

"2. To obtain from the employer the execution or performance of a collective labor contract.

"3. To require the revision of a collective contract, at the end of the period of its duration, in the cases and conditions set forth in this law; and [*sic*]

"4. To aid a strike which has for its object one of the purposes above enumerated and which has not been declared illegal."³⁶⁸

The grounds stated are so general that the labor boards are left completely untrammelled in exercising their discretion as to what strikes are lawful. If the board feels that 90 per cent. of the difference between cost of production and sale price should go to labor, to accomplish that result will be to "harmonize the rights of labor with those of capital," and to "accomplish equilibrium between the various factors of production." The same will be true if the board feels that 90 per cent. should go to capital.

If a duly declared strike is for a lawful purpose, as a practical matter it can have only one of two outcomes: victory for the workers or destruction of the enterprise. During its progress, the employer is forbidden to make any efforts to continue operations.³⁶⁹ If a minority of the workers have voted against the strike, they are not permitted to continue at work.³⁷⁰ The labor

the rights [of labor] effective." Emilio Portes Gil, *Exposición de Motivos* (1929), xxxv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

³⁶⁶Art. 264(2). Castorena criticizes this provision, upon the ground that it places the rights of the individual enterprise above the general welfare. Castorena, *Manual de Derecho Obrero* (1932), 262, §308. President Gil states that a majority vote is required, because otherwise the right to strike would be nugatory, and that the regulatory law should prescribe the conditions necessary to make effective the rights which the Constitution grants. Emilio Portes Gil, *Exposición de Motivos* (1929), xxxvi, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929). Protection of the enterprise and of the majority of the workers from the disruptive effects of a strike is a preferable justification of the provision.

³⁶⁷President Gil states that this means that the equilibrium between capital and labor must have been upset previously, and that, consequently, there can be no strikes because of purely individual conflicts. Emilio Portes Gil, *Exposición de Motivos* (1929), xxxv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929). Castorena struggles with the vexed question as to how collective and individual conflicts are to be distinguished. Castorena, *Manual de Derecho Obrero* (1932), 250, §301 & 260, §§307-308.

³⁶⁸Art. 260. "Illegal" here is to be interpreted in a broad sense, to include the situations referred to in Art. 269. Only the first requirement of Art. 260 is stated in the Constitution, Art. 123(18). The employers therefore raised the question whether the addition of the other causes was constitutional. Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 20. Castorena points out that the addition of the second and third grounds was unnecessary, since they are clearly included within the first. Castorena, *Manual de Derecho Obrero* (1932), 262, §308. He adds that the fourth ground could be considered either within or outside the first. *Ibid.* President Gil holds that doubts are to be resolved in favor of illegality. Emilio Portes Gil, *Exposición de Motivos* (1929), xxxvii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

³⁶⁹Art. 274(8). Art. 274 overlooks the provision in Art. 268 that a board may declare a strike illegal.

³⁷⁰Art. 8(2).

board and the civil authorities are required to cause the right which the workers are exercising to be respected, giving them the necessary guaranties, and extending to them the assistance they may request to the end that work in the enterprise shall cease, "in order to avoid violation" of the foregoing provisions.³⁷¹ Added to all this, if the causes of the strike are "imputable to the employer," he will be compelled to pay the wages of the strikers during the period of suspension.³⁷² This provision takes in practically all strikes except sympathetic ones.³⁷³ It seems reasonable to conclude that a labor board will feel that almost any other lawful strike has been caused by the fault of the employer. President Gil says on the point, however:

"It is necessary that the strike be imputable to the employer because of his resistance to compliance with obligations arising out of contract or the law, or because of his grossly unjustifiable refusal to grant the requests of his workers. If it be an arguable point which caused the workers to go on strike, and the employer believed in good faith that the workers had no right to have their requests granted, it would be unjust to impose on the employer the payment of wages, for if such a condition were imposed because of a quarrel over the merest trifle [*quítame esas pajas* take those straws off me], the workers would rush into a strike, whereas such should be considered only as a last resort."³⁷⁴

Castorena, discussing the two classes into which he divides the causes imputable to the employer, says:

"A distinction must be made between the real causes of a strike, and those determining it [*determinantes de ella*]. By real cause we understand the acts or omissions of the employer which cause the conflict; by determinant cause, those facts after the conflict which give rise to the strike; the first would consist of a violation of the law, a failure to comply with a contract; the second, of a denial of petitions which might have for their object to cure those violations, treating the petitions without respect, *et cetera*.

"Now then, in order that the strike may be imputable to the employer, in regard to the real cause, it is indispensable that, when bound by an agreement, he fails to comply with it, whatever may be the form of the existence of the obligation, whether custom, law, or contract, and that this gives rise to the strike; in regard to the determinant cause, the refusal of the employer must relate to those petitions which in accordance with positive law he neither can nor should deny, *c.g.*, the execution of a collective labor contract."³⁷⁵

It has been noted previously³⁷⁶ that the question is now being discussed

³⁷¹Art. 272. This applies unless the strike has been declared "unlawful." Interpretation of this article, together with Arts. 274 & 268, indicates clearly that "unlawful" in Art. 272 must be given a broad meaning to include the matters referred to in the first part of Art. 269.

³⁷²Art. 271.

³⁷³Sympathetic strikes are also expressly excepted. Art. 271(2d par.).

³⁷⁴Emilio Portes Gil, *Exposición de Motivos* (1929), xxxvii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929). He was discussing Art. 323 of the law as proposed at that time, but as to substance it is the same as Art. 260 as finally enacted.

³⁷⁵Castorena, *Manual de Derecho Obrero* (1932), 266, §312.

³⁷⁶At the end of Section 1 of this article, *supra*.

whether a general sympathetic strike is within the purview of the Labor Law. Unless the letter of the law is to be departed from, such a strike would seem clearly to be lawful if, and only if, it is in aid of a lawful strike, and duly declared by a majority of the workers in each enterprise affected, in accordance with the procedure about to be set forth. It will be seen that the latter requirement largely destroys any possibility of success in a general strike. It should be noted here that in time of peace most government employees may strike.³⁷⁷

After a majority of the workers in a particular enterprise have voted in favor of a strike, the law states that before stopping work they must take three steps, there being no penalty³⁷⁸ if the second is not complied with:

"1. Formulate their requests in a written notice to the employer, in which shall be fixed a period of at least six days before the strike is to commence, except that in case of public services³⁷⁹ ten days' notice must be given, and the day and hour when the strike is to begin must be stated.

"2. Send to the proper Board of Conciliation and Arbitration a copy of the notice; and

"3. Await the stated period to ascertain whether the employer or his representatives will respond to the requests negatively, or will fail to answer them."³⁸⁰

During a strike, picketing and boycotts are forbidden.³⁸¹ It has been made evident that, if the board is back of them, the strikers do not need these weapons in order to win. The strikers must abandon the place of their employment.³⁸² They must furnish the number of workers necessary, in the judgment of the labor board, to perform those services the suspension of which would seriously prejudice the renewal of operations, or the security and preservation of the enterprise.³⁸³ If necessary, the board may request the aid of governmental forces, in order that other workers may perform these services.³⁸⁴ A strike becomes illegal if a majority of the strikers perform acts of violence.³⁸⁵ Strikers

³⁷⁷Const., Art. 123(18) provides that a strike is unlawful in time of war in any establishment or service which is a branch of the government, and that the workers in the governmental military factories may never strike, because of their assimilation to the army. These provisions would seem clearly to indicate that, except as limited by the Constitution, governmental employees may strike. Art. 2 of the Labor Law leaves the relations between the State and its employees to be covered by the civil service laws, but a portion of the constitutional provision is copied into Art. 263(2).

³⁷⁸It is omitted from Art. 269(1st par.).

³⁷⁹The exception as to public services is partly from Const., Art. 123(18). Public services are given a broad definition. Art. 266. Castorena criticizes the law in permitting strikes in public services, on the ground that, in connection with them, the public interest is superior to that of labor, just as in general the rights of labor as a class take precedence over individual rights. Castorena, *Manual de Derecho Obrero* (1932), 268, §313.

³⁸⁰Art. 265. Conciliation conferences do not extend the time. Art. 267.

³⁸¹The strike is to be limited "to the mere act of the suspension of work." Art. 262.

³⁸²Art. 114(6).

³⁸³Art. 275.

³⁸⁴Art. 275.

³⁸⁵Art. 263; Const., Art. 123(18). Through an obvious error, the word "only" is inserted in the constitutional provision. If "only" is to be retained, "unlawful" in the same sentence must be tortured into a grossly restricted meaning. The individuals performing the acts are civilly and criminally liable. Art. 262. The class nature of the law is illustrated by the fact that the strike becomes unlawful as to the minority of workers who have not performed any acts of violence.

may not cause work to be suspended in establishments not under the control of their syndicate.³⁸⁶

When a strike is instituted, employers, workers or third persons may appeal to a labor board against it.³⁸⁷ The board is required to make a decision within forty-eight hours after the suspension of work.³⁸⁸ If it finds that the strike is not for a proper purpose, or has not been duly declared,³⁸⁹ the law provides that the board shall rule that a state of strike does not exist, and shall:

"1. Give the employees who have abandoned their work twenty-four hours within which to return to it.

"2. Notify them that by the sole fact of not abiding by the decision of the board within the period fixed their contracts of labor will end, except in case of *vis major*;

"3. Declare that the employer has not incurred any liability, that he is at liberty to hire new workers, and that he may bring an action to enforce civil liability, in accordance with the terms of Article 5 of the Constitution,³⁹⁰ against those who refuse to continue their work; and

"4. Order the steps taken which it considers proper in order that the employees who have not abandoned their work may continue in it."³⁹¹

It will be observed that if the striking employees return to work within twenty-four hours after the decision they are not subjected to any penalty.³⁹² Castorena criticizes this aspect of the law, upon the grounds that the strike may have been called in bad faith, or over a trivial matter, and that it may have occurred when even a short suspension of work was a serious injury to the employer.³⁹³

If a board at any time finds that a strike is illegal because of the use of violence by a majority of the strikers, the law is somewhat more severe, as the labor contracts of the strikers are forthwith terminated.³⁹⁴ If the board rules against the strike upon any ground, the aid of the authorities to the strikers³⁹⁵ ceases. Castorena justifies the cancellation of the contract rights of the peaceful minority, in the event of violence, upon the ground that under certain circumstances conspiracy is in itself a wrong.³⁹⁶

Even if a strike is declared illegal, the strikers may still win, if they have

³⁸⁶Art. 276.

³⁸⁷Art. 270.

³⁸⁸Art. 269.

³⁸⁹Except as to failure to notify the labor board. Art. 269(1st par.).

³⁹⁰This article provides that a worker who fails to perform his contract of employment shall be subject to the corresponding civil liability, without coercion against his person.

³⁹¹Art. 269. It has been noted that a strike may also become illegal later because of the use of violence by a majority of the strikers. Art. 263(1).

³⁹²Of course they will have lost their pay for the period of suspension.

³⁹³Castorena, *Manual de Derecho Obrero* (1932), 265, §311.

³⁹⁴Art. 268. It is expressly stated that the employer may make new contracts. *Ibid.* Under Art. 268, the strike is declared illegal, whereas under Art. 269 the board merely declares that a state of strike does not exist.

³⁹⁵Art. 272.

³⁹⁶Castorena, *Manual de Derecho Obrero* (1932), 269, §314.

sufficient class solidarity. Workers who desire to continue at work will be protected in doing so, and picketing and boycotting will be forbidden, but otherwise the government will not interfere. This means that when a strike is declared the employer is confronted with a sort of "Heads I win, tails you lose" proposition. If the strike is approved by the labor board, it has been seen that he must surrender or be ruined. If the authorities do not grant their approval, he still has a desperate struggle on his hands.

It is provided generally that a strike may be ended by argeement, by the decision of an arbitral body freely selected by the parties or by the decision of a labor board.³⁹⁷ Under the last alternative a labor board may at any time issue a direct order to one side or the other to yield. If either side refuses to obey such an order, the labor contract is terminated.³⁹⁸ In the case of the workers no further penalty is provided,³⁹⁹ so that the employer's troubles in connection with the strike are not over.⁴⁰⁰ But if an employer fails to comply, he will have to pay each worker three months' salary, in addition to substantial damages,⁴⁰¹ the amount of which will be discussed later.⁴⁰² These provisions are merely cumulative to those previously set forth in regard to action by the board.

25. LOCKOUTS⁴⁰³

Lockouts⁴⁰⁴ are limited to the realm of economic control over the supply of commodities and may not be used in connection with labor troubles. The Constitution provides:

"Lockouts are lawful only when the excess of production makes suspension of work necessary in order to maintain prices upon a profit-making basis, prior approval of a Board of Conciliation and Arbitration having been secured."⁴⁰⁵

To be effective it is generally true that such a lockout must be on a basis as broad as the market for the commodity.⁴⁰⁶ President Gil says:

"The Constitution does not consider that the lockout is an economic weapon similar to a strike, for employers to use to effect coercion of

³⁹⁷Art. 273.

³⁹⁸Const., Art. 123(21).

³⁹⁹Const., Art. 123(21), at end.

⁴⁰⁰He could also have the labor board rule that no state of strike exists, with the limited consequences described.

⁴⁰¹Art. 601; Const., Art. 123(21). The strike will continue as a lawful strike.

⁴⁰²Consult Section 27 of this article, *infra*. The matter is covered by Art. 602.

⁴⁰³Arts. 277-283.

⁴⁰⁴Consult, generally, Max Camiro, *El Concepto de Paro o "Lock-out" y las Fracciones XVII y XIX del Art. 123 de la Constitución Federal*, 1 *Revista General de Derecho y Jurisprudencia* (Mexico), 539 (1930).

⁴⁰⁵Const., Art. 123(19). Const., Art. 123(17) guarantees the employers' right to lockouts. They are covered by the Labor Law in Arts. 277-283 & 116(3 & 4).

⁴⁰⁶Camiro, *El Concepto de Paro o "Lock-Out" y las Fracciones XVII y XIX del Art. 123 de la Constitución Federal*, 1 *Revista General de Derecho y Jurisprudencia* (Mexico), 539 & 551 *et seq.* (1930); Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 14. The employers protested vigorously against the narrow limitation of lockouts. *Ibid.*, 20. They complained that under the constitutional provision the labor boards never found the necessary facts to exist. *Ibid.*, 14. Board decisions in regard to lockouts are discussed in Camiro, *op. cit.*, 545 *et seq.* Supreme Court decisions are discussed in the same article at 548 *et seq.*

their workers, as it is a principle of public law that an entrepreneur, while his enterprise is able to make profits, shall always bear in mind that a lockout, for purposes of coercion or as the result of caprice, would leave many employees without work."⁴⁰⁷

26. BOARDS AND AUTHORITIES⁴⁰⁸

The following are the labor boards and other authorities under the Labor Law:

- (1) Municipal Conciliation Boards;
- (2) Central Boards of Conciliation and Arbitration;
- (3) Federal Conciliation Boards;
- (4) Federal Boards of Conciliation and Arbitration;
- (5) Labor Inspectors;
- (6) Special Minimum Wage Commissions;
- (7) Labor Defenders.⁴⁰⁹

All labor boards are composed of equal numbers of representatives of capital and of labor, with one member appointed by the government.⁴¹⁰ The government representatives thus have the controlling voice,⁴¹¹ and have been developing a genuinely "public" point of view, different from that of either capital or labor. This is an important factor in the tendency, referred to in the historical review,⁴¹² of the government to transfer power from the labor unions to itself.

The Conciliation Boards may be either temporary or permanent,⁴¹³ and are designed to meet in each locality as occasion may arise.⁴¹⁴ Their function is limited to endeavoring to secure peaceful settlement of disputes through agreement by the parties.⁴¹⁵ If this can not be accomplished, they then refer the case

⁴⁰⁷Emilio Portes Gil, *Exposición de Motivos* (1929), xxxviii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

⁴⁰⁸Arts. 334-423. Art. 349(5) was amended by decree of Oct. 6, 1933. *Diario Oficial*, Oct. 11, 1933.

⁴⁰⁹The labor boards originated in the arbitration tribunals set up in collective contracts. Castorena, *Manual de Derecho Obrero* (1932), 308, §372. The history of their development is sketched by Castorena. Up to 1924, the Supreme Court did not recognize labor board decisions as binding upon the parties. In that year it reversed its position. *Ibid.*, 315, §379 & 317, §383; Gruening, *Mexico and Its Heritage* (1928), 508-509. Gruening attributes the change to the increase in the power of organized labor.

Collective contracts may provide for the creation of Mixed Commissions, to exercise whatever economic and social functions the parties desire. Art. 335. If the contract makes their decisions obligatory, they will be executed by the Conciliation Boards. All the boards and authorities, except the Labor Defenders, are listed in Art. 334.

⁴¹⁰Arts. 336, 344, 354 & 362; Const., Art. 123(20). The representatives of capital and labor on the Boards of Conciliation and Arbitration are selected in conventions held under the supervision of the government. Arts. 367-389.

⁴¹¹The employers complained that, since the government member normally would cast the deciding vote, the whole scheme of labor boards really represented nothing but a means of administrative settlement of disputes by the government, and that under it thirty inferior government employees would in effect control the entire economic life of the country. Grupo Patronal de la República, *Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* (1931), 15.

⁴¹²Near the end of Section 1 of this article, *supra*.

⁴¹³Arts. 337 & 354-355.

⁴¹⁴Arts. 336-337 & 353-354; Castorena, *Manual de Derecho Obrero* (1932), 320, §385.

⁴¹⁵Arts. 340(1-3), 352 & 357.

to a Board of Conciliation and Arbitration, one of which sits in each unit of the federation,⁴¹⁶ for a decision binding upon the parties.⁴¹⁷ The federal boards are organized in the same manner as the others, but are limited to territories and matters subject to federal jurisdiction.⁴¹⁸ Under the Constitution, the federal government has exclusive jurisdiction in all labor matters relating to railroads and other transportation enterprises having federal concessions, and all mineral, hydrocarbon, textile and maritime industries.^{418a}

The Labor Law provides that the President of the nation and the Governors of the States shall appoint whatever number of Labor Defenders they may consider necessary.⁴¹⁹ The function of the Labor Defenders is to render free legal services to both syndicates and individual workers before the labor boards and other authorities.⁴²⁰ The recent activity in regard to Special Minimum Wage Commissions⁴²¹ has been noted.⁴²² The Labor Inspectors are what the name implies.⁴²³ The federal Department of Labor, established as a separate executive department January 1, 1933,⁴²⁴ is in general charge of the enforcement of the law.

27. PROCEDURE⁴²⁵

The famous Article 550 of the Labor Law provides:

"The judgments [of the labor boards] shall be given in accordance with the truth known [*a verdad sabida*], without need of limitation by rules in regard to the weighing of evidence, but by appraisal of the facts by the members of the board as they may deem proper in conscience [*en conciencia*]."⁴²⁶

The Spanish terms quoted are used as catchwords to describe the method of decision. President Gil says:

⁴¹⁶Arts. 343 & 358. Additional Central Boards, or, in the case of the federal, divisions, may be created. Arts. 343, 363 & 366.

⁴¹⁷Arts. 349(2), 365(2-4) & 366(2). The Central Boards are also authorized to act as conciliation boards in matters affecting all the industries of a State or of the nation, or those of two or more units of the federation. Arts. 349(1), 365(1, 3 & 4) & 366(1).

⁴¹⁸Arts. 353 & 357-361; Const., Art. 73(10), as last amended, Decree of March 29, 1933. Diario Oficial, April 27, 1933. They handle all matters relating to two or more units of the federation. Art. 366(3 & 4).

^{418a}Const., Art. 73(10), as last amended, Decree of March 29, 1933. Diario Oficial, April 27, 1933.

⁴¹⁹Art. 407.

⁴²⁰Arts. 408-412. They are authorized to propose to the parties peaceful settlements of disputes. Art. 411. Regulations governing the Federal Office of the Defense of Labor were promulgated by Decree of Aug. 29, 1933, Diario Oficial, Sept. 11, 1933.

⁴²¹Governed by Arts. 414-428, as amended by Decrees of Oct. 6, 1933, Diario Oficial, Oct. 11, 1933, and Oct. 28, 1933, Diario Oficial, Nov. 3, 1933. Based upon Const., Art. 123(9), as amended, Decree of Oct. 28, 1933, Diario Oficial, Nov. 4, 1933.

⁴²²At the beginning of Section 11 of this article, *supra*.

⁴²³Arts. 402-406.

⁴²⁴Act of Nov. 30, 1932, Diario Oficial, Dec. 15, 1932. The function was previously performed by the federal Secretary of Industry, Commerce, and Labor.

⁴²⁵Arts. 328-333 & 429-583.

⁴²⁶One of the most strenuous objections of the employers to the new law was to this provision. They said that it would enable politics or caprice to be the controlling factor. Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 5, 14-16 & 52. They admitted that it perpetuated the existing practice. *Op.cit.*, 16.

"In this regard a radical change has been made, which is justified by the nature of labor conflicts, which are not simply of the juridical order, but, in many cases, relate to the economic order. Justification also arises out of the nature of the organism which is to make the decision, which is, in large part, conciliatory, and which is, as we have said, to pass upon questions not purely juridical.

"It is therefore provided . . . that the boards are to judge the submitted evidence in conscience, without being subject to any fixed rules in regard to the admission of such evidence.

"That the boards are to judge the proofs in conscience, does not mean that as a matter of whim or caprice they are to declare certain facts proved, in order therefore to render a certain judgment.

"Judgment of the facts in conscience, simply means that, in passing upon them, this is not to be done with a strict, legal standard, but that the proofs offered are to be weighed in the light of logical and just criteria, as would the ordinary layman in order to be convinced, after analysis in that spirit, of the truth of the facts asserted."⁴²⁷

Appeals (*amparos*) to the courts from the decisions of the labor boards are not possible.⁴²⁸ This is subject to certain qualifications, among them being that the board must be acting within its jurisdiction as to persons and subject matter, the latter including all controversies "arising out of the contract of labor,"⁴²⁹ or facts intimately connected with it."⁴³⁰ If the board fails to follow the procedure set forth in the Act, it can not claim that it is acting as a duly authorized governmental tribunal and the courts will grant relief against execution of its decisions. Thus the judgment must be responsive to the pleadings.⁴³¹ Obviously, the national congress would not have power, through the enactment of the Labor Law, to authorize the violation of any constitutional rights. Therefore the courts may be appealed to if any constitutional rights existing outside the field of labor law are violated. This reasoning does not apply to questions involving constitutional rights within the field of labor law, as the boards are themselves the duly authorized organs, recognized in the Constitution,⁴³² to pass upon those questions. Bearing in mind the provisions of Article 550, that the board decisions are to be in accordance with the "truth known" and "in conscience," and without limitation by any rules in regard to the weighing of evidence, it is clear that no appeal ever could be made to the courts upon any question of the admissibility of the evidence considered, the weight of the evidence or even the entire absence of evidence.

⁴²⁷Emilio Portes Gil, *Exposición de Motivos* (1929), xlix, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

⁴²⁸Art. 555. Neither is there any form of administrative redress. Of course the employers objected (*Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* [1931], 14-16), but when the courts did interfere they almost completely destroyed the efficacy of the system of labor tribunals.

⁴²⁹The contract of employment of a general agent in charge of landed properties has been held to be included. Decision cited and further discussed in footnote #47, *supra*.

⁴³⁰Arts. 340(1), 349(1) & 357-358.

⁴³¹*Ferrocarriles Nacionales de México v. Junta Especial Número Uno de Federal de Conciliación y Arbitraje*, 1 *Revista General de Derecho y Jurisprudencia* (Mexico), 491 (Supreme Court, 2d Chamber, 1930).

⁴³²Const., Art. 123(9, 18-21 & 27b).

The labor boards are thus completely set apart from the developed jurisprudence of the country. The courts have no control over them, and the substantive law principles furnished the boards by the Labor Law are of the most general character. This situation has accentuated the importance of custom as a factor in the formation of the law relating to labor.⁴³³ It has been said that the boards "have created a new law of custom, alongside the written law, a law formulated by the workers and employers which has priority in controlling the relations between capital and labor."⁴³⁴ Precedents can not be expected to have as much weight with the boards as with courts. In fact, the character of the entire system is such that it may be said to be administrative rather than judicial. Even the various divisions of the Federal Board of Conciliation and Arbitration have found difficulty in working together along the same lines.⁴³⁵ Steps have been taken to remedy this condition.⁴³⁶

All matters coming before the boards are divided into two classes, which Castorena describes as "juridic" and "economic,"⁴³⁷ for which different procedures are prescribed.⁴³⁸ Castorena thus describes the distinction between the two classes:

"The former are controversies founded on the law or a contract, in which the judge is called upon only to decide what is the legal rule applicable to the situation of fact the existence of which is proved; the latter, the conflicts of the economic order, are those which by the definition of the law itself arise out of causes having to do with the economic order, relating to the establishment of new conditions of work, lock-outs, termination of contracts, *et cetera*."⁴³⁹

The basic theory back of the distinction between the two systems of procedure is that, in dealing with the "juridic" matters, the parties directly interested should be afforded an opportunity to intervene as decisive factors, whereas, in dealing with the more general "economic" problems, more vitally affecting the interests of society at large, the intervention of the immediately interested

⁴³³Vicente Lombardo Toledano, *Las Fuentes del Derecho Industrial*, 1 *Revista General de Derecho y Jurisprudencia* (Mexico), 5 & 14 (1930).

⁴³⁴Vicente Lombardo Toledano, *Caracteres de la Legislación del Trabajo en México* (1928), v, published as a preface to *Legislación del Trabajo de los Estados Unidos Mexicanos* (1928).

⁴³⁵A newspaper report states that "in times past in similar matters they have rendered contradictory judgments such as to constitute virtual anarchy in the subject matter of industrial law." *Habrá Unidad en los Fallos que Pronuncie la J. de Conciliación*, *Excelsior*, Mexico City, March 26, 1933.

⁴³⁶*Habrá Unidad en los Fallos que Pronuncie la J. de Conciliación*, *Excelsior*, Mexico City, March 26, 1933; *Otro Reglamento en la Junta de Conciliación*, *Excelsior*, Mexico City, Aug. 12, 1933.

⁴³⁷Castorena, *Manual de Derecho Obrero* (1932), 321, §386. The latter are sometimes termed "conflicts of the economic order." *Ibid.*; Alfonso Teja Zabre, *Ley Federal del Trabajo* (Zabre ed. 1931), 233, title of c. vii, Título Noveno.

⁴³⁸The general treatment relates to the "juridic" conflicts. The special provisions relating to the "economic" are set forth in Arts. 570-583.

⁴³⁹Castorena, *Manual de Derecho Obrero* (1932), 321, §386. A list of specific matters which are placed in the "economic" category are set forth in Art. 579. In addition to those mentioned by Castorena, accident, *vis major* and economic difficulties in the prosecution of the employer's business are included, also technological diminutions in personnel. President Gil considers the lockout the illustration "par excellence" of the "economic" conflict. Emilio Portes Gil, *Exposición de Motivos* (1929), lv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

parties should in large part be excluded.⁴⁴⁰ In dealing with the "economic" cases the procedure is more deliberate and the board appoints a commission to investigate.⁴⁴¹

It has been noted that if an amicable agreement is not reached before a Conciliation Board the matter is referred on to a Board of Conciliation and Arbitration.⁴⁴² The parties are then given an opportunity to offer additional evidence,⁴⁴³ but seldom do so.⁴⁴⁴ Syndicates may appear in defense of either collective or individual rights.⁴⁴⁵ All pleadings and other written proceedings are entirely informal.⁴⁴⁶ The entire body of evidence is first passed upon as to its admissibility before any is admitted.⁴⁴⁷ Numerous provisions are designed to prevent undue delay.⁴⁴⁸ Concluding his discussion of the system, Castorena says:

"Perhaps because in practice the legal provisions in regard to arbitration have been corrupted, or because the opinion of those immediately interested in regard to obligatory arbitration has changed, or finally because at the present time the system does not render to the working class those benefits which they derived from it during the first years when the Constitution of 1917 was in force, the fact is certain that a change in public opinion in regard to this institution can be noted. Some persons desire to return to the original extreme of merely optional arbitration, others desire simply to make the regulations in regard to arbitration more liberal, so as to place the labor authorities in position to decide the labor conflicts in the form and upon the terms which they have always believed desirable.

"We ourselves feel that obligatory arbitration represents an achievement within the realm of pacific solution of the conflicts of labor, and we think that it is perfectly possible and practicable to return to a normal functioning of the institutions of arbitration, provided those administering them have a clear and precise conception of the delicacy of the problems involved and of the economic and human elements which inevitably find play in such conflicts. But only an overwhelming reform, juridical and social, can produce this result."⁴⁴⁹

⁴⁴⁰Castorena, *Manual de Derecho Obrero* (1932), 321-322, §386.

⁴⁴¹Arts. 572-575; Emilio Portes Gil, *Exposición de Motivos* (1929), lv, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929). The optional feature referred to by President Gil does not appear in the law as finally enacted.

⁴⁴²Section 25 of this article, *supra*.

⁴⁴³Art. 524.

⁴⁴⁴Castorena, *Manual de Derecho Obrero* (1932), 320, §385.

⁴⁴⁵Art. 460. In conciliation proceedings the parties must appear personally, without advisers, unless the board grants special permission. Art. 466.

⁴⁴⁶Art. 440.

⁴⁴⁷Arts. 522 & 524.

⁴⁴⁸In practice extensive delays nevertheless have occurred.

⁴⁴⁹Castorena, *Manual de Derecho Obrero* (1932), 322, §387. The employers complained that, prior to the enactment of the new law, the boards had generally leaned towards labor, because of the political influences to which they were subject (*Grupo Patronal de la República, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo* [1931], 5, 7, 14 & 19), and that the delays had been intolerable, making it difficult for the employers to effect changes in personnel or wages. *Op.cit.*, 5 & 14. They said: "When a readjustment [of personnel or compensation] appears to be unjustified, the boards deny it immediately, but if the justification is established by the evidence, they delay decision to the point of exhausting the possibilities of resistance of the enterprise." *Op.cit.*, 14.

28. ENFORCEMENT⁴⁵⁰

The jurisdiction of the labor boards is considered to consist only of semi-obligatory arbitration, in that if either side refuses to submit a controversy only certain specified results follow.⁴⁵¹ If there is submission, there is no limitation upon the judgment which a board may render. If a worker refuses to submit, the only consequence is termination of the labor contract.⁴⁵² If an employer does so, the consequences, as to each worker involved, are as follows:

- (1) Termination of the labor contract;
- (2) Payment of three months' wages;
- (3) Payment of an arbitrarily fixed amount,⁴⁵³ computed as follows: if the contract is for a definite period, not over one year, one half the amount of the wages earned during the period of services actually rendered; if the contract is for a longer definite period, six months' wages for the first year, and twenty days' for each succeeding year, of services rendered; if the contract is for an indefinite period, twenty days' wages for each year of past service.⁴⁵⁴ The total amount (in addition to the three months' wages) may not exceed that fixed in the workmen's compensation provisions of the Act in case of death—612 days' wages.⁴⁵⁵

Whether or not an employer submits to arbitration by a board, he may be required to restore a worker to his employment. This is a special elective right given by the Constitution to a worker who has been wrongfully discharged, or has justifiably left his employment because of wrongful conduct on the part of the employer.⁴⁵⁶ The employer can not nullify this right by refusing to arbitrate.⁴⁵⁷

The boards have full authority to enforce their judgments, as also contracts signed before them, through the issuance of execution against the property of the parties,⁴⁵⁸ and through the exercise of the usual powers of a court of

⁴⁵⁰Arts. 584-685.

⁴⁵¹Emilio Portes Gil, *Exposición de Motivos* (1929), fiftieth page *et seq.*, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929).

⁴⁵²Const., Art. 123(21), at end.

⁴⁵³Const., Art. 123(21), provides that the employer shall be subject to the "responsibility which results from the conflict." The provision about to be set forth in the text defines this. It would seem to be doubtful whether it is constitutional so to delimit a "responsibility."

⁴⁵⁴Arts. 601 & 602; Const., Art. 123(21).

⁴⁵⁵Arts. 602(last par.) & 298.

⁴⁵⁶Const., Art. 123(22). If the employee does not elect to return, he is entitled to three months' salary. This is in addition to the penalties provided in case the employer refuses to arbitrate.

⁴⁵⁷That is, he can not claim that the penalties for refusal to arbitrate, in Const., Art. 123(21), exclude application of the guaranties given the worker in Const., Art. 123(22). Emilio Portes Gil, *Exposición de Motivos* (1929), lii, published with *Proyecto de Código Federal de Trabajo* (official ed. 1929); *Asociaciones Patronales, Memorandum Sobre la Conveniencia de Modificar el Artículo 123 de la Constitución Política de los Estados Unidos Mexicanos*, 3, Anexo Núm. 1 to *Proyecto del Código Federal del Trabajo*, con los Comentarios y Sugestiones Hechos al Mismo por la Comisión Nombrada por las Asociaciones Patronales (1931).

⁴⁵⁸Arts. 584-585 & 588-589.

equity.⁴⁵⁹ There is no garnishment of wages,⁴⁶⁰ and no performance of services can be compelled.⁴⁶¹ Imprisonment not to exceed fifteen days may be imposed as a penalty.⁴⁶² The Act also contains voluminous provisions for the infliction of pecuniary penalties.⁴⁶³ The president of a board, the government member, may be dismissed because of a "notoriously unjust" decision.⁴⁶⁴

29. PROBABLE FUTURE DEVELOPMENTS

Current discussion in Mexico indicates that future changes in the labor law and its application probably will be along the following lines:

- (1) Increasing pressure upon workers to join syndicates. The situation in each enterprise will approach, if not amount to, a "closed shop."⁴⁶⁵
- (2) The formation of fewer and larger syndicates, particularly among workers employed in the same enterprise, cutting across vocational divisions.
- (3) Collective contracts to include larger numbers of employers and workers.
- (4) Increasing use by the government of its power to make collective contracts obligatory throughout specified areas.
- (5) A strengthening of the influence of the voice of the government through its representatives upon the labor boards. It has been suggested that the other members should act only as advisers (*asesores*) to the parties. It is felt generally that too often the members of the boards representing the private interests use their position to obstruct proceedings. Power will be increasingly transferred from both capital and labor to the government, which latter will continue to develop a viewpoint different from that of either capital or labor.
- (6) More prompt and simple procedure before the boards, possibly limiting or abolishing the use of separate boards for conciliation and arbitration.
- (7) More stringent regulations to compel the employment of as large a percentage of Mexican citizens as possible, and particularly a more effective enforcement of such provisions.
- (8) Discrimination against non-resident employers.
- (9) Increasing enforcement of the labor law by the federal government, rather than by the States.

⁴⁵⁹Arts. 600 & 603. In one respect they may go beyond this, as they may sign agreements for refractory parties. Art. 604.

⁴⁶⁰Arts. 606 & 95; Const., Art. 123(8). Wages as preferred claims have been treated in Section 11 of this article, *supra*.

⁴⁶¹Art. 38; Const., Art. 5. A *ne exeat* process in connection with proceedings is provided for. Arts. 561-565. As to workers this would seem to be unconstitutional, under the last paragraph of Article 5 of the Constitution.

⁴⁶²Art. 474.

⁴⁶³Arts. 467-473, 554 & 649-685. Arts. 683 and 684 were amended by Decree of Jan. 10, 1934, *Diario Oficial*, Jan. 20, 1934.

⁴⁶⁴Arts. 650(3) & 659.

⁴⁶⁵Even among syndicate members there is opposition in this connection, upon the ground that the labor leaders will thus be given too great control over the individual members.

(10) Raising the minimum wage standards and increasing efforts to enforce them.

(11) Enactment of social insurance measures, covering unemployment, sickness and old age. Progress along these lines necessarily will be slow.

(12) Compelling employers to take out workmen's compensation insurance, and requiring that such insurance be in Mexican companies.

(13) A shorter working week.

(14) Further development of vocational education, particularly agricultural.

(15) Encouragement of the use of new and modern machinery.

(16) Development of co-operative farming. Progress along this line will be slow, but the government will persist in the effort.

(17) Encouragement of larger employing units,⁴⁶⁶ particularly in the form of co-operatives strictly controlled by the government. Some of the political leaders plan that eventually the government shall acquire all co-operatives as government enterprises.

(18) Increasing efforts to balance economic supply and demand, in regard to both material and human elements.

⁴⁶⁶In this connection there is also a contrary current of thought, but the prevailing view seems to be that there should be no additional efforts made to coddle small enterprises, which are particularly likely to have difficulty in adjusting themselves to any raising of standards. Some political leaders favor large enterprises because their size would facilitate government acquisition and operation and would create sentiment in that direction.