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INTERNATIONAL LABOUR REVIEW

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The Law of Collective Bargaining in Germany

by

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COLLECTIVE bargaining in Germany definitely established its position about the end of the nineteenth and the beginning of the twentieth century. The difficulties in its way had not been raised by the employers alone ; large numbers of the workers as members of the "class-conscious proletariat" were formerly as suspicious of collective bargaining as they are now of the principle of joint industrial control as represented in that extended form of collective bargaining, the joint industrial association (1). The printers' union in 1895, for instance, when it signed its first national agreement, was split up to a certain extent. Violent labour struggles preceded the victory of the collective agreement in the handicrafts trades ; while mining, large-scale industry, and commerce remained hostile.

The first official census of 1905 showed a total of 1,577 agreements, affecting roughly 500,000 workers. In 1914 the number had increased to about 11,000, covering in round numbers 144,000 undertakings and 1,396,000 workers. The result of the war was a perceptible, though not very material, set-back. In 1918 only a little over 8,000 agreements, covering, roughly, 108,000 undertakings and 1,128,000 workers, were registered. From 1919 onwards the number of agreements suddenly and rapidly increased, numbering at the end of 1920 about 12,000 and covering nearly

(1) In November 1918 the principal employers' and workers' organisations in German industry formed themselves into a single association, covering the whole country, and organised both geographically and by occupation, with the purpose of finding by mutual agreement a peaceful settlement of their social and economic problems. Corresponding associations were formed later on for commerce and agriculture. The contribution of these joint industrial associations (*Arbeitsgemeinschaften*) to the peaceful development of relations between employers and employed has been considerable, even allowing for the subsequent transfer of some of their functions to the Provisional Federal Economic Council. The joint industrial association implies a temporary disavowal of the class struggle ; the idea has therefore naturally met with violent opposition from the more extreme among the workers. At the last Congress of the "free" trade unions, for instance, a motion in favour of continuing the system was only carried by a bare majority.

435,000 establishments with 9,561,000 workers. This was not entirely a result of the Revolution, as might be supposed. The movement had started even before the war. The National Service Act at the close of 1916 had gained the recognition of the trade unions, and a few days before the Revolution broke out an understanding had been reached between the employers' associations and the trade unions about the formation of a joint industrial association ; in this joint association the unions were recognised as definitely representative of the workers and the conclusion of collective agreements was declared compulsory. This understanding, together with the Order of 23 December 1918 regulating the principal legal problems connected with collective agreements, and the complete reversal of conditions caused by the Revolution, marked the triumph of the principle of collective bargaining.

Collective bargaining started both from an industrial and craft basis. This meant inevitable demarcation disputes. During the last few years of extremely rapid development there were frequent disputes as to which agreement should apply to some particular group of workers ; as, for instance, whether building workers permanently employed in the mining industry should be paid the building workers' or the mine workers' rate, and whether painters employed in a coach-building works should be included under the craft agreement applying to painters or the trade agreement covering coach-building. The employers' associations held the opinion that all workers employed in a single undertaking should be covered by a uniform agreement. Most of the trade unions took the same view, which was in the interest both of good management and of industrial peace, so that it became definitely established as the prevailing practice.

The principle of the craft agreement is partly contravened by the establishment of general local agreements, which, disregarding any craft distinctions, bring all paid workers of every kind, including salaried employees, of one locality under a single agreement. A great many such agreements were signed during the first few months after the Revolution, chiefly by reason of the non-existence of employers' organisations capable of entering into a collective agreement. As the employers became more completely and more strongly organised, such general local agreements gradually gave place to systematic demarcation by craft.

Along with this growing extent of the practice of collective bargaining, there is a tendency toward centralisation, or the inclusion of increasingly large numbers of works under single agreements. For instance, the number of establishments covered by a single agreement in 1914 was 13 and the average number of persons affected 129. By the end of 1920 these figures had risen to 37 and 822 respectively (2).

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(2) For statistics of collective bargaining in Germany, see *International Labour Review*, Vol. V, No. 4, April 1922, pp. 573-588 ; *Reichs-Arbeitsblatt*, 31 May,

From the outset collective agreements have shown a tendency to extend the geographical area over which they apply. This tendency has been especially marked in recent years. In 1920 the Federal Ministry of Labour had already declared 58 agreements to be binding over the whole country. By June 1921 this number had been increased to 67. These cover not merely industries which have long been regulated by collective bargaining, but also several non-manual occupations, such as insurance and banking. On the other hand, agriculture, the metal industry, commerce, and mining remain under local or district agreements.

National agreements are sometimes restricted to the regulation of general working conditions, leaving it to local or district agreements to regulate wage rates. Where wage rates are mentioned in national agreements, variation in cost of living conditions in different districts is ordinarily met by a system of classification of localities. This process, which consists in arranging the chief industrial centres in five to ten classes, was formerly one of the most disputed points in collective bargaining. Lately it has become more and more customary to accept, without further discussion, the official classification of localities. This official classification was made by the Federal authorities for the purpose of paying their officials and employees, and is based on a detailed enquiry into the cost of living.

The continued depreciation of the national currency has occasioned many difficulties. Agreed rates of wages have had to be adapted to changes in the value of money at shorter and shorter intervals in order to prevent too great a decline in real wages. Formerly it was usual to sign collective agreements for at least one, and often for two or three, years. Long-term agreements are now as a rule restricted to the regulation of general working conditions, while wage rates are fixed for three months—latterly even for a single month—at a time. The result is that the employer has lost the possibility of estimating labour cost in advance, which was for him the principal advantage of collective bargaining ; the more so as the increasing cost of living sometimes makes it impossible for the workers to maintain even short-term agreements. The workers themselves frequently find collective bargaining no advantage, but a tiresome restriction, preventing them from putting forward demands for increases of wages. The result has been a certain growing impatience with collective

30 June, 15 and 31 July, 15 Aug. 1922. The following table shows the changes from 1913 to 1920.

COLLECTIVE AGREEMENTS IN GERMANY : 1913-1920

Year	Number of agreements	Number of undertakings covered	Workers covered	Year	Number of agreements	Number of undertakings covered	Workers covered
1913	10,885	143,088	1,398,597	1917	8,854	91,313	905,670
1914	10,840	143,650	1,395,723	1918	7,819	107,303	1,127,690
1915	10,171	121,697	943,442	1919	11,009	272,251	5,986,475
1916	9,435	104,179	740,074	1920	11,624	434,504	9,561,323

bargaining, more apparent, however, in the pages of trade journals than in practice. It has been suggested that these difficulties might be got round by adopting an automatic sliding wage scale. The interest of both the general and the technical press in the discussion of the pros and cons of this question is growing steadily, now that the monthly index numbers published by the Federal Office of Statistics in the *Reichs-Arbeitsblatt* supply a fairly reliable indication of changes in the cost of living. Opinion among employers is totally adverse, and even among the workers there is considerable hesitation to commit themselves to a purely mechanical adjustment. A few attempts only have been made to carry out the principle ; for instance, at Flensburg. In some cases the regular examination of wage scales has been put in the hands of arbitration committees or wage boards, the parties previously binding themselves more or less completely to accept the ruling ; the Federal Ministry of Labour recommends this as the best solution available in present circumstances.

Legislation on Collective Agreements

In spite of the fact that collective bargaining was already very widely adopted before the war, there was an absence of any legislation on the subject, and collective agreements fell under the ordinary civil law. The regulations of the civil law had been drawn up to cover contracts between one individual and another, and they were not adequate for the systematic regulation and adjustment of the complex relations between organisations and single employers. Uncertainties and disputes as to the interpretation of the law occurred, and endless attempts to adapt this inadequate individualist legislation to cover the problems arising out of collective agreements only made matters worse. No general understanding, for instance, could be reached as to who were actually the contracting parties and consequently responsible for the rights and obligations arising out of an agreement.

Three conflicting theories were in the field. According to the so-called "representation" theory, the individual members of the organisation signing the agreement, not the organisation itself as such, are recognised as contracting parties ; the "organisation" theory recognises the organisation alone as responsible, while the "combination" theory considers that both the organisation and its individual members have joint and several responsibility for the carrying out of the agreement.

The adoption of one or other of these three theories led to totally different results when it came to applying an agreement, to claiming rights or enforcing obligations or, in short, to almost any question of real import.

In spite of this uncertainty in the legal implications of collective agreements those concerned turned a hostile or at least suspicious eye to any interference by law with collective bargaining. A suggestion for passing legislation was first made in the Reichstag in 1905. In 1908 and 1910 resolutions were

passed in favour of legislative protection of collective bargaining, but the Government itself thought such action premature.

It was not until the war and the Revolution had brought about a complete change in the relations between employer and employed that the way lay open to legislation. A few weeks after the Revolution there was issued an Order of the Council of People's Commissaries, dated 23 December 1918 (3), which was subsequently confirmed by an Act of the National Assembly passed on 4 March 1919. This Order also regulated the committees of workers and employees and reformed the method of arbitration in industrial disputes ; with the addition of some slight amendments and additions, it is still in force. These regulations by no means cover the whole ground in collective bargaining, but deal only with a number of separate and especially important problems. In all other cases the general regulations of the civil law apply, more particularly in the important question of liability.

Contracting Parties

The Order of 23 December 1918 recognises as contracting parties, on the workers' side, organisations only, and on the employers' side, either organisations or single employers. Organisations must be composed of workers only or of employers only : they may not admit to membership, nor accept contributions from, those of the other side. The organisations must have been established primarily for economic ends, although educational and religious aims may be included as some part of their programme. Such are the sole conditions limiting the right to sign a collective agreement. The legal theory on which the organisation is based, and its enjoyment or the reverse of incorporated rights, are immaterial. There is no provision for special procedure to determine whether some particular body is entitled to enter into a collective agreement ; any case of this kind has to go before the courts or the authorities who settle claims arising out of collective agreements. So far difficulties have not arisen in practice. This is essentially due to the fact that the right of the "free", Christian, and Hirsch-Duncker unions to conclude agreements is indisputable, and it is mainly these unions which are affected.

Representative bodies with statutory powers, such as chambers of commerce, crafts, or agriculture, cannot enter into collective agreements on behalf of the occupations which they represent. Nor have works councils, or councils of workers or employees as established by the Works Councils Act, any power to conclude agreements for the workers in their establishments. The Works Councils Act assigns to them the duty of seeing that the agree-

(3) *Reichs-Gesetzblatt*, 1918, p. 1456. Of the literature on collective bargaining special mention may made of : Hueck : *Das Recht des Tarifvertrags*, Berlin, Karl Vahlen, 1920 ; Kaskel : *Das Neue Arbeitsrecht*, Berlin, 1920, pp. 20 to 25 ; Sitzler : *Tarifvertragsrecht*, Berlin, Karl Vahlen, 1921.

ments signed by the trade unions are carried out within their works, but the agreement which they themselves sign with their employer is not a collective agreement within the meaning of the law and therefore does not, for instance, possess unconditional validity. This distinction between a collective agreement and a works agreement was intentionally made in drafting the legislation on the subject, in order to reserve the regulation of labour conditions to the trade unions, whose wider economic outlook and more compact organisation alone offer the necessary guarantees that the agreements will be properly drawn up and systematically carried out.

Validity of Agreements

The Order of 23 December 1918 requires that collective agreements be in writing. Verbal understandings as to the terms of a collective agreement are not necessarily invalid, but they do not fall within the scope of the Order and are simply subject to the general regulations of the civil law.

No compulsion to enter into an agreement arises out of the terms of the Order. Employers and workers' organisations are quite free to decide whether or not they wish to regulate labour conditions by collective agreement. The two parties can submit any dispute as to the conclusion of an agreement to the arbitration committees [4], which are also dealt with in the Order of 23 December [5]. Failing a settlement by agreement, however, the result is merely an arbitral award—in substance only a preliminary proposal for a settlement, which either party is free to accept or reject. It is true that the demobilisation authorities, i.e. the district or central administrative authorities, can in exceptional cases declare an arbitration award to be binding ; but this is only done when urgent public interests demand the settlement of a dispute, as may very well happen when, for example, undertakings supplying vital necessities are affected. This declaration then takes the place of the missing declaration of acceptance by one party or the other ; a valid collective agreement is, in effect, established against the wish of one side, and forms a legal basis for all subsequent action. The possibility of making such compulsory agreements, however, does not depend on general legislation. It was initiated by the Federal Ministry of Labour under special powers conferred for the duration of the so-called "economic demobilisation" period [6], and it was never

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(4) For a description of these committees and in general of the methods of settling industrial disputes in Germany, see the *International Labour Review*, Vol. V, No. 1, Jan. 1922, pp. 51 to 65.

(5) The consent of the works councils in the undertakings which will be affected by the decision is not necessary.

(6) Order of 15 February 1920 (*Reichs-Gesetzblatt*, 1920, p. 218). The validity of this Order was for long a matter of dispute, but has now been confirmed by a special decision of the Federal Court.

intended that it should continue beyond that period unless incorporated in an Act (7).

Great difficulties have occasionally arisen out of the simultaneous existence of different organisations of workers belonging to the same occupational groups. As collective bargaining in Germany is at present governed by the principle of freedom of contract, it is impossible to compel any particular organisation either to join with any other organisation in a joint signature to any collective agreement or to admit other organisations to profit by the terms of any agreement which it has itself concluded. In fact this right of freedom from restraint in bargaining has actually been used in order to exclude particular organisations of workers from participating in the benefits arising from a collective agreement ; and at times neither the force of common interests nor the influence of the arbitration authorities has been strong enough to overcome the hostility to organisations of another complexion. One of two results then followed. Either several independent though often almost identical agreements existed at the same time for a single occupation, or else industrial peace was disturbed by the action of organisations which had been left outside the scope of any agreement at all.

To overcome these difficulties of trade union division, Professor Brentano of Munich has suggested the establishment of statutory bodies competent to enter into collective agreements. He proposes that all workers, without regard to their trade union membership, should be grouped into compulsory organisations with elected executives on a combined occupational and geographical basis ; the employers should be grouped in corresponding organisations ; and these bodies should undertake the task of collective bargaining. The suggestion is undoubtedly very attractive, and it would seem to solve a number of the present difficulties. But it has small prospect of being adopted, and rightly so, seeing that it would mean substituting for the trade unions—which are living organisms—purely artificial bodies having by their very nature no responsibility and no restraining influence over the workers (8).

Individual Contracts

The application of collective agreements to individual contracts, which was formerly very doubtful and most violently

(7) The passing of such an Act seems very likely. A Bill for the reform of industrial arbitration, including a permanent scheme for the declaration of arbitral awards as binding, though only under very severe restrictions and important new statutory guarantees, is at present before the Reichstag. These guarantees consist of the substitution for the original arbitration authority of a special chamber or board of arbitrators, composed of employers and workers and required to give its decisions by specially designated majorities.

(8) Cf. *The Collective Labour Contract in France*, by Prof. Gaëtan Pirou, in the *International Labour Review*, Vol. V, No. 1, Jan. 1922, p. 48, where a similar proposals is referred to and rejected. See also in this number of the *Review*, *Legislative Notes*, *III. The Labour Code of Puebla* (*Mexico*), the remarks on Title I of the Code relating to collective agreements.

disputed, has been placed beyond doubt by the Order of 23 December 1918. It is expressly provided by the law that an employment contract comes within the scope of a collective agreement when both the employer and the worker between whom the contract is made are parties to the collective agreement.

The "parties to the agreement" for this purpose include, first, an employer who has himself signed the agreement ; secondly, the members of organisations which have signed it ; and lastly, employers and workers who have concluded an employment contract which definitely aims at conformity with the terms of the collective agreement. As this intended conformity need not be explicitly mentioned, it should always be assumed to exist in case of doubt, if the employer is bound by an agreement while the worker is not. Employment contracts of this character, therefore, are normally within the scope of the collective agreement.

Should an employer or worker cease to be a member of his organisation, the employment contract which he has already concluded continues to be governed by the collective agreement ; he, however, resumes complete freedom of contract and is now able to conclude other contracts on what terms he will. Agreements seeking to bind ex-members of organisations are null and void.

General Application of Collective Agreements

A collective agreement has no binding force outside the circle of those signatory to it unless the Federal Ministry of Labour declares it to be of general application. This new procedure was established by the Order of 23 December 1918. Its purpose is to ensure industrial peace by securing uniform labour conditions and to make it easier for the employer to enter into collective agreements by preventing any underbidding on the part of an outside ring of manufacturers.

If an agreement is to be declared of general application, it must be shown that it is of outstanding importance within the industry or group of occupations covered by it. It must be an established fact that conditions are in conformity with the terms of the agreement for a majority of the persons employed in the trade ; for a declaration of general application is intended to secure a complete acceptance of what has been approved by the majority ; it is not intended to impose the wishes of a minority. Convincing proof that an agreement is of outstanding importance is always difficult and sometimes impossible to obtain; a more or less accurate estimate of its probable importance must in many cases be taken as sufficient.

A collective agreement can only be declared to be of general application if a request has been made to that effect. The persons or bodies entitled to make such a request are, first, the signatory parties, and, secondly, any organisation whose members would be affected by the declaration. Requests are published in

the *Reichs-Arbeitsblatt*, and objections may be filed within a stated period of from two to four weeks. Objections may be based on the argument that the conditions required for a collective agreement which it is proposed to make of general application are absent; more especially that such agreement is not of outstanding importance. Objections may also be based on economic grounds; for instance, on the allegation that undertakings still outside the operation of the agreement would be unable to pay the wage scales required by it. Objections are frequently filed stating that such and such an organisation was unjustifiably excluded from sharing in the negotiations. Such exclusion is not necessarily decisive in causing the rejection of the request for general application of the agreement. In fact, as already stated, no particular organisation can claim any statutory right to share in the negotiations; but the Federal Ministry of Labour makes a point of examining such complaints and has already on several occasions refused to issue a declaration when the complaints were well-founded.

No statutory right of demanding a declaration of general application exists. Even where the required conditions are fulfilled, the Ministry of Labour is free to decide according to circumstances, taking the probable economic consequences into special account. As a matter of fact, however, the declaration is very rarely refused when the agreement is of outstanding importance. The declaration is usually issued six to eight weeks after the request has been received; it is permanent and not subject to appeal, although the Ministry itself can, of course, at any time modify or withdraw its decision. When an agreement is declared to be of general application, it is entered on the Register of Agreements at the Ministry (9) and notification of this entry is published in the *Reichs-Arbeitsblatt*. This is done in the interests of publicity; the agreement itself is binding from a date fixed by the Ministry. When an agreement is to be made of general application for the first time, the day from which it becomes binding is usually fixed at approximately the date of publication of the original request in the *Reichs-Arbeitsblatt*. For amendments to, or extensions of, agreements which are already of general application, the day is as a rule made to coincide with the date on which such amendment or extension became applicable to the actual signatories. This ante-dating of the general application of an agreement finds its justification in the very nature of collective bargaining; otherwise employers, not parties to the agreement, would temporarily be in a superior position to other employers, and the membership of the signatory associations might suffer. The competence of the Ministry to ante-date the general application of agreements was, of course, violently

(9) See the regulations laid down by the Federal Minister of Labour for the conduct of the Register of Agreements, dated 7 May 1919 (*Reichs-Gesetzblatt*, 1919, p. 446).

disputed and only finally established by a decision of the Federal Court [10].

The juridical character of the declaration of general application is a moot question. The generally accepted view regards the decisions issued by the Federal Ministry of Labour as a legislative act which gives the agreement the force of law. The other view sees in the declaration nothing more than an administrative act, the effect of which is to extend the scope of an agreement, increasing the number of persons to whom the agreement applies without altering its contractual nature. The consequences of this divergence of view—and there are a number of other opinions current between these two extremes—become plain when a collective agreement is to be amended or terminated. The "legislative" view considers the original agreement as binding without modification until the Ministry of Labour has either, in the one case, declared the amendment binding or, in the other, has cancelled the general application of the agreement. The "administrative" view regards the new terms as *ipso facto* in force and the original agreement as automatically withdrawn from general application whenever the new terms are no longer in conformity with the original terms. The Ministry has adopted the former view. It argues from the necessity for maintaining legal security, which would be seriously jeopardised if entries in the Register of Agreements were at any moment liable to become out of date and if the registration authorities were never in a position to give definitive information as to which agreements were of general application. No decision of a higher court has yet been taken to settle this disputed question.

A declaration of general application does not cover the agreement as a whole. Only those points are covered which can properly be embodied in an employment contract and are intended to be so applied. Persons brought within the scope of an agreement are not on the same footing as members in the organisation which originally signed the agreement ; they are merely bound by the labour clauses in the agreement.

Certain clauses are automatically excluded from general application. These are clauses dealing with the validity and conclusion of employment contracts (e.g. employment exchange procedure), with the agreement itself, notice of its termination, etc., with the mutual relations of the parties signing the agreement, or with the powers of the representative bodies in the works. It is usual for the Ministry of Labour expressly to exclude from general application any clauses which seem likely to give rise to ambiguity or unfairness when applied to persons other than the original signatories.

The system of declaring agreements binding has proved useful. Such difficulties and obscurities as remain are to be explained partly by the newness of the system, and partly by the extreme centralisation of all decisions in the Federal Ministry of Labour.

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(10) *Reichsgericht.*

This centralisation resulted from the haste with which the Order as to collective agreements was issued and the absence of suitable authorities in the State governments ; the fault will no doubt be corrected when the proposed reform of the law on collective bargaining is carried out. The extraordinarily short terms for which agreements can be concluded on account of the rapid depreciation of the currency are also, of course, a hindrance to general application, and make it extremely difficult to keep the Register of Agreements up to date. In spite of all difficulties, however, there has been a steady and rapid increase in the number of agreements declared generally binding. The first of these agreements was entered on the Register in May 1919. By the end of the year there were 437 such entries, by the end of 1920 there were 1,600 (including 58 national agreements) and by the end of June 1921 there were 1,818 (including 67 national agreements and 691 referring to salaried employees) (11). Attention should, however, be drawn to the fact that certain groups of workers, more especially the miners, have recently objected to the principle of declaring agreements to be generally binding. The explanation of this attitude is simple. The unorganised workers pay no trade union subscription, and the organised worker naturally considers it unfair that these outsiders should share the benefits of an agreement which his union has fought for and won. The claim is therefore put forward that at least certain definite benefits, such as cost of living and family allowances, or holiday payments, should be assigned to the organised employees alone. It need hardly be stated that the employers are unwilling to allow any such claim, which would require them to differentiate between their organised and their unorganised workers. Thus far, however, no acceptable solution of the difficulty has been found.

Subject Matter of Collective Agreements

There are no legislative principles laid down as to the subject matter of collective agreements. The regulations of the civil law apply, which annul a contract only if it contravenes the law or public morality.

The extent to which apprenticeship can be regulated by collective agreement is an important and much-disputed point. The general opinion is that regulation is permissible provided it is confined to the strictly contractual relations between apprentice and employer, and does not trench on the functions of the guilds or chambers of crafts in applying those statutory conditions of apprenticeship which are in the nature of public law regulation, such as, for instance, the duration of apprenticeship, the limitation of the number of apprentices, and journeymen's tests. As a matter of fact, a great many agreements deal with apprenticeship, especially with the wages to be paid to apprentices.

(11) See the list of collective agreements declared generally binding as given in the *Reichs-Arbeitsblatt*, 1921, p. 759.

A special privilege is incident to collective agreements which are declared generally binding in that they may contain some clauses which are otherwise disallowed. By the terms of such an agreement the constitution of the representative bodies within a works may differ from that laid down in the Works Councils Act. Again, according to the Bills on Hours of Work, which are now under discussion, such agreements may make regulations for hours of work which differ from those prescribed by law. The justification for this privilege lies in the fact that, if a collective agreement is generally binding, its terms obviously represent the wishes of the majority of the workers, while the power of the Ministry of Labour to decide which agreements shall be general is a guarantee against abuse.

Binding Character of Agreements

Previous to the Order of 23 December 1918, the general view was that any party to a collective agreement could repudiate its terms in making an individual employment contract, the only redress to the other signatories being an appeal at law to have the offending contract declared null and void. The new regulations avoid this roundabout method by declaring labour conditions, as laid down in an agreement, to be definitely and unconditionally in force. All employment contracts falling within the scope of an agreement are by statutory enactment invariably in accordance with the terms of the agreement ; the conditions defined in the agreement are *ipso facto* substituted for those not in accordance with it. Modifications of the conditions of the agreement, unless expressly permitted in the text of the agreement itself, are permissible only if they are more favourable to the worker. In other words, a collective agreement lays down minimum conditions and minimum wage rates. It is possible, however, to insert a clause expressly excluding more favourable conditions.

The Question of Liability

Failing any special legislation, the mutual liability of parties to a collective agreement is determined by the civil law. The principal problem of liability centres round breach of the industrial peace, i.e. breach of the obligation not to make use of any industrial weapons (strikes or lock-outs) during the term of the agreement. The scope of such an obligation is determined by the text of the agreement. The parties may expressly bind themselves not to make use of any industrial weapon for the term of the agreement. In these cases the use of industrial weapons is generally (12) held to be prohibited in so far as directed against

(12) See ruling of the Federal Court, in *Entscheidungen des Reichsgerichts*, Vol. 73, p. 103.

the continuance of the agreement or the fulfilment of the obligations arising from it. Thus the use of industrial weapons is prohibited when the point at issue is covered by the terms of an agreement ; where there are other, for instance, political, reasons involved, the use of such weapons is doubtfully permissible. Organisations are responsible for the acts of their reprensentatives as well as for their own acts, and are bound to restrain their members from breaches of the industrial peace by all the means in their power.

Liability is unlimited. In practice, however, demands for damages are very difficult to enforce, owing to the lack of legal competence attaching to workers' organisations. It is not customary to offer security for the fulfilment of obligations defined in collective agreements.

Demarcation Disputes

The rapid growth of the collective bargaining system in Germany has naturally led to a certain amount of conflict of jurisdiction and overlapping. To meet this difficulty the law has laid down only one rule. Where several agreements having general application overlap, the agreement to be enforced is the one the terms of which cover the largest number of employment contracts, either in the undertaking as a whole or in that department of it which is concerned. In addition, however, the decision in any particular case must take into account the intention and general purport of the different conflicting agreements, and the principle that in doubtful cases the agreements most favourable to the worker shall prevail. The Ministry of Labour is trying to clear up doubtful points as far as possible by defining at the time of declaration the relation to other agreements of each agreement which is declared generally binding ; it ordinarily proceeds on the basis of giving craft and occupational agreements precedence over general local agreements.

Termination of Agreements

The rules for the termination of agreements are those of the civil law. In the rare cases where agreements have been concluded for no definite period, the prevailing opinion is that notice of termination may be given at any time ; some writers, however, assume that the period fixed by custom for the validity of a contract applies. Termination without previous notice is permitted for important cause, such as, for instance, an unexpected serious rise in the cost of living.

Interpretation of Agreements

The law does not recognise any special courts for interpreting or settling claims arising out of an agreement. These matters

are dealt with by the ordinary courts. If, for instance, a given contract contravenes the law of hours of work or of freedom of association, its legality is determined by a suit in the ordinary judicial or administrative court. Thus there is no method of determining the legal implications of the terms of a collective agreement in advance. The fact that there is no official registration of agreements, except of those which have been declared generally binding, by which inconsistencies might be checked up, is also to be remarked. The texts of agreements, however, often provide for special authorities to decide or arbitrate disputes. These authorities may be competent in disputes between the parties both to collective agreements and to employment contracts; they may be empowered to apply both judicial and arbitral procedure. Such special authorities take precedence of the ordinary arbitration authorities. The proposed reform of the arbitral system includes further suggestions for the development of these special authorities.

Suggestions for Reform in the Law

The Order of 23 December 1918 regulating collective agreements was considered provisional ; it was only intended to regulate the most pressing questions pending comprehensive legislation. The drafting of such legislation is already far advanced. The Committee for Uniform Labour Legislation [13] which has been commissioned to codify German labour legislation, has prepared a Bill on Collective Labour Contracts, which has been published in the *Reichs-Arbeitsblatt* [14], and thus submitted to the criticism of public opinion.

The Bill consistently follows the trend of previous developments. The principle of the unrestricted development of collective bargaining is maintained ; no suggestion to create compulsory public statutory organisations of employers and employed, in place of the existing voluntary organisations, as authorities responsible for entering into collective agreements, has been admitted. On the other hand, what constitutes a workers' organisation capable of concluding agreements has been more narrowly defined : it must not confine its membership to any particular undertaking, it must not accept employers as members, and it must act as an independent and autonomous body in the protection of its members' interests. The object of the last clause is to exclude the so-called "economic peace" trade unions from concluding collective agreements.

The scope of the application of agreements to individual contracts is to be extended. Employment contracts signed by employers party to an agreement, even when concluded with workers who are not so party, fall under the terms of the agreement. It is laid down as a necessary preliminary condition that

(13) *Ausschuss für ein einheitliches Arbeitsrecht.*
(14) *Reichs-Arbeitsblatt*, 1920, p. 491.

in such cases all workers' organisations which are within the scope of the agreement shall have agreed to be bound by it, the object being to exercise a certain amount of pressure in favour of common acceptance of agreements. The system of declaring agreements to be of general application is retained and still more carefully regulated than it has been ; requests that agreements be made generally applicable may be sent in even while the negotiations are still in progress.

The Bill classifies the subject matter of agreements under three heads : "standard" clauses, which are to have the force of law within the realm of collective bargaining ; "contract" clauses, which are to define the rights and obligations of the contracting parties ; and "administrative" clauses, which are to regulate the relations between the organisations concerned and their members.

"Standard" clauses are to be confined to the regulation of labour conditions. They are described, in a newly coined phrase, as "agreement law" (15), set out in detail in separate clauses, and dealt with throughout as having the force of law. This becomes especially obvious when a collective agreement ceases to be binding : the "agreement law" which it embodied is to remain in force until superseded by a new "agreement law", though it is true that in this case it may be modified in any employment contract concluded. Clauses embodying "agreement law" are unconditionally valid, as in the provisions of the Order of 23 December 1918. Further, a declaration that a collective agreement is binding is to have reference only to such clauses. The terms of the "agreement law", when embodied in an employment contract, are to be subject to enforcement in a court of law, competent to enforce the contract itself, and by penalties laid down in the form of fines, which the collective agreement authorities can impose on recalcitrant parties to an agreement.

The "contract" clauses, defining the relations between the parties to an agreement, are, as heretofore, to be governed by the regulations of the civil law. The previously unlimited liability for damages is, however, to be replaced by liability to a fine not exceeding half a million marks. Special procedure is provided for the fixing of these fines by the court, which may also demand security against future breaches of the agreement. In addition, the Bill proposes to recognise all organisations entering into an agreement as legally responsible agents, so that even in cases when they have otherwise no competency to act in such matters, they shall be empowered to plead not only as defendants, but also as plaintiffs.

"Administrative" relations between organisations and their members are to be regulated by the exclusion of organisations entitled to sign agreements from the operation of a clause in the Industrial Code which gives members of such a body the right to resign their membership at any time.

Termination of collective agreements is regulated in detail.

(15) *Tarifsatzung.*

Agreements in which the contrary is not specifically stated are to be terminable at any time on three months' notice. Agreements concluded for more than three years shall on the expiration of the first three years be considered to have been concluded without time limit. In cases of urgency, the collective agreement court shall have power to terminate an unexpired agreement, either immediately or on given notice, on behalf of all or of some of the parties, provided that such parties cannot without injustice be held to its terms. The cases especially in mind are those where the circumstances in which the agreement was concluded have materially altered, or where the purpose of the agreement has been frustrated or endangered by the action of those party to it.

In cases where several agreements overlap, the Bill proposes to assign validity, first, to agreements which are narrowest as regards occupational definition, and, secondly, to those which cover the widest area or largest number of persons.

Regulations defining authorities in charge of collective agreements are for the present omitted, as this is a question which can only be properly settled when the comprehensive proposed Acts on labour courts and arbitration have been passed.

The terms of this Bill, which have here been briefly sketched, have found very fairly general acceptance (16). It may therefore be assumed that it will be the basis of a reform of collective agreement legislation, though there are still, of course, considerable differences of opinion as to details. The Federal Ministry of Labour is at present drafting the government text of the Bill.

(16) Cf. the discussion in *Soziale Praxis*, 1921, col. 434 et seq., and in *Juristische Wochenschrift*, 1922, pp. 613 et seq.