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The Mexican Labor Law

Joseph M. Cormack
William & Mary Law School

Frederick F. Barker

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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 Diaz 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." 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.]

*Professor of Law, University of Southern California.
**Member of the Los Angeles Bar, specializing in Mexican and International Law.

Gruening, 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. The oppression of the Indians for centuries is well known as a matter of general history. In order to secure cheap labor, the Spaniards imported Negro slaves to such an extent that the safety of the government was threatened.

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 haciendo 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."  

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."  

As to conditions under Diaz, Gruening writes:

"Under the industrial invasion of the late nineteenth century, facilitated by the Porfirián 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 . . . ."

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2 Paraphrasing, Gruening, Mexico and Its Heritage (1928), 145.
4 Priestley, The Mexican Nation, a History (1930), 54-57, 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.
5 Quoted, in slightly different translation, Reinach-Foussemagne, Charlotte, Impératrice du Mexique, 222; reprinted, Gruening, Mexico and Its Heritage (1928), 123.
6 Pimentel, Memoria Sobre la Situación de la Raza Indígena, 202; quoted, in slightly different translation, Gruening, Mexico and Its Heritage (1928), 355.
"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 Rio 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 politico [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—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 Diaz 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." 106

Under the Diaz 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 Diaz. 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

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106Gruening, Mexico and Its Heritage (1928), 213 & 335, citing, at the end, McGery, 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 Diaz ruthlessness was absent, and it was
possible for workers to meet and organize. 9 Because of this, reactionary busi-
ness 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 con-
sists 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 pro-
hibits 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 in-
dicated by the term “Labor Law,” in use in Mexico, as distinguished from “Indus-
trial 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,

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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), 339.
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.\textsuperscript{18} The state and federal\textsuperscript{19} 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.\textsuperscript{20} As was to be expected, this legislation contained defects resulting from inexperience and haste.\textsuperscript{21} A detailed discussion of it will not be attempted.\textsuperscript{22}

The uncertainties resulting from this mass of conflicting state legislation led both capital and labor to desire a uniform law of national application.\textsuperscript{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."\textsuperscript{24} In fact, through finding itself, of necessity, arbiter in such struggles, the federal government already was developing a system of national labor jurisprudence.\textsuperscript{25}

In 1929, the Constitution was amended to permit the federal congress to pass a labor law of national application.\textsuperscript{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."\textsuperscript{27} A draft was prepared by experts, "of known revolutionary affiliation."\textsuperscript{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.\textsuperscript{29}

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

\textsuperscript{18} Secretaría 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).
\textsuperscript{19} For the Federal District and Territories.
\textsuperscript{20} Secretaría 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).
\textsuperscript{21} Secretaría 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).
\textsuperscript{22} The 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, 1229, published as a supplement to the collection.
\textsuperscript{23} Vicente 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).
\textsuperscript{24} Vicente 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).
\textsuperscript{25} Vicente 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).
\textsuperscript{26} Enrique Delhumeau, Praxedis Balboa, and Alfredo Inarritu, forming the Commission which prepared the draft of Federal Labor Code, in letter of transmittal, vi, published as a preface to Proyecto de Código Federal de Trabajo (official ed. 1929).
\textsuperscript{27} Emilio Portes Gil, Exposición de Motivos (1929), xi, published with Proyecto de Código Federal de Trabajo (official ed. 1929).
\textsuperscript{28} Emilio 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.

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. 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, inserted at the beginning of Section 24 of this article. 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." 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. Because of difficulties which would be encountered in terminating labor contracts, once entered upon,

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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.
33Infra, p.261.
35Grupo 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.
it was predicted that overtime and temporary work would cease.\(^{35}\) Due partly to the force of these objections, there is a strong current\(^{36}\) 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.\(^{39,}\)

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...

\(^{35}\)Grupo Patronal de la República, Observaciones y Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 22.

\(^{36}\)March, 1934.

\(^{37}\)Published, 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.

\(^{39,}\)Decree of Jan. 2, 1934, Diario Oficial, Jan. 6, 1934.

\(^{40}\)Vicente 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 writing 42 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-

41Groening, 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 Groening, 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.

43Infra, 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 122(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 del 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 Terreón v. Junta Central de Conciliación y Arbitraje de Aguascalientes, 6 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(6th 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{51}Art. 16.
\textsuperscript{52}Enrique Calderón, annotation to Art. 16 (Calderón’s 2d ed. 1931).
\textsuperscript{53}Enrique 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.
All permanent industrial labor is required to be covered by a written contract, which must contain certain specified provisions. Each party is entitled to a copy. An oral contract must be proved by the testimony of two witnesses, who may be fellow workers. Temporary workers employed verbally are entitled to request a written statement of account every fifteen days. 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. 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. It is presumed that there is a contract if services are rendered. In the absence of express stipulations, the situation is governed by the Labor Law and suppletory standards.

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. In

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Footnotes:

55Arts. 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 (Calderon's 2d ed. 1931), citing Mexican and French authors.

Temporary 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).

Oral 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. 24(1 & 2). Art. 23.

Art. 24 & 25.

Art. 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 irremovable rights. Enrique Calderón, annotation to Art. 39 (Calderon'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


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.68

68Arts. 15 & 22(4); Const., Arts. 5(5th and 6th pars.) & 123(27g & 27h).

69Const., 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.70

70Art. 35. Enrique Calderon interprets this section as applying only to individual contracts. Calderon's 2d ed. 1931).

71Art. 115. 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.72

72Art. 43. 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 CONTRACT

A collective contract is one between one or more syndicates of workers and one or more employers, or one or more employers' syndicates. 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. Twenty workers are the minimum number who can form a syndicate. 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. 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. Otherwise a separate contract is to be executed with each. The contract is required to be in writing, and a copy must be deposited with the proper labor board. The contract applies to all employees of the enterprise, whether syndicalized or not. In selecting employees, preference must be given to syndicate members.

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78 Arts. 42-67. 79 Art. 42. 80 Art. 43. 81 Art. 238. 82 Art. 43. 83 Art. 43. 84 Art. 43. 85 Art. 43. 86 Art. 45. 87 Art. 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, 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, but neither this nor any other provision of the contract may operate to the prejudice of workers already employed, who are not syndicate members. 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." 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 law 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. Individuals involved may enforce their own rights if they have sustained individual damage. The dissolution of a workers' syndicate, or the withdrawal of an employer from an employers' syndicate, does not affect the contract obligations.

A collective contract may be for a definite or for an indefinite period, or for certain work; but under the Constitution it may not be for more than one year, to the prejudice of the workers. 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.
When a collective contract has been signed by two-thirds of the employers and two-thirds of the syndicalized workers in a certain branch of industry in a certain region, a governmental decree may extend it to all other establishments in that branch of industry in the region. This is in accordance with European precedents. A contract thus extended is known variously as an “obligatory collective contract,” a “regional contract,” or a “contract-law” (contrato-ley). A procedure is provided whereby the parties involved may be heard before such a decree is issued. 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. 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.” 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. An employer failing to abide by the wage or work period provisions of a regional contract may be punished by severe fines. 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.

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

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99 Art. 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 Sugestiones del Grupo Patronal al Proyecto de Código Federal de Trabajo (1931), 27.

100 The 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 Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 27-28. In practice this hypercritical objection has been disregarded.

101 Art. 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, published with Proyecto de Código Federal de Trabajo (official ed. 1929).

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

103 Alfonso Teja Zubra, sub-title applied to Arts. 59-67 (Zubra’s ed. 1931); as to contract-law, Enrique Calderón, annotation to Art. 63 (Calderón’s 2d ed. 1931).

104 Arts. 59-62.

105 Art. 63.


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

108 Art. 674.

109 Art. 64.
discussed. Under earlier legislation, a bakers' contract was made obligatory throughout the Federal District, which embraces the City of Mexico and vicinity. At least one presidential extension of the textile contract was made over the noisy protests of a substantial minority of the workers. The textile contract provides for a trial period of employment of thirty days, 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 AGREEMENTS

The Labor Law provides for publication to the workers, through posting about the plant, of a considerable body of specified 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. In addition, the employer may frame technical and administrative regulations for the conduct of the work. A copy of the shop agreement must be deposited with the proper labor board. The terms will, if necessary, be fixed or amended by the board. 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.

In the national textile collective contract it is provided that the number of members of any committee representing the workers shall not exceed six. 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 CONTRACTS

The most important fact to be noted here is that, in general, the employer who desires to suspend operations must first secure the approval of a labor board.
and legal proceedings before labor boards run true to form in not being noted for expedition.\textsuperscript{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 partial\textsuperscript{126} suspension, if it is physically or financially impossible to continue the business on a profit-making basis.\textsuperscript{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.\textsuperscript{128} If he lacks funds, he must also establish clearly (\textit{plenamente}) that it is impossible for him to secure them.\textsuperscript{129} If he relies upon inability to make profits, he must be able to show that this condition is well known and manifest (\textit{notoria y manifiesta}).\textsuperscript{130}

Suspension of a business does not end the employment contracts.\textsuperscript{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.\textsuperscript{132} In the national textile contract, previously referred to,\textsuperscript{133} it is provided that workers' posts shall be held open for them for fifteen days after the ending of a period of suspension.\textsuperscript{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 \textit{vis maior}.\textsuperscript{135} The employers have contended that the worker's right should terminate at the end of three or six months.\textsuperscript{136}

\section*{8. ENDING OF CONTRACTS\textsuperscript{137}}

One of the strongest objections made by the employers already has been referred to, namely, that, as to nearly all\textsuperscript{138} contracts, they were deprived of any power ever to discharge a worker without proving charges.\textsuperscript{139} The Con-
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. 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." 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.

It has been noted that services can be engaged temporarily only when such
is their nature. 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.

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. 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 repre-
sentatives without just cause.

Discharge is permitted for analogous causes which are as serious as those mentioned, and continued loafing would seem to

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

\[\text{140Const., Art. 123(22). If the employer submits to the arbitration of a labor board, and the worker elects to return, the Labor Law, in Article 122, specifically provides for the payment of wages for the period of unemployment until restoration. The penalties in case the employer refuses to submit to arbitration will be discussed in Section 28 of this article, infra. The employer, by refusal to submit to arbitration, can not substitute the penalties for that act for compliance with the worker’s constitutional right to reinstatement. Consult the authorities cited in footnote \#487, infra.}\]

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

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

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

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

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

\[\text{145Arts. 57, 121 & 125.}\]

\[\text{146Arts. 113 (1 & 2) & 683.}\]

\[\text{147Arts. 121 (11).}\]

\[\text{148Arts. 121 (16).}\]
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 maior, 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. 129.
157Art. 123.
158Art. 121 (6).
159Art. 121 (5). 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 Mexico, expediente: 15/920/1305, 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) (Zahre 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-operative and savings institutions formed by the syndicates.

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

171Grupo Patronal de la Republica, 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(11).

173Art. 111(12).

174Art. 111(11).

175Art. 111(22).

176Art. 111(22).

177Art. 111(11).

178Art. 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 Republica, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.

179Art. 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 Republica, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 36.
regard to syndicate matters. In rural districts, unoccupied space must be offered to the syndicates for rental. As stated, "black lists" are prohibited. Former workers who have served satisfactorily are entitled to preferential employment. An employee who leaves is entitled to a written testimonial. Pieceworkers are entitled to be compensated for time lost through fault of the employer.

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. The annual rent to be collected is limited to 6 per cent. of the assessed valuation.

Under the Constitution all employers, without limitation, are required also to furnish schools, hospitals and other necessary community services. 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. The teachers and curriculum are selected by the government, and the teachers must be paid not less than those employed in similar government schools. Large employers must maintain a limited number of workers' fellowships for technical, indus-

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178 Art. 112(3).
179 Art. 111(18).
180 Art. 112(7). This provision is discussed in footnote #165, supra.
181 Art. 111(1).
182 Art. 111(14).
183 Art. 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 force major or some other cause independent of their will.
184 Art. 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(3)), although the Constitution does not place any limitation upon the obligation. Const., Art. 123(12).
185 Art. 111(3); Const., Art. 123(12).
186 Const., Art. 123(12).
187 Art. 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. Under certain circumstances an employer whose plant has a rural location is required to reserve an area for the establishment of municipal services.

10. OBLIGATIONS OF WORKERS

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

All differences arising with the employer must be submitted to the proceedings set out in the Labor Law. 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. There must be no absence from work, except for just cause or with consent of the employer. Workers must submit to compulsory physical examination. Propaganda of any sort during working hours, within the establishment, is prohibited. Upon termination of employment, rural workers and miners must surrender homes furnished by the employer within a month; other workers, within fifteen days.

11. WAGES AND FINANCIAL PROVISIONS

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."

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. 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. The minimum wage may not be the subject of set-off or deduction.
These provisions of the Mexican Magna Charta of labor, Article 123 of the Constitution of 1917, 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 now being aggressively taken in accordance with them. The whole matter is, however, in the realm of current economics rather than of law. The Constitution provides for the setting up of special commissions to fix minimum wages and arrange for the sharing of profits. Apart from this, the labor boards have complete control over the amount of wages.

There can be no discrimination as to wages because of age, sex or nationality. Wages must be equal under like conditions. The wages of manual laborers must be paid at least once a week, and of all other workers at least every fifteen days. Overtime pay must be double. All payments of wages must be in cash. Full pay is required during the legally prescribed holidays and vacations. Wages may not be paid in a shop or in a place of recreation, eating or drinking, unless the workers are employed there. No obligation can be imposed upon employees to purchase articles of consumption at any particular shop or place. No charges for securing employment are permitted, and the Labor Law directs the executive departments to establish free employment agencies.

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202 Consult Section 1 of this article, supra.
203 March, 1934.
204 Former 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.
205 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.
206 Const., Art. 123(27b).
208 Arts. 22(5) & 86; as to sex and nationality, Const., Art. 123(7).
209 Art. 86; Const., Art. 123(7).
210 Arts. 22(9) & 67. As to manual workers, Const., Art. 123(27c).
211 Art. 92; Const., Art. 123(11). Except in case of imminent danger to life or to the existence of the enterprise. Art. 75.
212 Art. 89; Const., Art. 123(10). Merchandise, credit memoranda, tokens and other substitutes for money are expressly prohibited.
213 Art. 93. The employers argued that at least this burden should not be imposed "during the present moments of general crisis." Grupo Patronal de la Republica, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 32.
214 Arts. 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.
215 Arts. 22(11) & 112(1); Const., Art. 123(27e).
216 Const., 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.
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. 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. 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. Deductions by way of fine are expressly prohibited.

Special formalities are required for any assignment of wages to a third party, and any settlement or agreement between the employer and the worker must be executed before a labor board. There is no garnishment of wages, and in case the employer is sued by the worker there can be no set-off. Wages earned within a year, and workers' claims for damages, are preferred in bankruptcy, receivership, succession, attachment and garnishment proceedings. 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.

12. HOURS AND VACATIONS

An eight-hour day, a seven-hour night, and a seven-and-a-half-hour "mixed" tour of duty are established. Persons rendering domestic services in homes are permitted a greater number of day hours. 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. To take care of industries where continuous operation is required, it is provided that the executive departments,
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.\textsuperscript{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.\textsuperscript{235} There is a general provision that any contract stipulation calling for a tour of duty which is inhumane, because notoriously excessive, is void.\textsuperscript{236}

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

At least one day of rest to each six of work is required.\textsuperscript{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.\textsuperscript{241} Three paid holidays each year are also obligatory.\textsuperscript{242}

13. WOMEN AND CHILDREN\textsuperscript{243}

Women and children must be given the same pay as men for the same work.\textsuperscript{244} With parental consent, children are permitted to go to work at twelve,\textsuperscript{245} a lower age than in most countries. Up to sixteen they are limited to six hours.\textsuperscript{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.\textsuperscript{247}

Minors of both sexes, even though not emancipated, are given full capacity in regard to the execution and performance of labor contracts.\textsuperscript{248} A married woman does not need the consent of her husband, in connection with either the labor contract\textsuperscript{249} or syndicate matters.\textsuperscript{250} Working children of twelve may

\textsuperscript{234}Art. 83. The Constitution does not expressly provide for this. Const., Art. 123(1, 2 & 11).
\textsuperscript{235}Art. 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 Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 29.
\textsuperscript{236}Art. 74; Const., Art. 123(11).
\textsuperscript{237}As 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.
\textsuperscript{238}Art. 75. The Constitution does not contain this exception.
\textsuperscript{239}Art. 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.
\textsuperscript{240}Art. 82.
\textsuperscript{241}Art. 80—the dates being May 1st, September 16th and December 25th.
\textsuperscript{242}Arts. 105–110.
\textsuperscript{243}Arts. 22(5) & 86; as to women, Const., Art. 123(7).
\textsuperscript{244}Arts. 20 & 22(3); Const., Art. 123(8).
\textsuperscript{245}Art. 72; Const., Art. 123(3).
\textsuperscript{246}Arts. 22(2 & 6), 72, 76–77 & 106–109; Const., Art. 123(2).
\textsuperscript{247}Art. 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), 223, §273.
\textsuperscript{248}Art. 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

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251Art. 239.
252Art. 110; Const., Art. 123(5).
253Art. 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 Sugerencias del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 30 & 31.
254Art. 110. 255Art. 79; Const., Art. 123(5). 256Art. 123(13).
257Art. 110. 258Art. 106.
260Castorena, Manual de Derecho Obrero (1932), 185, §201.
261Castorena, Manual de Derecho Obrero (1932), 185, §201.
262Art. 227.
263Termination of the apprenticeship is not expressly stated, but is clearly to be inferred. The obligation of the employer, in Art. 226(1), to furnish instruction, would, for example, thereafter be meaningless.
the Labor Law, including those relating to minors, except insofar as expressly negatived. 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. 279

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 INDUSTRIES 284

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.

266 Art. 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.

267 Art. 224 (2).

268 Art. 226.


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

271 Art. 221.

272 Art. 224.

273 Art. 231.

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

275 Art. 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 Republica, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 24.

276 Art. 9.

277 Art. 9.

278 Art. 9.

279 Art. 10.

280 Art. 111 (1).

281 Art. 10.

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

283 Arts. 206-217.

284 Sections 10-21 of this article, infra: domestics, seamen, railroads, farms, grazing and forests.
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. 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.

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. They are not required to give annual vacations 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. 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. DOMESTICS

Domestic services unless rendered in homes are not subject to any special provisions. Domestic services of either sex in homes are excepted from the provisions of the Act in regard to hours. They must be afforded an opportunity to attend night schools. 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. In case of death, the employer must pay the expenses of burial. 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.

19. SEAMEN

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. The term of service may be for a definite or for an indefinite period, or by the voyage. The seaman must be returned to the port where taken on, or to a port specified. Wages may be different for the same services when rendered on ships of different categories. The owner must bear the expense of transmitting funds from the crew to their families, when the ship is in foreign

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287 Arts. 208 & 211-212. The Law of Family Relations is important here. Castorena, Manual de Derecho Obrero (1932), 197, §218, citing Arts. 53-55, 57-58, 72-74, 240 & 244-245 of said law.
288 Arts. 209 & 212-214. Special reports are required from those giving out the work. Arts. 215 & 217.
289 Arts. 205.
291 Arts. 209.
292 Arts. 207 & 213-214. Special reports are required from those giving out the work. Arts. 205 & 210.
293 Arts. 209.
294 Art. 208.
295 Art. 209 (4).
296 Art. 130 (5). 297 Art. 130 (5).
298 Art. 208.
300 Arts. 132-173.
301 Art. 137.
302 Art. 138.
303 Art. 137. 304 Art. 138.
305 Art. 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.
A strike may be declared only when the ship is in port. A few provisions relate only to river and interior navigation.

20. RAILROADS

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. Except as to those occupying posts designated in the collective contract as confidential, promotions are to be based upon physical capacity, efficiency and seniority, as prescribed in the contract. 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. Wages for the same services may vary when rendered upon lines or branches of unequal importance. Workers near the age of pensioning are not to be discharged because of slight faults.

21. FARMS, GRAZING AND FORESTS

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

22. WORKMEN’S COMPENSATION

Workmen’s compensation provisions are included in the Labor Law. In the preparation of this portion of the law, the principal statutes of the kind drawn up in other countries were considered, 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, and 242 varieties of partial disability, both subject to administrative amplification.
Employers are required to take out compensation insurance with a Mexican company. 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.

23. SYNDICATES

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

The members of an employers' syndicate must be engaged in the same branch of industry. In regard to workers' syndicates, in framing the Labor Law, the existing varieties of organizations were accepted. 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.

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

The by-laws are required to cover the points which have been found by experience most likely to give rise to disputes. Syndicates must register with the labor authorities and make reports to them. 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 administr-
tion of the funds.\textsuperscript{346} This requirement can not be waived.\textsuperscript{347} It is provided that syndicates may enforce collective contracts against their members,\textsuperscript{348} but in general the relations with the members are not covered by the law.\textsuperscript{349}

Duly registered syndicates are legal entities\textsuperscript{350} and are bound civilly by the acts of their boards of directors, when acting within the scope of their authority.\textsuperscript{351} Syndicates may acquire personal property, and buildings used immediately and directly to further their objects.\textsuperscript{352} They may form co-operatives and savings institutions.\textsuperscript{353} In general they may perform any acts designed to promote the economic or cultural well-being of their members,\textsuperscript{354} except that they may not engage in activities for profit,\textsuperscript{355} and may not take part in religious or political activities.\textsuperscript{356} Upon dissolution, the assets are distributed in accordance with the by-laws.\textsuperscript{357} In the absence of provision therein, they pass to the federation to which the syndicate belonged, and, lacking such, to the State.\textsuperscript{358}

Theoretically, workers are left entirely free to join syndicates or not.\textsuperscript{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.\textsuperscript{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,\textsuperscript{361} but the collective contract is expressly permitted to provide for the discharge from their employment of workers withdrawing or dismissed from the syndicate.\textsuperscript{362}

\textsuperscript{346} Art. 250. Other organs than those referred to in the law may be formed by a syndicate. Castorena, Manual de Derecho Obrero (1932), 237, §230.
\textsuperscript{347} Art. 259.
\textsuperscript{348} Emilio Portes Gil, Exposiciónde Motivos (1929), xxi, published with Proyecto de Código Federal de Trabajo (official ed. 1929).
\textsuperscript{349} Art. 247.
\textsuperscript{350} Art. 252.
\textsuperscript{351} Castorena, Manual de Derecho Obrero (1932), 235, §278 & 241, §290.
\textsuperscript{352} Castorena, Manual de Derecho Obrero (1932), 219, §246.
\textsuperscript{353} Art. 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.
\textsuperscript{354} Art. 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).
\textsuperscript{355} Art. 251.
\textsuperscript{356} Art. 254; Emilio Portes Gil, Exposiciónde 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.
\textsuperscript{357} Arts. 49 & 234.
\textsuperscript{358} Castorena, 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.
\textsuperscript{359} Art. 235.
\textsuperscript{360} Art. 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.
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24. STRIKES

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 Diaz 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

363 Const., 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), 275, §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

364 Gruening, 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.

365 Arts. 258-276.
places certain regulatory restrictions upon this right. A strike must be declared by a majority of the workers in each enterprise involved, and must be for one of the following purposes, as stated in the law:

"1. To accomplish equilibrium 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."

The grounds stated are so general that the labor boards are left completely untrammeled 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. If a minority of the workers have voted against the strike, they are not permitted to continue at work. 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).

Art. 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.

President 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.

Art. 269. "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. 269 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).

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

Art. 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 extend­
ing 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 con­
flict; 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 peti­
tions 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 deter­
minant 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 previously 376 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 & 269, 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 (1933), 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.\textsuperscript{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 penalty\textsuperscript{378} 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 services\textsuperscript{379} 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.\textsuperscript{380}\"

During a strike, picketing and boycotts are forbidden.\textsuperscript{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.\textsuperscript{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.\textsuperscript{383} If necessary, the board may request the aid of governmental forces, in order that other workers may perform these services.\textsuperscript{384} A strike becomes illegal if a majority of the strikers perform acts of violence.\textsuperscript{385} Strikers

\textsuperscript{377}\textsuperscript{378}\textsuperscript{379}\textsuperscript{380}\textsuperscript{381}\textsuperscript{382}\textsuperscript{383}\textsuperscript{384}\textsuperscript{385}
may not cause work to be suspended in establishments not under the control of their syndicate.\textsuperscript{386}

When a strike is instituted, employers, workers or third persons may appeal to a labor board against it.\textsuperscript{387} The board is required to make a decision within forty-eight hours after the suspension of work.\textsuperscript{388} If it finds that the strike is not for a proper purpose, or has not been duly declared,\textsuperscript{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 \textit{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,\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{394} If the board rules against the strike upon any ground, the aid of the authorities to the strikers\textsuperscript{395} 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.\textsuperscript{396}

Even if a strike is declared illegal, the strikers may still win, if they have...
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 agreement, by the decision of an arbitral body freely selected by the parties or by the decision of a labor board. 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. In the case of the workers no further penalty is provided, so that the employer's troubles in connection with the strike are not over. But if an employer fails to comply, he will have to pay each worker three months' salary, in addition to substantial damages, the amount of which will be discussed later. These provisions are merely cumulative to those previously set forth in regard to action by the board.

25. LOCKOUTS

Lockouts 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."

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

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297 Art. 273.
298 Const., Art. 123(21).
299 Const., Art. 123(21), at end.
300 He could also have the labor board rule that no state of strike exists, with the limited consequences described.
301 Art. 601; Const., Art. 123(21). The strike will continue as a lawful strike.
302 Consult Section 27 of this article, infra. The matter is covered by Art. 602.
303 Arts. 277-283.
304 Consult, 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).
305 Const., 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).
306 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 & 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., 29. 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., 548 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

25. BOARDS AND AUTHORITIES 408

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.

408 Arts. 334-428. Art. 349(5) was amended by decree of Oct. 6, 1933. Diario Oficial, Oct. 11, 1933.
409 The labor boards originated in the arbitration tribunals set up in collective contracts. Castorena, Manual de Derecho Obrero (1932), 300, §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., 319, §379 & §317, §383; Groening, Mexico and Its Heritage (1928), 508-509. Groening attributes the change to the increase in the power of organized labor.
410 Arts. 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.
411 The 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 Republica, Observaciones y Sugestiones del Grupo Patronal al Proyecto de Ley Federal del Trabajo (1931), 15.
412 Near the end of Section 1 of this article, supra.
414 Arts. 340(1-3), 352 & 357.
to a Board of Conciliation and Arbitration, one of which sits in each unit of the federation, for a decision binding upon the parties. The federal boards are organized in the same manner as the others, but are limited to territories and matters subject to federal jurisdiction. 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.

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. 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. The recent activity in regard to Special Minimum Wage Commissions has been noted. The Labor Inspectors are what the name implies. The federal Department of Labor, established as a separate executive department January 1, 1933, is in general charge of the enforcement of the law.

27. PROCEDURE

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]."

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

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416 Arts. 343 & 358. Additional Central Boards, or, in the case of the federal, divisions, may be created. Arts. 343, 363 & 366.
417 Arts. 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 of two or more units of the federation. Arts. 349(1), 365(1, 3 & 4) & 366(1).
418 Arts. 353 & 357-361; Const., Art. 73(10), as last amended, Decree of March 29, 1933. They handle all matters relating to two or more units of the federation. Art. 366(3 & 4).
419 Const., Art. 73(10), as last amended, Decree of March 29, 1933. Diario Oficial, April 27, 1933.
420 Arts. 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.
422 At the beginning of Section 11 of this article, supra.
423 Arts. 402-406. One 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 Republica, 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.

428Art. 555. Neither is there any form of administrative redress. Of course the employers objected (Grupo Patronal de la Republica, 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.
431Ferrocarriles Nacionales de México v. Junta Especial Numero Uno de Federal de Conciliacion 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. 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." 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. Steps have been taken to remedy this condition.

All matters coming before the boards are divided into two classes, which Castorena describes as "juridic" and "economic," for which different procedures are prescribed. 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, lockouts, termination of contracts, et cetera."

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

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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, Excélsior, Mexico City, March 26, 1933.
436Habrá Unidad en los Fallos que Pronuncie la J. de Conciliación, Excélsior, Mexico City, March 26, 1933; Otro Reglamento en la Junta de Conciliación, Excélsior, Mexico City, Aug. 12, 1933.
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, ete 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), iv, published with Proyecto de Código Federal de Trabajo (official ed. 1929).
parties should in large part be excluded. In dealing with the "economic" cases the procedure is more deliberate and the board appoints a commission to investigate.

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. The parties are then given an opportunity to offer additional evidence, but seldom do so. Syndicates may appear in defense of either collective or individual rights. All pleadings and other written proceedings are entirely informal. The entire body of evidence is first passed upon as to its admissibility before any is admitted. Numerous provisions are designed to prevent undue delay.

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."
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. 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. 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, 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. 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.

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. The employer can not nullify this right by refusing to arbitrate.

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, and through the exercise of the usual powers of a court of

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450 Arts. 584–585.
451 Emilio Portes Gil, Exposición de Motivos (1929), fiftieth page et seq., published with Proyecto de Código Federal de Trabajo (official ed. 1929).
452 Const., Art. 123 (21), at end.
453 Const., 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.”
454 Arts. 601 & 602; Const., Art. 123 (21).
455 Arts. 602 (last par.) & 298.
456 Const., 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.
457 That 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), ill, published with Proyecto de Código Federal de Trabajo (official ed. 1929); Asociaciones Patronales, Memorandum Sobre la Convenencia 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).
There is no garnishment of wages, and no performance of services can be compelled. Imprisonment not to exceed fifteen days may be imposed as a penalty. The Act also contains voluminous provisions for the infliction of pecuniary penalties. The president of a board, the government member, may be dismissed because of a "notoriously unjust" decision.

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."

(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.

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

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

461 Art. 474. Const., Art. 5. A ne exeq. 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.


464 Arts. 650(3) & 659.

465 Even 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, 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.

696 In 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.