APPENDIX D

REPORT OF THE COMMITTEE ON OVERSEAS CORRESPONDENTS *

I. REPORT OF THE PRESENT STATUS AND RECENT DEVELOPMENTS REGARDING LABOR DISPUTE SETTLEMENT PROCEDURES IN FRANCE DURING THE YEAR 1971

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There has been no significant change either in the law or in the practice of labor dispute settlement procedures in France during the year 1971. The whole picture can only be understood if we know that French law makes a fundamental distinction between two types of labor disputes: *individual disputes,* which involve one employer and one employee acting individually and for individual objectives; and *collective disputes,* which involve one or several employers and a group of employees acting collectively as a group in order to defend collective rights or to promote collective interests. On the other hand, it should be noted that within these two categories no real distinction is made between conflicts over rights and conflicts over interests.

A. It is a well-known fact that labor arbitration in France is now in a sort of lethargy.

As for individual disputes, the parties are forbidden to introduce in their contract a clause according to which they would have to bring their future disputes before an arbitrator, for the jurisdiction of the labor courts (Conseils de Prud'hommes) is not waivable. It is only when the dispute has already arisen that the parties can agree to go before an arbitrator—but, in fact, they never do. Furthermore, it should be noted that such a type of arbitration is discouraged by law. In any case, an arbitration award in itself is not binding.

As for collective disputes, the law encourages recourse to arbitration, but it refuses to make it mandatory as it was during the

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short period 1936-1939. Therefore, arbitration is only optional, which means that (1) here again, it is only in the case of an already existing dispute that the parties can conclude an arbitration agreement and decide to bring the case before an arbitrator (an arbitration clause could be included in a collective agreement, but it would not be binding upon the parties); and (2) in fact, the parties are resorting to arbitration less and less frequently. Shortly after the law of February 11, 1950, was passed, there were a few cases each year, but now this type of arbitration (although it is regulated by law in great detail and despite the existence of a Superior Court of Arbitration, before which special appeals against arbitration awards, based on points of law, can be brought) has practically fallen into complete disuse.

B. Most labor disputes, at least when they involve rights, are now brought before the courts (when they involve interests, they can be settled only by way of negotiation). There is no specialized forum for collective labor disputes; therefore, they have to be brought before ordinary courts. Individual labor disputes are brought before specialized labor courts, the Conseils de Prud'hommes (*cf.* McPherson and Meyers, *The French Labor Courts*).

A project is now under way to set up another type of court to decide some labor disputes that have both an individual and a collective character. Such disputes, in fact, derive from the exercise of collective rights which are granted to employees by law—more precisely, disputes concerning (1) the status of the representatives of the personnel (delegates of the personnel and employee members of the works committees, elected by all employees of the firm) and the union delegates, established by the law of Demember 27, 1968; (2) the application of the laws concerning the "participation" of the workers for the benefit of the enterprise; (3) the execution of the collective labor agreements; or (4) the defense of the collective interests of the craft or the industry.

It has never been considered that these new courts should be really autonomous. In a first proposal, prepared by the government in 1970, it was provided that they would only be special chambers of the existing ordinary courts (Tribunaux de Grande Instance), but the proposal met with very strong opposition from the labor organizations and was finally abandoned. A new propos-

al, prepared by the government in 1971, provides that these new courts be special chambers of the labor courts, staffed by labor court judges under the chairmanship of a professional judge of the ordinary court. This proposal was to be presented to the Parliament in 1971, but there are still some problems concerning the organization, functioning, and powers of the new courts, and there is still some disagreement on these points between the labor unions and the government. This explains why the proposal is still under study and why it has not been introduced in the Parliament. But it is very likely that it will come up for discussion this year, and it is one of the main reforms expected in this field during the coming months.

II. REPORT ON LABOR DISPUTE SETTLEMENT PROCEDURES IN SWEDEN FOR THE YEAR 1971

FOLKE SCHMIDT ***

Between the confederations of employers and of workers there exist a number of central agreements which deal with a great variety of topics. The basic agreement between the SAF (Swedish Employers' Confederation) and the LO (Confederation of Swedish Trade Unions) of 1938, amended in 1947, 1958, and 1964, is of paramount importance. In this agreement there is laid down, among other things, a procedure regarding dismissals and layoffs. After negotiations on local and national levels, a case can be brought to the Arbetsmarknadsnämnden (Labor Market Council), a joint body with three representatives from the SAF and three from the LO. When dealing with dismissals on personal grounds, this council has an umpire and acts as an arbitral board.

Further, there is an agreement, concluded in 1966 between the SAF and the LO, on works councils in which a local procedure for information and joint consultation is laid down. The Arbetsmarknadsnämnden, established by the basic agreement, has, in addition to its duties under that agreement, to consider and decide disputes with reference to the interpretation of the stipulations in the agreement on works councils. In such cases, too, the council acts as an arbitral board. In the year 1971, the Arbetsmarknadsnämnden tried two cases.

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The Barman's Case

(Award of the Arbetsmarknadsnämnden, October 27, 1971)

Mr. M. was a barman at the Tre Remmare, a restaurant in Stockholm. One day in March 1968, the branch manager received an anonymous telephone call from a person who said that as a customer he wanted to warn him that there was something wrong at the bar. "You should watch Mr. M.!" When the manager found a decrease in the sales for the last few months, he engaged a private detective, who visited the bar on two occasions. One evening the detective reported that the barman had sold 15 beers and a couple of other drinks without ringing them up on the cash register. M. was spoken to on the matter and was unable to explain the failure to register the amounts. He was dismissed without notice. The case was reported to the police who, after a summary investigation, dropped the case for lack of evidence.

In its opinion, the council stated that, according to the collective agreement, M. was entitled to 14 days' notice. In case of serious misconduct, such as drunkenness or dishonesty, however, an employer was entitled to dismiss the employee summarily. The council found that at the Tre Remmare a procedure was applied according to which the amounts were rung up on the register when the drinks were served. However, when the drink was ordered by a regular customer, the ringing-up could wait until payment. M. must have known about this procedure.

It was proved by the evidence that M. had failed to follow this procedure. However, it was not permissible to conclude that he had behaved dishonestly. It was important for the employer that his employees should follow the regular procedure of ringing-up. The failure to apply the proper procedure was undoubtedly such a serious breach of duty that repeated breaches would justify dismissal without notice, particularly when correction did not follow upon admonition. M., however, had not earlier been found guilty of such misconduct, and for this reason the employer was under obligation to apply the ordinary period of notice.

The council ordered the employer to pay M. 14 days' wages.

The Siporex Case

(Award of the Arbetsmarknadsnämnden, October 21, 1971)

According to the agreement on works councils between the

SAF and the LO, a works council must be established with a number of elected members—some chosen by the employer and others by the manual workers and the salaried employees—in any firm where, as a rule, at least 50 workers are employed. For the purpose of profiting from the experience and knowledge of the employees, it is assumed that joint deliberations shall take place and that information shall be given on all essential questions. The employer, however, has no duty to disclose information which might cause harm to his firm. In case of discontinuance, stoppage, or substantial curtailment of the firm's operation, consultation should take place in the council with regard to its effect on the employment relationships.

The Siporex Company, a subsidiary of the Cementa Company, produces light-weight concrete for housebuilding at four factories, one of them situated at Gävle. On September 21, 1970, Siporex announced to the works council and to the employees that it intended to close down its factory at Gävle and that production would be definitely discontinued before April 1, 1971. At the time of the notice, the number of employees at the Gävle factory was 263.

The union brought action at the Arbetsmarknadsnämnden, pleading that the firm had negligently failed to perform its duty of consultation and calling for punitive damages of 50,000 crowns. The Siporex Company pleaded before the council that it would have been detrimental to it to give information at an earlier point of time. This would have caused unrest among the employees, and rapid turnover had long been a serious problem. Further, a public debate about which of its factories should be closed down might have caused doubts with regard to the quality of the company's products, thus making the situation even worse.

In its decision, the council found that the company had good cause for not disclosing its plans at a time when it was not yet decided which of its production units should be closed down. The study of this problem was completed in the middle of September 1970, however, and already some time before that there were clear indications that the Gävle factory would have to be closed. On September 16, the Siporex Company submitted the matter for ultimate decision to the Cementa Company, of which Siporex is a subsidiary. Siporex ought to have reported the matter to the

works council for joint consultation before taking this action. The employees would then have had the opportunity of presenting their views on the situation and its consequences, and the company would have been able to consider these views when making its decision. Such a procedure would not have caused harm to the company.

The council found that the company was in breach of the duties incumbent upon it according to the agreement on works councils. With regard to the question of damages, the council stated that there were no earlier decisions of the Arbetsmarknadsnämnden which threw light upon the meaning of the agreement on the disputed point. For this reason, and considering the fact that there was no ground for assuming that the company had not acted in the belief that its way of action was consistent with the agreement and the interests of its employees, the council made use of its discretion and did not impose punitive damages.