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OPERATION OF THE MEXICAN LABOR LAW*

(Part I of Two Parts)

*Joseph M. Cormack***

1. INTRODUCTORY

THE purpose of this article is to examine the practical operation of the Mexican labor law.

For a reader interested in either labor problems or comparative law the Mexican labor law offers a particularly stimulating field of study. The Revolution of 1910, which deposed Diaz from his forty-year rule, was a social and economic as well as a political revolution, and stirrings among labor were a basic factor in the causes giving rise to it. The Mexican labor law has since developed in the presence of a dominant ideological viewpoint well to the left of any which has ever prevailed in the United States. In the labor field Mexico has taken forward steps before they have been taken in this country. Judging the future by the

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Many courtesies extended by Pierre Macy and J. D. Carter, of the Modern Languages Department of the College of William and Mary, are gratefully acknowledged, likewise the efficient assistance in research of Mrs. Helen L. Clagett, head of the Latin American Section of the Law Library of the Library of Congress. Work in Mexico City was facilitated by an office furnished in the Social and Economic Unit Building of the American Embassy and many copies of the Embassy Digest of newspapers, supplied by Mrs. Eistetter of the Embassy staff.

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past, one who desires to know what may happen in the United States should know what is happening in Mexico.

Since the revolution there has been great interest in labor problems in Mexico, and in political and governmental matters Mexico is the leading Latin American country in its influence upon the others. In both Mexico and the United States, as is no doubt true in other portions of the world, labor problems seem destined to be of increasingly greater importance. Currents of thought are stirring in Mexico from which we may learn much.

As the Mexican jurists grapple with the difficult problems in this field, we are afforded an excellent opportunity to observe the workings of the minds of civil law scholars with training, temperament, and methods of approach very different from our own.

All labor relations throughout Mexico are controlled by the national government, rather than by the states.¹ The federal statute now in force, based upon the Constitution of 1917, is known as the Labor Law of 1931. It is comprehensive in scope, and so nearly resembles our federal act that the reader can assume that the provisions of the two laws are the same, except insofar as differences are pointed out later herein. Translations of the law into English are readily available for those who desire to go into it further. I participated in an exposition in English of the contents of the law, together with a touch of the tragic historical background.²

¹ Until 1929 the Constitution gave the national Congress and the Legislatures of the states concurrent jurisdiction to pass labor laws (not in conflict with the numerous constitutional provisions) founded upon the necessities of each region. In that year the jurisdiction of the states was removed, and the federal government was empowered to enact a labor law of national application. Article 73(10) of the Constitution and the preamble to Article 123 were amended. Decree of August 31, 1929, *Diario Oficial*, September 6, 1929.

² Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251 (1934). For more comprehensive historical treatment consult: CLARK, *ORGANIZED LABOR IN MEXICO* (1934); MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949), esp. v. 1, cc. 2-7, and v. 2, cc. 38-43; GRUENING, *MEXICO AND ITS HERITAGE* (1928); PRIESTLY, *THE MEXICAN NATION, A HISTORY* (1930); TANNENBAUM, *MEXICO: THE STRUGGLE FOR PEACE AND BREAD* (1950); ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950).

The consideration herein of the operation of the law will include the decisions of the courts interpreting it and applying it to various situations. In addition to examining the Mexican legal literature and court decisions, I made personal observations in Mexico, and attended courses in labor law at the University of Mexico. An effort will be made to present the governmental, political, and sociological milieu in which the labor law operates — it is only in the light of this that the effectiveness of any social institution can be judged. In order to present a living picture, the footnotes contain many references to Mexican newspapers.

The first two topics — profit-sharing and discharge of workers — have been selected for special emphasis because of the possibility of their great importance in the future development of labor law in Mexico and the United States, and because they afford a particularly good opportunity to observe the mental processes and points of view of the Mexican jurists and the course of their historical progress. These subjects are unique in the Mexican law, in the sense that they have received a great deal of attention in Mexico, and have been relatively unthought of in this country. It is in connection with these aspects of the law that it seems most likely that we shall be able to learn from the Mexicans, and that it will be most important for us to observe the future course of their development. The two topics will therefore be developed in considerable detail. The reader who does not have a detailed interest in them from the standpoints mentioned should pass on to the later more generally treated topics.

2. PROFIT-SHARING

The potentialities of this part of labor law are tremendous.⁸ It

⁸ Consult, in general: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO* (1935); 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 700; GUILLERMO MOLINA REYES, *LA PARTICIPACIÓN A LOS OBREROS EN LAS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS* (1943); JUAN TREVIÑO Z., *LA PARTICIPACIÓN DE LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1943).

offers a way to put an end to all labor law, by making it unnecessary. The only way to end struggles between labor and capital would seem to be to cause each to feel that it is getting a fair share of the profits.⁴ If this can be done, they will then feel that they are working together as partners.⁵ It is therefore interesting, and may prove to be of great importance to the rest of the world, that Mexico is apparently going to make a serious effort to establish profit-sharing as a principle of universal application.⁶

The prevalence of corporate income taxes may yield a valuable by-product here. One of the greatest objections to profit-sharing has been that it would be impossible to tell what the profits are.⁷ It would seem that the profits as determined for tax purposes could be used as the basis for profit-sharing.

⁴ Of course, current payments to workers in the form of a minimum wage have to be provided. By like reasoning it is conceivable that labor could be brought to see the justice of a corresponding minimum return upon the original investment of capital, to be carried along as a cumulative deferred charge before any distribution (beyond the minimum mentioned) of profits to labor.

⁵ Opposed to this, organized employers have said that profit-sharing would be "one more reason for conflicts between capital and labor." "Oposición Patronal a la Participación," Mexico City Excelsior, September 21, 1951, p. 19A.

⁶ Various methods of distributing the profits have been suggested. The most natural would seem to be for each business to make payments to its employees in the same manner that dividends are paid to stockholders (possibly substituting cash for checks). It has been suggested that profits should be distributed to workers through the issuance of stock, instead of cash payments. This would seem to offer too many complications to be feasible, even though "labor shares" are recognized in the corporation laws. The same objection applies to suggestions that the profits of each business should be placed in a common fund, to be administered by the workers through majority vote. It has also been suggested that the workers' share of the profits should be turned over to the government, to be administered by it in various ways for the benefit of the workers of the entire country. This turns profit-sharing into a social security tax upon employers, and offers no incentive to workers to make the particular business more successful than its competitors. Another proposal has been that the profits from all businesses throughout the country be placed in a national fund, with uniform payments to all workers throughout the country. This again removes any incentive to advance the fortunes of the particular enterprise as compared with others. Unless the workers receive their payments in the same way that stockholders do, they will not feel that they are sharing in the profits. As to methods of distribution, see: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MEXICO* (1935) 83, 95, 106, 109, 183; GUILLERMO MOLINA REYES, *LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS* (1943) 35, 49-80.

⁷ ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO* (1935) 128 ff., esp. 136, 160, 167.

Prominent in the Constitution of 1917 is the famous Article 123,⁸ which has been termed the first charter of social rights in the world.⁹ It sets forth a long series of provisions and guaranties for the protection of labor. It states (*italics inserted*):

Congress, with due regard for the following principles, shall enact laws on labor, which shall govern in the case of skilled and unskilled workmen, employees, domestic help, and artisans, and in general every labor contract:

* * * * *

(VI) . . . In all agricultural, commercial, manufacturing or mining enterprises, *the workman shall have the right to participate in the profits* in the manner set forth in Subdivision IX of this Article.

* * * * *

(IX) *The fixing . . . of the participation in profits . . . shall be carried out by special commissions* appointed in each municipality and subordinate to the central board of conciliation and arbitration established in each state.

As the federal government did not proceed to take any steps to appoint the commissions, or otherwise endeavor to make the constitutional provisions as to profits effective,¹⁰ several of the states

⁸ It is an interesting sidelight that one of the principal streets in downtown Mexico City is named Article 123 (Artículo 123) Street.

⁹ Mexico City Excelsior, October 13, 1948, p. 23, discussing meeting of the Academy of Law and Social Security (Academia de Derecho y Previsión Social), presided over by the distinguished labor jurist, Member of Congress and union attorney, Alberto Trueba Urbina, whose works will be frequently referred to in this article, and whose lectures I attended at the law school of the University of Mexico. Professor Manuel Marván made the same comment in his labor law course at that school. Trueba is the leader of the labor group in the Chamber of Deputies.

¹⁰ In 1919 the Chamber of Deputies of the National Congress passed a bill (which did not become law) providing that in territories under federal control from 10 to 30 per cent of profits should be distributed. In 1921 President Obregón felt that it was not possible to give effect to the constitutional provisions, because of the difficulty in determining the amount of profits, and because, if determined, there would arise constant struggle between capital and labor. In 1925 the Chamber of Deputies passed another profit-sharing bill which did not become law. JUAN TREVIÑO Z., *LA PARTICIPACIÓN DE LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1943) 49, 50. President Cárdenas, in a presidential message in 1935, advocated profit-sharing. ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO* (1935) 100; JUAN TREVIÑO Z., *op. cit. supra*, at 57.

In 1929 (the present Labor Law being enacted in 1931) a Labor Law proposed by President Gil, but not enacted, provided that each worker should receive by reason of profits [presumably if any] an amount equal to five per cent of his monthly salary. GUSTAVO ARCE CANO, *LAS JUNTAS DE CONCILIACIÓN Y DE CONCILIACIÓN Y ARBITRAJE*

made ineffectual attempts to do so.¹¹ The resulting situation has been described as follows:

For several years after the adoption of the Constitution of 1917 the profit-sharing clause in Article 123 caused many conflicts between labor and capital. But this part of the Article was never made effective. Veracruz, in 1921, attempted to give workers some share in profits, by passing the "Hunger Law" which provided that each year not less than 10% [nor more than 90%]¹² of the net profits of the business should be turned over to the workers. Employers' associations were up in arms and threatened closure of the important manufacturing establishments of the state if the law were enforced. The federal government consistently used its influence against workers' participation in profits and the unions in later years [written in 1934] have made no claims for profit sharing.¹³

(1938) 72. The same year the Congress declared that in the Social Security Law to be enacted provision would be made for use of the workers' share of profits as part of the social security fund. Código Portes Gil, quoted, ALBERTO BREMAUNTZ, *op. cit. supra*, at 72, 73. See also: ALBERTO BREMAUNTZ, *op. cit. supra*, at 67, 69; GUILLERMO MOLINA REYES, LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS (1943) 43.

¹¹ The constitutionality of state laws in regard to profits (during the period of state jurisdiction) was upheld by the national Supreme Court. Amp. Tomás Ruiz & Cía., 16 S. J. F. 1276 (1925-1926, decision 1925).

"Amp." will be used as abbreviation for "Amparo de" (Appeal of). In common law practice the party named would be the appellant. Under civil law theory an amparo is an appeal for justice against the action of an inferior governmental authority, rather than a continuation of the contest with the adversary litigant as such.

"S. J. F." is the standard Mexican abbreviation for Semanario Judicial Federal (Federal Judicial Weekly), an official publication reporting the text of Supreme Court decisions. If the decision is from an earlier year than that in which the volume was published, both dates will be shown.

"Cía." is the abbreviation for company (compañía).

¹² GUSTAVO ARCE CANO, LAS JUNTAS DE CONCILIACIÓN Y DE CONCILIACIÓN Y ARBITRAJE (1938) 71.

¹³ CLARK, ORGANIZED LABOR IN MEXICO (1934) 227, quoted by permission of the University of North Carolina Press. An earlier Veracruz law, in 1918, had provided that each worker should be paid at the end of each year, as his share of the profits [presumably if any earned], an amount equal to his pay for one month. *Id.* at 53.

In Chihuahua and Campeche the share in profits was to be from 5 to 10 per cent, in the latter state this being limited to a percentage of annual profits exceeding 20 per cent of the invested capital. In Guanajuato the right to participate in profits was given to workers who had not been absent more than five times during a month and whose monthly salary exceeded 200 pesos. In most businesses 50 per cent of the profits were to be paid to employees of all kinds. These and other state laws are discussed: GUSTAVO ARCE CANO, LAS JUNTAS DE CONCILIACIÓN Y DE CONCILIACIÓN Y ARBITRAJE (1938) 71; ALBERTO BREMAUNTZ, LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO (1935) 66, 69, 107; GUILLERMO MOLINA REYES, LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES

The national Supreme Court has consistently held that the constitutional provisions are not self-executing,¹⁴ and that until the commissions are appointed the workers cannot require that they be given a share of the profits.¹⁵ In view of the reference in the Constitution to the commissions, this result seems unavoidable, notwithstanding a general provision that the bases of Article 123 are to go into effect at once.¹⁶ Like ourselves, the Mexicans have the principle of jurisprudence that a special provision controls a general one.¹⁷

The constitutional provision for profit-sharing has been criticized because it provides for the apportionment of profits by local

ANÓNIMAS (1943) 41; JUAN TREVIÑO Z., *LA PARTICIPACIÓN EN LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1943) 49, 50.

President Gil ascribed the failure of the state laws to two factors: the lack of well prepared commissions; and difficulties in examining the records of businesses and determining the profits. Quoted, BREMAUNTZ, *op. cit. supra*, at 71.

¹⁴ The failure to make effective provision for the participation in profits in the Constitution when originally adopted can probably be attributed to haste in the Constitutional Convention. While there had earlier been some discussion of labor matters, "it was not until . . . a week before the closing of the congress, that the project of Article 123 was introduced. Then, in only two sessions, one in the afternoon and the other in the evening of that day, the article was discussed and adopted. Thus, hastily, was prepared the basis for future labor legislation in Mexico. Both labor and capital are still suffering the effects of the haste and lack of preparation in social theory of the Querétaro congress." CLARK, *ORGANIZED LABOR IN MEXICO* (1934) 49, quoted by permission of the University of North Carolina Press.

¹⁵ Amp. Cervecería Moctezuma, S.A., 12 S.J.F. 753, 757 (1923); Amp. Maldonado Antonia, 71 S.J.F. 3257, 3262 (1942); Albarrán v. Presidente, 73 S. J. F. 1281, 1345 (1942). Other Supreme Court decisions are cited and quoted: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO* (1935) 120; GUILLERMO MOLINA REYES, *LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS* (1943) 45; JUAN TREVIÑO Z., *LA PARTICIPACIÓN DE LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1943) 52.

¹⁶ Transitory Article 11 of the Constitution reads: "Until the national Congress and those of the states legislate upon the agrarian and labor problems, the bases established in this Constitution for such laws shall be in force throughout the country."

In reference to possible entry of declaratory judgments in favor of workers (which would seem to have no practical value), pending establishment of the commissions, see Amp. Bengochea Francisco, 46 S.J.F. 3502, 3513 (1937, decision 1935); Amp. Celorio Eulogio y coags., August 12, 1936, quoted: GUILLERMO MOLINA REYES, *LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS* (1943) 47. And see digests of cases: 7 *Revista Mexicana del Trabajo* (1936, Núms. 39 y 40) 164; *id.* (Núms. 41 y 42) 288; 10 *id.* (1938) 255-257.

¹⁷ 3 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1943) 449—the special provision is the exception to the general.

commissions, subject only to control by the particular state.¹⁸ Such a system is certain to result in serious discriminations between employers doing business in different parts of the country,¹⁹ and to create difficulties for enterprises doing business in more than one state. It seems clear that the constitution should be amended to provide for action upon a national scale, with authority to make local adjustments.²⁰

In view of the importance attached to profit-sharing by the Mexican workers, it seems certain that eventually an obligatory system will be put into effect,²¹ notwithstanding the opposition of

¹⁸ GUSTAVO ARCE CANO, *LAS JUNTAS DE CONCILIACIÓN Y DE CONCILIACIÓN Y ARBITRAJE* (1938) 74. He suggests the appointment of a council of employers and workers in each line of business. Such councils have already been set up for other purposes, in many instances, under the terms of union contracts with employers—for example: "Comisión de Vigilancia," Mexico City Excelsior, November 13, 1950, p. 25.

While the work cited is a thesis submitted to the law school of the University of Mexico, in dealing with Mexican law a thesis can be cited without apology. A visitor to Mexico is startled at the high quality of the theses, and the consideration given them by mature scholars. This is in part a reflection of the great attention given to research at the law school. There are a number of well-equipped and diligently used seminar rooms with specialized libraries and with a faculty member present for consultation several hours a day.

¹⁹ It would be contrary to the Mexican law for an employer to move his plant from one state to another in order to take advantage of more favorable labor laws. However, this portion of the law has little practical effect, as the employer can evade it by discharging all the workers in the old plant and paying them the required indemnity, to be discussed *infra* under "Discharge of Workers."

²⁰ I MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 708. Another writer has suggested commissions for specified areas, with a central coordinating authority. ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MEXICO* (1935) 135.

If it were felt to be feasible to provide statutory requirements as to the percentage of profits to be distributed, and income tax returns were used as the basis, commissions would be unnecessary. *Id.* at 167. However, distinctions involving the consideration of many varying factors will no doubt be required, and it would be difficult to accomplish this by a general law. A great electric power plant may require only a handful of workers, whereas a window washing company may require many workers but little capital. Some businesses will be much more hazardous and fluctuating than others. Some will require large investments of capital for years before any returns can be expected.

²¹ Congressional Deputies belonging to the ruling Partido Revolucionario Institucional submitted to the President a technical and legal study to be used as a basis for framing legislation, with support from the opposition Partido Acción Nacional. "Participación Para los Trabajadores," Mexico City Excelsior, September 24, 1950, p. 1. Profit-sharing was a leading subject of discussion and favorable action at the national union convention in 1950 of the great C. T. M. (Confederación de Trabajadores de México). In this connection the jurist Trueba affirmed that it is necessary that the class struggle be not abandoned while there are multitudes of unprotected persons.

the employers.²² In the 1951 May Day parade of half a million workers in Mexico City, there were many more placards dealing with this than with any other subject.²³

The present support of profit-sharing by the unions is a reversal of their former opposition. They then felt that any such system would be counter-revolutionary, that is, contrary to the class struggle, in that it would turn the workers into capitalists.²⁴ Now the thought is being advanced that turning them into capitalists as

"Insiste la CTM que los Obreros Tengan Participación en las Utilidades," *id.*, July 5, 1950, p. 18.

Without waiting for action by the Congress, the unions are demanding profit-sharing clauses in their contracts. "La CROM Insistirá en el Reparto de Utilidades Para los Trabajadores," *id.*, June 27, 1950, p. 4; "Participación de las Utilidades," *id.*, December 14, 1950, p. 1; "Peticiones Cetemistas," *id.*, February 13, 1951, p. 23. Such a provision appears in the union contract with Fábricas de Papel de San Rafael y Anexas, for example. 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 710. Section 602 of the Labor Law recognizes participation in profits as a proper feature of a labor contract.

Of course, profits are at least a negative factor in every determination of a wage rate. Trueba lays down as a basic principle identifying a proper strike, that "when the employer makes a greater gain, the pay of the worker should be increased," and points out that this principle has been approved by the Supreme Court. ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 137, quoting Amp. Unión Sindical de Peluqueros, Ejecutoria de September 20, 1935.

²² J. JESÚS CASTORENA, *TRATADO DE DERECHO OBRERO* (1942) 783; 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 707. The employers' federation feels that any system of profit-sharing should be voluntary. "El Reparto de las Utilidades, Difícil," Mexico City Excelsior, July 1, 1951, p. 1A. They object to making their financial operations public. "La CROM Insistirá en el Reparto de Utilidades Para Los Trabajadores," *id.*, June 27, 1950, p. 4. Other objections are set forth: "Oposición Patronal a la Participación," *id.*, September 21, 1951, p. 19A.

²³ This report was made by Justice Jorge Bocobo, head of the Code Commission of the Philippines, an eyewitness.

²⁴ 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 706; Lic. Alfonso Melo Guzmán, *La Participación de Utilidades a los Trabajadores*, Mexico City Excelsior, May 5, 1951, p. 7A; editorial, "Participación de Utilidades," *id.*, December 15, 1950, p. 6. In the editorial Pope Leo XIII is referred to as taking the lead in advancement of the idea in the present-day world.

In 1921 the Mexico City Excelsior discussed in an editorial the opposition of the workers to the Veracruz state profit-sharing law. The workers were opposing profit-sharing upon the ground that it would deprive them of their liberty to fight for higher wages and shorter hours — they had the employers at their mercy, but under the new system the employers would compel them to work harder for the same wages in order to produce profits. The editor felt that this attitude reflected the influence of the Russian revolution. "La Participación en las Utilidades," reprinted August 2, 1951, p. 7A, from editorial "El Fracaso del Programa," *id.*, July 27, 1921.

well as workers will provide a bulwark against communism.²⁵ On the other hand, employers charged, some years ago, that compulsory profit-sharing would be socialistic and Bolshevik, and argued that the extra money would not do the workers any permanent good, as they would quickly squander it on pleasures and vices.²⁶

In favor of profit-sharing, the points have been made that when prices rise (inflation being a perpetual problem) the entire benefit should not go to the employer, and that the value in the market of the product of a business is produced by society rather than by the participants.²⁷ Also the point has been made that economic cycles would be lessened in intensity through more equitable distribution of the gains of business.²⁸

Possibly it is fitting to let the Mexican jurist Bustillos²⁹ close our discussion of this topic:

It is indubitable that the participation of the workers in the profits of the employer would be the means of reconciling peacefully the conflict-

²⁵ "Medida Para que no Cunda el Comunismo," Mexico City Excelsior, January 1, 1951, p. 1; editorial, "Participación de Utilidades," *id.*, September 25, 1950, p. 6. The editor states that until a short time ago the tendency toward profit-sharing seemed very dangerous, and leading in the direction of communist objectives, but he feels that under present conditions it could, if well directed, be just the opposite.

An earlier editorial in the same paper was skeptical, believing that profit-sharing would not only fail to be a panacea for the problems of the employers and the workers, but would not even result in betterment of the condition of the workers. Questions were raised as to how to deal with fluctuations of profits, and it was suggested that the idea merited conscientious study in order to be sure that it would not redound to the prejudice of the workers. "Utilidades a los Trabajadores," April 15, 1950, p. 6.

²⁶ Statement of Confederación Fabril Nacional Mexicano, quoted: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MEXICO* (1935) 191.

²⁷ ENRIQUE MARTÍNEZ SOBRAL, *PRINCIPIOS DE ENCONOMÍA*, quoted at length: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MEXICO* (1935) 191. JUAN TREVIÑO Z., *LA PARTICIPACIÓN DE LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1934) 54.

²⁸ Statement of Department of Agriculture quoted: ALBERTO BREMAUNTZ, *LA PARTICIPACIÓN EN LAS UTILIDADES Y EL SALARIO EN MÉXICO* (1935) 53. The ideas of Carlos L. Gracidas, prime mover of the adoption by the Constitutional Convention of the principle of profit-sharing, are set forth at length in letter quoted: ALBERTO BREMAUNTZ, *op. cit. supra*, at 115. For other opinions pro and con: *id.* at 51, 56, 93, 96, 189; GUILLERMO MOLINA REYES, *LA PARTICIPACIÓN A LOS OBREROS EN LOS BENEFICIOS DE LAS EMPRESAS Y LAS ACCIONES DE TRABAJO DE LAS SOCIEDADES ANÓNIMAS* (1943) 37; JUAN TREVIÑO Z., *LA PARTICIPACIÓN DE LAS UTILIDADES EN EL DERECHO DEL TRABAJO MEXICANO* (1943) 54.

²⁹ Lic. José R. Bustillos Carrillo, "Naturaleza y Estimativa Jurídicas de la Participación en las Utilidades," 32 *Revista del Trabajo* 63, 65 (1948).

ing claims of capital and labor upon equitable bases, in such a way that the workers could be confident that they would really receive the wage which corresponds to the real worth of their work, involving a recognition of the right of the worker to the honest product of his labor, which would attain, as Smedley Taylor says, "a noteworthy stability and a beneficent peace which are greatly lacking in employer-worker relationships."

Attorney Mariano Alcocer feels that it should be considered highly commendable for employers to associate their personnel with them in the benefits of the enterprise, for the following reasons:

(a) From the standpoint of equity the workers should share in the gains of an enterprise, because obtaining profits depends more upon economic conditions than upon the ability of the employers;

(b) From the standpoint of the interest of the employers themselves, who would make a greater success of the enterprise by creating interest upon the part of the workers, as it is logical to believe that when they feel that they have a right to participate in the profits of the enterprise in which they are rendering their service, they will display greater activity, with the purpose of increasing production;

(c) Because of the harmony which this method of remunerating the labor force would maintain in the employer-worker relations; and

(d) Because the system could be considered a step toward a more perfect organization of production.

The adversaries of the system make the following objections:

First. That the plan is not equitable insofar as it associates the workers only with the profits of an enterprise, and excludes them from the losses.

Bustillos feels that the answer to this is that the workers will have invested their labor (in the hope of being duly compensated out of the profits) in the same manner as the capital of the employer, so that when losses come the worker will also be losing his patrimony. Smedley Taylor is quoted to the effect that ordinarily a large percentage of the profits placed in the treasury of the enterprise will have been due to the efforts of the workers, and that this money can with great justice be considered the contribution of the workers to the future losses of the bad years.

The second objection is:

In order that the workers could be sure that the participation assigned to them is trustworthy, they would have to have the accounts of the enterprise audited, which would involve a danger, inasmuch as within a short time the public would have knowledge of the economic state of the business.

Bustillos replies to this by pointing out that most corporations now make public the results of their operations, without having experienced unfavorable consequences. Furthermore, he asserts that good faith in dealing with the workers entitles them to this knowledge.

The third objection is:

The right to participation would cause the workers to endeavor to intervene in the direction of the enterprise whenever they believed, with or without reason, that the management of the employer was mistaken, and this interference could reduce the profits.

Bustillos feels, in reply, that the interest of the workers in the management of the business would be beneficial rather than injurious, and that, with their intimate knowledge of its functioning, they would have ideas which would increase profits. Also, he is of the opinion that if a right upon the part of the workers to share in the profits is recognized, it would not be consonant with such right to bar them from objecting to the adoption of improper methods. Bustillos adds that he does not advocate making the participation in profits permanent, as this would involve too great a restriction upon the development of the enterprise.

The fourth and final objection is:

No institution is taken seriously when it is "founded on charity and benevolence".

Bustillos feels that profit-sharing is not a charity, but rather a just distribution of a common product, and points out that the right has already been given recognition in the Mexican Constitution. He concludes:

Undoubtedly there are other objections to the system, and we do not

aspire to demonstrate that it would remedy all the ills which appear in employer-worker relations. It would, however, conduce to a better distribution of the product of the joint efforts, and would thus become a factor of co-operation and necessary stability as well as of a social peace based on justice. Its aspirations are limited "to transferring, peacefully and with satisfaction to both parties, millions of pesos from the treasury of the employer to the stockings of the workers".

3. DISCHARGE OF WORKERS

A key issue in labor relations is control over the discharge of workers. The disadvantages to the employer, if he cannot be master in his own house, are obvious.³⁰ A Mexican jurist, Supreme Court Justice Luis G. Corona, contends³¹ that any limitation upon the right of an employer to discharge workers³² is a violation of constitutional individual guaranties, because, insofar as it is effective, it deprives the employer of the power to manage his own business, and condemns him to a perpetual tie to his workers, unless he wishes to turn his capital over to them. Justice Corona states that it creates an atmosphere of violence, leaving the weapons in the hands of the worker, with the employer helpless.

A labor spokesman, union official and Congressman, Fernando Amilpa, has expressed³³ the viewpoint of the workers:

Apart from the technical aspects of the question, . . . it involves a fundamentally human content: to guarantee the rights which are the patrimony of the worker as an active member of society and as an

³⁰ For objections of employers: GRUPO PATRONAL DE LA REPÚBLICA, OBSERVACIONES Y SUGESTIONES DEL GRUPO PATRONAL AL PROYECTO DE LEY FEDERAL DEL TRABAJO (1931) 25, 39. See 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*, p. 3; Núm. 6, Maximiliano Camiro, *Memorandum Sobre la Terminación del Contrato de Trabajo Celebrado por Tiempo Indefinido*, pp. 1-9; Núm. 9, Maximiliano Camiro, *Memorandum Sobre Legislación del Trabajo en los Estados Unidos Mexicanos*, pp. 11, 12.

³¹ Reported: "Reforma al 123 que es Anticonstitucional," Mexico City Excelsior, November 26, 1948, p. 20.

³² He evidently does not feel that the requirement of a severance payment, which already exists, constitutes a limitation.

³³ Radio broadcast, reported: "La Reforma a la Fracción XXI del Artículo 123 Protege los Derechos de los Obreros," Mexico City Excelsior, December 17, 1948, p. 3.

important factor in the economic development of business enterprises. From this it results that it is anachronous and artificial for employers to claim that protection of workers against unjustified discharge would involve a lessening of the liberty of the employers and would foment employer-worker frictions.

It is inexact to say that an unjustified discharge is resolved satisfactorily and definitively for both parties through the medium of the payment of indemnity [as is now required]. For the employer it means an extra expense of a small amount; but for the worker it is only a transitory solution, while the cents last which he has received and which he exhausts in the satisfaction of his huge necessities and those of his family. But, further, a trained worker — if we assume such a case — cannot quickly find employment in his particular line; and to train himself for another line requires newly initiated and redoubled efforts, lessening his economic possibilities; and we must not lose sight of the fact that the physical and moral aspects of the situation will depress him. To sum it all up, a worker unjustifiably discharged, although indemnified, is converted into a charge upon society. All of this is without taking into account that the appearance of the discharge upon his record is a negative recommendation — silent but evident — so that one employer and another and yet another will take this into account and will not give him employment. In theory "black lists" [prohibited by the Labor Law³⁴] do not exist; but we all know the reality insofar as many instances of employers' actions are concerned.

* * * * *

To protect the worker is simply an act of justice to one who does not have the economic strength sufficient to prevent his being made the victim of caprice.

The great jurist De la Cueva, in the third edition of his large two-volume work on labor law,³⁵ says:

The workers' association has this goal, the permanent defense, present and future, of the worker; and nothing better translates into action this essence of the law of labor, than the Mexican principle of *the permanence of the labor relation while the causes continue which gave rise to the origin and subject matter of the work* [author's italics]. Upon the value which is given to these principles depend the present

³⁴ § 112 (7); 1 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 612.

³⁵ 1 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 825.

and the future of the worker; the present, inasmuch as wages are, as the law states in Section 95, the basis of the worker's patrimony, and the future, because the years of service create a series of rights, to promotion, seniority, retirement, etc.

Under the individualistic conception, in a business enterprise there exist only patrimonial relations between each worker and his employer, and the failure to fulfill any obligation is repaired through the payment of damages; the law of labor takes a different position, because the worker acquires rights in the enterprise that cannot be taken away. It is curious that men should exert themselves to surround capital with guaranties, and protest against any expropriation, and that, on the other hand, these same men should give their support to making it possible for the rights of workers to disappear through an arbitrary act of the owner of the business; and the difference is so much the more striking when the workers have in their favor a provision in the law [to be discussed in the text of this article] which is clear and precise.

The battle for strict compliance with the labor contracts is one of the best evidences of the thesis sustained in this book: in the capitalist world there exist two hostile classes; because, if this is not so, how can the refusal of the employers to comply with the labor contracts be explained? Is it possible to conceive of a collaboration of classes which would have as one of its postulates the caprice of the employer? It will not be possible to achieve social peace if the rights of the workers are not fully respected.

The Mexican labor law has been a determining factor in the evolution of the law of the peoples of South America; and it is sad to contemplate that while those peoples are advancing in the course which our institutions indicate, we are endeavoring to destroy them [the backward step which he has in mind will be discussed].

* * * * *

The Mexican workers, while the present principle of our Supreme Court prevails, have one way open to them, *to demand that the clause of compulsory reinstatement be included in their collective contracts* [author's italics]. And this solution is not alien to our law, as it is

found set forth in the collective contract of the railroads of 1936.³⁶

The Mexican law has had a curious history in reaching its present position, that any worker can be discharged, with or without reason, upon payment of the required indemnity. Subdivision 22 of the famous Article 123 of the Constitution contains the following provision, which by itself would clearly entitle a wrongfully discharged worker to obligatory reinstatement:

An employer who discharges a worker without proper cause or for having joined a union or for having taken part in a lawful strike, shall be bound, at the option of the worker, either to perform the contract or to indemnify him by the payment of three months' wages.

However, the preceding Subdivision 21 of the same Article provides for what would seem to be a remedy open to the worker at his election in another connection, or, as Trueba puts it,³⁷ a general rule to which Subdivision 22 is an exception. The Subdivision reads:

If the employer refuses to submit his differences to arbitration or to accept the award rendered by the Board, the labor contract shall be considered terminated, and the employer shall be bound to indemnify the worker by the payment to him of three months' wages, in addition to the liability which he may have incurred by reason of the dispute. If the workman rejects the award, the contract will be held to have terminated.

Putting the two Subdivisions together, it was at first the view of the Supreme Court that the worker could compel his reinstatement. Later the court reversed itself, and held that he could not, upon the ground that to give him that right would constitute a

³⁶ He continues by pointing out the impersonal character of present-day production, and states that compulsory reinstatement should not apply to house servants or to other situations involving close personal contacts.

The great jurist Trueba believes that the employer should be compelled to reinstate a wrongfully discharged employee, in order that the worker may permanently have the means of livelihood. He points out that a judgment for the reinstatement of a worker has characteristics different from those of any other civil obligation, and that the permanence of the worker in his employment has no equivalent in the life of society. 3 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1943) 442.

³⁷ 3 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1943) 449.

deprivation of liberty,³⁸ in violation of Article 5 of the Constitution, the relevant part of which reads:

The government can not permit the carrying into effect of any contract, covenant or agreement having for its object the impairment, loss, or irrevocable sacrifice of the liberty of man, whether on account of work, education, or religious vow.

De la Cueva, leading up to discussion of these decisions, states:³⁹

The individualistic idea of law has not been definitely discarded in the life of the labor law; and it has not been possible to make effective [the first quoted] Subdivision 22 of Article 123 of the Constitution. The employers have consistently refused to comply with judgments ordering them to reinstate workers unjustifiably discharged; two principal arguments have been adduced: first, that Subdivision 21 of Article 123 of the Constitution, in harmony with Sections 601 and 602 of the Labor Law [along the lines of Subdivision 21], authorizes the employer to refuse to submit to the arbitration of the Labor Boards and authorizes him not to obey the Board's order; such refusals cause the contract of employment to be considered broken, and impose upon the employer the obligation to pay the damages thereby caused. The second argument is that the obligation to reinstate is an obligation to take affirmative action ["hacer"], and that, upon failure to comply with it, it is transformed into an obligation to pay the resulting damages, as provided in Section 600 of the Labor Law [Section 600 is like the quoted Subdivision 21].

De la Cueva then quotes at length from the earlier decision, in 1938,⁴⁰ in which the above arguments were rejected, and reinstatement of the worker compelled. He next discusses the overruling of this decision:

The new members of the Labor Division of the Supreme Court

³⁸ De la Cueva interprets the opinion as meaning that the *employer* would be deprived of liberty, which seems to be clear. 1 DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 818. Trueba, however, giving the interpretation that the *worker* would be deprived of liberty, uses the adjectives "absurd" and "truly monstrous" in describing the opinion, and says: "To compare civil obligations with those of labor is simply to be ignorant of the incompatible nature of these obligations. . . ." 3 DERECHO PROCESAL DEL TRABAJO (1943) 449.

³⁹ 1 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 815.

⁴⁰ Amp. Gustavo Adolfo de la Selva, 49 S.J.F. 681 (1938).

changed the course of our jurisprudence, and, in *Amparo de Oscar Cué*, 67 S.J.F. 2044 (1941), uprooted from the Mexican labor law one of its greatest triumphs, upon the ground that the obligation of the employer is one to act ["hacer," rather than to pay], *i.e.*, to furnish the employee with work, and that such an obligation can not be specifically enforced, but when breached is transformed into one to pay the damages. Reliance was placed upon the Message of the President ["Exposición de Motivos"] when he transmitted the Labor Law to the Congress. The decision also reasoned: the constitutional provisions in Subdivisions 21 and 22 "cannot be applied to conflicts which are of an economic character and of an order distinct from the individual struggle between the master and the workers. It is neither admissible nor convenient, on the other hand, that when the parties are separated from each other by reasons which may be numerous and grave, they continue, nevertheless, in an enforced relation which would prejudice the equilibrium and harmony which should exist between capital and labor for production. Finally, apart from how unsound juridically and even monstrous it would be to exercise violence in connection with obligations to take affirmative action, reinstatement as the result of a lawsuit would be equivalent to considering the worker a lifetime functionary ["vitalicio"], which would lead to the extremes condemned by the Fifth Article of the Constitution, which prohibits carrying into effect any contract, covenant, or agreement having for its object the impairment or irrevocable sacrifice of the liberty of man, whether caused by work, education or religious vow."

The court also felt that it would be impossible to enforce the obligations of the employer.

De la Cueva severely criticizes the opinion, feeling that the court is protecting the employer rather than the worker. He cites the views of Continental writers that a worker can be given protection against wrongful discharge without violation of the natural rights of man.

De la Cueva makes the clever, though possibly specious, argument that the obligation of the employer, if reinstatement is ordered, is not one on his part to take affirmative action, since, while the obligation of the worker is to expend his energy in his work, the only obligation upon the employer is to *pay* — he does

not have to furnish work — because, while he is *privileged* to make use of the services of the worker whom he pays, he is under no obligation to do so. De la Cueva likens the situation to that of a tenant, who cannot evade payment of the rent by refusing to occupy the premises. He points out that no obligation upon the part of the employer to continue in business indefinitely is involved. He can go out of business, and give the workers their legal indemnity. But while he continues in business he cannot deprive the workers of their rights. De la Cueva feels that “the enterprise is not merely an individual matter; the law of labor has risen above that epoch.”

Viewing the problem in the light of his social viewpoint, he continues:

Discussion of the question has been somewhat useless. Jurists frequently discuss matters superficially, without recurring to fundamental concepts. Subdivision 22 of Article 123 of the Constitution has brought into competition two concepts of the law of labor, one which attempts to confine it within the old individualistic ideas, and one which contemplates it as a human law with social content. In the regime of capitalist production the rights of man are in conflict with the asserted rights of capital: the right to existence of the workers defends the principle of compulsory reinstatement; the caprices of capital defend the efforts to obstruct the natural consummation of Subdivision 22. Indeed, when Bismarck prohibited the formation of associations of workers, he affirmed in the Imperial Message that to the worker his present and his future are important; and such is the law of labor — it does not resign itself to considering only the present of the worker, and endeavors to give security to his future.

Trueba feels that the present position of the court, “against obligatory reinstatement, is contrary to the basic spirit of Article 123, to protect the workers, and that that spirit should prevail against technicalities.”⁴¹ He says, further:⁴²

It is to be hoped that the court will return to the former jurisprudence,

⁴¹ 3 DERECHO PROCESAL DEL TRABAJO (1943) 449. For his discussion of the decisions of the court: *id.*, 443. See also his EL ARTICULO 123 (1943) 394.

⁴² 3 DERECHO PROCESAL DEL TRABAJO (1943) 450.

and that it will understand that it should not be restricted by the rigidity of the constitutional provisions in interpreting them, but that it should be guided by the objectives of the Constitution and the evolutionary currents which have succeeded in accomplishing systematization in the constant progress not only of the interests of the working class but also of the innate procedural discipline of labor in its scientific and cultural manifestations.

Through the change of orientation of the jurisprudence of the Supreme Court, the option which the legislator sought to establish in favor of the worker has been converted into an option in favor of the employer. Between the purpose of the legislator and the import of the new jurisprudential doctrine there is a world of ideas and thoughts in conflict.

The *amount* of the indemnity required to be paid the discharged worker under various circumstances⁴³ has caused many disputes, but is not significant for our purposes, since, as De la Cueva has pointed out,⁴⁴ the necessity of making the payment has not sufficed to deter employers from wrongfully discharging workers and refusing to reinstate them.⁴⁵ It is then a natural question — why so many disputes, often carried on appeal to the Supreme Court? I would say that there are four reasons, any one or more of which

⁴³ 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 813, 829; 4 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1944) 369, Apéndice 7, "Salarios Caídos en el Proceso por Despido Injustificado"; Constitution, Art 123, Subdivisions 21 and 22; Labor Law, §§ 122, 128, 601, 604. Among the decisions: Amp. García Juan B., 59 S.J.F. 701 (1939); Amp. Agoitia Juan, 62 S.J.F. 2881 (1940); Amp. Gris Carlos M., 63 S.J.F. 2437 (1942); Amp. Rafael Pérez Márquez, 84 S.J.F. 647 (1945); Amp. Martha Llanos de Porras Moliner, 30 Revista del Trabajo 35 (1947, Núm. 119); Amp. Cía. Manufacturera Driles y Lonas, S.A., *id.* at 39; Amp. Arturo Morgan y Emma Yáñez, digested, 26 Los Tribunales 55 (1949); amparo discussed, "Pagos Legales de los Salarios Caídos," Mexico City Excelsior, January 17, 1949, p. 1; amparo discussed; "Aclara la Corte Jurisprudencia de Salarios Caídos," *id.*, December 24, 1949, p. 30; amparo against Board filed by La Perfeccionada, "Fallo Contrario a una Fábrica de Hilados," *id.*, March 29, 1951, p. 19; Amp. El Salvador, "Distinción en Casos de Despido Injusto," *id.*, July 19, 1951, p. 5A; Amp. Domínguez Jaime Gallegos, "Aconsejan Cautela a los Patronos al Rescindir los Contratos," *id.*, July 21, 1951, p. 5A.

Technical questions of pleading have been involved. In the majority of cases the employer denies that the worker was discharged, making the burden of proof very important. 1 MARIO DE LA CUEVA, *op. cit. supra* at 834.

⁴⁴ 1 *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 815, quoted *supra* at note 39.

⁴⁵ A newspaper report stated that eleven workers had been discharged by an ice plant in Tampico, and that the manager had paid the men their separation indemnities, totaling almost 9,000 pesos, in the presence of the Labor Board. "Indemnización a Trabajadores," Mexico City Excelsior, August 1, 1951, p. 4A.

may apply to a particular case: first, desire to avoid having to make the payment; second, endeavor to establish a precedent against having to make such payments in the future;⁴⁶ third, desire to have public opinion on one's side; and fourth, pressure by the government to at least use the machinery of the Boards and the courts.

It seems certain that the Constitution will be amended to provide effectively for compulsory reinstatement. The Chamber of Deputies of the National Congress has already almost unanimously taken action to that effect.⁴⁷

If the employer is to be prevented from wrongfully discharging a worker, a logical corollary would seem to be that the worker should be prevented from wrongfully leaving. This is a good illustration of the general problems to what extent a legal system should recognize economic disparity.

The Labor Law contains a long list of causes which *justify* discharge of a worker,⁴⁸ together with a catch-all provision for analogous causes of equal seriousness and with similar consequences.⁴⁹ There is a corresponding list of acts of the employer which justify recission by the worker of the contract of employment.⁵⁰ It is provided that the worker who quits without just cause is subject to civil liability.⁵¹ Unless he is difficult to replace, the damages would

⁴⁶ The civil law theory that judicial decisions are not precedents is not lived up to by the Mexicans, at least in the labor law field. In this aspect of their thinking they are thoroughly Americanized — loose leaf editions of the Labor Law are kept annotated down to date, and collections of digests of the decisions are published. A reversal of its position by the Supreme Court is given the same significance as with us.

⁴⁷ "Salvaguardia Contra el Cese de Trabajadores," Mexico City Excelsior, November 24, 1948, p. 1.

⁴⁸ § 121; discussed: 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 599, 808; Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 267 (1934).

⁴⁹ § 121 (6). Presumably this would cover any violation of the long lists of obligations and prohibitions set forth in §§ 113 and 114.

⁵⁰ § 123, including a similar catch-all provision, which presumably brings in violation of any of the obligations and prohibitions relating to employers in §§ 111 and 112. Discussed: 1 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 609, 809; Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 269 (1934). The worker is also entitled to three months' wages. § 124.

⁵¹ §§ 38, 125.

seem to be nominal, and in any event enforcement of the liability against him would, of course, be problematical, particularly as wages can not be garnished.⁵² In view of the attitude of the Supreme Court toward obligatory reinstatement, as involving a deprivation of liberty, the constitutionality of the provision would seem to be doubtful.⁵³

An employee cannot be hired for a trial period, as this would lead to evasion of the provisions of the law in regard to discharge.⁵⁴ Nor can other forms of contracts for temporary employment be used unless the work is by its nature temporary.⁵⁵ On the other hand, a contract of employment may not *extend* for more than a year to the prejudice of the worker.⁵⁶

Possibly something of the spirit with which the Labor Law is being administered can be gathered from consideration of some of the cases which have arisen. In general, the results are not surprising.

Disobedience, within the meaning of the Law,⁵⁷ relates to orders in the conduct of the business, and does not apply to a personal matter, such as, contrary to the wishes of the manager, requesting

⁵² § 95.

⁵³ This would seem to be true notwithstanding the reference to the worker's civil liability for breach of contract in the final sentence of Article 5 of the Constitution. On the other hand, the severance payment required of the employer has been upheld.

⁵⁴ Amp. Juárez Enrique C. y coags., 67 S.J.F. 2058 (1941); Amp. Hernandez Alicia, August, 1950. Actual incompetency or inefficiency, or loafing, would seem to justify discharge as a violation of the obligation, in § 113 (2), to work "diligently, carefully and with proper attention," and theoretically to call for the imposition of a small fine by the government under § 683. 1 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 602. See also §§ 24(2), 126(9).

⁵⁵ §§ 24(3), 39, 126 (4, 5); Amp. Heredia José y coags., "Garantía Jurídica en los Contratos con Trabajadores," Mexico City Excelsior, June 14, 1951, p. 4A. For Board decisions prior to the present Labor Law: annotations to § 39 in Enrique Calderón's second edition of the Labor Law in 1931.

⁵⁶ Constitution, Art. 5; Labor Law, § 37.

⁵⁷ §§ 113(1), 121(11). Among many decisions: Amp. Cía. de Tranvías de Luz y Fuerza Motriz de Monterrey, 45 S.J.F. 5668 (1937, decision 1935); Amp. Venegas José, 56 S.J.F. 1451 (1939, decision 1938); Amp. Vera J. Raúl, "Si los Obreros Desobedecen Ordenes del Patrón, se les Cancela el Contrato," Mexico City Excelsior, May 21, 1951, p. 11A.

the police to remove another employee who had been injuring and threatening the one discharged.⁵⁸

... This was not a matter of the work agreed upon, nor could it be, because it related to a matter eminently personal, involving personal dignity, which the worker does not, and should not, place in the hands of his employer.

It is dishonesty justifying discharge⁵⁹ when a worker sleeps on the job and negligently permits a tank of oil to overflow:⁶⁰

In effect, honesty signifies rectitude of conduct, fulfillment of duty, and it is evident that such a worker ... does not work with honesty, and, furthermore, that his conduct causes injury to his employer, when the worker collects wages without performing the duty for which he is obligated. Section 113(2) of the Labor Law places upon the worker the obligation to perform his duty with appropriate intensity, care and attention, and in the manner, time and place agreed, from which it results that disobedience of these precepts involves a lack of that which the law considers as obligation of the worker in fulfillment of his duty.

In another case discharge was held justified when a watchman fell asleep on the job, and permitted himself to be robbed of his pistol.⁶¹

The following were likewise held to be sufficient acts of dishonesty: failure to report to the employer or to the police alleged loss of money collected from customers;⁶² working for a competitor during a leave of absence granted upon a plea of illness;⁶³ faking an accident in order to secure workmen's compensation benefits;⁶⁴ taking company lumber;⁶⁵ taking company money;⁶⁶ and stealing freight being transported by employer railroad.⁶⁷

⁵⁸ Amp. Gancedo Domingo, 71 S.J.F. 571, 573 (1942).

⁵⁹ § 121(2).

⁶⁰ Amp. Cía. Mexicana de Petróleo "El Aguila," S.A., 48 S.J.F. 1685, 1689 (1937-1938, decision 1936).

⁶¹ Amp. Pedroza Fidel, 64 S.J.F. 850 (1940).

⁶² Amp. Reyna Herlinda, 62 S.J.F. 321 (1940, decision 1939).

⁶³ Amp. García Alfredo, February 28, 1947, digested, 24 Los Tribunales 172 (1947).

⁶⁴ Amp. Costilla, 28 Los Tribunales 27 (1950).

⁶⁵ Amp. Cardona Manuel, 47 S.J.F. 699, 704 (1937, decision 1936).

⁶⁶ Amp. Ahedo Fernando, 37 S.J.F. 1615 (1935, decision 1933).

⁶⁷ Amp. Cabrera Ponciano, 42 S.J.F. 3655 (1936, decision 1934).

Drunkenness on the job justifies discharge,⁶⁸ but has caused many disputes.⁶⁹ Thus, it has been held that the drunkenness must be such as to endanger life or property, and that it is not sufficient that a physician testifies that the man had imbibed of alcohol, and had alcoholic breath, altered pulse and thick speech.⁷⁰ When a worker did not show up for work drunk, which the law expressly proscribes,⁷¹ but had his condition reported from his home, and it took him four days to recover, and the intoxication was not customary, this was held, by a divided court, to be an instance of *vis major* not justifying discharge.⁷²

The law permits three unexcused absences without good reason during a month.⁷³ It is held that if a worker has good reason for an absence, he must report it before the time for work has arrived, otherwise it will be charged against him.⁷⁴

Violence against coworkers which disturbs discipline is expressly forbidden.⁷⁵ Discharge was held justified even though the disturbance was outside working hours,⁷⁶ and in another case when workers left a factory to assault another employee in the street.⁷⁷ A like result was reached when the one discharged had

⁶⁸ §§ 114(4), 121(13).

⁶⁹ Among many cases, in addition to those discussed: Amp. Ferrocarriles Nacionales de México, 43 S.J.F. 1214, 1217, 1218 (1935); Amp. Cortés Ildefonso, 45 S.J.F. 3170 (1937, decision 1935); Amp. Sindicato de Trabajadores Ferrocarrileros, 45 S.J.F. 5347 (1937, decision 1935); Amp. Rivera Miguel, 49 S.J.F. 1965 (1938, decision 1936).

⁷⁰ Amp. Cía. Mexicana de Fósforos y Cerrillos "La Imperial," S.A., 64 S.J.F. 1439 (1940).

⁷¹ §§ 114(4), 121(13). That it may be reasonable to require that this occur three times within a year, to justify discharge: Amp. Rendón Antonio, 81 S.J.F. 5661 (1944), digested, 21 Los Tribunales 356 (1944).

⁷² Amp. Cías. Mexicana de Explosivos, S.A., y Mexicana de Mechas para Minas, S.A., "Faltar al Trabajo por Embriaguez no es Causa de Cese," Mexico City Excelsior, August 9, 1950, p. 4.

⁷³ §§ 114(2), 121(10).

⁷⁴ Amp. "Fernández Hnos.", Scres., 62 S.J.F. 2586 (1940); Amp. Guzmán Jesús Ramírez, 87 S.J.F. 1081 (1946).

⁷⁵ § 121(2, 3).

⁷⁶ Amp. Burgos Gandulfo José, 59 S.J.F. 2236 (1939).

⁷⁷ Amp. Colgate Palmolive Peet, S.A., 67 S.J.F. 981 (1941). Among other cases of violence justifying discharge: Amp. Sindicato de Ferrocarrileros de la República Mexicana, 45 S.J.F. 4157 (1937, decision 1935); Amp. Valenzuela Juan, 61 S.J.F. 3517 (1940, decision 1939); Amp. Praxedis Puente F., 79 S.J.F. 303 (1944).

insulted other workers and they had requested his discharge.⁷⁸

... In the spirit of protection of the workers, which rules all the labor legislation, injuries or bad treatment [by the discharged worker], whatever may be the circumstances, can never be justified, if it is borne in mind, furthermore, that only with a methodical system of work, based upon respect of the workers for each other and for their employer, is their task facilitated and their effort lessened.

Acquittal in criminal proceedings is not binding upon the Labor Boards.⁷⁹

Destruction of company bulletins, the contents of which were already known to the employees, was not an act of sufficient importance to justify discharge.⁸⁰ Workers can not be discharged because of intra-union troubles.⁸¹ Discharge is justified when the employer is called a gossip ("hablador").⁸² Sabotage justified the discharge of seven miners.⁸³ An accident while driving a bus justified discharge of the driver.⁸⁴ A debt owed the employer could not justify discharge.⁸⁵ A worker near retirement age who disobeyed an order under the mistaken belief that a boiler was being cleaned in a dangerous manner should have been disciplined, and not discharged.⁸⁶

The law provides that loss of confidence upon the part of the employer is ground for termination of the contract of employment

⁷⁸ Amp. United Shoe and Leather Co., S.A., 47 S.J.F. 1895, 1896 (1937, decision 1936).

⁷⁹ Amp. Ferrocarriles Nacionales, "Tesis Juridica en Materia de Juicios Obrero," Mexico City Excelsior, September 7, 1950, p. 4.

⁸⁰ Amp. Ferrocarril Mexicano, "Romper Boletines no es Falta de Probidad," Mexico City Excelsior, October 9, 1950, p. 13.

⁸¹ Amp. Díaz de León Guillermo y coags., 71 S.J.F. 564 (1942); Amp. Duesca Gabriel Marco, 30 Revista del Trabajo 37 (1947, Núm. 119).

⁸² Amp. Duarte José Jesús, 44 S.J.F. 4168 (1937, decision 1935).

⁸³ Amp. Trabajadores Mineros, Metalúrgicos, y Similares de la Republica Mexicana, "Declara la Corte que es Lícita la Destitución de Obreros Saboteadores," Mexico City Excelsior, March 6, 1951, p. 1.

⁸⁴ Amp. Arana Luis, 45 S.J.F. 667 (1937, decision 1935).

⁸⁵ Amp. Rodríguez Cipriano, 49 S.J.F. 218 (1938, decision 1936). A contrary decision would, of course, have been a step toward peonage.

⁸⁶ Amp. Trabajadores Ferrocarrileros de la República, 45 S.J.F. 5662 (1937, decision 1935).

of a worker in a managerial, fiscal or supervisory position.⁸⁷ It was held that faults of indolence and negligence upon the part of such an employee might merit disciplinary action, but did not justify discharge.⁸⁸ In another case the court said:⁸⁹

The loss of confidence, which the Board also considers a legitimate cause for the separation of the complainant, is something which cannot be made concrete by strict standards, for it depends, in large part, upon subjective causes the principal criterion for the evaluation of which is the good faith which should be mutual in the relations between employee and employer. In numerous decisions this court has established the principle that loss of confidence is a legitimate cause for termination of the contract only when it is founded upon sufficient reasons which, taking into consideration the situation of the employee, and the intimate bond which binds him to the interests of the employer, merit his separation.

The court therefore held that the requisite lack of confidence could not arise out of a personal dispute with another employee not connected with his work; nor from requesting an advance against his future salary; nor from a dispute with a higher official because the latter had, without notifying the discharged complainant, ordered a subordinate of the complainant to do work other than that which he had been ordered to do by the complainant.

(Part II will appear in the next issue.)

⁸⁷ § 126(10). If he had been promoted from a lower position, he is entitled to be restored to it unless there exists ground for discharge. *Ibid.* A textbook decision: Amp. Cía. "Productos de Maiz," S.A., 64 S.J.F. 1192 (1940).

⁸⁸ Amp. Rodríguez Arnulfo, 49 S.J.F. 1163 (1938, decision 1936).

⁸⁹ Amp. Gancedo Domingo, 71 S.J.F. 571, 573 (1942).

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