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## Operation of the Mexican Labor Law (Part II)

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## OPERATION OF THE MEXICAN LABOR LAW

(Part II of Two Parts)

*Joseph M. Cormack\**4. STRIKES<sup>90</sup>

It is remarkable how similarly this species of class struggle (a more appropriate term in this connection than collective bargaining) works out among peoples of different temperaments and historical backgrounds, having divergent economic viewpoints and many other differences. With the Mexicans, as with us, elaborate governmental machinery has been set up in order to achieve peaceful settlement of labor disputes — Trueba has written a four-volume work upon Mexican labor law procedure<sup>91</sup> — and yet the outcome of most controversies depends upon the prevailing national current of psychological and economic conditions, influenced to a minor degree by the Lewisite qualities of the negotiators. As a generalization, it seemed to me that the strikes in Mexico are neither more nor less frequent, important or significant than with us, producing in each country about the same amount of benefit or injury, depending upon the point of view.

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<sup>90</sup> See, in general: Labor Law, §§ 258 ff.; 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 745 ff.; ALBERTO TRUEBA URBINA, *DERECHO PENAL DEL TRABAJO* (1948), *DERECHO PROCESAL DEL TRABAJO* (1941), and *EVOLUCIÓN DE LA HUELGA* (1950).

Professor Cepeda has made a detailed classification of the various forms of labor conflicts: Rodolfo Cepeda Villareal, *Concepto y Clasificación de los Conflictos de Trabajo*, 30 *Revista del Trabajo* 7 (1947, Núm. 119), reprinted, 6 *El Foro* 10 (1949, Núm. 1). For other classifications: J. JESÚS CASTORENA, *MANUAL DE DERECHO OBRERO* (1932) 266, 321; 2 MARIO DE LA CUEVA, *op. cit. supra* at 748; ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 271.

Strikes by government employees (not including those working for corporations, such as *Petróleos Mexicanos*, owned by the government) are covered by special statute (*Estatuto de los Trabajadores al Servicio de los Poderes de la Unión*) and are not treated in this article. The statutory provisions are quoted: ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 232.

<sup>91</sup> *DERECHO PROCESAL DEL TRABAJO* (1941).

The right to strike is expressly protected by the Constitution<sup>92</sup> — De la Cueva has stated that Mexico was the first country to make the strike a juridical act.<sup>93</sup> The Labor Board is required to promptly<sup>94</sup> “qualify”<sup>95</sup> each strike as legally “existent,”<sup>96</sup> “non-existent” or “unlawful” (*ilícita*). A strike duly voted by a majority of the workers for a proper purpose, and commenced in accordance with the required procedure (as to notices, period for arbitration, etc.), is “existent,” without regard to the merits of

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<sup>92</sup> Article 123 (17, 18). The Fifth Article provides, with exceptions relating to governmental activities, that no one ought to be obliged to render personal services without just compensation or without his free consent. A portion of the Article has been quoted in the text.

<sup>93</sup> 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 813.

<sup>94</sup> The Labor Law sets the impossible requirement of a decision within 48 hours from the time work is suspended. § 269.

<sup>95</sup> A strike which has not been qualified by a Labor Board is sometimes referred to (incorrectly, it would seem) as a labor lock-out (*paro obrero*).

<sup>96</sup> It has been contended, without adoption by the Supreme Court, that, notwithstanding the practice since the enactment of the Labor Law, Labor Boards cannot declare a strike “existent,” but only “non-existent” or “unlawful.” This is the celebrated “Pozo thesis,” advanced by Justice Pozo, of the Labor Division of the Supreme Court. The argument is purely textual, that the Labor Law speaks only of the two latter forms of decisions, in granting authority to the Boards. De la Cueva seems to have the simple and perfect answer, that if the Board fails to declare a strike “non-existent” (or “unlawful”), it is in effect held “existent,” whatever terminology may be employed — also that if a tribunal is given jurisdiction over a problem, it necessarily follows that there is authority to render a decision, and that it is not necessary that the law state expressly that the decision can be either way. In labor circles it has been felt that the “Pozo thesis,” if adopted, would be a step backward — it is not clear to me (although complicated by procedural questions) that it would have any substantial effect. “Conciliación, sin Facultades Para Declarar Legal una Huelga,” Mexico City Excelsior, July 7, 1949, p. 1; “Conmoción, por los Debates en la Corte” and “Pardo Aspe no Acepta Lagunas en la Ley,” both *id.*, July 8, 1949, p. 1; “Arbitraje Obligatorio,” editorial, *id.*, July 8, 1949, p. 6; “La Tesis de Pozo Beneficiaría Sólo a los Trabajadores” and “Se Complica el Debate en la Corte,” both *id.*, July 9, 1949, p. 1; “Ha Sufrido Confusiones el Ministro Pozo en el Asunto de las Huelgas, Dice Mario de la Cueva,” *id.*, July 10, 1949, p. 1 (De la Cueva quoted); “Probable Rechazo de la Tesis Pozo en la Junta de Hoy” and “Puntos de Vista Obreros Sobre el Debate Jurídico,” both *id.*, July 11, 1949, p. 1; “Tras de un Enconado Debate, fuè Derrotada Ayer la Tesis Pozo,” *id.*, July 12, 1949, p. 1; Lic. Victor M. Mercado, *La Existencia de una Huelga*, *id.*, July 26, 1949, p. 7; “El Ministro Pozo Sepultó su Tesis Sobre las Huelgas,” *id.*, October 6, 1949, p. 4; “Abusa la Corte del Sobreseimiento y Niega así Justicia, Dice un Ministro,” *id.*, August 15, 1950, p. 4; “Otra vez se Impuso la Tesis Pozo en la Suprema Corte de Justicia,” *id.*, August 17, 1950, p. 1; “Empresa Amparada Contra una Huelga,” *id.*, September 1, 1950, p. 46.

the substantive demands (as to wages, hours, etc.)<sup>97</sup> and is given legal protection. A strike failing to meet any of these requirements is normally not unlawful,<sup>98</sup> but is "non-existent,"<sup>99</sup> and is not given legal protection. An "existent" or "non-existent" strike becomes "unlawful" only when the majority of the strikers are guilty of acts of violence, or the strike is against the government in time of war.<sup>100</sup> The purpose of the majority requirement is to prevent employers from causing a ruling of illegality by planting agents among the strikers.<sup>101</sup>

I have stated that to be "existent" a strike must be called for a lawful purpose. The range of permissible purposes is so broad as to be almost all-inclusive.<sup>102</sup> By the Constitution a strike may be called to "attain equilibrium among the various factors of production, harmonizing the rights of labor with those of capital."<sup>103</sup> This obviously can mean almost anything, and it has not been

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<sup>97</sup> Labor Law, § 269; 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 814, 863, 866; ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 263, 266, 268, 270; Amp. Sindicato de Terán de Palomeque, 54 S.J.F. 1939 (1938, decision 1937). See also Constitution, Art. 123(18).

<sup>98</sup> Under the Constitution this is necessarily true, except in the sense that under certain circumstances the workers may incur civil liability. 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 812; ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 138. "Lawful," in Article 123(18) of the Constitution, relates only to the purpose of the strike, whereas "existent" includes other elements.

<sup>99</sup> For examples of decisions of the federal Labor Board holding strikes existent and non-existent, respectively, see: "Resolución que Declara Existente la Huelga de los Trabajadores de la Empresa Wells Fargo & Co.," 22 Trabajo y Previsión Social 39 (1944, Núm. 81); "Resolución que Declara Inexistente la Huelga de los Trabajadores de 'La Perfeccionada,' Fábrica de Hilados y Bonetería," *id.* at 19.

<sup>100</sup> Constitution, Art. 123(18), repeated in Labor Law, § 263.

<sup>101</sup> Deputy Jara, of the Constitutional Convention, quoted: ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 142.

<sup>102</sup> Constitution, Art. 123(18); Labor Law, § 260.

<sup>103</sup> Art. 123(18).

given any restrictive interpretation.<sup>104</sup> So any sort of demands for higher wages, shorter hours, fringe benefits, etc., no matter how extreme, constitute a lawful purpose.

There can, however, still be an improper purpose, such as, for example, a strike contrary to the provisions of a union contract.<sup>105</sup> It has also been held that the discharge by the employer of union officials does not justify a strike.<sup>106</sup> Presumably it would not be a proper purpose to endeavor to take over the prerogatives of management. A Labor Board held that increases in the cost of living would not justify a strike, as the required disequilibrium had to be between the enterprise and its employees — the effect of this would seem to be simply to require the unions to rephrase their demands.<sup>107</sup>

The Labor Law expressly authorizes sympathetic strikes in aid of those having lawful purposes,<sup>108</sup> but De la Cueva<sup>109</sup> contends that this provision of the Labor Law is unconstitutional.<sup>110</sup> He also feels that sympathetic strikes are dangerous because tending

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<sup>104</sup> Trueba points out that the conception of "equilibrium" has caused polemical battle among jurists and economists, and contradictory decisions. *EVOLUCIÓN DE LA HUELGA* (1950) 262. He himself considers it "a just participation in the benefits." He feels that the lack of equilibrium may arise, not only from causes within the enterprise, but from outside phenomena such as the high cost of living, devaluation of the money, etc.

De la Cueva considers "equilibrium" to be "the highest level of life [for the workers] compatible with the existence of the enterprise." 2 *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 836. Equilibrium is to be attained between the particular employer and his employees, and not between capital and labor in general.

The Supreme Court has held that "equilibrium" means betterment of the conditions of labor as the economic condition of business improves. *Amp. Unión Sindical de Peluqueros*, July 20, 1935, quoted: TRUEBA, *op. cit. supra* at 137.

<sup>105</sup> 2 *MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 870.

<sup>106</sup> *Amp. "La Consolida," S.A.* August 8, 1947, 30 *Revista del Trabajo* 26 (1947, Núm. 117), quoted at length: "Aplauden el Fallo de la Corte Sobre Cese de Líderes," *Mexico City Excelsior*, July 22, 1948, p. 1.

<sup>107</sup> "No Existe la Huelga de los Textiles," *Mexico City Excelsior*, September 29, 1948, p. 1, dealing with a strike of *Unión de Empleados y Trabajadores de Compañías Plataneras* against the Standard Fruit and Steamship Company.

<sup>108</sup> § 260(4).

<sup>109</sup> 2 *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 893.

<sup>110</sup> Under Art. 123(18).

in the direction of general or revolutionary strikes.<sup>111</sup> Trueba, on the other hand, believes that a sympathetic strike is not contrary to the Constitution, as the strike being aided "has for its object maintenance of equilibrium among the factors of production, and action of solidarity among the workers necessarily tends toward co-operation in the establishment of such equilibrium."<sup>112</sup> Trueba holds, nevertheless, that a revolutionary strike is not legally protected, although he recognizes that a sympathetic strike might become so widespread as to produce the effects of a revolutionary strike.<sup>113</sup>

When the Labor Law was being framed, it was argued, in favor of sympathetic strikes, that the government should be interested in developing ties of harmony and solidarity among the workers, in such a way as to make them understand that their problems are common to all and that they should unite in the better defense of their interests — also that the aid of their comrades would hasten the solution of controversies, with consequent lesser injury to both sides.<sup>114</sup>

In order to be ruled "existent" a sympathetic strike has to comply in each enterprise with the usual requirements as to other strikes — majority vote, arbitration period, etc. A newspaper report indicates that these requirements have practical effect in restraining such strikes.<sup>115</sup>

As with us, outsiders may give the strikers financial assistance.

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<sup>111</sup> A newspaper report stated that the electrical workers in 22 states had threatened to go on strike in aid of strikers at Ciudad Guzmán, Colima and Morelia. "Anuncian los Electricistas una Huelga en Veintidós Estados, Como un Acto de Solidaridad," Mexico City Excelsior, July 29, 1951, p. 1.

<sup>112</sup> EVOLUCIÓN DE LA HUELGA (1950) 267. *Accord*: NICOLÁS PIZARRO SUÁREZ, LA HUELGA EN EL DERECHO MEXICANO (1938) 117.

<sup>113</sup> EVOLUCIÓN DE LA HUELGA (1950) 268.

<sup>114</sup> *Diario de los Debates de la Cámara de Diputados del Congreso de Los Estados Unidos Mexicanos*, XXXIV Legislatura, Tomo II, No. 11, July 10, 1931, p. 16, quoted: ALBERTO TRUEBA URBINA, EVOLUCIÓN DE LA HUELGA (1950) 267.

<sup>115</sup> "No Podrán Efectuar Huelgas Solidarias," Mexico City Excelsior, March 19, 1951, p. 1.

Not only do other unions send money, but farmers (campesinos) have sent corn and beans.<sup>116</sup>

A newspaper editorial states that in Monterrey, the industrial capital of Mexico, where there have been many bitter struggles in the steel mills, capital-labor relations have been substantially improved through a system whereby councils elected by the workers impose penalties upon workers who fail to do their duty.<sup>117</sup>

I have stated that when the Labor Board has "qualified" a strike as "existent," it is given legal protection. This means that the employer is prohibited from hiring strikebreakers (popularly termed "esquiroles"),<sup>118</sup> and that any minority workers who have voted against the strike are not permitted to continue working.<sup>119</sup> In other words, there is no possibility of the employer's continuing to do business. Trueba says that this means that the outcome of the strike will be determined by the "free play" of the parties, as there will be no possibility of the strike's being settled otherwise than by agreement between them.<sup>120</sup> We may be permitted to wonder whether the employer would consider the play "free." The Labor Law also provides that if the causes of such a strike are imputable to the employer (which, again, could mean almost anything) he shall pay the wages lost during the strike.<sup>121</sup> This provision, however, is not effective, since what, if anything, shall be done about wages lost will be worked out as part of the strike settlement.<sup>122</sup>

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<sup>116</sup> "Ayudarán a Huelgistas," Mexico City Excelsior, July 6, 1951, p. 5A; "Graves Escollos Para Resolver el Conflicto Minero de Palau," *id.*, October 3, 1950, p. 1.

<sup>117</sup> "Participación de Utilidades," Mexico City Excelsior, December 15, 1950, p. 6.

<sup>118</sup> Labor Law, §§ 8, 274. Any strikers who may regret their action and desire to return to work during the progress of the strike are included within the prohibition. Strikebreakers cannot be employed during the period within which the union is taking the steps required by law in order to get a strike lawfully under way. Amp. Sind. de Trab. de Volante y Sim. de Monterrey, C.T.M., 67 S.J.F. 3314 (1941).

<sup>119</sup> Labor Law, § 8(2); 2 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 864, 866. See also § 272 of the Law.

<sup>120</sup> EVOLUCIÓN DE LA HUELGA (1950) 281.

<sup>121</sup> Labor Law, § 271. See 2 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 816; ALBERTO TRUEBA URBINA, EVOLUCIÓN DE LA HUELGA (1950) 271.

<sup>122</sup> For example, in a strike which had lasted over a month, the two points remaining for discussion were the wages lost and the hours of work. "El Conflicto de 'El Porvenir,'" Mexico City Excelsior, August 1, 1951, p. 4A.

If the strike is qualified as "non-existent," it is without legal protection, and the employer is free to hire other workers, the Labor Board taking whatever protective steps are necessary in order to make continuance of work possible.<sup>123</sup> The strikers may also be subject to civil liability (no doubt worthless to the employer),<sup>124</sup> but apart from this they are still privileged to cease work, under the guaranties set forth in the Fifth Article of the Constitution. Non-employees are prohibited from participating in a "non-existent" or "unlawful" strike.<sup>125</sup>

If the strike is qualified as "unlawful," the only clear difference (as compared with being ruled "non-existent") is the certainty that there will be guilty workers subject to penal liability.<sup>126</sup> It is an unsettled point, upon which the jurists differ, as to whether the labor contracts of the innocent minority of the workers (the unlawfulness arising out of acts of violence by the majority) shall be canceled. De la Cueva holds that they are to be, "as a consequence of the strike's being the action of a workers' coalition, and not, as formerly considered, the juxtaposition of individual acts."<sup>127</sup> Trueba, however, while agreeing that a strike is not a group of individual acts, feels that "it is absurd to punish with the loss of his work one who has committed no fault or infraction in the exercise of his rights."<sup>128</sup> Incidentally, any violation of the Labor Law calls for at least the imposition of a small fine.<sup>129</sup>

It will be observed that the strikers may win a "non-existent"

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<sup>123</sup> Labor Law, § 269 (3, 4); 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 870.

<sup>124</sup> Labor Law, § 269(3).

<sup>125</sup> Labor Law, § 269bis(b).

<sup>126</sup> Labor Law, § 268. The provisions of Article 123(18) of the Constitution, specifying when a strike is "unlawful," have been discussed in the text.

<sup>127</sup> 2 *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 873.

<sup>128</sup> *EVOLUCIÓN DE LA HUELGA* (1950) 283. NICOLÁS PIZARRO SUÁREZ, *LA HUELGA EN EL DERECHO MEXICANO* (1938) 152, is quoted to the same effect.

<sup>129</sup> Labor Law, § 683. Penal aspects in general are not treated in this article. See ALBERTO TRUEBA URBINA, *DERECHO PENAL DEL TRABAJO* (1948). For a case in which a fine was imposed because of improper acts against a strike, see Amp. Rodríguez Isabel, 65 S.J.F. 4234 (1941).



or "unlawful" strike; but nevertheless the desire to obtain government support, and to influence public opinion through securing legal approval, is sufficient to cause regular resort to the procedures of the Labor Boards, followed sometimes by an appeal (amparo) to the courts. There is also the factor that by instituting Board proceedings the union is given, during the pendency of the proceedings, a final opportunity to negotiate for a peaceful settlement without losing face.

During a strike (or any temporary suspension of work) the workers are required to leave the premises.<sup>130</sup> The activities of the strikers are "limited to the mere act of suspension of work," and moral as well as physical coercion and violence are expressly prohibited, under severe penal sanction.<sup>131</sup> These provisions necessarily eliminate sit-down strikes,<sup>132</sup> picketing and boycotts; and slow-downs, the "turtle's pace" (paso de tortuga),<sup>133</sup> as a partial suspension of work, seem to be clearly included. The strikers are required to furnish the maintenance men considered necessary by the Labor Board,<sup>134</sup> and the newspapers often report the hearings held for this purpose.<sup>135</sup> In general, the famous red and black flag of the strikers (unfortunately coinciding with the colors of communism and despair), posted at the entrance to the struck enterprise, seems to be sufficient to accomplish all their purposes, although there are occasional newspaper reports of violence<sup>136</sup> (in

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<sup>130</sup> Labor Law, § 114(6).

<sup>131</sup> Labor Law, § 262.

<sup>132</sup> For detailed accounts of a sit-down strike which nevertheless occurred: "Es Delicada la Situación de Textiles," Mexico City Excelsior, October 7, 1948, p. 1; "Los Trabajadores del Ramo de Lana Ofrecen no Cometer Ningún Otro Acto de Violencia," *id.*, October 9, 1948, p. 1.

<sup>133</sup> For a complaint of such activity: "La Fundidora de Monterrey se Quejó de Actos de Sabotaje," Mexico City Excelsior, March 11, 1951, p. 17.

<sup>134</sup> Labor Law, § 275. In case of necessity the Board is authorized to request governmental assistance to see that other workers perform such services.

<sup>135</sup> For example: "Los Conflictos en Monterrey," Mexico City Excelsior, October 20, 1950, p. 14.

<sup>136</sup> For example: "Una Verdadera Fusilata fué la Matanza Obrera en Santa Rosa," Mexico City Excelsior, July 14, 1948, p. 1; "Los Obreros Textiles Apelan al Sabotaje al Perder la Huelga," *id.*, Oct. 5, 1948, p. 13; "Asaltos a Panaderías y Cafés," *id.*, Oct. 22, 1948, p. 13.

the long run, as with us, both sides no doubt being equally guilty).

In dealing with the problem of strikes, which is basically psychological, it is difficult to extract anything of value from statistics — an extreme degree of effort is required in order to endeavor to evaluate them. To begin with, in Mexico, in any such attempt upon a national basis, it must be remembered that a large percentage of the population consists of Indians whose contact with civilization is almost non-existent — President Alemán stated that it is one of Mexico's greatest problems how to make them a part of its civilization. An area which has since been improved was thus described:

Of nearly a million people in the area in 1947, only two in ten owned shoes, only three in ten could read and write. The typical home was a bamboo hovel. The average life span in some places was only 29 years.

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Three years ago Sayula [a village] . . . lived much as it had three centuries back. Four out of five families in the wattled, floorless huts spoke only an Indian dialect.<sup>137</sup>

Statistics covering every phase of labor law are published by the government in great detail.<sup>138</sup> During a 1949-1950 12-month period 8,325 matters of every sort, union and individual, were initiated before the Federal Labor Board (Junta Federal de Conciliación y Arbitraje).<sup>139</sup> Some 9,681 were concluded, and at the close of the year 16,094 were pending. There were 504 strike notices, four strikes qualified as "existent" settled by agreement, one "existent" strike discontinued, eleven strikes declared "non-existent," 135 strikes not qualified settled by agreement, 159

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<sup>137</sup> *A New Day in Butterfly Basin*, condensed by Ruth Watt Mulvey from *La Prensa*, New York, 59 Reader's Digest 129 (August, 1951), used by permission of the Reader's Digest. See also TANNENBAUM, *MEXICO: THE STRUGGLE FOR PEACE AND BREAD* (1950) 173 ff.

<sup>138</sup> The statistics in the text are taken from the 1950 *MEMORIA DE LABORES*, SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, at pp. 179 ff.

<sup>139</sup> In general, the federal Board has jurisdiction over all matters arising in the City of Mexico (the Federal District, to be exact) and the federal territories, and all important businesses throughout the country. 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) c. LXXX, p. 961.

strikes not qualified discontinued, and 723 union contracts deposited. 65,488 items of correspondence (presumably largely pleadings, depositions and reports) were received, and 8,196 dispatched. The pecuniary amount of judgments was 3,773,928.85 pesos.

Trueba declares enthusiastically that the statistics set forth in "the pages of books and official publications reveal the dynamic progress of the strike."<sup>140</sup> This is, of course, a highly subjective appraisal by a brilliant jurist who is also a political leader and a union attorney. Trueba presents figures showing how wages have increased<sup>141</sup> — this leads into another field of difficulties in regard to evaluation, as such figures need to be evaluated in the light of the declining purchasing power of the peso.

During the summer of 1948 I visited the scenes of two strikes which happened to be in progress while I was in Mexico City. Each had lasted four months. Each was against a local employer, one a building contractor, the other an eating-place concessionaire in a leading hotel. The struck enterprises were idle, with the red and black flag displayed. At what would have been quitting time the construction workers gathered in the street beside the half-constructed building and answered a roll call by a union representative. I talked with the workers, and they gave no manifestation of intense feelings.

At the same time a Pullman strike, occasioned by the laying-off of 32 workers on the Southern Pacific, was causing losses of millions of pesos to the hotels alone.<sup>142</sup> The strike was settled, and the red and black flags removed from the idle cars, when the Under Secretary of Labor induced both sides to agree to abide by the decision of the Labor Board, which had been very dilatory in its proceedings.

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<sup>140</sup> EVOLUCIÓN DE LA HUELGA (1950) 303.

<sup>141</sup> *Id.* at 263.

<sup>142</sup> Among many news reports: "Cinco Millones han Perdido ya los Hoteleros," Mexico City Excelsior, July 2, 1948, p. 1.

The same summer Mexico lost fifty million pesos in three months because of a strike of zinc and lead miners, and prices of those metals reached higher points in New York than they had during the war.<sup>143</sup> During the same year, there were, among others, great iron and steel strikes,<sup>144</sup> a national strike in the woolen mills,<sup>145</sup> an electrical strike in Monterrey,<sup>146</sup> and a bakers' strike which was settled upon the initiative of the President.<sup>147</sup>

In 1949 a bus line was paralyzed by a strike for seven months.<sup>148</sup> In 1950 troops took over for a time operation of the railroad telegraphic services,<sup>149</sup> and there was a 72-day strike of 5,000 miners.<sup>150</sup> In two years there were six telephone strikes.<sup>151</sup>

During the first third of 1951 a "hunger march" of striking miners proceeded, amidst a welter of charges, including one of

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<sup>143</sup> "México Perdió 50 Millones por una Huelga," Mexico City Excelsior, July 29, 1948, p. 1.

<sup>144</sup> Fundidora strike: "Parece Eternizarse el Caso de la Fundidora," Mexico City Universal, Aug. 12, 1948, p. 1; "Al fin Cesa la Huelga en la Fundidora, que Causó Pérdidas por 32 Millones," Mexico City Excelsior, Sept. 25, 1948, p. 1. Fierro y Acero de Monterrey strike: "Dos Puntos Básicos Detienen la Solución de un Conflicto," *id.*, Aug. 31, 1948, p. 1.

<sup>145</sup> "Estalló la Huelga General en las Fábricas de Hilados y Tejidos," Mexico City Excelsior, Sept. 25, 1948, p. 1.

<sup>146</sup> "Continúa la Huelga en Monterrey, N. L.," Mexico City Excelsior, Oct. 20, 1948, p. 1.

<sup>147</sup> "Anoche Se Reanudó la Elaboración de pan en la Metrópoli," Mexico City Excelsior, Oct. 22, 1948, p. 1.

<sup>148</sup> "Siete Meses de Huelga," Mexico City Excelsior, Nov. 23, 1949, p. 4.

<sup>149</sup> "Conserva el Ejército el Control Telegráfico de los Ferrocarriles," Mexico City Excelsior, Dec. 13, 1950, p. 1.

<sup>150</sup> "Angustiosa Situación por la Huelga en Fresnillo," Mexico City Excelsior, April 9, 1950, p. 5.

<sup>151</sup> A single reference for each strike: "Un Amparo Determinó Ayer que Siga la Huelga Telefónica," Mexico City Excelsior, Mar. 6, 1949, p. 1; "Solamente 40 Minutos Duró Ayer la Huelga de los Teléfonos de México," *id.*, Jan. 19, 1950, p. 1; "Sin Variación Alguna Continúa la Huelga de los Telefonistas," *id.*, Mar. 3, 1950, p. 1; "A las 3 Horas Terminó hoy la Huelga de Telefonistas," *id.*, Aug. 4, 1950; "El Gobierno se Incautó de los Teléfonos y Acabó la Huelga," *id.*, Nov. 22, 1950, p. 1; "La Huelga de Telefonistas," *id.*, Feb. 5, 1951, p. 11.

communist influence, to Mexico City.<sup>152</sup> Odd-numbered years are normally relatively peaceful, as most of the large union contracts are made during even-numbered years for a two-year period.<sup>153</sup>

### 5. LOCKOUTS

While the right of employers to effect what are termed lockouts (paros) is expressly recognized by the Constitution,<sup>154</sup> along with the right of workers to strike, it is further provided that lockouts are lawful only when made necessary by excess of production, in order to maintain prices upon a basis which will cover costs.<sup>155</sup>

Lockouts in the sense that we use the term are therefore prohibited;<sup>156</sup> and price-fixing practices are outside the scope of this article. Of course, an intransigent employer can accomplish the same result as a lockout by precipitating the calling of a strike by the union.

De la Cueva explains the apparent unfairness of the law in permitting strikes but not lockouts by arguing that "the strike is the struggle of man, in defense of his rights, against things, and that the lockout is the struggle of things against man," again, that "the law of labor tends to resolve a human problem, and not to

<sup>152</sup> Baltasar Dromundo, *La verdad sobre la "Caravana del Hambre,"* 17 *La Justicia* 10898 (1951); "Caravana de Hambre de 6,000 Obreros," *Mexico City Excelsior*, Jan 21, 1951, p. 1; "La Caravana de los Mineros se Encuentra en las Góteras de la Ciudad de México," *id.*, Mar. 9, 1951, p. 15; "En la Basílica, los Mineros Prescindieron de su Bandera Comunista," *id.*, Mar. 12, 1951, p. 13; "Alemán Comisiona a Ruiz Cortines Para que Resuelva el Conflicto Minero de Nueva Rosita," *id.*, Mar. 13, 1951, p. 1; "Más de un Millón de Pesos Recaudados por los Líderes de la Caravana, Según un Viejo Minero," *id.*, Mar. 15, 1951, p. 17; "Solo Ayuda de Alimentos a los que Integran la Caravana Minera," *id.*, Mar. 20, 1951, p. 1; "Los Comunistas Azuzan a los Mineros, a fin de Utilizarlos Como Instrumento de Agitación," *id.*, Mar. 23, 1951, p. 1; "Deserciones de Mineros de la Caravana," *id.*, Mar. 25, 1951, p. 9; "Golpean a los Mineros que ya no Quieren a la Caravana," *id.*, Mar. 27, 1951, p. 13; "Apoyo a la Caravana," *id.*, Apr. 3, 1951, p. 14; "1,800 Mineros han Sido Reocupados, en Coahuila," *id.*, May 8, 1951, p. 1.

<sup>153</sup> "1951 Promete ser un año Pacífico en Materia Obrera," *Mexico City Excelsior*, Jan. 1, 1951, p. 4.

<sup>154</sup> Art. 123(17). Prior approval by the Labor Board is required. See Labor Law, §§ 116(3), 118-120, 277-283, 680 (may be punished by fine as high as 2,000 pesos).

<sup>155</sup> Constitution, Art. 123(19).

<sup>156</sup> A brewery moving to another city without Labor Board permission was held guilty of an unlawful lockout. It was ordered to resume operations at its old location and pay all wages lost, and was fined 2,000 pesos. *Amp. Cía. Cervecería Sabinas, S.A.*, 46 S.J.F. 1413 (1937, decision 1935).

defend the supposed rights of things."<sup>157</sup> The fallacy of such reasoning is sufficiently obvious.

A newspaper report states that the Mexican motion picture producers tacitly declared "a strike of 'fallen arms' " (brazos caídos) because of differences with a union.<sup>158</sup>

"Lockout" (paro) is sometimes used in the secondary, if not incorrect, sense of a strike which has not been "qualified,"<sup>159</sup> possibly one not expected ever to be qualified.<sup>160</sup>

## 6. UNIONS<sup>161</sup>

The right to form unions is guaranteed by the famous Article 123 of the Constitution.<sup>162</sup> In 1950 there were 434,565 workers organized in 1,712 unions.<sup>163</sup> The same term, sindicatos, is used to describe both employers' and workers' organizations.

The "closed shop" is permitted,<sup>164</sup> and the exclusion clause directed against non-union workers has caused many disputes.<sup>165</sup> In applying the clause to compel the discharge of a worker, he is

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<sup>157</sup> 2 DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 888. See ALBERTO TRUEBA URBINA, EVOLUCIÓN DE LA HUELGA (1950) 136, 223.

<sup>158</sup> "Huelga de Brazos Caídos de los Productores de Cine," Mexico City Excelsior, Sept. 9, 1950, p. 1.

<sup>159</sup> A strike not qualified was thus described by a Mexican attorney with whom I conferred. Wildcat strikes because of intra-union struggle have been thus referred to: "Hubo Paros en Cananea, Son.," Mexico City Excelsior, Sept. 9, 1950, p. 13.

<sup>160</sup> "Cesó a Mil de sus Trabajadores la Compañía de Palau," Mexico City Excelsior, Sept. 30, 1950, p. 1.

<sup>161</sup> See, in general, Labor Law, §§ 232-257; 2 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 285 ff. The various kinds of unions provided for in the law, together with some of the provisions governing them, are set forth in Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 279 (1934). The history of the principal unions is presented in CLARK, ORGANIZED LABOR IN MEXICO (1934).

<sup>162</sup> In Subdivision 16.

<sup>163</sup> 1950 MEMORIA DE LABORES, SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, chart preceding Anexo Núm. 4.

<sup>164</sup> Labor Law, §§ 49, 236. It may not, however, operate to the prejudice of workers already employed who become parties to the contract. § 49; Amp. Piñero Hermanos, S.de R. L. [Sociedad de Responsabilidad Limitada], Feb. 21, 1947, 30 Revista del Trabajo 31 (1947, Núms. 108-113).

The constitutionality of the Labor Law provisions for the closed shop is examined at length in 2 MARIO DE LA CUEVA, DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 392. See also *id.* at 382, 404, 667.

<sup>165</sup> For example, Amp. Corona Díaz Julian y coags., 103 S.J.F. 1232 (1950).

entitled to due process of law — notification of charges, etc.<sup>166</sup> Employers are required by the Labor Law to give preference to union members when hiring workers.<sup>167</sup> A union contract applies to all non-union employees.<sup>168</sup> The “check-off” is required of the employer, when expressly agreed to by the union member in advance.<sup>169</sup> The government is encouraging workers of different trades to come together in unions.<sup>170</sup>

The unions complain of company “white” unions,<sup>171</sup> and both employers and the established unions complain of wildcat (“locas”, literally crazy) strikes,<sup>172</sup> sometimes declared by “straw” unions existing only on paper and used by racketeers to extort payments from employers.<sup>173</sup>

As with us, there are jurisdictional<sup>174</sup> and intra-union<sup>175</sup> controversies. Trueba refers to the triumph of the right to strike, notwithstanding hot-headed acts of strikebreakers and employers and proletarian bloodshed from jurisdictional struggles.<sup>176</sup>

<sup>166</sup> Amp. Pérez Ramón H., “Los Líderes no Pueden Cesar a los Trabajadores,” Mexico City Excelsior, Jan. 31, 1951, p. 4.

<sup>167</sup> § 111(1).

<sup>168</sup> Labor Law, § 48. Except, of course, those of higher rank.

<sup>169</sup> Labor Law, §§ 91, 111(19, 20).

<sup>170</sup> “Fortalecimiento de Varios Sindicatos,” Mexico City Excelsior, Apr. 7, 1950, p. 3.

<sup>171</sup> “Combatirán a Los Sindicatos Blancos,” Mexico City Excelsior, May 30, 1949, p. 4.

<sup>172</sup> Among many reports: “Campeón de las Huelgas Locas,” Mexico City Excelsior, Mar. 28, 1948, p. 30; “Amenazan con Huelgas Locas,” *id.*, Mar. 24, 1949, p. 36; “Está en Puerta Otra Huelga Loca Minera,” *id.*, Oct. 4, 1950, p. 1; “Han Disminuido Considerablemente las Huelgas Locas,” *id.*, Mar. 6, 1951, p. 4.

<sup>173</sup> Among many reports: “Amilpa Señala el Remedio Para Evitar Huelgas Locas,” Mexico City Excelsior, Mar. 14, 1949, p. 1; “Se Pondrá fin a la Anarquía en las Demandas Obreras,” *id.*, Apr. 4, 1949, p. 1; “Existen más de 1,500 Sindicatos,” *id.*, Mar. 3, 1951, p. 9; “Revisión de los Registros de Varios Sindicatos,” *id.*, Mar. 28, 1951, p. 4.

<sup>174</sup> Among many reports: “2 Sindicatos Piden Amparo Contra la Sría. del Trabajo,” Mexico City Excelsior, Aug. 15, 1950, p. 4; “Probablemente Surje Otra Nueva Central,” *id.*, Aug. 16, 1950, p. 1; “Huelga por un Conflicto Intergremial,” *id.*, Oct. 17, 1950, p. 1; “Numerosas Plantas Están a Punto de Clausurarse,” *id.*, May 23, 1951, p. 15A.

<sup>175</sup> Among many reports: “No Hay División en los Mineros,” Mexico City Excelsior, Aug. 17, 1950, p. 10.

<sup>176</sup> EVOLUCIÓN DE LA HUELGA (1950) 303.

## 7. LABOR BOARDS

With the Mexicans, as with us, I feel that the real value of the boards is that they give a skilled negotiator a chance to work privately with the parties and induce them to make concessions, without "losing face," which they would not otherwise yield, and thus to come to an agreement. Just as peace is less spectacular than war, so the achievements of the boards are less spectacular than strikes; but they are nonetheless substantial. Requiring the parties by law to participate in the proceedings before the boards is part of the technique which prevents them from "losing face".

There are two kinds of boards: Conciliation; and Conciliation and Arbitration. The former are limited to endeavoring to effect an amicable adjustment. The latter have the additional, and possibly primary, function of making a complete record and "qualifying" a strike.

Each board is composed of three<sup>177</sup> members. A public member, appointed by the government, acts as President. The others represent, respectively, and are elected by, the employers and the unions.<sup>178</sup> It can readily be appreciated that the representatives of capital and labor tend to line up against each other upon all questions of policy,<sup>179</sup> leaving the decisive responsibility with the President — while I was talking to the President and one of the other members of a board, the latter pointed to the President, and said, without contradiction, "He is the board." Likewise, a Mexican attorney has written that in effect the board is composed of one member,<sup>180</sup> but this is hardly a fair statement, as the other members make a contribution — the acts of the President would not carry nearly as much weight if the others were not present.

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<sup>177</sup> Except where more than one industry is involved.

<sup>178</sup> Constitution, Art. 123 (20); Labor Law, §§ 336, 345, 354, 362.

<sup>179</sup> However, a strike was unanimously "qualified" as "non-existent" when declared while a union contract was in force: "La Huelga de Subalternos," Mexico City Excelsior, Jan. 20, 1951, p. 4.

<sup>180</sup> Felipe Ibarra Olivares, *¿Por que se Fundó la Junta Federal de Conciliación y Arbitraje?*, 31 Revista del Trabajo 7, 11 (1948, Núm. 121).



The ordinary proceedings before the boards are considered "juridic" — ascertaining the rights of the parties under existing contracts and legal provisions, including those in regard to how to promote or oppose strikes. Distinguished from these are collective "economic" conflicts — to determine what rights should be established. A special procedure is provided for the "economic" conflicts, including the appointment of experts who make a report to the board.<sup>181</sup> The "economic" conflicts are usually more general in character, often involving general economic conditions.<sup>182</sup> In the "economic" conflicts the board goes into the substantive merits of the demands and defenses of the parties, not being limited, as with strikes, to questions of purposes and taking the proper steps. The Supreme Court has thus described the two types of controversies:

Conflicts between capital and labor have a double nature, since they can be of a juridical character or of an economic nature; the former is the case when the question being contested relates to the obligations existing between the parties and when, consequently, what is being asked is compliance with obligations assumed in contracts or derived from existing law; and the latter when the workers or the employers feel that the contractual standards governing the rendition of services do not correspond to the necessities of the workers or the actual condition of the industry; and then, as has been indicated, what is asked is the equitable and just distribution of the part of the product which should belong to each. . . .<sup>183</sup>

During a 1949-1950 12-month period the Federal Board of Conciliation and Arbitration dealt with 124 "economic" conflicts.<sup>184</sup> The majority were occasioned by reduction in electric power (the result of prolonged drouth) or lack of raw materials,

<sup>181</sup> Labor Law, §§ 570 ff.; 3 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1943) 115.

<sup>182</sup> Rodolfo Cepeda Villareal, *Concepto y Clasificación de los Conflictos de Trabajo*, 6 *El Foro* 10, 27 (1949, Núm. 1); 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 772.

<sup>183</sup> Amp. Compañía de Petróleo "El Aguila," 55 S.J.F. 2007, 2081 (1939, decision 1938).

<sup>184</sup> 1950 MEMORIA DE LABORES, SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, p. 183.

necessitating temporary closures or reduction in the number of hours worked. One conflict related to cutting down the number of street cars in Tampico.

In general it is the duty of the boards, in addition to dealing with strikes, to supervise the necessary technological<sup>185</sup> and other changes in businesses, and lessen the resulting hardships to workers.<sup>186</sup> The boards also endeavor to see that inequities do not arise among workers, and that changes in businesses are not used as subterfuges to evade obligations under the Labor Law.<sup>187</sup> In one case the board, without waiting to go into the merits, permitted the immediate closing of a business for 90 days upon posting a bond in the amount of 1,300,000 pesos to cover wage claims in the event the suspension was found not to have been justified.<sup>188</sup>

As I pointed out in discussing the discharge of workers, there is no absolute compulsion to resort to or obey the boards in connection with either juridic or economic matters, but nevertheless the pressure is great enough to cause the parties, normally, at least to go through the procedures before the boards. For example, small enterprises may desire to reduce personnel and to lower wages.<sup>189</sup> In a famous "economic" case it was decided that the old mills manufacturing the corn meal "mass" for the staff-of-life tortillas should yield to modern plants making more extensive

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<sup>185</sup> "Agitan Contra la Modernización," Mexico City Excelsior, Feb. 24, 1949, p. 23; "Arbitros en el Conflicto Textil," *id.*, Sept. 22, 1949, p. 1; "Convenio Sobre la Modernización Textil," *id.*, July 12, 1950, p. 1; "Tardará Todavía la Modernización Textil," *id.*, Sept. 11, 1950, p. 1; "Indemnización a los Trabajadores Desplazados por la Modernización," *id.*, Nov. 11, 1950, p. 4; "Desde hoy Rige el Pacto Sobre la Modernización de los Hilados," *id.*, Jan. 25, 1951, p. 1.

<sup>186</sup> Labor Law, §§ 116 ff.

<sup>187</sup> Amp. Caleras Beltrán, S.A., 79 S.J.F. 315 (1944) (when physical conditions are alleged as reason for suspension of work, *vis major* must be proved); "Fábrica que se Clausuró," Mexico City Excelsior, Sept. 1, 1950, p. 40 (charged that factory which closed because of alleged lack of raw materials was really being moved to another city); "Conflicto en 'La Carpeta'," *id.*, Oct. 26, 1950, p. 32 (charged by Trueba as attorney that the closing of a printing establishment was really a maneuver to open another plant and get rid of employees, some with forty years of service, without giving them their legal indemnity).

<sup>188</sup> "Un Conflicto Económico," Mexico City Excelsior, Dec. 27, 1950, p. 25; "No Han Dado aun la Fianza," *id.*, Dec. 29, 1950, p. 4. Under Labor Law, § 581.

<sup>189</sup> "Empresas que han Pedido Reajustes," Mexico City Excelsior, Feb. 4, 1950, p. 22.

use of mechanical processes.<sup>190</sup> Trueba as professor cited to his class, as an illustration of a "juridic" conflict, a case in which three "widows" of a deceased worker appeared to claim the resulting workmen's compensation benefits. Additional statistics as to the work of the boards have been presented in connection with the discussion of strikes.

The Conciliation and Arbitration Board which I visited in Mexico City was a busy hive of activity, contradicting a published report of dilatoriness and disorder twenty years ago.<sup>191</sup> At first glance I did not realize that I was in the room where the proceedings were being conducted. I found myself back of a waist-high railing extending the length of the room about four feet from the wall. The rest of the room was filled with typewriter tables at which girls were busily working. Groups of three, four or half a dozen men (the representatives of the employers and the unions, and their attorneys) were leaning over the railing and talking either to typists or to men inside (the members of the Board). Sometimes there were most animated discussions before the girls were told what to write (girls farther from the railing, I assumed, were copying depositions, pleadings, board opinions, etc.). The records in the cases, which the girls by the railing were preparing, were most voluminous when completed. The opposing attorneys seemed to cooperate in preparing the records until a dispute arose, when board members would be called in to settle it. There was no idling or small talk. While no tempers seemed to be aroused, the rather hectic atmosphere did not seem to me to be conducive to conciliation — presumably the efforts in that direction had largely been concluded, and the attorneys were then engaged in preparing the records to support the "qualifications" of strikes, and to form the bases of possible appeals (*amparos*) to the courts (limited, as with us, to questions of law). I went over

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<sup>190</sup> Amp. Sind. de Obreros de Molinos de Nixtamal de Irapuato, 71 S.J.F. 3415, 3418 (1942).

<sup>191</sup> Editorial, Mexico City Universal, Sept. 11, 1931, quoted, CLARK, ORGANIZED LABOR IN MEXICO (1934) 255.

one of the records with the President, and it would have made a favorable impression in any of our appellate courts. It seemed to me that, as with us, there was undue emphasis upon beautiful and elaborate paper work.

The various forms of business activities are divided among the numerous boards sitting in Mexico City — thus each board handles only cases in fields in which it is already acquainted with the general conditions.

#### 8. UNION CONTRACTS<sup>192</sup>

With the prevalence of union contracts many legal provisions in regard to terms of employment have ceased to have significance. The increasingly wide scope of such agreements is evidence of the tendency throughout the world, which others have pointed out, to return to a regime of status, such as constituted the legal system of the Middle Ages, employment being now substituted for land tenure. The Mexican legal mind makes a curious theoretical recognition of this, in considering the worker who has acquired rights under an individual or union employment contract a "third party" to such agreement.<sup>193</sup>

As with us, the "fringe benefits" in union contracts are becoming increasingly important as compared with the specification of the rate of pay. Apart from workmen's compensation, the following fringe benefits have been noted:

- Civic center space (rural)
- Cooperatives (selling below costs plus expenses)
- Funerals
- Houses (at low rentals)
- Illness benefits

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<sup>192</sup> Constitution, Arts. 5, 123(1-15, 22-31); Labor Law, §§ 14-128; 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 481-732, 847-853; ALBERTO SIDAQUI, *TEORIA GENERAL DE LAS OBLIGACIONES EN EL DERECHO DEL TRABAJO* (1946).

<sup>193</sup> Labor Law, §§ 6, 7; consult Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. (1934) 251, 262.

Life insurance  
Living expenses (while railroad workers are away from home)  
Medicines (prophylactic)  
Pensions  
Premiums for punctuality  
Profits (participation in)  
Raw materials (quality of, to facilitate competition abroad)  
Savings funds (to be paid to worker at end of year, or upon leaving employment)  
Scholarships  
Schools (rural)  
Selection of higher employees (by council including worker members)  
Seniority  
Sports promotion  
Stores (selling at cost)  
Sunday closing  
Vacations

An employers' organization (Confederación Patronal) has placed its seal of approval upon fringe benefits, by taking the position that in framing union contracts betterment of social services and the assumption of other obligations by the employer are preferable to increasing the amount of wages.<sup>194</sup>

No attempt has been made in union contracts to tie wages to the cost of living through a sliding scale,<sup>195</sup> but at least one contract has provided for increases depending upon the amount of production.<sup>196</sup>

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<sup>194</sup> "Mejoría Social en vez de Mayor Salario," Mexico City Excelsior, June 3, 1951, p. 1.

<sup>195</sup> Written as of the summer of 1948.

<sup>196</sup> 1950 MEMORIA DE LABORES, LA SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, p. 183, discussing contract of the Sindicato de Trabajadores de la Industria Azucarera y Similares de la R. M. [República Mexicana] with all the sugar, alcohol and similar industries of the country.

The Labor Law provides for possible revision of union contracts at the expiration of two years,<sup>197</sup> and it is customary to take advantage of this. A Labor Department official stated that he felt that the practice of biennial revisions is harmful, and should be discontinued — sometimes unnecessary trouble is caused by revision, and sometimes, on the other hand, with the cost of living rapidly advancing, two years is too long for the workers to wait.<sup>198</sup>

In addition to the minimum wage provisions, the Constitution states that all wages provided for in contracts must be "remunerative" (remunerador), to be enforced by the Labor Boards.<sup>199</sup> It has apparently been assumed that this provision could not be brought into play during the life of a contract to permit showing that increases in the cost of living have caused wages (which were originally sufficient) to become "unremunerative".

When a union contract has been entered into by two-thirds of the employers and workers in an industry in a district,<sup>200</sup> the President may make it binding upon the remainder.<sup>201</sup> It is then often referred to as an obligatory contract or a "contract-law" (contrato-ley).<sup>202</sup>

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<sup>197</sup> Labor Law, §§ 56, 64-66. A seemingly invalid attempt to evade this provision was made by simultaneously executing two contracts taking effect consecutively, the first for nine months and the second for two years. "Mundo Obrero — Extraordinario," Mexico City Excelsior, July 26, 1948, p. 4.

<sup>198</sup> For the views of a columnist on contract revisions: Bernardo Ponce, *Perspectiva*, Mexico City Excelsior, Feb. 21, 1949, p. 6.

<sup>199</sup> Art. 123(27b). The board may fix a scale of "remunerative" wages higher than the general minimum wage. Amp. Cía. Eléctrica y Telefónica Fronteriza, S.A., 67 S.J.F. 3543 (1941).

<sup>200</sup> The "district" may be the entire country.

<sup>201</sup> Constitution, Art. 123(31); Labor Law, §§ 58-67; Ley Sobre Contratos Colectivos de Trabajo de Carácter Obligatorio, June 6, 1945. For an example of such a decree: "Decreto que Establece la Obligatoriedad del Contrato Colectivo de la Industria Azucarera, Alcohólera y Similares de la República Mexicana," 19 Trabajo y Previsión Social 19 (1944, Núm. 2).

<sup>202</sup> In general: Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 264 (1934); 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 703-729; 3 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1943) 307-364

9. CORRUPTION<sup>203</sup>

Every Mexican with whom I talked, whether his sympathies were with capital or with labor, agreed that the governmental system set up to deal with labor troubles is permeated with corruption.<sup>204</sup> None ventured an opinion as to whether this tipped the scales of justice in either direction (although Miss Clark reported in 1934 that the employers had the advantage<sup>205</sup>), or was just an added expense to both parties.

Trueba, whose works have been frequently referred to herein, told his class at the law school of the University of Mexico of the professional witnesses (mostly lawyers) to be found at the doors of the boards — “three or four pesos for a lie.” He spoke of one case in which two police officers testified as to the arrival and departure of workers at the scene of a disturbance, when it developed that they had been in jail at the time. He stated that false witnesses before the boards were never punished, and that consequently there was a parade of them.

## 10. COMMUNIST INFLUENCE

There are the same sort of reports as in this country of communist influence among the unions — when we recall that with us Robert A. Taft has been called a communist because of his advocacy of public housing, we realize how cautious a foreigner should be in evaluating such reports.<sup>206</sup> At the same time, it seems clear that the numerous reports over many years, including statements

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<sup>203</sup> In general: TANNENBAUM, MEXICO: THE STRUGGLE FOR PEACE AND BREAD (1950) 79; also 69,99.

<sup>204</sup> An editorial: “Regeneración Necesaria,” Mexico City Excelsior, July 4, 1949, p. 6; a letter to the editor, purporting to be from an attorney: “Exhibe las Lacras de Conciliación y Arbitraje,” *id.*, Aug. 17, 1951, p. 7A.

<sup>205</sup> ORGANIZED LABOR IN MEXICO (1934) 253, 259; see also *id.* at 113, 144, 221, 240.

<sup>206</sup> Among many: CLARK, ORGANIZED LABOR IN MEXICO (1934) 78, 115, 134, 170, 264, 287, 289; “Maniobras Rojas en la Huelga de la Cía. Fundidora,” Mexico City Excelsior, Aug. 18, 1948, p. 1; “Consigna a las Células Comunistas Para Dividir a las Centrales Obreras,” *id.*, July 5, 1949, p. 1; “Oposición Obrera a la Nueva Central,” *id.*, July 10, 1949, p. 1; “72 Millones de Obreros, Contra los Monopolios,” *id.*, July 20, 1949, p. 1.

purportedly issued by the Communist Party of Mexico,<sup>207</sup> have some foundation; and in particular I feel that when unions take action upon the ground of internal communist activities,<sup>208</sup> they are not usually merely satisfying personal grudges.

If I had to hazard a guess, I would say that in Mexico the communist influence is greater than with us, because of the general orientation of the country farther to the left. While bearing in mind that socialism is not communism, possibly one item which I observed in 1939 will serve to illustrate my point, as to the general picture. Upon an extensive arch over the only entrance to the largest public school in Mexico was displayed in big letters the slogan, "The purpose of education is the creation of a socialist classless society."<sup>209</sup>

During the summer of 1948 the communists apparently made use of a public demonstration in the heart of Mexico City (declared to be against speculators and monopolists enriching themselves at the expense of the misery of the people) to test out their strength. The results were, from the standpoint of the communists, very disappointing.

## 11. INFLATION

As with us, if there were no other reason, the decline in the value of the peso would be sufficient to keep up a constant ferment of labor difficulties. It has been estimated that from 1939 to 1945, notwithstanding the extensive wage increases granted, the real value of the workers' income declined 16 per cent.<sup>210</sup> "Carestia,"

<sup>207</sup> "Declárase Enemigo del Sabotaje el Partido Comunista," Mexico City Excelsior, July 24, 1949, p. 1.

<sup>208</sup> "Burocratas Contra los Comunistas," Mexico City Excelsior, July 21, 1949, p. 27; "La Labor de Divisionistas," *id.*, Aug. 16, 1950, p. 22; "Expulsión de los Comunistas en el Sindicato Minero," *id.*, Sept. 29, 1950, p. 1; "Ayer Comenza la Purga de Rojos en los Grandes Sindicatos de México," *id.*, Feb. 22, 1951, p. 1.

<sup>209</sup> Going farther along the same line: NORTHROP, *THE MEETING OF EAST AND WEST* (1947) 50, 51.

<sup>210</sup> TANNENBAUM, *MEXICO: THE STRUGGLE FOR PEACE AND BREAD* (1950) 221. The figure (16.4 per cent, to be exact) relates to Mexico City, where the inflationary pressure has probably been higher than in many smaller places.



the high cost of living, is a constant subject of public discussion.

For various reasons the problem of inflation seems to be more poignant in Mexico than in this country, and to have been earlier recognized as a problem — in 1934 Miss Clark reported that prices had rapidly increased, greatly worsening the lot of the peasant.<sup>211</sup> As a relatively undeveloped country industrially which needs to secure manufactured goods from abroad, the rate of exchange is much more important than with us, and tends to fluctuate madly.

While I was in Mexico in 1948 the peso was, without warning, suddenly lessened in value by the government in relation to the dollar. The results were dramatic. Public leaders issued statements that the change related only to trade with the United States, and should and would have no effect upon the prices in Mexico of Mexican products, but I knew of an instance where the price of Mexican silver products was marked up literally overnight to an extent greater than the change in the rate of exchange. Food prices shot up, and I saw lines of poor women having difficulty getting the dough for their tortillas. If the government had not acted quickly, taking over the sale of foodstuffs and setting up markets, the stability of the government would have been seriously threatened. A government official confirmed my impression that the communists make the most of everything of this sort in their constant efforts to stir up bitter feelings and create as many and as virulent labor troubles as possible.

## 12. NATIONALISM

I had been under the impression that there was a strong element of "swat the damned Yankee" in Mexican strikes (as I had found in Chile in 1939 was the case there). While that has been a substantial factor in the past,<sup>212</sup> I would say that today, apart from

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<sup>211</sup> CLARK, *ORGANIZED LABOR IN MEXICO* (1934) 164.

<sup>212</sup> *Id.* at 174, 275-278. It has been suggested, as an interesting speculation, that adoption of the sweeping pro-labor program embodied in the 1917 Constitution would not have been possible if most of the large capital of the country had not been foreign. TANNENBAUM, *MEXICO: THE STRUGGLE FOR PEACE AND BREAD* (1950) 114, 115.

ineffective communist attempts to stir up trouble,<sup>213</sup> it is completely non-existent.

In fact, I was surprised to learn that now the shoe is on the other foot — a foreign employer is much less likely to have labor difficulties than a domestic one. The reason is that foreign concerns generally pay much higher wages. While in Mexico City I learned the pay scale of the great new Sears-Roebuck department store (which has been successful enough to justify erection of additional stores of the chain in other Mexican cities), and it seemed to me that the people there were getting about three times as much as they would have received in the stores owned by local citizens. In the agrarian field, I was told by an American rancher, most of whose land had been nationalized, that the government had been harder upon its own citizens than upon him.

Today the emphasis is upon getting foreign capital to develop their resources, notwithstanding past cries, often with justification, about being exploited. We should remember that the present absence of anti-foreign feeling is in spite of what we Americans have to answer for in past history — for example, an American engineer in Mexico told me that in the "good old days," when labor was ground under the heel of the Díaz regime, he had seen

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<sup>213</sup> A statement issued by the Mexican Communist Party referred to "reactionaries, agents of northamerican imperialism, incruited in the government." "Declárase Enemigo del Sabotaje el Partido Comunista," Mexico City Excelsior, July 24, 1949, p. 1. The national Chambers of Commerce (Confederación de Cámaras de Comercio) have felt that there is a connection between communist influence and agitation among the workers employed by American concerns. "Sabotaje de Comunistas a la Cooperación Internacional," *id.*, July 27, 1949, p. 1. Vicente Lombardo Toladano, against whom many charges of radicalism have been leveled over the years, and who has been at least accused of giving orders to communists ("Se Planea un Aumento General de Salarios," Mexico City Universal, Aug. 12, 1948, p. 1), is reported to have referred to a strike against the Ford Motor Company as "part of a great movement against northamerican imperialists." "Estalló Ayer en la Ford la Primera Huelga de la Serie de Lombardo," Mexico City Excelsior, July 14, 1949, p. 1. Incidentally, the strike lasted only fifteen hours, the company having in the meantime asked the Labor Board to declare it "non-existent." "Inesperadamente Levantó la Huelga en la Ford la UGOCM," *id.*, July 15, 1949, p. 1. Such a holding was later made, upon the ground that the company already had in force a contract with another union. "La Huelga Contra la Ford Motor fué Declarada Inexistente por la Junta," *id.*, July 23, 1949, p. 1.

a gang of Mexicans bossed by a giant American with a long black-snake whip.

It is true that the foreign individual (as distinguished from foreign capital) is not welcome (except as a tourist, etc.) A foreigner will find it extremely difficult to obtain permission to enter business as a resident in any Latin American country, but they will accept him if necessary in order to get foreign capital. In Mexico 90 per cent of the employees on the lower levels must be Mexican citizens,<sup>214</sup> and in general employers are required to prefer Mexicans in employment.<sup>215</sup> No foreigner can be a member of the board of directors of a union.<sup>216</sup> Under Article 33 of the Constitution the President can, without trial, expel from the country any foreigner deemed undesirable.

The expropriation in 1938 of the properties of the American oil companies, which threatened war between this country and Mexico, was not, as widely interpreted here, a manifestation of anti-foreign sentiment. It was the result of the most famous "economic" labor conflict of Mexican history. The government brought sufficient pressure to bear upon the companies to cause them to agree to submit their dispute over wages to an "economic" proceeding, but after the Supreme Court had confirmed the decision against them, they defied the government, resulting in the expropriation.<sup>217</sup>

The national pride of the Mexicans, including that in their Indian blood,<sup>218</sup> and their desire to develop their own industries, do not require discussion.

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<sup>214</sup> Labor Law, § 9. There are minor exceptions.

<sup>215</sup> Labor Law, § 111(1).

<sup>216</sup> Labor Law, § 240.

<sup>217</sup> Because of the transcendent importance of this struggle Trueba has set forth the text of the pleadings and the decree of expropriation in his work on labor law procedure. 3 DERECHO PROCESAL DEL TRABAJO (1943) 207-257. See also his EVOLUCIÓN DE LA HUELGA (1950) 301. The Supreme Court wrote a 120-page opinion: Amp. Compañía de Petróleo "El Aguila," 55 S.J.F. 2007 (1939, decision 1938). See also the earlier petroleum "economic" conflict: Amp. Huasteca Petroleum Co., 47 S.J.F. 5013 (1937, decision 1936).

<sup>218</sup> CLARK, ORGANIZED LABOR IN MEXICO (1934) 276.

## 13. ATTITUDE OF GOVERNMENT

With unions an integral part of the dominant political party, it would be logical to expect the Mexican government to be much more pro-labor than ours ever has been. Indeed, it is, from the standpoint of verbal utterances, and historically its interest in encouraging the union movement goes further back. Volumes could be written upon the attitude of the government toward all the labor problems since 1910, but it seems an accurate generalization to say that again the result is at present the same as in this country.

Just as, with us, the unions could not have reached their present position of strength without governmental encouragement since 1933, so De la Cueva says that in Mexico the labor movement was extraordinarily weak, and never could have met with success if Mexico had not recognized and guaranteed the right to strike, giving it a stronger legal position than it had in the United States or in Europe.<sup>219</sup>

In Mexico, again as with us, while the unions have been encouraged, they have not been given free sway, and concepts of the public interest have come first. When the present Labor Law was being framed, for example, some of the proposals advanced by the employers were adopted, in place of others going farther in favor of labor.<sup>220</sup>

The Supreme Court of Mexico has declared that "the labor law is not legislation for the benefit of the employing class, but the reverse, of the working," and the laissez faire has been abandoned in favor of "intervention by the state as a policy which rules the entire life of the economic system (colectividad) in every moment of its activity."<sup>221</sup>

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<sup>219</sup> 2 DERECHO MEXICANO DEL TRABAJO (3d ed. 1949) 786. See also TANNENBAUM, MEXICO: THE STRUGGLE FOR PEACE AND BREAD (1950) 114 ff.

<sup>220</sup> Consult Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 256 (1934).

<sup>221</sup> Amp. Compañía de Petróleo "El Aguila," 55 S.J.F. 2007 (1939, decision 1938), quoted, ALBERTO TRUEBA URBINA, EVOLUCIÓN DE LA HUELGA (1950) 244, 245. To the same effect as the first statement: Amp. Petróleos Mexicanos, 71 S.J.F. 2095, 2098 (1942).

As with us, the biggest strikes, or threats of strikes, tend to reach the desk of the President (or the Secretary of Labor) for settlement. Trueba states that these interventions have favored the interests of the workers.<sup>222</sup> As a union advocate, he has misgivings about them, as "these governmental activities to an extent impede the right to strike in counteracting by itself the economic force of the capitalist class." However, he continues, "the social rights of the working person have not suffered mutilation, and the development of the workers has been progressive."

Occasionally the government has taken over strike-bound properties, and in a few instances troops have been used. There are even legal provisions that the government can turn plants over to the workers.<sup>223</sup> While these laws have an ominous sound, it is hard to conceive of their having any practical importance, because of financial inability upon the part of workers to take over a business and run it.<sup>224</sup>

The Labor Law provides for operation by the government of an extensive department for the defense of labor (*Procuraduría de la Defensa del Trabajo*), to render free advice and representation to individual workers and to unions.<sup>225</sup> The government gave the union of government employees land for the erection of a million-peso headquarters building.<sup>226</sup>

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<sup>222</sup> ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 330.

<sup>223</sup> *Ley de Expropiación y Ocupación de Bienes* and *Ley de Vías Generales de Comunicación*.

<sup>224</sup> That such provisions, state and federal, have not been entirely without effect: CLARK, *ORGANIZED LABOR IN MEXICO* (1934) 249, 263; 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 891. A factory in San Luis Potosí expropriated by the government so that it could be operated by the workers as a co-operative went into bankruptcy, notwithstanding tax exemption as a co-operative. "Quebró una Fábrica en Manos de los Obreros," *Mexico City Excelsior*, May 5, 1951, p. 25A. A Mexico City-Veracruz truck line which had been strike-bound for five months was turned over by the employers to the workers to be operated by them. "Empresa que ha sido Entregada," *id.*, Oct. 19, 1950, p. 33.

<sup>225</sup> §§ 407-413. Discussed, and Regulations governing the Department set forth: 4 ALBERTO TRUEBA URBINA, *DERECHO PROCESAL DEL TRABAJO* (1944) 293-312. For report of its activities: 1950 *MEMORIA DE LABORES DE LA SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL*, pp. 169-175.

<sup>226</sup> "Gran Edificio Construirá la Federación de Trabajadores Burócratas en Lucerna y Lisboa," *Mexico City Excelsior*, Sept. 2, 1950, § 3, p. 11.

14. COMPULSORY ARBITRATION<sup>227</sup>

Here we have an important difference from the situation in this country — in Mexico the employers are in favor of compulsory arbitration,<sup>228</sup> and the unions opposed, whereas with us capital joins labor in opposition. How Mexican employers, in the milieu of their country, can expect not to be the losers through governmentally administered arbitration, I cannot understand. De la Cueva, however, thinks that they will gain, as compared with labor, because of the protection afforded by their impenetrable “mysterious” systems of accounting.<sup>229</sup>

Compulsory arbitration is, of course, the antithesis of the dearly achieved and highly prized right to strike. De la Cueva contends that obligatory settlement of labor disputes necessarily involves control of prices, and that this in turn means an economy directed by the state.<sup>230</sup> He says that the free men of democratic countries battle against such a solution, and that this explains why compulsory arbitration exists only under dictatorships, the experience of France having proved the inefficacy of attempting to establish it in a democracy.

Eduardo Pallares, son of the famous Jacinto Pallares, and possibly the most brilliant Mexican legal writer of all time, has said that “the right to strike is to the industrial anarchy of modern times what the duel was to the regime of feudal anarchy.”<sup>231</sup> Another Mexican attorney wrote a book the thesis of which is that the right to strike is inconsistent with a state of law.<sup>232</sup> A Mexican social economist has said:

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<sup>227</sup> In general: 2 MARIO DE LA CUEVA, *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 877-891; ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 308-331.

<sup>228</sup> ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 309, 327.

<sup>229</sup> 2 *DERECHO MEXICANO DEL TRABAJO* (3d ed. 1949) 890.

<sup>230</sup> *Id.* at 889.

<sup>231</sup> *DERECHO DE HUELGA* (1923) 5, quoted, ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 323.

<sup>232</sup> CARLOS ROEL, *ESTADO DE DERECHO O HUELGA* (1942), discussed, ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 316, 328.

The capitalist economic organization will never be able to effect a form which will harmonize the factors of production. The clashes between the classes will form a series which only a radical change in the political-economic regime will interrupt, and they will be necessary as a preparation for that new regime.<sup>233</sup>

Trueba, the brilliant legal and political protagonist of labor, gets into a fighting frame of mind when thinking about any possible abolition of the right to strike (he does not object to restrictions in connection with the Labor Board machinery<sup>234</sup>):

Many would desire that the right to strike be suppressed or strangled, without stopping to think that this would bring with it the transformation of the capitalist economic regime that they are defending; and would, indeed, precipitate the social revolution, and, in consequence, the expedition of a socialist constitution.<sup>235</sup>

[the closing words of his book on strikes] In the future, the strike is not only a hope of the proletariat for the transformation of the capitalist regime, but the touchstone of the social revolution.<sup>236</sup>

Trueba has summed up his philosophy as follows:

Throughout the history of our country and its institutions we can observe the exercise of the free life becoming manifest, step by step: that the right to strike is the first segment of the circle which liberty involves; the second is the right to defend labor; the third is the right to participate in the formation of the rules governing labor; the fourth is the right to share in the profit from labor; and the fifth is the right to govern by virtue of labor.<sup>237</sup>

Possibly I should state that I believe that society will find it necessary to extend the judicial processes to include labor problems, and that it will be possible to do this without far-reaching consequences and without prejudice to either side.

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<sup>233</sup> MIGUEL A. QUINTANA, *ECONOMÍA SOCIAL* (1937) 169, quoted, ALBERTO TRUEBA URBINA, *EVOLUCIÓN DE LA HUELGA* (1950) 322.

<sup>234</sup> *EVOLUCIÓN DE LA HUELGA* (1950) 330.

<sup>235</sup> *Id.* at 327. See also *id.* at 5, 29, 309, 313, 323, 330.

<sup>236</sup> *Id.* at 331.

<sup>237</sup> *Id.* at 329.

15. FUTURE CHANGES<sup>238</sup>

The Mexican Labor Law as a statute does not excite the constant and intense interest that our Taft-Hartley Law does. In addition to profit-sharing and compulsory reinstatement of workers, already treated at length herein, and the perennial desire of some for compulsory arbitration, there has been popular discussion of the following subjects, with a view to possible changes in the Labor Law, or in the Regulations thereunder (Trueba being a central figure in the discussions within the governing political party):

Apprenticeship (to prevent being used as means of exploitation).

Central unions.

Code of Labor Law Procedure.

Extension of the strike notice period from six to ten days, and more effective provisions to prevent work stoppages before the expiration of the period.

Formation of corporations to evade Labor Law.

Houses and schools (supplying by employers).

Increase in maximum workmen's compensation daily payments to actual wage received.

Labor Code.

Minimum wage.

More effective requirements to insure actual efforts by the parties to reach an agreement before the Labor Boards.

Obligatory contracts (contratos-ley).

Prevention of arbitration by President.

Protection of workers not paid wages or who are self-employed.

Repeal of provisions relating to small businesses (because of

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<sup>238</sup> For predictions of change of a more general character, see Cormack & Barker, *The Mexican Labor Law*, 7 So. Calif. L. Rev. 251, 293 (1934).



splitting up of large enterprises in order to take advantage of them).

Restraining the actions of irresponsible union leaders, particularly through formation of "straw" unions.

Revision of contracts, particularly the biennial system.

Sweatshops, all "labor in homes" (abolition urged).

Trueba has in mind widespread reforms in the Constitution, including changing the name to the Political-Social (Político-social) Constitution.<sup>239</sup>

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<sup>239</sup> "Plan de Reformas Generales a la Constitucion," Mexico City Excelsior, Dec. 27, 1950, p. 1.

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