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Robert J. Nye

John Marshall Law School

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THE STATUS OF THE COLLECTIVE LABOR
AGREEMENT IN FRANCE*Robert J. Nye**

THE collective labor agreement has a peculiar status in free or quasi-free industrial economies. Theorists have attempted to define this status in terms of long-accepted concepts, but the results of their efforts have constituted merely new grounds for disagreement and controversy. Essentially, the debates have been predicated on the idea that the collective agreement has the characteristics and implications of one of two concepts, or that the collective agreement may be characterized by some combination of these two concepts, that is, (1) the true contract, and (2) the legislative regulation. Most agree that neither concept in itself can account for the accepted legal and social effects of the collective agreement, and they therefore conclude that the agreement partakes of some of the characteristics of both contract and law.¹ But the more difficult problem is to what extent the respective concepts can and do assist in a proper definition.

However the collective labor agreement is conceptually defined, its effect on industrial relations, the public and the state has been ever-widening. In one sense it may be characterized as a constitution for the government of the industrial community, the result of the exercise of a delegated legislative authority, but limited in scope and control by legislative standards. In this sense the agreement is similar to a state constitution, enacted in accordance with the principles and limited in turn by the standards of the federal constitution.

Basically the same in all nations, the collective agreement is subject to various requirements of form and scope in the different nations. This paper is intended to outline in historical perspective the statutory, judicial, administrative and social developments which have made the collective agreement an indispensable accessory to legislative and judicial regulation in France.

* Member, Illinois bar; B.A. 1953, University of Chicago; J.D. 1954, DePaul University; LL.M. 1955, New York University.—Ed.

¹ For an interesting examination of French theories to explain the legal basis of the collective agreement, see Pirou, "The Theory of the Collective Labour Contract in France," 5 INT. LAB. REV. 35 (1922).

THE ACT OF MARCH 21, 1884:
FREEDOM OF ASSOCIATION

Recognition of the legal efficacy of a collective agreement necessitates the pre-recognition of groups and associations, informal or formal, which are authorized to conclude valid agreements and enforce them by appeal to judicial sanction. This development occurred in France in 1884 as the result of a twenty-year trend.² The Act of March 21, 1884³ removed the previous disabilities of "industrial associations or societies"⁴ and provided (§ 2) that they "may be formed freely without Government authorization."

This "Magna Charta" of industrial organization⁵ did not only remove the previous criminal sanctions attached to unauthorized association; it gave industrial associations a new and precious legal status. Among the new perquisites were the right in a collective capacity to sue and be sued, the right to acquire property by gift or by bargain, and the right to administer special funds for mutual assistance and pensions.⁶ The right to enter into contracts under its own corporate signature was, of course, of enormous importance, and this provision presaged future legislative concern with the collective labor agreement itself.

² See, for a most complete explanation of the history of trade union legislation, the trade union movement, and the social, economic and political developments which concurred to persuade the 1884 legislative action, 2 *FREEDOM OF ASSOCIATION* 87-99 [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927].

³ As amended by the Act of March 12, 1920, *Bul. Min. Trav.* 1920, p. 33 [I.L.O., *Legis. Ser.*, 1920, France 8], as repealed and reenacted as consolidated in the Act to Consolidate Certain Labor Laws (Code of Labor and Social Welfare, Book III), dated Feb. 25, 1927, *J. Off.* (March 1, 1927) No. 50, p. 2483 [I.L.O. *Legis. Ser.*, 1927, France 3].

⁴ SEE *FREEDOM OF ASSOCIATION* [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927]. French statutory history on industrial associations is outlined in Reynard, "Collective Bargaining and Industrial Peace in France," 1 *AM. J. COMP. L.* 215 at 216 (1952):

"Present day French labor law traces its legislative development at least as far back as 1791 when the Assembly of the Revolutionary period enacted two statutes, the first of which abolished the guilds which had exercised a monopolistic control over industry, and the second of which forbade the organization of workers. Both of these measures were consistent with the individualistic spirit of the French Revolution, which placed strong emphasis upon the liberty of the individual and construed it to extend to the 'liberty to work.' The French Penal Code of 1810 also contained an article prohibiting the concert of action of workers aimed at the improvement of working conditions. A reversal of this legislative trend began in 1864, when a statute was enacted limiting the application of the Penal Code provision just mentioned, and impliedly recognizing the right of workers to organize for mutual self-improvement for limited purposes. In 1884, the remaining provisions of the Penal Code restricting the rights of organization were removed, and unions were recognized as legal personalities with some restrictions. . . ."

⁵ See note, 1 *INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOR LAW*, 1925, at 90 (I.L.O., Geneva, 1926), where the editor, while applauding the new status, deprecates repeal of article 416 of the Penal Code as a sanction of the "legality of victimization."

⁶ Act of March 21, 1884, as amended by Act of March 12, 1920, §5.

But it was not only individual organizations which achieved legislative recognition. The act provided legal status for associations of industrial associations (i.e., federations of industrial organizations), and entrusted these bodies, too, with all the rights and duties of their constituent member associations.⁷ In France, as in the United States, we find that this kind of positive legislative mandate became the justification if not the cause of the growth of tremendous federations of industrial associations. And it is recognized that in France, if not in the United States, it is these tremendous federations which define the labor policies and goals to be pursued through collective bargaining and effected through the collective contract.

It would be misleading to stop here and leave the impression that industrial organizations were subjected to no restriction by the act here described. Restrictions do exist, but they are mostly of formal, rather than substantive, consequence. What papers must be filed and where, who may be members of an industrial association and who may manage or administer its functions, with what rights and subsisting duties is a member who withdraws from the association invested: these are but restrictions of form. There is but one really important restriction which may be characterized as substantive: "Industrial associations shall have no other purpose than that of studying and defending economic, industrial, commercial, and agricultural interests."⁸ At first glance one may feel hard put to find any other purpose toward which an industrial organization might turn its efforts. But there is one. A purpose to exercise *political power* is prohibited, and one need not think long before it is realized that the exercise of political power by a militant organization whose membership may number into the millions constitutes an overwhelming danger to any state.

Happily, although the largest industrial federation in France (the Confédération générale du Travail) started out with an orientation which was at least in part political, in 1906 the principle of political neutrality was adopted. Due not entirely to the statutory restriction above described, but to a great extent demanded by an explosive internal situation, a conference at Amiens resulted in an important declaration:

"The Federal Congress of Amiens approves Article 2 of the constitution of the C.G.T., which reads as follows:

"The C.G.T. stands apart from all political schools of

⁷ Id., §6.

⁸ Id., §3.

thought and includes all workers consciously taking part in the struggle to abolish the wage-earning system and the employers.'

"The Congress considers that this declaration involves the recognition of class warfare which in the economic field opposes workers in revolt to all forms of material and moral victimization and oppression introduced by the capitalist classes against the working classes.

"The Congress adds precision to this theoretical declaration by the following remarks:

"In its daily work trade unionism aims at co-ordinating the worker's efforts and improving his welfare and condition by the immediate introduction of steps to shorten hours of work, to increase wages, etc. This, however, is merely one side of its task. Using the general strike as a weapon, it is preparing the complete emancipation of the workers, considering that the trade union, nowadays a militant organization, will in future become a group of producers engaged in the re-organization of society.

"The Congress declares that this twofold policy of present and future action is actuated by the unsatisfactory position of the wage earners, which handicaps the whole of the working classes and which goes to show that all workers, whatever be their political and philosophical views, should belong to so essential an organization as the trade union. The Congress consequently recognizes the entire freedom of the individual trade unionist to participate, apart from his union, in any form of struggle which corresponds to his philosophical or political opinions, and restricts itself to requesting him in return to abstain from introducing into the Union the opinions which he professes outside it; as concerns organizations the Congress declares that if the movement is to produce its full effect, all economic action should be directed against the employers, it being no concern of affiliated organizations as such to take any account of parties or sects which, outside them and side by side with them, are free to pursue their work of transforming society."⁹

Whatever we might think today of the quoted article of the C.G.T. constitution and of the essentially socialistic aim described in this declaration, we do see that the Amiens Conference agreed to restrict union activities to the economic sphere. We must recognize the fact that French unions are politically oriented

⁹ See FREEDOM OF ASSOCIATION 108-109 [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927].

(so, too, in the main, are those of other continental countries), but we now know that they have subscribed to a policy of attaining their political ends primarily through economic conflict.¹⁰

Another restriction had also been imposed on union activity. Whether or not the drafters of the Amiens Declaration realized that under the act unions could not act in a commercial capacity with intent to make and distribute profits among their members, they expressly ratified the end that the trade union "will in future become a group of producers engaged in the re-organization of society." The courts, however, interfered.¹¹ Under the

¹⁰ The courts, too, have had something to say about political methods of attaining union institutional goals: *Ministère public v. Leretour*, Trib. civ. Seine (Jan. 2, 1935) D.H. 1935.127, and *Ministère public v. Ligue des objecteurs de conscience*, Trib. civ. Seine (Oct. 17, 1934) D.H. 1934.596; Sem. jur. 1935.117, in which cases it was held that an association formed to advocate, encourage, and organize resistance to military obligations, including conscription, is unlawful; *Venue Gras v. Vitilio*, Trib. civ. Marseille (on appeal from Provisural Court) (Dec. 20, 1929) Gaz. Pal. 1930.1.426; Sem. jur. 1930.622 [English translation: I.L.O., Dec. Lab. Law, 1930, at 105-107], *affd.* Cass. civ. (Oct. 29, 1930) Gaz. Pal. 1930.2.848 [I.L.O., Dec. Lab. Law, 1930, at 107], holding that a worker who takes part in a day's stoppage ordered by his trade union as an anti-war demonstration, without his employer's permission, may be dismissed without customary notice, the contract for hire of services being already broken by his act in participating in a strike for political purposes; *Angevin v. Dubois*, Cons. Prud'h. Seine, (Sept. 28, 1927) Gaz. Pal. 1927.2.583, where the Justice of the Peace said: "This strike was quite unconnected with any corporate or occupational need, and its sole object was a demonstration of sympathy with Sacco and Vanzetti. In these circumstances, we must hold that the right to strike was wrongfully exercised and that [the] workers abruptly broke their contract of employment. . . . [A] strike which is not directed solely to corporate and trade ends is a breach of the contract of employment and justifies a claim by the employer for damages." *Dr. Ricklin v. Syndicat médical de Mulhouse et des environs*, App. Colmar (July 15, 1924) Rec. jur. d'Alsace-Lorraine (Feb.-March 1925) S. somm. 1925.2005, where it was held that a professional association (medical organization) cannot for political motives or on the ground of conflict of opinions, refuse to admit a French citizen among its members or order his exclusion. Reversed, Cass. civ. (March 14, 1927) Gaz. Pal. 1927.1.599, and on rehearing, App. Colmar (Feb. 7, 1928) Gaz. Pal. 1928.1.561, on grounds that a medical association does not exceed its rights in making the admission of new members dependent on certain conditions which are in themselves justified, such (in the case of an association located in Alsace) as the candidate's frank, sincere, and unreserved adherence to the French institutions restored by the Treaty of Versailles. [Under French law, associations other than trade unions enjoy wide latitude in excluding members, with political considerations in no way prohibited.] But, as to the duty of professional associations to confine themselves to the defense of professional interests and to refrain from an interference in political matters, see Cass. civ. (Nov. 16, 1914) D. 1917.1.61. For other cases restraining union political machinations, see cases cited in FREEDOM OF ASSOCIATION 129-130 [I.L.O. Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927].

¹¹ See, e.g.: *Procureur de la République v. Leretour*, Trib. civ. Seine (Jan. 2, 1935) D.H. 1935.127; *Ministère public v. La Ligue des objecteurs de conscience*, Trib. civ. Seine (Oct. 17, 1934) D.H. 1934.596; Sem. jur. 1935.117; *Gorgeon v. Thomas d'Hoste, Daudier et al.*, Trib. civ. Nantes (judging as a commercial court) (June 15, 1934) D.H. 1934.503, holding that associations registered under the Act of July 1, 1901 (which includes unions but expressly disavows affecting the special laws governing industrial associations) cannot be regarded as commercial companies, even though they are sometimes obliged, in order to achieve their ends, to engage in commercial operations although such operations are not carried on for purposes of gain, and profits are not to be distributed among the

act,¹² the legislative policy seems to be that there can be no partition of union assets among the members. If this is true, and the judges seem to agree, neither can profits gained from the use of those assets be so distributed. And this interpretation was expressly reaffirmed in section 16 of the Act of February 25, 1927.¹³

THE ACT OF MARCH 25, 1919:
COLLECTIVE LABOR AGREEMENTS

The Act Respecting Collective Labor Agreements of March 25, 1919,¹⁴ confirmed the validity of collective agreements negotiated by industrial associations with employers or employer associations. This was the first French legislation to define the collective contract and provide formal and substantive requirements for its valid conclusion. The term "confirmed" is justified, for the courts had previously been forced to recognize the validity of collective contracts. The right to contract for the promotion and defense of collective interests, expressed in the Act of 1884, required such a decision. In a most notable case¹⁵ the Court of Cassation affirmed the legal nature of collective agreements concluded by industrial associations, and their right to take legal action "in order to assure the protection of the collective interests of the trade represented as a whole by the association."¹⁶

French trade union leaders (Syndicalists) had, at first, abhorred the idea of collective bargaining as a mode of action to achieve their ends. However, after World War I their attitude changed and they accepted with enthusiasm the new method. Their acceptance, associated still with a political flavor, however, was expressed in a statement made at the Congress of the C.G.T. held in Lyon in 1919:

"It would be a profound error to see in collective agreements a form of collaboration [between employers and unions]. The collective agreements whether they cover a plant, an area or a nation-wide occupation have transformative values, because

members. See, also, discussion in *FREEDOM OF ASSOCIATION* 130 [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927].

¹² Act of March 21, 1884, as amended, §7, ¶3; Act to Consolidate Certain Labor Laws, dated February 25, 1927, §9.

¹³ Act to Consolidate Certain Labor Laws (Code of Labor and Social Welfare, Book III), J. Off. (March 1, 1927) No. 50, p. 2483 [I.L.O., Legis. Ser., 1927, France 3].

¹⁴ Bul. Min. Trav. XXVI, 74* [I.L.O. (Basle) Bul. vol. XIV (1919) pp. 41-47, France 1].

¹⁵ Cass. réun. (April 5, 1913) (D. 1914.1.65).

¹⁶ See, for an explanation of this extra-legal (i.e., without express statutory authorization) development, *FREEDOM OF ASSOCIATION* 149-150 [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 29, Geneva, 1927].

they limit the authority of the employers, because they reduce the relations between employers and employees to a bargain which encourages the effort without dulling the energy, since the worker has thus the satisfaction of reducing the employers' absolutism by introducing into the workshop or plant the control of a power not subject to exploitation by the employer, of a force of emancipation: the union."¹⁷

One writer has concluded that the legislative intent behind enactment of the Act of 1919 was more an effort to reduce union political orientation than a recognition of changing legal and social concepts: "By establishing the legal basis of collective agreements, the conservative majority of the Chamber elected in 1919 hoped to direct the energies of French syndicalism into new, less political, and less revolutionary channels."¹⁸

Whatever the pressures which convinced the French legislature to bring forth the act, it must certainly be characterized as a logical conclusion to a series of legal, social and political events. The act codified the essence of rules which had emerged in judicial decisions, providing a statutory basis for collective agreements, but it also maintained the theory of contractual strictness. Collective agreements were negotiated without governmental intervention, and were binding only on the parties signatory thereto. One important result of the strictly contractual nature of agreements governed by the provisions of this act was that:

"[I]t was possible for heads of undertakings who were not affiliated to employers' associations to evade the obligations accepted by the associations, even when the associations were the most representative ones in the trade concerned. It was therefore not unnatural that some employers hesitated to bind themselves to certain conditions of employment which might place them at a disadvantage as compared with competitors who were less interested in improving the conditions of their workers."¹⁹

And it was found as a fact that in the period between the end of World War I and the date of the next revision of the law relating to collective agreements, in 1936, there was a remarkable contrast between the degree of legislative concern to promote collec-

¹⁷ Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 237 (1951).

¹⁸ Ibid.

¹⁹ Pouillot, "Collective Labour Agreements in France," 37 INT. LAB. REV. 1 at 2 (1938). Thus, Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 237 (1951), states: "As far as immediate effects are concerned, therefore, the law of 1919 was of little consequence. . . ."

tive agreements and the extent of practical application and adoption of collective agreements.²⁰

During the years immediately following its enactment, the courts were presented with a variety of issues relating to the nature and extent of the provisions of the Act of 1919. One question which arose was whether there were collective agreements which are not regulated by the act. Reacting in the affirmative, the Civil Tribunal of St. Etienne²¹ held that a contract fixing the scale of wages, and entered into between an association "whose object it is not to group in a trade union the workmen belonging to it" and workmen, some of whom were members of this association, and some not, does not constitute a collective agreement for work within the meaning of the act. In that case the contract was entered into for a period of eighteen years. Under the act a collective contract could not be made for a definite period exceeding five years. Then, too, a member of an association who has so contracted with the association cannot release himself from the contract by withdrawing from membership. Under the act, a member of an industrial association can, by withdrawing from membership, be released from the obligations of a collective agreement to which the association is a party.

It seems that the court in this case had a false idea of the true nature of a collective agreement. The essence is not agreement between an industrial organization and workmen who belong to it or not; a collective agreement is one entered into by a labor organization and an employer, employers or an association of employers. The writer's intent is not to argue the validity of the decision, but it seems strange that a court would feel bound to reason that "some collective contracts are not governed by the act respecting collective contracts," instead of reasoning that "this contract is not a collective contract and is therefore not governed by the act respecting collective contracts." The line of reasoning of the court has not been followed in any succeeding case brought to the attention of the writer, but neither is it necessarily obviated by the type of reasoning followed by the Court of

²⁰ See, e.g., Sturmthal, "Collective Bargaining in France," 4 *INDUS. & LAB. REL. REV.* 236 at 237 (1951); Report, "Collective Agreements in France," 31 *INT. LAB. REV.* 700 at 704 (1935), summarizing an extensive inquiry carried out by the French National Economic Council. But, cf. Pirou, "The Theory of the Collective Labour Contract in France," 5 *INT. LAB. REV.* 35 at 36 (1922).

²¹ *Syndicat général des Tisseurs de la Loire et la Haute-Loire v. Jamot, Merlat, and Armand*, Trib. civ. St. Etienne, 2d Ch. (Jan. 21, 1925) D.H. 1925.281. For an English translation of the case, see I.L.O., *Int. Survey of Legal Decisions on Labor Law, 1925*, at 109-111 (Geneva, 1926).

Cassation in a 1928 decision in which the nature of a collective agreement is defined:

"The object of a collective agreement which is concluded between a group of wage-earning or salaried employees and a group of employers or a single employer, is to determine beforehand certain conditions of employment. Neither of the contracting parties undertakes to pay a wage to the other party in exchange for work promised by that party, and there is no bond of subordination between the parties. The agreement therefore has not the characteristics of a contract for hire of services. . . ."²²

The thesis that it is only the contracting parties and those whom they represent who are bound by a collective agreement has been subject to limitations evolved from the very nature of the civil law. Historically, one of the sources of law in the civil law tradition has been local custom. The Act of July 19, 1928, amending section 23 of Book I of the Labor Code, provides in subsection 3 of said section that "any clause in an individual contract or works rules fixing a period of notice less than that established by custom or by collective agreement shall be null and void in law." This provision overruled in essence the previous practice engaged in by the Court of Cassation by which it had held that provisions of a collective agreement cannot be cited except against the groups which are parties to them or against groups, employers, or employees which had adhered to them in the manner and within the time-limits provided by the Act of 1919.²³ If the Act of July 19, 1928 can be interpreted to mean that a collective agreement may contribute to create usages in matters of notice of discharge, and if this usage constitutes "custom" within the meaning of the Act of 1928, provisions of a collective agreement can be cited against parties not signatories to them.²⁴

²² *Alépée v. Lang*, Cass. civ. (Jan. 4, 1928) S. 1928.1.86; D.H. 1928.152 [I.L.O., Dec. Lab. Law, 1928, at 84], and *Pastergue v. Société française de peintures et vernis*, Cass. civ. (March 4, 1929) S. 1929.1.267; Sem. jur. 1929.541 [I.L.O., Dec. Lab. Law, 1929, at 90].

²³ See, e.g., *Ruaro v. Fiori*, Cass. civ. (Feb. 11, 1929) S. 1929.1.208; Sem. jur. 1929.426 [I.L.O., Dec. Lab. Law, 1929, at 91 and 92].

²⁴ With regard to works rules indicating or crystallizing consistent usage, see: *Société anonyme des Ateliers et Chantiers de la Gironde v. Jusseaume*, Cass. civ. (June 27, 1929) Gaz. Pal. 1930.1.680, sub-note (a) [I.L.O., Dec. Lab. Law, 1930, at 81-82]; and *Agius v. Ruaro*, Cons. Prud'h. Marseille (Sept. 23, 1930) Gaz. Pal. 1930.2.981 [I.L.O., Dec. Lab. Law, 1930, at 83-84].

With regard to works rules becoming a constituted and accepted usage, see: *Cômpain v. Société des Etablissements Sauter et Harlé*, Cass. civ. (July 31, 1930) D.H. 1930.457; Gaz. Pal. 1930.2.314 [I.L.O., Dec. Lab. Law, 1930, at 84-85], reversing a case identical on the facts and lower decision as a case decided by the Tribunal Civil de la Seine, 7th Ch. (July 20, 1929), *Société des Etablissements Sauter v. Carratoni*, D.H. 1929.454; Gaz.

But the Act of July 19, 1928 disturbs an entire theory developed by the Court of Cassation with regard to works rules:²⁵

"[T]his theory treated works rules as a tacit collective agreement and raised them, in pursuance of section 1134 of the Civil Code, to the status of contractual law between the parties, on the strength of a presumption or fiction of implied but deliberate acceptance of all the clauses of the works rules. The 1928 Act, on the other hand, treats works rules as a body of employment conditions imposed by the will of the employer, as opposed to regulation by collective agreements between employer and employed. . . ."²⁶

At the same time, however, the Court of Cassation reversed only one of the inferences which it had drawn from the theory of works rules as an implied collective agreement, namely, the binding nature of works rules fixing periods of notice, and not the theory itself.²⁷

Pal. 1929.2.146 [I.L.O., Dec. Lab. Law, 1929, at 94-95]. The Court of Cassation held that acceptance of a work rule regarding notice without protest by employees of the Paris metal industry for many years had *not* the effect of abolishing a prior usage and substituting for it another usage, and that the usage arising out of acceptance of the work rule does not take the place of the old usage within the definition of the word "usage" in the Act of 1928. *Accord*: Decottignies v. Deberghe et Lafage, Cons. Prud'h. Seine, (March 9, 1929) Gaz. Pal. 1929.1.749 [I.L.O., Dec. Lab. Law, 1929, at 93-94]; and Société La Manufacture Ardennaise v. Briard, Trib. civ. Charleville (Dec. 24, 1929) Sem. jur. 1929.598 [I.L.O., Dec. Lab. Law, 1929, at 95-96]. *Contra*: Mignot et Béquet v. Faure, Cons. Prud'h. Seine (March 7, 1931) D.H. 1931.216 [Extract of English translation, I.L.O. Dec. on Lab. Law, 1931, at 80-81]. But see Levan v. Société métallurgique de l'Escaut, Cass. civ. (July 28, 1931) D.H. 1931.523; Gaz. Pal., 1931.2.796, where it was held that when old usage in an industry within a given district fixes the period of notice to be observed by the parties in case of cancellation of the contract at a fortnight, the judge cannot set aside this usage simply by recalling that in the great majority of undertakings in the same industry and the same district works rules of long standing have abolished notice without arousing the hostility of the workers, and that this new usage must be established by a showing that it has been freely and generally followed, particularly in works where there are no works rules; and Société Manufacture d'armes de Paris v. Carré, Trib. civ. Seine (June 1, 1933) D.H. 1933.421; Gaz. Pal., 1933.2.480, and Société des Etablissements Sautter-Harlé v. Compain, Cass. civ. (May 2, 1933) D.H. 1933.316; Gaz. Pal., 1933.2.101, both of which cases hold that a practice arising out of shop regulations or individual contracts, which do not involve the free consent of the worker, who agrees from ignorance or constraint to the requirements of the employer, cannot derogate from ancient usages, and that only a collective agreement can do that.

²⁵ E.g., Cass. civ. (Nov. 21, 1927) Sem. jur. 1928.45, where analogy between works rules, and an agreement concluded by an employer with his employees collectively, led the court to declare lawful and binding a clause in the works rules which exempted the parties from observing the periods of notice fixed by local custom.

²⁶ Note, I.L.O., International Survey of Legal Decisions on Labor Law, 1929, at 96-97 (Geneva, 1930).

²⁷ With regard to works rules constituting a tacit collective agreement, see: Cheyssial v. Bailly, Cons. Prud'h. Toulon (May 18, 1928) Sem. jur. 1928.1133 [I.L.O., Dec. Lab. Law, 1928, at 90-91], where it was held that a clause excluding payment for overtime inserted in works rules was a lawful stipulation in a tacit collective agreement. Cf., *contra*, Dr. Treille v. Vigier, Trib. civ. Lyon (Nov. 16, 1927) Gaz. Pal. 1928.1.240; D.H. 1928.131; Sem. jur. 1928.301 [I.L.O., Dec. Lab. Law, 1928, at 88-90].

In 1925, the Court of Cassation rendered a decision which has been cited as authority for the proposition that "a collective contract cannot be a bar to individual contracts freely entered into in a regular form."²⁸ In reality, however, the court refused to hold that individual contract provisions conflicting with those of a collective contract are valid. The court's entire decision was based on the fact that "the union [did not] indicate what breaches to the collective contract could be ascribed to the company." Prior to this decision, however, the Civil Tribunal of St. Nazaire²⁹ had decided that workmen and an employer who are bound by a collective agreement for work can alter the latter through their individual agreements. Whether a collective agreement controls even in the presence of less favorable provisions in individual contracts of employment is an issue which must be resolved if the nature and status of a collective agreement is to be defined. But the 1925 decision of the Court of Cassation does constitute a positive step forward in recognizing precedence of the collective agreement. To the extent that the decision in that case may be interpreted to mean that the court refused to affirm that individual agreements can alter the terms of collective agreements, it has repudiated its 1910 decision that collective agreements have no effect on non-conforming individual contracts of employment.³⁰ It is but reasonable that the French courts should have taken a step—although not a bold one—away from the strict concept of contract. Although the Act of 1919 did provide for the effects and enforcement of collective agreements in subchapter IV, it did not expressly give to collective agreements the effect of supersedure. A close reading of the act, however, does justify this conclusion.³¹ And it is further justified by the fact that all collective agreements are intended to regulate working conditions, although to varying degrees. One interesting treatment has thus stated: "All collective agreements, in so far as they regulate working conditions, lay down in advance the conditions of employment that must form part of every individual contract of

²⁸ *Syndicat des dessinateurs de Nantes v. Société des ateliers de constructions de l'Ouest*, Cass. civ. (Jan. 5, 1925) Rev. Prud. 1925.75 [I.L.O., Dec. Lab. Law, 1925, at 108]. See note, I.L.O., Dec. Lab. Law, 1925, at 108.

²⁹ *Syndicat des Métallurgistes de St. Nazaire v. Chauden et ateliers de la Loire*, Trib. civ. St. Nazaire (July 12, 1922) D. 1925.2.1 [I.L.O., Dec. Lab. Law, 1925, at 104].

³⁰ Cass. civ. (July 7, 1910) 1 D.P. 201.1911. See, for a discussion of development of the French judicial attitude on this point, Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 215 at 228-229 (1952).

³¹ See, particularly, §§31*q*, 31*s*, 31*t*, 31*u*. Bul. Min. Trav., XXVI, 74* [I.L.O. (Basle) Bul., vol. XIV (1919) pp. 41-47, France 1].

employment concluded between persons bound by the collective agreements."³²

By 1937, however, the Court of Cassation had reached the point where it consistently upheld the validity of collective agreements notwithstanding any stipulation to the contrary in an individual contract of employment between an employer and an employee who were bound by a collective agreement. Thus, the clauses of a collective agreement are mandatory, and it is not permitted for such persons to depart from them.³³ This final step may have been hastened by the additional provisions inserted into the Act of 1919 by the Act of 1936. The latter provisions reinforced in another context the binding nature of collective agreements, and may have convinced the courts that the nature of a collective agreement is consistent with the idea of a regulatory measure.³⁴

THE ACT OF JUNE 24, 1936: SUBSTANTIVE REGULATION AND EXTENSION OF COLLECTIVE AGREEMENTS³⁵

The Act of June 24, 1936 followed closely a conference held in the early part of June 1936, at which were present representatives

³² COLLECTIVE AGREEMENTS 125 [I.L.O., Studies and Reports, Ser. A (Industrial Relations), No. 39, Geneva, 1936].

³³ Glatigny v. Lecacher, Cass. civ. (Nov. 17, 1937) D.H. 1938.68, quashing a judgment which refused to grant a worker the benefit of wages laid down in a collective agreement on the ground that the clause of an individual agreement stipulating a lower wage was still in force. See, also, Société Pharmacie centrale du Nord v. Dame Eysseric, Trib. civ. Seine (June 23, 1937) D.H. 1937.512 [I.L.O., Dec. Lab. Law, 1937, at 73], where it was held that an employee who has accepted a lower rate of wages is always entitled to require the employer to pay him the rate prescribed in the agreement, because the collective agreement makes any individual contractual agreement ineffective. For an exception based on the concept of *force majeure*, see, Grandjean v. Société des Etablissements Erisol, Cass. civ. (June 17, 1937) D.H. 1937.439 [I.L.O., Dec. Lab. Law, 1937, at 74].

³⁴ See, Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 237 (1951), where he states that the law of 1919 led to "interesting discussions about the legal nature of the collective agreements, which helped to prepare the second phase of their history. A number of jurists, led by Professor Duguit, questioned the legal classification of the collective agreements. They are not simple contracts, but of a different legal nature: they are 'actes-règles,' statutes of the profession having a character similar to that of public statutes. This concept made rapid progress among the labor lawyers and has become the predominant legal interpretation in France. It was officially endorsed by the legislature under the Popular Front regime of 1936 and was made the cornerstone of the new law adopted on June 24, 1936, as a consequence of the famous 'Accords Matignon' of June 7, 1936." For an incisive comment on legislative and judicial attitudes and criteria with respect to labor legislation, see, Lambert, Pic and Garraud, "The Sources and the Interpretation of Labour Law in France," 14 INT. LAB. REV. 1 (July 1926).

³⁵ Act to Amend and Supplement Chapter IV *bis* of Part II of the First Book of the Labor Code, Entitled "Collective Agreements," J. Off. (June 26, 1936) No. 149, p. 6698 [I.L.O., Legis. Ser., 1936, France 7], as amended by the Decree Respecting Production of May 2, 1938, J. Off. (May 1, 2, 3, 1938) No. 104, p. 4951; (May 8, 1938) No. 109, p. 5266; (May 20, 1938) No. 119, p. 5658; Aug. 10, 1938) No. 186, p. 9458 [I.L.O., Legis. Ser., 1938, France 5].

of the (employer) French Confederation of Production, the (employee) General Confederation of Labor (C.G.T.), and the government. As we have seen, the Act of 1919 did very little to promote the conclusion of collective agreements between labor organizations and employers. The conference was the result of recognition by industrial and governmental forces of the immediate necessity for mitigating the economic effects of severe sitdown strikes which occurred in May and June of 1936,³⁶ and the more mediate but no less necessary objective of placing "the relations between employers and workers on a more stable footing."³⁷ The conference led to the Accord of Matignon (so-named from the hotel in which the Accord was concluded) on June 7 and 8, 1936, signed in the presence of the Prime Minister by the representatives of the two confederations.

The Matignon Agreements were, in fact, a set of rough-draft generalizations which were shortly thereafter incorporated by process of deduction and expansion in the Act of 1936. They recognized that workers may freely exercise the right of association, that workers cannot be hired, disciplined, or given work assignments by consideration of their belonging or not belonging to a union, and that a liaison system of workers' delegates must be instituted to relay worker grievances concerning application of legislation or collective agreements to the employer. But most important for our purpose was Article 1 of the Accord: "The employers' delegation agrees to the immediate preparation of collective contracts of employment."

The Act of 1936 includes three salient features: (1) collective bargaining was to be by "joint committee[s] . . . composed of representatives of the most representative industrial organizations of employers and employees in the branch of industry or commerce in question for the region under consideration, or for the whole territory of France if a national agreement is envisaged;"³⁸ (2) the requirement that certain substantive and procedural

³⁶ Report, "Collective Agreements in French Commerce," 59 INDUS. & LAB. INFORMATION 198 (I.L.O., Geneva, 1936); Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 215 at 217 (1952); COLLECTIVE AGREEMENTS 84 [I.L.O., Studies and Reports, Ser. A (Industrial Relations) No. 39, Geneva, 1936].

³⁷ Pouillot, "Collective Labour Agreements in France," 37 INT. LAB. REV. 1 at 7 (1938). See, also, Hamburger, "The Extension of Collective Agreements to cover Entire Trades and Industries," 40 INT. LAB. REV. 153 at 166 (1939), where it is reported that it was not only employer and employee industrial associations which felt the need to stabilize employment relations, but that "one of the leading points on the programme of the new [Popular Front] Government was the encouragement of collective agreements. . . ."

³⁸ Act of June 24, 1936, §31*va*, ¶2.

stipulations be incorporated in the collective agreement;³⁹ and (3) the concept of extension of the collective agreement to third parties by order of the Minister of Labor.⁴⁰ Each of these three points effects a radical change in the status of the collective agreement as defined in prior French legislation. And, since the changes constitute not only a difference in approach from earlier French law but a difference from United States law either in degree or in principle, several problems raised by the act will be examined.

The first problem to be considered is what is a "most representative industrial organization"? The source of the phrase is generally conceded to be Article 3, paragraph 5 of the Constitution of the International Labor Organization, where it is used to govern the appointment of employer and worker delegates to the Conference of the Organization.⁴¹ A decision of the Permanent Court of International Justice on July 31, 1922⁴² gave very little assistance. With respect to the ILO provision, the only conclusion which was warranted was that "all other elements being equal, the number of members would be decisive in determining the representative character of the organization."⁴³ But labor organizations are as different with respect to elements other than size as human beings. To attempt a clarification of the phrase, the Minister of Labor issued a Circular on August 17, 1936. Restating the decision of the Permanent Court, "Numbers are not the only test of the representative character of the organizations, but they are an important factor," the Circular went on to say:

"If it is found that membership in the organization is not actually free, but that it was brought about by means of pressure or through the influence of certain employers, the extent to which the union is qualified to negotiate with the employer concerning the occupational interests of the workers and employees is open to question. . . .

³⁹ *Id.*, §31*vc*.

⁴⁰ *Id.*, §§31*ud*, 31*ve*, 31*vf*.

⁴¹ See, Sturmthal, "Collective Bargaining in France," 4 *INDUS. & LAB. REL. REV.* 236 at 238 (1951); Pouillot, "Collective Labour Agreements in France," 37 *INT. LAB. REV.* 1 at 8-9 (1938).

⁴² Publications, Permanent Court of International Justice, Series B: Collection of Advisory Opinions, No. 1, July 31, 1922 (Leyden, 1922), at 19: "Numbers are not the only test of representative character of the organizations, but they are an important factor; other things being equal, the most numerous will be the most representative."

⁴³ Sturmthal, "Collective Bargaining in France," 4 *INDUS. & LAB. REL. REV.* 236 at 238 (1951). And Hamburger, "The Extension of Collective Agreements to cover Entire Trades and Industries," 40 *INT. LAB. REV.* 153 at 172 (1939).

"In addition to the number of members, other criteria may be taken into account, for instance, the length of time during which the members have paid their contributions and the amount of the contribution. In view of the fact that the creation of occupational organizations is not subject to complicated and costly legal formalities, they can be established with the greatest facility. Therefore, for an organization to be considered the most representative, it should be able to show, both by the amount of the contributions and the regularity of payment, that there exists a bond of a certain permanence between the organization and its members and not only a fortuitous and temporary connection."⁴⁴

The minister of Labor also indicated that more than one organization in a particular industry or area might be the "most representative."⁴⁵ The designation of the "most representative" industrial organizations is placed within the discretion of the Minister of Labor or his representative,⁴⁶ but appeal was permitted "to the Higher Arbitration Court (Cour supérieure d'arbitrage) and, after its suspension by decree of September 1, 1939, to the Conseil d'Etat, a High Court specially dealing with the legality of administrative actions. . . ."⁴⁷ It may be noted, in comparison, that there exists no *direct* judicial review of an NLRB certification of the bargaining representative for an employee unit, nor of an administrative determination of the "appropriate" unit to be represented by a certified representative.⁴⁸

On May 28, 1945, the Minister of Labor issued another Circular dealing with the same definition.⁴⁹ Several new features

⁴⁴ "Definition of Representative Industrial Organizations in France," 52 INT. LAB. REV. 680 at 681 (1945).

⁴⁵ See Sturmthal, "Collective Bargaining in France," 4 INDUS. AND LAB. REL. REV. 236 at 239 (1951), where the rationalization for this ministerial decision is restated:

"For this interpretation . . . its advocates appealed to the 'spirit of French individualism,' the great ideological diversity of the French workers, etc. No less important, it may be assumed, was the strategic need of preventing the C.G.T.—although at that time under strong non-Communist leadership—from obtaining a trade union monopoly at the expense, in particular, of the Catholic labor organization and of the Confédération Générale des Cadres de l'Economie Française (C.G.C.E., created in 1937) [Since 1944 this organization has called itself C.G.C. It organizes higher and technical employees.]."

⁴⁶ Act of June 24, 1936, §31*va*.

⁴⁷ Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 239 (1951). See, for a decision by the Council of State upholding an administrative determination of "most" representativeness, DROIT SOCIAL, 18th Year, No. 4, April 1955, pp. 224-225 [Reported in English, 14 INDUS. & LAB. 196-197 (I.L.O., No. 4, Aug. 15, 1955)].

⁴⁸ E.g.: American Federation of Labor v. NLRB, 308 U.S. 401 (1940); Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146 (1941); Inland Empire District Council v. Millis, 325 U.S. 697 (1945); May Dept. Stores Co. v. NLRB, 326 U.S. 376 (1945).

⁴⁹ J. Off. (June 28, 1945) p. 3915.

may be noted, however. A natural effect of World War II and the Occupation was to render "patriotism" a more conscious criterion for all positions of privilege. Thus, the new Circular stated that the patriotic services performed by industrial organizations and their record with regard to the enforcement of social legislation should also be taken into account. The Circular said that the General Confederation of Labor (C.G.T.) and the French Confederation of Christian Workers satisfy all the conditions necessary to "most representative" status. But we must not conclude that only these two unions constitute the sole bargaining representatives for labor in the French scheme. The Circular provides: "A trade union may be found to be qualified to represent the interests of an occupation so far as a region is concerned, or locally, or within an undertaking, whereas the federation or confederation to which it is affiliated is not qualified to do so at the national level." Thus, "the representative character of a trade union organization may be judged, as the case may require, from either the occupational or the territorial (whole country, district, locality, undertaking) point of view, and sometimes with different results. . . ."⁵⁰ And the second Circular clarifies the meaning of the minister's original declaration that "most representativeness" in a particular industry or area is not limited to one organization. We now see that the French system contemplated a concept of representation very similar, if not identical, to that which has developed under American law. Both systems subscribe to a concept of "exclusive representative" for purposes of representation of the employees in a particular unit. In France such a unit was defined in terms of "occupation" or "territory"; in the United States the unit for bargaining is defined in terms of "appropriateness." To the extent, therefore, that a labor organization in France is recognized as "most representative" in an appropriate "occupational-territorial" unit, it could also be recognized as the "exclusive representative" for an "appropriate bargaining unit" in the United States.

The Act of February 11, 1950⁵¹ finally incorporated the criteria set out by the Minister of Labor in his several Circulars. Most concisely, all the criteria have been stated by one writer as:

1. Membership; the number of members should be duly

⁵⁰ LABOUR-MANAGEMENT CO-OPERATION IN FRANCE 15 [I.L.O., Studies and Reports (n.s.) No. 9, Geneva, 1950].

⁵¹ Section 31f, J. Off. (Feb. 12, 1950) No. 38, p. 1688; (Feb. 22, 1950) No. 46, p. 2087; (March 13, 1950) No. 63, p. 2823 [I.L.O., Legis. Ser., 1950, France 6].

checked, without, however, such supervision constituting an infringement of freedom of association;

2. Independence; membership must be really free and without any pressure or influence of the employer; works unions do not provide the necessary guarantees from this point of view;

3. The length of time during which members have paid their subscriptions, regularity of payment, and the amount of the subscription, all circumstances which prove the existence of a permanent bond between the union and its members and provide the union with the resources which ensure its independence;

4. The experience and age of the groups, the effectiveness and continuity of their social activities, their constructive spirit, achievements and moral influence;

5. Their patriotic attitude, their record under the Vichy regime and their loyalty in applying social legislation.⁵²

The legislative policy of the United States government, as embodied in the National Labor Relations Act, as amended,⁵³ provides only, in section 8 (d), that collective bargaining is

“ . . . the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . . ”

French policy under the Act of 1936 is to require stipulations with respect to a number of matters to be incorporated in the collective agreement. This is, in effect, to insist that the parties negotiate with respect to these matters. The act does not limit the agreement as finally concluded from incorporating stipulations as to matters beyond and more favorable than those required, but the validity of a collective agreement depends mainly on agreement as to the specified matters. In essence, the matters

⁵² LABOUR-MANAGEMENT CO-OPERATION IN FRANCE 15 [I.L.O., Studies and Reports (n.s.) No. 9, Geneva, 1950]. Several intermediate revisions have been analyzed in Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 240 (1950), and "The Question of the 'Most Representative Organizations,'" 58 INT. LAB. REV. 660 at 661-662 (1948). These intermediate revisions were jointly issued by the Prime Minister and the Minister of Labor on March 13, 1947 and April 8, 1948.

⁵³ 49 Stat. 449 (1935), amended by 61 Stat. 136 (1947), 62 Stat. 991, 1286 (1948), 63 Stat. 880 (1949), 65 Stat. 601 (1951), 29 U.S.C. (1952) §§141-197.

with relation to which agreement is necessary are (1) affirmation of employee freedom of association and opinion; (2) institution of elected workers' delegates; (3) minimum wages; (4) period of notice; (5) organization of apprenticeship; (6) grievance procedures; and (7) procedures for revision or amendment of the agreement.

The strictly contractual theory of collective agreements lost ground in the Act of 1936, never to be renewed. For, in addition to restating in amended form the 1919 provision that industrial associations not parties to a collective agreement may subsequently adhere and become bound by it,⁵⁴ the new act instituted a novel (for France) procedure by which collective agreements may be extended and "rendered binding upon all the employers and employees in the occupations and regions within the scope of the agreement. . . ."⁵⁵ And, by 1938, the power of the Minister of Labor, by order, to so extend a collective agreement had been exercised in several instances.⁵⁶ Not long after the extension procedures of the Act of 1936 became a subject of discussion and inquiry, the question arose whether certain provisions of an agreement could be excluded from the extension and whether partial extension was permissible. In 1937, the National Economic Council declared that such "partial extension" is permissible.⁵⁷ The Act of 1936, then, has added to the voluntary and consensual type of collective agreement, another type: "[T]he agreement which, by virtue of Government intervention, re-

⁵⁴ Act of 1919, §31j, as amended, Act of 1936, art. 2. In deciding the binding character of such adherence by an employer under the Act of 1919, the Cour d'appel de Bordeaux, in *Biere v. Union bordelaise des syndicats de l'imprimerie*, November 5, 1935, (S. 1936.2.159) held that when a manufacturer has adhered to a collective agreement concluded between an employers' association of which he is not a member and the workers' union for the occupation, the union is entitled to require its performance. It seems, however, that such adherence by a single employer will no longer be binding under the amendment introduced in the Act of 1936. Whether such adherence would be binding under the traditional civil law concepts may be another question.

⁵⁵ Act of 1936, §31*vd*. See, for a discussion of extension and the nature of the collective agreement, Pouillot, "Collective Labour Agreements in France," 37 INT. LAB. REV. 1 at 10 (1938). For the sources and history of extension, see Hamburger, "The Extension of Collective Agreements to cover Entire Trades and Industries," 40 INT. LAB. REV. 153 at 162 ff. (1939), and Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 215 at 226 (1952).

⁵⁶ E.g., silk weaving industry, motor industry, Paris metal industry. Preliminary note, INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1936-1937, at 110.

⁵⁷ Conseil National Economique, LES PROBLEMES POSES PAR L'EXTENSION DES CONVENTIONS COLLECTIVES DU TRAVAIL, 1937, at 9. See Hamburger, "The Extension of Collective Agreements to cover Entire Trades and Industries," 40 INT. LAB. REV. 153 at 174 (1939).

ceives after its adoption the status of general rule applying to the whole occupational group and region. . . ."⁵⁸

Also in 1936 the French legislature enacted what has proved to be the basis for a third category of collective agreements. The Act of December 31, 1936 concerning conciliation and arbitration in collective labor disputes⁵⁹ made provision for compulsory procedures to settle collective disputes which affect commerce or industry. Conciliation was to be attempted first, with arbitration following where the conciliation process failed. The details were to be specified by administrative decrees,⁶⁰ in the absence of these details being stipulated in the collective agreement involved in a particular dispute. And a most spectacular change in concept was made by section 6, which provides: "The reasons for the arbitration award shall be stated, and there shall be no appeal against it. It shall be binding. It shall be published." At last a chink in the armor of civil law disavowal of the concept of precedent is perceived.⁶¹ Arbitrators, in the performance of their essentially judicial functions, were compelled to justify their decisions logically. Appeal to precedent is the natural effect of the existence of a body of reasoned decisions. And it must be concluded that the French legislature meant that general rules of industrial behavior were to be developed. That the reasons for the arbitration award shall be stated and that the award shall be published demonstrates this intent.

But several disturbing problems arose with relation to the Act of December 31, 1936: (1) aggravation of disputes caused by a

⁵⁸ Preliminary note, INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1936-1937, at 110.

⁵⁹ J. Off. (Jan. 1, 1937) No. 1, p. 127 [English translation, I.L.O., Legis. Series, 1936, France 17]. For the considerations which led the French government to introduce a compulsory procedure of conciliation and arbitration, see Maurette, "A Year of 'Experiment' in France: I," 36 INT. LAB. REV. 1 at 17-18 (1937). See, for the Acts of July 18, 1937 [J. Off. (July 19-20, 1937)] and January 14, 1938 [J. Off. (Jan. 14, 1938); LE TEMPS, Jan. 14, 1938], which provided, respectively, for prolongation of certain collective agreements and of the powers conferred on the government by the Act of December 31, 1936, and for prolongation until February 28, 1938 of the provisions of the decrees issued under the Acts of December 31, 1936 and July 18, 1937, 63 INDUS. & LAB. INFORMATION 220 (1937) and 65 INDUS. & LAB. INFORMATION 145 (1938).

⁶⁰ Decrees were issued: Decree of January 16, 1937, J. Off. (Jan. 17, 1937), as amended by the Decree of September 18, 1937, J. Off. (Sept. 19, 1937). For a description of the events leading up to adoption of the act and a summary of the Decree of January 16, 1937, see, 61 INDUS. & LAB. INFORMATION 232 (1937). A summary of the chief amendments in the Decree of September 18, 1937 may be found in 64 INDUS. & LAB. INFORMATION 211 (1937).

⁶¹ And Professors Lambert, Pic, and Garraud, "The Sources and the Interpretation of Labour Law in France," 14 INT. LAB. REV. 1 at 14-15 (1926), reinforce the conclusion that this disavowal has been merely spoken but not intended, and professed but not effected.

complicated system of conciliation by stages as set forth in the administrative decrees; (2) insufficient definition of the powers of arbitrators and umpires; (3) absence of the right of appeal from an umpire's decision attacked on grounds that the umpire was not competent to make such an award, that he exceeded his powers, or that the award was contrary to law; (4) legal effect of an arbitrator's or umpire's award interpreting the provisions of a collective agreement or of a wage agreement; (5) absence of provision for revision, by arbitration, of wage clauses in collective agreements during the term of the agreement, when the cost-of-living index rises dangerously. To resolve these problems the French legislature passed the Act of March 4, 1938.⁶² With respect to the first problem, section 2 provided that only one attempt at conciliation will be made, failure of which will be immediately followed by arbitration. With respect to the second problem, section 9 of the act provided that arbitrators and umpires may not decide any points other than those set out in the report recording failure of conciliation, that their decisions are to be based on the rules of the general law in the case of disputes involving legal issues, and that in other collective disputes decisions are to be based on equity. With respect to the third problem, section 13 and 14 provide for appeal to a newly constituted Higher Court of Arbitration (*Cour supérieure d'arbitrage*). With respect to the fourth problem, section 18 provides that an award interpreting provisions of a collective agreement or wage agreement has the same effect as a collective agreement if it is registered in accordance with section 31c of the Act of 1919.⁶³ With respect to the fifth problem, section 10 provides for review of wage clauses when the official cost-of-living index varies five percent or more from the "index number at the date nearest to the date on which the wages in question were fixed."⁶⁴

⁶² J. Off. (March 5, 1938) No. 54, p. 2570 [English translation, I.L.O., Legis. Series, 1938, France 1]. The act was supplemented by a Decree of April 20, 1938, J. Off. (April 20 and 23, 1938); *Bulletin de la Confédération générale du patronat français*, (June 15, 1938), the substance of which is found in 67 INDUS. & LAB. INFORMATION 362-363 (1938). A simplification of the Act of 1938 procedure was the object of a legislative decree of November 12, 1938, issued under the Emergency Powers Act of Oct. 5, 1938, a summary of which may be found in 68 INDUS. & LAB. INFORMATION 364-369 (1938).

⁶³ One writer in 1937 felt the need for a penalty to enforce arbitration or umpire awards. Maurette, "A Year of 'Experiment' in France: I," 36 INT. LAB. REV. 1 at 19 (1937): "There is one possible omission [in the Act of December 31, 1936]: if the decision of the arbitrators or the umpire is not carried out by one of the parties, no penalty can be enforced. . . ." The question seems to have been rendered moot, in view of the 1938 provision that such awards may be enforced as collective agreements.

⁶⁴ A detailed analysis of the Act of March 4, 1937 may be found in 65 INDUS. & LAB. INFORMATION 349 (1938). An examination of settlement procedures existing prior to the

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THE VICHY REGIME

Beginning on the first day of September 1939, emergency decrees were issued which, *inter alia*, dealt with the status of the collective bargaining agreement and conciliation and arbitration procedures. The Decree of September 1, 1939⁶⁵ suspended the application of laws and regulations concerning conciliation and arbitration, and the application of provisions concerning the review of wages in collective agreements and contracts of employment. But the concept of the collective agreement as the industrial supplement to legislation was not thereby destroyed. In an official statement issued by the French Ministry of Labor on October 13, 1939,⁶⁶ it was pointed out that "the state of war is not in itself a sufficient reason for the termination of contracts of employment. The war has not affected collective agreements concluded between employers' and workers' organizations, and, in the absence of supplementary agreements in the form of additional clauses, all provisions of collective agreements must be fully observed."⁶⁷ In a statement made on October 20, 1939⁶⁸ to the Labor Committee of the Chamber of Deputies, the Minister of Labor assured his audience that the collective agreement system, which was the keystone of the whole French social structure, would be maintained subject to changes which might be required by unforeseen events.⁶⁹

A Decree of October 16, 1939⁷⁰ suspended the working of the National Economic Council for the duration of the war and set up a Permanent Economic Committee to assume the necessary duties during the period of hostilities. A memorandum to the decree explained that the National Economic Council was not adapted to wartime requirements and that "a smaller permanent

Act of December 31, 1936 may be found in *CONCILIATION AND ARBITRATION IN INDUSTRIAL DISPUTES*, French national monograph at 170-186 [I.L.O., Studies & Reports, Ser. A (Industrial Relations) No. 34, Geneva, 1933].

⁶⁵ J. Off. (Sept. 6, 1939), amended by the Decree of September 8, 1939, J. Off. (Sept. 9, 1939), which provides that the Minister of Labor, when he thinks fit, may introduce a system of conciliation and arbitration applicable throughout the war. All the provisions of the decree are summarized in 71 *INDUS. & LAB. INFORMATION* 339-341 (1939).

⁶⁶ *LE TEMPS*, October 14, 1939.

⁶⁷ Note, "The War and Collective Agreements in France," 72 *INDUS. & LAB. INFORMATION* 216 (1939).

⁶⁸ *LE TEMPS*, October 21, 1939.

⁶⁹ Note, "The War and Collective Agreements in France," 72 *INDUS. & LAB. INFORMATION* 216 (1939).

⁷⁰ J. Off. (Nov. 2, 1939).

committee is in a much better position to deal immediately with all questions and requests addressed to it by the various Ministries concerned." As was the council, however, the committee was to be composed of representatives from the most important trade organizations of workers and employers.⁷¹

The Decree of October 27, 1939⁷² provided that conditions of employment established by collective agreements in force on the first of September 1939, and by arbitration awards which had become binding by the same date, would remain in force for the duration of hostilities for those employers and employees in the trades and districts within the scope of such agreements and awards. Conditions under which changes might be made in conditions of employment so fixed were to be specified in a subsequent decree.

The Legislative Decree of November 10, 1939⁷³ explained the government's policy with respect to collective agreements and other matters involved in the industrial sphere. The new regulations introduced substantial changes in the system of collective agreements formerly established by the Act of June 24, 1936. Specifically, the decree provided for the establishment of two different systems, one to apply to industries and undertakings not involved in national defense and the other to apply to those which were engaged in defense work. In the *former* industries and undertakings, the terms of existing collective agreements and arbitration awards could be revised either by mutual agreement between the organizations concerned or at the request of one of them. The procedure for revision by request of one party was set forth, to be supplemented by decrees. In any case, any changes would come into effect only after approval by the Minister of Labor, from whose decision there was no appeal. In addition, the clauses of collective agreements and arbitration awards could be modified by the Minister of Labor when they "appear to him to be incompatible with the requirements of production or labor output." In particular, the minister could set the wage scales for a given trade or district. In the *latter* industries and undertakings, conditions of employment, whether or not specified in collective agreements or arbitration awards, were frozen ("stabilized") as of September 1, 1939. Conditions of employment could

⁷¹ Note, "Wartime Legislation in France," 72 INDUS. & LAB. INFORMATION 292 (1939).

⁷² J. Off. (Nov. 1, 1939) No. 267, p. 12,787 [I.L.O., Legis. Ser., 1939, France 21 (D)].

⁷³ J. Off. (Nov. 16, 1939) p. 13,143; J. Off. (Nov. 22, 1939) p. 13,298. For details in English, see, note, "Wartime Legislation in France," 72 INDUS. & LAB. INFORMATION 292-295 (1939).

be modified only by joint decision of the Minister of Labor and the minister directly concerned. Civil penalties were provided for employers who paid wages in contravention of the provisions of the instant decree or subsequent ministerial decisions. And a Decree of June 1, 1940 affirmed the authority of the Minister of Labor to fix wages.⁷⁴

On August 16, 1940 the Vichy Regime dissolved trade union confederations and employer federations,⁷⁵ and the act of that date was later implemented by a Decree of November 19, 1940, which "ordered dissolution of the C.G.T. and of the C.F.T.C. and of a somewhat ephemeral semi-Facist organization, the Confédération des Syndicats Professionnels (C.S.P.F.), which had been founded in 1937 in conjunction with the Parti Social Français."⁷⁶ Before the implementing decree was issued, however, the Vichy Regime proclaimed its "Charte du Travail," the Act of October 4, 1941 Respecting the Social Organization of Occupations,⁷⁷ by which free trade unions and free collective bargaining were abolished. The act prohibited strikes and lockouts,⁷⁸ provided that "occupational activities shall be divided among a specified number of industrial or commercial families . . ." organized for "joint management of the occupational interests of their members of all categories" and for "collaboration . . .,"⁷⁹ provided for the formation of local unions whose membership was composed automatically of every person engaged in an occupational activity in the appropriate "category, area and occupation . . .,"⁸⁰ placed strict limits on the administration, functions and purposes of these "unions,"⁸¹ and stated rules for the formation of regional and national federations of unions.⁸² Provisions relating to organization and workings of unions and federations were later supplemented by two decrees on August 28, 1942.⁸³

⁷⁴ Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 241 (1951).

⁷⁵ See I.L.O., Legis. Ser., 1940, France 10, for text and citation.

⁷⁶ Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 241 (1951).

⁷⁷ J. Off. (Oct. 26, 1941) No. 293, p. 4650 [I.L.O., Legis. Ser., 1941, France 7].

⁷⁸ Act of October 4, 1941, §5.

⁷⁹ Id., §1.

⁸⁰ Id., §§9-12.

⁸¹ Id., §§14-18.

⁸² Id., §§19-22.

⁸³ Decrees Nos. 2134 and 2136, J. Off. (Sept. 7, 8, 1942) No. 215, p. 3070 [I.L.O., Legis. Ser., 1942, France 13]. The Vichy Acts of Aug. 16, 1940 and Oct. 4, 1941 were the subject of an ordinance promulgated by the Algiers Provisional Government on July 27, 1944 [J. Off. (Aug. 30, 1944) No. 72, pp. 776-777, as amended, J. Off. (Sept. 27, 1944) No. 83, pp. 837-838 (I.L.O., Legis. Ser., 1944, France 5 and 13)], which provided for the reconstitution of employer and employee industrial organizations and for the restoration of their property.

POST-WAR LEGISLATION: PRESENT STATUS OF THE
COLLECTIVE AGREEMENT

On October 27, 1946, after having been approved by a referendum, a new Constitution of France was promulgated.⁸⁴ The preamble expressed principles concerning the rights of workers, and the body included provisions concerning the Economic Council, the advisory arm of the French Parliament. The preamble reads, in part:

"It is every man's duty to work, and every man has the right to obtain employment. No one's rights, as regards work or employment, may be impaired because of his origin, his opinions or his beliefs.

"Every man may defend his rights and interests by collective action and may join the union of his own choosing.

"The right to strike is exercised within the limits of the regulations fixed by the law.

"Every worker takes part, through his representatives, in the collective fixing of conditions of work as well as in the management of undertakings."

Two months after promulgation of the new Constitution of the Fourth French Republic, the Act of December 23, 1946 Respecting Collective Labor Agreements was enacted.⁸⁵ In essence, the act reaffirmed the principles incorporated in the Act of 1936. But there were several significant differences.

First. The French Legislature felt that until the national economy was stabilized and peace-time production revitalized, wages should continue to remain in the control of the Minister of Labor.⁸⁶ Since 1939, wage levels had been determined, not by free negotiation, but by governmental decree. The time had not yet come when the legislature could entrust the economy to the effects of economic forces which had been held in abeyance for seven years.⁸⁷

Second. The law marked a reversal to the concept of free collective bargaining in that it required the minister's approval for all collective agreements.⁸⁸ No agreement was valid or binding

⁸⁴ J. Off. (Oct. 28, 1946) p. 9166. See note, "The New French Constitution," 54 INT. LAB. REV. 364-367 (1946), for extracts from the text.

⁸⁵ J. Off. (Dec. 25, 1946) No. 301, p. 10,932; J. Off. (Jan. 5, 1947) No. 5, p. 138 [I.L.O., Legis. Ser., 1946, France 15].

⁸⁶ Part IV, Rates of Remuneration, and Part V, Transitional Provisions.

⁸⁷ A survey of wage regulations may be found in LABOUR-MANAGEMENT CO-OPERATION IN FRANCE 63-70 [I.L.O., Studies & Reports (n.s.) No. 9, Geneva, 1950].

⁸⁸ Act of December 23, 1946, §31D.

unless it had received such approval, and approval could be withdrawn at the discretion of the minister on his own initiative or on application by an organization of employers or employees concerned.⁸⁹

Third. Approval of a collective agreement by the minister implied an automatic extension of the approved agreement to all "public undertakings or nationalized establishments which, owing to the nature of their work, normally come within its scope."⁹⁰ And an approved agreement could be extended to "industrial and commercial establishments of the State or to public authorities⁹¹ by a joint Order of the Minister of Labor and Social Security, the Minister for Economic Affairs and the Minister concerned."⁹² Two writers who have dealt with the Act of 1946 have asserted that these provisions effect an automatic extension of a collective agreement to all occupations or enterprises within its scope. Their words have been:

"His approval carried with it the automatic 'extension' of its terms to all occupations or branches of the industry within the locality or limits laid down in the agreement; thus such agreements took on the effect of public regulation insofar as the non-participating parties were concerned."⁹³

"His approval implied at the same time the 'extension' of the agreements. Thus no agreement was valid unless the Minister approved it; and such approval made the agreement automatically a public regulation for the entire occupation or branch of industry within the local limits laid down in the agreement itself. The former division of agreements into two classes—those with limited validity and those 'extended' to nonrepresented employers and employees—disappeared. . . ."⁹⁴

It is submitted that there is question as to whether (1) approval by the Minister of Labor automatically extended the terms of an agreement to *all* occupations or enterprises within its scope, and (2) the act has reduced "the former division of agreements" to

⁸⁹ *Id.*, §31G.

⁹⁰ *Id.*, §31F, ¶1.

⁹¹ The translation of this phrase may be erroneous. The French text reads ". . . ou des collectivités publiques . . .," and should be translated "or of public authorities [bodies]." The question is important to the meaning of the section.

⁹² Act of December 23, 1946, §31F, ¶2.

⁹³ Reynard, "Collective Bargaining and Industrial Peace in France," 1 *AM. J. COMP. L.* 215 at 219 (1952).

⁹⁴ Sturmthal, "Collective Bargaining in France," 4 *INDUS. & LAB. REL. REV.* 236 at 241 (1951).

one undifferentiated type rather than that the act has further diversified collective agreements into a triad of types, namely: (a) approved agreements which are automatically extended to "public undertakings or nationalized establishments," (b) approved agreements which may be extended by order to "industrial and commercial establishments of the State or to [*sic*, of] public authorities [*sic*, bodies]," and (c) approved agreements for which there are no provisions in the Act of 1946 by which extension may be authorized to *private* industrial and commercial establishments and undertakings. The author has found no judicial, legislative or regulative decisions, nor has he found any ministerial memoranda which would resolve the problem so posed. But it does seem unlikely that the Act of 1946, characterized as a reconstitution of free collective bargaining, a reaffirmation of the legal efficacy of freely negotiated collective agreements, and a reversal of authoritarian concepts which were initiated three years after the Act of 1936 and subsequently expanded, would eliminate a principle which had found favor in the minds of labor, the legislature, the government and the employers in June of 1936. An interpretation of section 31F of the Act of 1946 which precludes, by implication,⁹⁵ the extension of approved collective agreements to all but public undertakings, nationalized establishments, and industrial and commercial establishments of the state or of public authorities, abrogates the acceptance of extension to all "employers and employees in the occupations and regions within the scope of the agreement. . . ." found in section 31*vd* of the Act of 1936, and returns the French collective agreement, so far as this concept is concerned, to the strictly contractual basis prescribed by the Act of 1919. In any case, it may be presumed that the authors quoted above erred, insofar as the Act of 1946, absent authoritative interpretation, does not authorize *automatic* extension to the extent that they have assumed.

Fourth. The confusion which had previously existed with regard to whether employees who are not members of the employees' representative union are affected by the terms of an agreement binding his employer and the union was eliminated. The Act of 1946 provided:

"In every establishment which falls within the scope of an

⁹⁵ This interpretation could be justified by the rule "*inclusio unius est exclusio alterius*," to eliminate from a positive or prohibitive legislative direction an event or circumstance which, while otherwise included under the general intent of a statutory provision, is excluded by virtue of its absence from a list of events or circumstances specified in the statute.

agreement, the provisions of the said agreement shall be binding in respect of employment relations arising from individual or gang contracts, save where the clauses of the said contracts are more favourable to the employees than those of the agreement."⁹⁶

Thus, an employer who is subject to the terms of a collective agreement cannot bind himself to give and an employee to take, terms and conditions of employment less favorable than those specified in the collective agreement. The same result is obtained in the United States through the provisions of section 9 (a) of the National Labor Relations Act, as amended:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment"

In France, the employer who is bound by a collective agreement cannot contract, within the collective agreement's occupational scope, for terms less favorable than those in the collective agreement; in the United States, the employer who is bound by a collective agreement cannot contract for terms less favorable than those in the collective agreement because the bargaining representative of his employees represents, by law, all the employees, nonunion as well as union, in the particular bargaining unit. In French theory the employer is bound because the act says that he is bound; in American theory the employer is bound because

⁹⁶ Act of December 23, 1946, §31, ¶3. The history of this problem is outlined in Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 215 at 225, n. 12 (1952) where he states:

"The 1919 Act provided that a person bound by the agreement must apply it to his legal relations with third parties, unless there was a specific clause to the contrary.

"Two situations had to be considered:

"(1) Where both employer and employee were bound by the statute: the collective agreement could not be abrogated by individual agreements, in sharp contrast to the previously existing law.

"(2) Where only one of the parties was bound by the agreement: the party thus bound was presumed to have applied the agreement, unless he stipulated to the contrary; but if he did so he was liable in damages.

"The system of the statute was consequently that the employer could stipulate in the collective agreement that he wanted to apply it only to the members of the contracting union. If he did so, he was free to make individual contracts with outsiders; if he failed to do so, he could still make valid contracts at variance with the collective agreement; but he was presumed not to have done so, and if he had explicitly done so, he was liable in damages for failure specifically to secure this right in the collective agreement. The 1936 Act apparently made no significant change in this respect."

he has so contracted with *all* his employees through their representatives.

Fifth. As was the case under the Act of 1936,⁹⁷ collective agreements could be concluded for an occupation or industry at the national, regional, local, or individual undertaking level.⁹⁸ However, "The Act has been designed with a view to creating a chronological order in respect of the conclusion of the various agreements; national agreements should be concluded first and agreements for undertakings last."⁹⁹ The Act of 1936 had no such design. The 1946 act provided that agreements for individual establishments shall govern conditions of employment only within the limits allowed by national, regional or local agreements,¹⁰⁰ and, in addition, that individual collective agreements "shall not contain any provisions less favourable to the employees than those in the special local, regional or national agreements which apply to the establishment concerned."¹⁰¹

On February 11, 1950, the most recent French act relating to collective agreements was passed by the French legislature.¹⁰² The Act of 1950 replaces the Act of 1946, the acts respecting conciliation and arbitration of December 31, 1936 and March 4, 1938, and all other enactments and decrees which had been issued under them. With regard to its scope:

"It applies to all private employers and employees, particularly specifying industry, commerce, agriculture and related occupations, professional work, Government departments and offices, domestic service, caretakers, homeworkers, and private associations. It does not apply to nationally owned undertakings save to the extent that their personnel is not subject to special rules issued by Act or regulation; the list of nationally owned undertakings having such rules will be issued by decree."¹⁰³

⁹⁷ Act of June 24, 1936, §31*va*.

⁹⁸ Act of December 23, 1946, Divisions II and III. For a review of the decrees which set forth the criteria for determinations of the representative character of industrial organizations for purposes of concluding national agreements, see LABOUR-MANAGEMENT CO-OPERATIVE IN FRANCE 71, n. 1 [I.L.O., Studies & Reports (n.s.) No. 9, Geneva, 1950].

⁹⁹ LABOUR-MANAGEMENT CO-OPERATION IN FRANCE 71 [I.L.O., Studies & Reports (n.s.) No. 9, Geneva, 1950].

¹⁰⁰ Act of December 23, 1946, §31*Q*.

¹⁰¹ *Id.*, §31*R*.

¹⁰² Act No. 50-205 Respecting Collective Agreements and Proceedings for the Settlement of Collective Labor Disputes, J. Off. (Feb. 12, 1950) No. 38, p. 1688; J. Off. (Feb. 22, 1950) No. 46, p. 2087; (March 13, 1950) No. 63, p. 2823 [I.L.O., Legis. Ser., 1950, France 6].

¹⁰³ Note, "Collective Agreements and Industrial Disputes Procedure in France," 3 INDUS. & LAB. 290 at 291 (1950).

For several years immediately preceding enactment of the Act of 1950, pressure had increased for a return to the system of freely negotiated collective agreements, as incorporated in the Act of June 24, 1936. In 1948 and 1949, gradual increase in production enabled the government to remove controls over prices, rationing and exchange in large sectors of the economy. Why, the workers questioned, should controls remain over wages and collective agreements? Employee organizations called for the restoration of free wage bargaining.

In November 1949, the government introduced a bill¹⁰⁴ intended to govern collective agreements and specify the procedures for settlement of collective disputes. The text of the bill was preceded by a memorandum in which the government explained why it considered either a return to the rigid scheme laid down by the Act of 1946 or a reversion to the pre-war system inappropriate:

"The negotiation of national collective agreements subject to ministerial approval has often proved to be most cumbersome; yet the workers ought to be enabled to conclude wage agreements without delay, since these constitute one of the essential elements in the collective agreement as a whole. . . .

"The 1946 legislation led to the conclusion of a large number of collective agreements with widely varying scope and thus to an excessive diversity in conditions of employment, such as would no longer be compatible with the existence of an extensive nationalized sector and with the need for a sound employment policy."¹⁰⁵

The bill consisted of two parts: one related to collective agreements, the other to adjustment of collective disputes by compulsory conciliation and arbitration. The first part found little opposition, especially since it impliedly provided for the free determination of wages, explicitly rendered collective agreements valid without governmental approval, and reenacted the desirable features of the 1946 law. But the second part was vigorously opposed by the trade unions. They argued that compulsory arbitration procedures would derogate from the right to strike that had been expressly guaranteed by the new Constitution. And employers feared that government price and exchange controls would return if compulsory arbitration, "with the pyramid

¹⁰⁴ No. 8444, National Assembly, Chamber of Deputies, 1949 session. Appendix to the minutes of the sitting of Nov. 22, 1949.

¹⁰⁵ Note, "Collective Agreements and Industrial Disputes Procedure in France," 3 *INDUS. & LAB.* 290 at 291 (1950).

of labor courts which the government proposal provided," were enacted.¹⁰⁶ Unanimous opposition by employers' and workers' organizations was reflected in the Economic Council and by a majority of the National Assembly. The Economic Council pointed out that "Part II of the Bill relating to conciliation and arbitration constitutes an infringement of the right to strike, which figures in the Constitution, and a contradiction of the principle of a return to the free negotiation of agreements."¹⁰⁷ Parliamentary discussions resulted in compromises.

In the text as finally enacted, the government was able to salvage two main controls.

First. The Minister of Labor is able to determine, in his own discretion, whether collective agreements shall be extended to employers and employees not represented by the parties to the agreement.¹⁰⁸ Extension was to be no longer automatic in any case. The union demand that the automatic extension provisions of the Act of 1946 should persist was refused.¹⁰⁹

Second. A governmentally-appointed Superior Collective Agreements Board is to determine, by reference to a model budget, the minimum guaranteed wage ("minimum vital") which, when accepted by "Decree adopted by the Council of Ministers on the advice of the Minister of Labour and Social Security and the Minister responsible for economic affairs . . .," shall constitute the minimum wage for all occupations.¹¹⁰ In thus retaining ultimate control over the minimum wage, the government felt assured that no general wage increase due to an increase in the minimum would occur.

¹⁰⁶ See, for summaries of the arguments against the compulsory arbitration provisions of the government bill, Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 244 (1951), and note, "Collective Agreements and Industrial Disputes Procedure in France," 3 INDUS. & LAB. 290 at 296-297 (1950). Two pre-war works on French labor courts may be consulted for information as to the special judicial system which has existed in this field in France: Binet, "Labor Courts," 37 INT. LAB. REV. 463, 466 (1938); and LABOR COURTS 89, French national monograph [I.L.O., Studies & Reports, Ser. A (Industrial Relations) No. 40, Geneva, 1938].

¹⁰⁷ Opinion of the President of the Economic Council on Bill No. 8566, National Assembly, Chamber of Deputies, 1949 session. Appendix to the minutes of the sitting of Dec. 1, 1949.

¹⁰⁸ Act of 1950, §31j.

¹⁰⁹ Sturmthal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 243 (1951).

¹¹⁰ Act of 1950, §31x. Under a Decree of March 3, 1950, J. Off. (March 4, 1950), amended by a Decree of April 15, 1950, J. Off. (April 16, 1950), the seats reserved for the workers' and employers' representatives were distributed among the various "most representative" trade unions. Final membership was fixed by an Order of April 25, 1950, J. Off. (April 26, 1950), after the organizations entitled to be represented had notified the government of the names of their representatives. See note, "Collective Agreements in France," 4 INDUS. & LAB. 177 at 178 (1950).

The Act of 1950 abandoned the "strict hierarchy"¹¹¹ of the Act of 1946¹¹² by which national agreements must have been negotiated before regional or local agreements could be concluded, and by which such regional or local agreements must have been negotiated before agreements relating to individual establishments within the occupational or territorial scope of the prior agreements could be concluded.

"Under the preceding legislation, the most representative organizations of employers and workers in joint session were required to conclude agreements at the national level, and it was only within the general framework thus laid down that regional and local agreements found their place. . . ."¹¹³

However, if a national agreement has been concluded in a given trade or occupation, the more restricted-scope agreements are only able to adapt its provisions, or certain of its provisions, to the needs of the particular area; such restricted-scope agreements cannot vary the provisions of a national agreement by concurrence as to less favorable terms. But such agreements can contain new stipulations.¹¹⁴

The Act of 1950 prescribes an extended list of stipulations which must be incorporated into national collective agreements.¹¹⁵ The subjects which have been added to the mandatory from the permissive category are

- (a) Employees' delegates and works committees, and the financing of the social and benevolent associations managed by the said committees;
- (b) Holidays with pay;
- (c) The procedure for the revision, amendment or termination of all or part of the collective agreement;
- (d) The procedure agreed upon for conciliation, according to which collective labor disputes which may arise between the employers and workers bound by the agreement are to be settled;
- (e) The special conditions of work for women and young persons in the undertakings covered by the agreement.

And the permissive category has been expanded by the specifica-

¹¹¹ Sturmtal, "Collective Bargaining in France," 4 INDUS. & LAB. REL. REV. 236 at 243 (1951).

¹¹² Act of 1946, §31M, ¶3; §31Q.

¹¹³ Note, "Collective Agreements and Industrial Disputes Procedure in France," 3 INDUS. & LAB. 290 at 292 (1950).

¹¹⁴ Act of 1950, §31i.

¹¹⁵ Id., §31g.

tion of additional subjects which may, inter alia, be included in national agreements.

The procedures for the adjustment of collective disputes are set forth in Part II of the Act of 1950.¹¹⁶ Under the act, every collective agreement must contain provisions respecting contractual conciliation proceedings for the settlement of disputes.¹¹⁷ Where, however, a collective dispute is not the object of an agreed conciliation procedure provided for in the agreement or by supplemental agreement, it must be brought before a national or regional conciliation board of tripartite character, including representatives of the employers and workers in equal numbers, plus not more than three persons representing the public authorities. Administrative regulations are authorized to provide for the detailed rules respecting composition, working and territorial jurisdiction of the boards.¹¹⁸ Arbitration, after failure to achieve agreement by the compulsory conciliation procedures, is completely voluntary. Agreement to arbitrate disputes may be made in the collective agreement or by any supplemental or *ad hoc* agreement.¹¹⁹ As under the Conciliation and Arbitration Act of 1938, the arbitrator may not decide any points other than those mentioned in the record of failure to achieve conciliation, but he may decide "those points which, being the result of events which take place after the said record was made, are a consequence of the dispute under consideration."¹²⁰ And, again:

"The arbitrator shall give decisions on the law involved, in points in dispute, respecting the interpretation and execution of the statutes, regulations, collective agreements or agreements in force.

"The arbitrator shall give equitable decisions on other points in dispute, in particular when the dispute concerns wages or conditions of work not fixed by any statutes, regulations, collective agreements or agreements in force, and on points in dispute respecting negotiations concerning clauses in collective agreements and the revision of such clauses.

¹¹⁶ J. Off. (Feb. 12, 1950) No. 38, p. 1688; J. Off. (Feb. 22, 1950) No. 46, p. 2087; (March 13, 1950) No. 63, p. 2823 [I.L.O., Legis. Ser., 1950, France 6].

¹¹⁷ Act of 1950, §7.

¹¹⁸ Id., §8. A Decree of February 27, 1950, J. Off. (Feb. 27-28, 1950), No. 51, p. 2337; amended J. Off. (March 5, 1950) No. 56, p. 2523, laid down the methods of enforcement of these provisions concerning national and regional conciliation boards. See note, "Collective Agreements in France, 4 INDUS. & LAB. 177 at 179 (1950), for a summary of the provisions of the decree. An English translation of the text may be found in I.L.O., Legis. Ser., 1950, France 2.

¹¹⁹ Act of 1950, §§9, 10.

¹²⁰ Id., §11.

"All decisions of arbitrators must be accompanied by the reasons therefor.

"No appeal may be made against such decisions, save in the manner provided for in Chapter IV."¹²¹

Chapter IV establishes a Superior Court of Arbitration to hear appeals brought by the parties against any decision of an arbitrator on grounds that the decision is *ultra vires* or contrary to law. Of whom the court is to be composed and what its procedure shall be are set forth in general form, with details to await specification by administrative regulations.¹²² Chapter V of Part II governs the execution and legal efficacy of conciliation agreements and decisions of arbitration boards. And the pre-war concept, that a conciliation agreement or arbitration award affecting the interpretation of the clauses of a collective agreement has the same effect as the collective agreement itself, persists.

In May and June 1955, two decrees were issued.¹²³ The first laid down a procedure for mediation in industrial disputes which was intended to facilitate conclusion of collective and wage agreements. The supplementary decree contained administrative regulations. The mediation procedure is resorted to on application by one of the parties or by order of the Minister of Labor either when conciliation procedures have failed to settle a dispute or, if both parties agree, immediately on occurrence of a dispute. Immediate voluntary submission is deemed unnecessary, however, if the minister decides that a dispute over wages or other remuneration is such that the general interest precludes the normal procedure. In such cases he may order immediate mediation.

One final question may be pursued. Is there any duty imposed on French employers and employee organizations to bargain collectively? The answer, if we look for an express provision to this effect, is "No"; but if we look to the inferences which may be justifiably drawn from the Act of 1950, the answer must be "Yes." We in the United States are not so concerned with whether the duty may be inferred from inexplicit provisions: we have

¹²¹ *Ibid.*

¹²² A Decree of March 15, 1950 provided for the method of enforcement of the statutory provisions concerning the Superior Arbitration Courts. See, note, "Collective Agreements in France," 4 *INDUS. & LAB.* 176 at 179 (1950).

¹²³ May 5, 1955, No. 55-478, *J. Off.* (May 6, 1955) 87th Year, No. 108, p. 4493; June 11, 1955, No. 55-784, *J. Off.* (June 12, 1955) 87th Year, No. 139, p. 5923. A summary of their provisions may be found in note, "Mediation in Industrial Disputes in France," 14 *INDUS. & LAB.* 271 (No. 6, Sept. 15, 1955).

sections 8 (a) (5), 8 (b) (3) and 8 (d) of the National Labor Relations Act, as amended. But even without them, the duty to bargain collectively could probably be deduced. French law requires that all collective disputes be submitted to conciliation. Insofar as conciliation is but an extension of collective bargaining, a direction by the French legislature that conciliation is mandatory amounts to the imposition of the duty to bargain. French law also authorizes the Minister of Labor to convene mixed commissions to negotiate collective agreements, either at the request of one of the parties or organizations concerned, or on his own initiative.¹²⁴ "It would seem obvious that, if these commissions are to fulfill their purpose, attendance and good faith participation in the negotiations would be required. However, the law is silent on this point and no sanctions are set forth."¹²⁵ But French courts have never been averse to enforcing a moral duty or duty of conscience not granted express legal efficacy by the legislature.¹²⁶ It may be that future developments will demonstrate that the duty to bargain in good faith has gained sanction in the judicial mind.¹²⁷

¹²⁴ Act of 1950, §§31f and 31h.

¹²⁵ Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 215 at 220 (1952).

¹²⁶ For cases where French courts found acknowledgment of a "natural obligation" valid and binding, see, e.g., *Compayré v. Combes*, Cass. civ. (March 11, 1918) S. 1918-1919.1.170; *Franc v. Azema*, App. Toulouse (Dec. 28, 1892) S. 1893.2.209; *Spouses Berrier-Drouin v. de Cambaceres*, App. Paris (Nov. 8, 1892) S. 1894.2.191; *Tibayrenc v. Bureau de Bienfaisance de Narbonne*, App. Montpellier, 1892, D.P. 1894.2.15; *Faure v. Rougier*, Cour de Grenoble, 1860 [Dalloz, Jurisp. Gen. Vol. 11, Supp. "Obligations," §385, n. 1].

¹²⁷ It has been noted that voluntary action on the part of the parties in the industrial sphere has been less than encouraging: Reynard, "Collective Bargaining and Industrial Peace in France," 1 AM. J. COMP. L. 216 at 220 (1952); Powell, "Activities of French Labor Unions in 1949-51," 72 MONTHLY LABOR REVIEW 642 (1951). For affirmation of the view that "The effects of judicial practice are more original in a branch of law such as labour law . . ." see Lambert, Pic, and Garraud, "The Sources and Interpretation of Labour Law in France," 14 INT. LAB. REV. 1 at 14-15 (1926). And, notwithstanding the absence of penal or civil sanctions to compel good faith bargaining in France, collective agreements have been negotiated in a number of important industries. See, e.g., notes: 5 INDUS. & LAB. 108 (1951) (metals); 6 id., 326 (1951) (textiles); 6 id., 373 (1951) (domestics); 9 id., 246 (1953) (chemicals); 15 id., 292 (1956) (automobiles).