MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES IN THE UNITED STATES.

BY CHAS. P. NEILL.

INTRODUCTION AND SUMMARY.

The Federal law commonly known as the Erdman Act, which provides a means for the mediation and arbitration of controversies affecting railways and their employees engaged in railroad train service, has now been on the statute books of the United States for more than 13 years, but it may be said to have been in practical operation only about five years.1 During the first eight and a half years following the enactment of the law, in June, 1898, one attempt only was made to utilize its provisions. This attempt, which was made within a year after the passage of the law, proved entirely fruitless.2 During the past five years the provisions of the law have been invoked in nearly 60 different controversies.3 During that period its provisions have been invoked with increasing frequency, and from the middle of 1908 to the present time there has been only one period as long as three months during which the mediators have not been called upon to act in some pending controversy.

The list of formal applications for mediation and arbitration is given on page 44. This list, however, gives an inadequate idea of the extent to which the mechanism for mediation provided in the law has been utilized, as it contains no mention of a considerable number of cases in which controversies arising over the application or the interference with the execution of any of the provisions of the act.

1 For text of this law, see Appendix I, p. 58.
2 This case is discussed at length later on, p. 29.
3 The table on page 2 shows only 48 cases, but the cases numbered 10 and 11 cover, respectively, 6 and 3 separate controversies. They involved the same class of employees, and the requests for mediation were covered in two applications and were for convenience afterward listed as only two cases. See pp. 22-25.
pretation of agreements made under the provisions of the law have been brought back to the mediators and understandings have thus been reached over the matters in dispute.

The controversies which have been brought before the mediators have ranged in importance all the way from a few instances of small roads, involving less than 100 miles of line and fewer than 100 employees, up to cases of exceptional magnitude, embracing over 50 roads and involving more than 100,000 miles of line and over 40,000 employees in a single controversy. In one year, 1910, the assistance of the mediators under the act was called for in 16 cases, these cases involving nearly 300,000 miles of railroad and directly involving nearly 80,000 railway men. The total mileage involved in the 48 cases in which the provisions of the law have been invoked is over 500,000, and the total number of employees directly involved is over 160,000.¹

In the following table the number of cases brought before the mediators under the act, the railroad mileage involved, and the number of employees directly involved are shown year by year, the cases being classified according as the application came from the railroad company, the employees, or from both jointly:

**NUMBER OF CASES OF MEDIATION AND ARBITRATION UNDER THE ERDMAN ACT, WITH RAILROAD MILEAGE AND NUMBER OF EMPLOYEES DIRECTLY INVOLVED IN SUCH CASES, FOR EACH YEAR FROM THE PASSAGE OF THE LAW, JUNE 1, 1898, TO DECEMBER 31, 1911, CLASSIFIED ACCORDING AS APPLICATION WAS MADE BY THE RAILROAD COMPANY, THE EMPLOYEES, OR JOINTLY BY COMPANY AND EMPLOYEES.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications by company</th>
<th>Applications by employees</th>
<th>Joint applications</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of cases</td>
<td>Railroad mileage involved</td>
<td>Employees directly involved</td>
<td>Number of cases</td>
</tr>
<tr>
<td>1899</td>
<td>15</td>
<td>397,190</td>
<td>126,840</td>
<td>13</td>
</tr>
<tr>
<td>1896</td>
<td>1</td>
<td>2,350</td>
<td>600</td>
<td>1</td>
</tr>
<tr>
<td>1897</td>
<td>5</td>
<td>117,850</td>
<td>46,350</td>
<td>5</td>
</tr>
<tr>
<td>1898</td>
<td>1</td>
<td>7,000</td>
<td>6,350</td>
<td>1</td>
</tr>
<tr>
<td>1899</td>
<td>5</td>
<td>2,200</td>
<td>3,300</td>
<td>5</td>
</tr>
<tr>
<td>1900</td>
<td>6</td>
<td>257,330</td>
<td>71,330</td>
<td>2</td>
</tr>
<tr>
<td>1911</td>
<td>4</td>
<td>12,400</td>
<td>2,530</td>
<td>1</td>
</tr>
</tbody>
</table>

¹ Not reported.

² Not including 1 case for which mileage and employees directly involved were not reported.

In spite of the large number of serious controversies successfully handled, the law may be said to be in an experimental stage, and it is too early yet to predict that it will meet the exigencies of the future as it has those of the past five years.

¹ It will be noted that these figures represent approximately twice the entire railroad mileage of the United States. This is due to the fact that many roads have been involved in more than one case.
Some of its defects have already become apparent, and in a number of aspects it can be strengthened and improved through amendment, but its success has been marked during the five years in which it has been in practical operation. Its provisions have been invoked in nearly every possible form of controversy that could arise out of the relation of employer and employee in the railroad-train service. Serious disputes as to wages, hours, and ordinary working conditions have been frequent. In two instances controversies on southern roads involving the race issue have precipitated strikes of the most dangerous kind, and in several other instances disputes involved counterclaims over jurisdiction on the part of different organizations—a class of controversy which is always delicate and difficult in an exceptional degree.

In no case has there been a repudiation by either side of the award of an arbitration board. In some instances, as is inevitable, there have been different interpretations placed on certain sections of the award and there has been consequent friction in some of these instances, but the awards as a whole, it can be said, have been acceptable and lived up to by both sides.

SCOPE OF THE ERDMAN ACT.

The provisions of the law apply only to those classes of employees actually engaged in train operation, so its practical scope is limited to controversies involving engineers, firemen, conductors, trainmen, switchmen, and telegraphers. During the past five years there has been no serious strike and no important controversy threatening a serious strike involving any of these classes of employees in which the provisions of this act have not been invoked by one or the other party to the controversy; and with one exception there has been no case in which mediation was invoked and accepted before the actual beginning of a strike in which an amicable adjustment has not been brought about. In the case in question the strike had actually been ordered before mediation was invoked. When the mediation conferences began it developed that the strike was set for the following day, and, upon the refusal of the representatives of the organization involved to consider arbitration or to defer the inauguration of the strike, mediation proceedings were discontinued. The strike was begun the following day. It was costly to the roads affected by it, caused grave inconveniences and loss to the public, and proved disastrous to the employees involved and to their organization.

The mediation proceedings provided for in the act are purely voluntary, so far as concerns either of the parties to the controversy. The act merely provides that in case of disputes actually interrupting or seriously threatening to interrupt interstate traffic either party to
the controversy may appeal to the chairman of the Interstate Commerce Commission and the Commissioner of Labor to put themselves in communication with the other party and endeavor by mediation and conciliation to bring about an amicable adjustment of the matters at issue.

Moreover, the mediators are without authority to intervene in any controversy upon their own initiative. Their intervention is conditioned, first, upon the receipt of a request for mediation under the provisions of the law from one of the parties to the controversy, and, second, upon the acceptance by the other party of the mediators' tender of friendly offices.

The law provides no powers of compulsion which may be used to induce either party to make a request for mediation. The employer is as free to resort to a lockout and the employees to inaugurate a strike as if the Erdman Act had never been passed. Even in cases where the provisions of the act are invoked by one party the other party is under no legal obligation either to accept the tender of friendly offices made by the mediators or to submit the matters at issue to the arbitration provided for in the law. In this respect the Erdman Act differs from the Canadian Industrial Disputes Investigation Act, which forbids either employers or employees in the industries to which that act applies to inaugurate either a lockout or a strike until after the matters in dispute have been submitted, in accordance with the provisions of the act, to an investigation and a report has been published by an investigation board.

At the time the Erdman Act was passed practically all the discussion was focused on its arbitration features and little attention was given to its provisions for mediation. Experience has shown, however, that the latter are the more important and efficacious features of the law. Of the 44 cases in which mediation under the act was invoked, only 8 have been carried on to arbitration. These figures do not show the whole disproportion, however, for in each of these 8 cases the greater part of the matters in controversy were settled by mediation and only a few of the points were carried to arbitration. In addition to these, 4 other cases have been arbitrated under the provisions of the Erdman Act, these cases having been submitted to

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1 By an amendment approved March 4, 1911, this provision was changed and the authority was given to the President to designate any member of the Interstate Commerce Commission or any member of the United States Commerce Court to perform the duties and exercise the functions conferred in the law itself upon the chairman of the Interstate Commerce Commission. From the time of the passage of the act up to the organization of the Commerce Court Hon. Martin A. Knapp had been the chairman of the Interstate Commerce Commission and had taken part in the negotiations carried on under the mediation and arbitration law. Upon the organization of the Commerce Court he was appointed its presiding judge, and upon the passage of the amendment to the law just referred to the President, in March, 1911, designated the presiding judge of the Commerce Court to exercise for a period of two years the functions assigned in the original act to the chairman of the Interstate Commerce Commission.
arbitration directly by agreement between the parties in controversy without first invoking the mediation proceedings of the act.

One section of the act provides for adaptation of the arbitration machinery to cases in which a majority of the employees involved are not organized. The other provisions are applicable to all employees covered by the act, whether or not they are organized. As a matter of fact, in all cases, either of mediation or of arbitration, the employees who were parties to the proceedings have been organized and have always been represented by the officials of their respective organizations. In mediation proceedings they have always been represented by officers of the national associations. This is due to the fact that before a dispute can reach a point which justifies invoking this act it has reached a point at which the employees concerned have given up the effort to secure an adjustment through their local representatives on the road involved and have turned the conduct of further negotiations over to their national officers.

Although the law applies equally to organized and unorganized workers, it is difficult to see how its provisions could be carried out with any degree of satisfaction except in cases where organized employees are dealt with. Much of the success which has marked the operation of the law thus far is probably due to the fact that the classes of employees with whom it deals are strongly organized and well-disciplined groups.

From the number of times that appeal has been made to the provisions of a law designed to obviate strikes it might appear that controversies of a serious nature arise with considerable frequency on American railroads. As a matter of fact, the record really indicates that the railways in the United States and their employees engaged in train operation have maintained more than ordinarily friendly relations. There are many railroads in the United States. Upon each of these roads there are six different classes of employees subject to the provisions of this act, and the schedules governing their wages and conditions of employment are being constantly reopened for readjustment.

During the period covered by the practical operation of this law there have been hundreds of cases in which either new agreements have been negotiated or existing agreements reopened and wage scales and working conditions readjusted through conferences between the particular road involved and one or another of the classes of employees covered by the provisions of the Erdman Act. On the average it is probable that hardly a week goes by in which some one of these classes of employees is not engaged in negotiations with some railroad in some part of the United States concerning changes in their existing agreements. A large number of these are settled directly without the intervention of any of the national officials of
the organization concerned, and, as pointed out elsewhere, it is only upon the failure of the local representatives of the employees to secure a settlement and after the matter has been referred to their national organization and there has been a further failure to reach a settlement in negotiations between the road and the officials of the national organization involved that a case reaches a point where the provisions of the Erdman Act are invoked.

**COURSE OF PROCEDURE IN A CASE OF MEDIATION.**

**CONDITIONS NECESSARY TO ACTION BY MEDIATORS.**

The course through which the mediation provisions of the Erdman Act are invoked is ordinarily somewhat as follows: A controversy arises between a railroad company and one or more classes of its employees coming within the provisions of the act. This controversy may relate to proposed changes in the existing rates of pay or the existing regulations governing working conditions, or it may arise over some grievance growing out of a misunderstanding of the terms of the existing contract and involve no proposals for changed conditions. If no settlement can be reached by the local committee or the general committee directly representing the employees on the road or roads involved, the questions in dispute are referred by the employees to their national organization, and a grand officer, as he is termed, of that organization then takes the matter up directly with the road or roads involved and endeavors by direct negotiation to effect a settlement. If this effort fails, the questions in dispute and any proposal of settlement offered by the road are usually laid before the employees concerned, and they are asked to vote upon whether they are willing to inaugurate a strike unless some basis of settlement more satisfactory to their representatives than the one offered can be secured. If the vote of the men is in favor of a strike to enforce their proposals, the grand officer again opens negotiations with the road in a further effort to effect an amicable adjustment of the controversy. If these negotiations prove fruitless, or if at the outset it is apparent that no settlement can be effected directly by the parties concerned, one or the other of the parties to the dispute makes an application to the mediators designated in the Erdman Act, requesting them to use their friendly offices to bring about an amicable adjustment of the controversy and avert the threatened strike.

Under the provisions of the law applications for mediation may be made by either side. In the 48 cases of mediation and arbitration in which the act has been invoked, applications have in 19 instances been made by the railroad companies involved, in 13 cases by officers of organizations representing the employees involved, and in 16 cases by representatives of both parties to the controversy. The applica-
tions made by the employees approach in number those made by the companies, but cover proportionately a much smaller mileage and involve a smaller number of employees. This is due to the fact that when a really serious strike is threatened it is naturally the company rather than the employees which invokes the friendly offices of the mediators.

**TAKING A STRIKE VOTE BEFORE APPLICATION.**

In a few cases applications, either made jointly or by the employees alone, have been made before a strike vote has been taken. In such instances the mediators, in deciding upon their action, have been governed by the gravity of the existing situation. The law itself provides that its machinery shall be utilized only when traffic either has been actually interrupted or is seriously threatened with interruption. Ordinarily it might be held that this condition does not exist until the employees involved have been polled on the question at issue and have strongly indicated their willingness to withdraw from service as a means of enforcing their proposals or remedying their grievances. But the law does not require the taking of a strike vote as a preliminary to invoking its provisions,¹ and in each case the mediators are left free to exercise their own judgment as to whether or not the conditions assumed by the law exist.

As a consequence the action taken in such cases varies according to the nature of the controversy in which intervention is sought. It is not desirable that the provisions of the act should be invoked for the settlement of comparatively unimportant controversies, nor that they should be applied even in important controversies until the parties themselves have exhausted their efforts to reach a settlement, and until the public, in consequence, is threatened with serious inconvenience. On the other hand, it is sometimes undesirable and unwise to compel the employees to go to the expense of polling the road on the question of a strike, and at the same time to stir up the unrest and friction attendant upon that process. The mediators, therefore, have only required that they be satisfied that the parties to a controversy can not themselves reach an agreement, and that the dispute is of such a character that it might, if not settled, bring about a strike with consequent serious results to the public dependent upon the road involved. Applications of this kind, however, are exceptional. In the great majority of cases in which intervention is sought strike votes have actually been taken and strikes seriously

¹ Formerly under the Canadian Industrial Disputes Investigation Act no appeal for a board of investigation could be made by the employees concerned until they had taken a strike vote. During 1910 the law was amended so that where a dispute directly affects employees in more than one Province, and such employees are members of the trade union having a general committee authorized to carry on negotiations in disputes, a declaration by the chairman or president and by the secretary of such committee to the effect that, failing an adjustment of the dispute, to the best of the knowledge and belief of the declarants, a strike will be declared, may be accepted as sufficient instead of a strike vote.
threatened before the cases were taken up under the provisions of the Erdman Act.

**ACTION OF MEDIATORS UPON RECEIPT OF APPLICATION.**

Where a joint request for mediation is received, signed by both parties to the controversy, there can, of course, be no question as to the willingness of both parties to meet the mediators and undertake negotiations through them. In case, however, a request for mediation is received from only one party to the controversy, the mediators notify the other party, and ask whether the party so addressed is willing to accept their friendly offices with a view to bringing about an amicable adjustment of the matters in controversy.

Applications for mediation usually come without previous notice and as a rule are made by telegraph. As has been indicated above, they are not ordinarily made until an acute situation has arisen and a strike threatened. It is essential therefore, if the Erdman Act is to be effectively administered, that action be taken quickly and that as little formality as possible be required in the matter of making and acting upon applications for mediation. Applications actually received vary from more or less formal ones reciting the provisions of the law to what might be called simple requests for the exercise of friendly offices.

**FORMS OF APPLICATIONS AND REPLIES.**

Below are given copies of applications actually received, showing the range of differences in form.

The two following are copies of applications made by representatives of the railroads:

**TELEGRAM.**

**Hon. Martin A. Knapp,**
Chairman Interstate Commerce Commission,  
Washington, D. C.

**Hon. Charles P. Neill,**
Commissioner of Labor, Washington, D. C.

A controversy concerning wages has arisen between The ______ Railroad Co. and the employees of said company employed as ______. The said ______ Railroad Co. is a common carrier subject to the provisions of an act concerning carriers engaged in interstate commerce and their employees, effective June 1, 1898, commonly known as the Erdman Act, and the said controversy threatens to seriously interrupt the business of said carrier. You are, therefore, in accordance with the provisions of said act, requested by said ______ Railroad Co. to put yourselves in communication with the parties to such controversy and use your best efforts, by mediation and conciliation, to amicably settle said controversy, and if such efforts shall be unsuccessful to at once endeavor to bring about an arbitration of said controversy, in accordance with the provisions of said act.

Respectfully submitted.

______  
President.
TELEGRAM.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission,
Washington, D. C.

Hon. Charles P. Neill,
Commissioner of Labor, Washington, D. C.

After earnest effort to agree on wage scale with —— of these companies they have refused to accept our offers and on appeal have voted to support demands of their committee. Will you kindly arrange hearing in accordance with provisions of Erdman Act and mediate between —— and ourselves? Mr. ——, Brotherhood of ——, Hotel ——, represents men.

V. P.,—— R. R.

The following are copies of applications for mediation made by representatives of the employees:

TELEGRAM.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission,
Washington, D. C.

Hon. Charles P. Neill,
Commissioner of Labor, Washington, D. C.

A controversy has arisen between the —— on the following lines: ——, ——, ——, ——. This controversy concerns ——, ——, ——, and unless peacefully adjusted may lead to serious interruption of interstate traffic on these lines.

The above lines are all practically owned and controlled by the same interests, and the —— on each of these lines are alike represented by the undersigned, acting for the Brotherhood of ——.

It is our earnest desire to avoid a rupture of our relations with these carriers, and if possible to find a peaceful adjustment of the existing controversy. We, therefore, request the Chairman of the Interstate Commerce Commission and the Commissioner of Labor to put themselves in communication with the president of the roads above mentioned, as provided in the act of June 1, 1898, commonly known as the Erdman Act, with a view to bring about an amicable settlement of the controversy through the mediation and conciliation provided by said act.

TELEGRAM.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission,
Washington, D. C.

Hon. Chas. P. Neill,
Commissioner of Labor, Washington, D. C.

A controversy has arisen between the —— on the —— Railway and the officials in charge of operations, which unless peacefully adjusted may lead to serious interruptions of interstate traffic on the 31326°—Bull. 98—12—2
various lines entering ———, on account of the close intermingling
of the business of the carriers in question with the other properties.
It is our earnest desire to avoid a rupture in our relation with these
carriers. We therefore request the Chairman of Interstate Com­merce Commission and Commissioner of Labor to put themselves
in communication with the officers of these lines as provided in act of
June 1, 1898, known as the Erdman Act, with a view of bringing
about an amicable adjustment.

The following are copies of applications that have been received
in cases where both parties to the controversy have united in a joint
agreement:

TELEGRAM.

Hon. Martin A. Knapp,
Presiding Judge, Commerce Court, Washington, D. C.

Hon. Charles P. Neill,
Commissioner of Labor, Washington, D. C.

A controversy existing between The -------- Ry. Co. and its ---------,
relative to wages and working conditions, threatens to interrupt in­terstate commerce, and in accordance with the Erdman Act, both
parties to the negotiations hereby respectfully solicit your good
offices in an effort to harmonize the difference.
Will you kindly indicate the time and place the hearing will be
held. The parties to the controversy would be very agreeable to
——— as the place, but will be pleased to meet at any point the

mediators name.

———

General Manager, ——— Ry. Co.

———

Vice President, Order Railroad ———.

TELEGRAM.

Hon. Martin A. Knapp,
Chairman, Interstate Commerce Commission,
Washington, D. C.

Hon. Charles P. Neill,
U. S. Commissioner of Labor,
Washington, D. C.

The officials of the -------- Railway Company and the --------- em­ployed thereon have been in conference at various times during the
past two months; and having failed to agree upon certain questions
at issue, jointly invite your good offices as mediators under provisions
of the Erdman Act, and request your presence here at your earliest
convenience to that end. Please wire answer immediately.

———

General Manager ——— R. R. Co.

———

First Vice President, Order Railroad ———.

Upon receipt of an application for mediation, the mediators usually
wire immediately to the other party to the controversy tendering
their friendly offices in a communication of which the following is typical:

TELEGRAM.

———,

The——— Railroad Company has applied to the undersigned under the Erdman Act, so called, to exercise our friendly offices in an endeavor to settle a pending controversy between that company and your organization. Kindly wire us the nature of this controversy and advise us of your willingness to accept our services in aid of a peaceable settlement.

CASES OF REJECTION OF MEDIATION.

Almost invariably, no matter by which side the application has been made, the offer of the mediators' services is at once accepted. As already indicated, the history of the law shows two distinct periods—the time from its passage up to 1906, during which its provisions were invoked only once; and the period from 1906 up to the present time, during which it has been called into play with steadily increasing frequency. In the one case of the earlier period, the act was invoked by the employees, and the principal roads concerned emphatically declined to become parties either to mediation or arbitration. During the latter period there has been no single instance in which mediation has been definitely rejected in any case of consequence in which a strike was seriously threatened.

There have been a few cases in which mediation under the law has been invoked by one side and declined by the other, as the table on page 44 shows; but these have either been cases insignificant in the mileage or number of employees involved, or else cases in which the application was premature, and no interruption of traffic was seriously threatened. Moreover, these cases are distinctly exceptional. As a rule, whenever an application for mediation has been made by either side in any serious case, the other party to the controversy has cordially accepted the mediators' tender of friendly offices, and negotiations have been undertaken which have uniformly resulted in an amicable adjustment of the pending controversy.

The acceptance of tenders of mediation come in all varieties of forms. Below are given copies of two acceptances received, the differences in the tenor of which are indicative of the different degrees to which the preceding negotiations had brought about a tension in the existing relations between the parties in controversy. It might be added that in the second case as well as the first a strike vote had been taken and the company notified of the intention of the employees to withdraw from the service unless a more satisfactory settlement of the differences could be reached than anything previously offered by the road.
TELEGRAM.

Hon. Martin A. Knapp,
Chairman, Interstate Commerce Commission,
Washington, D. C.

Hon. Charles P. Neill,
Commissioner of Labor,
Washington, D. C.

Your wire date. Ninety-eight per cent our membership employed vote in favor strike controversy over wages and conditions, and we have served notice on president of line that unless company recedes from position taken, men will retire from service. We will, however, defer all action until --------, to allow opportunity for exercise of your friendly offices here toward peaceful settlement.

TELEGRAM.

Hon. Martin A. Knapp,
Presiding Judge, United States Commerce Court,
Washington, D. C.

Hon. Charles P. Neill,
Commissioner of Labor,
Washington, D. C.

Telegram received. The controversy between the -------- Ry. Co. and the -------- employed is one of rates of wages, rules, etc. The committee representing these -------- find it impossible to reach an agreement with that company and will be glad to accept your friendly offices to the end that an amicable adjustment of pending controversy may be effected. Answer.

THE MEDIATION PROCEEDINGS.

When both sides have agreed to mediation proceedings they are as a rule begun very promptly, usually the only delay being that which is involved in getting the parties concerned together at the place decided upon. By reference to the date and place where the mediation proceedings have begun, and comparing these with the date the application was received, as shown in Table I, page 44, some idea may be gained of the promptness with which it has been felt necessary to take up negotiations in the majority of the cases in which the provisions of the Erdman Act have been invoked. There is no fixed rule as to where mediation proceedings shall be held. In numerous instances the representatives of the parties in controversy have come to Washington, and the negotiations have been conducted there. When this has not been feasible or desirable, one or both mediators have gone to the place in which the parties had up to that time conducted their negotiations, and the mediation
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conferences have been carried on there. The mediators have covered a rather wide range of territory, having carried on conferences at points as remote from Washington as St. Paul, Denver, and El Paso. The proceedings are purposely kept as informal as possible, in order that they may be the more readily adapted to the exigencies of any given case. Conferences are always held with the two parties to the controversy separately, and a joint meeting is never arranged until either a complete settlement of the questions in dispute or an agreement to arbitrate has been brought about by the mediators and agreed to in writing by the two parties.

Ordinarily the mediators begin by meeting the representatives of the side by which the mediation was invoked. After learning the matters at issue and discussing these in a general way, a conference is held by the mediators with the other party to the dispute. Successive conferences are then held by the mediators with one or the other party alternately, or it may happen that several successive conferences are held with one side before again conferring with the other side. The procedure in this respect is a matter governed entirely by the nature of the questions at issue and the particular conditions existing in any given case.

No limit is set to the number of conferences which may be held nor to the period which may be devoted to the mediation proceedings. Some cases have been brought to a successful termination within a few days, but these are exceptions; from one to two weeks is more nearly the rule. In some of the large cases where conditions were peculiarly acute, and a tension existed which made it important to secure a settlement at the earliest possible moment, conferences have for days at a time been carried on throughout the entire day and far into the night; and even what were practically all-night sessions have not been unusual.

While the procedure usually follows the above lines, any variation which seems desirable may be introduced, and the only fixed and unvarying rule is that neither side shall know what concessions the other side is willing to make unless and until an amicable agreement is reached. This rule has been adopted because both sides are more likely to make concessions if there is no danger that these concessions may later on be used to their disadvantage if the case should go to arbitration. It is always possible that the mediation proceedings may prove ineffective and that the case may go to arbitration. In that event, if any concessions offered by either side were known to the other side and could be adduced before the arbitrators as offers once made, it is obvious that the side which had offered the concessions in the mediation proceedings would be to that extent at a disadvantage in arbitration proceedings. The rule above referred to
prevents this difficulty and leaves both parties free to suggest concessions without fear of future prejudice. In the event of a failure to secure a settlement through mediation in any given case, neither party at the end of the proceedings would have any definite knowledge of what concessions the other had been willing to make, and both are therefore in the same relative position as they were when the proceedings began. Neither has gained any tactical advantage, nor has either had its side of the case prejudiced by what has passed during the mediation proceedings.

No minutes are taken nor are any formal records kept of what occurs in the meetings between the mediators and the respective parties to the controversy. Ordinarily the only thing which becomes a matter of formal record is the final articles of settlement agreed to and signed by the parties in dispute.

Unless requested or authorized to do so by the parties to the controversy, the mediators do not make public the terms of settlement agreed upon through mediation. It is true that these proceedings are carried on by Government officials under Government authority and at Government expense; and it might be argued that these facts render the controversies public matters. On the other hand it may be held that since differences between certain classes of employers and employees engaged in interstate traffic may, if unadjusted, cause serious public inconvenience and serious public loss, the Government merely furnishes the machinery for bringing about an amicable settlement if the two parties to a controversy can not themselves come to terms; but that, nevertheless, these disagreements remain primarily the concern of the employers and employees involved. The mediators, however, are primarily concerned only with the policy that will render most effective the operations of the law, and it is believed that leaving to the parties in dispute to determine the degree of publicity to be given to the terms of settlement is much the best policy.

DISTINCTION BETWEEN MEDIATION PROCEEDINGS AND ARBITRATION.

In a number of instances published articles dealing with the settlement of cases through mediation carried on under the Erdman Act have referred to the “award handed down by the mediators,” or have used such expressions as “the decision rendered by the mediators,” thus giving the impression that the mediation proceedings are similar to an arbitration and that settlements through mediation represent a decision by the mediators on the questions at issue embodying their view of what is a fair and reasonable settlement. By reference to the law itself it will be seen that the mediators are

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1 In this respect the treatment of mediation proceedings differs widely from that of arbitration proceedings. The latter are usually carried on in open hearings, and all the papers, including the award and a certified stenographic copy of the testimony, are filed in the clerk's office of the United States circuit court, and become matters of public record.

2 See p. 58.
without authority of any kind to impose their views or conclusions upon the parties to the controversy. Their functions consist solely in exercising friendly offices and attempting to harmonize the differences existing between the employer and the employees and by inducing concessions from each side to bring them to a voluntary agreement upon all the points at issue. It may be assumed that in any given case the mediators would naturally endeavor to induce the parties to come to a settlement on terms that would appear to them just and fair, but they have no authority or power to compel the parties to the controversy to yield to the views held by the mediators. The mediation negotiations, therefore, in no way partake of the nature of an arbitration, and the settlements brought about through mediation represent an agreement reached by the parties themselves through the friendly offices of the mediators rather than an agreement imposed upon them by any third party.

ARBITRATION UNDER THE ERDMAN ACT.

The concluding part of section 2 of the law provides that in the event the efforts to secure an agreement through mediation should prove unsuccessful the mediators shall endeavor to induce the parties to the controversy to submit their differences to an arbitration in accordance with the provisions of the law.

Sections 3 to 7, inclusive, of the act are devoted to the provisions governing arbitration. These sections provide the form of arbitration agreement that should be entered into, the method of selecting the arbitrators, and provide also for a certain limited right of appeal to the courts from the award of the arbitrators.

Under the provisions of the law one arbitrator is selected by each party to the controversy, and the two thus chosen select a third, provided they are able to agree upon such third arbitrator within five days after their first meeting. In the event of their failure to agree upon the third arbitrator within these five days, he is named by the presiding judge of the Commerce Court and the Commissioner of Labor acting together.¹

From January, 1907, up to the present time there have been 12 arbitrations under this Federal law. In only three cases out of the 12 have the two arbitrators appointed respectively by the parties to the controversy been able to agree upon a third arbitrator. In two of these three cases the two arbitrators agreed upon a third arbitrator within the five days prescribed by the law, but in each case the arbitrator so agreed upon was unable to serve. The fact that the arbitrator so agreed upon was unable to serve did not develop in either of these cases until after the expiration of the fifth day. In

¹ See note, p. 4.
both of these cases the two arbitrators then agreed upon a third arbitrator in place of the one unable to serve; but as the five days had elapsed they were without legal authority to name the person thus agreed upon as the third member of the arbitration board. In the third case the two arbitrators were unable to agree upon a third arbitrator within the five days, but did shortly thereafter agree upon such third arbitrator. In each of these three cases, in order that the person selected by the arbitrators themselves might legally become third arbitrator, he was, upon the request of the other two arbitrators, named as third arbitrator by the mediators, who are directed by the law to appoint such arbitrator in cases where the two arbitrators first appointed have not been able within the five days prescribed by the law to agree upon the third arbitrator. In all the other cases of arbitration the two arbitrators have not been able within the five days to agree, and have thereupon notified the mediators and requested them to appoint such arbitrators.

The selection of the third arbitrator by the mediators has been a difficult and embarrassing duty and one that involves a considerable degree of responsibility. It is practically inevitable that the third arbitrator is unfamiliar with the questions at issue. The contracts between the railroad companies and the employees engaged in train operation are complex agreements involving many matters of detail which it is important for an arbitrator to understand, but of which few persons have any correct appreciation unless they have been familiar with railroad operations at first hand. Obviously anyone having this familiarity would be either a former manager or operating official of a road or a former employee who had been engaged in train operation. While the mediators could unquestionably find and agree upon some one of either of these classes who in their judgment would be absolutely fair-minded, it is obvious that the appointment of such person might be looked upon with distrust by one or the other side to the arbitration. If the other two arbitrators should differ, each one leaning to the side by which he had been appointed, est with which he had formerly been affiliated, should render an and the third arbitrator, joining with the one appointed by the interaward favorable to that side, there would more than likely be an added feeling of dissatisfaction with the award on the part of the interest which had lost by the decision, and criticism on its part of the mediators for making such appointment. In any event, dissatisfaction with an award and consequent criticism of the appointment of the third arbitrator is to be expected; and this would not be a factor to be taken into consideration by the mediators in choosing an arbitrator were it not that the character of their work in mediation is delicate, and anything tending to create distrust of their fair-
ness or their judgment on the part of either employer or employee would lessen their usefulness and hamper their work under the law. In a word, it is necessary that the person appointed by the mediators shall not only in their judgment be fair-minded in fact, but shall be free from any present or past affiliations which might justify either side in doubting his actual fair-mindedness.

In actual experience further difficulty has arisen from the fact that when a person fully meeting the requirements has been found by the mediators it has frequently been difficult to induce him to accept the appointment. In more than one instance the mediators have agreed successively upon three or four persons, only to find that they were unwilling or unable to serve.

Such care has been exercised in the selection of arbitrators that frequently one of the mediators has gone personally to interview a proposed appointee to find out if there was any reason unknown to them that would make it undesirable for such proposed appointee to serve. Inquiries have also been made sometimes directly of the parties concerned in the controversy, and at other times of interests affiliated with them from whom it could readily be learned whether the proposed appointee could reasonably be considered objectionable to either side.

It would, of course, be particularly unfortunate if by any chance the mediators should unknowingly appoint as third arbitrator some one who during the five days spent by the two arbitrators first appointed in considering a third arbitrator had been considered and rejected by them. To avoid this possibility, the mediators, when notified by the two arbitrators of their inability to agree upon a third arbitrator, request that they be given a list of the names, if any, that have been discussed or proposed and rejected. In some instances, in the hope of simplifying their own task and of finding a third arbitrator who would unquestionably be acceptable to each of the other two arbitrators, the mediators have asked each of the arbitrators already appointed to submit a list of names of persons who would not only be satisfactory to the side that had chosen the arbitrator making up the list, but whom that arbitrator had a right to feel would be entirely acceptable to the other side. The mediators had hoped that perhaps one name might appear on both lists, and by the selection of that name they could assure themselves that the appointee was entirely satisfactory to the other two arbitrators. This hope, however, has never been realized.

As will be seen from the column in Table II giving the occupations of the arbitrators in the various cases that have gone to arbitration, the railroad companies have usually frankly named as their arbitrator one of the operating officials of the road or roads involved.
or an operating official of a neighboring road, and the organizations representing the employees have on their part frankly selected as their arbitrator one of their own officials. While on the face of it this might seem a matter for criticism, it is not at all certain that it is not after all the wiser course to pursue.

In any case in the selection of an arbitrator each side naturally chooses someone who looks at the question from its own viewpoint. It is not that either side desires to be unfair. Ordinarily each side is convinced of the fairness of the position that it has taken in the controversy which brought about the dispute and led up to the arbitration; and each side probably feels that the inability of the other side to see the fairness of the opposing contention is due to a natural bias brought about by its own interests. As a matter of fact, it is difficult to get even disinterested men always to agree upon what is fair or right in a controversy of this kind, because one's opinion as to the fairness of a position on questions of the character involved in these disputes is unavoidably affected to a considerable extent by the angle from which it is viewed. Each side, therefore, in choosing an arbitrator naturally selects one who will look at the question from its own standpoint. Unavoidably, therefore, the third arbitrator really becomes the umpire and the other two arbitrators, through what might be termed an honest bias, become more or less advocates of the contention of the side by which they have been respectively appointed.

In most of the cases, as is seen from Table II, the possible bias of the arbitrator is plainly indicated, and the third arbitrator is thus advised of the angle from which each of his colleagues is viewing the question at issue. Moreover, the questions involved in most of these controversies are complex and technical far beyond the ordinary wage controversy. The agreements regulate every phase of wage rates and working conditions. Questions under any or several of these provisions may arise in any arbitration, and arbitrators unfamiliar with the complexities might easily, if in their deliberations after the hearings are closed they are unaided by the presence of representatives of both parties, be very much confused over some of the questions, and might unwittingly render a decision the results of which would be far different from what they anticipated or desired. It may be argued, therefore, that there is considerable advantage in having present during the period of deliberation and the framing of an award two arbitrators who are themselves entirely familiar with every detail of the questions involved and who can foresee and point out the exact effect of any given decision proposed by the third arbitrator.
APPEAL TO COURTS FROM ARBITRATION DECISIONS.

Section 4 of the act provides for an appeal to the courts from the decision of the arbitrators. After the award has been filed in court, the parties to the controversy are given only 10 days within which to file exceptions thereto preparatory to an appeal from the decision of the arbitrators; and the only basis of an appeal is for "error of law apparent on the record."

The right of appeal from the award of the arbitrators is, first, to the circuit court of the United States; and after the decision of the circuit court either party has a further right of appeal to the circuit court of appeals. The only instance in which an appeal has been taken from an award of the arbitrators to the court was in one of the earliest cases of arbitration under this law. In this case the employees filed exceptions to certain parts of the award before the expiration of 10 days, but asked that the provisions of the award to which they did not take exception become effective at the expiration of the 10 days provided in the law. The decision of the court in the case was not handed down until a little over four months after the date of the decision by the arbitrators. The court partly sustained the exceptions taken by the employees but held that until the final disposition of the case no part of the award became effective. The company then took a further appeal, as allowed by law, from the decision of the court. The hearing on the second appeal could not be reached by the court for nearly six months after it was made. A year after the award the matter was still in litigation in the courts, and no part of the award had become effective. The parties to the controversy thereupon began direct negotiations with one another and finally reached an agreement, whereupon the litigation in court was abandoned and the dispute was thus finally disposed of 14 months after the decision had been rendered by the arbitrators.

As was clearly demonstrated in this case a provision for court appeals in an arbitration act must inevitably either remain a dead letter or defeat the very purpose of the law itself. Arbitration is a quasi-judicial method adopted for the speedy settlement of industrial controversies. Industrial controversies of the kind contemplated in this act as well as industrial controversies in general relate to questions which if they are to be settled effectively must be settled promptly. They can not be settled to the satisfaction of either side by any such lengthy process as is involved in litigation in one or more courts. This fact was so clearly demonstrated in the case just described that not only has no other case been carried from the arbitrators to the courts, but, on the contrary, practically all of the agreements to arbitrate made since that time have been accompanied by further agreements between the parties to the controversy to waive
the right of appeal to the courts and to accept the decision of the arbitrators as final and binding.

CONCERTED MOVEMENTS.

It will be seen by reference to Table I that in a number of instances a large group of roads, in three cases representing over 100,000 miles of line and in one case directly involving over 40,000 employees, have been involved jointly in a single case. This has come about through what is known as a “concerted movement.” These concerted movements usually cover a certain definite territory. There have gradually grown up in the railroad world three distinct wage zones. These may be defined as the Western Territory, which includes the Illinois Central Railroad and all roads lying west of a line formed by that road and the western shore of Lake Michigan; the Eastern Territory which includes the roads lying north of the Chesapeake & Ohio Railway and east of the Illinois Central and Lake Michigan; and the Southern Territory, lying south of the Chesapeake & Ohio and east of the Illinois Central.

For some years past the organizations of railroad employees in taking up questions dealing with the revision of the wage scale or of general working conditions have endeavored through concerted movements to have the questions at issue settled for an entire territory through one series of negotiations. The method through which this is carried out is somewhat as follows: Representatives of a given class of employees on all the roads in one of the territories outlined above meet and formulate certain proposals respecting wages and conditions of employment which it is desired to secure from all the roads in that territory. The local committees representing the employees involved then present these proposals to their respective roads, asking the latter to unite in forming a committee representing all the roads in that territory to meet a committee representing jointly the employees on these roads, in order to reach an agreement applying alike to each road in the territory.

In the Western Territory this practice has been the rule in dealing with employees in train service since 1906. Thus, in case 4 shown in Table I, practically all the Western roads were involved in a controversy with their conductors and trainmen. In the negotiations between the roads and their employees previous to the mediation, the roads had been represented by a committee of 10 of the general managers who had been given full authority by each road involved to make a binding settlement. The negotiations on the part of the employees were conducted by a large committee consisting of something over 160 members.

The conductors and trainmen, though having separate organizations, regularly conduct their negotiations jointly. In the nego-
tions in question the committee representing the employees con-
sisted of several conductors and trainmen from each of the roads con-
cerned in the negotiations and several of the grand officers of their
respective organizations.

When the mediation proceedings began, the negotiations were car-
rried on for the railroads by the committee of general managers and
for the employees by a subcommittee of 12 headed by the grand
officers of the respective organizations.

The settlement reached applied alike to each of the roads given
under this case in the table, thus settling in a single movement the
matter of wages and certain working conditions for the entire West-
ern Territory.

In the same way cases 29 and 40 represent concerted movements
embracing a large number of roads and involving firemen and engi-
neers, respectively. Case 35 similarly represents a concerted move-
ment covering the Southern Territory. Cases 23 and 25 involving
switchmen represent similar cases, although the territory covered
does not correspond with that outlined heretofore. Case 23 covered
practically all the railroads leading out of St. Paul and Minneapolis
or having switching service there. Case 25 involved all the roads
leading out of Chicago, whose switching service at that point was
carried on with the organization of the Switchmen's Union of North
America.

In all of these cases before mediation was invoked the controversy
had reached a point at which a strike vote had been taken on every
one of the lines involved in the controversy; and the entire mileage
was thus threatened with the paralysis of traffic that would have in-
evitably followed the withdrawal from service of such a large num-
ber of employees.

While the negotiations in the Western Territory with the train
organizations are usually carried on by concerted movements, it has
been the exception in the territory east of the Illinois Central. The
only instance in which a concerted movement has been carried on in
this territory east of the Illinois Central was in the summer of 1910,
when the principal southeastern roads acting in concert met the rep-
resentatives of the conductors, trainmen, and switchmen. These nego-
tiations finally reached the stage where mediation was invoked, and
the roads involved may be seen by reference to case 35 in Table I.
In the spring of 1910 the conductors and trainmen asked the eastern
roads to join in a concerted movement to consider their proposals
for wage increases and certain changes in working conditions. The
eastern roads declined to do so, and negotiations were then under-
taken with each road separately upon identical proposals that had
been submitted to them.
Similarly, in October, 1911, the engineers formulated certain proposals concerning increased pay and changes in working conditions and presented them to all the roads in the Southern Territory, with the request that these roads would join in a concerted movement and consider the proposals through a committee representing all the roads alike. The roads declined to act jointly in the matter, and the proposals were then taken up separately with each road by the representatives of the engineers' organization.

In both these cases, it might be added, the results worked out practically as they would have in a concerted movement. In each instance a settlement was effected with a single road, and the organizations concerned then declined to make any settlements with other roads on terms different from those secured in the first settlement. In the end the settlements secured over the entire territory were substantially the same, although they were secured through negotiations with the individual roads rather than in a concerted movement.

In cases 10 and 11, shown in Table I, several roads have been grouped together as in the concerted movements discussed above, but in neither of these cases was the movement similar to the ones already referred to. The facts in these cases are as follows:

Practically all the contracts of working agreements between railroads and employees in train service contain a provision that either party desiring a change in any of the rates or regulations covered by the contracts shall give 30 or 60 days' notice, the period being different in different contracts.

In December, 1907, and January, 1908, the southeastern roads enumerated under cases 9, 10, and 11 served notice on the engineers and other train organizations of a desire to reopen the contracts, after the expiration of the time prescribed in the notices, with a view to readjusting the wage scale. It was, of course, understood that this meant a reduction in wages. The first of these roads upon which the contract was actually reopened and negotiations begun was the Southern Railway. All of the train organizations declined to agree to any reduction of wages, declaring their intention of withdrawing from service in case the railroad company should put a reduced rate of pay into effect, and the road thereupon invoked mediation under the Erdman Act. Within a few days after these negotiations had begun the 30 or 60 day periods required to expire after the serving of notice of a desire to change the rates of pay provided in the existing contracts began to expire in the cases of some of the other roads concerned. In the case of the Louisville & Nashville the date of expiration was March 1, and it was understood that that road was prepared to put reduced rates of pay into effect immediately thereafter.
The officers of the engineers’ organization were determined to resist the threatened reductions in pay, even to the extent of inaugurating a strike, and it was apparent that a crisis was approaching with the possibility of a strike of engineers beginning on the Louisville & Nashville that would quickly spread in turn to the other roads in that territory.

In order to preserve the status quo and prevent a strike on any of the other southern roads over the same issue that was then in mediation in the case of the Southern Railway, the representatives of the engineers’ organization who were then in Washington filed an application invoking mediation under the Erdman Act in the case of the seven roads enumerated under case No. 10. The mediators immediately wired to the principal official of each of these roads a communication of which the following is a copy:

TELEGRAM.

WASHINGTON, D. C., February 23, 1908.

In accordance with the provisions of the act of Congress approved June 1, 1898, and commonly known as the Erdman Act, representatives of the locomotive engineers of your company have invoked the mediation of the undersigned in an endeavor to bring about a mutually satisfactory adjustment of the controversy now existing between your company and its locomotive engineers.

We are at present engaged in a similar mediation in the controversy between the Southern Railway Co. and its employees engaged in train operation and can not take up the controversy with your company for some days. We beg to ask that you forward us any statements you may desire to make concerning the matters in controversy and urge upon you not to take any action likely to create a breach between your company and its employees until we have had an opportunity to exercise our friendly offices in an effort to secure an amicable adjustment.

(Signed) Martin A. Knapp, Chairman.
(Signed) Chas. P. Neill, Commissioner of Labor.

In response to this request of the mediators, each of the roads addressed agreed to suspend action at the expiration of the respective periods at which each of them would have been free under its contract with the engineers to put into effect a reduced scale of wages, and to take up the controversy through mediation when the mediators had concluded the pending negotiations between the Southern Railway and its employees. The mediation of the Southern Railway controversy, as is explained below, continued for a considerable time and was postponed and renewed at intervals until the close of the calendar year. Although no formal agreement was entered into to this effect,
it became generally understood that the agreement reached on the
Southern Railway would be followed by the other roads involved in
the controversy growing out of the proposed reduction of wages. No
direct negotiations were had with any of the roads involved except
the Southern Railway, and as no further effort was made by any of
them to put into effect the proposed reduction, no other cases were
taken up. The several roads listed under cases 9 and 10 in Table I
are grouped together merely because there were two applications for
mediation on the part of the engineers—one covering the 6 roads
given under case 10 and the other covering the 3 roads given under
case 11. These cases, therefore, do not represent concerted move­ments as is the case in other instances where a group of roads are
given under a single case.

The position taken by the train employees who were resisting the
proposed reduction on the Southern Railway was that the depression
which began in October, 1907, and which had undeniably seriously
affected the revenues of all the railroads concerned in these negotia­tions, had lasted only a few months, and in view of the basic sound­ness of the business conditions of the country was likely to be of short
duration. They further argued that during the previous years of
prosperous conditions they had not received any increase in wages
until long after conditions warranted an increase, and that they were,
therefore, unwilling voluntarily to accept a reduction in wages imme­diately upon the first recession of business. They conceded that if
the depression which had begun gave evidence of being long con­tinued, they would be willing to consider the voluntary acceptance of
a lower wage scale. The net result of several weeks' negotiations
was an agreement on the part of the road to maintain the existing
wage scale for a period of three months. If at the end of that time
the conditions of traffic were not more encouraging to the railroad,
the negotiations were to be resumed with a view to agreeing on a new
scale of wages—the employees on their part agreeing to waive the
provisions of their contracts requiring either a 30 or a 60 days' notice
on the various roads that were then in a way jointly concerned in
the mediation proceedings in the Southern Railway case. At the
expiration of the three months agreed upon the Southern Railway
notified the mediators that the conditions were such that they were
willing to continue the existing scale of wages for a further period,
with the same understanding as to waiving the 30-day clause as was
agreed to in the earlier settlement. Another period of three months
was thereupon agreed upon. At the expiration of this second three
months the existing agreement was continued in effect for another
three months, with a further understanding that if the road did not
at its expiration serve notice of a desire to reopen negotiations the
mediation proceedings would be considered ended, the existing wage
scale would be understood to continue in effect under the conditions existing previous to the opening of the original mediation proceedings, and could not again be reopened until after serving the notice required by the contract.

At the expiration of this third temporary agreement the conditions of traffic had so improved that no notice of a desire to reopen negotiations was served, and the existing wage scales were allowed to stand unchanged.

As has been pointed out, the Erdman Act by its terms is confined to controversies between railways and those classes only of their employees actually engaged in train operation. Practically, therefore, the law applies only to controversies involving engineers, firemen, conductors, trainmen, switchmen, and telegraphers.

In the instance of the Southern Railway just referred to, as is shown by Table I, the controversy involved five of the shop crafts and the maintenance-of-way employees in addition to the six classes of employees to which the law is applicable. The shop crafts were represented in the negotiations, and the settlement reached, so far as the Southern Railway was concerned, applied to them as well as to the employees engaged in train operation. This, however, was an exceptional case, and the presence of the representative of the shopmen in the negotiations grew out of the fact that the 12 crafts enumerated had in this particular instance joined forces to resist a reduction of wages which threatened them all alike on account of the depression following the "panic of 1907."

The application for mediation was made by the railway company, but as the train employees had united with the shop crafts in the existing controversy, and as they felt obliged not to accept any settlement that could not be agreed upon by all the crafts interested, representatives of each of the crafts involved appeared on the committee that conducted the negotiations.

This is the only case in which negotiations carried on under the law have been directly concerned with controversies involving any class of employees other than those engaged in train operation. In a number of instances informal applications have been received to take up cases involving only shop employees or maintenance-of-way employees. However willing the mediators might feel personally to take up any case in which they could be of service, they have not felt that they had authority under the law to consider such cases. Even if they had felt warranted in undertaking such cases, it would probably have been unwise to do so. Both the mediators designated in the law have primarily been appointed for other important duties, and frequently the demands upon their time prove a serious burden and render it extremely difficult to give proper attention to these
other duties. If they were to undertake cases other than those properly coming under the law, or if the law were amended to include other crafts not now within its scope, it would be absolutely necessary to create some other machinery for carrying out its provisions than the present plan which simply imposes the work required by the law upon two officials who are appointed for other purposes and who under any conditions can only give part of their time to this work.

**ARBITRATION ACT OF 1888.**

Before the present law dealing with mediation and arbitration of railroad disputes was enacted a previous law had been passed and approved October 1, 1888, providing both for voluntary arbitration and for what amounted to compulsory investigation in controversies affecting “railroad and other transportation companies” engaged in interstate traffic and their employees. This law applied to any controversy between a railroad or other transportation company engaged in interstate commerce and any class of its employees, which might “hinder, impede, obstruct, interrupt, or affect such transportation of property or passengers.” It thus differs from the present act which applies only to controversies with those classes of employees engaged in actual train operation. The law of 1888 provided that in the event of such controversy either side might propose in writing to submit the differences to arbitration; and if the other party to the controversy should accept the proposition each side should then appoint one arbitrator and these two should select a third. The three persons thus selected were created a board of arbitration.

It will be noted that there is no provision in the act of 1888, as in the Erdman Act, for the appointment of a third arbitrator in the event of the first two arbitrators’ failure to agree on one. The act of 1888 provided also that each of the arbitrators appointed by the respective parties should be “wholly impartial and disinterested in respect to” the difference or controversy concerning which they were to conduct the arbitration. This act differs from the Erdman Act in this provision, as the latter act places no limitation on the relation to the controversy of the person who may be selected by either side as its arbitrator. As indicated in the discussion of arbitration cases (p. 18), it may be doubted whether such a limitation as provided in the law of 1888 is desirable.

The board of arbitration once created was given all the power of administering oaths, subpoenaing witnesses, requiring the production of papers, etc., that belongs “to the United States commissioners appointed by the circuit court of the United States.”

The act of 1888 provided that upon the conclusion of its investigation the decision of the board of arbitration should be publicly an-
nounced and a copy of it filed with the Commissioner of Labor of the United States. No provision of any kind was made for enforcing any award of the board, and the act evidently relied on the force of public opinion to make effective the decision of the arbitrators. In this respect the act of 1888 is similar to the Canadian act.

After providing for the arbitration board, as above indicated, the act of 1888 provided also that in the event of a controversy such as was covered by the law, the President might select two commissioners who, together with the United States Commissioner of Labor, should "constitute a temporary commission for the purpose of examining the causes of the controversy, the conditions accompanying, and the best means for adjusting it." The report of the commission was to be transmitted to the President and to the Congress. The services of such commission might be tendered by the President for the purpose of settling a controversy "either upon his own motion or upon the application of one of the parties to the controversy or upon the application of the executive of the State." A commission thus created by the President was given all the power and authority given to the board of arbitration with respect to administering oaths, subpoenaing witnesses, compelling their attendance, and requiring the production of books and papers. The commission's decision was to be made public and was "to advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust the matters in dispute."

The boards of arbitration provided in the act were created by joint agreement between the two sides, the two arbitrators were chosen by the parties to the controversy, and the third arbitrator was chosen by the first two arbitrators. On the other hand, the commission could be appointed by the President without application from either side or without regard to the wishes of either side. The members of the commission, in addition to the Commissioner of Labor, were chosen by the President without conference with either party to the controversy or without reference to them. The findings of the commission, like the findings of the board, were not enforced through any provision of law, but depended for their acceptance or enforcement upon the backing of public opinion, with only this difference: That in the case of the arbitration board the parties had formally agreed to the arbitration in advance and were, therefore, morally bound to accept its findings, while in the case of the commission appointed by the President there was no such obligation.

CHICAGO STRIKE COMMISSION.

The act of 1888, which was repealed by a section of the Erdman Act of June 1, 1898, was in effect for practically 10 years. At no time, so far as is known, was any attempt ever made to utilize its
arbitration features; and the only instance in which the provisions for a commission of investigation were utilized was in July, 1894, when the President created a commission to investigate and report upon the railroad strike that had grown out of the strike of the employees in the Pullman car shops.

In so far as the law was designed to furnish a means of preventing strikes or settling strikes that had arisen, the application of its provisions in this case was futile. The commission was not appointed until a month after the strike had begun, and, as a matter of fact, the strike had practically been lost a week or more before the appointment of the commission. Its report was made over three months after such appointment and contained no recommendations as to a basis of settlement for the particular strike in question, since the conditions of settlement had already been determined months before by the arbitrament of relative strength. The commission recommended a permanent strike commission with "duties and powers of investigation and recommendation as to disputes between railroads and their employees similar to those vested in the Interstate Commerce Commission as to rates, etc.," and further recommended that "power be given to the United States courts to compel railroads to obey the decisions of the commission." These recommendations would have resulted in a more drastic and compulsory law than the one then in effect, but the law actually passed in place of the act of 1888 was less drastic than the earlier act, except in the provision for the enforcement of awards by the United States courts in cases where a voluntary arbitration had been agreed upon.

CONGRESSIONAL DISCUSSION OF ERDMAN ACT UPON PASSAGE.

The present law was passed by the Fifty-sixth Congress, and was approved by the President under date of June 1, 1898. The bill in one form or another had been before several preceding Congresses, and the present law is usually referred to as the "Erdman Act," because the original bill was introduced in Congress by Representative Erdman, of Pennsylvania; but he was not a Member of the Congress in which the law was enacted.

In the form in which the law was finally enacted, its provisions were made applicable only to those classes of railroad employees actually engaged in train operation, i. e., engineers, firemen, conductors, brakemen, switchmen, and telegraphers.

Although at the time of its passage by Congress the act had the support of the organizations representing the classes of employees to whom it was made applicable, it was regarded with considerable distrust by many of the representatives of other labor interests, and some very strong opposition to it was expressed on the floor of both
the House and Senate in the debates preceding its passage. It was felt by a number of those representing the labor movement outside of the railway-train service that the law was a dangerous innovation for two reasons: In the first place, it was feared that the power granted to the courts of equity to enforce the decisions of the boards of arbitration was too vague and general and might lead to the exercise of an oppressive judicial power neither foreseen nor desired by those advocating the bill. It was also felt that the bill might prove the entering wedge for a system of compulsory arbitration to which the representatives of the labor movement were emphatically opposed. Both these criticisms of the law were explicitly and emphatically stated on the floor of both the Senate and the House. The entire discussion of the law in the debates preceding its passage centered around the arbitration provisions of the act, and the possibilities of the provisions for mediation were little appreciated. The actual working of the law, however, has failed to justify the fears at that time expressed.

The provisions for arbitration have been seldom directly invoked (only four times since the passage of the act), and the courts have never been called upon to enforce an award. That the provisions for mediation have proved of much greater importance than the arbitration features of the act is not only an unexpected but probably a fortunate development.

**HISTORY OF FIRST ATTEMPT TO UTILIZE ERDMAN ACT.**

That the time was not wholly ripe for the passage of such an act is indicated by the fact that the first effort to utilize its provisions, made within a year after its passage, resulted not only in a complete failure, but even in a repudiation of its principles by the leading railroad companies involved; and by the further fact that for a period of seven and a half years no other effort was made to invoke its provisions.

This first effort to utilize the mechanism for conciliation and arbitration provided in the statute forms so important a chapter in the history of the development of methods of maintaining industrial peace, and the correspondence growing out of this effort brought out so clearly and concisely some of the views then held concerning the arbitration of industrial disputes that the matter is given here in some detail.

This first effort to utilize the provisions of the new statute grew out of a movement undertaken in September, 1898, by the conductors and brakemen engaged in switching service in the railroad yards in and about Pittsburgh to secure an increase in wages and certain changes in working conditions upon the railroads having a switching service in what was known as the "Pittsburgh district."
At that time the rates of pay for conductors and brakemen engaged in switching operation in the Pittsburgh yards were as follows:

Day conductors 24 cents per hour
Day brakemen 18 cents per hour
Night conductors 25 cents per hour
Night brakemen 19 cents per hour

The new rates asked were as follows:

Day conductors $2.75 per day
Day brakemen 2.50 per day
Night conductors 2.90 per day
Night brakemen 2.70 per day

In addition to these rates a 10-hour day was asked for with overtime pro rata for any work performed in excess of 10 hours.¹

The rates asked for by the switchmen were stated by them to be the standard rates “paid in the yards in Chicago, St. Louis, most of the yards at Cincinnati, and other yards of importance in that territory and west of Chicago.”

The following roads were involved in this movement for an increase in pay and a reduction of hours:

Pennsylvania R. R.
Pennsylvania Lines West of Pittsburgh.
Allegheny Valley Ry.
Pittsburgh & Lake Erie R. R.
Pittsburgh & Western R. R.
Union R. R. (including yard employees of Carnegie Steel Co.).
Monongahela Connecting R. R.
Laughlin Iron Co.

Although the employees on the several roads were practically acting in concert in this matter, their proposals were presented to each road separately by the local committees representing the employees on that road. A number of the smaller roads stated to their committees that they would grant any increases that might be granted by the larger roads; but as the principal roads involved declined to grant any increase, no progress was made by the local committees in their efforts to secure increases.

The switchmen involved were members of the Brotherhood of Railroad Trainmen, and after several months of fruitless efforts by the local committees to secure any settlement of their controversies the assistance of their national organizations was invoked. In January and February, 1899, two of the chief officers of the brotherhood

¹ The present ruling rates of pay for conductors and brakemen in switching service in the Pittsburgh yards are as follows:

Day conductors 37 cents per hour
Day brakemen 34 cents per hour
Night conductors 39 cents per hour
Night brakemen 36 cents per hour

Ten hours or less constitute a day’s work, and overtime pro rata is paid for any work performed in excess of 10 hours.
took charge of the matter and held a number of conferences with the roads involved, but were unable to obtain any substantial concessions in the matter of wages and hours. Further action was then postponed until after the fourth biennial convention of the Brotherhood of Railroad Trainmen, which was to meet in May of that year. Immediately after the convention the grand master of the trainmen, as stated by him in his report to the fifth biennial convention in 1901, "concluded, after a consultation with prominent members interested, my associate officers, and the executives of the other organizations represented in the federation who would become involved in the trouble, to test the efficiency of the act of Congress, approved June 1, 1898, and commonly known as the 'arbitration law.'"

As the first step to invoking the provisions of the arbitration law the grand master of the Brotherhood of Railroad Trainmen addressed the following letter to the secretary of the Interstate Commerce Commission:

May 29, 1899.

Hon. E. A. Moseley,
Secretary Interstate Commerce Commission,
Washington, D. C.

Dear Sir: A serious situation presents itself to the brotherhood, as well as to a number of railways involved. Through our organization the men employed in yard service on the different railway lines in one of the large switching centers have asked for an adjustment of their wages and hours of labor. No relief has been given, and we have practically exhausted every effort to settle the matter. The men are dissatisfied and will not be put off in this way. Their claims are just and reasonable. I desire to take advantage of the arbitration act, and enlist the offices of the chairman of the Interstate Commerce Commission and the Commissioner of Labor in the hope of settling this matter amicably. Will you kindly communicate my wish to these gentlemen and have them fix a time when I can meet them at Washington for the purpose of formally presenting the situation to them.

An early consideration of, and reply to, the foregoing will greatly oblige.

Yours, truly,

P. H. Morrissey,
Grand Master Brotherhood of Railroad Trainmen.

After some informal discussion with the mediators designated in the arbitration law, the grand master of the Brotherhood of Railroad Trainmen addressed to them the following formal application for mediation:

June 21, 1899.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission.

Hon. Carroll D. Wright,
Commissioner of Labor, Washington, D. C.

Gentlemen: During the month of September, 1898, the conductors and brakemen employed in the several railway yards (excepting the
Baltimore & Ohio) in the Pittsburgh, Pa., switching district, through regularly appointed committees of the Brotherhood of Railroad Trainmen, employees of the respective lines, presented to the officials of the companies a scale of wages and hours which they asked to be put into force, requesting that the same be considered and answer made thereto within 30 days. The roads to which the schedules were presented are as follows: Pennsylvania Railroad; Pittsburgh, Cincinnati, Chicago & St. Louis Railway; Allegheny Valley Railway; Pittsburgh & Western Railway; Pittsburgh & Lake Erie Railway; Union Railway; Laughlin & Co. (Ltd.); Monongahela Connecting Railway; and Pittsburgh, Fort Wayne & Chicago Railway.

The wage scale asked for was uniformly as follows: Day conductors, $2.75 per day; night conductors, $2.90 per day; day brakemen, $2.50 per day; night brakemen, $2.70 per day; 10 hours or less to constitute a day's work; overtime after 10 hours to be paid for at one-tenth the above rate per hour.

In addition to the wage scale the employees of each road asked for the adoption of certain rules guaranteeing their rights in the service, a fair hearing when dismissed for any alleged offense, etc. The rates as above practically represent what is known as "standard pay" in the switching service, as paid in the yards of Chicago and St. Louis, and by some of the lines at Cincinnati, Detroit, and Columbus, and in most of the switching yards of any prominence west of Chicago.

The present Pittsburgh switching scale is as follows: Day conductors, 24 cents per hour; day brakemen, 18 cents per hour; night conductors, 25 cents per hour; night brakemen, 19 cents per hour.

The Pittsburgh scale is less than paid at the points before mentioned, as well as being less than is paid in most of the yards at Buffalo, Cleveland, Toledo, Ashtabula, Youngstown, and Indianapolis, and in many of the yards of lesser importance in the territory between Pittsburgh and Chicago. I would also mention that east of Pittsburgh the New York, New Haven & Hudson River Railroad has lately put into effect an eight-hour day system at much higher rates per hour than the Pittsburgh scale.

The committees called on their superintendents at the end of 30 days for answers to their requests and the propositions were either denied outright or they were told the company could do nothing in the matter, or that they would have to go to the higher officials of the road. This latter was done in each and every instance, and the highest officer in charge of operation on each line was approached by a committee of the men, as well as by an officer representing the brotherhood, who, in accordance with the usual practice in such cases, renewed every honorable effort to settle the grievances. I desire to state in this connection that excepting in one instance, that of the Pennsylvania lines west of Pittsburgh, wherein Mr. Loree, general manager, declined to meet the representative of the brotherhood, both the committees and the officers of the organization were courteously met by the managements, who, after considering the matter, declined to grant the increase of wages, most of them on the grounds that if they did it others would have to do it, some of them assigning as a
reason that their property was not paying sufficiently well to permit the advance, while others gave no definite reason other than they would not concede the advance. In one or two instances the committees were informed that certain companies would pay the proposed scale if others would pay it.

This brief statement of facts is sufficient to show that the efforts of these employees to secure equal wages paid to other employees in the switching service similarly situated have been orderly, free from agitation, and characteristic of the methods which we believe should obtain in the intelligent labor movement of our country. That their position is a reasonable one we believe will be substantiated on investigation. Heretofore the efforts of the men employed in the switching service in large yards to secure what is generally accepted as the standard wage have been largely attended by agitation and strikes, greatly injuring the earnings of the companies as well as of the men involved, and, as you are probably aware, threatening at the time the peace and good order of the communities. We believe that the same results can be obtained by conservative methods and the reasoning of the differences as between the employees and their employers. All this we have endeavored to do and have failed. We have made repeated efforts to secure a joint conference between committees of the employees and representatives of the different railway interests at Pittsburgh and have failed. The men are now left the alternative of yielding their requests or pressing the matter further, in accordance with the rights given them under our organization, viz, to strike. I have been repeatedly requested by the men involved to take a vote on the proposition to strike in support of their grievances; but knowing how they feel in the matter, both from personal observation and knowledge, as well as the communications that come to my office from the district, and the report of one of my associate officers who has had much to do with the matter, I know that the result will be almost unanimous in favor of a strike, and my experience suggests to me that men once having taken a position in a matter of this kind, after carefully weighing the consequences of their proposed action, are much more difficult to reason with toward an amicable adjustment of affairs than if the question of strike had not been submitted to them and agreed to by them. There are over 1,000 men in the switching service in the Pittsburgh district, and the Brotherhood of Railroad Trainmen is fairly representative of them. This number, as well as the large number of members of the brotherhood in the train service on each of the lines before mentioned, would become involved in case of a strike.

On account of the foregoing reasons and for other reasons, I have concluded that the controversy is sufficiently serious to warrant asking your intervention, as permitted by section 2 of the act of Congress approved June 1, 1898, entitled "An act concerning carriers engaged in interstate commerce and their employees." I therefore request you on behalf of the employees in the switching service on the lines referred to in Pittsburgh and vicinity, who, as before stated, are fairly represented by the Brotherhood of Railroad Trainmen, of which organization I am the executive officer, to use your good offices
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with the officials of the said companies to the end that a reasonable adjustment of the complaints of such employees may be effected.

I have the honor to be,

Very truly, yours,

(Signed) P. H. Morrissey,

Grand Master Brotherhood of Railroad Trainmen.

Under date of July 1 the chairman of the Interstate Commerce Commission and the Commissioner of Labor, the officials designated as mediators in the law, addressed a joint letter to the representatives of each of the railroads involved and inclosed with it a copy of the above letter to the grand master of the trainmen. The following replies were received from the railroads in question:

_______ Railroad Co.,

Office of the President,

_______, July 15, 1899.

Hon. Martin A. Knapp,

Chairman Interstate Commerce Commission.

Hon. Carroll, D. Wright,

Commissioner of Labor, Washington, D. C.

Gentlemen: I have given the attention it justly commands to your letter of July 1, transmitting a copy of an application to you to undertake the amicable settlement of a controversy alleged to exist between the ____ Railroad Co. and certain of its employees in the so-called "switching district" of Pittsburgh, made by Mr. P. H. Morrissey, grand master of the Brotherhood of Railroad Trainmen.

Although this application of Mr. Morrissey's professes to be made under the act of Congress approved June 1, 1898, it is not a request emanating from "either party to the controversy " existing or alleged to exist, as required by said act. I feel it incumbent upon me, however, in compliance with your request, to make the following statement of the position of the ____ Railroad Co.

During the present year, representatives of the ____ Railroad Co. and of the yardmen in its service in the Pittsburgh district met on several occasions and discussed questions relating to the wages of the latter, their hours of service, and other incidental matters. I believe that every question thus discussed, excepting that of wages, was settled to the satisfaction of all parties. Saving through Mr. Morrissey's application, I have not been advised that because of any difference of opinion on this remaining question a strike of the yardmen is threatened or impending; nor do I believe that any ground exists for a controversy which shall seriously threaten to interrupt our business as a carrier, especially as the wages paid our employees in the Pittsburgh switching district compare favorably with those paid to men engaged in other pursuits requiring a like amount of ability and intelligence.

During the last 25 years the rates paid by our shippers and the dividends paid to our shareholders * * * have been reduced practically one-half. During the same period the dividends paid to the shareholders * * * have been scant and exceptional.
Although we have frequently advanced the wages paid to our employees during that time, we have never made a reduction. In all other pursuits the wages of employees have been subject to severe fluctuations and have been so reduced at times as barely to provide for their actual living expenses.

At the present time we are not participants in the general advance of prices which has occurred. On the contrary, we have suffered thereby, inasmuch as we have been compelled to pay advanced prices for our supplies and have thus had our expenses considerably increased. As compared with the rates in 1898 (up to which time they had been constantly lowering) the present prevailing freight rates are approximately 10 per cent lower.

Mr. Morrissey alludes to the fact that the wages paid for switching services at Pittsburgh are lower than those paid by the company for such service at Chicago. At the latter point the wages for switching service are disproportionate as compared with those there paid for other services. At Pittsburgh the wages we are now paying for such switching service are fairly proportionate to those paid for the service there rendered by our other employees. It is not necessary here to consider the reason for the disproportionately high wages for switching service paid at Chicago; but we are unwilling to extend this disproportion to other points of our system. In this connection it may not be amiss to state that, through the adoption within the last few years of safety appliances, the risks formerly attending the performances of switching duties have been greatly reduced.

During the conferences with our employees, to which I have alluded, the question of advance in wages to be paid for switching services at Pittsburgh was thoroughly considered by the officers of this company. They were entirely satisfied with the fullness and fairness of the wages there paid for that particular service, and felt that it would not be proper to make an increase which would bring about a disproportion in the East similar to that existing at Chicago. At that time they felt, and they and I now feel, that in justice to those we represent, and to the public, we can make no advance upon the present switching rates.

Entertaining the very high respect I do for yourselves, and for the offices you occupy, I would, in many cases, feel strongly moved to accept your mediation; but in the present case, concerning, as it does, purely a question of amount of wages to be paid, which has been so thoroughly considered, I feel convinced that such mediation could only bring us to the alternative suggested by the act, viz, the submission of the same to the arbitration of a board to be composed of three persons.

The act of June 1, 1898, provides that in case of an award by these three persons both parties shall be bound, but "that no employee shall be compelled to render personal services without his consent." Of course this proviso is proper, because no man should be compelled to work against his will, but necessarily an arbitration concerning wages which binds one party and not the other is not of the character the world regards as fair.
I do not desire, however, to put upon this ground my objection to the arbitration in the present matter.

The effect of this law, if its provisions be accepted in this case by the carrier, seems to be this: That the carrier, while continuing to be responsible for the discharge of its duties to the public, likewise to its creditors and stockholders, abdicates its vital prerogative of determining what it can afford to pay its employees for their services, and transfers that prerogative to a special transient committee of three arbitrators, and, in default of errors of law apparent in the proceedings, binds itself to the judgment which may be entered on the award of these arbitrators.

The question of what compensation shall be paid to its employees is of such grave importance that the officers of -------- Railroad do not feel that they can in any manner relinquish their duty or right to determine it, according to their own best judgment, nor by any act of their own subject the interests which are intrusted to them to the judgment of any other tribunal than themselves. Moreover, I am advised that it would not be legally competent for them to permit the settlement of such a question by anybody other than by themselves, acting in conjunction with their employees.

Very respectfully, yours,

President.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission.

Hon. Carroll D. Wright,
Commissioner of Labor, Washington, D. C.

Gentlemen: Yours of the first, covering a letter addressed to you by Mr. P. H. Morrissey, grand master of the Brotherhood of Railroad Trainmen, is before me.

I beg to say in reply that I am not advised of any such conditions existing between this company and switchmen in its employ at Pittsburgh as can be construed into a controversy under the act of Congress referred to in your communication.

The proper officer of this company had, early in this year, application from certain of its employees as to wages and certain police regulations governing the working of the road.

These last matters, I understand, were satisfactorily adjusted, and the wage question carefully considered, with the conclusion that the company could not consent to any increase; that the wages paid were fair and equitable; that the company had no time in years past (including eight years from May 1, 1884, when the company was in default on its obligations, under mortgages and floating debt) made any reduction in the wages paid the switchmen, or any others in the service, but had continued to pay the scale of wages in the Pittsburgh district.

This company has no earnings beyond the actual requirements for its operation and fixed charges, and therefore can not undertake the
burden of increased expenses that would be entailed in granting the advance in wages to switchmen as mentioned in Mr. Morrissey's letter. Very truly, yours,

President.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission.

Hon. Carroll D. Wright,
Commissioner of Labor, Washington, D. C.

GENTLEMEN: Your letter of the 1st instant, with copy of application of Mr. P. H. Morrissey, grand master Brotherhood of Railroad Trainmen, has been received and carefully considered.

In answer to your request that "the positions of this company respecting the controversy may be disclosed" to you, I beg to submit the following:

The application of Mr. Morrissey as chief executive of the brotherhood, made, as he says, under the act of Congress of June 1, 1898, asks that you intervene for the purpose of effecting an adjustment of complaints of employees and of a controversy said to be pending between the railroad company and some of its employees at Pittsburgh, to wit: Yard conductors and switchmen, in relation to their compensation.

At the present time the company can not properly or justly increase the wages of its switchmen. The expenses of the company have been and are largely increased by expenditure made for the improvement of its tracks and equipment, and these expenses are at present augmented by advances in price of materials and supplies; while on the other hand, the net receipts of the company are diminished by reason of the decrease in transportation rates. Included in these expenses are large expenditures for safety appliances, which have greatly diminished the dangers incident to the labor and duties performed by switchmen, and the improvements in track and equipment also contribute in this direction.

The company has for years past kept up the rates of compensation of its employees, when by reason of depression of business and the other conditions above stated, it might with propriety have made a reduction, but it has deemed it best for all concerned so far as practicable to maintain the stability of the rates of compensation paid to its employees.

Mr. Morrissey refers to the fact that wages paid for switching service in Pittsburgh are lower than at Chicago and some other places. While it may be true that circumstances and conditions at Chicago and elsewhere are such as to warrant or require the payment of higher wages for such service than are paid at Pittsburgh, it does not follow that the wages are too low at Pittsburgh any more than it would follow that they are too high because they are more than paid for like service at some other points.

This company, through its proper officers and representatives, has, within the past year, on several occasions conferred with its em-
ployees upon various matters relating to their service and compensation, and has never refused to confer with them or their committees in relation to any subject matter when requested.

The officers of this company have considered the question whether any increase in the wages of switchmen at Pittsburgh ought to be made, and after full and careful examination of the subject were and still are of the opinion that the wages now paid are full and adequate compensation for the services rendered, and that in justice to the company and to other employees and to all interests concerned no increase should be made.

The question as to the amount of compensation the company shall pay its employees involves the consideration of very many matters with which the officers of the company are familiar, and it is their duty after full conference with and due regard for the rights of employees to determine the question; and while they have the highest respect for you and confidence in your ability and impartiality, yet in this matter they feel that they ought not and can not rightfully relinquish their duty or delegate their power to determine that question.

Very respectfully, yours,

President.

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Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission.

Hon. Carroll D. Wright,
Commissioner of Labor, Washington, D. C.

GENTLEMEN: I beg to acknowledge your favor of July 1, requesting me to make written answer to the statements contained in the application presented to you by P. H. Morrissey, of the Brotherhood of Railroad Trainmen, copy of which you inclose.

I beg to say in reply thereto that I was called upon sometime ago by a committee of the Railroad Trainmen employed on the line of the --- Railway, and they made request for an increase in the compensation for services paid day conductors, day brakemen, night conductors, and night brakemen employed in the various yards of this company.

After going over the subject very fully with the committee, I had to decline to make the concessions asked for by them, owing to the fact that the revenues of the company at this time did not warrant the payment of the advance asked for by the representatives of the organization. I was subsequently called upon by another committee, which was accompanied by Second Vice President Fitzpatrick, of the Brotherhood of Railroad Trainmen, and went over the ground again fully with this committee, and I then stated to them that owing to the very low rates prevailing I did not see my way clear to meet the views of the railroad trainmen's representatives, or those of the vice president of the organization; that in 1892 a scale of wages was adopted by the company and its employees engaged in all the branches of its train service, namely: Conductors, engineers, brakemen, etc., which was agreed to by all the orders representing labor organiza-
tions at that time employed in the service; since that time the company has passed through a period of serious depression, with a constant reduction of its rates, and that while other labor throughout the country suffered by having its wages reduced, the employees of the ——— Railway were not asked to meet the depressed conditions, and the wages fixed at a time of great prosperity throughout the country were maintained and paid, and have been paid up to this day; that while the holders of the securities of the company have been compelled to forego the interest due on their mortgages, and make great sacrifices, the train labor had not in any way been asked to share in the same; that the existing rates for the transportation of commodities to-day are lower than they have ever been in the history of the road, and while the tonnage has increased in volume, the steady reduction of rates has required large expenditures for improvements, and necessitated the greatest economy in the management to enable the company to maintain its position as a competitor and give employment to its employees, and under the conditions named I stated it was entirely impracticable to consider an advance of wages at the present time, and further, that the organizations, parties to the agreement made for the train labor in 1892, were not demanding any increase of wages, and that under the circumstances I could not increase the compensation of the employees who were members of the Railroad Trainmen's Association without discriminating against the members of the other organizations who were at the time parties to the agreement mentioned above.

The responsibility for the management of the property has been imposed upon me personally by the Circuit Court of the United States for the Western District of Pennsylvania, and as I understand it, it is my duty to manage the property with respect to the rights of all persons interested in it as well as with respect to any just claims or demands of my employees. I have no authority to delegate the exercise of this responsibility to anyone else, either by way of mediation or arbitration. I am perfectly satisfied that my refusal of the demands of the men referred to was based upon just and reasonable grounds. If, however, they are not satisfied with my action, there is no difficulty in having the matter, upon their application, submitted to and reviewed by the circuit court of the United States under whose authority I am acting.

Respectfully,

[Signature]

Receiver.

——— Railroad Co.,
July 14, 1899.

Hon. Martin A. Knapp,
Chairman Interstate Commerce Commission.

Hon. Carroll D. Wright,
Commissioner of Labor, Washington, D. C.

Gentlemen: I beg to acknowledge receipt of your letter of July 1, 1899, inclosing copy of communication from Mr. P. H. Morrissey in relation to the amicable settlement of a controversy alleged to exist between the ——— Railroad Co. and certain of its employees in pursuance of the act of Congress approved June 1, 1898.
In answer thereto I desire to say that no special controversy exists between this company and any of its employees, but it is true that a demand has been made upon railroad companies in the Pittsburgh district, including the -------- Co., by certain of their employees, for an increase of wages substantially as set forth in his letter, which demand the several companies, including the -------- Railroad Co., have refused to grant.

The -------- Railroad is a short line of road in the vicinity of the city of Pittsburgh connecting with several of the main lines of railroad and performing a belt-line service. Its main business is the switching of cars. * * * It employs in this switching service 19 regular and 5 extra conductors and 42 regular and 20 extra brakemen. It has 13 locomotives in use and employs 21 engineers and 21 firemen. It will be apparent that the -------- Railroad Co. is a small factor in the general situation and its rates of pay are naturally affected by, and largely based upon, those paid by the main line railroads with which it connects. The employees of the -------- Railroad Co. have made no demands other than as stated—the general demand made upon all the roads named in Mr. Morrissey's letter. They have presented no other grievance, and, so far as I can learn, their relations with the company are of the most amicable nature.

Whatever may be ultimately decided either by agreement or by mediation or arbitration, as suggested by Mr. Morrissey, as the proper scale of wages to be paid by the other Pittsburgh railroads for switching service will undoubtedly be the basis for adjustment of the wages to be paid for similar service by this company, and I am convinced that this company and its employees can quickly and amicably adjust any question as to wages as soon as settled by the main railroads. For this reason I respectfully suggest that it is unnecessary that this company take part in any proceedings, as requested by Mr. Morrissey, and that this company will await the settlement of a general rate of wages by the principal roads and their employees.

I feel, too, that it is important that the friendly relations now existing between this company and its employees should not be imperiled by either side becoming active parties to the controversy.

Yours, respectfully,

President.

-------- Railroad Co.,

July 13, 1899.

Hon. Martin A. Knapp,
Chairman, Interstate Commerce Commission,
Washington, D. C.

Dear Sir: Replying to your valued favor of July 1, would advise that, after careful consideration, we do not think that this company is governed by the act of Congress referred to therein. The -------- Railroad is located entirely within the limits of the city of Pittsburgh, and while it connects with other railroads, still it performs merely a switching service between the manufactories on its lines of said railroads.
We have, however, paid the same wages as the larger railroads for like service.

Yours, respectfully,

General Manager.

After these replies had been received and the attitude of the railroad companies had been made known to the head of the Brotherhood of Railroad Trainmen, that official came on to Washington and urged the mediators to make a further effort to have the companies take up the controversy under the provisions of the act of June 1, 1898. This effort was made through a personal interview between one of the mediators and a representative of the principal road concerned, but without success; and later the following formal communication was addressed to the grand master of the trainmen:

INTERSTATE COMMERCE COMMISSION,
Washington, August 4, 1899.

Mr. P. H. Morrissey,
Grand Master Brotherhood of Railroad Trainmen,
Peoria, Ill.

Dear Sir: You are aware that copies of your application to the undersigned, under date of July 1, 1899, made in pursuance of the act of Congress approved June 1, 1898, were mailed to the presidents of the roads named therein; and you have been furnished with copies of the answers which they severally submitted in compliance with our request.

In addition to the facts thus presented, we have heard the oral statements made by you on behalf of the employees you represent, and one of us has had a personal interview with the first vice president of the Railroad Co., who explained at some length the reasons which influenced that company to take the position disclosed by its answer. While it is not within our province, under the circumstances of this case, to express any opinion as to the merits of the controversy, the facts brought to our attention indicate a situation of such gravity as to require the most careful consideration by the executive officers of the interested roads.

You will see from the answers of the companies that our offer of mediation has been declined. The friendly offices tendered by us in the manner and for the purposes contemplated by law have not been accepted. While our proffer of service has been treated with respect and courtesy, the answers and attitude of the roads are a declination of our official assistance in settling the difficulty which admittedly exists.

There was plainly no occasion for us to make further effort to induce the companies to submit the matter to arbitration, for their answers have anticipated that effort by an explicit and positive refusal to arbitrate the controversy. We believe that refusal is final, and are convinced that no influence on our part can change their determination in that regard.

Under these circumstances it is clear that our duty in the premises has been discharged, and it only remains for us to inform you that
our efforts have been unsuccessful. The employees represented by you have sought redress for the grievance asserted by them in the manner provided by the act of Congress. It is not their fault, and we believe it is not ours, that nothing has been accomplished.

Yours, very truly,

Martin A. Knapp,
Chairman, Interstate Commerce Commission.

Carroll D. Wright,
Commissioner of Labor.

The declination of the representatives of the principal roads to take the controversy up under the Erdman Act ended the efforts at mediation, but the employees did not drop the agitation for increased wages. In the next few months continued efforts to secure the increase in wages were made by the officers of the trainmen's organization through direct negotiations with the roads involved and also through the officers of representatives of the other train organizations. Upon the failure of these efforts to secure any part of their demands, a strike vote was taken on all of the roads concerned in the controversy, and shortly thereafter an increase in wages was granted by the roads and the controversy thus terminated.

SECOND CASE UNDER THE ACT.

After the failure of this attempt to utilize the provisions of the law on the part of the Brotherhood of Railroad Trainmen in June, 1899, no further effort was made to invoke the provisions either as to mediation or arbitration until the latter part of December, 1906. In that month a controversy that had arisen on the Southern Pacific Railway involving the locomotive firemen on the lines between El Paso and New Orleans reached a point where a strike was ordered to become effective at 5 o'clock on December 23. After the strike had been ordered, and only the day before it had actually become effective, the company invoked the provisions of the Erdman Act in a formal application for mediation and requested the mediators, in conformity with the provisions of the law, to place themselves in communication with the other parties to the controversy in an endeavor to bring about an amicable adjustment.

The situation had, however, reached a point where it was impossible to prevent the inauguration of a strike the following day, but as the firemen had expressed a willingness to conduct negotiations through the mediators, one of the mediators started at once for Houston, Tex., and negotiations were begun there looking to a termination of the strike and the resumption of former relations between the parties to the controversy.

The case proved a particularly difficult one, involving a question of jurisdiction between different train organizations, and it became
necessary for the other mediator to go to Chicago and conduct negotiations there between the representatives of the organizations whose interests were concerned.

The matter was finally adjusted in an agreement to submit the question in dispute to arbitration under the provisions of the law on a basis agreed to by all parties concerned and in conformity with proposals framed by the mediators.

Since that date, as the table on page 44 shows, the provisions of the act have been invoked with increasing frequency. Since 1906 there has been no case of a serious strike or of danger of a serious strike on the part of those classes of employees to whom this law is made applicable in which the provisions of this law have not been invoked.
### Table I.—Cases of Mediation and Arbitration Under Application

<table>
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<tr>
<th>Case No.</th>
<th>Date received.</th>
<th>Made by—</th>
<th>Railroads involved.</th>
<th>Approximate mileage.</th>
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<td>June 23, 1899</td>
<td>Employees</td>
<td>Pennsylvania R. R.</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pennsylvania Lines West of Pittsburgh</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Allegheny Valley R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pittsburgh &amp; Western R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pittsburgh &amp; Lake Erie R.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Union R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Monongahela Connecting R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Laughlin Iron Co.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Dec. 22, 1906</td>
<td>Company</td>
<td>Southern Pacific (Atlantic System)</td>
<td>2,350</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Atchison, Topeka &amp; Santa Fe R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Coast Lines)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Canadian Northern R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Canadian Pacific R.</td>
<td>(west of Fort William)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago &amp; Alton R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago &amp; North Western R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago, Burlington &amp; Quincy R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago Great Western R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago, Milwaukee &amp; St. Paul R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chicago, St. Paul, Minneapolis &amp; Omaha R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Colorado &amp; Southern R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Duluth, Missabe &amp; Northern R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>El Paso &amp; Southwestern System</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Fort Worth &amp; Denver City R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Great Northern R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Gulf, Colorado &amp; Santa Fe R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Houston East &amp; West Texas R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Houston &amp; Texas Central R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Illinois Central R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>International &amp; Great Northern R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Kansas City Southern R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Missouri, Kansas &amp; Texas R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Missouri Pacific System</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Minneapolis, St. Paul &amp; Sauk Ste. Marie R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Northern Pacific R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oregon Short Line R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rock Island Lines</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>St. Louis &amp; San Francisco R. R. System</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>St. Louis Southwestern R. System</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>San Antonio &amp; Aransas Pass R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>San Pedro, Los Angeles &amp; Salt Lake R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Southern Pacific (Atlantic System)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Southern Pacific (Pacific System)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Texas &amp; Pacific R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Union Pacific R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Wisconsin Central R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yazoo &amp; Mississippi Valley R. R.</td>
<td></td>
</tr>
</tbody>
</table>

1 Not reported.
2 Mediation declined by the companies; see p. 11.
3 The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen, also includes in its membership hostlers and a considerable number of engineers.
4 There were no mediation proceedings in this case, as the parties to the controversy agreed upon an arbitration under the provisions of the act without attempting mediation. For further particulars see Table II, p. 56.

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Federal Reserve Bank of St. Louis
### MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES.

#### THE ERDMAN ACT, JUNE 1, 1898, TO DECEMBER 31, 1911.

<table>
<thead>
<tr>
<th>Employees involved.</th>
<th>Approximate number</th>
<th>Represented by—</th>
<th>Date mediation conferences began.</th>
<th>Place of mediation conferences.</th>
<th>Settled by—</th>
<th>Date mediation agreement was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Switchmen</strong></td>
<td>1,200</td>
<td>(Brotherhood of Railroad Trainmen. )</td>
<td>(?)</td>
<td>(?)</td>
<td>(?)</td>
<td>(?)</td>
</tr>
<tr>
<td><strong>Firemen and enginemen</strong></td>
<td>600</td>
<td>(Brotherhood of Locomotive Firemen and Enginemen. Order of Railroad Telegraphers. )</td>
<td>Dec. 27, 1906</td>
<td>Houston, Tex.</td>
<td>Jan. 7, 1907</td>
<td>(?)</td>
</tr>
<tr>
<td><strong>Telegraphers</strong></td>
<td>1,250</td>
<td>(Brotherhood of Locomotive Firemen and Enginemen. Order of Railroad Telegraphers. )</td>
<td>Jan. 5, 1907</td>
<td>Chicago, Ill.</td>
<td>(?)</td>
<td>(?)</td>
</tr>
<tr>
<td><strong>Conductors...</strong></td>
<td>42,500</td>
<td>Order of Railway Conductors. Brotherhood of Railroad Trainmen.</td>
<td>Mar. 30, 1907</td>
<td>Chicago, Ill.</td>
<td>Mediation...</td>
<td>Apr. 4, 1907</td>
</tr>
<tr>
<td><strong>Switchmen</strong></td>
<td>1,200</td>
<td>(Brotherhood of Railroad Trainmen. )</td>
<td>May 5, 1907</td>
<td>Denver, Colo.</td>
<td>Mediation...</td>
<td>May 17, 1907</td>
</tr>
<tr>
<td><strong>Engineers...</strong></td>
<td>1,150</td>
<td>(Brotherhood of Locomotive Engineers. )</td>
<td>Sept. 20, 1907</td>
<td>St. Louis, Mo.</td>
<td>Mediation...</td>
<td>Oct. 1, 1907</td>
</tr>
<tr>
<td><strong>Firemen and enginemen</strong></td>
<td>1,300</td>
<td>(Brotherhood of Locomotive Firemen and Enginemen. )</td>
<td>Nov. 26, 1907</td>
<td>do</td>
<td>do</td>
<td>Nov. 27, 1907</td>
</tr>
</tbody>
</table>

*In this case a strike of switchmen in the yards of the Colorado & Southern Ry. Co. occurred in the first place. The switchmen involved were members of the Brotherhood of Railroad Trainmen, and two weeks after the strike had begun the trainmen were called out in support of the strike of the switchmen. When the strike of the trainmen had been ordered the company applied for the mediation of the case so far as it concerned the trainmen. Before a reply had been received the trainmen had gone on strike. The mediators did not meet either of the parties, but were in telegraphic communication with them for a day or more, and at the expiration of this time the parties agreed to an arbitration outside of the provisions of the Erdman Act.*
TABLE I.—CASES OF MEDIATION AND ARBITRATION UNDER APPLICATION.

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date received.</th>
<th>Made by—</th>
<th>Railroads involved.</th>
<th>Approximate mileage.</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Feb. 25, 1908</td>
<td>Company</td>
<td>Southern Ry.</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Feb. 27, 1908</td>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Atlanta &amp; West Point R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Atlantic Coast Line R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Georgia R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Louisville &amp; Nashville R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mobile &amp; Ohio R. R.</td>
<td>11,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Nashville, Chattanooga &amp; St. Louis R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Western Ry. of Alabama</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Alabama Great Southern R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cincinnati, New Orleans &amp; Texas Pacific R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Georgia Southern &amp; Florida R.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Mar. 2, 1908</td>
<td>do.</td>
<td></td>
<td>1,050</td>
</tr>
<tr>
<td>12</td>
<td>Mar. 14, 1908</td>
<td>do.</td>
<td>Chicago Great Western Ry.</td>
<td>1,350</td>
</tr>
<tr>
<td>13</td>
<td>July 9, 1908</td>
<td>Company and employees jointly.</td>
<td>Chicago, Rock Island &amp; Pacific Ry.</td>
<td>8,000</td>
</tr>
<tr>
<td>14</td>
<td>Nov. 19, 1908</td>
<td>do.</td>
<td>Missouri, Kansas &amp; Texas Ry.</td>
<td>3,050</td>
</tr>
<tr>
<td>15</td>
<td>Nov. 23, 1908</td>
<td>Employees</td>
<td>Pennsylvania Lines West of Pittsburgh</td>
<td>2,900</td>
</tr>
</tbody>
</table>

1 The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen also includes in its membership hostlers and a considerable number of engineers.
2 For explanation of inclusion of these employees, see p. 25.
3 Application was made and mediation proceedings were deferred by agreement pending settlement of controversy in case 9. See pp. 22-25.
4 The application for mediation in the Chicago Great Western case, signed jointly by the representatives of the engineers, firemen, conductors, trainmen, and switchmen, was received during the mediation proceedings with the Southern Railway. The mediators wired the receivers asking that the matters be left in abeyance until the negotiations growing out of the application in the cases immediately preceding
THE ERDMAN ACT, JUNE 1, 1898, TO DECEMBER 31, 1911—Continued.

<table>
<thead>
<tr>
<th>Employees involved</th>
<th>Date mediation conferences began</th>
<th>Place of mediation conferences</th>
<th>Settled by</th>
<th>Date mediation agreement was reached</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Engineers</strong>... Firemen and enginemen¹</td>
<td>Brother of Locomotive Engineers. Brother of Locomotive Firemen and Enginemen.</td>
<td>Order of Railway Conductor. Brother of Railroad Trainmen.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>(5,350)</td>
<td>(5,350)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td><strong>Conductors...</strong> Switchmen... Telegraphers</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>3,300</td>
<td>3,300</td>
<td>3,300</td>
<td>3,300</td>
</tr>
<tr>
<td><strong>Machinists... Blacksmiths. Boiler makers.</strong> Carmen .......... Sheet metal workers. Maintenance of way employees.</td>
<td>Brother of Locomotive Engineers.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>2,150</td>
<td>2,150</td>
<td>2,150</td>
<td>2,150</td>
</tr>
<tr>
<td><strong>Telegraphers</strong></td>
<td>Order of Railroad Telegraphers.</td>
<td>Chicago, Ill... Washington, D. C.</td>
<td>Mediation... Aug. 15,1908</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
</tr>
<tr>
<td><strong>Engineers...</strong> Firemen and enginemen¹</td>
<td>Brother of Locomotive Engineers. Brother of Locomotive Firemen and Enginemen.</td>
<td>Order of Railway Conductor. Brother of Railroad Trainmen.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>(2,350)</td>
<td>(2,350)</td>
<td>(2,350)</td>
<td>(2,350)</td>
</tr>
<tr>
<td><strong>Conductors...</strong> Trainmen... Switchmen</td>
<td>Order of Railroad Trainmen.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>1,500</td>
<td>1,500</td>
<td>1,500</td>
<td>1,500</td>
</tr>
<tr>
<td><strong>Engineers...</strong></td>
<td>Brother of Locomotive Engineers. Brother of Locomotive Firemen and Enginemen.</td>
<td>Order of Railway Conductor. Brother of Railroad Trainmen.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>2,150</td>
<td>2,150</td>
<td>2,150</td>
<td>2,150</td>
</tr>
</tbody>
</table>

(cases 9, 10, and 11) were concluded, and the receivers replied, accepting the offer of mediation and agreeing to let the controversy remain in statu quo until such time as it could be taken up by mediation. The employees' committee thereupon returned home to await the convenience of the mediators. The controversy had arisen over a new schedule which the receivers had proposed putting into effect in place of the existing schedule, some of which changes the men considered would work a reduction in their earnings. Following the settlement of the Southern Ry. case and before any mediation proceedings were begun, the receivers notified the mediators that they had withdrawn the proposed schedule and had notified the employees, thus disposing of the case.
Table I.—Cases of mediation and arbitration under application.

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date received</th>
<th>Made by—</th>
<th>Name</th>
<th>Approximate mileage</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Feb. 19, 1909</td>
<td>Employees</td>
<td>Pennsylvania R. R. (lines east of Pittsburgh)</td>
<td>5,300</td>
</tr>
<tr>
<td>18</td>
<td>Mar. 1, 1909</td>
<td>do.</td>
<td>Pennsylvania Lines (east and west)</td>
<td>8,200</td>
</tr>
<tr>
<td>19</td>
<td>Mar. 12, 1909</td>
<td>Company</td>
<td>Texas &amp; Pacific Ry</td>
<td>1,900</td>
</tr>
<tr>
<td>20</td>
<td>May 22, 1909</td>
<td>do.</td>
<td>Georgia R. R</td>
<td>300</td>
</tr>
<tr>
<td>21</td>
<td>July 15, 1909</td>
<td>Employees</td>
<td>Huntington &amp; Broad Top Mountain R. R. &amp; Coal Co</td>
<td>70</td>
</tr>
<tr>
<td>23</td>
<td>Nov. 24, 1909</td>
<td>Company and employees jointly</td>
<td>Minneapolis, St. Paul &amp; Sault Ste. Marie Ry</td>
<td>13,000</td>
</tr>
<tr>
<td>24</td>
<td>Dec. 8, 1909</td>
<td>do.</td>
<td>Chicago, Burlington &amp; Quincy R. R.</td>
<td>6,150</td>
</tr>
<tr>
<td>25</td>
<td>Jan. 6, 1910</td>
<td>do.</td>
<td>Chicago Great Western Ry (system except St. Paul &amp; Minneapolis)</td>
<td>14,450</td>
</tr>
<tr>
<td>26</td>
<td>Jan. 8, 1910</td>
<td>do.</td>
<td>Chicago Terminal Transfer R. R. (Chicago smelting district)</td>
<td>2,300</td>
</tr>
<tr>
<td>27</td>
<td>Jan. 22, 1910</td>
<td>do.</td>
<td>Cleveland, Cincinnati, Chicago &amp; St. Louis Ry</td>
<td>900</td>
</tr>
</tbody>
</table>

1 In this case mediation conferences were actually begun, but the representatives of the road maintained that no condition had arisen threatening an interruption to traffic and that the conditions presumed by the law did not therefore exist. The conference developed the fact that no strike vote had been taken and that the controversy, as a matter of fact, had not reached the stage contemplated by the law in which there was any serious danger of interruption to traffic. The mediation proceedings were therefore dropped.  
2 In this case the mediators wired the road notifying it of the receipt of the application for mediation, and the manager of the road replied that there was no strike threatened on the road and therefore no occasion for invoking the provisions of the Federal act. The mediators wired the representatives of the men of the reply made by the company and no further action was taken.  
3 The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen, also includes in its membership hostlers and a considerable number of engineers.  
4 In this case, upon receipt of the application, the matter was taken up by telegraphic correspondence with the representatives of the employees involved. This correspondence developed that the respective
<table>
<thead>
<tr>
<th>Employees involved.</th>
<th>Approximate number</th>
<th>Represented by—</th>
<th>Date mediation conferences began.</th>
<th>Place of mediation conferences.</th>
<th>Settled by—</th>
<th>Date mediation agreement was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telegraphers</td>
<td>3,000</td>
<td>Order of Railroad Telegraphers.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Firemen and engineers</td>
<td>7,300</td>
<td>Brotherhood of Locomotive Firemen and Engineemen.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Engineers</td>
<td>300</td>
<td>Brotherhood of Locomotive Engineemen.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Firemen and engineemen</td>
<td>95</td>
<td>Brotherhood of Locomotive Firemen and Engineemen.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Conductors</td>
<td>10</td>
<td>Order of Railway Conductors.</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Switchmen</td>
<td>2,000</td>
<td>Switchmen’s Union of North America.</td>
<td>Nov 29, 1909</td>
<td>St. Paul, Minn</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Telegraphers</td>
<td>1,050</td>
<td>Order of Railroad Telegraphers.</td>
<td>Jan. 24, 1910</td>
<td>Cincinnati, Ohio</td>
<td>do</td>
<td>Jan. 29, 1910</td>
</tr>
<tr>
<td>....do....</td>
<td>400</td>
<td>Order of Railroad Telegraphers.</td>
<td>Jan. 27, 1910</td>
<td>do</td>
<td>do</td>
<td>Feb. 17, 1910</td>
</tr>
</tbody>
</table>

Parties to the controversy had not exhausted their own efforts to reach a settlement, and the mediators therefore recommended that the two parties resume negotiations and make a further effort to reach an agreement. This course was adopted, and the case was not again brought to the attention of the mediators.

*In this case the application for mediation was made after a strike had actually been inaugurated, and the road involved declined to accept the offer of mediation.

*In this case mediation proceedings were actually begun, but it developed at the opening conference that a strike order had already been issued, and the strike was to become effective at 5 o’clock the following day. As the representatives of the employees were unwilling either to postpone the time fixed for the inauguration of the strike or to consider arbitration, negotiations were dropped. The strike began the following day. It inflicted serious losses on the roads involved, caused loss and suffering to the public, and resulted disastrously to the employees concerned and to their organization.
### Table I—Cases of Mediation and Arbitration Under Application

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date received.</th>
<th>Made by—</th>
<th>Name.</th>
<th>Railroads involved.</th>
<th>Approximate mileage.</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Mar. 3, 1910</td>
<td>Company</td>
<td></td>
<td>Baltimore &amp; Ohio R. R.</td>
<td>4,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Atchison, Topeka &amp; Santa Fe Ry.</td>
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<td></td>
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<td></td>
<td></td>
<td>Atchison, Topeka &amp; Santa Fe Ry. (Coast Lines).</td>
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<td></td>
<td></td>
<td></td>
<td>Canadian Northern Ry.</td>
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<td></td>
<td>Chicago &amp; North Western Ry.</td>
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<td>Chicago &amp; Alton R. R.</td>
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<td>Chicago, Burlington &amp; Quincy R. R.</td>
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<td></td>
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<td></td>
<td>Chicago Great Western Ry.</td>
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<td>Chicago Junction R.</td>
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<td></td>
<td>Chicago, Milwaukee &amp; St. Paul Ry.</td>
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<td></td>
<td>Chicago, Rock Island &amp; Pacific Ry.</td>
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<td></td>
<td></td>
<td>Chicago, St. Paul, Minneapolis &amp; Omaha Ry.</td>
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<td></td>
<td>Chicago Terminal Transfer E. R.</td>
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<td></td>
<td>Chicago &amp; Western Indiana R. R. and Belt Ry. of Chicago.</td>
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<td>Colorado &amp; Southern Ry.</td>
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<td>Davenport, Rock Island &amp; Northwestern Ry.</td>
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<td></td>
<td></td>
<td>Dubuque, South Shore &amp; Atlantic Ry.</td>
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<td></td>
<td>El Paso &amp; Southwestern System</td>
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<td>Eastern Ry of New Mexico</td>
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<td>Southern Kansas Ry. of Texas.</td>
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<td>Fort Worth &amp; Denver City Ry.</td>
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<td>Great Northern Ry.</td>
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<td></td>
<td>Gulf, Colorado &amp; Santa Fe Ry.</td>
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<td>Houston, East &amp; West Texas Ry.</td>
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<td></td>
<td>Houston &amp; Texas Central R. R.</td>
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<td>Illinois Central R. R.</td>
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<td>Indianapolis Southern R. R.</td>
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<td>Indiana Union &amp; Orient Ry.</td>
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<td></td>
<td>Kansas City Southern Ry.</td>
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<td>Kansas City, Missouri &amp; Pacific Ry.</td>
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<td></td>
<td>Missouri Pacific Ry.</td>
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<td></td>
<td>Minnesota Transfer Ry.</td>
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<td></td>
<td>Mineral Range R. R.</td>
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<td></td>
<td>Northern Pacific Ry.</td>
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<td>Oregon Short Line R. R.</td>
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<td></td>
<td></td>
<td>Peoria &amp; Pekin Union Ry.</td>
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<td>Quincy, Omaha &amp; Kansas City R. R.</td>
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<td>San Pedro, Los Angeles &amp; Salt Lake R. R.</td>
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<td>St. Joseph &amp; Grand Island Ry.</td>
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<td>St. Joseph Terminal R. R.</td>
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<td>St. Louis &amp; San Francisco R. R.</td>
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<td></td>
<td>St. Louis, Brownsville &amp; Mexico Ry.</td>
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<td>Southern Pacific (Pacific System)</td>
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<td>Trinity &amp; Brazos Valley Ry.</td>
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<td></td>
<td>Union Pacific R. R.</td>
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<td></td>
<td></td>
<td>Wichita Valley Ry.</td>
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<tr>
<td>29</td>
<td>Mar. 15, 1910</td>
<td>do</td>
<td></td>
<td>Minnesota Transfer Ry.</td>
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<td>Mineral Range R. R.</td>
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<td>Northern Pacific Ry.</td>
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<td>Oregon Short Line R. R.</td>
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<td></td>
<td>Peoria &amp; Pekin Union Ry.</td>
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<td>Quincy, Omaha &amp; Kansas City R. R.</td>
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<td>San Pedro, Los Angeles &amp; Salt Lake R. R.</td>
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<td>St. Joseph &amp; Grand Island Ry.</td>
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<td>St. Joseph Terminal R. R.</td>
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<td>St. Louis &amp; San Francisco R. R.</td>
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<td>St. Louis, Brownsville &amp; Mexico Ry.</td>
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<td>Southern Pacific (Pacific System)</td>
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<td>Southern Pacific (Atlantic System)</td>
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<td>Trinity &amp; Brazos Valley Ry.</td>
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<td>Union Pacific R. R.</td>
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<td></td>
<td></td>
<td>Wichita Valley Ry.</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Apr. 6, 1910</td>
<td>do</td>
<td></td>
<td>Southern Ry.</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Apr. 23, 1910</td>
<td>Company and employees jointly.</td>
<td></td>
<td>Southern Pacific (Atlantic System)</td>
<td>2,350</td>
</tr>
<tr>
<td>32</td>
<td>Apr. 28, 1910</td>
<td>do</td>
<td></td>
<td>Seaboard Air Line Ry.</td>
<td>3,000</td>
</tr>
</tbody>
</table>

1 The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen, also includes in its membership hostlers and a considerable number of engineers.

* It will be noted that two other applications involving the telegraphers had been received during the preceding three weeks, and it was not possible to take up the Seaboard Air Line case until May 5. Mediation developed that the matters at issue between the telegraphers and the Seaboard Air Line were similar to the questions in the controversy between the Southern Railway and its telegraphers. Conferences were
MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES. 51

THE ERDMAN ACT, JUNE 1, 1898, TO DECEMBER 31, 1911—Continued.

<table>
<thead>
<tr>
<th>Employees involved.</th>
<th>Date mediation conferences began.</th>
<th>Place of mediation conferences.</th>
<th>Settled by—</th>
<th>Date mediation agreement was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class.</td>
<td>Represented by.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conductor, Switchmen</td>
<td>Order of Railway Conductors,</td>
<td>Mar. 4, 1910 Baltimore, Md.</td>
<td>Mediation</td>
<td>Mar. 11, 1910</td>
</tr>
<tr>
<td></td>
<td>Brotherhood of Railroad Trainmen.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Firemen and Engineers</td>
<td>Brotherhood of Locomotive Firemen and Enginemen</td>
<td>Mar. 17, 1910 Chicago, Ill.</td>
<td>Mediation and arbitration</td>
<td>Mar. 23, 1910</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>May 27, 1910 Houston, Tex.</td>
<td>arbitration</td>
<td>July 15, 1910</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>May 5, 1910 Washington, D.C.</td>
<td>(T)</td>
<td>(T)</td>
</tr>
</tbody>
</table>

Postponed in the Seaboard Air Line case until an award was handed down on these differences between the Southern Railway and its telegraphers, which had been passed on to arbitration. After such arbitration award had been handed down, the mediators suggested that inasmuch as similar points at issue had been settled partly through mediation and partly through arbitration that the Seaboard Air Line and its telegraphers renew negotiations directly. This was done and an amicable adjustment was reached.
**Table I.—Cases of Mediation and Arbitration Under the Act.**

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date received</th>
<th>Made by—</th>
<th>Railroad involved</th>
<th>Approximate mileage</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>May 31, 1910</td>
<td>Company and employees jointly.</td>
<td>Missouri Pacific System</td>
<td>7,200</td>
</tr>
<tr>
<td>34</td>
<td>June 16, 1910</td>
<td>Employees</td>
<td>Gulf &amp; Ship Island R. R.</td>
<td>300</td>
</tr>
<tr>
<td>36</td>
<td>July 16, 1910</td>
<td>Company and employees jointly.</td>
<td>Virginian Ry.</td>
<td>470</td>
</tr>
<tr>
<td>37</td>
<td>July 18, 1910</td>
<td>Company</td>
<td>Central Vermont Ry.</td>
<td>400</td>
</tr>
<tr>
<td>38</td>
<td>Sept. 20, 1910</td>
<td>Employees</td>
<td>Birmingham Southern R. R.</td>
<td>30</td>
</tr>
</tbody>
</table>

*There were no mediation proceedings in this case, as the parties to the controversy agreed upon an arbitration under the provisions of the act without attempting mediation. For further particulars, see Table II, p. 58.*

*In this case the application for mediation was made after a strike had actually been inaugurated, and the road involved declined to accept the offer of mediation.*

*In this case the application for mediation was made on the day on which the strike was actually to occur. The strike on the Central Vermont was only a part of the larger strike involving the entire Grand Trunk System. The mediators notified the representatives of the employees of the application for mediation made by the road. As the application for mediation involved only a part of the system involved in*
MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES. 53

THE ERDMAN ACT, JUNE 1, 1898, TO DECEMBER 31, 1911—Continued.

<table>
<thead>
<tr>
<th>Employees involved.</th>
<th>Date mediation conferences began.</th>
<th>Place of mediation conferences.</th>
<th>Settled by—</th>
<th>Date mediation agreement was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class</td>
<td>Approximate number.</td>
<td>Represented by—</td>
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<td>(1)</td>
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<td>---------------------</td>
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<td>-----</td>
</tr>
<tr>
<td>Telegraphers.</td>
<td>1,000</td>
<td>Order of Railroad Telegraphers.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>do</td>
<td>50</td>
<td>do</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Conductor...</td>
<td>12,600</td>
<td>Order of Railroad Conductors. Brotherhood of Railroad Trainmen.</td>
<td>June 16, 1910</td>
<td>Washington, D.C.</td>
</tr>
<tr>
<td>Switchmen...</td>
<td></td>
<td>do</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Engineers...</td>
<td>75</td>
<td>Brotherhood of Locomotive Engineers.</td>
<td>July 19, 1910</td>
<td>Washington, D.C.</td>
</tr>
<tr>
<td>Conductor...</td>
<td>150</td>
<td>Order of Railway Conductors. Brotherhood of Railroad Trainmen.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Trainmen...</td>
<td></td>
<td>do</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Engineers...</td>
<td>37</td>
<td>Brotherhood of Locomotive Engineers.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Firemen and enginen</td>
<td>570</td>
<td>Brotherhood of Locomotive Firemen and Enginenmen.</td>
<td>(1)</td>
<td>(1)</td>
</tr>
</tbody>
</table>

the threatened strike, the employees were unwilling to separate the case and postpone the inauguration of the strike on the Central Vermont. As the larger part of the system involved was in Canada and as obviously no settlement could be reached except one applying to the entire system, the mediators took no further action in the case.

* In this instance the road replied to the offer of mediation that there was no danger of any serious interruption to traffic, and the following day the representatives of the employees wired that the case had been amicably adjusted.

The Brotherhood of Locomotive Firemen and Enginenmen, while primarily an organization of firemen, also includes in its membership hostlers and a considerable number of engineers.
### Table I.—Cases of Mediation and Arbitration Under

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date received.</th>
<th>Made by—</th>
<th>Name.</th>
<th>Approximate mileage.</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Dec. 15, 1910</td>
<td>Company</td>
<td>Barre received.</td>
<td>Made by—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>International &amp; Great Northern R. R.</td>
<td>Kansas City Southern R. R.</td>
<td>115,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kansas City Terminal R. R.</td>
<td>Louisiana Western R. R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Missouri Transfer R.</td>
<td>Missouri Pacific System</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Morgan's Louisiana &amp; Texas R. R.</td>
<td>New Orleans, Texas &amp; Mexican R. R.</td>
<td></td>
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<td></td>
<td></td>
<td>Northern Pacific R. R.</td>
<td>Oregon &amp; Washington R. R.</td>
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<tr>
<td></td>
<td></td>
<td>Quincy, Omaha &amp; Kansas City R. R.</td>
<td>Rock Island Lines</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>St. Joseph &amp; Grand Island R.</td>
<td>St. Joseph Terminal R. R.</td>
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<td></td>
<td></td>
<td>St. Louis &amp; San Francisco R. R.</td>
<td>St. Louis, Brownsville &amp; Mexican R. R.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>St. Louis Southwestern R.</td>
<td>San Antonio &amp; Aransas Pass R.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>San Pedro, Los Angeles &amp; Salt Lake R. R.</td>
<td>Santa Fe, Prescott &amp; Phoenix R.</td>
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<td></td>
<td></td>
<td>Southern Pacific Co.</td>
<td>Spokane, Portland &amp; Seattle R.</td>
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<td></td>
<td></td>
<td>Tacoma Eastern R. R.</td>
<td>Texas &amp; New Orleans R. R.</td>
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<td></td>
<td></td>
<td>Texas &amp; Pacific R. R.</td>
<td>Trinity &amp; Brazos Valley R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Union Pacific R. R.</td>
<td>Wichita Valley R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yazoo &amp; Mississippi Valley R. R.</td>
<td>Bennington &amp; Rio Grande R. R. System</td>
<td></td>
</tr>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cincinnati, New Orleans &amp; Texas Pacific R.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Mar. 9, 1911</td>
<td>do.</td>
<td>Coal &amp; Coke R.</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Southern R.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Apr. 1, 1911</td>
<td>Company and employees jointly.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>May 27, 1911</td>
<td>Company</td>
<td>Baltimore &amp; Ohio R. R</td>
<td>4,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Company and employees jointly.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Employees jointly.</td>
<td>[Montpelier &amp; Wells River R. R.</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Barre R. R. ]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Nov. 11, 1911</td>
<td>Employees</td>
<td>Alabama &amp; Vicksburg R.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Vicksburg, Shreveport &amp; Pacific R. Y.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Nov. 22, 1911</td>
<td>Company</td>
<td>Chesapeake &amp; Ohio R.</td>
<td>2,250</td>
</tr>
<tr>
<td>48</td>
<td>Dec. 29, 1911</td>
<td>Company and employees jointly.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen, also includes in its membership hostlers and a considerable number of engineers.

2 When this application for mediation was received one of the mediators was in Denver, and the other in New York, on other duties and unable to leave them. Preliminary negotiations were carried on by telegraph. Several conferences were held in Washington between the dates of the application and the settlement.
MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES. 55

THE ERDMAN ACT, JUNE 1, 1898, TO DECEMBER 31, 1911—Concluded.

<table>
<thead>
<tr>
<th>Employees involved.</th>
<th>Approximate number.</th>
<th>Represented by—</th>
<th>Date mediation conferences began.</th>
<th>Place of mediation conferences.</th>
<th>Settled by—</th>
<th>Date mediation agreement was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineers...</td>
<td>24,600</td>
<td>Brotherhood of Locomotive Engineers.</td>
<td>Dec. 17, 1910</td>
<td>Chicago, Ill.</td>
<td>Mediation...</td>
<td>Dec. 24, 1910</td>
</tr>
<tr>
<td>Firemen and engine-</td>
<td>570</td>
<td>do</td>
<td>Mar. 10, 1911</td>
<td>Denver, Colo.</td>
<td>do</td>
<td>Mar. 22, 1911</td>
</tr>
<tr>
<td>Firemen and engine-</td>
<td>300</td>
<td>Brotherhood of Locomotive Firemen and Engineers.</td>
<td>(5)</td>
<td>do</td>
<td>(5)</td>
<td>Arbitration</td>
</tr>
<tr>
<td>Firemen and engine-</td>
<td>105</td>
<td>Order of Railway Conductors.</td>
<td>May 29, 1911</td>
<td>Washington, D. C.</td>
<td>do</td>
<td>June 10, 1911</td>
</tr>
<tr>
<td>Telegraphers</td>
<td>1,950</td>
<td>Order of Railroad Telegraphers.</td>
<td>(Oct. 24, 1911</td>
<td>Baltimore, Md.</td>
<td>do</td>
<td>Nov. 7, 1911</td>
</tr>
<tr>
<td>Firemen and engine-</td>
<td>38</td>
<td>Brotherhood of Locomotive Firemen and Engineers.</td>
<td>(5)</td>
<td>(5)</td>
<td>(5)</td>
<td>(5)</td>
</tr>
<tr>
<td>Firemen and engine-</td>
<td>160</td>
<td>Brotherhood of Locomotive Engineers.</td>
<td>Nov. 27, 1911</td>
<td>New Orleans, D. C.</td>
<td>do</td>
<td>Dec. 7, 1911</td>
</tr>
</tbody>
</table>

* There were no mediation proceedings in this case, as the parties to the controversy agreed upon an arbitration under the provisions of the act without attempting mediation. For further particulars, see Table II, p. 56.

* In this case the manager of the road replied that he did not consider the situation serious and believed the differences could be adjusted by further negotiations with the representatives of the employees. The representatives of the employees were so notified, and the matter was settled through further direct negotiations.
<table>
<thead>
<tr>
<th>Case No.</th>
<th>Railroad company.</th>
<th>Employees.</th>
<th>Date of agreement to arbitrate.</th>
<th>Arbitrators.</th>
<th>Occupation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Name.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J. R. Norton</td>
<td>Attorney.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J. V. Lee</td>
<td>Attorney at law.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>H. B. Perham</td>
<td>President, O. R. T.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Emory R. Johnson</td>
<td>Prof. transportation and commerce, Univ. of Pa.</td>
</tr>
<tr>
<td>20</td>
<td>Georgia R. R. . . .</td>
<td>Firemen and engine men.¹</td>
<td>May 29, 1909</td>
<td>Hilary A. Herbert</td>
<td>Attorney</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Thos. W. Hardwick</td>
<td>U. S. Representative</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>David C. Barrow</td>
<td>Chancellor, Univ. of Ga.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>John A. Newman</td>
<td>Vice Pres., O. R. T.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>B. H. Meyer</td>
<td>Chm. R. R. Com. of Wisconsin</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S. E. Heberling</td>
<td>1st vice pres. S. J. of N. A.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Stephen S. Gregory</td>
<td>Attorney.</td>
</tr>
<tr>
<td>26</td>
<td>Cleveland, Chich­cago, &amp; St. Louis Ry.</td>
<td>Telegraphers</td>
<td>Jan. 29, 1910</td>
<td>Homer Baker</td>
<td>Gen. mqr. Q. &amp; C. route</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J. J. Dermody</td>
<td>Prof. of sociology, Cath. Univ. of America</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. J. Kerby</td>
<td>Ass't. to gen. mqr., Ill. Central R. R.</td>
</tr>
<tr>
<td>27</td>
<td>Baltimore &amp; Ohio Southwestern R. R.</td>
<td>. . . . do.</td>
<td>Feb. 17, 1910</td>
<td>Geo. H. Groce</td>
<td>Prof. of sociology, Cath. Univ. of America</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J. J. Dermody</td>
<td>Vice pres. O. R. T.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. J. Kerby</td>
<td>Ass't. gen. mqr. S. Pac. Co.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Timothy Shea</td>
<td>1st vice pres. B. L. F. &amp; R.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. L. Chambers</td>
<td>Lawyer, late member of Spanish Treaty Claims Com.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J. J. Dermody</td>
<td>Vice pres. O. R. T.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. R. Vance</td>
<td>Dean, Geo. Washington Univ. Law School</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Frank J. Ryan</td>
<td>Com., Kanse Ed. of R. R. Commissioners</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. L. Chambers</td>
<td>Lawyer, late member of Spanish Treaty Claims Com.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>W. F. Hynes</td>
<td>Attorney and counselor at law</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wm. L. Chambers</td>
<td>Lawyer, late member of Spanish Treaty Claims Com.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wendell P. Stafford</td>
<td>Justice, Supreme Court, District of Columbia</td>
</tr>
</tbody>
</table>

¹ The Brotherhood of Locomotive Firemen and Enginemen, while primarily an organization of firemen also includes in its membership hostlers and a considerable number of engineers.

² The two arbitrators agreed upon a third arbitrator, but in order to make the appointment legal (five days having elapsed) he was appointed by the chairman of the Interstate Commerce Commission and the Commissioner of Labor. For further explanation, see pp. 15 and 16.
MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES.

CASIES WHERE MEDIATION WAS FIRST INVOKED AND CASES OF ARBITRATION DECEMBER 31, 1911.

<table>
<thead>
<tr>
<th>Arbitrators</th>
<th>Date chosen.</th>
<th>Date of first hearing</th>
<th>Place</th>
<th>Date of award.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers...</td>
<td>Jan. 7, 1907</td>
<td>Jan. 31, 1907</td>
<td>Houston, Tex.</td>
<td>Feb. 1, 1907</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Jan. 30, 1907</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Feb. 14, 1907</td>
<td>Mar. 16, 1907</td>
<td>San Francisco, Cal.</td>
<td>Apr. 6, 1907</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Mar. 7, 1907</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>May 29, 1909</td>
<td>June 21, 1909</td>
<td>Atlanta, Ga.</td>
<td>June 26, 1909</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>June 19, 1909</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Jan. 10, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Jan. 19, 1910</td>
<td>Mar. 4, 1910</td>
<td></td>
<td>Mar. 22, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Jan. 19, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Feb. 14, 1910</td>
<td>Mar. 7, 1910</td>
<td>Cincinnati, Ohio</td>
<td>Mar. 23, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Feb. 28, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Feb. 17, 1910</td>
<td>Mar. 14, 1910</td>
<td></td>
<td>Apr. 4, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Mar. 7, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>May 29, 1910</td>
<td>May 16, 1910</td>
<td>Chicago, Ill.</td>
<td>June 4, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>May 10, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Apr. 15, 1910</td>
<td>May 24, 1910</td>
<td>Washington, D. C.</td>
<td>June 11, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>May 18, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>May 14, 1910</td>
<td>July 6, 1910</td>
<td>St. Louis, Mo.</td>
<td>July 28, 1910</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>July 1, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Sept. 17, 1910</td>
<td>Oct. 11, 1910</td>
<td>Denver, Colo.</td>
<td>Nov. 1, 1910</td>
</tr>
<tr>
<td>Employers...</td>
<td>Oct. 6, 1910</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employers...</td>
<td>Apr. 8, 1911</td>
<td>May 8, 1911</td>
<td>Washington, D. C.</td>
<td>May 27, 1911</td>
</tr>
<tr>
<td>Chmn. I. C. C. and Com. of Labor</td>
<td>Apr. 1, 1911</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presiding Judge Commerce Court and Com. of Labor</td>
<td>May 5, 1911</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3 For details as to roads involved, see Table I, p. 48.
4 For details as to roads involved, see Table I, p. 50.
5 The two arbitrators agreed upon a third arbitrator, but in order to make the appointment legal (five days having elapsed) he was appointed by the presiding judge of the Commerce Court and the Commissioner of Labor. For further explanation, see pp. 15 and 16.
APPENDIX I.—ACTS CONCERNING MEDIATION AND ARBITRATION OF CONTROVERSIES BETWEEN CARRIERS ENGAGED IN INTERSTATE COMMERCE AND THEIR EMPLOYEES.

ACT OF JUNE 1, 1898: 30 STAT., 424.

SECTION 1. The provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or license, and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: Provided, however, That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

SEC. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which cannot be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: Provided, however, That when a controversy involves and affects the interests of two or more classes and grades of employees belonging to different labor organizations, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations; and in cases where the majority of such employees are not members of any labor organization, said employees may by a majority vote select a committee of their own number, which committee shall have the right to select the arbitrator on behalf of said employees. The two thus chosen shall select the third commissioner of arbitration; but, in the event of their failure to name such arbitrator within five days after their first meeting, the third arbitrator shall be named by the commissioners named in the preceding section. A ma-

1 For change in law as to mediators see act of March 4, 1911, p. 61, below.
MEDIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES.

A majority of said arbitrators shall be competent to make a valid and binding award under the provisions hereof. The submission shall be in writing, shall be signed by the employer and by the labor organization representing the employees, shall be filed with the railroad, and shall contain appropriate provisions by which the respective parties shall stipulate, as follows:

First. That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award, as provided in this section, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed: Provided, That no employee shall be compelled to render personal service without his consent.

Second. That the submission shall be in writing, shall be signed by the employer and by the labor organization representing the employees, shall specify the time and place of meeting of said board of arbitration, shall state the questions to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate, as follows:

1. That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award, as provided in this section, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed:

Provided, That no employee shall be compelled to render personal service without his consent.

2. That the award and the papers and proceedings, including the testimony relating thereto certified under the hands of the arbitrators and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the circuit court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Third. That the respective parties to the award shall each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit: Provided, That no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service.

Fourth. That employees dissatisfied with the award shall not by reason of such dissatisfaction quit the service of the employer before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of their intention so to quit. Nor shall the employer dissatisfied with such award dismiss any employee or employees on account of such dissatisfaction before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of his intention so to discharge.

Fifth. That no new arbitration upon the same subject between the same employer and the same class of employees shall be had until the expiration of one year if the award is not set aside as provided in section four. That as to individual employees not belonging to the labor organization or organizations which shall enter into the arbitration, the said arbitration and the award made therein shall not be binding, unless the said individual employees shall give assent in writing to become parties to said arbitration.

Sec. 4. That the award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said circuit court or on appeal therefrom.

At the expiration of ten days from the decision of the circuit court upon exceptions taken to said award, as aforesaid, judgment shall be entered in accordance with said decision unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said circuit court, judgment pursuant thereto shall thereupon be entered by said circuit court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award. But in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.
Sec. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

Sec. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of said commission.

Any agreement of arbitration which shall be entered into conforming to this act, except that it shall be executed by employees individually instead of by a labor organization as their representative, shall, when duly acknowledged as herein provided, be transmitted to the chairman of the Interstate Commerce Commission, who shall cause a notice in writing to be served upon the arbitrators, fixing a time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration; Provided, however, That the said chairman of the Interstate Commerce Commission shall decline to call a meeting of arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

Sec. 7. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency, violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid, or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages: Provided, That nothing herein contained shall be construed to prevent any employer, party to such an arbitration, from reducing the number of its or his employees whenever in its or his judgment business necessities require such reduction.

Sec. 8. That in every incorporation under the provisions of chapter five hundred and sixty-seven of the United States Statutes of eighteen hundred and eighty-five and eighteen hundred and eighty-six it must be provided in the articles of incorporation and in the constitution, rules, and by-laws that a member shall cease to be such by participating in or by instigating force or violence against persons or property during strikes, lockouts, or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations. Members of such incorporations shall not be personally liable for the acts, debts, or obligations of the corporations, nor shall such corporations be liable for the acts of members or others in violation of law; and such corporations may appear by designated representatives before the board created by this act, or in any suits or proceedings for or against such corporations or their members in any of the Federal courts.

Sec. 9. That whenever receivers appointed by Federal courts are in the possession and control of railroads, the employees upon such railroads shall have the right to be heard in such courts upon all questions affecting the terms and conditions of their employment, through the officers and representatives of their associations, whether incorporated or unincorporated, and no reduction of wages shall be made by such receivers without the authority of the court therefor upon notice to such employees, said notice to be not less than twenty days before the hearing upon the receivers' petition or application, and to be

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posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

Sec. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer’s contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

Sec. 11. That each member of said board of arbitration shall receive a compensation of ten dollars per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed ten thousand dollars in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

Sec. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property of persons and their employees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

ACT OF MARCH 4, 1911: 36 STAT. 1397.

The President of the United States from and after the passage of this act is authorized to designate from time to time any member of the Interstate Commerce Commission or of the Court of Commerce to exercise the powers conferred and the duties imposed upon the chairman of the Interstate Commerce Commission by the provisions of the “Act concerning carriers engaged in interstate commerce and their employees,” approved June first, eighteen hundred and ninety-eight; and the member so designated, during the period for which he is designated, shall have the powers now conferred by said act on the chairman of the Interstate Commerce Commission.

APPENDIX II.—ACT CONCERNING ARBITRATION OF CONTROVERSIES BETWEEN CARRIERS ENGAGED IN INTERSTATE COMMERCE AND THEIR EMPLOYEES.

ACT OF OCTOBER 1, 1888: ACTS OF 1887–88.—CHAPTER 1063.

SECTION 1. Whenever differences or controversies arise between railroad or other transportation companies engaged in the transportation of property or passengers between two or more States of the United States, between a Territory and State, within the Territories of the United States, or within the District of Columbia, and the employees of said railroad companies, which differences or controversies may hinder, impede, obstruct, interrupt, or affect such transportation of property or passengers, if, upon the written proposition of
either party to the controversy to submit their differences to arbitration, the
other party shall accept the proposition, then and in such event the railroad
company is hereby authorized to select and appoint one person, and such em­ployee or employees, as the case may be, to select and appoint another person,
and the two persons, thus selected and appointed, shall select a third person, all
three of whom shall be citizens of the United States and wholly impartial and
disinterested in respect to such differences or controversies; and the three
persons thus selected and appointed shall be, and they are hereby, created and
constituted a board of arbitration, with the duties, powers, and privileges
hereinafter set forth.

Sec. 2. The board of arbitration provided for in the first section of this act
shall possess all the powers and authority in respect to administering oaths,
subpoena witnesses and compelling their attendance, preserving order during
the sittings of the board, and requiring the production of papers and writings
relating alone to the subject under investigation now possessed and belonging
to the United States commissioners appointed by the circuit court of the United
States; but in no case shall any witness be compelled to disclose the secrets or
produce the records or proceedings of any labor organization of which he may
be an officer or member; and said board of arbitration may appoint a clerk
and employ a stenographer, and prescribe all reasonable rules and regulations,
not inconsistent with the provisions of this act, looking to the speedy advance­ment
of the differences and controversies submitted to them to a conclusion and
determination. Each of said arbitrators shall take an oath to honestly, fairly,
and faithfully perform his duties, and that he is not personally interested in
the subject-matter in controversy, which oath may be administered by any State
or Territorial officer authorized to administer oaths. The third person so
selected and appointed as aforesaid shall be president of said board; any order,
finding, conclusion, or award made by a majority of such arbitrators shall be
of the same force and effect as if all three of such arbitrators concurred
therein or united in making the same.

Sec. 3. It shall be the duty of the said board of arbitration, immediately
upon their selection, to organize at the nearest practicable point to the place
of the origin of the difficulty or controversy, and to hear and determine the
matters of difference which may be submitted to them in writing by all the
parties, giving them full opportunity to be heard on oath, in person and by
witnesses, and also granting them the right to be represented by counsel; and
after concluding its investigations said board shall publicly announce its
decision, which, with the findings of fact upon which it is based, shall be re­duced
to writing and signed by the arbitrators concurring therein, and, to­gether
with the testimony taken in the case, shall be filed with the Commissi­oner
of Labor of the United States, who shall make such decision public as
soon as the same shall have been received by him.

Sec. 4. It shall be the right of any employees engaged in the controversy to
appoint, by designation in writing, one or more persons to act for them in the
selection of an arbitrator to represent them upon the board of arbitration.

Sec. 5. Each member of said tribunal of arbitration shall receive a compensa­tion
of ten dollars a day for the time actually employed. That the clerk ap­pointed
by said tribunal of arbitration shall receive the same fees and compensa­tion
as clerks of United States circuit courts and district courts receive for
like services. The stenographer shall receive as full compensation for his serv­ices
ten cents for each folio of an hundred words of testimony taken and reduced
to writing before said arbitrators. United States marshals or other persons
serving the process of said tribunal of arbitration shall receive the same fees and compensation for such services as they would receive for like services
upon process issued by United States commissioners. Witnesses attending be­fore
said tribunal of arbitration shall receive the same fees as witnesses attending
before United States commissioners. All of said fees and compensation
shall be payable by the United States in like manner as fees and compensa­tion
are payable in criminal causes under existing laws: Provided, That
the said tribunal of arbitration shall have power to limit the number of wit­nesses
in each case where fees shall be paid by the United States: And pro­vided further, That the fees and compensation of the arbitrators, clerks, ste­nographers, marshals, and others for service of process, and witnesses under
this act shall be examined and certified by the United States district judge
of the district in which the arbitration is held before they are presented to the
accounting officers of the Treasury Department for settlement, and shall then
be subject to the provisions of section eight hundred and forty-six of the Revised Statutes of the United States; and a sufficient sum of money to pay all expenses under this act and to carry the same into effect is hereby appropriated out of any money in the Treasury not otherwise appropriated. And provided likewise, Not more than five thousand dollars shall be expended in defraying the costs of any single investigation by the commission hereinafter provided for.

Sec. 6. The President may select two commissioners, one of whom at least shall be a resident of the State or Territory in which the controversy arises, who, together with the Commissioner of Labor, shall constitute a temporary commission for the purpose of examining the causes of the controversy, the conditions accompanying, and the best means for adjusting it; the result of which examination shall be immediately reported to the President and Congress, and on the rendering of such report the services of the two commissioners shall cease. The services of the commission, to be ordered at the time by the President and constituted as herein provided, may be tendered by the President for the purpose of settling a controversy such as contemplated, either upon his own motion, or upon the application of one of the parties to the controversy, or upon the application of the executive of the State.

Sec. 7. The commissioners provided in the preceding section shall be entitled to receive ten dollars each per day for each day's service rendered, and the expenses absolutely incurred in the performance of their duties; and the expenses of the Commissioner of Labor, acting as one of the commission, shall also be reimbursed to him. Such compensation and expenses shall be paid by the Treasurer of the United States, on proper vouchers, certified to by the Commissioner of Labor and approved by the Secretary of the Interior.

Sec. 8. Upon the direction of the President, as hereinbefore provided, the commission shall visit the locality of the pending dispute, and shall have all the powers and authority given in section 2, to a board of arbitration, and shall make careful inquiry into the cause thereof, hear all persons interested therein who may come before it, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust such dispute, and make a written decision thereof. This decision shall at once be made public, shall be recorded upon proper books of record to be kept in the office of the Commissioner of Labor, who shall cause a copy thereof to be filed with the Secretary of the State or Territory, or States or Territories, in which the controversy exists.

Sec. 9. In each case the commissioners who may be selected as provided shall, before entering upon their duties, be sworn to the faithful discharge thereof. The Commissioner of Labor shall be chairman ex officio of the commission, and may appoint one or more clerks or stenographers to act in each controversy only, which clerks or stenographers shall be compensated at a rate not exceeding six dollars per day each, and actual expenses incurred shall be reimbursed.

Sec. 10. The Commissioner of Labor shall, as soon as possible after the passage of this act, establish such rules of procedure as shall be approved by the President; but the commission shall permit each party to a controversy to appear in person or by counsel, and to examine and cross-examine witnesses. All its proceedings shall be transacted in public, except when in consultation for the purpose of deciding upon the evidence and arguments laid before it. The chairman of the commission is hereby authorized to administer oaths to witnesses in all investigations conducted by the commission, and such witnesses shall be subpoenaed in the same manner as witnesses are subpoenaed to appear before United States courts and commissioners, and they shall each receive the same fees as witnesses attending before United States commissioners: Provided, That said temporary board of commissioners shall have the power to limit the number of witnesses in each case where fees shall be paid by the United States.

Sec. 11. All fees, expenses, and compensation of this commission shall be paid as hereinbefore provided in section five of this act.
CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT OF 1907.

In Bulletin of the Bureau of Labor No. 76, May, 1908, and again in Bulletin No. 86, January, 1910, the operation of the Canadian Industrial Disputes Act was reviewed, and the purpose, administration, and results of the law and the sentiment toward it were discussed in detail. The purpose of the present article is to bring down to as near a date as practicable the history of this act, in order that a study of the experience under the act may be based upon the largest possible amount of data. The facts covering the entire operation of the act are especially desirable here in order that they may be available for comparison with the record of mediation and arbitration proceedings under the Erdman Act in the United States, presented elsewhere in this Bulletin, and with the other studies of conciliation and arbitration as existing in Great Britain and in some of the continental countries.

The details of the Canadian act and the methods of its application have been fully discussed in the two previous articles which have been devoted to the subject. It will be sufficient for the purposes of this article to give a brief description of the act and its method of operation.1

The act applies to all public utilities, including municipal service corporations, transportation companies of all kinds, and occupations (like stevedoring) subsidiary to transportation, and also to coal mines and to metal mines. In these industries and occupations it is unlawful for employers to lock out their workmen or for employees to strike until an investigation of the causes of the dispute has been made by a government board appointed for this particular case and the board's report has been published. After the investigation is completed and the report made, either party may refuse to accept the findings and start a lockout or a strike. The investigating board usually tries by conciliation to bring the parties to an agreement, so that the functions of the board considerably exceed those of a body appointed solely to procure information.

The law does not aim at compulsory arbitration or to force men to work against their will after all chance of an amicable settlement has disappeared. Neither employer nor employee is compelled to become party to a bargain he does not voluntarily accept. The purpose of the act is limited to discouraging strikes and lockouts in

1 This description is taken in part from Bulletin of the Bureau of Labor No. 86, and in part from the Fourth Report of the Registrar of Boards of Conciliation and Investigation of the Proceedings under the Industrial Disputes Investigation Act, 1907. Ottawa, 1911.
industries that serve immediately the entire public and to prevent­ing the cessation of such industries through the arbitrary or unwar­ranted acts of either employers or workmen. It seeks to enforce
the right of the people who use railways and burn coal, for instance,
to know on bow just grounds, in case of an industrial dispute, they
are deprived of so necessary a service or commodity.

The procedure and machinery for accomplishing this end are as
follows: In the industries in question any change in working condi­tions affecting hours and wages, whether demanded by employers
or workers, must be preceded by 30 days' notice. If such a contem­plated change, or if any other point at issue between the parties,
threatens to end in a strike or a lockout, either party may apply to
the Dominion Labor Department for a board of conciliation and
investigation.

Application forms are supplied by the Department of Labor, but
it is not necessary that applications be made on these forms. The
application must be, however, accompanied by a statement setting
forth (1) the parties to the dispute; (2) the nature and cause of the
dispute, including all claims and demands made by either party on
the other to which exception is taken; (3) an approximate estimate
of the number of persons affected; and (4) the efforts made by the
parties themselves to adjust the dispute. The law requires, further,
that the application should be accompanied by a "statutory declara­tion setting forth that, failing an adjustment of the dispute or a
reference thereof by the minister to a board of conciliation and
investigation under the act, to the best of the knowledge and belief of
the declarant, a lockout or strike, as the case may be, will be declared,
and that the necessary authority to declare such lockout or strike has
been obtained."

This last provision was subjected to a slight modification during
the session of Parliament of 1909-10. Representations had been
made from time to time on behalf of railway men to the effect that
in obtaining the authority to declare a strike or lockout over a line
of railway several thousand miles in length much expenditure of
money and time was necessitated and that the act in this respect bore
severely on the class of labor concerned. The act was therefore
amended so as to provide that where a dispute concerned employees
in more than one Province, thus embracing, it was felt, all cases where
injustice might result from the earlier procedure, there should be an
alternative procedure permitting action to be taken upon declaration
of an authorized trade union committee that, failing adjustment, to
their best knowledge and belief, a strike will be declared.

1 During the session of 1909-10 of the Canadian Parliament the act was amended to re­quire that any such contemplated changes may not take place "until the dispute has
been finally dealt with by a board."
In order that both parties to the dispute may be made acquainted with the proceedings taken under the act at the earliest moment possible and all unnecessary delay prevented, the applicant for a board is required to send to the other party concerned a copy of the application at the time it is transmitted to the department, and the second party to the dispute is similarly required to prepare without delay a statement in reply and forward the same to the department and to the other party to the dispute.

Upon the receipt of the application the minister of labor or his deputy appoints a board of three members, one upon the recommendation of the employers, another upon the recommendation of the workers, and a chairman selected either by the first two members of the board, or, in case they fail to agree, by the Government. If the workers or the employers, either through indifference or in order to block an investigation, refuse to recommend a representative for appointment, the minister of labor selects at his discretion a suitable person to fill the place. The members of the board are paid for the time they serve and for the necessary traveling expenses incurred. The Government also provides for necessary clerical expenses and for the fees of witnesses called for either party.

Each board controls its own procedure, which varies greatly under different chairmen and in different cases. Usually the most information is obtained, and the quickest settlements are made where the board discusses informally with committees representing both sides in joint session the various points at issue without laying much stress on technical evidence. Such informal meetings are apt to reveal sentiment, air grievances, and explain misunderstandings. But some boards, on account either of the judicial training of their members or of the technical character of the points at controversy, have conducted their proceedings like a law court. If the board succeeds in bringing the parties to an agreement, it embodies the terms of this agreement in its findings. But if it is unable to end the controversy it presents a report, or majority and minority reports, describing the conditions that cause the dispute and usually recommending what appear fair terms of settlement. The report or reports are at once published by the Government, and the employers and employees involved, if unable otherwise to agree, may then resort to the last measures of industrial warfare.

The penalty for causing a lockout before the board has reported is a fine upon the employer ranging from $100 to $1,000, and the penalty for striking, under like conditions, is a fine of from $10 to $50 upon each striker. Prosecutions are brought by the aggrieved party, not by a public officer.
The Canadian act came into force March 22, 1907, and the experience under the act is now available to December 31, 1911, covering, therefore, a period of four years and nine months. During this time 121 applications for intervention under the act were made, 107 of which were by employees, 13 by employers, and 1 was a joint application. Upon these applications 109 boards were appointed to deal with labor disputes. In the following table are shown the number of applications under the act and the number of boards granted, as well as the number of strikes averted or ended and the number not averted, for each calendar year since the act came into effect:

### NUMBER OF APPLICATIONS AND OF BOARDS GRANTED UNDER THE ACT, AND OF STRIKES AVERTED AND OF STRIKES NOT AVERTED, BY CALENDAR YEARS.

<table>
<thead>
<tr>
<th></th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
<th>1910</th>
<th>1911</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of applications:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By employers:</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>By employees:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of boards granted:</td>
<td>19</td>
<td>27</td>
<td>18</td>
<td>25</td>
<td>19</td>
<td>109</td>
</tr>
<tr>
<td>By employers:</td>
<td>22</td>
<td>26</td>
<td>21</td>
<td>23</td>
<td>16</td>
<td>100</td>
</tr>
<tr>
<td>By employees:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strikes averted or ended:</td>
<td>24</td>
<td>37</td>
<td>16</td>
<td>25</td>
<td>13</td>
<td>105</td>
</tr>
<tr>
<td>By employers:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By employees:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strikes not averted or ended:</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>12</td>
</tr>
</tbody>
</table>

1 The act became law Mar. 22, 1907, so that proceedings cover 9 months only.
2 Including the dispute of December, 1908, involving the John Ritchie Co. (shoe factory), where both parties made application. Boards granted are counted as of same calendar year in which application was received. In 5 instances boards were constituted in the year following year of application.
3 Not including North Atlantic collieries, closed down in liquidation January, 1911, and 3 disputes still pending Dec. 31, 1911.

It will be seen from this table that the number of applications under the act has differed but little from year to year, the minimum being 19 applications in 1911, and the maximum 28, appearing in both 1908 and 1910.
The distribution of the boards by industries, the number of employees affected directly and indirectly, and the number of cases in which strikes resulted are shown in the following table:

<table>
<thead>
<tr>
<th>Industries</th>
<th>Boards granted</th>
<th>Employees affected directly and indirectly</th>
<th>Illegal strikes (begun before or pending investigation)</th>
<th>Legal strikes (begun after report of board)</th>
<th>Settlements without strikes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Strikers</td>
<td>Number</td>
<td>Strikers</td>
<td>Number</td>
</tr>
<tr>
<td>Coal mines</td>
<td>35</td>
<td>37,937</td>
<td>1</td>
<td>12,145</td>
<td>3</td>
</tr>
<tr>
<td>Metal mines</td>
<td>8</td>
<td>1,345</td>
<td>1</td>
<td>650</td>
<td>3</td>
</tr>
<tr>
<td>Railways</td>
<td>38</td>
<td>70,768</td>
<td>2</td>
<td>4,550</td>
<td>1</td>
</tr>
<tr>
<td>Street railways</td>
<td>8</td>
<td>5,045</td>
<td>1</td>
<td>4,550</td>
<td>1</td>
</tr>
<tr>
<td>Shipping</td>
<td>10</td>
<td>7,786</td>
<td>1</td>
<td>4,550</td>
<td>1</td>
</tr>
<tr>
<td>Telegraph and telephones</td>
<td>2</td>
<td>2,120</td>
<td>1</td>
<td>1,243</td>
<td>1</td>
</tr>
<tr>
<td>Municipal employees</td>
<td>3</td>
<td>433</td>
<td>1</td>
<td>433</td>
<td>1</td>
</tr>
<tr>
<td>Shoe factories</td>
<td>2</td>
<td>1,243</td>
<td>1</td>
<td>1,243</td>
<td>1</td>
</tr>
<tr>
<td>Textile mills</td>
<td>2</td>
<td>5,270</td>
<td>1</td>
<td>5,270</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>131,947</td>
<td>11</td>
<td>17,245</td>
<td>9</td>
</tr>
</tbody>
</table>

1 These strikes were: Western Coal Operators Association (7 companies), 3,595 men, April, 1907, before they were familiar with terms of act; Nicola Valley Coal & Coke Co., 150 men, Apr. 28 to June, 1909; Western Coal Operators Association (7 companies), 2,100 men, Apr. 1 to July 1, 1909; Canada West Coal Co., 300 men, Apr. 23 to July 30, 1909; Western Coal Operators Association (18 companies), 6,000 men, Mar. 31 to Nov. 17, 1911.

2 These strikes were: Cumberland Railway & Coal Co., 1,700 men, Aug. 1 to Oct. 31, 1907; Dominion Coal Co., 3,000 men, July 6, 1909, to Apr. 28, 1910; Cumberland Railway & Coal Co., 1,550 men, Aug. 9, 1909, to March, 1910.

3 Not including North Atlantic Collieries Co., closed down in liquidation, pending completion of board, January, 1911.

4 These strikes were: British Columbia Copper Co., 225 men, June 28 to July 24, 1909; and same company, 325 men, Apr. 19 to May 11, 1910.

5 Not including Intercolonial Railway employees, number not reported, dispute of May 14, 1908.

6 These strikes were: Intercolonial Railway of Canada, 250 men, June 20, 1907, men unfamiliar with terms of act; Grand Trunk Pacific Ry. Co., 260 men, Oct. 10, 1911.

7 These strikes were: Canadian Pacific Ry. Co., 8,000 men, Aug. 3 to Oct. 3, 1908; Grand Trunk Ry. Co., 3,017 men, July 18 to Aug. 2, 1910; Canadian Northern Ry. Co., 432 men, July 7 to Sept. 27, 1910.

8 Not including two disputes still pending Dec. 31, 1911.


11 Including freight handlers, longshoremen, and teamsters.

12 These strikes were: Shipping Federation of Canada, 3,100 longshoremen, May 13 to 15, 1907; Furness Withy Co. (and 2 other companies), 500 longshoremen, May 26, 1907; Canadian Pacific Ry. Co., 250 freight handlers, May 7 to May 10, 1907; also same company, 700 freight handlers, Aug. 9 to Aug. 16, 1908.

13 Not including two disputes still pending Dec. 31, 1911.

14 One cotton-mill strike was terminated by the appointment of a board.

According to the foregoing table, in 20 cases strikes occurred, 11 of which were begun before or pending investigation and were thus illegal, and in the 9 other cases were begun after the report of the board and were therefore legal. In 84 cases settlement was effected without strike.

Of the industries which have made use of the act, the railways are most important, both on account of the number of boards which have been appointed and on account of the number of employees directly and indirectly affected, 38 out of a total of 109 boards and 70,768 out of the total of 131,947 employees directly and indirectly...
affected being in that industry. Next in importance are the coal mines, with 38 boards and 37,937 employees affected. In both of these industries, it will be noticed, there have been illegal strikes—that is, strikes before or pending the investigation and report of a board.

Of the results which have attended the operations of the act, the Fourth Report of the Registrar of Boards of Conciliation and Investigation (1911) sums up the experience as follows:

The most obvious virtue of the act lies, it will be seen, in bringing the parties together before three fellow citizens of standing and repute, one at least of whom is a wholly disinterested arbiter, where a free and frank discussion of the differences may take place and the dispute may be thrashed out in such a manner as is frequently quite impossible as between the disputants directly. Granting that such discussion and investigation take place before a strike or lockout has been declared and that the board acts with proper discretion and tact, the chances are believed to be largely in favor of an amicable adjustment of the differences at issue. Much, of course, depends upon the chairman, and obviously it is most desirable that he shall be a gentleman whose reputation, both as a practical man and as a man of judicial bearing, shall command respect on the part of the disputants and of the public generally. Inquiry shows that in somewhat less than half of the cases referred under the act the parties themselves have agreed on a chairman; in the remainder the appointment has been made by the minister of labor.

Apart from the advantages of thus bringing the parties together before a board, the act invokes the factor of publicity briefly noted above, and this is believed to have proved a valuable factor in many instances in averting extreme methods on the part of employer or employee. There is, first, the publicity involved in the investigation itself; as a rule a disputant does not desire to submit for investigation a cause which is obviously unfair, and an impending investigation leads, not infrequently, to the abandonment of extreme propositions or contentions. There is, secondly, the publicity involved in the publication of the official report and frequently of newspaper reports of proceedings, though the latter may be limited by the action of the board. The publication of the official findings of a board on a given dispute acquaints the public with the precise circumstances of the situation, enables the public to determine with some accuracy the degree of reasonableness or unreasonableness of either party, and in large measure assures the defeat of action taken by either party contrary to the findings or recommendations of the board. This has been, with rare exceptions, the experience of the operation of the act in Canada.

The statement following, taken from the annual report of the Canadian Department of Labor and from reports published in the Labor Gazette, issued by the same department, shows somewhat in detail the proceedings under the act from September 1, 1909, to December 31, 1911. The table is in continuation of similar tables printed in Bulletins Nos. 76 and 86.
Applications for Boards of Conciliation and
A.—Miners, Agencies of Transportation and Communication, and Other
Public-Service Utilities.

[Compiled from Report of the Department of Labor for the fiscal year ending March 31, 1910, and monthly
issues of The Labor Gazette, May, 1911, to January, 1912, both issued by the Department of Labor,
Dominion of Canada.]

Coal mines.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov. 18 1909</td>
<td>Edmonton Standard Coal Co. (Ltd.) and employees.</td>
<td>Employer.</td>
<td>Edmonton, Alberta.</td>
<td>75</td>
<td>Wages and dismissal of employees.</td>
</tr>
<tr>
<td>Dec. 2 1910</td>
<td>James W. Bain, contractor for output of Cardiff Coal Co. (Ltd.), and employees.</td>
<td>do</td>
<td>Cardiff, Alberta</td>
<td>275</td>
<td>Wages and conditions of employment.</td>
</tr>
<tr>
<td>Jan. 5 1910</td>
<td>Alberta Coal Mining Co. and employees.</td>
<td>do</td>
<td>do</td>
<td>60</td>
<td>Concerning wages and conditions of employment.</td>
</tr>
<tr>
<td>Apr. 18 1910</td>
<td>Canadian-American Coal &amp; Coke Co. and employees, members of Frank Local No. 1263, U. M. W. A.</td>
<td>do</td>
<td>Frank, Alberta</td>
<td>262</td>
<td>Concerning making of new agreement and recognition of U. M. W. A.</td>
</tr>
<tr>
<td>Oct. 26 1911</td>
<td>Crow's Nest Pass Coal Co. (Ltd.) and employees, members of district No. 12, U. M. W. A.</td>
<td>Employer.</td>
<td>Fernie, British Columbia.</td>
<td>3,000</td>
<td>Concerning alleged breach of agreement and increased charge for special train.</td>
</tr>
<tr>
<td>Jan. 16 1911</td>
<td>North Atlantic Collieries Co. (Ltd.) and employees, members of Local Union No. 2182, district No. 26, U. M. W. A.</td>
<td>do</td>
<td>Port Morien, Nova Scotia.</td>
<td>260</td>
<td>Concerning reduction in wages and conditions of employment.</td>
</tr>
<tr>
<td>Apr. 13 1911</td>
<td>Coal mining companies (18 in number), comprising Western Coal Operators' Association, and employees, members of district No. 18, U. M. W. A.</td>
<td>do</td>
<td>British Columbia, eastern part; Alberta, southern part.</td>
<td>6,000</td>
<td>Making new agreement to replace one expiring Mar. 31, 1911; concerning wages, conditions of work, classes of labor.</td>
</tr>
<tr>
<td>May — 1911</td>
<td>Canadian Northern Coal &amp; Ore Dock Co. (Ltd.) and certain employees, members of Coal Handlers' Union No. 319.</td>
<td>do</td>
<td>Port Arthur, Ontario</td>
<td>330</td>
<td>Increase of wages; more pay for overtime; union men not to be discriminated against; agreements made to remain in force 1 year.</td>
</tr>
<tr>
<td>Nov. — 1911</td>
<td>Alberta Coal Mining Co. and employees in its mine at Cardiff, Alberta.</td>
<td>do</td>
<td>Cardiff, Alberta.</td>
<td>80</td>
<td>Increase of wages and other changes in conditions of employment.</td>
</tr>
</tbody>
</table>

Metalliferous mines.

<table>
<thead>
<tr>
<th>Date</th>
<th>Company</th>
<th>Employer</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 8 1910</td>
<td>British Columbia Copper Co. (Ltd.) and employees.</td>
<td>Employer.</td>
<td>Greenwood, British Columbia.</td>
<td>350</td>
<td>Employees unwilling to work with non-union men.</td>
</tr>
<tr>
<td>May 1911</td>
<td>Canadian Northern Coal &amp; Ore Dock Co. (Ltd.) and certain employees, members of Coal Handlers' Union No. 319.</td>
<td>do</td>
<td>Mine, 12 miles from Gowanda, Ontario.</td>
<td>30</td>
<td>Reduction of wages 50 cents per shift and increase of 15 cents in price of board.</td>
</tr>
</tbody>
</table>

1C, chairman; E, employers; M, men. 2 Directly, 60; indirectly, 15. 3 Directly, 35; indirectly, 25.
INVESTIGATION, SEPTEMBER 1, 1909, TO DECEMBER 31, 1911.

A.—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES.

[Compiled from Report of the Department of Labor for the fiscal year ending March 31, 1910, and monthly issues of The Labor Gazette, May, 1911, to January, 1912, both issued by the Department of Labor, Dominion of Canada.]

### Coal mines.

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geo. F. Cunningham, C; F. B. Smith, E; Clement Stubbs, M.</td>
<td>1909. Dec. 2</td>
<td>1909. Dec. 27</td>
<td>A unanimous report was presented by the board, making certain recommendations for the settlement of the dispute which were accepted by the parties concerned, a strike being thereby averted. Proceedings in connection with this application were discontinued in view of an agreement being reached by the parties concerned.</td>
</tr>
<tr>
<td>R. G. Duggan, C; I. O. Hannah, E; Clement Stubbs, M.</td>
<td>1910. Jan. 17</td>
<td>1910. Apr. 2</td>
<td>A unanimous report was presented by the board, making certain recommendations for the settlement of the dispute which were understood to have been accepted by both parties concerned, a strike being thereby averted. Settlement arrived at by chairman without board being formally convened; settlement effective to Mar. 31, 1911.</td>
</tr>
<tr>
<td>I. S. G. Van Wart, C; Colin MacLeod, E; Clement Stubbs, M.</td>
<td>Apr. 30</td>
<td>June 4</td>
<td></td>
</tr>
<tr>
<td>I. S. G. Van Wart, C; W. S. Lane, E; Clement Stubbs, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prof. Robt. Magill, C; Duncan G. MacDonald, E; Alexander McKinnon, M.</td>
<td>Mar. 9</td>
<td>Mar. 23</td>
<td>Board effected settlement, which was understood to be acceptable to both parties concerned, a strike being thereby averted.</td>
</tr>
<tr>
<td>John McKay, C; Geo. F. Harrigan, E; Arthur Boyd, M.</td>
<td>May 19</td>
<td>June 17</td>
<td>Settlement affected on all points in dispute. Concessions made on both sides; men modifying demands respecting wages and pay for overtime, and company agreeing not to discriminate against union men, and that signed agreements should hold for 1 year. Board report unanimous.</td>
</tr>
<tr>
<td>Norman Fraser, C; J. O. Hannah, E; Clement Stubbs, M.</td>
<td>Nov. 8</td>
<td>Dec. 7</td>
<td>Board's findings were substantially as claimed by the men, and were signed, with slight modifications, by representatives of both sides.</td>
</tr>
</tbody>
</table>

### Metalliferous mines.

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. H. Senker, C; Ino. A. Mara, E; Ino. McNinnis, M.</td>
<td>1910. Jan. 10</td>
<td>1910. Mar. 29</td>
<td>The report of the board was accompanied by a minority report, signed by Mr. John McNinnis. The board's report was substantially in favor of the company. At the close of the year [March] the department was in communication with the parties to the dispute. No cessation of work occurred.</td>
</tr>
<tr>
<td>George Ritchie, C; R. F. Taylor, E; Chas. H. Lowthian, M.</td>
<td>1911. Feb. 20</td>
<td>1911. Feb. 28</td>
<td>A unanimous report was presented by the board making certain recommendations for settlement of dispute. No cessation of work occurred.</td>
</tr>
<tr>
<td>Geo. Ritchie, C; John Sharpe, E; Duncan J. McDonnell, M.</td>
<td>May 3</td>
<td>June 6</td>
<td>Board report not unanimous: majority report sustaining complaints of company and minority report by Mr. McDonnell sustaining claims of men.</td>
</tr>
</tbody>
</table>

* Directly, 110; indirectly, 150. " Directly, 150; indirectly, 200. & Directly, 35; indirectly, 30.
### Applications for Boards of Conciliation and Investigation—Continued.

#### Railways.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1909.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aug. 11</td>
<td>Intercolonial Ry. and its employees</td>
<td>Employees</td>
<td>Halifax, Nova Scotia.</td>
<td>1,020</td>
<td>Alleged discrimination against certain employees.</td>
</tr>
<tr>
<td>Oct. 2</td>
<td>Intercolonial Ry. and machinists and fitters in its employ.</td>
<td>do</td>
<td>Intercolonial Ry. System.</td>
<td>406</td>
<td>Concerning dismissal of certain employees and alleged violation of contract. Wages, advertising of vacancies, etc.</td>
</tr>
<tr>
<td>Dec. 3</td>
<td>Grand Trunk Ry. and telegraphers and station agents in its employ.</td>
<td>do</td>
<td>Grand Trunk Ry. lines, east of Detroit, Mich.</td>
<td>760</td>
<td></td>
</tr>
<tr>
<td><strong>1910.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Canadian Pacific Ry. Co. and its conductors, baggagemen, brakemen, and yardmen.</td>
<td>do</td>
<td>All lines of C. P. Ry.</td>
<td>4,300</td>
<td>do</td>
</tr>
<tr>
<td>19</td>
<td>Grand Trunk Pacific Ry. Co. and telegraph and station employees.</td>
<td>do</td>
<td>G. T. P. Lines</td>
<td>75</td>
<td>Concerning rules and rates of pay.</td>
</tr>
<tr>
<td>22</td>
<td>Dominion Atlantic Ry. Co. and employees.</td>
<td>do</td>
<td>Kentville, Nova Scotia.</td>
<td>29</td>
<td>Concerning terms of employment and dismissal of certain employees.</td>
</tr>
<tr>
<td>May 2</td>
<td>Canadian Northern Ry. Co. and its blacksmiths, members of Blacksmiths' Railway Union, No. 147.</td>
<td>do</td>
<td>Winnipeg, Manitoba.</td>
<td>30</td>
<td>Concerning demand for new working agreement, increased wages, and shorter hours.</td>
</tr>
<tr>
<td>2</td>
<td>Canadian Northern Ry. Co. and its blacksmiths' helpers, members of Blacksmiths' Helpers' Lodge, No. 335.</td>
<td>do</td>
<td>Betw'n 30 and 40.</td>
<td>325</td>
<td>do</td>
</tr>
<tr>
<td>2</td>
<td>Canadian Northern Ry. Co. and its machinists, members of Fort Garry Lodge, No. 189, International Association of Machinists.</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>Concerning demand for new working agreement and increased wages.</td>
</tr>
</tbody>
</table>

1 Directly, 20; indirectly, 1,000.  2 Directly, 363; indirectly, 43.
GATION, SEPTEMBER 1, 1909, TO DECEMBER 31, 1911—Continued.

A.—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES—Continued.

### Railways

<table>
<thead>
<tr>
<th>Names of members of board.</th>
<th>Date on which board was constituted.</th>
<th>Date of receipt of report of board.</th>
<th>Result of reference.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sir Geo. Garneau, C;</td>
<td>1909. Sept. 25</td>
<td>1909. Nov. 17</td>
<td>A unanimous report was presented by the board, making certain recommendations for settlement of the dispute. The findings of the board were subsequently accepted by both parties to the dispute, a strike being thereby averted.</td>
</tr>
<tr>
<td>Jas. H. Gilmour, E;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aaron A. R. Mosher, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge J. A. Barron, C;</td>
<td>Oct. 19</td>
<td>Dec. 8</td>
<td>A unanimous report was presented by the board, making certain recommendations for the settlement of the dispute which were accepted by both parties concerned, a strike being thereby averted.</td>
</tr>
<tr>
<td>Jas. H. Gilmour, E;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. G. O'Donoghue, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. E. Atkinson, C;</td>
<td>Dec. 21</td>
<td>Feb. 24</td>
<td>A report was presented which was unanimous on certain of the matters in dispute. Mr. Wallace Nesbitt, K. C., member appointed on behalf of the company dissenting from the views of the other members on two points. At the close of the year [Mar. 31, 1910] the department was in communication with the parties to the dispute. No cessation of work occurred.</td>
</tr>
<tr>
<td>Wallace Nesbitt, E;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. T. J. Lee, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. E. Atkinson, C; F. H.</td>
<td>1910. Apr. 6</td>
<td>1910. Mar. 31</td>
<td>Agreement was reached between parties concerned without board having been convened. The terms of settlement of this dispute were understood to correspond closely to the terms of settlement of a similar dispute between the C. P. R. and its employees in train and yard service.</td>
</tr>
<tr>
<td>McGuigan, E; J. G. O'Donoghue, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. E. Atkinson, C;</td>
<td>Mar. 31</td>
<td>June 22</td>
<td>Report of board was accompanied by a minority report signed by Mr. J. G. O'Donoghue, member appointed on the recommendation of the employees. Upon receipt of these reports negotiations were resumed between the company and the employees concerned which resulted, on July 21, in an agreement to continue in force until terminated by 30 days' notice in writing. The agreement was understood to be in some respects similar to, but in other particulars different from, the terms of settlement proposed by the board, and was said to correspond closely both in respect of rates of wages and rules to &quot;standard&quot; rates and rules existing on a number of the principal railway systems in the Eastern States.</td>
</tr>
<tr>
<td>Wallace Nesbitt, E;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. G. O'Donoghue, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. E. Atkinson, C;</td>
<td>Apr. 6</td>
<td>June 22</td>
<td>Report of board was accompanied by a minority report signed by Mr. Wallace Nesbitt, K. C., member appointed on the recommendation of the company. Upon receipt of these reports negotiations were resumed between the company and the employees concerned for settlement of the differences in question. These negotiations were continued up till July 18, when a strike was declared of the employees concerned. Strike continued up till Aug. 2, when it was announced that a settlement had been arrived at through Government intervention, the strike being declared off.</td>
</tr>
<tr>
<td>Wallace Nesbitt, E;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. G. O'Donoghue, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>His Honor Judge D.</td>
<td>Apr. 22</td>
<td>July</td>
<td>A unanimous report was presented by the board which made certain recommendations for the settlement of the dispute. No cessation of work occurred.</td>
</tr>
<tr>
<td>McGibbon, C; Donald Ross, C; W. T. J. Lee, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hon. John N. Armstrong, C; McCallum Grant, E; Aaron A. R. Mosher, M.</td>
<td></td>
<td></td>
<td>Report of board was accompanied by a minority report signed by Mr. Aaron A. R. Mosher, member appointed on behalf of the employees, which was accepted by them. The department was informed by the company that there would be no discrimination on its part between union and nonunion men. No cessation of work occurred. No board established. Settlement having been arrived at between the parties concerned.</td>
</tr>
</tbody>
</table>

3 Directly, 4; Indirectly, 25.
## APPLICATIONS FOR BOARDS OF CONCILIATION AND INVESTIGATION

**A—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES—Continued.**

### Railways—Continued.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910. May 2</td>
<td>Canadian Northern Ry. Co. and its machinists' helpers, members of Federal Union, No. 4.</td>
<td>Employees.</td>
<td>Winnipeg, Manitoba.</td>
<td>57</td>
<td>Concerning demand for new working agreement, increased wages and shorter hours.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>do</td>
<td>do</td>
<td>13</td>
<td>do.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>do</td>
<td>do</td>
<td>432</td>
<td>do.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>do</td>
<td>do</td>
<td>170</td>
<td>do.</td>
</tr>
<tr>
<td>June 21</td>
<td>Intercolonial &amp; Prince Edward Islands Ry. and telegraphers, train dispatchers, and station agents, members of Order of Railroad Telegraphers.</td>
<td>do</td>
<td>Canadian Government Ry. System.</td>
<td>490</td>
<td>Concerning proposed amendments to schedule and alleged mistreatment of certain employees.</td>
</tr>
<tr>
<td>28</td>
<td>Grand Trunk Ry. Co. and brass workers in Montreal, members of Brass Workers, Local 220.</td>
<td>do</td>
<td>Montreal, Quebec...</td>
<td>24</td>
<td>Concerning demand for minimum rate of 30 cents per hour.</td>
</tr>
<tr>
<td>Sept. 3</td>
<td>Canadian Pacific Ry. Co. and maintenance-of-way employees.</td>
<td>do</td>
<td>C. P. R. System in Canada.</td>
<td>4,000</td>
<td>Concerning demand for increased wages and revision of schedule.</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>do</td>
<td>do</td>
<td>1,000</td>
<td>do.</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>do</td>
<td>do</td>
<td>1,800</td>
<td>do.</td>
</tr>
<tr>
<td>1911. Feb. 10</td>
<td>Kingston &amp; Pembroke Ry. Co. and firemen and hostlers, members of the Brotherhood of Locomotive Firemen and Enginemen.</td>
<td>do</td>
<td>Kingston, Ontario...</td>
<td>13</td>
<td>Concerning demand for increased wages and revision of rules.</td>
</tr>
<tr>
<td>June</td>
<td>Quebec &amp; Lake St. John Ry. Co. and its men,</td>
<td>do</td>
<td>Quebec &amp; Lake St. John</td>
<td>$ 95</td>
<td>Wages, and conditions of employment.</td>
</tr>
</tbody>
</table>

1 Directly, 11; indirectly, 20.
<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wm. Elliott Macara, C; David H. Cooper, E; Phillip C. Locke, M.</td>
<td>1910.</td>
<td>1910.</td>
<td>No board established, settlement having been arrived at between the parties concerned.</td>
</tr>
<tr>
<td>David H. Cooper, E...</td>
<td>1911.</td>
<td>1911.</td>
<td>Board presented a unanimous report making certain recommendations for a settlement. Award was not accepted by employees concerned, some of whom declared strike on July 7. Strike continued until Sept. 27, when the men returned to work on the terms of the board's award.</td>
</tr>
<tr>
<td>His Honor Judge John A. Harron, C; J. H. Gilmore, E; J. G. O'Donoghue, M.</td>
<td>1911.</td>
<td>1911.</td>
<td>Establishment of board was postponed owing to arrangements being made for a conference between the Government railways managing board and representatives of the employees concerned. A request was received from the employees on Nov. 14, 1910, for a board, no settlement having been arrived at. A unanimous report was received, making certain recommendations for the settlement of the dispute which were accepted by the Government railways managing board and by the employees.</td>
</tr>
<tr>
<td>A. G. B. Claxton, C; Wm. Aird, E; C. Rodier, M.</td>
<td>July 13</td>
<td>July 30</td>
<td>Report of board was accompanied by a minority report, signed by Mr. Wm. Aird, member appointed on behalf of the company. Report was accepted by the employees concerned. No cessation of work occurred.</td>
</tr>
<tr>
<td>His Honor Judge D. McGibbon, C; F. H. McGuigan, E; W. T. J. Lee, M.</td>
<td>Sept. 21</td>
<td>Mar. 1</td>
<td>Report of board was accompanied by minority report signed by Mr. F. H. McGuigan, member appointed on behalf of the company. Department was informed that the majority report was accepted by company and employees concerned.</td>
</tr>
<tr>
<td>His Honor Judge D. McGibbon, C; J. W. Dawsey, E; W. T. J. Lee, M.</td>
<td>...do...</td>
<td>Jan. 7</td>
<td>Report of board was accompanied by minority report signed by Mr. J. W. Dawsey, member appointed on behalf of the company. Report was accepted on behalf of employees concerned. The company, however, declined to be bound by the board findings. No cessation of work occurred.</td>
</tr>
<tr>
<td>His Honor Judge D. McGibbon, C; F. H. McGuigan, E; W. T. J. Lee, M.</td>
<td>Sept. 22</td>
<td>Mar. 2</td>
<td>Report of board was accompanied by minority report signed by Mr. F. H. McGuigan, member appointed on behalf of the company. Employees accepted board findings, company, however, declined to be bound by the same, but accepted instead the minority report. No cessation of work occurred.</td>
</tr>
</tbody>
</table>

Department advised parties concerned that further effort should be made to effect settlement, and on Mar. 11, 1911, was informed that an amicable settlement had been arrived at.

No board established. New schedule of rates and conditions arranged and agreed to between the parties June 15.
### Railways—Concluded.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 18</td>
<td>Grand Trunk Ry. system in Canada and its machinists, apprentices, and helpers.</td>
<td>Employees</td>
<td>All lines of company</td>
<td>18,000</td>
<td>Wages, hours, and conditions of employment.</td>
</tr>
<tr>
<td>Aug. 1</td>
<td>Grand Trunk Pacific Ry. Co. and its boiler makers.</td>
<td>Employees</td>
<td>do</td>
<td>do</td>
<td>150</td>
</tr>
<tr>
<td>Sept. 11</td>
<td>Canadian Pacific Ry. Co. and its clerks, freighthand men, checkers, truckers, etc.</td>
<td>Employees</td>
<td>Calgary and Medicine Hat, Alberta</td>
<td>13,000</td>
<td>Dismissal of two employees because members of union.</td>
</tr>
<tr>
<td>Nov—Dec.—</td>
<td>Quebec Central Ry. Co. and station agents and telegraph employees.</td>
<td>Employees</td>
<td>do</td>
<td>do</td>
<td>70</td>
</tr>
<tr>
<td>Dec—</td>
<td>Michigan Central R. R. and station agents, telegraph and telephone operators.</td>
<td>Employees</td>
<td>do</td>
<td>do</td>
<td>3,115</td>
</tr>
</tbody>
</table>

### Street railways.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 5</td>
<td>Toronto Ry. Co. and employees, members of Toronto Railway Employees' Union, No. 113.</td>
<td>Employees</td>
<td>Toronto, Ontario</td>
<td>1,300</td>
<td>Concerning demand for new working agreement.</td>
</tr>
<tr>
<td>Oct. 22</td>
<td>Winnipeg Electric Ry. Co. and conductors and motormen, members of Amalgamated Association of Street Railway Employees of America, Local No. 99.</td>
<td>Employees</td>
<td>Winnipeg, Manitoba</td>
<td>605</td>
<td>Concerning alleged discrimination against certain employees, members of Amalgamated Association of Street Railway Employees.</td>
</tr>
<tr>
<td>June 21</td>
<td>Montreal Street Ry. Co. and conductors and motormen, members of Street and Electric Railway Employees of America, No. 328.</td>
<td>Employees</td>
<td>Montreal, Quebec</td>
<td>2,000</td>
<td>Dismissal of certain employees and alleged discrimination against them as members of the union.</td>
</tr>
</tbody>
</table>

1 Directly, 2,000; indirectly, 6,000.  
2 Directly, 6,500; indirectly, 6,500.
GATION, SEPTEMBER 1, 1909, TO DECEMBER 31, 1911—Continued.

A.—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES—Continued.

Railways—Concluded.

<table>
<thead>
<tr>
<th>Names of members of board.</th>
<th>Date on which board was constituted.</th>
<th>Date of receipt of report of board.</th>
<th>Result of reference.</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. C. Teetzel, C; Wallace Nesbit, E; J. G. O'Donoghue, M.</td>
<td>1911.</td>
<td>Aug. 23 1911.</td>
<td>Board awarded that old rules remain in force and that rates of pay be advanced in a number of cases.</td>
</tr>
<tr>
<td>J. W. Sparling, C; J. L. Gordon, E; Thos. J. Murray, M.</td>
<td>...do ...</td>
<td>Oct. 25 1911.</td>
<td>On all points in dispute the board unanimously sustained the men. Company refused to accept the board's findings.</td>
</tr>
</tbody>
</table>

Street railways.

| His Honor Judge John A. Barron, C; J. P. Mularkey, E; J. G. O'Donoghue, M. A. E. Beck, E; Jas. H. McVety, M. | 1910. | July 16 1910. | A unanimous report was presented by board making certain recommendations for settlement of dispute, which were accepted by both parties concerned. |
| Mr. Justice Fortin, C; J. L. Perron, E; C. Rodier, M. | 1911. | July 19 | Report of board was accompanied by a minority report signed by Mr. L. L. Peltier, member appointed on the recommendation of the employees concerned. Employees ceased work on Dec. 16, 1910, to enforce their demand for reinstatement of four discharged employees. A settlement was effected through the intervention of citizens' committee, by which strike was terminated on Dec. 31, 1910. |

* Directly, 115; indirectly, 3,000.  
* Directly, 30; Indirectly, 1,970.
A—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES—Continued.

Shipping.

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug. 8</td>
<td>Allan Line, Donaldson Line, Leyland Line, White Star-Dominion Line, Canada Line, South African Line, Mexican Line, Manchester Lines, Black Diamond Line, Head Line, Canadian Pacific Ry. Line, and all other owners of vessels navigating in the port of Montreal and the Ship Liners of the Port of Montreal.</td>
<td>...do...</td>
<td>...do...</td>
<td>200</td>
<td>Concerning wages, hours, and conditions of employment.</td>
</tr>
<tr>
<td>Sept. 10</td>
<td>Canadian Pacific Steamship Co. and its employees commonly known as deck hands at Vancouver and Victoria, members of Sailor’s Union of the Pacific.</td>
<td>...do...</td>
<td>Vancouver and Victoria, British Columbia.</td>
<td>136</td>
<td>...do...</td>
</tr>
</tbody>
</table>

Freight handlers.

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>1909</td>
<td>Aug. 18</td>
<td>Canadian Pacific Ry. Co. and its freight handlers at Fort William, Ontario.</td>
<td>Employees</td>
<td>Fort William, Ontario.</td>
<td>700</td>
<td>Concerning wages....</td>
</tr>
</tbody>
</table>

Commercial telegraphers and telephone companies.

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected</th>
<th>Nature of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>June 25</td>
<td>Canadian Pacific Ry. Co. and commercial telegraphers, members of Commercial Telegraphers’ Union of America.</td>
<td>Employees</td>
<td>Commercial telegraph lines of Canadian Pacific Ry.</td>
<td>600</td>
<td>Concerning wages and conditions of employment.</td>
</tr>
<tr>
<td>1911</td>
<td>Mar. 3</td>
<td>Great Northwestern Telegraph Co. of Canada and telegraphers, members of Commercial Telegraphers’ Union of America.</td>
<td>...do...</td>
<td>All offices operated by the Great Northwestern Telegraph Co. of Canada.</td>
<td>1,300</td>
<td>...do...</td>
</tr>
<tr>
<td></td>
<td>Sept. 6</td>
<td>British Columbia Telephone Co.</td>
<td>...do...</td>
<td>Lines in British Columbia.</td>
<td>220</td>
<td>Increase of wages and company’s attitude to union men.</td>
</tr>
</tbody>
</table>

1 Directly, 86; Indirectly, 50.
### Shipping

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon. Mr. Justice T. Fortin, C; Wm. Lyall, E; Gustave Francq, M.</td>
<td>Apr. 7, 1910</td>
<td>Apr. 20, 1910</td>
<td>A unanimous report was presented by the board, making certain recommendations for the settlement of the dispute, which were accepted by both parties concerned, an agreement being entered into effective for a period of five years. In connection with the same a permanent board of conciliation was established to settle such grievances as might from time to time be complained of.</td>
</tr>
<tr>
<td>W. D. Lighthall, C; J. Herbert Lauer, E; George Poliquin, M.</td>
<td>Aug. 22, 1910</td>
<td>Sept. 16, 1910</td>
<td>Report of board was accompanied by a minority report signed by Mr. J. Herbert Lauer, member appointed on the recommendation of the Shipping Federation of Canada. The report was acceptable to the employees concerned; the shipping companies, however, in a communication addressed to the department, expressed themselves as unable to accept the majority report. No cessation of work occurred.</td>
</tr>
<tr>
<td>His Honor Judge W. W. B. McInnes, C; G. E. McCrossan, E; J. H. McVety, M.</td>
<td>Oct. 27, 1911</td>
<td>Nov. 28, 1911</td>
<td>A unanimous report was presented by board, making certain recommendations for the settlement of the dispute which were accepted by the employees concerned. The company maintained that it had no dispute with its employees and that, therefore, no action on its part was necessary. No cessation of work occurred.</td>
</tr>
</tbody>
</table>

### Freight handlers

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. C. Young, C; W. J. Christie, E; W. T. Rankin, M.</td>
<td>Aug. 21, 1909</td>
<td>Aug. 24, 1909</td>
<td>Men went on strike Aug. 9 without formal warning and before applying for board; claimed to be unaware of existence of the act. Resumed work Aug. 16. Unanimous report presented by the board, which was accepted by both parties to the dispute.</td>
</tr>
</tbody>
</table>

### Commercial telegraphers and telephone companies

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. E. Duval, C; F. H. McGuigan, E; D. Campbell, M.</td>
<td>July 7, 1910</td>
<td>July 25, 1910</td>
<td>A unanimous report was presented by board in which it was stated that an agreement was concluded between the parties concerned on all points at issue.</td>
</tr>
<tr>
<td>Hon. Mr. Justice J. V. Teetzel, C; Frederick H. Markey, E; D. Campbell, M.</td>
<td>Mar. 30, 1911</td>
<td>July 13, 1911</td>
<td>Board report unanimous. Findings accepted by employees concerned Aug. 24.</td>
</tr>
<tr>
<td>J. H. Senkler, C; W. H. Barker, E; Chas. Enright, M.</td>
<td>Sept. 29, 1911</td>
<td>Nov. 21, 1911</td>
<td>Board report divided; majority sustaining the claims of the men; minority finding that the men were already adequately paid.</td>
</tr>
</tbody>
</table>

* Directly, 200; indirectly, 1,100.
### APPLICATIONS FOR BOARDS OF CONCILIATION AND INVESTIGATION

#### A.—MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES—Concluded.

**Municipal public utilities.**

<table>
<thead>
<tr>
<th>Date of receipt of application</th>
<th>Parties to dispute</th>
<th>Party making application</th>
<th>Locality</th>
<th>Number of persons affected directly and indirectly</th>
<th>Nature of dispute</th>
</tr>
</thead>
</table>

#### B.—INDUSTRIES OTHER THAN MINES, AGENCIES OF TRANSPORTATION AND COMMUNICATION, AND OTHER PUBLIC-SERVICE UTILITIES.

| 1911. Apr. 13 | Four shoe manufacturing companies: John Ritchie Co. (Ltd.); Wm. A. Marsh Co. (Ltd.); Gale Bros.; J. M. Stobo; and certain employees | Employees | Quebec | 943 | Increase of wages... |

1 Directly, 32; indirectly, 66.
### Municipal public utilities

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date on which board was constituted</th>
<th>Date of receipt of report of board</th>
<th>Result of reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rev. S. C. Murray, C; J. Dix Fraser, E; C. W. Foster, M.</td>
<td>1911. June 1</td>
<td>1911. June 30</td>
<td>All differences amicably settled and threatened strike averted. Unanimous findings of board accepted and signed by both parties.</td>
</tr>
<tr>
<td>H. C. Taylor, C; A. W. Ormsby, E; W. Symonds, M.</td>
<td>June 2</td>
<td>...do...</td>
<td>New schedule of wages and working rules drawn up and unanimously agreed to; submitted to both parties and after some changes accepted by them. Dispute harmoniously settled.</td>
</tr>
</tbody>
</table>

### Industries other than mines, agencies of transportation and communication, and other public-service utilities

<table>
<thead>
<tr>
<th>Names of members of board</th>
<th>Date of reference</th>
<th>Settlement affected in each case by unanimous report of board</th>
</tr>
</thead>
</table>
CONCILIATION AND ARBITRATION OF RAILWAY LABOR DISPUTES IN GREAT BRITAIN.

CONCILIATION AND ARBITRATION AGREEMENT OF 1907.

In Great Britain, since November 6, 1907, the settlement by conciliation and arbitration of questions in dispute between railway companies and their employees relating to the rates of wages or hours of labor of any class engaged in the manipulation of traffic has been under an agreement secured through the Board of Trade and signed by representatives of the railway companies and of the leading railway men's trade-unions. This agreement was the outcome of a series of protracted conferences following a threatened general railway strike in 1907. The agreement was signed initially on behalf of 11 of the principal railway companies, but its terms were afterwards accepted by 35 others. The 46 companies which entered into this agreement, together with one other company which had a scheme of conciliation of its own, employed over 97 per cent of the railway workers in the United Kingdom.

Under the plan agreed upon conciliation boards were formed for each railway company, to deal with questions referred to them either by the company or its employees which could not be settled through the usual channels. The various grades or occupations of men coming under the scheme were grouped in a suitable number of sections or groups of grades, for each of which a sectional conciliation board was formed. Each sectional board consisted on the men's side of one or more representatives elected by and from among the employees of the particular section in each district, and on the company's side included an appropriate number of officers representing the company, with one or more directors, if practicable. In addition to the sectional boards there was for each railway a central conciliation board, consisting of one or more representatives chosen from each sectional board.

The plan provided that any application for a change in rates of wages or hours of labor was first to be made in the usual course through the officials of the departments concerned. A reply was to be given within two months, and if no reply were received within that time, or if the decision were not accepted, the men could require

1 For terms of this agreement and for sample scheme formed under it, see Appendixes III and IV, pp. 117-122.
the matter to be referred to the sectional conciliation board, which was to be at once convened to consider it. If the sectional board failed to reach a settlement, the question might be referred, on the motion of either side, to the central board, and upon the failure to reach an agreement by the central board the question should go to arbitration. In case of arbitration a single arbitrator was to be appointed for the particular case by agreement between the two sides of the conciliation board, or, in default of agreement, by the speaker of the House of Commons and the master of the rolls, or, in the unavoidable absence or inability of one of them to act, then by the remaining one. The decision of a conciliation board was, subject to certain provisions, to be binding on the parties and not to be reopened within 12 months. The decision of an arbitrator was to be binding on all parties for a period fixed by him for the duration of his award.

The agreement might be terminated only after 12 months' notice had been given by one side or the other, but no such notice was to be given within 6 years from the date of the agreement.

The agreement of 1907 was drawn up in November, and many of the roads did not accept it until the following year. The process of setting up the machinery it provided took considerable time, and but little was done in the way of settling disputes in 1908. By 1909, however, on most of the roads the scheme was in full working order, and in that year 265 cases were handled by 30 boards. Of these 171 were settled, 67 of them by arbitrators. In 1910 comparatively few disputes arose, most of the leading roads having in the preceding year effected settlements lasting three years or more. However, 14 boards handled 97 cases, of which 72 were settled during the year.¹

The adoption of the agreement of 1907 happened to coincide with a period of decreased earnings in the railroad world, with a consequent reduction of expenses, including wages, and a general process of "speeding up," so that the employees might in many cases be getting actually less pay while doing more work than they had a year or two earlier. At the same time pressure was brought to bear on the railway companies to cut down, in the interests of public safety, the long hours which some of the men were working. This cut off the overtime pay at the same time, that regular wages might be cut down. Also in the interests of public safety, much stricter physical examinations and especially stricter eyesight tests were instituted, so that many good workers found themselves reduced to more poorly paid positions or in some cases even laid off. Naturally, the men thus affected felt they had cause for complaint.

Apart from this, however, the scheme proved unsatisfactory. Proceedings under its terms, the men complained, were slow and expen-

¹ Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in the United Kingdom in 1910, Board of Trade (Labor Department). London. 1911, p. 81.
sive, and a marked tendency appeared to look upon arbitration not as a last resort, to be called upon only in the most difficult and intricate cases, but as the inevitable goal of every case brought up by the employees. As the scheme had been based upon the idea of conciliation, with arbitration as a last resource, much time was consumed in reaching the final stages. Much of the delay, the men believed, was wholly unnecessary, and, rightly or wrongly, they credited the companies with utilizing every possibility of delay for the sake of postponing decisions and continuing the conditions of which complaints were made. Worse still, when an award was finally reached, there was often a difference of opinion between the two parties as to its real meaning. Legal language is always open to private interpretation; and if the men interpret a decision in one way and the employers in another, as too often happens, it is usually a cause of fresh irritation and friction.

The bitterness aroused by these grievances was greatly increased by the belief of the men that the machinery provided by the scheme of 1907 had been ingeniously wrested from its true intent and used as a means of delaying or preventing any fair settlement of their difficulties.

By 1910 the men had reached a pitch of irritation which found official expression during the annual convention of the Amalgamated Society of Railway Servants during September of that year. At this convention the executive committee presented the following resolution, which was adopted by the society:

That having regard to the unfortunate irritation and inconvenience which is being experienced by the general public as a consequence of the unrest that is so evident at the present time among the railway workers, this executive committee, after giving serious consideration to the same, hereby declares that this unfortunate position of affairs has been created by the vexatious attitude of many of the railway companies toward the working of the scheme of conciliation and arbitration agreed to in 1907 between the Board of Trade, the railway companies, and this society; and further, we take this opportunity to explain to the public that unless the spirit as well as the letter of the aforementioned agreement is observed more fully in the future than it has been in the past, this committee will have to seriously consider the advisability of repudiating the scheme agreed to in 1907.

But no improvement, from the men's point of view, followed, and the feeling grew more and more bitter, until August, 1911, when the crisis was reached. A very significant indication of the state of feeling among the workers was seen in the beginning of this month when the Board of Trade issued to the railway men's unions schedules providing for the nomination of the men's representatives on the new sectional conciliation boards, which under the terms of the agree-
ment of 1907 were to be elected during this year. In many instances the men tore the schedules to pieces and burned them as an indication of their utter dissatisfaction with the working of the scheme and their refusal to take any further part in it.

RAILWAY STRIKE OF AUGUST, 1911.

In the early part of the month trouble arose on the Lancashire & Yorkshire Railroad. Some of the men asked for an increase of 2 shillings (49 cents) a week with a minimum of 20 shillings ($4.87) a week. The request was refused in what the men considered an unnecessarily arbitrary and high-handed manner, and they struck. On August 13, Sunday, a crowded meeting of railway workers of all grades was held in Manchester to express sympathy with the strikers, at which the following resolution was proposed by a person in the body of the hall:

That this meeting of railway workers of all grades gives notice that if the demands of the men already on strike are not granted within 24 hours we will immediately withdraw our labor.

This was put to the meeting and carried with much cheering, after which strike committees were duly appointed, representing each branch of the several railway men's organizations. Bitter complaints were made at this meeting of the treatment accorded the men, of long hours, low wages, etc., but the leaders realized that the trouble was not so much with any one road or specific grievance or set of grievances as with the general situation which had developed between employers and employees. Mr. J. E. Williams, general secretary of the Amalgamated Society of Railway Servants, said:

It would be useless for me to deny the serious character of the situation. The unrest among the men has reached such a pitch that there is no telling what any particular hour may bring forth. * * * It is no use attempting to name particular lines where unrest prevails. It is widespread and includes all lines.

The truth of his statement was shown on the following day when, without longer waiting for concerted action, railway men struck at Liverpool, Glasgow, Sheffield, Birmingham, Bristol, and many other large cities. Everywhere the complaints were the same. Rightly or wrongly, the men seemed firmly convinced that the machinery of the agreement of 1907 was being used against them as a means of delay and postponement of issues instead of being used in the spirit in which it was designed.

On August 15 a conference of representative railway men, consisting of the executive committees of the Amalgamated Society of Railway Servants, the Associated Society of Locomotive Enginemen and
Firemen, and General Railway Workers' Union, and the secretary of the Signalmen and Pointsmen's Society was held in Liverpool. Mr. Williams, secretary of the first mentioned of these organizations, called attention to the resolution passed in the previous September by his society. At this meeting, which lasted all day, the following resolution was agreed to unanimously and was made public in the form of a notice to the railway companies:

That this joint meeting of the executive committee of the Amalgamated Society of Railway Servants, of the Association of Locomotive Enginemen and Firemen, the General Workers' Union, and the Signalmen and Pointsmen's Society, summoned to consider the critical situation which has arisen in connection with the strike of railway workers in Liverpool and other centers, and also the almost universal demand on the part of our members for instructions to cease work immediately, hereby unanimously agree to offer to the railway companies 24 hours to decide whether they are prepared to meet, immediately, representatives of these societies to negotiate a basis of settlement of matters in dispute affecting the various grades.

In the event of this offer being refused, there will be no alternative than to respond to the demand now being made for a national stoppage.

This notice was not to become operative until the following day, so that the 24 hours specified would end on August 17.

With a view to avoiding a strike, the Board of Trade asked for a conference with the executive officers of the railway men's unions. In response to this request the latter reached London early on August 17 and went into conference with the president and other officials of the Board of Trade. In the course of this conference the representatives of the men were questioned as to the actual causes on which the issuance of the strike order was based, the grievances connected with the conciliation act, etc. Summarizing their replies, the prime minister, who met them later, said:

Your answer to the first and second questions is that the ground of your action is the failure of the railway companies to behave in the spirit and letter of the conciliation board agreement of 1907, and the utter impossibility of the men's representatives to redress the many grievances of which the men complain.

Your answers to all the remaining questions have been based upon and assumed the correctness of these statements, and it is of first and most essential importance to establish or disprove by impartial investigation the soundness of your statements. For this purpose His Majesty's Government are prepared to appoint immediately a royal commission to investigate the working of the conciliation agreement, and to report what amendments, if any, are desirable in the scheme, with a view to a prompt and satisfactory settlement of the difference.

I hope to announce without delay the names of the commissioners, who will meet at the earliest possible moment.

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1 See p. 84.
2 From newspaper account, August 18, 1911.
3 Board of Trade Labor Gazette, September, 1911, p. 322.
After considering the offer the men decided that it did not meet the needs of the situation and must be declined. As the 24 hours specified in their ultimatum had more than elapsed, telegrams were sent out at once to all the branches of the four unions calling for an immediate strike.

It was estimated that over 200,000 employees—union and non-union—responded to the call. Every railroad was affected except the London & South Western. The wages on that road were somewhat higher than on the others, and the men could always obtain an unprejudiced hearing by the officials of the company.

Almost immediately after the strike call was issued it was learned that a grave misunderstanding existed concerning the appointment of the “royal commission.” It was feared by the men that its proposal was a scheme to evade the issue and to postpone action by the appointment of “a roving commission merely for putting off the evil hour.” In the House of Commons that same evening Mr. Lloyd George emphatically disclaimed any such intention on the part of the Government. On the contrary, the proposed commission was to be “a committee of inquiry—a small one, a judicial one, and above all one which would lead to a prompt decision and a prompt report, which would involve decisive action with a view to putting an end to the causes of this irritation, so fruitful of unrest and disturbance, charged with disaster and catastrophe to the industrial system.”

Upon this explanation of what the commission was meant to be, negotiations were renewed, officials of the Government acting as intermediaries between the railroad directors and the labor representatives. Through their efforts a conference was arranged between representatives of the Government, the railway companies, and the men.

**SETTLEMENT OF THE STRIKE.**

The conference met at the Board of Trade on August 19, and after prolonged discussion the following settlement was unanimously arrived at and signed:

1. The strike to be terminated forthwith and the men’s leaders to use their best endeavors to induce the men to return to work at once.
2. All the men involved in the present dispute, either by strike or lockout, including casuals, who present themselves for work within a reasonable time, to be reinstated by the companies at the earliest practicable moment, and no one to be subjected to proceedings for breach of contract or otherwise penalized.
3. The conciliation boards to be convened for the purpose of settling forthwith the questions at present in dispute, so far as they are within the scope of such boards, provided notice of such questions be given not later than 14 days from the date of this agreement. If the sectional boards fail to arrive at a settlement the central board to meet at once.
Any decisions arrived at to be retrospective as from the date of this agreement.

It is agreed that for the purpose of this and the following clause, "rates of wages" includes remuneration whether by time or piece.

4. Steps to be taken forthwith to effect a settlement of the questions now in dispute between the companies and classes of their employees not included within the conciliation scheme of 1907, by means of conferences between representatives of the companies and representatives of their employees who are themselves employed by the same company, and, failing agreement, by arbitration to be arranged mutually or by the Board of Trade.

The above to be a temporary arrangement pending the report of the commission as to the best means of settling disputes.

5. Both parties to give every assistance to the special commission of inquiry, the immediate appointment of which the Government have announced.

6. Any question which may arise as to the interpretation of this agreement to be referred to the Board of Trade.¹

Assurances were given by both parties that they would accept the findings of the commission of inquiry, the terms of reference to which are as follows:

To investigate the working of the railway conciliation and arbitration scheme signed on behalf of the principal railway companies and of three trade-unions of railway employees, at the Board of Trade, on November 6, 1907, and to report what changes (if any) are desirable with a view to the prompt and satisfactory settlement of differences.

On behalf of the Government an assurance was given to the railway companies that they would propose to Parliament at the next session legislation providing that an increase in the cost of labor due to the improvement of conditions for the staff would be a valid justification for a reasonable general increase of charges within the legal maxima if challenged under the act of 1894.

It was also stated on behalf of the Government that the commission would consist of five members, including members representing employers and workmen in equal numbers, with a neutral chairman, the commission to proceed with its inquiries as expeditiously as possible, and to report with the least possible delay.

When the terms of the settlement were made public, the rank and file of the railway employees made many bitter protests against the Government, the railway companies, and their own officials, but loyalty to their representatives prevailed and work was resumed. The agreement was reached on the night of August 19; on August 22 the members of the royal commission were announced and its first sitting was held on August 23.

¹ Board of Trade Labor Gazette, September, 1911, pp. 322, 323.
INQUIRY OF THE ROYAL COMMISSION.
COMPLAINTS OF THE RAILWAY EMPLOYEES.

The commission commenced its inquiries on August 23. Its findings are given elsewhere,1 but the testimony offered before it brings out more fully than the condensed summary there given the men's grounds of complaint. Naturally there was some difference in these, according to the company by whom a given witness was employed. The secretary of the Amalgamated Society of Railway Servants thought the chief objections to the scheme of 1907 were, in effect:

Irritating delay in acceptance of petition of men's grievances. Slow and cumbersome machinery for settling such grievances. Enormous cost to the trade-unions of arbitration proceedings. (Eleven cases cost the Amalgamated Society of Railway Servants £30,000 [$145,995].) Claim of the companies to be sole interpreters of the awards. Refusal to recognize the men's unions.

DELAY IN ACTING UPON COMPLAINTS.

Concerning the first and second items, it was explained that a petition from the workers concerned was the first step in bringing any matter before the employers, but there were no definite rules as to the number or proportion of signatures such a petition must have before the directors would consent to receive it. Consequently when a petition was presented it might be sent back as being insufficiently signed, and the men would have to collect more signatures, not knowing at all how many were needed. When a petition was received, an answer was not obligatory until two months had elapsed. If the answer were unfavorable, there were numerous opportunities for delay in calling the meetings of the successive boards. "Taking the companies all round, the lapse of time from application to settlement extended to 15 and 18 months." And meanwhile the grievance against which the original petition was directed was continued in full force.

CLAIM OF COMPANIES OF RIGHT TO INTERPRET AWARDS.

Another grievance which produced perhaps even more irritation was the claim of the companies to be the sole interpreters of the awards given. The men felt that if there was a difference of opinion as to the meaning of an award there should be a discussion between the two sides of the central board as to its real import, or else the arbitrator should be appealed to, while the companies took, in effect, the ground that their reading was the only tenable one, and that neither discussion nor appeal was in order. Consequently it was only after long delays, if at all, that the men succeeded in getting

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1 See Appendix I, pp. 100–109.
disputed points discussed or referred back to the arbitrator. One case was instanced in which an award was given in February, 1909, to become effective in April. The men's side of the central board asked in February for a reference back to the arbitrator that the terms might be interpreted. This the company refused, and when, later on, difficulties arose over the various meanings put upon the award they insisted the whole procedure of the conciliation scheme should be invoked, i.e., that the men should present petitions and send deputations, that the sectional boards should be called into play, that the questions should be passed up to the central board, and only after its action might the arbitrator be called upon to say what he meant, which point was reached and an interpretation given in January, 1910, nearly a year after the award was made. Many of the grievances brought before the boards, the witnesses declared, were not settled yet, although awards had been given. Such matters might be easily settled if the representatives of masters and men could be brought together for free discussion.

Other witnesses brought forward additional complaints. The scheme of 1907 was not sufficiently inclusive, some thought; it dealt only with wages and hours, but there were many grievances which did not come under these heads—fines, suspensions, deductions, and withholding of advances and promotions. Furthermore, complaint was made that the companies sometimes varied the awards or evaded them by so changing conditions of work that men failed to get the benefits the awards were supposed to give.1

Another complaint was that while the companies came before the different boards fully informed as to every circumstance, the men's side had no practicable means of getting the information they needed; and that the companies might, and in some cases did, refuse to furnish this, so that the men's representatives had to work with incomplete knowledge. For instance, the wages of certain classes of workers varied considerably from place to place on the same roads. Cases were cited in which, when applications from these workers were brought before the conciliation boards, the companies refused to give any information as to rates of pay, so that the men's side of the boards either had to work in the dark or send to every place where such workers were employed and learn by individual questioning what wages each got—a process so slow, expensive, and difficult as to be practically impossible. The men themselves did not always know the conditions of their employment.2

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1 Officers of the companies admitted that in some cases such changes had been made, but claimed that these were matters of management, which the agreement of 1907 left entirely in their hands.
2 Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the working of the Railway Conciliation and Arbitration Scheme of 1907, pp. 45 and 46; p. 52, q. 1209; p. 62, q. 2030; p. 228, qqs. 5989 and 5981.
Again it was felt that arbitrators' awards were made binding for too long a period. Many of the awards given were to last through 1914, and no matter what changes might occur meanwhile in cost of living and general rates of wages, the men were estopped from even asking for any improvements until the expiration of the period fixed.

Still another objection was the difficulty of getting arbitrators sufficiently familiar with railroad work to understand and adjudicate fairly the questions brought before them. "One of our greatest difficulties," said one witness, discussing the decision of a certain arbitrator, "was to get him to understand the work of the various grades. There is a great number of grades in many of these arbitration cases which in their ordinary work differ one from the other. I am afraid that has lost, in a number of cases, really the point at issue." 1 Other witnesses declared in effect that the men were afraid to risk arbitration because of this drawback. Judges and other prominent men who had no practical experience in railroading could hardly be expected to understand its intricacies, and the men felt that by bringing cases before such arbiters they were more likely to lose than to gain. 2

REFUSAL TO RECEIVE OFFICIAL REPRESENTATIVES OF THE MEN.

There were other minor points of annoyance and irritation, but the greatest difficulty of all was the attitude of the companies toward the unions. In principle, and to a very large extent in practice, they declined to recognize that organizations of any kind existed among the men. They were willing to deal with individual men in their employ, or with a group of men acting as a delegation, but they refused in toto to receive anyone as a representative of the men unless he were actively employed in their service. This, the men felt, put them at a very unfair disadvantage. In any negotiations between them the companies were represented by highly trained experts, familiar with every detail of the company's business, and thoroughly skilled in the art of presenting a case.

On their part the men could only put forward one of their own number, a man who, as engineer or guard or fireman or other worker, was employed from 8 to 12 hours a day at one detail of the company's service, and had only such time as was left after his day's work for familiarizing himself with the general situation, collecting the data needed for backing up his case, and preparing himself to set forth his arguments effectively. Moreover, he was necessarily hampered by the fact that he was arguing with his own employers, and that if he created a bad impression upon them his future pros-

1 Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the working of the Railway Conciliation and Arbitration Scheme of 1907, p. 231, q. 6019. London, 1911.
2 Idem, p. 161, q. 3922; p. 214, q 5473; p. 188, q. 4682.
pects, if not his present position, might be seriously injured. If
the men tried to meet this situation by paying their chosen advocate
a salary, so that he might be free to work up their case and present
it unhampered, he immediately ceased to be an employee of the com-
pany and was therefore no longer eligible to represent them, either
in informal conferences with the employers or before the concilia-
tion boards. If a case went to arbitration, he might appear before the
arbitrator, but up to that stage the men must be their own advoca-
tes.

There was some disagreement among the men as to the stage at
which it should be permitted to call in a trade-union official as
spokesman. A few thought this should be permissible as soon as a
man felt he had a grievance, but the majority agreed that it would
be better to have a first interview between the men and their
superiors alone. If the matter were settled in this interview, well
and good, but if not, the man or men concerned should have a right to
another interview, in which they might be represented by their trade-
union officials or anyone else whom they chose, and they should be
equally free in their choice of a representative if the matter went to
conciliation. Most of the witnesses also thought that this right of
representation should not be confined to matters of hours and wages
only, but should extend to the numerous other questions over which
trouble was always likely to occur.

ALLEGED VICTIMIZATION OF REPRESENTATIVES OF THE MEN.

The witnesses for the men complained of numerous cases in which
those who had taken an active part in trying to secure better condi-
tions had been victimized, i.e., dismissed or reduced in grade or

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1 I spent 30 years with a railway company myself. During that period I occupied
the position of a representative on behalf of the men on several occasions, and while I
am prepared—and I always like to do justice to everyone—to say that the company permitted
me to exercise a reasonable freedom in the position that I occupied, nevertheless, though
not being unduly a nervous man, I always felt a certain amount of temerity when advo-
cating the men's claims. I think that it would appeal to everyone that when you are
arguing an economic question with your own employers, it is just possible for you perhaps
to argue it a little more vigorously than they care for, and as a consequence it is bound to
have an effect upon the advocate, no matter who the individual may be. (Minutes of
Evidence taken before the Royal Commission appointed to investigate and report on the
working of the Railway Conciliation and Arbitration Scheme of 1907, p. 7, q. 132.
London, 1911.)

2 We say that in the event of a deputation of the men waiting upon the management to
discuss questions of conditions of employment, they should be accompanied, if they desire,
by a representative of their trade-union. I do not mean by that, and the society does not
mean, that if any individual man at a station has got some point of difference or griev-
ance against his particular company he must immediately report it to the society, and
the society insist upon accompanying that man to the management. * * * Where
we have recognition we insist upon the practice that the men themselves should first make
local representations to their own immediate official, but in the event of their failing to
obtain satisfaction, if it is a question, say, where there is a large number of men involved
and a deputation is appointed from a station, if they request, and only at their request,
and at the request of the union, they shall be accompanied by a representative of the
society. (Minutes of Evidence taken before the Royal Commission appointed to investi-
gate and report on the working of the Railway Conciliation and Arbitration Scheme of
1907, p. 608. London, 1911.)
given less desirable work or otherwise penalized. The companies' witnesses denied that such victimization ever took place, and declared that in the specific cases cited by the men the penalty was inflicted for other causes and was in no wise connected with the sufferers' efforts to secure better conditions.

SUMMARY OF COMPLAINTS OF THE MEN.

It will be seen that the complaints of the men centered around two points—first, the absence of any recognition of their unions and the closely connected refusal of many of the companies to treat with the men as equal parties in the conciliation proceedings, and, second, the alleged violation by the companies of the spirit and intent of the pact by delaying its working most unreasonably, by claiming the right to be sole interpreters of the awards when given, and by varying conditions of work after awards had been given, so that those who would otherwise have profited by these awards gained no advantage from them. The men felt that they had very serious grievances in the matters of long hours, low wages, and oppressive conditions of work, and that the agreement of 1907 had been so perverted from its true purpose that it was merely an ingenious device for preventing any remedial action.

ANSWERS OF THE RAILWAY COMPANIES.

The representatives of the railway companies who testified before the commission denied the charges of delay and bad faith in the working of the scheme of 1907, and on their side complained strongly of the recent strike as a breach of the agreement. They also claimed that they had signed the agreement on the understanding that the question of recognition was not to be raised during its existence, and for the men to bring forward that demand at the present juncture was a violation of their bargain which showed the futility of entering into negotiations with the unions. For the most part they were fairly well satisfied with the scheme of 1907, though they suggested various changes which would make it work more satisfactorily.

OPPOSITION TO RECOGNITION OF THE UNION.

Most of the railway officials were absolutely and unalterably opposed to recognition of the unions in any shape or form. Various minor reasons were assigned for this attitude, such as the difficulty of dealing with the numerous organizations among which the unionists were divided, the fact that the majority of railroad workers

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1 The managers of the North Eastern Railway had not signed the agreement of 1907, but had conciliation methods of their own which involved full recognition of the union. Their grievance was the sympathetic strike, which brought their men out in August, although they had no personal reasons for striking.
were not unionized and hence could not be represented by a trade-union official, the unreasonable character of union demands, etc., but the reason upon which most emphasis was placed was the effect such recognition would have upon the discipline of the force. The sole purpose of seeking recognition, some felt, was to increase the power of the unions.

The meaning of the word "recognition," as asked for by the trade-unions, is, to my mind, this: It is an undefined something which the railway companies are asked to concede with a view of enabling the trades-unions to coerce nonunionists to join their societies, so as to put them in a position to dictate terms to the railway companies and, if necessary, to declare a strike with every possibility of success.\(^1\)

Even those railway officials who did not take as extreme a view as this of the purposes of the union felt that to permit a trade-union official, as such, to take any part in the negotiations before they reached the final stage of arbitration would interfere disastrously with the safe and effective working of the railroads.

The commission will know as well as I do that the British railways stand absolutely at the top of the railways of the world as regards safety of working. There is nothing comparable to them in any country of the world, and that is brought about by the very high state of discipline which exists on the railways. If the action of an officer in controlling and directing his staff is to be subject to the criticism of an outsider and the intervention of that outsider, the authority of that officer must be weakened. It is only by the knowledge that the officer has got supreme, direct, and unquestionable control over his men that the discipline which gives the British public the safety they enjoy in traveling can be maintained.\(^2\)

**ATTITUDE OF PARTIES TOWARD CONCILIATION.**

It will be seen that neither side presented arguments against conciliation in itself. A few witnesses on the men's side declared that their fellow workers had become so disheartened and disgusted by the way in which the plan of 1907 was worked that they wanted nothing more to do with conciliation in any form, preferring to go back to the old method of striking at discretion; but these were very much in the minority. The men in general had not lost their belief in conciliation, but only in this particular method. It will be noticed that the report of the royal commission gives a number of plans, all involving conciliation and most allowing arbitration, which the witnesses for the workers' side suggested as substitutes for the present arrangement. Apparently none of them wished to sweep away

\(^1\) Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the working of the Railway Conciliation and Arbitration Scheme of 1907, p. 353. London, 1911.

\(^2\) Idem, p. 374.
the existing machinery and have nothing in its place. Among the witnesses on the companies' side, also, there was no inclination to revert to earlier methods. Many of them admitted that they had signed the agreement reluctantly, but, having tried it, they did not wish to relinquish the plan, though they suggested various improvements.

REPORT OF THE ROYAL COMMISSION.

The royal commission, after reviewing the evidence, suggested certain amendments to the scheme of 1907 designed to secure promptness of settlement, uniformity of procedure, and finality of decision.\(^1\)

It was suggested that the central boards be abolished, and that the sectional boards, with some alterations and additions, should perform the conciliation work not settled by direct negotiations between the parties concerned.

All matters of difference dealing with rates of wages, hours of labor, or conditions of service other than matters of management or discipline, if not settled by conference between deputations of the men and the company, should be referred to the conciliation boards. Either side of a board, by 14 days' notice, might ask for a special meeting, submitting the matter to be discussed. A neutral chairman was provided for, to be selected by the conciliation boards from a panel to be prepared by the Board of Trade, the same chairman to act for all the boards on a system during the entire period of office of those boards. The fees and expenses of the chairman were to be paid by the Board of Trade. Any differences arising as to matters to be placed on the program should be decided by the chairman, as well as any question of interpretation not settled by the board.

No steps should be taken to alter existing agreements and awards before July 1, 1912.

The proposed new scheme should remain in force until November 6, 1914, and thereafter be subject to revision as regards any company, by 12 months' notice by the company, or by a majority of the representatives of the employees on all the conciliation boards of the company's system.

The scheme proposed contemplates final settlement at boards by conciliation, if possible without a chairman, but if conciliation fails, then by bringing in a chairman. The representatives of the men on each board shall be at liberty to appoint as their secretary any suitable person, whether an employee of the company or from outside, but he shall not have the power to vote unless he shall have been duly elected a member. Men charged with misconduct, neglect of duty, or other breaches of discipline should be permitted to state their defense, to call witnesses, and to advance any extenuating circumstances before their officers prior to a final decision being arrived at.

\(^1\) For the recommendations of the Royal Commission in full, see pp. 105-108.
CRITICISM OF THE REPORT OF THE ROYAL COMMISSION.

The report of the royal commission was very far from satisfying the men; in fact, it provoked a storm of opposition. The principal objection was its failure to secure "recognition," i.e., the right of the men to representation by their trade-union officials at all stages of proceedings between them and their employers. The amended scheme provides that the men may choose anyone they please for their secretaries upon the conciliation boards, but leaves untouched the existing rule that only employees of a company may be concerned in the initial stages—the presentation of petitions and the discussion of grievances before the company officials. This representation through their trade-unions the men regarded as almost a sine qua non. They would, for the most part, admit that the first discussion of a grievance or presentation of a request should be carried on between the men and their superiors only, but if this conference failed to result satisfactorily they felt that the trade-union officials should be called in at once. They pointed out that an employee, more used to working than to speaking and wholly unskilled in the art of presenting a case, is at a grave disadvantage as compared with the shrewd and trained officials before whom he must plead his cause. He is unable to do justice to the complaint or petition he has to present, and quite apart from any bias on the part of the employers his cause does not get a fair show. More important still, the men, whether rightly or wrongly, seemed thoroughly convinced that the employee who thus puts himself forward in the effort to remedy a grievance exposes himself to petty persecution, to reduction of wages or refusal of promotion, and to possible discharge. Naturally under such circumstances there would be difficulty in getting complaints brought forward, and the original grievance would be augmented by the men's feeling that any attempt on their part to secure a remedy would be likely to result disastrously for them. "The railway men's battle will never be fought," declared one writer, voicing the opinion of his fellows, "until the directors are faced by representatives over whom they have no power, whom they can not boycott or blacklist."

They also objected strongly to the ruling that no change in existing settlements could be considered until July, 1912, on the ground that conditions had so changed since these settlements were adopted that they had in some cases become unfair and oppressive. The provision requiring the signatures of 25 per cent of the men affected to any petition for improvements was deemed unreasonably severe, and it

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1 How can a workman go forward and arbitrate with his employer, a man with just a common board school education, and on the other side men with the best college education? They can twist and turn your figures as much as they like. (Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the working of the Railway Conciliation and Arbitration Scheme of 1907, p. 328. London, 1911.)

2 See Appendix II, clause 2, p. 109.
was pointed out that the terms of the settlement were in several points so vague that they would almost inevitably provoke dissension when the two sides of the conciliation boards tried to apply them.

The dissatisfaction of the men was so intense that on November 2 the executive committees of the four railway unions wrote to the prime minister asking that a conference be arranged between their representatives and those of the railway companies, with a view to amending the scheme; should this be refused, they could not recommend the adoption of the plan. The prime minister conferred with representatives of the leading railway companies, who refused to agree to the proposed conference, holding that both sides had bound themselves to accept and act upon the findings of the royal commission. Upon receipt of this reply, the joint executives called for a vote of all railway unionists upon two questions: Whether they should accept the report as it stood and whether they favored a strike to secure better terms. The ballot papers were to be returned by December 5.

While this ballot was being taken the matter was brought up in the House of Commons, and a resolution was passed unanimously calling for a conference between the two sides and asking the Government to use its good offices to bring this about. The Board of Trade then sent letters to each side inviting them to confer, on the understanding that the findings of the royal commission were accepted in principle and in substance. The railway representatives agreed to confer on this basis, and the two sides met at the Board of Trade December 7.

AMENDMENT OF THE CONCILIATION SCHEME OF THE ROYAL COMMISSION.

As the result of this conference, several alterations, involving important concessions to the men, were made in the plan proposed by the commission.1 The employers must receive a deputation, if the men wish to send one, within 14 days of the receipt of a petition. Petitions and answers must be made in writing, thus avoiding some possibilities of misunderstanding. Clause 2, providing that if the employees wish to apply for any changes a petition must be presented, signed by 25 per cent of those affected, was altered to provide that special meetings of the conciliation boards might be held at once, at which the necessary percentage should be decided upon; if the two sides were unable to agree, the 25 per cent should stand. Clauses 5 and 6 were amended to provide that, in the case of a company wishing to alter adversely wages, hours, or conditions of service, it must notify the workers concerned, and the matter must be brought up and passed upon at the next meeting of the concilia-

1 For the amendments agreed to in this conference, see pp. 115–117.
tion board, the change not becoming effective until the board had approved it or the chairman given his decision in its favor. Variations in trip rates, if unsatisfactory to the men, might be referred to the next meeting of the conciliation board, and its decision should be retroactive. Alterations in existing settlements might be made at the meeting of the conciliation boards to be held in May, 1912, but should not take effect till July, 1912. A number of other amendments were made, all in the direction of securing a smoother working of the scheme. In addition, the railway representatives present bound their own roads to pay extra and casual men for the time actually worked at rates not lower than the minimum rates paid regular employees for the same work, and undertook to get other companies to adopt the same arrangement. The plan as amended was signed December 11, 1911.

Even with these amendments, the plan was so distasteful to a number of the workers that for a time it was a question whether the members of the executive committees could prevail upon the unionists to accept it. At the present time, however, it seems to have been adopted, and the more moderate element is pointing out the importance of the concessions gained. The union has secured a large measure of recognition, employees have henceforth the right to know the conditions under which they are employed, awards can no longer be made binding for long periods, the possibility of delay has been much reduced, the right to secure prompt interpretation of disputed points has been conceded, and the inclusion of "conditions of service" among the matters coming within the scope of the boards, while presenting opportunities for disagreements, also gives the workers a tenable ground for bringing up any matter they choose. As an additional gain, although the royal commission refused to interfere with existing settlements, the companies, as a direct result of the strike and the resulting publicity, have in many cases altered the terms allowed them, making substantial advances in wages.

ATTITUDE OF PARTIES AND THE PUBLIC TOWARD CONCILIATION AND ARBITRATION.

It is as yet rather early to say what has been the effect of the strike upon the attitude of all concerned toward conciliation and arbitration, but on the whole there seems much reason to believe that the movement in their favor gained substantially. A section of the men are, it is true, almost in open revolt against the conciliatory scheme adopted, but they seem to be rather a small minority. The leaders have given strong evidence of their faith in conciliation, and declare that in doing so they represented the real sentiment of their supporters. The attitude of the railway managers is more problematic.
Some of them had evidently accepted the principles of conciliation in good faith, and saw no reason for giving them up; others had accepted them reluctantly, and claimed that neither side had benefited thereby. Even these latter, however, would not admit when questioned on the point that they would be willing to sweep away all machinery for consultation and discussion, and to go back to the old methods—or lack of methods.¹

As to the general public there can be no question that the strike gave a powerful impetus to the cause of conciliation. Thousands had been inconvenienced, in some cases most seriously, and whole cities had been brought to the verge of acute suffering, because, in the first instance, certain employers and their men could not agree. Obviously, the public ought to be protected against such possibilities. The question of the relation between employer and employee was brought home to multitudes who in the natural course of events would never have considered it, and their attitude was clearly shown when the railway representatives refused to confer with the union officials over the terms proposed by the royal commission. Here was a case where the public's rights were imperiled because one party to a dispute refused to adopt the principles of conciliation; and the House of Commons promptly and unanimously demanded that that party should recede from what they considered an unjustifiable position. A more striking proof could hardly have been given of the extent to which the public has departed from the belief that labor troubles are in all cases private matters to be fought out between the two parties concerned, and come to feel that peaceful means of adjusting a difficulty should prevail. A rather unusual combination of circumstances gave the public a chance of showing where it stood, and it declared unhesitatingly for conciliation.

¹ Q. 11575. Do you think that the old method of dealing directly with your men was preferable to any scheme of either conciliation or arbitration?—A. I do. I have seen a good deal of it. I have seen deputations attend in the board room, and I have seen them appear there on practical equality with the chairman and directors of the railway. They have had freedom of speech, they have had facility of expression, and they have gone away with substantial benefits.

Q. 11576. But the deciding power was with the chairman of the railway company?—A. Quite so.

Q. 11577. He was the man who had to decide?—A. He was open to be convinced and frequently was convinced.

Q. 11578. But still it was a matter for him to decide whether he would be convinced or not?—A. Yes. He was the custodian of the shareholders' money.

Q. 11579. You think that was a system that was preferable, both from the railway company's side and the men's side, to any scheme, either of conciliation or arbitration?—A. Well, I have got used to conciliation and arbitration now, but if you had asked me that question in 1907 I should have said, "Absolutely nothing of the sort is wanted."

Q. 11580. You are a few years older now; what do you think now?—A. Well, you would never get rid of it now.

Q. 11581. You do not like it yet?—A. It is not altogether bad; it is good in parts.

(Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the working of the Railway Conciliation and Arbitration Scheme of 1907, p. 476. London, 1911.)

In the following pages the significant portions of the report of the royal commission are given in full, the omitted sections being of an introductory character, reviewing the appointment of the commission, the events leading up to the agreement of 1907, and a brief synopsis of the agreement of 1907.

THE AGREEMENT OF 1907.

OPERATION OF THE SCHEME.

20. The putting into operation of entirely new machinery led, in some instances, to considerable delay, but, on the whole, reasonable efforts were made by the greater number of the companies to get the conciliation boards established.

21. As regards the earlier meetings of the boards, there appears to have been a disposition, on the part of both the companies and the men, to regard arbitration as the final destination of the matters put on the agenda. This tendency was no doubt greatly contributed to by the fact that the men's demands were on the lines of the “national program,” from which the men's representatives on the boards did not feel at liberty to depart. It is therefore not surprising that for the time the methods of negotiation through “the usual channels” between the men and the companies fell, more or less, into abeyance. No doubt the companies, in accordance with the terms of the agreement, required the presentation of the petitions and the holding of conferences between the men and their officers. But these proceedings would appear to have been very much a matter of form and to have been carried out only as a necessary prelude to placing the points of difference before the sectional board. In many instances reference to the sectional board seems to have been again a matter of form. Central board proceedings were much of the same character, and, as already stated, the final destination of the demands, in many of the cases which arose in the earlier period of the operation of the scheme, was arbitration.

22. All this, although it can hardly, in our opinion, be said to have carried out the intention of the framers of the scheme, is not any proof that the failure was attributable to the scheme itself, but merely demonstrates that the circumstances which prevailed at the time rendered very difficult the application of the earlier stages of the scheme, which depend on conciliation. High hopes were apparently entertained by the men as to the result that might come from arbitration. Prior to the actual hearing before an arbitrator it may almost be concluded that the men had never understood, or even heard, what could be said from the point of view of the railway companies, nor had they had any conception of the financial consequences of their demands.

23. Even after the arbitration proceedings it is highly probable that the great majority of the men could not quite appreciate the fairness of the awards. The men, no doubt, received important and valuable concessions, but, notwithstanding this, the results of the arbitrations were at the time, and have since remained, a keen disappoint-
ment. This is easily understood from the short review of the occurrences which took place from the declaration of the "national program" by the Amalgamated Society of Railway Servants in 1906 up to the launching of the scheme of 1907.

24. It would serve no purpose to discuss the probabilities as to what might have happened if the relations between the companies and the trade unions had admitted, before or at the time of the launching of the "national program," of an interchange of ideas as to its feasibility, but the conclusion might reasonably be drawn that such an interchange of opinions at that stage would have been attended with valuable results.

EVIDENCE OF TRADE-UNION REPRESENTATIVES AND RAILWAY EMPLOYEES.

25. It is alleged that since the introduction of the scheme the former methods of settlement of differences between the men and the companies have to a great extent been abandoned, and that whereas the conciliation boards established under the scheme are only to deal with questions of wages and hours which can not be mutually settled through the "usual channels," as a matter of practice these channels, in the case of many companies, have become narrowed almost to disappearance.

26. Different rules and methods for the approach by the men to the companies have prevailed on the various railways, but the general trend of the evidence of the men is that the preliminary stage of conferences with the companies' authorities is not so much encouraged and resorted to as formerly. No doubt, before a proposal for change of hours or wages can be brought before a conciliation board an application must previously have been made in "the usual course," but it is alleged by the men that the procedure in regard to such applications is not governed by any rule and can be declined and delayed by the companies on the ground that it does not really represent the views of any considerable proportion of the men.

27. It is complained by the men that a period of two months for reply, before any steps can be taken to bring the matter before a board, is excessive, and that even then a fortnight's notice must be given after the secretaries have signed the agenda before the board can meet. A further cause of delay which is mentioned is that the secretaries do not always concur as to the contents of the agenda.

28. It is advanced by the men that sectional boards as at present constituted are in many instances merely formal mediums through which business is carried to the central boards, that they are presided over by officers of the companies, and that frequently there is no discussion of the subjects on the agenda.

29. It is alleged that where a section board does not come to a decision and where the further step of reference to a central board is taken much delay occurs.

30. The scheme is said to be too limited in its scope, and it is contended that it should provide for the consideration of all relations between railway men and the companies, except those in which discipline and management are concerned.

31. In matters of misconduct or neglect of duty it is alleged that men do not always get a full opportunity of explaining or stating any extenuating circumstances before they are punished, and it is con-
tended that the difficulties of making an appeal after punishment are manifestly much greater than if the opportunity were afforded before punishment.

32. It is complained that in some companies the temporary and casual laborers (who have been regarded as not falling within the scope of the scheme of 1907 and as outside the settlements and awards thereunder) are being increased beyond the numbers necessary to provide for abnormal conditions of traffic.

33. It is urged that the men are placed at a disadvantage by the rule which obliges them to appoint an employee of the company as their secretary. They state that a servant of the company, dependent both as to position and future prospects, must be more or less influenced in his duties as secretary and advocate.

34. The men object to arbitration as provided by the scheme on the grounds of expense, delay, and differences on the subject of interpretation of awards. They also strongly object to the long periods for which the decisions by award are fixed, and many of the witnesses suggest that any award should be determinable at the end of 12 months from its date by a 3 months' notice by either party.

35. Complaint is made that where advantages accrued to the men by the agreements arrived at by the boards or the awards of arbitrators these advantages were counterbalanced or altogether taken away by changes in "management." The chief instances given are the reclassification of grades, the employment of men in a lower grade to discharge the duties of men in a higher grade, the adjustment of hours of duty so that Sunday rates of wages and overtime were avoided, and, where hours of labor were shortened, the arrangement of the hours of going on and coming off duty in a way that spread the period of duty over a greater number of hours.

36. In this connection several witnesses referred to the necessity of supplying to each grade of men in the permanent employment of the company a statement of the conditions under which they are employed.

37. The various suggestions made by the men may be briefly enumerated as follows:

Direct recognition of the trade-unions by the companies.

A central board only, as at present constituted.

Appeal to a national board; various suggestions as to its composition; general idea, six members, with a chairman, three to be named by railway companies, three by the trade-unions, and a chairman to be mutually agreed upon.

Abolition of central board; all decisions to be come to by sectional boards.

Appeal to national board, or to three persons, one to be chosen by each party, with a chairman to be agreed upon, and, failing agreement, to be appointed by the Board of Trade.

Some concur in the proposal that central or sectional boards, whichever may be decided upon, should be presided over by a neutral chairman, with a determining authority, while others would give such authority only on those occasions on which both sides consent.

The demand for the removal of the present restriction that the secretary must be an employee of the company is common to all these alternative proposals.
38. The evidence of the railway companies traverses generally the statements made by the men. The companies do not agree that any delay that occurred in putting the agreement into operation can be attributed to a desire on their part to deny to the men the advantages of the scheme. They emphasize strongly that they have carried out the terms of all awards and agreements and that the changes in matters of management, which the men allege deprive them of the benefits granted by awards, were not carried out with that object.

39. They reason that where shorter hours or a relief from Sunday work are asked for by the men a complaint that earnings are no longer derived from overtime and extra-duty pay is not tenable.

40. They urge that the absence of discussion at the conciliation boards was due generally to the avowed inability of the men to depart from the terms of the “national program.”

41. As regards the cost to the men of proceedings under the scheme, the companies reply that they offered to defray the expenses of the men at all stages of conciliation and arbitration and that the men refused the offer.

42. The companies concur in thinking that the machinery of the scheme might be simplified and that the decisions on matters of disagreement might be arrived at much more speedily. They approve of the abolition of the central board and agree generally that there should be a determining authority, easily approachable, if a sectional board can not come to a settlement.

43. Various suggestions are made as to the form of arbitration. There appears to be a desire on the part of the companies that arbitrators should be appointed (with or without assessors) for definite periods and for certain districts, and that they should be nominated by agreement or by the Board of Trade.

44. They object strongly to the intervention of any person not being an employee of the company at any stage of conciliation. They agree, however, that the men should be empowered to select assistance and advocacy from any quarter when their case goes before an arbitrator.

45. The companies strongly urge that, although the agreement of 1907 does not include it as one of its conditions, they were expressly assured that the question of “recognition” was not to be raised during the term of the agreement, and that it was upon this understanding that they agreed to submit to arbitration, as provided in the agreement, matters which, in their opinion, should be left entirely under their own control.

46. The companies express very decided opinions as to the restriction of operations under the scheme to questions of hours and wages, and they believe that any expansion of the scheme so as to include within its scope questions of discipline, management, or general conditions of service would most prejudicially affect their obligations to the public.

47. The companies dwell upon the great importance of arriving at some method by which security for the observance of contracts and agreements may be obtained. Most of the witnesses decline to make suggestions as to the method by which this could be accomplished,
while some of them express the view that legislative reforms should be carried out on the subject of picketing, the financial responsibility of trade-unions, the payment of strike benefit, the extension of the term of notice to cease work, the adequate protection of persons who desire to work, and the punishment of those against whom a charge of incitement to breach of contract can be maintained.

COMMENTARY ON EVIDENCE.

Recognition.

48. The most important, if not the main, efforts of the companies and the men were directed to the question of "recognition," and, beginning with this question, we now proceed to make some commentary upon the evidence given by both sides.

49. The position in which the question of recognition was left at the date of the 1907 agreement is not clear. The negotiations resulting in that agreement were conducted through intermediaries; there were no direct negotiations between the companies and the men. Whatever may have been understood by the companies, we have no evidence before us to enable us to say that the men understood it to be an essential condition of the agreement that the question of recognition should not be raised during its term.

50. The representatives of the men ask for recognition; the companies strongly object to it in any shape. The exact meaning of the term as it would be applied in practice is not quite clearly conveyed by either of the parties. The unions do not all express the same views; some desire the presence of a trade-union official to help the men in advocating their case before the officers of the company or before the directors; others think that their purpose would be served by the admission of the union official to help the men before the conciliation boards. The existing practice is that trade-union officials are admitted to plead before the arbitrator.

51. The apprehensions of the companies are that recognition as they interpret it would seriously affect discipline and interfere with management if men, in approaching their officers or directors on any subject of grievance or complaint, had the right to bring a union official with them.

52. We think that with their great responsibilities the companies can not and should not be expected to permit any intervention between them and their men on the subjects of discipline and management.

53. The trade-unions press strongly for recognition as representatives of the men. No doubt, in some matters and on some occasions, friendly relations between companies and the representatives of unions have been both convenient and useful. The witness who appeared before us on behalf of the Great Western Railway gave an illustration of the valuable results which attended his collaboration with the trade-union official who had conducted the case of the men before the arbitrator. In that instance many vexed points of interpretation were settled quite satisfactorily, and, in our opinion, a more general adoption of this method of negotiation would be helpful to both parties.
54. In our amended scheme we have provided that the members of each board shall be at liberty to select a secretary from any source they may think proper. We mention this in connection with the subject of recognition, as it may be regarded as pertaining to it.

Allegations of evasion of settlements.

55. The examples of regrading, the establishment of trip rates, and the other methods of management by which the men were alleged to have been deprived of the beneficial effects of awards are not numerous. Some of the companies did take this action, but, assuming that in doing so they acted in good faith and were within their rights, the carrying out of these economies at the very time the awards came into operation was, in our opinion, unfortunate and calculated to excite feelings of disappointment and irritation.

Suggested amendments of scheme.

56. In our opinion, amendments to the scheme of 1907 should aim at promptness of settlement, uniformity of procedure, and finality of decision, and the machinery should be such as is calculated to secure the confidence of those whose interests are involved in its operations. It is with this object in view that we make the following suggestions:

Preliminary procedure.

57. Taking in the order of sequence the various steps by which the men can ask for a consideration of matters which, in their opinion, demand rectification, we have, first, the approach to the company. In our opinion it is of the utmost importance that this preliminary procedure should not only be maintained but facilitated and every effort be made by both the companies and the men to adjust matters of difference before the next step is taken.

Sectional but no central boards.

58. All questions affecting hours, wages, or conditions of service, not settled by negotiation between the parties concerned, should, in our opinion, be referred to a board of conciliation constituted on lines similar to the sectional boards in the scheme of 1907 and sufficiently comprehensive to include all grades engaged in the manipulation of traffic. The sectional boards are representative, and we are of opinion that, with some alteration and addition, these boards can be made to fulfill the conditions and to carry out the principles of the scheme of 1907. Having regard to the additional powers which we propose shall be exercised by sectional boards, we think an entirely new election of members for the men's side of the boards should be carried out forthwith. We think the central board is redundant, and we propose that it should be abolished.

Grouping of grades.

59. To the form of election to sectional boards no exception has been taken save, perhaps, in the grouping of the grades forming the sections. While sympathizing with the desire of certain grades to
reduce the number of other grades grouped with them, we believe that the number of sections on any one railway system should not exceed eight. All grades engaged in the manipulation of traffic and in the permanent service of the company should, we think, be included in some one or other of the sections. Any doubt or difference as to the inclusion of a grade should be decided by the Board of Trade, to which department all differences and references on the subject of grouping grades and forming sections should be submitted for decision.

**Procedure before boards.**

60. We propose to provide that any matter dealing with hours, wages, or conditions of service, except questions of or bearing upon discipline and management, if not settled by conference between deputations of the men and the company, shall be placed upon the agenda paper for reference to a conciliation board to be assembled under normal circumstances at intervals of six months. The agenda paper, to be issued 14 days before the meeting of the board, should be agreed upon and signed by the secretary of the company’s side and the secretary of the men’s side of the conciliation board.

61. We propose that it shall be competent for either side of a board, by a 14 days’ notice, to ask for a special meeting, submitting at the same time the matter to be placed on the agenda. If a difference should arise as to the necessity for such special meeting, the question should be referred to the chairman within the 14 days. If he should decide in favor of holding the meeting, he should also fix the date upon which it should be held.

62. If a board be not able to come to an agreement either at first meeting or, if necessary, after adjournment for 14 days, on the application of either side of the board, then the chairman should be called in to preside over a reassembled board and to give a decision which should be final.

**Duties of chairman.**

63. An essential element in our proposed scheme is that a chairman, to be chosen from a panel to be prepared by the Board of Trade, should be available for each board, and that, as far as practicable, the same chairman should act for all the boards on a company’s system during the entire period of office of those boards. He should be selected by the conciliation boards or, failing agreement, by the Board of Trade. His fee and expenses should be paid by the Board of Trade under the provisions of the Conciliation Act, 1896.

64. We further propose that in the event of any difference arising between the secretary of the company’s side and the secretary of the men’s side as to the matters to be placed upon the agenda paper, reference should be made to the chairman, whose decision should be final. Any question of interpretation which can not be settled by the board should be submitted to the chairman for decision.

**Period of settlements.**

65. We think that agreements arrived at by a board should have force for 12 months and be held to continue thereafter until amended, superseded, or nullified by agreement of a board or by decision of a
chairman. Decisions by a chairman should have force for two years and thereafter continue in operation under conditions similar to the foregoing.

66. We propose that all existing agreements and awards should remain in force until July 1, 1912, and thereafter continue in operation under conditions similar to the foregoing.

67. We suggest that agreements arrived at by boards should be final, and that the provision in the scheme of 1907 for a suspensory period, within which the companies or the men have the option of rejection, should be deleted.

**Duration of new scheme.**

68. We propose that the amended scheme shall remain in force until November 6, 1914, and thereafter be subject to revision or determination, as regards any given company, by 12 months’ notice by the company or by a majority of the aggregate representatives of employees on all the conciliation boards for the company’s system.

69. All agreements and decisions of the chairman in existence at the period of the determination of the scheme should remain in force for the full time for which they were made and thereafter until amended, superseded, or nullified by agreement between the parties or by such machinery for the settlement of differences as may be thereafter set up.

**Men’s secretary.**

70. It will be seen that our proposals contemplate final settlements at boards by conciliation, if possible without a chairman, but, if conciliation fail, then by bringing in a chairman. The procedure in the matter of statements and advocacy will be to a great extent the same upon each occasion. At present the men can choose an advocate (not being counsel) to put their case before an arbitrator. We consider that it is of much importance to the men that the advocate before the chairman should have had the advantage of a full knowledge of all the circumstances at the preceding stages of the conciliation board. We therefore consider that the men should be free, if they think proper, to combine in the same person the duties of secretary and advocate at all meetings of the board, and, in furtherance of this object, we propose that the representatives of the men on each board shall be at liberty to appoint as their secretary any suitable person, whether an employee of the company or a person from outside, but that he shall not have the power to vote unless he shall have been duly elected a member. This arrangement is not intended to prevent the men from obtaining the services of a special advocate before the chairman.

**Facilities to be provided by companies.**

71. We think that the men’s secretaries while acting in the discharge of their secretarial duties should be offered the privilege of free traveling over the company’s system. We also think that the members of boards on the men’s side should be tendered a like privilege on producing a summons to attend a meeting.
Offenses against discipline.

72. Men charged with misconduct, neglect of duty, or other breaches of discipline should be permitted to state their defense, to call witnesses, and to advance any extenuating circumstances before their officers prior to a final decision being arrived at. Where doubts arise or where serious results to men are likely to follow, the cases should, we think, be placed before the higher officials of the company. Appeals after punishment lead to a difficult position, and the necessity for them should be avoided.

Conditions of service.

73. We attach much importance to the subject of "conditions of service." Many misunderstandings would be avoided if each man in the permanent employment of a railway company could be given access to a statement of the exact conditions of his service. If this were done many vexed questions—small, perhaps, in themselves, but important to individuals—would be greatly minimized.

Applications to Board of Trade.

74. When the assistance of the Board of Trade is asked for, the request should be made by the secretary to the company's side and the secretary to the men's side of the board jointly. If a difficulty should arise as to the form in which the request is to be made, the matter should, we think, be referred to the chairman.

Text of proposed new scheme.

75. The above-mentioned proposals will be found incorporated in the proposed new scheme annexed to our report.

OBSERVANCE OF SETTLEMENTS.

76. In other important industries experience has shown that conciliation on similar lines to those we recommend has satisfactorily settled differences between employers and employed, and we see no reason why it should not be equally successful on railways, provided that both sides are prepared to give it a fair trial. To make any scheme of conciliation effective there should be no organized stoppage of work until the conciliation machinery has been exhausted. No encouragement or assistance should be given to either side refusing to abide by the settlements during the periods of their continuance, and full and ample protection should be given to those who desire to observe them.

77. It is clear that however satisfactory machinery may be, however reasonable the settlement, all goes for nothing if a contract once entered into be not loyally observed.

78. Witnesses have suggested the applicability to railway employees of section 4 of the Conspiracy and Protection of Property Act, the Canadian Industrial Disputes Investigation Act, and the provisions contained in a bill presented to Parliament by Mr. Crooks, M. P., and others. It is not for us to prescribe how the adherence
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to contracts can be encouraged; how the breach of them can be penal-
ized. Men have the right to determine their engagement by giving
a lawful notice, but in the exercise of their freedom in this respect
they should not, in our opinion, be permitted to incite or coerce by
threats, or by any form of intimidation, men who desire to give their
labor.

matters outside the scheme.

79. We confidently hope that the suggestions we have made and
the amendments we propose in the scheme of 1907 may lead to the
overcoming of many difficulties which may hereafter arise in negoti­
tiations and in arriving at settlements between the railway companies
and their employees.

80. We can not, however, overlook the fact that strikes have taken
place under circumstances which had no connection with the con­
tract for hours, wages, or general conditions of service, nor, indeed,
with the concerns of either the strikers or their employers. The
scheme of 1907 does not meet such cases, nor do we believe it can be
made to meet them. We had proposed to make suggestions for the
alleviation of such difficulties, but the recent establishment of the
industrial council by your majesty’s government renders our obser­
vations unnecessary.

conclusion.

81. In humbly submitting these, our views, we beg your majesty’s
gracious permission to travel for an instant out of the terms of our
reference. The railway service of the united kingdom is second to
none. The public regards its railway system with pride and confi­
dence. That system has been built upon great traditions and high
ideals, and it is the privilege of every railway man in the kingdom,
of every class and grade, to participate in and to contribute toward
the great trust with which he has been invested. We think we ex­
press the general opinion when we say that if railway men will only
place the call of duty above and before every other consideration
they may confidently rely upon the british public to support them
in any fair claim fairly put.

appendix ii.—scheme for dealing with questions affecting
wages, hours, or conditions of service of railway employees
engaged in manipulation of traffic.

following is given the text of the proposed new scheme of con­
ciliation and arbitration as suggested in the report of the royal com­
mission of 1911. the scheme as here given is as recommended by the
commission:

steps preliminary to the bringing of business before conciliation boards.

1. unless otherwise mutually arranged the procedure laid down in paragraphs
2 to 8 shall be adopted.
2. if the employees forming a grade, or combination of grades having a
common interest, wish to bring to the notice of the company a matter affecting
their rates of wages, hours of labor, or conditions of service, or (at this stage)
any questions affecting the contractual relations between the company and its
employees, a petition shall be presented signed by at least 25 per cent of those concerned. The petition shall name a suitable number of employees of the company whom the petitioners desire to form a deputation. The company shall receive the deputation and shall give a reply to the petitioners within 28 days of its reception.

3. In the case of a matter which affects one or more individuals, as distinguished from a grade, or concerns one depot only, the application may be made, either orally or in writing, by those affected to the immediate superior of the men, and the company may designate a local superintending officer to hear the applicants, the reply of the company to the application to be made within 28 days of the conference with the applicants.

4. In the event of the company's reply in either case not being acceptable, or of no reply being received within the stipulated period, it shall be open to the deputation to require any question relating to rates of wages, hours of labor, or conditions of service, other than matters of management or discipline, to be referred to the appropriate conciliation board, by written application to the secretary of the employees' side of that board.

5. In the event of the company proposing to reduce the rates of wages, or to increase the hours of labor, or otherwise alter the conditions of service of a class of employees, notice of the proposals shall be given in writing to the secretaries of the conciliation board or boards which include the grades affected. Such notice shall specify a period of not less than 28 days within which objection, if any, to the proposals must be made.

6. In the event of 25 per cent of the employees concerned presenting within the specified period a petition stating their unwillingness to accept the company's proposals, a deputation of employees shall be received by the company to discuss the matters at issue, and the deputation shall notify their acceptance or otherwise of the company's original proposals, or such modification as may have been suggested meantime by the company, within 28 days of the reception of the deputation. If the company's original or modified proposals be not accepted by the deputation, it shall be open to the company to require the matter to be referred to the appropriate conciliation board.

7. For the purpose of the time limits set out in the preceding rules the months of August and September shall not be counted.

8. Petitions and deputations from the employees and proposals by the company shall, when practicable, be made at such dates as, failing agreements between the parties direct, will admit of the subjects of difference being placed on the agenda of the next ordinary meetings of the conciliation boards.

ESTABLISHMENT AND CONSTITUTION OF CONCILIATION BOARDS.

9. There shall be established on each railway a suitable number of conciliation boards to deal with questions referred to them relating to the rates of wages, hours of labor, or conditions of service, other than matters of management or discipline of all wage-earning employees engaged in the manipulation of traffic and in the permanent service of the company.

Employees' representatives.

10. For this purpose the various grades of the employees of the company who have a common interest and are covered by this scheme shall be grouped in a suitable number of sections, and the area served by the company shall be divided, if necessary, for the purposes of election into a number of suitable districts.

11. The employees belonging to each section shall elect, from among themselves, one or more representatives for each district, such representatives to form the employees' side of a conciliation board to deal with matters coming within the scope of this scheme and affecting employees included in the section.

12. The grouping of grades into sections, the division of the company's system into areas, and the number of representatives of employees shall, in the first instance, follow the existing arrangements for sectional boards under the railway conciliation and arbitration scheme of 1907.

13. The first election of employees' representatives shall be held as soon as possible, and existing conciliation boards under the scheme of 1907 shall cease to exist from the dates of the declaration by the Board of Trade of the results of the elections of employees' representatives to the new boards to be established under this scheme.
14. All elections of representatives of the employees shall be held under the supervision of the Board of Trade, and the following rules shall apply:
(a) Candidates must be employed in the section and district for which they desire to stand.
(b) Nomination papers proposing candidates for the various boards shall be sent to the Board of Trade not later than a specified day.
(c) Each nomination paper shall be signed by not less than 20 adult employees belonging to the candidate's section and district.
(d) The Board of Trade, after satisfying themselves that the nomination papers are in order, shall prepare voting papers and arrange for them to be circulated among the adult employees on a given pay day.
(e) The Board of Trade shall receive and count the voting papers.
(f) For the purpose of these rules "adult" means a person of not less than 20 years of age.

Company's representatives.

15. The company shall furnish to the Board of Trade, not later than the date on which the men's voting papers are to be counted, a list for each conciliation board of the persons in the permanent employ of the company from among whom the company will select its representatives on the conciliation board. Such list must specify at least two persons who will have permanent seats on the company's side of the board. The remaining seats on the company's side may be filled by any of the persons named in the company's panel of representatives for the board in question, provided always that at no time shall the total number of representatives present on the company's side exceed the total membership of the employees' side of the board.

Publication of names of members.

16. The Board of Trade shall publish for each board, with as little delay as possible, the names of the members elected to represent the employees and the names of the persons forming the company's panel of representatives, specifying those of the latter who are to have permanent seats.

Term of office.

17. The term of office of the first boards established under this scheme shall expire on November 6, 1914. Should the scheme be continued each subsequent board shall have a term of three years from the date of publication by the Board of Trade of the names of members of such board.

Casual vacancies.

18. Casual vacancies on the employees' side of a conciliation board through death, resignation, or loss of qualification shall be filled by cooption by the remaining members of that side, the coopted member to be a permanent employee of the company in the section and district represented by his predecessor. Similar vacancies on the company's side shall be filled by the company.

Modification of sections, districts, and number of representatives.

19. Any class of employees falling within the scope of this scheme, but not included at the outset in any conciliation board, may make application to the company, by means of a petition signed by at least 25 per cent of their number, to be included in an existing board or to have a new board established. The company shall thereupon arrange to receive a deputation of the petitioners with a view to the decision of the matter, which, in the event of no agreement being arrived at, shall be referred to the Board of Trade.

20. Any class of employees wishing to be transferred from one board to another existing board, or to a new board, may make application to the company by petition signed by at least 25 per cent of their number, and the petition shall be dealt with in the manner indicated in the preceding paragraph.

21. All differences with regard to the definition or modification of sections, districts, or number of representatives of employees, which can not be settled by agreement, shall be determined by the Board of Trade.
22. There shall be for each conciliation board a chairman, who shall not be a director of any railway company in the United Kingdom or in the service of any such company. The chairman of a conciliation board shall be selected from a panel to be constituted by the Board of Trade.

23. As soon as the conciliation boards on a company's system have been established, and from time to time when necessary, the employees' side of each board shall select two of their number to be invested with plenary powers, who shall attend a special combined meeting with an equal or less number of representatives of the company for the purpose of selecting, from the panel mentioned in paragraph 22, the name of a chairman to be suggested to the Board of Trade for appointment. In the event of failure to agree, the Board of Trade shall nominate the chairman.

24. On each occasion that the services of a chairman are required at a meeting of a conciliation board, as provided in paragraph 41 of this scheme, he shall be appointed under the Conciliation Act, 1896, and the same chairman shall act for all the conciliation boards established on a company's system during the entire period of office of those boards whenever practicable.

Leading members.

25. Each side of a conciliation board shall select its own leading member from among the members of the side. The leading members of the two sides shall, in the absence of the chairman of the board, preside alternately at the meetings unless otherwise mutually arranged.

26. In case of emergency, and in the event of the secretary of a side not being available, the leading member of that side shall perform the duties of secretary.

Secretaries.

27. Each side of a conciliation board shall have a secretary, who may take part in discussions and act as advocate, if desired, but shall have no vote unless he is a member of the board.

28. The company's secretary of each conciliation board shall be appointed by the company from any source it pleases.

29. The employees' secretary shall be chosen by a majority of the employees' side of the conciliation board, who may select him from any source they please, and shall determine the length and conditions of his office, subject to the provisions of this scheme.

PROCEDURE.

Ordinary meetings.

30. Every conciliation board shall hold two ordinary meetings a year at intervals of six months.

31. The date of an ordinary meeting shall be fixed by the secretaries of the board or, failing agreement, by the chairman.

32. At least 14 days' notice of the meeting shall be given by each secretary to the members of his own side.

33. The agenda shall be agreed upon and signed by the secretaries of the two sides of the board, and shall be issued 14 days before the meeting.

Special meetings.

34. Either side of a conciliation board may, by letter addressed to the secretary of the other side, ask for a special meeting to be held within 14 days, the request for a meeting to be accompanied by a statement of the matters to be placed on the agenda.

35. Should a difference arise as to the date of the special meeting, or as to the necessity of holding it, the difference shall be referred by the two secretaries to the chairman within the 14 days mentioned in the preceding paragraph. The chairman shall then fix the date of the meeting, if any is to be held.
36. No meeting shall be held in August or September, except by mutual consent.

Agenda.

37. Any difference arising between the two secretaries as to the matters to be placed on the agenda shall be referred to the chairman for his decision.

38. No question not on the agenda shall be brought up at any meeting except with the consent of both sides.

Method of dealing with applications.

39. No proposal for an alteration of rates of wages, hours of labor, or conditions of service shall be entertained by a conciliation board until the proposal has been dealt with in the manner set out in paragraphs 1–8, and the company and the employees concerned have failed to come to agreement by direct negotiation.

40. In the event of such failure to agree on a matter competent to be dealt with under this scheme, the matter may be placed on the agenda for the next ordinary meeting of the appropriate conciliation board by the side representing the party which made the proposal, and it shall be considered at such meeting unless previously withdrawn or placed on the agenda for a special meeting.

41. In the event of the two sides failing to agree at the first meeting at which a matter is considered, it shall be open to either side to adjourn the meeting for 14 days. If no agreement is reached at the adjourned meeting, or if neither side asks for such adjourned meeting, the chairman of the board shall be called in to preside over a reassembled board, and to give a decision on the matter, if the parties can not be reconciled.

42. At meetings presided over by the chairman, either side may, if it desires, have the services of a special advocate, who is neither member nor secretary of the board, but counsel shall not be engaged.

Records of proceedings.

43. A record of every meeting of the board shall be agreed upon and entered in duplicate minute books, one to be kept by each secretary, and signed by both. Each secretary shall circulate a copy of the record among those represented by his side of the board, in such manner as may be determined by the side.

Decisions of boards.

Voting by sides.

44. Each side of a conciliation board shall vote separately and, in the absence of the chairman, all decisions shall be arrived at by agreement between the two sides.

Function of chairman.

45. At meetings at which the chairman is present he shall endeavor to bring the two sides into accord, and, failing this, shall, either at the meeting or within a reasonable time thereafter, give a decision on any matter still at issue.

Decisions to be final.

46. All settlements arrived at, whether by agreement of the two sides or by the decision of the chairman, shall be final and binding, for their periods of operation, on both the company and the employees, the ratification of neither of these parties being required.

Duration of settlements.

Existing settlements.

47. All settlements at present in operation, whether arrived at by agreement by conciliation boards under the scheme of 1907 or by arbitration under that scheme, shall remain in force until July 1, 1912, and thereafter until they are varied, superseded, or nullified by decisions of conciliation boards or chairmen under the present scheme.
48. Notwithstanding the terms of any settlement by agreement or by arbitration under the scheme of 1907, it shall be competent under the present scheme to reopen, after July 1, 1912, any question dealt with in those settlements.

**Future settlements under the present scheme.**

49. Settlements arrived at by agreement between the two sides of a conciliation board shall have effect for at least 12 months.

50. Settlements by decision of the chairman of a board shall have effect for at least two years.

51. In either case settlements shall be held to continue in operation beyond the minimum period above specified until they are varied, superseded, or nullified by decision of the conciliation board arrived at by agreement or by decision of the chairman.

52. Settlements, whether by agreement or by decision of the chairman, may be varied at any time (before or after the expiration of the minimum periods above mentioned) by mutual consent of the two sides of the board.

**Duration of scheme.**

53. The present scheme shall remain in operation until November 6, 1914, and thereafter be subject to revision or determination, as regards any given company, by 12 months' notice given by the company, or by a majority of the aggregate representatives of employees on all the conciliation boards for the company's system. The earliest date at which such notice may be given is November 6, 1913.

54. All settlements in force at the period of determination of the scheme shall continue in operation for the period for which they were made, and thereafter until varied, superseded, or nullified by agreement between the company and the employees, or by such machinery for the settlement of differences as may be hereafter established.

**Codification of conditions of employment.**

55. Lists showing the existing rates of wages, hours of labor, and all other conditions of service of the various grades of employees covered by this scheme shall be prepared as soon as possible by the company, and printed in a suitable form at its expense.

56. These lists shall form the basis of the contract between the company and its employees, and copies thereof shall be exhibited by the company without delay in places where they may readily be consulted by the employees concerned, in order that every employee may know precisely what are the conditions of his service.

**Expenses.**

57. Secretaries of conciliation boards shall be allowed free traveling on the company's system when engaged in the execution of their secretarial duties.

58. All members of a conciliation board shall be allowed free traveling on the company's system for the purpose of attending meetings of a board.

59. A statement of the results of the election of employees' representatives to a conciliation board, the agenda papers, the records of proceedings, and the text of the agreements arrived at, having been prepared and signed by the two secretaries, shall be printed and posted up at the depots, stations, etc., in such a manner as to be accessible for examination by the employees of the company. Copies shall also be supplied to each member of the board. All this shall be done at the company's expense.

**Interpretation.**

**Interpretation of settlements.**

60. Any differences which may arise as to the interpretation of settlements, whether arrived at by agreement between the two sides of a conciliation board or by decision of the chairman, shall in the first instance be considered by the two secretaries, and in case of difference be referred to the board, which shall be summoned within 14 days.
RAILWAY LABOR DISPUTES IN GREAT BRITAIN. 115

61. Requests by employees for interpretation by a conciliation board shall be made through the secretary of the employees' side, who shall decline them or bring them before the board in accordance with general or special directions from the employees' side of the board.

62. Applications by the company for interpretation by a conciliation board shall be made through the secretary of the company's side of the board.

63. Any questions of interpretation, on which the board fail to agree, shall be dealt with at an adjourned meeting at which the chairman shall be present, the decision of the chairman on points of difference to be final.

Interpretation of scheme.

64. If any question should arise as to the interpretation of this scheme it shall be decided by the Board of Trade.

65. Requests for interpretation of the scheme shall be signed by both secretaries of the board concerned. In the event of disagreement the chairman shall confer with the secretaries and settle the form of application to the Board of Trade.

THE RAILWAY CONFERENCE AGREEMENT OF DECEMBER 11, 1911, SUPPLEMENTARY TO THE SCHEME SUGGESTED BY THE ROYAL COMMISSION FOR DEALING WITH QUESTIONS AFFECTING WAGES, HOURS, OR CONDITIONS OF SERVICE OF RAILWAY EMPLOYEES ENGAGED IN THE MANIPULATION OF TRAFFIC.

In furtherance of an agreement signed at the Board of Trade on August 19, 1911, and of the report of the royal commission appointed to investigate and report on the working of the railway conciliation and arbitration scheme of 1907, it was agreed by the undersigned, on behalf of the railway companies in Great Britain who have adopted the conciliation scheme of 1907, and of the joint executives of the trade unions of railway employees, and of the Government and the Board of Trade, that the report and scheme of the royal commission be accepted and adopted with the following alterations and additions:

A.—It was agreed that the form of procedure as laid down in clauses 2 to 8 be adopted, subject to the following modifications:

Clause 2. The last sentence to read as under: "The company shall receive the deputation within 14 days from the receipt of the petition and shall give a reply in writing to the petitioners within 28 days of the reception of the deputation."

With regard to the signing of the petition by at least 25 per cent of those concerned, it was agreed that each company shall settle with its employees the question of percentage.

For this purpose a special meeting of each conciliation board shall be convened.

Failing agreement between the two sides of the board the percentage of 25 laid down in the scheme to apply.

Clause 3. The words "either orally or," in lines 2 and 3, to be deleted.

The following words to be inserted after the word "applicants" in the fourth line: "Within 14 days of the receipt of the application."

The words "in writing" to be inserted after the word "made" in the fifth line.

Clauses 5 and 6 to be deleted and the following clauses to take their place:

Clause 5. In the event of the company proposing to reduce the rates of wages, or to increase the hours of labor, or otherwise alter adversely the conditions of service (other than matters of management or discipline) of a class of employees, the company shall circularize the men concerned, stating what their proposals are and giving notice that the proposal will be placed on the agenda for the next appropriate meeting of the conciliation board. Such circular to be issued to the staff not less than one month before the date of the meeting of the conciliation board at which the proposal will be considered.

Clause 6. If the company find it necessary to reduce the rates of wages or increase the hours of labor or adversely alter the conditions of service of any
individual or individuals, as distinct from a class of employees, they shall be at liberty to do so, subject to the man or men concerned having the right (if they feel aggrieved) to refer the question, unless it is one relating to matters of management or discipline, to the next meeting of the conciliation board.

If, at the meeting of such board, it is determined that the alteration was not reasonable the matter shall be adjusted as from the date the alteration was made.

B.—It was agreed that clause 13 should be altered to read as under:

“In those cases where the elections of employees’ representatives have taken place during the year 1911 the term of office of such boards shall expire on November 6, 1914, except in those cases where it is found necessary to reorganize the grades coming under the existing boards. Elections under these conditions, and also in the case of boards not yet formed or not reelected during 1911, shall be held as soon as possible.”

It was agreed that the first meeting of the conciliation boards established under this scheme should not be held prior to May, 1912, except so far as the special meetings necessary to decide the percentage referred to in minute A (clause 2) are concerned. At the first meetings held in May, 1912, it shall be competent to raise for discussion, after the usual procedure laid down in clauses 2, 3, and 4 of the scheme has been carried out, any matter included in settlements at present in operation, subject to the proviso that no alteration in such settlements shall operate before July 1, 1912, as laid down in clause 47 of the scheme.

C.—Clause 14. It was agreed that the following note should be added to paragraph (C) in this clause:

“The board of trade have, in their discretion in the case of small companies, modified the number of adult employees required to sign the nomination papers. This discretion to be continued.”

D.—Clause 15. It was agreed that the words “in the permanent employ of the company,” in line 3, should be read as imposing no restriction on directors sitting upon the boards.

E.—Clause 18. It was agreed that cooptation should be employed in the case of vacancies caused by an insufficient number of candidates being properly nominated for election.

F.—Clauses 25 and 29. It was agreed that in the event of the employees’ side of a conciliation board being unable to agree upon the selection of its leading member or secretary, the question shall be referred to the Board of Trade, who will either decide the matter or take a ballot of the whole of the men employed in the grades represented by the board.

G.—Clause 43. It was agreed that the record of meetings entered in the duplicate minute books shall be signed by the leading members of both sides as well as by the secretaries.

H.—It was agreed that clause 48 should be deleted.

I.—Upon the representatives of the men’s side raising the question of the alteration of trip rates by the railway companies, it was explained that the companies must retain the right to vary trip rates according to varying circumstances, but it was stated that in case of the men not being satisfied as to the reasonableness of any such alteration of trip rates in a downward direction, the matter could be referred in the ordinary course to the next meeting of the conciliation board, it being understood that if it was determined that such a reduction was not reasonable, the matter should be adjusted from the date of the alteration.

JOINT STAFF.

J.—It was agreed that joint staff, where there is no separate conciliation board, shall be allocated to one or other of the owning companies for election purposes, and that so far as alteration in their rates of wages, hours of duty, and conditions of service are concerned, they shall be dealt with through those conciliation boards as though they formed part of the staff of the company to which they were allocated, it being understood that in those cases where the joint staff are under the supervision of a joint officer all applications shall, in the ordinary course, be submitted to such joint officer.

In those cases where the joint staff are not under the control of a joint officer, it is understood that they should participate in any improved conditions which may be granted as the result of a petition dealing with the whole of
the grade to which they belong throughout the company’s line to which they are allocated.

In addition to the above alterations, it was agreed, on behalf of the companies whose representatives were present at the conference, that extra and casual men employed in the manipulation of goods traffic shall be paid for the time actually worked at hourly rates on a basis not lower than the minimum rate of wages and hours of duty of the permanent men working in similar positions.

The representatives of the companies further undertook to use their good offices to get other companies to adopt the same arrangement.

[Signed on behalf of the railway companies, the joint executives of the trade unions of railway employees, and of the Government and the Board of Trade.]

APPENDIX III.—AGREEMENTS IN REGARD TO A SCHEME FOR CONCILIATION AND ARBITRATION IN QUESTIONS RELATING TO RATES OF WAGES AND HOURS OF LABOR OF CERTAIN CLASSES OF RAILWAY EMPLOYEES, SIGNED AT THE BOARD OF TRADE ON WEDNESDAY, NOVEMBER 6, 1907.

I.—AGREEMENT SIGNED BY REPRESENTATIVES OF CERTAIN RAILWAY COMPANIES.

The undersigned duly authorized representatives of the railway companies named below declare that they are prepared on their behalf to adopt a system of conciliation and arbitration for the settlement of questions relating to the rates of wages and hours of labor of various classes of their employees, on the general lines of the scheme appended to this agreement.

They will also use their good offices to induce the other railway companies to adhere to this agreement. Such adherence may be notified at any time within the next three months.

[Signed by railway officials and countersigned by officials of the Board of Trade.]

II.—LIST OF RAILWAY COMPANIES ON WHOSE BEHALF THE ABOVE AGREEMENT WAS ACCEPTED.

Caledonian Railway Co.
Great Central Railway Co.
Great Eastern Railway Co.
Great Northern Railway Co.
Great Western Railway Co.
Lancashire & Yorkshire Railway Co.
London & North Western Railway Co.
London & South Western Railway Co.
London, Brighton & South Coast Railway Co.
Midland Railway Co.
South Eastern & Chatham Railway Co.’s managing committee.

III.—AGREEMENT SIGNED BY REPRESENTATIVES OF THE AMALGAMATED SOCIETY OF RAILWAY SERVANTS.

The undersigned duly authorized representatives of the Amalgamated Society of Railway Servants accept, on behalf of its members, the terms of the agreement with regard to conciliation and arbitration signed this day at the Board of Trade by the representatives of the railway companies.

[Signed by trade-union officials and countersigned by officials of the Board of Trade.]

IV.—OUTLINE OF SCHEME FOR CONCILIATION AND ARBITRATION.

GENERAL PRINCIPLES.

(a) Boards to be formed for each railway company which adheres to the scheme to deal with questions referred to them, either by the company or its employees, relating to the rates of wages and hours of labor of any class of employees to which the scheme applies, which can not be mutually settled through the usual channels.

(b) The various grades of the employees of the company who are covered by the scheme to be grouped for this purpose in a suitable number of sections, and the area served by the company to be divided, if necessary, for purposes of election, into a number of suitable districts.
(c) The employees belonging to each section so grouped to choose from among themselves one or more representatives for each district, these representatives to form the employees' side of a sectional board to meet representatives of the company to deal with rates of wages and hours of labor exclusively affecting grades of employees within that section.

(d) The first election of representatives to be conducted in a manner set out in the rules of procedure. Subsequent elections to be regulated by the boards themselves.

(e) Where a sectional board fails to arrive at a settlement, the question to be referred on the motion of either side to the central conciliation board, consisting of representatives of the company and one or more representatives chosen from the employees' side of each sectional board.

(f) In the event of the conciliation boards being unable to arrive at an agreement, or the board of directors or the men failing to carry out the recommendations, the subject of difference to be referred to arbitration. The reference shall be to a single arbitrator appointed by agreement between the two sides of the board, or in default of agreement to be appointed by the speaker of the House of Commons and the master of the rolls, or in the unavoidable absence or inablility of one of them to act, then by the remaining one. The decision of the arbitrator shall be binding on all parties.

**DURATION OF SCHEME.**

The present scheme to be in force until 12 months after notice has been given by one side to the other to terminate it. No such notice to be given within six years of the present date.

**INTERPRETATION.**

If any question should arise as to the interpretation of this scheme, it shall be decided by the Board of Trade or, at the request of either party, by the master of the rolls.

**OUTLINE OF SUGGESTED CONSTITUTION AND PROCEDURE OF CONCILIATION BOARDS.**

N. B.—The following outline is intended as a general "model," to be amended in detail to suit the circumstances of particular companies:

**CONSTITUTION OF BOARDS OF CONCILIATION.**

Boards to be constituted in the first place for the more important sections (the list to be subject to modification to suit particular railways):

The following are suggested merely as examples—

**Railway A.**

1. Locomotive drivers, firemen, and cleaners.
2. Signalmen, pointsmen, etc.
3. Permanent-way men, plate layers, etc.
4. Traffic department men other than signalmen.

**Railway B.**

1. Locomotive drivers, firemen, and cleaners.
2. Signalmen and pointsmen.
4. Passenger-department guards, ticket examiners, shunters, and porters.
5. Telegraph and permanent way.

**Note.**—Variations may be made in the above classification, care being taken to provide, so far as possible, for the inclusion of other grades of wage-earning employees engaged in the manipulation of traffic on one or other of the boards.

If the employees belonging to any section not included at the outset should desire hereafter to participate in the scheme, they may make application to the central board, which, if it thinks desirable, may either admit them to an existing sectional board or arrange for the constitution of a new board.

The electoral district to be based, so far as practicable, on districts already in existence for the purpose of the railway company (e. g., district superinten-
dent's or district goods managers' districts), which may, if necessary, be grouped for the purpose.

Note.—It seems desirable that the districts should be as few as possible (preferably not more than four, and in no case exceeding six), in order to admit of two operative representatives instead of only one being elected for each district on each board. This will give opportunity for variety of representation, (e.g., for a fireman as well as an engine driver to be elected on board 1, without unduly increasing the number of members of the boards.)

The term of office of a conciliation board to be three years. Casual vacancies through death, resignation, or loss of qualification to be filled by cooption by the remaining members on the same side of the board.

**ELECTION OF CONCILIATION BOARDS.**

The following rules to apply to the first election. Subsequent elections to be regulated by the conciliation boards themselves:

1. Nomination papers proposing candidates for the various boards, signed by not less than 20 adult employees belonging to the same section and district, to be sent to the Board of Trade on or before a date to be arranged.

2. The board, after satisfying themselves that the nominations are in order, to prepare voting papers and arrange for them to be circulated to the adult employees on a given pay day.

3. The Board of Trade to receive and count the voting papers of the men, and also to receive from the company a list of its proposed representatives on the various boards. The result to be published with as little delay as possible.

Note.—For the purpose of these rules "adult" means a person aged 20 and upwards.

**PROCEDURE.**

Each side of a conciliation board to select its own chairman. Every board to meet for business as required at the request of either side. A fortnight's notice to be given of all meetings. No meeting shall be called in August or September.

Meetings to be convened by the secretary, who shall be appointed by agreement between the two sides of the board. Failing agreement each side to appoint a secretary from among the employees of the company. The agenda to be circulated with the notices, and no question not on the agenda be brought up except with the consent of both sides.

Each side of a board to vote separately, and all decisions to be arrived at by agreement between the two sides.

**MODE OF DEALING WITH APPLICATIONS.**

Before a conciliation board can entertain any proposal for a change in the rates of wages or hours of labor of any class of employees, an application for such change must previously have been made in the usual course through the officers of the department concerned.

After any such application has been made by the employees they shall be informed, as soon as practicable, and in any case within two months, of the company's decision with regard to the request or of their desire to refer it to a conciliation board. In the event of the decision not being accepted or of no reply being received within the specified time, the men may require the matter to be referred to a conciliation board, which shall be at once convened to consider the matter so referred.

Note.—For the purpose of this rule, the months of August and September shall not count.

Any proposal agreed to by a conciliation board involving increased expenditure shall be placed before the directors for their acceptance at their next ordinary board meeting, or, if that meeting takes place within a week of the proposal, then at the next meeting but one, and failing this shall be referred forthwith to arbitration.

Any proposal agreed to by a conciliation board involving a reduction of rates of wages shall be communicated to the men, and if rejected by them within a month shall be referred forthwith to arbitration.

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1 It is desirable that at least one of the company's representatives on each board should be a director.
Subject to the above provisos the decision of a conciliation board to be final and binding on the parties, and no decision to be reopened within 12 months.

Where a sectional board fails to arrive at a settlement, the question to be referred on the motion of either side to the central conciliation board.

Should the central conciliation board fail to agree, the question to go forthwith to arbitration at the request of either party.

Proceedings before the arbitrator shall be regulated by him, including the period during which the award shall be binding.

EXPENSES.

In the absence of an agreement to the contrary, the expenses of arbitration proceedings and conciliation boards to be divided equally between the company and its employees.

Note.—It is agreed that in order to keep procedure simple and inexpensive, counsel should not appear in these cases.

V.—NOTICE OF ADHESION TO THE SCHEME SIGNED BY REPRESENTATIVES OF THE ASSOCIATED SOCIETY OF LOCOMOTIVE ENGINEERS AND FIREMEN.

On behalf of the members of the Associated Society of Locomotive Engineers and Firemen, we accept the arrangements entered into to-day at the Board of Trade.
[Signed by the secretary and two members of the society.]

VI.—NOTICE OF ADHESION TO THE SCHEME SIGNED BY REPRESENTATIVE OF THE GENERAL RAILWAY WORKERS' UNION.

On behalf of the members of the General Railway Workers' Union, I accept the arrangements agreed to to-day at the Board of Trade.
[Signed by the general secretary of the union.]

APPENDIX IV.—CONCILIATION AND ARBITRATION SCHEME FOR THE SETTLEMENT OF QUESTIONS RELATING TO RATES OF WAGES AND HOURS OF LABOR BETWEEN THE CALEDONIAN RAILWAY CO. AND THEIR EMPLOYEES.

FORMATION OF CONCILIATION BOARDS.

1. Conciliation boards, consisting of representatives of the company and their employees, shall be formed to deal with questions referred to them, either by the company or by their employees, relating to the rates of wages and hours of labor of the grades of employees after mentioned which can not be mutually settled through the usual channels.

2. The conciliation boards shall be the following; that is to say—

(1) A sectional conciliation board for each section, in which the various grades of employees shall be grouped as after mentioned.

(2) A central conciliation board.

3. For the purpose of the election of representatives of the employees to the sectional boards, the various grades of employees shall be grouped in seven sections, as specified in the first schedule hereto, and the territory served by the company shall be divided into four districts, as specified in that schedule.

4. The employees belonging to each such section employed in each district shall choose from among themselves two representatives for each district, and the eight representatives so chosen shall form the employees' side of each sectional board.

5. The employees' side of the central board shall consist of 14 representatives, of whom 2 shall be chosen by and from the employees' side of each sectional board.

6. The company's representatives on each sectional board and the central board shall not exceed in number the employees' representatives.

7. The term of office of a conciliation board shall be three years.

ELECTION OF EMPLOYEES' REPRESENTATIVES ON CONCILIATION BOARDS.

8. Employees under 20 years of age will not be eligible as representatives on any board, nor entitled to nominate candidates or to vote in any election.
9. The first election of representatives to form the employees' side of the sectional boards shall be conducted in a manner set out in the second schedule hereto. Subsequent elections shall be regulated by the central board.

FUNCTIONS OF CONCILIATION BOARDS.

10. The sectional boards shall deal with rates of wages and hours of labor exclusively affecting the grades of employees in the sections for which the respective sectional boards have been formed.

11. Before a sectional board can entertain any proposal for a change in the rates of wages or hours of labor of the grades of employees in the section, an application for such change must previously have been made in the usual course through the officers of the department concerned.

12. After any such application has been made by the employees they shall be informed as soon as practicable, and, in any case, within two months, of the company's decision with regard to the request or of the company's desire to refer the proposal to the appropriate sectional board. In the event of the company's decision not being accepted, or of no reply being received within the prescribed time, the employees may require the matter to be referred to the appropriate sectional board.

13. Where a sectional board fails to arrive at a settlement, the question shall be referred to the central board.

14. Where the central board fails to arrive at a settlement, the question shall be referred, on the motion of either side, to arbitration.

15. Any proposal agreed to by a sectional board, or by the central board, involving an increase of rates of wages, shall be placed before the directors of the company for their acceptance at their next ordinary board meeting, or, if that meeting takes place within a week of the proposal, then at the next meeting but one, and, failing its acceptance by the directors, shall be referred as follows, that is to say—

(1) A proposal agreed to by a sectional board and not accepted by the directors shall be referred to the central board; and

(2) A proposal agreed to by the central board and not accepted by the directors shall be referred to arbitration.

16. Any proposal agreed to by a sectional board or a central board involving a reduction of rates of wages shall be communicated to the employees, and if rejected by them within a month, shall be referred as follows, that is to say—

(1) A proposal agreed to by a sectional board and rejected by the employees shall be referred to the central board; and

(2) A proposal agreed to by the central board and rejected by the employees shall be referred to arbitration.

17. Except as otherwise herein provided, the decision of a sectional board or of the central board shall be final and binding on the parties, and no decision shall be reopened within 12 months.

PROCEDURE OF CONCILIATION BOARDS.

18. Each side of a conciliation board shall select its own chairman.

19. Secretaries for the sectional boards and the central boards shall be appointed by the central board. A single secretary may be appointed by agreement between the two sides of the central board, and the single secretary so appointed shall act for both sides of all the sectional boards and of the central board. Failing agreement each side of the central board shall appoint a separate secretary from among the salaried or wages employees of the company, and the separate secretaries so appointed shall act for the respective sides of such boards.

20. Each side of a conciliation board shall vote separately, and the vote of each side shall be determined by a majority of the side, or, in the event of equality, by the casting vote of the chairman of the side, and all decisions shall be arrived at by agreement between the two sides.

21. Casual vacancies in a conciliation board through death, resignation, or loss of qualification shall be filled by cooptation by the remaining members on the same side of the board.

MEETINGS OF CONCILIATION BOARDS.

22. Every board shall meet for business, as required, at the request of either side, but no board shall be required to meet for new business oftener than once in two months, except that where, in the case of the central board, this would
-involve an interval of more than one month after a sectional board fails to arrive at a settlement, the central board shall, at the request of either side, meet to deal with such business. A fortnight's notice shall be given of all meetings. No meeting shall be held in August or September, but where this would involve an interval of more than three months, a meeting shall, at the request of either side, be held in July.

23. All meetings of a conciliation board shall be convened by the single secretary or by the separate secretary of either side, as the case may be. The agenda shall be circulated with the notices of meeting, and no question not on the agenda shall be brought up except with the consent of both sides.

APPOINTMENT AND POWERS OF ARBITRATOR.

24. Any reference to arbitration shall be to a single arbitrator, to be appointed by agreement between the two sides of the central board, or, in default of agreement, to be appointed only on the application of either side of the central board by the speaker of the House of Commons and the lord president of the court of session, or, in the unavoidable absence or inability of one of them to act, then by the remaining one.

25. Proceedings before the arbitrator shall be regulated by him, including the period during which the award shall be binding.

26. The decision of the arbitrator shall be binding on all parties.

AS TO COUNSEL AND LAW AGENTS.

27. In order to keep procedure simple and inexpensive, counsel or law agents shall not be entitled to appear or plead in any matter or question before any conciliation board, and counsel shall not be entitled to appear or plead in any arbitration proceedings.

EXPENSES OF CONCILIATION BOARDS AND ARBITRATION PROCEEDINGS.

28. In the absence of any agreement to the contrary, the expenses of conciliation boards and arbitration proceedings shall be borne and paid equally by the company and the employees.

INCLUSION OF OTHER GRADES OF EMPLOYEES.

29. If the employees belonging to any grade not included in any of the sections should desire hereafter to participate in this scheme, they may make application to the central board, which, if it thinks desirable, may either admit them to an existing sectional board, or form a new sectional board for such grade of employees.

DURATION OF SCHEME.

30. The present scheme shall be in force until 12 months after notice has been given by one side to the other to terminate it. No such notice shall be given within six years of the sealing of this scheme.

INTERPRETATION.

31. If any question should arise as to the interpretation of this scheme it shall be decided by the board of trade, or at the request of either party, by the lord president of the court of session.
CONCILIATION AND ARBITRATION IN GREAT BRITAIN.

CONCILIATION ACT OF 1896.

In Great Britain in recent years the development of the machinery for the settlement of trade disputes by boards of conciliation and arbitration and by joint committees has assumed great importance. While a considerable number of these boards have been in operation for long periods and many more are due entirely to the initiative of the employers and employees independent of any official agency, the conciliation act of 1896 and the railway conciliation and arbitration scheme of 1907 have been especially influential in promoting the growth of the present movement.

The conciliation act of 1896 was the outcome of an inquiry begun in 1893 by the Board of Trade as to the legislation needed to meet the new industrial and social conditions. At that time three earlier acts were still nominally in force: The arbitration act of 1824, which authorized the appointment by justices of the peace of arbitrators in labor disputes and gave them extensive and arbitrary powers; Lord St. Leonard's act of 1867, which confirmed the act of 1824 and added provisions for the formation of councils of conciliation and arbitration; and the arbitration act of 1872, which enlarged the machinery for appointing arbitrators and arbitration boards, but left the arbitrary provisions of the earlier legislation in full force. Practically none of these acts had been put into operation, and at the time the Board of Trade's discussion was begun it was obvious that they were one and all wholly unsuited to existing conditions, and that the best which could be said for them was that they were harmless when not enforced.

After three years of discussion in Parliament and outside, the act for the prevention and settlement of trade disputes, commonly known as the conciliation act of 1896, was passed. Its most important feature was the authorization of the Board of Trade as a standing agency of mediation, ready to act at the request of either party, or to offer its services when the public welfare seemed to demand such action. It will be noticed that the Board of Trade was given no powers of compulsion whatever, but the mere fact that a body of its weight and reputation had been told off for such a service tended to dignify the idea of conciliation, while the ease with which its services could be secured was a strong inducement to call upon it in cases of disagreement.

1 For text of the Conciliation Act, 1896, see Appendix I, pp. 140 and 141.
In the 15 years since the passage of the act only two important additions have been made to the machinery which the Board of Trade was empowered to call into play when circumstances demanded. The first was the provision in 1908 of the permanent court of arbitration.\(^1\) In providing for this the president of the Board of Trade expressly disclaimed any intention of curtailing or replacing any of the functions already performed under the conciliation act; the proposed court was to be an addition, not a substitution, and its creation was ascribed to the fact that the scale of the operations carried on by the Board of Trade "deserves, and indeed requires, the creation of some more formal and permanent machinery." Another reason given was the desire to test public sentiment in regard to arbitration; it seems to have been felt that the general attitude toward conciliation was already pretty well known.

The panels from which the members of the court were to be drawn were prepared at once, and the system was put in operation in 1909. There was strong opposition among some of the trade-unionists to the appointment by the Board of Trade of the panel of workpeople's representatives. In 1909 and 1910 alike eight cases were settled by the court of arbitration, but it is worthy of note that, whereas in 1909 in five of the cases handled the appeal to the Board of Trade was not made until after a stoppage of work had occurred, in 1910 only three of the cases had reached this stage; yet the number of cases handled by the Board of Trade which involved a stoppage of work was rather larger in 1910 than in 1909. As far as it is permissible to draw conclusions from so brief a test, it would seem that the court of arbitration works more to the satisfaction of the contesting parties when called upon in the earlier stages of a dispute.

**INDUSTRIAL COUNCIL.**

The second addition to the machinery provided by the Board of Trade was made during 1911 largely as an outcome of the industrial contests of the late summer, which threw an enormous amount of delicate and difficult work upon the Board of Trade. Moreover, the part which the Government was obliged to take in these troubles gave additional cogency to the argument that any conciliatory agency ought to be free from suspicion of being moved by political considerations.

"One disadvantage of the existing system," said the president of the Board of Trade, in discussing the new plan, "is undoubtedly that it brings into action and prominence the parliamentary head of the

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\(^1\) For constitution of court, rules, etc., see Appendix II, pp. 141-143.
Board of Trade, who is necessarily a politician, though, in my opinion, none the worse for that, and a member of the Government, into disputes and conciliation which ought to be purely industrial. * * * If the action of the department in these matters could be still further removed from the sphere of politics or the suspicion of politics, it would give even greater confidence and there would be greater willingness by the parties to a dispute to seek the assistance of the Board of Trade.\textsuperscript{1}

The new body, known as the industrial council, was to be made up of representatives of employers and of workmen in equal numbers. The following panels of representatives were appointed, and agreed in their individual capacity to serve for the first year:

\textit{Employers' representatives.}

Mr. George Ainsworth, chairman of the Steel Ingot Makers' Association.
Mr. G. H. Claughton, J. P., chairman of the London & North Western Railway Co.
Mr. W. A. Clowes, president of the London Master Printers' Association.
Mr. J. H. C. Crockett, president of the Incorporated Federated Associations of Boot and Shoe Manufacturers of Great Britain and Ireland.
Mr. F. L. Davis, J. P., chairman of the South Wales Coal Conciliation Board.
Mr. T. L. Devitt, chairman of the Shipping Federation (Ltd.).
Sir T. Hatcliffe Ellis, secretary of the Lancashire and Cheshire Coal Owners' Association and joint secretary of the Board of Conciliation of the Coal Trade of the Federated Districts, etc.
Mr. F. W. Gibbins, chairman of the Welsh Plate and Sheet Manufacturers' Association.
Sir Charles Macara, Bart., J. P., president of the Federation of Master Cotton Spinners' Associations.
Mr. Alexander Siemens, chairman of the executive board of the Engineering Employers' Federation.
Mr. Robert Thompson, J. P., M. P., past president of the Ulster Flax Spinners' Association.
Mr. J. W. White, president of the National Building Trades Employers' Federation.

\textit{Workmen's representatives.}

Mr. T. Ashton, J. P., secretary of the Miners' Federation of Great Britain and general secretary of the Lancashire and Cheshire Miners' Federation.
Mr. C. W. Bowerman, M. P., secretary of the Parliamentary Committee of the Trades Union Congress and president of the Printing and Kindred Trades Federation of the United Kingdom.
Mr. F. Chandler, J. P., general secretary of the Amalgamated Society of Carpenters and Joiners.
Mr. J. R. Clynes, J. P., M. P., organizing secretary of the National Union of Gas Workers and General Laborers of Great Britain and Ireland.
Mr. H. Gosling, president of the National Transport Workers' Federation and general secretary of the Amalgamated Society of Watermen, Lightermen, and Watchmen of River Thames.
Mr. Arthur Henderson, M. P., Friendly Society of Ironfounders.
Mr. W. Mosses, general secretary of the Federation of Engineering and Shipbuilding Trades and of the United Pattern Makers' Association.

\textsuperscript{1} Board of Trade Labor Gazette, November, 1911, p. 403.
Mr. W. Mullin, J. P., president of the United Textile Factory Workers' Association and general secretary of the Amalgamated Association of Card and Blowing Room Operatives.

Mr. E. L. Poulton, general secretary of the National Union of Boot and Shoe Operatives.

Mr. Alexander Wilkie, J. P., M. P., secretary of the shipyard standing committee under the national agreement, 1909, and general secretary of the Ship-constructor and Shipwrights' Society.

Mr. J. E. Williams, general secretary of the Amalgamated Society of Railway Servants.

Additions may be made to the above list.

The members of the council will in the first instance hold office for one year.

Sir George Askwith, K. C. B., K. C., the present comptroller general of the labor department of the Board of Trade, has been appointed to be chairman of the industrial council, with the title of chief industrial commissioner, and Mr. H. J. Wilson, of the Board of Trade, to be registrar of the council.

The first meeting of the council was held October 26, 1911, at the Board of Trade offices. The president of the board, in his address of welcome, after referring to the need of a conciliatory body free from political affiliations, continued:

The other reason for the creation of the industrial council is that we believe that the powers and position of the Board of Trade, its good offices, could be advantageously strengthened in the direction of what may be called a national industrial body of weight and repute, consisting of representatives of the two great sides of the industry of the country; * * * a body that would bring to bear on these problems a great range of advice, great weight, and a greater likelihood, therefore, of useful and acceptable action, especially—and I lay stress on this—before, rather than after, stoppage of work. Such a body would also enable an appeal to be made to it by one or other of the combatants without loss of dignity.

I would point out further that of late years, both on the side of the employers and on the side of the workmen, considerable steps have been taken toward what I may call federated effort—combinations of trade unions on the one hand and of federations of employers' associations on the other—and that, from the point of view of trade disputes, trade and industry are far more interdependent than they used to be. While, therefore, a few years ago the creation of a national conciliation council, representing all the great industries, might have been thought to be premature, its existence is really now essential, so that these matters can be considered as a whole. * * *

Fear has been expressed that the council may interfere with the freedom of action of federations of employers or of the unions of the men, but I wish to state clearly * * * that there will be no compulsion on either side to submit their case to the council or to accept its advice or its decisions. The council will not interfere with the freedom of action of the employers or the employed.

At this first meeting of the council it was decided that regular meetings should be held in February, June, and November of each year, and special meetings might be called at any time by the chairman. Meetings in general should be considered private, only official statements of their action being issued, and the members should act

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1 Board of Trade Labor Gazette, October, 1911, pp. 362, 363.
2 Idem, November, 1911, p. 403.
in a judicial capacity, not as advocates. The following classes of cases might require to be dealt with:

(1) Cases which may be referred to the council, as an impartial body, for their opinion upon the facts only of the case, to be conveyed to the parties privately.

(2) Cases which may be referred to the council in order that the facts may be impartially ascertained and recommendations made to each side, the acceptance of such recommendations not to be obligatory nor made public.

(3) Cases similar to those last mentioned, but both sides agreeing beforehand that the recommendations of the council be made public.

(4) Cases which may be referred to the council upon which a decision may be given, the parties agreeing to accept the decision as a final settlement.

(5) Cases which may be referred to the council, under special circumstances, by the Board of Trade or the Government.

(6) Other matters, apart from particular disputes, which the Board of Trade or the Government may decide to refer to the council, with a view to obtaining a considered and representative opinion upon specific points.

It will be seen that while the courts of arbitration were merely another agency through which the Board of Trade must act, the industrial council is intended to serve to a large extent as a substitute for the Board. The latter reserves the right to offer its services, in case the disputants fail to call on the council or the council fails to adjust a serious difficulty; but it is confidently expected that such cases will be few and far between.

CONCILIATION BOARDS IN 1910.

In most of the principal industries of the United Kingdom joint meetings of representatives of employers and employees are now the generally recognized method of settling disputes or adjusting differences concerning questions which might otherwise lead to a cessation of work. In the coal mining and iron and steel industries wages, the most frequent cause of disputes, are in most districts controlled by conciliation boards or the machinery set up by them. In the engineering and shipbuilding industries national agreements providing for the full discussion of matters in controversy are in existence. In the cotton industry provision has been made for holding joint conferences in cases of dispute. In the building trades national schemes of conciliation are in existence for all the principal branches of the industry.

In August, 1910, according to the report of the Board of Trade,¹ the number of permanent boards and joint committees in existence

in the various trades was 262. In addition there were a number of agreements, such as that known as the Brooklands agreement in the cotton-spinning industry, and the terms of settlement in the engineering industry, which, although not coming quite within the scope of the definition of a conciliation board, exercised functions of a conciliatory character. It was estimated that nearly 2,000,000 employees were covered by all these agencies for conciliation. In addition to the boards and committees above mentioned there were also 14 district boards which offered mediation of a general character and were not confined to any particular trade, and two boards whose work was restricted to questions affecting employees of cooperative societies.

MEMBERSHIP OF CONCILIATION BOARDS.

As regards the constitution of the boards dealing with particular trades, the membership usually consists of equal numbers of representatives of the employers' associations and of the trade-unions which are party to the agreement establishing the board. In the iron and steel industry the members are representatives of establishments and not of organizations. In the national scheme of conciliation for building trades, where three types of boards exist—namely, local, central, and national—provision is made for a change in the personnel of the various boards, the employees' members of the local boards being chosen locally, while those of the central and national boards are selected by the general associations of the trade-unions, the representatives of the employers being on a similar basis. Under the railway conciliation scheme, the employees' representatives on the central boards are selected by the members of the sectional boards from among their number. In the district boards the employers' representatives are chosen not by employers' associations concerned with questions affecting labor, but by local chambers of commerce. In the boards dealing with employees of workmen's cooperative societies, the workpeople's representatives are chosen by the trade-union parliamentary committee, while the representatives of the cooperative societies are selected by the cooperative union.

SCOPE OF WORK OF CONCILIATION BOARDS.

Some of the more important conciliation boards limit their work to fixing the general level of wages. Other boards have a settlement of general wage questions as their principal object, but also deal with other matters which may be in dispute. Another class, covering in some cases a wide area, deals only with disputes at individual establishments and has no jurisdiction as regards general disputes. Others, again, deal solely with the demarcation of work between different trades. The most numerous class of boards is under no such
limitations as to the scope of its work, but may deal with all ques-
tions affecting the relations between employers and employees within
the area of their jurisdiction, whether general or limited to indi-
vidual plants, and whether relating to wages or to other matters.

PROVISIONS AGAINST STRIKES AND LOCKOUTS.

In most cases it is provided by the agreement that no stoppage of
work shall be permitted until the dispute has been submitted to the
conciliation board. With many of the boards this means that no
opportunity for a stoppage of work is afforded, as the rules provide
full machinery for the settlement of the dispute. In some cases,
notably in the manufactured iron and steel industry, the rules pro-
vide that if a stoppage of work has occurred the board will refuse to
discuss the matter until work has been resumed. In the boot and
shoe industry it is provided that not only may the board refuse to
inquire into the matter in dispute until work has been resumed, but
that such suspension of work shall be taken into account in the con-
sideration of the question. These boards have a further rule that
fines may be imposed on either party causing a stoppage of work if
work is not resumed on the morning of the fourth day after notifica-
tion of the stoppage by an aggrieved party.

METHODS OF CONCILIATION BOARDS FOR FINAL SETTLEMENT OF
DIFFERENCES.

The majority of the questions which are brought before the con-
ciliation boards are adjusted by conciliatory methods without further
reference, but as the conciliation boards generally consist of equal
numbers of representatives of employers and employees, it not in-
frequently happens that the two sides of the board are equally
divided on the question in controversy. Accordingly the effective-
ness of a board as an agency for securing a settlement of differences de-
pends largely upon the measures adopted for escaping from such a
deadlock. The report of the Board of Trade classifies the 262 boards
and committees in existence in August, 1910, according to their vari-
ous methods of procedure as follows:

(1) Boards with complete automatic machinery for the settlement
of disputes. These boards in August, 1910, numbered 153.

(2) Boards with complete machinery for the settlement of disputes,
not automatic, but to be used only by mutual consent of the parties.
These boards numbered 81.

(3) Boards with no provisions for avoiding a deadlock in the set-
tlement of disputes.

The procedure of the various boards up to the final failure of the
parties to agree differs considerably. In some cases only one meeting
of the conciliation board is provided for. In others, by adjourn-
ments, opportunity is afforded the parties to reconsider the question
in dispute or consult with their constituents, while in still other cases a series of boards or committees is provided, with appeal from one to the other until the body whose decision is final is reached.

The 153 boards having complete automatic machinery for dealing with disputes in which the parties have been unable to arrive at a settlement include a majority of the important boards in the principal industries. Nearly all the boards in the coal-mining industry are of this character, as well as those in connection with the railways and many other industries.

The rules of these 153 boards show a considerable variation in the methods of procedure adopted. According to the provision for the selection of a final authority to settle disputes, they are classified by the Board of Trade as follows:

1. Reference to the Board of Trade for appointment of final authority to settle disputes; 39 boards.
2. Reference to permanent neutral chairman, president, arbitrator, umpire, or referee; 33 boards.
3. Reference to arbitrator, umpire, or referee appointed for the particular case; 75 boards.
4. Reference to 3 arbitrators or referees with decision by the majority; 6 boards.

It will be noted that in the case of the majority of the boards a single umpire or arbitrator is provided for and that boards of arbitration as distinguished from a single arbitrator are preferred in only a few cases.

The 39 boards which provide for the final reference of disputed questions to an arbitrator appointed by the Board of Trade differ in their methods of securing this appointment and in the character of the questions thus referred. Some of these boards apply to the Board of Trade for assistance in the appointment of an arbitrator, umpire, or chairman when the parties have been unable to agree in their choice at their annual or other election of officers. More frequently the application to the Board of Trade for the appointment of an arbitrator or umpire is not made until a dispute has arisen which the parties are unable to settle. In the case of one board, a special feature of the rules is a provision that if either of the parties fails to appoint an arbitrator or to assist in appointing an umpire the other party is entitled to apply to the Board of Trade to appoint an arbitrator, whose decision shall be final and binding on both parties. In addition to the boards mentioned, there were in August, 1910, 49 agreements between employers and employees, which, while not establishing conciliation boards, made provision for the reference of disputes to arbitrators or umpires appointed by the Board of Trade.

Among the 33 boards which refer disputes to a permanent neutral chairman, president, arbitrator, umpire, or referee, the method
of selection of the umpire differs considerably. In the 6 boards in
the building trades, cases which the boards are unable to settle are
referred to a referee, or chairman, appointed annually. In 6 boards
in the coal-mining industry, such cases are referred to a neutral
chairman, appointed by outside authorities, when the board is unable
to make a selection. In some of the boards the independent chair­
man has a casting vote only and has to decide in favor of one or the
other of the proposals submitted to him, being unable to make an
award in the nature of a compromise. In certain of these boards
provision is made for an adjournment of proceedings for a specified
number of days, in order to give an opportunity for the parties to
consult their constituents or to modify their claims. In some of these
cases the chairman may give the final decision upon the failure of the
parties to agree at a second meeting, or a further adjournment may
be taken.

The 75 boards which refer disputed questions in the final instance
to an arbitrator or umpire, appointed for the particular case, are
an important group. In a number of instances the boards refer their
unsettled cases direct to arbitrator or umpire. In other cases such
questions are first referred to two arbitrators, and to the umpire only
when the arbitrators fail to reach settlement. In the case of the
railway boards, under the agreement of 1907, the appointment of an
arbitrator, failing an agreement by the central board, was left to the
speaker of the House of Commons and the master of the rolls.1 It
should be noted that in some cases the arbitrators referred to in this
class differ from those mentioned under the previous types of boards
in that they are not necessarily independent persons, but may be re­
presentatives of the parties who appointed them.

Theconciliation boards which in the final instance refer their un­
settled disputes to three arbitrators, or referees, are confined to the
shipbuilding industry and deal only with questions of demarcation
between the various trades in the shipyard. They usually consist of
equal numbers of employees of each trade affected and an equal num­
ber of employers. In one case, however, the employers have only
one representative, who acts as chairman.

Another class of boards is that made up of those with complete
machinery for the settlement of disputes, which, however, can only
be put in operation by mutual consent of the parties. Included in
this group are 67 boards and committees under the national scheme
of conciliation in the building trades. The plan provides for refer­
ence of unsettled disputes from joint committee to local board, thence

1 Under the amended railway conciliation scheme of 1911 a permanent neutral chair­
man is provided for, to be selected by the conciliation board from a panel established by
the Board of Trade, or, failing agreement, by the Board of Trade. The chairman renders
a final decision on matters upon which the parties can not agree. See page 112.
to central board, and, if still unsettled, to a national board. At any stage of the proceedings the matter in dispute may be referred to arbitration by mutual consent of the parties.

A further class of boards is that in which no provision has been made to avoid the deadlock which arises from the equality of voting. In addition to these boards, the class includes other important conciliatory agencies. Among these are the arrangements given in the cotton-spinning industry and in the engineering and shipbuilding trades. The Brooklands agreement, which has been in operation in the cotton-spinning industry since 1893, provides for the reference of disputes to the local secretaries of employers’ and operatives’ organizations, next to a joint committee of the employers’ federation and the operatives’ association, but no provision is made for arriving at a settlement should the latter committee fail to agree. In the weaving industry of north and northeast Lancashire an agreement made in December, 1909, sets up machinery similar to that provided for in the Brooklands agreement. An important addition, however, is the provision that in cases where stoppages of work occur meetings of representatives of the parties to the agreement shall be held every four weeks in Manchester, with a view to effecting a settlement of the dispute. During 1911 a similar provision was added to the Brooklands agreement.

PROVISIONS AGAINST VIOLATION OF AGREEMENTS.

The rules of some of the boards provide for the establishment of a guaranty fund or the payment of caution money, and under certain circumstances money penalties are exacted. Thus, in the boot and shoe trade a deed of trust places the sum of £2,000 ($9,733) in the hands of three trustees as a guaranty for the due performance by each party of the obligations of the terms of settlement. In the case of the board for dock laborers and corn porters at Bristol both sides deposit £300 ($1,460) as caution money, to remain intact until any of the provisions of the agreement establishing the board, or one of its awards, shall have been broken, in which case the money deposited by the offending party, or so much thereof as may be necessary to recoup the resulting loss or damage, shall be paid over to the other party, and any money so paid over shall be forthwith replaced by the losing party.

CASES DEALT WITH BY BOARD OF TRADE UNDER THE CONCILIATION ACT, 1896 TO 1910.

The recent additions to the machinery for conciliation and arbitration have not involved any alteration in the powers bestowed on the Board of Trade by the act of 1896. Until the creation of the industrial council the Board was the organism through which the act became effective, and the degree to which it was influential was indi-
eated by the extent of the Board’s activities. The range of the direct activities of the Board is shown by the following table:

**NUMBER OF CASES DEALT WITH BY THE BOARD OF TRADE UNDER THE CONCILIATION ACT, 1896 TO 1910, BY YEARS.**

[From Eighth Report by the Board of Trade of Proceedings under the Conciliation Act, p. 4.]

<table>
<thead>
<tr>
<th>Years</th>
<th>Involving stoppage of work</th>
<th>Not involving stoppage</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1896</td>
<td>8</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>1897</td>
<td>24</td>
<td>13</td>
<td>37</td>
</tr>
<tr>
<td>1898</td>
<td>8</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>1899</td>
<td>5</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>1900</td>
<td>13</td>
<td>8</td>
<td>21</td>
</tr>
<tr>
<td>1901</td>
<td>21</td>
<td>12</td>
<td>33</td>
</tr>
<tr>
<td>1902</td>
<td>10</td>
<td>11</td>
<td>21</td>
</tr>
<tr>
<td>1903</td>
<td>8</td>
<td>9</td>
<td>17</td>
</tr>
<tr>
<td>1904</td>
<td>4</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>1905</td>
<td>3</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>1906</td>
<td>8</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>1907</td>
<td>15</td>
<td>24</td>
<td>39</td>
</tr>
<tr>
<td>1908</td>
<td>24</td>
<td>36</td>
<td>60</td>
</tr>
<tr>
<td>1909</td>
<td>24</td>
<td>33</td>
<td>57</td>
</tr>
<tr>
<td>1910</td>
<td>26</td>
<td>41</td>
<td>67</td>
</tr>
<tr>
<td>Total</td>
<td>201</td>
<td>231</td>
<td>432</td>
</tr>
</tbody>
</table>

1 Five months only.

The most immediately striking feature of this table is the marked increase in the number of cases handled during the last few years. More than one-half (51.6 per cent) of all the cases dealt with have been brought before the Board in the last four years; more than two-fifths (42.6 per cent) belong to the last three; and the number in 1910 was greater than in any previous year. It is worth noticing that the marked increase began in 1907, a year of industrial depression, in which there was very general unrest among the workers and in which a much larger number of labor disputes involving stoppages of work occurred than in any other year between 1901 and 1911. Apparently the increasing difficulty of the situation between employers and employed led to an increased appreciation of the services of an outside body, affiliated with neither party, which had proved itself both impartial and efficacious. That the Board of Trade has established such a reputation is shown by the increasing frequency with which both parties to a dispute ask for its intervention.

In the earlier years applications for the intervention of the Board of Trade came mainly from one side only (generally the workpeople), but in recent years the majority of applications have been made jointly by the parties or by organizations representing them. During 1910 the number of joint applications was 44, or two-thirds of the total number of cases dealt with, while in 13 cases applications were received from the workpeople only, and in two cases from the employers only. **Of the total of 432 cases dealt with under the conciliation act during the period 1896–1910, there have been joint applications in 278 cases. **In 95 cases the application

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1 These figures relate to disputes in which the Board of Trade has intervened directly, and do not include any of those settled by the conciliation boards organized and registered under the terms of the act of 1896.
was made by the workpeople only and in 26 cases by the employers only. In the remaining 33 cases the Board of Trade took action on their own initiative.\(^1\)

Quite as important as the increase in the number of cases brought before the Board is the change in the time at which they are brought. It will be observed that at first there was a strong tendency not to call upon the Board until a strike or lockout had actually occurred, but that, beginning with 1902, the tendency has set in the other direction, and that now the Board is called upon more often to prevent an open break than to patch up a truce after the break has occurred. In other words, it is becoming more and more a preventive agency, and since prevention is the chief aim of conciliatory proceedings, it is fulfilling with increasing effectiveness the function for which the act was passed.

The cases dealt with by the Board of Trade, shown in the above table, were distributed among the various trades as follows: Building trades, 133; metal, engineering, and shipbuilding trades, 77; mining and quarrying industries, 54; boot and shoe trades, 48; textile trades, 28; transport trades, 27; printing and allied trades, 18; all other trades, 47. In the 26 cases dealt with in 1910 which involved stoppages of work these stoppages affected in the aggregate about 190,000 workpeople.

Apart from the direct activities of the Board of Trade, another effect, less easily measured, of the act of 1896 has been its influence in encouraging the formation of voluntary conciliation boards and increasing the tendency to call on such bodies in cases of industrial disagreement. Just how far the act has been influential in this direction can not, of course, be determined, but the tendency is strongly marked. The following table shows the increase during 10 years in the use of conciliation or arbitration in disputes which have reached an acute stage:

**NUMBER OF INDUSTRIAL DISPUTES, INVOLVING STOPPAGE OF WORK, SETTLED BY CONCILIATION OR ARBITRATION, 1901 TO 1910.**

[From Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in 1910, p. 27. These figures include the cases settled by the Board of Trade.]

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of strikes and lockouts settled by conciliation or arbitration</th>
<th>Number of workpeople involved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Directly</td>
<td>Indirectly</td>
</tr>
<tr>
<td>1901</td>
<td>27</td>
<td>14,904</td>
</tr>
<tr>
<td>1902</td>
<td>27</td>
<td>3,018</td>
</tr>
<tr>
<td>1903</td>
<td>25</td>
<td>4,492</td>
</tr>
<tr>
<td>1904</td>
<td>28</td>
<td>21,115</td>
</tr>
<tr>
<td>1905</td>
<td>25</td>
<td>6,975</td>
</tr>
<tr>
<td>1906</td>
<td>46</td>
<td>10,777</td>
</tr>
<tr>
<td>1907</td>
<td>45</td>
<td>13,296</td>
</tr>
<tr>
<td>1908</td>
<td>56</td>
<td>159,274</td>
</tr>
<tr>
<td>1909</td>
<td>63</td>
<td>79,273</td>
</tr>
<tr>
<td>1910</td>
<td>59</td>
<td>172,818</td>
</tr>
</tbody>
</table>

\(^1\) Eighth Report by the Board of Trade of Proceedings under the Conciliation Act, pp. 6 and 7.
It will be seen that while the number of disputes annually settled by these means has increased but slowly, the number of people affected has increased enormously. In 1910 the number of strikes and lockouts thus settled was but little over half as large again as in 1901, but the number of workpeople involved was more than 11 times as great as in the earlier year. This can only mean that more important disputes are now being handled by these methods, which in turn indicates a much greater confidence in their fairness and efficacy than was shown in the years when only comparatively unimportant disagreements were thus settled.

It may be objected that the increased use of conciliation and arbitration might imply only an increase in the number and seriousness of labor troubles, since obviously the more general such disagreements are the greater the likelihood that every means of settlement will be tried. To some extent this may be valid. Industrial disputes have on the whole been increasing in seriousness for some years past, but this increase has not kept pace with the increase in the use of conciliation and arbitration. The report already quoted gives the following figures on this point:

**NUMBER OF STRIKES AND LOCKOUTS, AND NUMBER OF WORKPEOPLE INVOLVED, DIRECTLY OR INDIRECTLY, 1901 to 1910.**

[From Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in 1910, p. 8.]

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of disputes beginning in each year</th>
<th>Number of workpeople involved in disputes beginning in each year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Directly.</td>
<td>Indirectly.</td>
</tr>
<tr>
<td>1901</td>
<td>642</td>
<td>111,437</td>
</tr>
<tr>
<td>1902</td>
<td>442</td>
<td>116,824</td>
</tr>
<tr>
<td>1903</td>
<td>497</td>
<td>88,515</td>
</tr>
<tr>
<td>1904</td>
<td>335</td>
<td>56,430</td>
</tr>
<tr>
<td>1905</td>
<td>358</td>
<td>67,653</td>
</tr>
<tr>
<td>1906</td>
<td>456</td>
<td>157,372</td>
</tr>
<tr>
<td>1907</td>
<td>601</td>
<td>100,728</td>
</tr>
<tr>
<td>1908</td>
<td>399</td>
<td>223,969</td>
</tr>
<tr>
<td>1909</td>
<td>436</td>
<td>170,288</td>
</tr>
<tr>
<td>1910</td>
<td>531</td>
<td>355,055</td>
</tr>
</tbody>
</table>

It will be seen that while the number of strikes and lockouts annually settled by arbitration or conciliation increased from 37 to 59 during the decade covered, the number of strikes and lockouts occurring shows an actual decrease of over a hundred; and that while the disputes settled by these means in 1901 involved only about one-tenth (9.8 per cent) as many people as were concerned in the strikes and lockouts beginning in that year, in 1910 this proportion has increased to nearly two-fifths (39.6 per cent). It is evident that the use of these methods is growing more rapidly than are the troubles to which they are applied.
An even more important case occurred in the cotton industry, which was supposed to be provided, by the Brooklands agreement, with effective machinery for conciliatory methods of settling disagreements. Nevertheless, this dispute, which is known as the George Howe case, and which centered about the discharge of one man for action in which he was sustained by the operatives as a body, resulted in a lockout involving in all about 102,000 workpeople, and in an apparent deadlock between the parties. Both sides had proposed calling in the Board of Trade, but each had coupled with the proposition terms to which the other would not consent. Under these circumstances the Board proffered its services, and prolonged negotiations were carried on between its representative and the disputants. The trouble was finally arranged and the Brooklands agreement so amended that, it is hoped, no future disputes can reach such a pitch. The efficacy of the Board of Trade in cases where the two parties seem hopelessly at odds is now quite widely recognized.

"The rules of a number of the conciliation boards," says a recent report, "and other agreements arranged by employers and workpeople in the various trades, frequently contain a clause providing that, in the event of failure to effect a settlement of a dispute locally, application shall be made to the Board of Trade for the appointment of an umpire, arbitrator, or conciliator. Such clauses, so far as known to the department, now exist in 96 agreements." Obviously the insertion of such clauses in voluntary agreements is strong testimony to the effect the conciliation act has had in the past, and to the respect felt by both employer and employed for the work done by the Board of Trade under its provisions.

MEDIATION WORK OF BOARD OF TRADE.

The foregoing table does not indicate one of the most important results of the conciliation act—the use made of the Board of Trade, under the powers conferred by the act, as a mediator when the machinery provided within an industry for the settlement of its own disputes breaks down. Some of the most important interventions of the Board in 1910 were of this character. For instance, a disagreement between the Shipbuilding Employers’ Federation and the United Society of Boilermakers and Iron and Steel Shipbuilders led to a stoppage of work affecting directly 15,300 men, and indirectly 20,000 others. Both employers and employees were strongly organized, and with a view to preventing precisely the kind of deadlock which now arose, both sides had in 1909 signed an agreement making "ample provision for local negotiations, preliminary conferences, grand conferences, demarcation disputes, etc., and for the appointment or

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1 See pages 157 and 195.
2 Eighth Report by the Board of Trade Proceedings under the Conciliation Act, p. 7.
selection of an independent referee to whom questions of dispute may be submitted in the event any joint committee fails to agree. As in spite of this machinery it seemed impossible to reach an agreement, the Board of Trade proffered its services as mediator, and separate conferences were held with representatives of the organizations on both sides. Negotiations between the two parties were resumed, and the difficulty was finally settled, the original agreement being amended to prevent the recurrence of such a situation.

WORK OF PERMANENT CONCILIATION BOARDS AND JOINT COMMITTEES.

The growing confidence in the principles of conciliation shows itself also in the number of permanent conciliation boards and joint committees established in the various trades throughout the United Kingdom. In most of the principal trades of the United Kingdom joint meetings of representatives of employers and workpeople are now the generally recognized method of settling disputes or adjusting differences in regard to questions which might otherwise lead to a cessation of work. The following table shows the distribution by industries of the permanent boards and joint committees:

### NUMBER OF PERMANENT BOARDS AND JOINT COMMITTEES FOR CONCILIATION AND ARBITRATION, BY INDUSTRIES.

<table>
<thead>
<tr>
<th>Industries</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building trades</td>
<td>111</td>
</tr>
<tr>
<td>Coal mining</td>
<td>19</td>
</tr>
<tr>
<td>Other mining and quarrying</td>
<td>6</td>
</tr>
<tr>
<td>Iron and steel</td>
<td>10</td>
</tr>
<tr>
<td>Engineering and shipbuilding</td>
<td>10</td>
</tr>
<tr>
<td>Other metal trades</td>
<td>4</td>
</tr>
<tr>
<td>Textiles</td>
<td>4</td>
</tr>
<tr>
<td>Boots, shoes, and clogs</td>
<td>24</td>
</tr>
<tr>
<td>Tailoring</td>
<td>4</td>
</tr>
<tr>
<td>Railways</td>
<td>47</td>
</tr>
<tr>
<td>Dock and waterside labor</td>
<td>8</td>
</tr>
<tr>
<td>Miscellaneous trades</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>262</td>
</tr>
<tr>
<td><strong>District boards</strong></td>
<td>14</td>
</tr>
<tr>
<td><strong>General boards</strong></td>
<td>2</td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td>278</td>
</tr>
</tbody>
</table>

These figures show the situation in August, 1910; it is known that the number of such bodies has increased since then, but the figures for 1911 are not yet at hand.

1 See page 187.
3 Not including Brooklands agreement.

31326—Bull. 98—12—10
The following tables show by years the number of cases considered and the number settled by permanent conciliation and arbitration boards for a period of 10 years:

### NUMBER OF CASES CONSIDERED BY PERMANENT CONCILIATION AND ARBITRATION BOARDS, 1901 to 1910.

These tables show a marked increase both in the number of cases handled and in the number settled by the boards. The most striking feature is the inclusion of railway disputes from 1908 onward, due to the workings of the agreement of 1907. The very small number of these disputes settled in 1908, the year in which the railway conciliation boards were first set up, is due to the delays involved in getting the new machinery into working order. The next year shows a large number of settlements. The falling off in 1910 shows the effect of the 1909 settlements, many of which were to last for three years or longer, so that on the roads where these adjustments were in force, disputes were barred. By far the largest number of cases either handled or settled were in the mining and quarrying industries. This is due to the joint committees for the coal trade of Northumberland and Durham, which deal solely with disputes at

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1 Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in 1910, p. 81.
individual collieries, and which in 1910 settled 561 out of the 657 disposed of by all the boards and committees in this group.

The iron and steel industry shows an absolute decrease in the number of cases handled, while at the same time the proportion of cases settled has risen from 84 per cent in 1901 to 92 per cent in 1910. The falling off in numbers is due to the careful preliminary sifting of complaints at the works, and also to the fact that many precedents of general application have now been established.

The engineering and shipbuilding trades also show a very marked decrease in the number of cases handled. The area covered by conciliation boards or committees has increased during the decade, so that this decrease can only mean a falling off in the number of disputes in the industry.

The building trades show a striking increase in the number of cases handled, due apparently to the extensive development in the machinery for conciliation which has taken place in these trades within the last few years.

The work of these boards is very largely preventive. Of the 1,087 disputes settled by them in 1910, only 16 involved a stoppage of work. During the decade 1901 to 1910, 7,984 disputes were settled by permanent conciliation and arbitration boards, and of these only 125 (1.6 per cent) had reached a stage involving a stoppage of work. In general the rules of the boards require that neither a strike nor lockout shall take place until the difficulty has been discussed. The disputes dealt with range from trivial matters affecting only a few persons to cases involving thousands of workers. One of the settlements in 1910 related to an advance of wages in the coal trade of Monmouth and South Wales which affected 190,000 workpeople.

INDIRECT EFFECT OF CONCILIATION ACT.

In addition to the two effects already discussed, i.e., the direct activities of the Board of Trade and the encouragement given to the formation and use of conciliatory bodies, there is some ground for attributing to the act of 1896 an indirect but important effect in adding dignity and weight to conciliation proceedings by whatsoever body undertaken. The registration of the permanent boards and the intervention of the Board of Trade in difficult cases tend to give an official or even a quasi judicial character to conciliation or arbitration proceedings, making it easier for either side to accept a decision which goes against it.

"The settlement of difficulties between masters and men," says one student of the subject, "now partakes to a large extent of the nature of court proceedings, and masters and men, instead of resorting, as

1 Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in 1910, pp. 80 and 81.
in the old days, to force on one side and violence and intimidation on the other, are satisfied now to submit their differences to a recognized authority who renders his decision not because he has prejudices or is under the influence of complainant or defendant, but on the merits of the question as it has been presented to him, precisely as a judge does; and in England the litigant has confidence that the judge will be governed by no improper motives in awarding his verdict.”

This tendency has probably been increased by the addition of the permanent court of arbitration to the machinery which the Board of Trade may call into play when necessary.

It is evident that the act of 1896 may fairly be credited with a considerable influence both in reducing the number of labor troubles which reach an acute stage and in aiding the development of a respect for conciliation and arbitration as opposed to violence in settlement of industrial disputes. Up to the outbreak of the railway strike of 1911, this movement appeared to be gaining ground with employers, employees, and the general public alike. How it will be affected by the strike can not, of course, yet be said. It is to be noted, however, that the strike was directed not against the principles underlying this movement but against a particular method of applying them which the men believed involved delays and hardships which formed no necessary part of their application; and, further, that the settlement proposed by the royal commission involves no recession from the principles of the act, but merely such changes in the machinery for adjusting disputes as will render it possible to apply these principles more promptly and effectively.

APPENDIX I.—CONCILIATION ACT, 1896.

AN ACT TO MAKE BETTER PROVISION FOR THE PREVENTION AND SETTLEMENT OF TRADE DISPUTES. [7TH AUGUST, 1896.]

1.—(1) Any board established either before or after the passing of this act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorized by an agreement in writing made between employers and workmen to deal with such disputes (in this act referred to as a conciliation board), may apply to the Board of Trade for registration under this act.

(2) The application must be accompanied by copies of the constitution, by-laws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect.

(4) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.
CONCILIATION AND ARBITRATION IN GREAT BRITAIN. 141

(6) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

2. — (1) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely:

(a) Inquire into the causes and circumstances of the difference;

(b) Take such steps as to the board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference;

(c) On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation;

(d) On the application of both parties to the difference, appoint an arbitrator.

(2) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavor to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

3. The arbitration act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this act applies, but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said act, or such of the regulations of any conciliation board, or under such other rules or regulations as may be mutually agreed upon by the parties to the difference or dispute.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with the employers and employed, and, if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this act.

6. The expenses incurred by the Board of Trade in the execution of this act shall be defrayed out of moneys provided by Parliament.


8. This act may be cited as the Conciliation Act, 1896.

APPENDIX II.—COURT OF ARBITRATION.

The following is the text of a memorandum communicated by the president of the Board of Trade to chambers of commerce and employers’ and workmen’s associations in September, 1908, with reference to the formation of a court of arbitration as an auxiliary to the conciliation act. It is self-explanatory:

MEMORANDUM.

1. Under the conciliation act of 1896 the Board of Trade has power to appoint a conciliator in trade disputes, and an arbitrator at the request of both parties. These slender means of intervention have been employed in cases where opportunity has offered, and the work of the department in this sphere has considerably increased of recent years. In 1905 the Board of Trade intervened in 14 disputes and settled them all; in 1906 they intervened in 20 cases and settled 16; in 1907 they intervened in 39 cases and settled 32; while during the first eight months of the present year no fewer than 47 cases of intervention have
occurred, of which 35 have been already settled, while some of the remainder are still being dealt with.

2. It is not proposed to curtail or replace any of the existing functions or practices under the conciliation act, nor in any respect to depart from its voluntary and permissive character. The good offices of the department will still be available to all in industrial circles for the settlement of disputes whenever opportunity offers. Single arbitrators and conciliators will still be appointed whenever desired. Special interventions will still be undertaken in special cases, and no element of compulsion will enter into any of these proceedings. But the time has now arrived when the scale of these operations deserves, and indeed requires, the creation of some more formal and permanent machinery; and, with a view to consolidating, expanding, and popularizing the working of the conciliation act, I propose to set up a standing court of arbitration.

3. The court, which will sit whenever required, will be composed of three (or five) members, according to the wishes of the parties, with fees and expenses to members of the court and to the chairmen during sittings. The court will be nominated by the Board of Trade from three panels. The first panel—of chairmen—will comprise persons of eminence and impartiality. The second will be formed of persons who, while preserving an impartial mind in regard to the particular dispute, are nevertheless drawn from the "employer class." The third panel will be formed of persons similarly drawn from the class of workmen and trade-unionists. It is hoped that this composition will remove from the court the reproach which workmen have sometimes brought against individual conciliators and arbitrators, that, however fair they mean to be, they do not intimately understand the position of the manual laborer. It is believed that by the appointment of two arbitrators selected from the employers' panel and two from the workmen's panel in difficult cases, thus constituting a court of five instead of three persons, the decisions of the court would be rendered more authoritative, especially to the workmen, who, according to the information of the Board of Trade, are more ready to submit to the judgment of two of their representatives than of one. As the personnel of the court would be constantly varied, there would be no danger of the court itself becoming unpopular with either class in consequence of any particular decision; there would be no difficulty in choosing members quite unconnected with the case in dispute, and no inconvenient labor would be imposed upon anyone who consented to serve on the panels. Lastly, in order that the peculiar conditions of any trade may be fully explained to the court, technical assessors may be appointed by the Board of Trade, at the request of the court of the parties, to assist in the deliberations, but without any right to vote.

4. The state of public opinion upon the general question of arbitration in trade disputes may be very conveniently tested by such a voluntary arrangement. Careful inquiry through various channels open to the Board of Trade justifies the expectation that the plan would not be unwelcome in industrial circles. The court will only be called into being if, and in proportion as, it is actually wanted. No fresh legislation is necessary.

5. Steps will now be taken to form the respective panels.

September 1, 1908.

When both parties to an industrial dispute desire to have their differences settled by arbitration it is open to them jointly to apply to the Board of Trade under the conciliation act either (1) for the appointment of a single arbitrator, or (2) for the appointment of a court of arbitration in accordance with the scheme devised in 1908, by the president of the Board of Trade.

The following regulations have been drawn up by the Board of Trade in connection with the appointment of courts of arbitration:

REGULATIONS.

1. The application should state (a) the subject matter of the dispute; (b) whether the parties wish the court to consist of (1) a chairman and two arbitrators, or (2) a chairman and four arbitrators; (c) whether the parties desire
the Board of Trade (i) to appoint a chairman and arbitrators, all of whose names have been jointly selected by the parties from the respective panels, or (ii) to appoint a chairman whose name has been jointly selected by the parties from the chairman's panel, and to select and appoint the arbitrators from the respective panels, or (iii) to select and appoint the chairman from the chairmen's panel, and to select and appoint the arbitrators jointly selected by the parties from the respective panels, or (iv) to select and appoint all the members of the court from the respective panels; (d) whether the parties wish the court to appoint, or apply to the Board of Trade to appoint, a technical assessor or assessors.

2. A court of arbitration shall, if either party or both parties shall have so requested, or may on their own initiative, if they consider that the assistance of a technical assessor or assessors is expedient, appoint or apply to the Board of Trade to appoint a technical assessor or assessors accordingly.

3. Technical assessors shall not be members of the court. They will be appointed solely for the purpose of giving the court information on technical matters when required by them. They will only be entitled to be present at such stages of the proceedings as the court may direct. Every assessor before taking up his duties shall pledge himself in writing to keep secret all matters with which he shall in the course of the performance of such duties become acquainted.

4. All procedure in connection with the hearing of a case shall be settled by the chairman after consultation with other members of the court, including the mode of appearance thereat.

For the convenience of the court, each application should be accompanied by a statement showing (a) whom the parties desire to represent them at the hearing and (b) the approximate number of witnesses each side desires to call.

5. The award of a majority of the members of the court shall be the award of the court. When no majority can be obtained in favor of an award, owing to the arbitrators being equally divided, then the matter shall be decided by the chairman, acting with the full powers of an umpire.

6. After an award is made it shall be signed by the chairman on behalf of the court. When no majority can be obtained in favor of an award, owing to the arbitrators being equally divided, the matter shall be decided by the chairman, acting with the full powers of an umpire.

APPENDIX III.—RULES OF LONDON LABOR CONCILIATION AND ARBITRATION BOARD.

I. That a permanent body be constructed, to be called The London Conciliation Board, which shall be affiliated to the London Chamber of Commerce, and that its composition shall be as follows, viz: 

(a) Twelve members representing capital or employers, to be elected by the council of the chamber.

(b) Twelve members representing labor, to be elected by the employed.

II. The duties of The London Conciliation Board shall be as follows:

(a) To promote amicable methods of settling labor disputes and the prevention of strikes and lockouts generally, and also especially in the following methods:

1. They shall, in the first instance, invite both parties to the dispute to a friendly conference with each other, offering the rooms of the chamber of commerce as a convenient place of meeting. Members of the board can be present at this conference, or otherwise, at the pleasure of the disputants.

2. In the event of the disputants not being able to arrive at a settlement between themselves, they shall be invited to lay their respective cases before the board, with a view to receiving their advice, mediation, or assistance. Or, should the disputants prefer it, the board would assist them in selecting arbitrators, to whom the questions at issue might be submitted for decision.

3. The utmost efforts of the board shall in the meantime and in all cases be exerted to prevent, if possible, the occurrence or continuance of a strike or lockout until after all attempts at conciliation shall have been exhausted.
The London Conciliation Board shall not constitute itself a body of arbitrators except at the express desire of both parties to a dispute, to be signified in writing, but shall in preference, should other methods of conciliation fail, offer to assist the disputants in the selection of arbitrators chosen either from its own body or otherwise. Any dispute coming before the board shall, in the first instance, be referred to a conciliation committee of the particular trade to which the disputants belong, should such a committee have been formed and affiliated to the chamber.

(b) To collect information as to the wages paid and other conditions of labor prevailing in other places where trades or industries similar to those of London are carried on, and especially as regards localities either in the United Kingdom or abroad where there is competition with the trade of London. Such information shall be especially placed at the disposal of any disputants who may seek the assistance of The London Conciliation Board.

III. The London Chamber of Commerce places its rooms at the disposition of The London Conciliation Board and of the trade conciliation committees for holding their meetings. Any alterations in the rules and regulations of these bodies which may be from time to time proposed shall be submitted for approval to the council of the chamber.

IV. The above regulations shall be subject to by-laws, to be specially framed for the purpose and which shall be open to amendments as required from time to time, on agreement between the council of the chamber of commerce and The London Conciliation Board.

EXTRACTS FROM THE BY-LAWS.

5. The board shall elect its own chairman and vice chairman, who shall vote with the board but shall not have a second or casting vote.

7. The chairman shall be selected from the employers of labor on the board and the vice chairman from amongst the employed.

APPENDIX IV.—DURHAM COAL OWNERS' ASSOCIATION AND DURHAM COUNTY MINING FEDERATION CONCILIATION BOARD.

The Durham Coal Owners' Association and the Durham County Mining Federation hereby agree to form a board of conciliation for the Durham coal trade, hereinafter called "the board."

The following shall be the objects, constitution, and rules of procedure:

OBJECTS.

By conciliatory means to prevent disputes and to put an end to any that may arise, and with this view to consider and decide upon all claims that either party may from time to time make for a change in county rates of wages or county practices, and upon any other questions not falling within the jurisdiction of the joint committee that it may be agreed between the parties to refer to the board.

CONSTITUTION AND RULES OF PROCEDURE.

1. The board shall be constituted of the following number of representatives appointed by the following bodies, viz, by the—

<table>
<thead>
<tr>
<th>Association</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miners' association</td>
<td>9</td>
</tr>
<tr>
<td>Colliemen's association</td>
<td>3</td>
</tr>
<tr>
<td>Mechanics' association</td>
<td>3</td>
</tr>
<tr>
<td>Enginemen's association</td>
<td>3</td>
</tr>
<tr>
<td>Coal owners' association</td>
<td>18</td>
</tr>
</tbody>
</table>

Total: 36

2. The coal owners' representatives on the one hand and the representatives uniedly of the four other associations on the other hand, are for brevity herein referred to as the parties.

3. The board shall continue till either of the parties gives six months' notice of withdrawal from it, but neither of the parties to withdraw before the end of 1902.
4. An umpire shall be forthwith agreed upon by the board, or failing agreement, be appointed by the Board of Trade after conferring unitedly with each of the parties represented by the board. Each umpire shall hold office until his successor is appointed. The board shall, at its meeting in November, 1900, and in November of each succeeding year, and within one month of the death or resignation of any umpire, proceed to appoint a successor in the manner herein provided.

5. No decision shall be altered until it has been in operation for 12 weeks.

6. All questions submitted to the board shall be stated in writing, and may be supported by such verbal, documentary, or other evidence as either party may desire to adduce and as the board may deem relevant.

7. All questions shall in the first instance be submitted to and considered by the board without the presence of the umpire, it being the desire and intention of the parties to settle by friendly conference, if possible, any difficulties or differences which may arise. If the board cannot agree, then the meeting shall be adjourned, and the umpire shall be summoned to the adjourned meeting, when the matter shall be again discussed, and in default of an agreement by the board, the umpire shall give his casting vote on such matter. The decision of the board or its umpire shall be final and binding on the parties.

8. The umpire may at his discretion require either party to afford him the means of obtaining, for the information of the board only, any facts that in his judgment are essential to the decision of any question at issue.

9. The parties shall each, respectively, elect a secretary to represent them in the transaction of the business of the board, and each party shall give written notice thereof to the secretary of the other party, and both such secretaries shall remain in office until they shall resign or be withdrawn by the party electing them. The secretaries shall attend all meetings of the board and be entitled to take part in the discussion, but they shall have no power to move or second any resolution or to vote on any question before the board, unless either secretary be also one of the representatives, in which case he shall in that capacity have all the rights and privileges of a representative.

10. The secretaries shall conjointly convene all meetings of the board, of which not less than seven days’ notice shall be given, such notice specifying the business to be considered, and shall take proper minutes of the board and the proceedings thereof, which shall be transcribed in duplicate books, and each such book shall be signed by the umpire, chairman, or vice chairman, or other person, as the case may be, who shall have presided at the meeting to which such minutes relate. One of such minute books shall be kept by each of the secretaries. The secretaries shall also conduct the correspondence for the respective parties and conjointly for the board.

11. The secretaries shall on the written application of either of the parties, made to the chairman and secretary of each party, call a special meeting of the board within 21 days, at such time as may be agreed upon by the secretaries. The application for the meeting shall state clearly the object of the meeting.

12. Each party shall pay the expenses of its own representatives and secretary, but the costs and expenses of the umpire, stationery, books, printing, hire of rooms for meetings, etc., shall be borne by the respective parties in equal shares.

13. At the first meeting of the board in each year the board shall appoint a chairman and vice chairman, one of whom shall be a representative of the coal owners’ association and the other of the miners’, cokemen’s, mechanics’, or enginemen’s association.

14. The chairman, or in his absence the vice chairman, shall preside at all meetings at which the umpire is not present, as herein provided. In the absence of both chairman and vice chairman a member of the board shall be elected by the majority to preside at that meeting. The chairman or vice chairman, or other person presiding, shall vote as a representative, but shall not have any casting vote. When the umpire is present he shall preside and have a casting vote only.

15. Ordinary meetings of the board shall be held as early as possible in the months of February, May, August, and November in each year. The meetings of the board shall be held at Newcastle, or such other place as the board shall from time to time determine.

16. All votes shall be taken at meetings of the board by show of hands. When at any meeting of the board the representatives of the respective parties
are unequal in number, all shall have the right of fully entering into the dis-
cussion of any matters brought before them, but only an equal number of each
shall vote, the withdrawal of the representatives of whichever party may be
in excess to be by lot unless otherwise arranged.
17th October, 1899.

DURHAM COAL OWNERS' ASSOCIATION AND DURHAM MINERS' ASSO-
CIATION.

JOINT COMMITTEE RULES, AS AMENDED JUNE 9, 1911:

MINERS.

1. The joint committee shall take into consideration and determine local dis-
putes arising at any particular colliery belonging to a member of the Durham
Coal Owners' Association between the management and the workmen thereof
(hereinafter referred to as the parties) except on county questions.

2. The committee to be composed of six members chosen by the Durham
Coal Owners' Association and six members of the Durham Miners' Association,
together with an impartial chairman to be chosen annually in March (or at
such other times as the office may become vacant) by the owners' association
and the Durham County Mining Federation.

3. The owners' and miners' associations shall each select a secretary to repre-
sent them in the transaction of the business of the committee, and each asso-
ciation shall give written notice of such appointment to the other associa-
tion, and each such secretary shall remain in office until he shall resign or be
withdrawn by the association which elected him.

The secretaries shall attend all meetings of the committee and be entitled to
take part in the examination of witnesses or in the discussion of any matter
before the committee, but they shall have no power to move or second any reso-
lution or to vote on any question before the committee, unless either secretary
be also one of the elected members of the committee, in which case he shall,
in that capacity, have all the rights and privileges of a member.

4. The committee shall, except on county questions, as hereinafter defined,
have full power to settle, either by its own decision or by reference to arbitra-
tion or otherwise, all questions relating to wages, rates of payment for altered
methods of working, and all questions or disputes of any other description
which may arise from time to time between the parties at any particular
colliery relating to matters affecting that colliery, and which shall be referred
to the consideration of the committee by either of the parties concerned, and the
decisions of the committee shall be binding.

5. County questions are those in which any decision given by the committee
would establish a precedent affecting either the whole of the collieries in the
county or several collieries, or those which have been decided by the owners'
and miners' associations to be county questions, or which are under discussion
between the associations as affecting the county. If the hearing of a case is
opposed on the ground of its being a county question, such opposition may be
put forward at any time by either the owners' or workmen's association, or by
a member of the committee, or by either secretary of the committee, and the
joint committee shall determine whether the contention that the case is a
county question has been sustained.

6. The collieries are to be classed into three districts, with the following
boundaries:

(a) The east district to comprise all those collieries which lie to the east of
the Team Valley Railway.

(b) The north district to comprise all those collieries which lie to the west of
the Team Valley Railway and north of the Lanchester Valley Railway.

(c) The Auckland district to comprise all those collieries which lie to the
west of the Team Valley Railway and south of the Lanchester Valley Railway.

The owner of any colliery situated on the boundary line of any district shall
have the option of choosing the district in which such colliery shall be included.

7. The meetings of the joint committee shall be held in Newcastle-upon-Tyne
or such other convenient place as may be fixed by the committee, and at such
dates and hours as may be fixed by the chairman.

8. In any case brought before the joint committee the owners may be re-
presented by one or more of their agents, and the workmen by any of the work-
men employed upon the colliery from which the case is sent or by the check-
weighman of that colliery, but it shall be competent for either side to bring such witnesses as they may deem necessary.

9. The county standard wages and hours of the various classes of workmen shall be those agreed to between the two associations modified up or down by any change brought about by any county agreement.

10. All decisions of the committee shall be in accordance with county awards, county agreements, county customs, and county arrangements, whether such are in writing or otherwise, and the decisions of the committee in all cases shall be such as to bring practices, hours, or wages as nearly as may be into accord with the recognized county standards.

11. Before any application for an advance or reduction in the wages of hewers (including kirvers and tub loaders) shall be entertained it must, except as provided in rule 12, be clearly shown that the average wage earned by the same class of persons in the seam (or portion of a seam if cavilled separately) is at least 5 per cent above or below the recognized county standard rate, but there shall be excluded from the averages the earnings of any hewers or tub loaders who are paid an extra price in addition to the ordinary rates in consideration of their working at night under any special arrangement.

Before any application for an advance or reduction in the wages of any other classes of workmen paid by the piece shall be entertained it must be clearly shown, if the application relates to workmen employed underground and paid by the piece, that the average wage earned by the same class or classes of persons in the seam is at least 5 per cent above or below the recognized county standard rate, or if the application relates to workmen at bank paid by the piece that the average wage earned by the same class or classes of persons employed at the pit is at least 5 per cent above or below the recognized county standard rate.

12. If either party desires a revision of the hewing prices of the various districts comprising a seam, the joint committee may make such revision or send it to arbitration, although the average of the seam is not 5 per cent above or below the county average, provided that in such cases the general average of the seam prevailing before the revision shall be as nearly as possible maintained.

13. The prices to be paid to hewers or other classes of workmen paid by the piece employed in new seams or at broken or under any other changed mode or conditions of working in any seam, for which prices are not already fixed, shall, on application, be settled by arbitration if they can not be arranged by mutual agreement or by the joint committee.

14. In cases of extension or recommencement of districts, the prices previously paid in such districts shall be paid in all extensions of the workings, except where boundaries are otherwise specifically defined.

15. On the application of the owners or workmen at any colliery an area of and distance from goaf governing the payment of broken prices shall, if not already fixed by agreement or custom, be fixed by the joint committee or arbitration.

16. All applications by one party for advance or reductions of piecework prices shall entitle the other side to raise the question of the prices paid to the same class of workmen throughout the whole of the pit, and all applications for advances or reductions of the dotal wages of any workmen shall entitle the other side to raise the question of the dotal wages paid to workmen of the same class throughout the whole of the pit, provided that, in either case, not less than seven clear days before the day appointed for hearing by joint committee, a statement of any counterclaim intended to be made, together with a statement of average earnings or dotal wages as provided for in rule 18, shall be handed to the manager, or in the case of hewing prices specifying the names of the districts or flats where the advances or reductions are sought. The provisions of rule 11 shall apply to counterclaims in the same way as to original applications.

17. In the event of any change being made by the owners of a colliery in the methods of working a mine, or any part thereof, or in the conditions under which the labor concerned is performed, no stoppage of work by the workmen shall take place, and in the event of a change of wages being awarded by the committee or arbitration, in consequence of such altered methods or conditions of working, such change shall take effect from the commencement of the altered mode or conditions of working.

18. No request for advance, reduction, or revision of piecework prices, or dotal wages, shall be entertained unless a statement showing the average earnings per shift, or of the dotal wages, has been supplied by the secretary of
the owners' or workmen's side of the committee, as the case may be, to the other secretary at least nine clear days before the date fixed for hearing by joint committee. In the case of piecework, the averages thus supplied shall be those of at least three recent consecutive pays (each given separately) actually received by the workmen, excluding the first and last pays of each quarter, and the two pays immediately following the date of a decision, award, or agreement becoming operative. The averages of seams and of the districts or flats where the advance, reduction, or revision is asked for, shall be supplied in each case, and also the numbers and dates of the pays. The joint committee, in considering and determining claims for advance or reduction of piecework prices, shall be guided by the difference between the average earnings of the workmen during the pays for which averages have been supplied and the county standard rate for the class concerned, and in considering and determining claims respecting datal wages shall be guided by the difference between the datal wage of the workmen concerned and the county standard wage for that class.

19. In those cases where either piecework or datal work is possible it shall be competent for the owners to say which method of payment shall be adopted, and if the rates are not already fixed therefor to have such fixed on application to the committee, but failing local agreement, the change in the method of payment shall not take place until such application to committee be made.

20. When both owners and workmen have cases for consideration, the cases of each shall be considered alternately, and lists of cases to be considered at any meeting shall be exchanged between the two secretaries at least 14 days before such meeting; and it shall not be competent for the committee to discuss any other matter than shall be specified in such lists unless the parties concerned agree to any very urgent case being heard, and both sides of the committee concur.

21. Either of the parties may, subject to the conditions of rule 22, object to a demand made by the other party on the ground that the party submitting the demand has, within the previous three months, deliberately refused, notwithstanding the protest of the other party, to carry out any county or local agreement, or any previous decision of the joint committee, or any award; but if such refusal shall proceed from a bona fide difference of opinion as to the meaning of any such agreement, decision, or award, the party shall not be deemed to have refused to carry it out until it has been decided by the joint committee or arbitration that such party's interpretation is wrong, and such party after such decision acts in opposition thereto. If such objection shall be established under this rule, the claim of the offending party shall not be considered by the committee.

No application shall be entertained from any class of workmen who are shown to have been restricting their labor within the preceding three months.

22. If any objection is to be raised to the hearing of a claim or counterclaim (except as a county question), written notice stating the particulars of such objection shall be given to the manager or the workmen by the committee, as the case may be, and such notice shall, as regards claims, be given seven clear days before the day appointed for hearing, and, as regards counterclaims, four clear days before the day appointed for hearing; but if the cause or objection arises within such seven or four days, then the notice may be given at any time previous to the time appointed for hearing.

23. The committee shall in all cases, where such is possible, determine the questions submitted to its consideration without calling upon the chairman for his casting vote.

24. On any case being submitted to the committee the parties may each state their case, and may bring forward in support such evidence as they deem necessary and as the committee may consider relevant. During the hearing of evidence there shall be no discussion or argument, the examination of witnesses being confined to putting the committee into possession of the facts bearing on the case. When the witnesses have completed their evidence they shall retire, and the members of the committee shall then discuss and endeavor to arrive at a decision on the case. In the event of their failing to arrive at a unanimous decision, any member may propose a motion for settling the matter, and the chairman shall put such motion to the committee, and it shall be determined by a vote taken by show of hands. If the votes are equal, the chairman shall himself decide the question at issue, or shall refer it to arbitration, or order a report, as he may think fit. If the number of members present representing the owners and workmen, respectively, is unequal, the voting shall
be deemed to be equal if all the workmen's representatives present vote one way and those of the owners the other.
25. Unless otherwise arranged by mutual agreement by the joint committee or by arbitration, all advances and reductions shall take effect from the beginning of the pay commencing first after the date of the decision or award.
26. In the event of any payment of back money being awarded, the chairman of the joint committee shall decide upon the period (not exceeding 14 weeks prior to the day appointed for hearing by the Joint committee) for which such payment shall be made.
27. In any case referred to arbitration each party shall appoint a disinterested arbitrator within 21 days of the date of the reference; and if within the said 21 days either of the parties fail to appoint an arbitrator, the arbitrator appointed shall ask the chairman of the joint committee to authorize him to hear and determine the matter referred, and make an award which shall be binding on both parties.
28. If in any case referred to arbitration the arbitrators are unable to decide on the claim and fail to agree as to the appointment of an umpire, each arbitrator shall nominate not exceeding two persons, not being colliery owners, mining engineers having charge of or being interested in any colliery, or members or officials of any colliery owners' or workmen's association, and the chairman of the joint committee shall appoint a person from among those thus nominated.
29. On any case sent by the committee for report, the persons appointed shall, if possible, submit their report to the joint committee for the same district at its next meeting after the date of the reference.
30. In any case referred by the committee for report, if the persons appointed are unable to agree upon a joint report, they shall submit separate reports showing the points on which they differ.
31. Cases shall not be reconsidered until after the lapse of 12 weeks from the date of their last hearing, or from the date of an award or agreement affecting the question proposed to be dealt with in the case.

APPENDIX V.—CLEVELAND MINE OWNERS' ASSOCIATION AND CLEVELAND MINERS’ & QUARRYMEN’S ASSOCIATION.

RULES FOR THE JOINT COMMITTEE AFFECTING THE IRONSTONE MINES AS WELL AS THE LIKE COMMITTEE AFFECTING THE LIMESTONE QUARRIES.

1. The object of the committee shall be to discuss and settle questions (except such as may be termed district questions or questions affecting the general trade) relating to wages, practices of working, or any other subject which may arise from time to time at any particular mine or quarry, and which shall be referred to the consideration of the committee by the parties concerned. The committee shall have full power to settle all disputes, and their decision shall be final and binding upon all parties.
2. The committee shall consist of six representatives chosen by the Cleveland Mine Owners' Association, and six representatives chosen by the Cleveland Miners' and Quarrymen's Association.
3. It shall be deemed that there shall be no quorum unless at least three members of each association be present at a meeting of the committee.
4. Each meeting shall nominate its own chairman, who shall have no casting vote. In case of equality of votes upon any question it shall be referred to arbitration, one or more arbitrators, as may be agreed on, to be chosen by the members of each association present at the meeting, the arbitrators to have power to appoint an umpire if unable themselves to settle the question at issue. Decisions, whether come to by the committee or by arbitrators or an umpire, shall be binding for not less than three calendar months.
5. Each party shall pay its own expenses; the expenses of the umpire to be borne equally by the two associations.
6. The joint committee shall meet as early as possible, but not later than 21 days after notice has been given of a claim, and when referees are appointed they shall meet as early as possible to deal with the matter, but not later than 14 days after the date of their appointment.
7. When any subject is to be considered by the committee the secretary of the association by whom it is brought forward shall give notice thereof to the secretary of the other association at least seven days before the meeting at which it is to be considered.
8. If any member of the committee is directly interested in any question under discussion he shall abstain from voting, and a member of the opposite party shall also abstain from voting.

9. All questions presented to the committee must have been previously discussed between the workmen and their employers.

10. No alteration or addition to these rules shall be made except after three months' notice.

APPENDIX VI.—AGREEMENT BETWEEN SHIPBUILDING EMPLOYERS' FEDERATION AND SHIPYARD TRADE-UNIONS.


The federation and the unions recognizing that it is in the best interests of both employers and workmen that arrangements should be made whereby questions arising may be fully discussed and settled without stoppages of work hereby agree as follows:

Clause 1.—General fluctuations in wages.

Section 1. Changes in wages due to the general conditions of the shipbuilding industry shall be termed general fluctuations. Such general fluctuations in wages shall apply to all the trades comprised in this agreement and in every federated firm at the same time and to the same extent. Differences in rates of wages in any trade in different districts can be dealt with as heretofore under clause 2, section 3.

Section 2. In the case of all such general fluctuations the following provisions and procedure shall apply, viz:

(a) No step toward an alteration in wages can be taken until after the lapse of six calendar months from the date of the previous general fluctuation.

(b) Before an application for an alteration can be made there shall be a preliminary conference between the federation and the unions, in order to discuss the position generally. Such conference shall be held within 14 days of the request for same.

(c) No application for an alteration shall be competent until the foregoing preliminary conference has been held, and no alteration shall take effect within six weeks of the date of the application.

(d) The application for a proposed alteration shall be made as follows: The federation to the unions, parties to this agreement, or the said unions to the federation.

(e) Within 14 days after the receipt of an application the parties shall meet in conference.

(f) The conference may be adjourned by mutual agreement, such adjourned conference to be held within 14 days thereafter.

(g) Any general fluctuation in tradesmen's rates shall be of the following fixed amount, viz: Piecework rates, 5 per cent, and time rates, 1s. [24.3 cents] per week, or ½d. [0.51 cent] per hour, where payment is made by the hour.

Clause 2.—Questions other than general fluctuations in wages.

Section 1. When any question is raised by or on behalf of either an employer or employers, or of a workman or workmen, the following procedure shall be observed, viz:

(a) A workman or deputation of workmen shall be received by their employers in the yard or at the place where a question has arisen, by appointment, for the mutual discussion of any question in the settlement of which both parties
are directly concerned; and failing arrangement, a further endeavor may, if desired, be then made to negotiate a settlement by a meeting between the employer, with or without an official of the local association, on the one hand, and the official delegate, or other official of the workmen concerned, with or without the workman or workmen directly concerned, as deemed necessary.

(b) Failing settlement, the question shall be referred to a joint committee consisting of three employers and three representatives of the union or of each of the unions directly concerned, none of whom shall be connected with the yard or dock where the dispute has arisen.

(c) Failing settlement under subsection (b), the question shall be brought before the employers' local association and the responsible local representatives of the union or unions directly concerned in local conference.

(d) Failing settlement at local conference, it shall be competent for either party to refer the question to a central conference to be held between the executive board of the federation and representatives of the union or unions directly concerned, such representatives to have executive power.

Sec. 2. If the question is in its nature a general one affecting more than one yard or dock, it shall be competent to raise it direct in local conference, or if it is general and affecting the federated firms or workmen in more than one district, it shall be competent to raise it direct in central conference without going through the prior procedure above provided for.

Sec. 3. The questions hereby covered shall extend to all questions relating to wages, including district alterations in wages and other matters in the ship-building and ship-repairing trade, which may give rise to disputes.

Clause 3.—Grand conference.

In the event of failure to settle any question in central conference under clause 2, section 1, subsection (d), either party desirous to have such question further considered shall, prior to any stoppage of work, refer same for final settlement to a grand conference to be held between the federation and all the unions parties to this agreement. A conference may by mutual agreement be adjourned. On any occasion when a settlement has not been reached the conference must be adjourned to a date not earlier than 14 days nor later than 1 month from the date of such conference.

Clause 4.—Settlement of piecework questions.

Local arrangements for dealing with questions arising out of piece-price lists, or in connection with piece prices or piecework, may continue or be established with the following further provisions, viz:

Failing settlement of any such question under the arrangements already existing or to be established, same shall be referred to a joint committee in accordance with clause 2, section 1, subsection (b), and if need be, the further procedure under same clause, section 1, subsections (c) and (d), and clause 3.

Note.—In districts where there is a standing committee the question, instead of being referred to subsection (b), will be dealt with under subsection (c), and if need be, the further procedure named.

The settlement shall be retrospective. Any claim for alteration of price must be made before the commencement of the job.

The price to be paid during the time the question is under discussion shall, failing agreement between the employer and workman or workmen concerned, be fixed in the following manner, viz: Two or three employers not connected with the yard where the question has arisen shall give a temporary decision as to the price to be paid, but said decision shall be without prejudice to either party, and shall not be adduced in evidence in the ultimate settlement of the question.

Clause 5.—Demarcation questions.

The existing local arrangements for the settlement of questions with respect to the demarcation of work shall continue meantime.

Clause 6.—General provisions.

At all meetings and conferences the representatives of both sides shall have full powers to settle, but it shall be in their discretion whether or not they conclude a settlement.
In the event of any stoppage of work occurring in any federated yard or federated district, either in contravention of the foregoing or after the procedure laid down has been exhausted, entire freedom of action is hereby reserved to the federation, and any federated association, and to the unions concerned, notwithstanding the provisions of this agreement. The suspension of the agreement shall be limited to such particular stoppage, and the agreement in all other respects shall continue in force.

Pending settlement of any question other than questions of wages, hours, and piece prices (the last named of which is provided for above), two or three employers not connected with the yard where the question has arisen shall give a temporary decision, but such decision shall be without prejudice to either party, and shall not be adduced in evidence in the ultimate settlement of the question.

The expression "employer" throughout this agreement shall include an employer's accredited representative.

Until the whole procedure of this agreement applying to the question at issue has been carried through there shall be no stoppage or interruption of work either of a partial or of a general character.

**Clause 7.—Duration of agreement.**

This agreement shall continue in force for three years, and shall hereafter be subject to six months' notice in writing on either side, said notice not to be competent until the three years have elapsed.

**Agreement Supplementary and Subsidiary to the Shipyard Agreement of March 9, 1909.**

The federation undertakes and the unions individually and collectively undertake to carry out the shipyard agreement and the further arrangements herein made.

When parties are in disagreement as to whether or not a stoppage of work in breach of the shipyard agreement has taken place, the question shall be referred to a committee of six representatives, who will also decide who is responsible for the same. Three shall be appointed by each side. They must not be connected with the yard or dock where the question has arisen. Work to be proceeded with pending the question being dealt with by the committee, which should then be immediately called together, but no meeting to be held until work is in progress.

In the event of the committee failing to agree, the question shall forthwith be referred to an independent referee, previously selected by the committee from a panel chosen as per next clause, whose decision shall be final and binding on all parties.

The panel from which the referee is to be selected shall consist of persons mutually agreed upon by the federation and the unions.

Where both sides are in agreement, or where the committee or referee has decided that a stoppage in breach of the agreement has occurred, the offending parties are to be dealt with as follows: In the case of the workmen, by the executive council of the society, in accordance with the rules of the society; and in the case of an employer, by the executive board of the federation, in accordance with the rules of the federation.

It shall be the duty of the committee and of the referee, if need be, in all cases, to see that individual offenders on either side have been dealt with under rule, and proof of the enforcement of the rules shall be given by the federation and the unions to the committee and the referee.

The procedure under clause 4 of the shipyard agreement shall be expedited so that a claim shall be considered by a joint committee within 7 days of a request in writing for a meeting, and by local conference within 14 days of notice of appeal. Where the claim concerns repair work, the procedure shall be so expedited that the joint committee shall meet before the first pay day, if practicable, or within three working days. Any appeal to central conference shall be considered at the first conference held after notice of appeal, the conference to be held within three weeks when the circumstances in the opinion of either side make this desirable.

When both parties are agreed, at the prior joint meeting, that the question to be determined by a local conference, under said clause 4, is distinctly local in character, the union concerned shall select from amongst the members of the Shipbuilding Employers' Federation and alternately the local association of...
employers shall select from the union affected a chairman, who shall preside at such local conference, and whose decision in the event of the parties failing to agree shall be final. Such decision shall not form a precedent in any other yard or dry dock.

With regard to the settlement of the price to be paid during the time a question is under discussion, under clause 4 of the shipyard agreement, it is agreed that settlements shall be made in the yard wherever possible, and that in arriving at a settlement parties should take into account the practice of the district and the average wages earned by the workman or workmen concerned on the same class of work on previous similar vessels in the yard or dry dock where the question has arisen. The same factors shall be taken into account when two employers are called in under the agreement to give a temporary decision. The decision in either case shall be without prejudice to either party, and shall not be adduced in evidence in the ultimate settlement of the question. All sums so paid are to be to account only.

December 8, 1910.

APPENDIX VII.—BUILDING TRADES’ CONCILIATION BOARDS.

RULES FOR THE ESTABLISHMENT AND GOVERNANCE OF CONCILIATION BOARDS IN THE BUILDING TRADES. AGREED TO BY A SUBCOMMITTEE OF EMPLOYERS AND OPERATIVES AT A MEETING HELD IN MANCHESTER ON DECEMBER 5, 1904, AND AMENDED AT THE FIRST MEETING OF THE NATIONAL BOARD HELD IN LONDON ON OCTOBER 2, 1905. FURTHER AMENDED AT THE THIRD MEETING OF THE BOARD HELD IN LONDON ON MAY 31, 1907.

(1) The object of the conciliation boards shall be to adjust all question or disputes relating to hours of labor, rates of wages, working rules, and demarcation of work that may from time to time arise and be referred to them either by employers or operatives with a view to an amicable settlement of the same without resorting to strikes or lockouts.

(2) Any dispute or question that may arise shall in the first instance be dealt with by the joint local trade committee or representatives of the employers and operatives of the trade affected, but if they are unable to come to an agreement within 14 days, unless the time is extended by mutual consent, or in cases where a notice or notices have been given by the date upon which such notice or notices expire, then the case shall be referred to the local conciliation board for the district, such meetings to be called within 10 days, and pending a decision of the conciliation boards, local or otherwise, no stoppage of work shall be allowed on any pretext whatever. If, however, the principal place of business of the contractor is not situate within the district covered by the local conciliation board, it shall be competent for him to demand that the case shall be heard by the center conciliation board of the district where the work is performed in lieu of the local conciliation board.

Any district conciliation boards shall be formed in all districts where employers and operatives are sufficiently organized, and such boards shall consist of two representatives from the local branch of each operatives’ association that is a party to this agreement, together with an equal number of employers elected by the employers’ general association of the district.

(4) Should the local conciliation board be unable to arrive at a settlement of any case or matter in dispute within 14 days from the receipt of notice from either side, unless the time is extended by mutual consent, it shall be the duty of both the secretaries of the local conciliation board to give notice to the center conciliation board, and a meeting of the said center board must be held within 10 days of the receipt of such notice for the purpose of hearing the appeal from the local board. Should any party to this agreement refuse to abide by any decision arrived at by the joint committee of the trade affected or by the local board, such party shall be considered as a delinquent, and their name or names sent to their respective society or association to be dealt with.

(5) There shall be one center conciliation board for each center district of the employers’ national federation that may be a party to this agreement, which center board shall consist of two representatives from each of the operatives’ general associations parties hereto and a like number of employers elected by the federations forming the centers.

(6) Should the center conciliation board be unable to agree after all matters, minutes, and correspondence in reference to the question at issue have been duly considered, it shall be competent for either side within seven days after the sitting of the center board to appeal to the national board of conciliation.
(7) The national board of conciliation shall consist of 16 employers elected by the national federation of building trades' employers, and a like number of operatives elected by the general associations of operatives that are parties to this agreement, and the board shall meet within 10 days of the receipt of notice of appeal to consider any case referred from the center conciliation boards.

(8) The employers and operatives on the several boards shall respectively appoint each a secretary who shall summon the meetings, keep the minutes, and generally carry on the business of the boards under the directions of the members at their officially summoned meetings.

(9) All meetings of the several boards shall be convened by the joint secretaries.

(10) In case of an appeal being made either from a local to a center board or from a center to the national board the secretaries of the local or center boards shall attend before the center or national board, as the case may be, with all minutes and correspondence relating to the case, and the local parties interested therein may also attend before the board for the purpose of supporting their case or giving information only.

(11) No subject shall be brought forward at any meeting of the boards except with the consent of a two-thirds majority of the representatives present, unless seven days' notice thereof has been given to the joint secretaries.

(12) A majority of the representatives on each side shall constitute a quorum at any meeting of the boards. The voting power of employers and operatives to be equal in all cases.

(13) The decision of any of the boards to be binding must be carried by a majority of votes of those present, and in the event of the attendance on each side being unequal, a unanimous vote of the numerically weaker party shall be considered equal in number to the unanimous vote of the stronger side, and the result shall be a tie; but should there be cross voting the decision shall be given in favor of the side securing a majority of such cross votes. The chairman shall have one vote only as a member of the board and shall not be entitled to give a casting vote.

(14) If any of the representatives on any of the boards die, resign, or otherwise cease to be qualified, a successor shall be appointed; and should any representative be unable to attend any meeting of the boards a duly appointed substitute may attend in his place.

(15) Any party to this agreement wishing to withdraw therefrom may do so by giving six months' notice in writing to the joint secretaries, to expire on May 1.

(16) Though in all ordinary cases the procedure shall follow the rules above written, yet for the purpose of more quickly arriving at an agreement on matters in dispute, it shall be competent for any of the several boards by mutual and unanimous consent of the two parties to call in an arbitrator or arbitrators with power to settle the dispute, and where this is done the decision of such arbitrator or arbitrators shall be final and binding. In the event of an arbitrator or arbitrators being called in by any of the boards the costs, if any, shall be borne in equal shares by the employers and operatives unless left to the discretion of the arbitrator or arbitrators by mutual consent of the board.

(17) Although the principal objects of the conciliation boards are the settlement of disputes as set forth in rule 1, it shall also be within their province to meet and discuss any question of trade interest at the request of any of the parties to this agreement, providing that a fortnight's notice in writing has been given to the joint secretaries of the board concerned setting forth the matter it is desired to discuss.

(18) The several boards shall meet annually in May to elect the officers for the ensuing year and to transact such other business as may be necessary. The names of the representatives elected on the board for each year, commencing May 1, must be forwarded to the joint secretaries at least 14 days before that date.

(19) Any party desiring an alteration of these rules shall give six months' notice in writing to the joint secretaries of the national board prior to the annual meeting thereof, and such notice shall at once be communicated to all the parties to this agreement, and the national board shall have power to alter this agreement by a majority of votes of those present at the annual meeting thereof.

May 31, 1907.
(a) The area of jurisdiction of any conciliation board shall be the area in which the rules between the masters’ association and the operatives’ societies apply. In the event of an appeal being made to any of the several boards to consider a dispute and one side objecting on the ground that it is out of order, then the chairman, vice chairman, and two secretaries of the board concerned shall at once meet to consider the question and decide whether a meeting of the board shall be called. In those eligible localities where boards are not already formed, either section may take the initiative in forming or convening a meeting for the purpose of forming the local boards.

(b) The matter to be submitted to the conciliation board should be definitely and specifically drawn up by the secretary of the party lodging the complaint or appeal, so as to enable the board to consider and, if possible, give a decision upon the precise matters submitted to them. The case to be stated and the evidence taken should be scrupulously confined to the matter or matters definitely set forth in the appeal.

(c) The conciliation board shall have power to amend the appeal to effectuate the real intention of the parties where the appeal has been erroneously or insufficiently drawn up. If a proposed alteration is a material one or will introduce new matter there must be the consent of a majority of the board, the voting to be taken as provided by the rules.

(d) The date of the appeal shall be taken to be the date when application was made by one of the contracting parties to the joint secretaries of the conciliation board.

(e) The proceedings at an appeal shall commence by the appellants making short statements of their case and calling witnesses in support of same. The other parties shall be entitled to make a short statement of their case, call witnesses, and produce evidence. The appellants shall have a right to reply. All witnesses to be subject to cross-examination.

(f) Witnesses shall only give evidence on matters which are within their personal knowledge, and hearsay evidence shall not be admitted. In case of illness or any other cause which makes it absolutely impossible for a witness to be present, the written statement of such witness shall be admitted, but must be signed and attested by two witnesses.

(g) All evidence and information in relation to the matter under consideration communicated by one of the parties or their witnesses or agents shall be in the presence of the other parties.

(h) All the evidence to be submitted by both parties shall be heard before the case is closed by the conciliation board.

(i) When the case has been formally closed the parties and witnesses shall retire, and no further evidence shall be heard or information communicated.

(j) If a member of the conciliation board has represented one of the parties as a witness during the hearing he shall retire when the case has been closed and not take any part in the deliberation of the board while considering the evidence and arriving at their decision.

(k) Draft minutes of all meetings shall be mutually approved by the joint secretaries within a short period (say five days), and the record in both minute books should be identical therewith.

(l) These regulations are for the purpose of effectually carrying out the rules already agreed upon for the establishment and governance of conciliation boards, and any determination of the said rules, either by effluxion of time or notice given by any of the parties thereto, will apply with equal force to these regulations.

(m) Any party desiring an alteration of these regulations shall give six months’ notice in writing to the joint secretaries of the national board prior to the annual meeting thereof, and such notice shall at once be communicated to all the parties to this agreement, and the national board shall have power to alter these regulations by a majority of votes of those present at the annual meeting thereof.

May 31, 1907.

STANDING ORDERS GOVERNING PROCEDURE IN DEBATE, AGREED TO AT A MEETING OF THE NATIONAL COUNCIL BOARD HELD IN LONDON, MAY 31, 1907.

(a) All motions or amendments shall be reduced to writing by the proposer or seconder immediately on their being seconded.
Whenever an amendment is made on an original proposition, no further amendment shall be taken into consideration until the first has been disposed of. If the first amendment be carried, it becomes itself an original question, whereupon a further amendment may be moved. If the first amendment be negatived, then a second may be moved upon the original question under consideration; but only one amendment shall be submitted to the meeting at one time. The mover of any original resolution, or of an amendment carried, shall have a right to reply before the question is put from the chair; but no other member shall be allowed to speak more than once on the same question, unless fresh evidence is introduced or the attention of the chair be called to a point of order.

May 31, 1907.

APPENDIX VIII.—BROOKLANDS AGREEMENT.

Among the numerous collective agreements between employers and employed in the cotton-spinning industry the most important is the general treaty known as "the Brooklands Agreement," which was arrived at upon the conclusion of the great dispute in the spinning trade of 1892–93. The terms of this agreement have subsequently been in certain respects modified and, as at present in force, read as follows:

1. The representatives of the employers and the representatives of the employed, in the pending dispute, hereby admit that disputes and differences between them are inimical to the interests of both parties, and that it is expedient and desirable that some means should be adopted for the future whereby such disputes and differences may be expeditiously and amicably settled and strikes and lockouts avoided.
2. That the pending dispute be settled by a reduction of seven-pence (7d.) [14.2 cents] in the pound (£) [$4.8665] in the present wages of the operative cotton spinners, card and blowing room hands, reelers, winders, and others, such reductions to take effect forthwith, and the mills to resume work on Monday next, the 27th instant (Mar. 27, 1893).
3. That when the employers and employed next agree upon an increase in the standard wages of the operative cotton spinners, card and blowing room hands, and others who participated in the last advance in wages, such increase shall not exceed the reduction now agreed upon, unless in the meantime there shall have been a further reduction of such wages, in which case, should an advance be agreed to, the employed shall be entitled to an advance equal in amount to the last preceding reduction, plus the reduction of seven pence [14.2 cents] in the pound [$4.8665] now agreed upon, provided always that no application for an increase or reduction of such wages as now agreed upon shall be made for the period of six calendar months from the date hereof.
4. That subject to the last preceding clause, and with a view to prevent the cotton-spinning trade from being in an unsettled state too frequently from causes such as the present dispute, to the disadvantage of all parties concerned, no advance or reduction in such wages as aforesaid shall in future be sought for by the employers or the employed until after the expiration of at least one year from the date of the previous advance or reduction, as the case may be; nor shall any such advance or reduction, when agreed upon, be more or less than 5 per cent upon the then current standard wages being paid. (Notwithstanding anything hereinbefore contained in this clause, whenever a general demand for an advance or decrease of wages shall be made, the wages of the male card and blowing room operatives may be increased or decreased to such an extent as may be mutually agreed to.)

On July 15, 1910, an agreement was arrived at by which in clause 4 "two years" is substituted for "one year," and that no demand for a change in present wages is to be made for five years from that date. This agreement was signed on Aug. 8.

The words in brackets in clause 4 were deleted by agreement made between the employers and workpeople on Apr. 26, 1900.
5. That the secretary of the local employers' association and the secretary of the local trades-union shall give to the other of them, as the case may be, one calendar month's notice, in writing, of any and every general demand for a reduction or an advance of the wages then being paid.

6. That in future no local employers' association nor the federated association of employers, on the one hand, nor any trades-union or federation of trades-unions, on the other hand, shall countenance, encourage, or support any lockout or strike which may arise from, or be caused by any question, difference, or dispute, contention, grievance, or complaint, with respect to work, wages, or any other matter, unless and until the same has been submitted in writing by the secretary of the local employers' association to the secretary of the local trades-union, or by the secretary of the local trades-union to the secretary of the local employers' association, as the case may be; nor unless and until such secretaries or a committee consisting of three representatives of the local trades-union with their secretary, and three representatives of the employers' association with their secretary, shall have failed, after full inquiry, to settle and arrange such question, difference, or dispute, contention, complaint, or grievance, within the space of seven days from the receipt of the communication in writing aforesaid; nor unless and until, failing the last-mentioned settlement or arrangement, if either of the secretaries of the local trades-union or local employers' association shall so deem it advisable, a committee consisting of four representatives of the federated association of employers, with their secretary, and four representatives of the amalgamated association of the operatives' trades-unions, with their secretary, shall have failed to settle or arrange, as aforesaid, within the further space of seven days from the time when such matter was referred to them, provided always that the secretaries or the committee hereinafter mentioned, as the case may be, shall have power to extend or enlarge the said periods of seven days whenever they may deem it expedient or desirable to do so. Should either the local employers' association or the local operatives' association fail to call such a meeting within seven days (unless by consent of the other side), then the party which has asked for the meeting shall have the right to at once carry the question before the joint committee of the employers' federation and the operatives' federation, according to No. 6 clause of the Brooklands Agreement, so far as regards the operatives' amalgamation and the employers' federation.

6a. When the procedure of clause 6 has been gone through without a settlement having been effected and a strike or lockout has taken place, the dispute subcommittees of the organizations which are parties to the dispute shall, without any formal application being made by either side, meet in Manchester at the same place and hour as the last meeting prior to the strike or lockout, commencing within a period not exceeding 14 days from the commencement of the strike or lockout, and subsequent meetings shall be held in Manchester until the strike or lockout is terminated, at the same place and hour, at periods not exceeding four weeks from the date of the last meeting.

7. Should any firm make any change which when completed involves an alteration in the work or rate of wages of the operatives which is considered not satisfactory by them, then the firm shall at once place the matter in the hands of their association, who shall immediately take action as per clause 6, failing which the operatives involved shall have the right to tender notices to cease work without further notice to the employers' association. When a settlement is arrived at, it shall date from the time the change was made.

8. Every local employers' association or the federated association of employers, on the one hand, and every local trades-union or the federation of trades-unions, on the other hand, shall, with as little delay as possible, furnish

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1 This clause was adopted October 18, 1900.
2 This clause was adopted September 29, 1911.
to the other of them, in writing, full and precise particulars with reference to any and every question, difference or dispute, contention, complaint, or grievance, with a view to the same being settled and arranged at the earliest possible date, in the manner hereinbefore mentioned.

9. There shall not be placed upon any joint committee of the federated association and the amalgamated association more than one member of the local employers' association and one member of the local trades-union, in addition to the respective secretaries of those bodies. The rest of the said joint committee shall consist of persons who have not locally adjudicated upon the matter in question. It is understood that in case of unavoidable absence of secretary a substitute may be present to act in same capacity as secretary.

10. It is agreed that in respect to the opening of new markets abroad, the alteration of restrictive foreign tariffs, and other similar matters which may benefit or injure the cotton trade, the same shall be dealt with by a committee of three or more from each federation, all the associations agreeing to bring the whole weight of their influence to bear in furthering the general interests of the cotton industry in this country.

11. The above committee shall meet whenever the secretary of either federation shall be of opinion that questions affecting the general interest of the cotton trades should be discussed.

12. The representatives of the employers and the representatives of the employed in the pending dispute do hereby mutually undertake that they will use their best endeavors to see that the engagements hereinbefore respectively entered into by them are faithfully carried out in every respect.

The agreement is signed on behalf of the Federation of Master Cotton Spinners' Associations, the Amalgamated Association of Operative Cotton Spinners, the Amalgamated Association of Card and Blowing Room Operatives, and the Amalgamated Northern Counties Association of Warpers, Reelers, and Winders (now the Amalgamated Weavers', Winders', Warpers', Reelers' and Winders' Association).

By an agreement made on March 30, 1906, between the Federation of Master Cotton Spinners' Associations, on the one hand, and the Amalgamated Association of Operative Cotton Spinners, on the other hand, the following amendment was made in the Brooklands Agreement, so far as it relates to dealing with complaints of bad spinning:

When a settlement has been arrived at by the federation and amalgamation committees in a bad spinning complaint, and there be any further cause for such a complaint within a period of three months from the date of the aforesaid settlement, then the federation and the spinners' amalgamation shall appoint from the joint committee which has previously dealt with the case, one or more persons to inspect the spinning within a period of three days. Where practicable, the same persons shall be appointed who have previously made an inspection. In the event of these persons failing to bring about a settlement, then a joint meeting of the federation and amalgamation subcommittees shall be called within three days of either party requesting same. Should such a joint meeting not be able to arrive at a settlement, then the operatives shall have the right to tender notices to cease work on any making-up day within 21 days from the date of such joint committee meeting. Should notices not be tendered within the 21 days, then any further complaint up to the expiration of the three months shall be dealt with as hereinbefore provided. After three months from the first settlement, any complaint shall be considered to be a new case, to be dealt with in accordance with clause 6 of the Brooklands Agreement relating to bad spinning.

The Brooklands agreement affects in all some 150,000 operatives employed in Lancashire and the adjoining counties (at Ashton, Bolton, Bury, Chorley, Darwen, Farnworth, Glossop, Heywood, Manchester, Oldham, Rawtenstall, Rochdale, and Stockport).
APPENDIX IX.—AGREEMENT OF NORTH AND NORTHEAST LANCASHIRE COTTON SPINNERS' AND MANUFACTURERS' ASSOCIATION AND AMALGAMATED WEAVERS' ASSOCIATION.

JOINT RULES FOR THE SETTLEMENT OF TRADE DISPUTES IN THE WEAVING, WINDING, AND WARPING DEPARTMENTS.

The object of these rules is to secure the consideration and settlement of trade disputes in their early stages, and thereby to preserve good feeling between employers and operatives. For the purpose of carrying out this object it is agreed as follows:

1. In the event of a trade dispute arising between any member of an association comprised in the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association, and any operative member or members of an association comprised in the Amalgamated Weavers' Association, the following course shall be taken:

(a) Before any notices shall be given by either party to terminate employment, for the purpose of a lockout or strike, the dispute shall be brought forthwith before a local joint meeting of representatives of employers appointed by the local employers' association and of operatives appointed by the local operatives' association, and such meeting shall be held within four days (exclusive of Sunday) from the date of an application by either party for such meeting; and if a settlement of the dispute be not come to at that meeting, or at an adjournment thereof, then

(b) Before any notices shall be given by either party to terminate employment, for the purpose of a lockout or strike, the dispute shall be brought before a joint meeting of representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Amalgamated Weavers' Association, and such meeting shall be held within seven days from the date of an application by either party for such meeting; and if a settlement of the dispute be not come to at that meeting, or at an adjournment thereof, then

(c) Before any notices shall be given by either party to terminate employment, for the purpose of a lockout or strike, the dispute shall be brought before a joint meeting of representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Northern Counties Textile Trades Federation, and such meeting shall be held within seven days from the date of an application by either party for such meeting; and if a settlement be not come to at such meeting, or at an adjournment thereof, then either party shall be at liberty to take whatever course it thinks fit.

2. In the event of a complaint of bad material which the local secretaries of the respective associations have been unable to settle, the local secretary of the operatives' association shall have power to claim a joint inspection by representatives of employers and of operatives of the material complained of at the mill where such material had been given out for work, in which case each association shall appoint representatives to make such a joint inspection within three days (Sundays excepted) from the making of such claim, and failing a satisfactory settlement at such joint inspection or at an agreed adjournment thereof, or if facilities be not given for a joint inspection within such period as aforesaid, or within such extended time, as may be mutually agreed upon between the secretaries of the two local associations, the complaint shall then be regarded as a trade dispute and be subject to the procedure provided by rule 1 hereof in relation to trade disputes.

3. Any determination of a dispute as to a weaving price shall take effect from the time when the work was given out to the operative, except in cases of new cloth for which no definite provision is made in the Uniform List of Prices for Weaving, or the Colne and District Standard List of Prices for Weaving Colored Goods, or any other lists for weaving which are recognized by the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association, or for which no price has been officially fixed by the two associations, and in either of those cases the weaving price and the time when it shall take effect shall be mutually arranged between the employers' association and the operatives' association. In case of an agreement to the contrary, any case, such disagreement shall be regarded as a trade dispute, and be subject to the procedure provided by rule 1 hereof in relation to trade disputes.

4. In cases of underpayment of the Uniform List of Prices for Weaving, or the Colne and District Standard List of Prices for Weaving Colored Goods, or any other lists for weaving which are recognized by the North and Northeast
Lancashire Cotton Spinners' and Manufacturers' Association, and where such underpayment is admitted by the employer, or where the accused employer refuses to consent to a joint inspection of work on application by the employers' secretary, the operatives shall be at liberty to take whatever action they think fit without the necessity of bringing the matter before either the local or central employers' associations.

5. Whenever a settlement of any trade dispute shall not have been come to and operatives are on strike or locked out of employment in consequence thereof, then meetings shall be held periodically between representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Northern Counties Textile Trades Federation; the first of such meetings shall be held in Manchester four weeks after and at the same place and hour as the last meeting of representatives in the same dispute, and subsequent meetings shall be held at the same place and hour periodically every four weeks until the dispute be settled, and without any formal application by either party for any such meeting.

6. If the attendance of any person or persons is desired by either party at any meeting to be held for the consideration of a trade dispute, and notice in writing is given to the other party of such desire, each party will, when so desired, request such person or persons to attend the meeting.

7. In the event of an application being made by the operatives in any section for an advance of wages, or by the employers in any section for a reduction of wages, such application, if not granted, shall, before any notices are given by either party to terminate employment, for the purpose of a strike or lockout, be brought before a joint meeting of representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Amalgamated Weavers' Association, and such meeting shall be held within seven days from the date of an application by either party for such meeting, and if a settlement be not come to at such meeting, or at an adjournment thereof, then, before any notices shall be given by either party to terminate employment, for the purpose of a strike or lockout, the matter shall be brought before a joint meeting of representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Northern Counties Textile Trades Federation, and such meeting shall be held in Manchester within seven days from the date of an application by either party for such meeting, and if a settlement be not come to at such meeting, or at an adjournment thereof, then either party shall be at liberty to take whatever course it thinks fit.

8. All meetings shall be held at such time and place as may be mutually agreed upon between the officials of the employers' and operatives' associations.

9. The proceedings at joint meetings shall be regarded as strictly private and confidential. Every question discussed, every statement made, and every opinion expressed shall be treated by each person present as strictly private and confidential, and shall not be communicated to any outside person or to the press except by direction or permission of the meeting, and the name of any person attending a meeting or the particular part taken by any person in any of the discussions shall not be quoted at any public meeting.

10. An application by the employers for a meeting with representatives of the Amalgamated Weavers' Association may be addressed to Mr. Joseph Cross, Ewbank Chambers, Accrington, or to the secretary for the time being, and an application by the employers for a meeting with representatives of the Northern Counties Textile Trades Federation may be addressed to Mr. Thomas Shaw, 122 Skipton Road, Colne, or to the secretary for the time being. An application by the operatives for a meeting with representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association may be addressed to Mr. John Taylor or Mr. F. A. Hargreaves, 12 Exchange Street, Manchester, or to the secretary for the time being.

11. In the event of an association, either of employers or operatives, failing to appoint a time for and to give notice to the secretary of the other association affected by a dispute of a joint meeting to deal with such dispute, in accordance with these rules and within the period limited for such purpose, or within such extended period as may be mutually agreed upon between the secretaries of the two associations, then either party shall be at liberty to take whatever course it thinks fit.

September 3, 1910.
INTRODUCTION.

The investigation which furnished the basis of the present report was planned in July, 1911, and was to be made beginning the following month. But in that month the United Kingdom was in the throes of one of the greatest strikes of modern times, and it is necessary to emphasize this as coloring the views of employers. Thus, one extensive employer of labor remarked, when asked his views on conciliation and arbitration, and especially the act of 1896, "Arbitration is impossible; the whole scheme has broken down." This, it may be added, is an extreme view and was not generally shared by employers. Nevertheless, the great industrial convulsion which had recently paralyzed industrialism, caused the price of food to advance in London, Liverpool, and other large cities, brought about the enforced idleness of hundreds of thousands of men, and made it necessary for the authorities to bring troops from their regular stations to guard railway property and protect the men who had not gone out—and the use of the military in England in labor disputes is only resorted to on rare occasions—naturally made employers take a somewhat different view of the efficacy of conciliation and arbitration from what undoubtedly would have been taken a year or even six months earlier. Remembering this, it is not surprising that some employers should feel that state-recognized arbitration, or any scheme to prevent labor disputes, although theoretically ideal, is practically impossible.

The strike of 1911 began with a dispute between the dockers and their employers in the north of England, which was attended with some violence, and spread, involving other trades, until finally it embraced nearly all the great railway systems of the country. At the time of the outbreak standing arrangements for conciliation and arbitration were in force in a number of the leading industries of Great Britain. Many of these were directly due and many others owed their origin indirectly to the conciliation act of 1896. This act made the arbitration act of 1889 inoperative so far as labor disputes are concerned, and that act repealed acts and parts of acts passed in the reigns of William III, William IV, and Victoria. The conciliation act of 1896 was the last and most progressive word in labor legisla-
tion at the time of its enactment, and was intended to supersede all previous statutes on that subject. It has had such an important bearing upon the development of conciliation and arbitration in Great Britain that the question can hardly be discussed without some reference to its provisions.

**VOLUNTARY CHARACTER OF PROVISIONS FOR CONCILIATION AND ARBITRATION.**

The text of the act is given elsewhere in this bulletin and need not be repeated here. It should be carefully noted, however, what the act does and does not do. The old conception of a legislative enactment was that a law was designed either to prevent the commission of a certain act or to punish the transgressor. Modern progress has in many instances—and this statute is an example—made a law not mandatory but permissive, the purpose being to assist society by the official machinery of the state and the exercise of its friendly offices as a disinterested and impartial party. It implies at the outset voluntary submission as opposed, for instance, to the compulsory submission of an offender brought before a court of justice, which has the whole power of the state at its command to enforce obedience.

Official recognition is given by the act to conciliation boards, but it is optional whether any board shall ask for that recognition. The Board of Trade may, on its own initiative, inquire into a difference existing or apprehended between employers and their workmen; it may try to reconcile these differences, but it has no power to compel a settlement; on the application of either side it can appoint a conciliator; on the application of both sides it can appoint an arbitrator. These powers conferred by the act, it will be seen, are merely the exercise of friendly offices. They are the same functions constantly performed in private life by an individual who is anxious to prevent misunderstandings between his friends or who seeks to remove misapprehension. He can argue and plead, he can offer his services as an intermediary or as an arbiter; he can appeal to their good sense or their self-interest, but he is without coercive powers. The Board of Trade as a branch of the Government, which means the delegated authority of society, can do no more. There are no penal clauses in the act. The power conferred on the Board of Trade to inquire into a dispute is valuable as giving the public, which is usually ignorant of the merits of a particular case, an official and impartial report. The other powers are also valuable when both sides are willing to submit their difference to conciliation or arbitration, but of no value at all when one side is stubborn or

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1 See pp. 140 and 141.
violent or considers that a principle is at stake which does not admit of outside intervention.

While the words conciliation and arbitration are bracketed together so that in the minds of some people their meaning is synonymous, there is, as a matter of fact, a very wide difference between the two. Voluntary conciliation most people agree is feasible and usually productive of good results; arbitration that does not provide for an automatic execution of the award, but merely gives a decision which either side may disregard with impunity, can never be anything but unsatisfactory.

**DISTINCTION BETWEEN CONCILIATION AND ARBITRATION.**

The difference between conciliation and arbitration is, to employ a simile, the difference between medicine and surgery; and it is further the difference between the science of preventive and curative medicine. The object of conciliation is to prevent an industrial illness; the arbitrator is called in when the only way to restore health is an operation. The whole theory of conciliation on which all the conciliation schemes and boards are modeled, is to provide a means whereby employers and employees may be brought together, may meet on an equality and sitting at the same table with, for the time being, all class and social distinctions abolished, freely interchange views and endeavor to adjust grievances, whether real or imaginary. The process implies mutual forbearance and often leads to a more intimate knowledge on the part of the employees of the facts governing a particular industry, and on the part of the employers of conditions existing among the workers. It must in the nature of things be voluntary and the proceedings must be carried on in an amicable spirit. A conciliation scheme would be useless that operated after blows were struck; it is to prevent a blow, to eliminate friction, to prevent discontent, or to remove dissatisfaction that conciliation can and has in the past accomplished a great service in industry.

Arbitration, on the other hand, can only be employed when the issue is joined. Usually the arbitrator, like the surgeon, is called in after the injury has been done. There is preventive surgery as there is preventive medicine, and a surgeon sometimes performs a minor operation to obviate the necessity of a more serious one later. Occasionally a dispute is referred to an arbitrator when it is still trifling and both sides are in a conciliatory mood and would rather have peace than war, but that is the exception. Almost invariably the services of the arbitrator are requisitioned not to prevent war but to try to bring about peace; not to remove the cause of complaint but to try to patch up a truce; but unless both sides abide by his decision his efforts, of course, have been in vain.
RAILWAY CONCILIATION AND ARBITRATION SCHEME OF 1907.

As has already been mentioned, public opinion, at the time this investigation was undertaken, had just been powerfully influenced by the railway strike of 1911. The effect of this strike will be more readily appreciated if it is remembered that for four years an agreement, which was supposed to render strikes and lockouts impossible, had been in force on all the leading railroads. On the 6th of November, 1907, representatives of some of the most important railway companies in England met at the Board of Trade and there signed an agreement in regard to a scheme for conciliation and arbitration relating to rates of wages and hours of labor, which agreement was also signed by the representatives of the men. Subsequently practically all the English and Scotch and the leading Irish railway companies became parties to the scheme, and so that it might be fairly tested it was agreed that it should remain in force for seven years. With inconsequential modifications to suit local or individual conditions the scheme offered by the Board of Trade was accepted by the various railway companies and their employees.

So well satisfied was the Board of Trade that it had at last been able to find a means whereby industrial peace was secured in the railway world that the comptroller general of the labor department, in reporting to the secretary of the Board of Trade, in February, 1909, said:

In the aggregate the companies that thus have a conciliation scheme in operation employ over 97 per cent of the railway servants in the United Kingdom, and as the proportion in the case of the grades affected by the scheme would be about the same, it may be inferred that the effect of the arrangements entered into is to render practically impossible a strike or lockout among the men employed in working the traffic on the railways of the country.1

In forwarding this report to the president of the Board of Trade, the permanent secretary of the board wrote:

It was not to be expected that so great a change in the methods of settling differences as to labor conditions on the railways would be carried through without some difficult questions arising as to the scope and meaning of particular provisions of the agreement and the methods of giving effect thereto. Mr. Askwith's report shows, however, that he has not found any of the questions that have arisen to be incapable of adjustment, and it is most gratifying to be able to state that the scheme of conciliation and arbitration contemplated in the agreement signed at the Board of Trade may now be said to be established, and that it has already borne fruit in the amicable

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1 For terms of this agreement, see pp. 117–120.
2 Report to the Board of Trade upon Matters connected with the Establishment and Working of Railway Conciliation Boards, set up in accordance with the Agreement of the 6th November, 1907, p. 6. London, 1909.
settlement of important questions which might otherwise have led to prolonged disputes.¹

In a report made in August, 1910, the latest publication on the subject, Mr. W. F. Marwood, of the railway department of the Board of Trade, reporting to the secretary, says:

A report upon the establishment and preliminary working of the conciliation boards set up under that agreement was issued in February, 1909 (No. Cd. 4534). As shown therein it was provided by the scheme that any application for a change in rates of wages or hours of labor of a class of employees must first be made in the usual course through the officers of the department concerned. If the claim put forward were not mutually settled, it could be referred to a sectional conciliation board, representing a particular group of grades, including the one affected; failing an agreement by that board, the matter could go to the central conciliation board, representing all grades within the scheme; and, finally, recourse could be had, if necessary, to arbitration. There are thus four distinct stages at which it is possible for a decision to be arrived at upon claims submitted.²

Yet in a year after these expressions of confidence in the feasibility of the scheme it had broken down, the railways had been brought to a standstill, the trade of the Kingdom was dislocated, London was threatened with semistarvation, the prices of food had already risen, thousands of troops with ball cartridges were holding strategical points, and only by the active intervention of the Government, which appointed a royal commission to inquire into their grievances, were the men induced to return to work.

OPINIONS OF EMPLOYERS CONCERNING CONCILIATION AND ARBITRATION.

In view of the facts thus related it would be easy enough to say that the conciliation act has proved a failure, that arbitration and conciliation schemes are unworkable, and that both employers and men prefer the rude, stern methods of force—the lockout and the strike—rather than the more refined and civilized methods of legal adjustment, the substitution of law for anarchy, of concession and mutual tolerance for passion; yet any such sweeping statement would be wide of the truth, certainly so far as those employers are concerned who have been consulted in the course of this inquiry; and they are the recognized leaders in their several branches of trade and represent the great manufacturing interests of Great Britain.

Most employers make a very broad distinction between conciliation and arbitration, and especially between voluntary conciliation schemes, which are part of the machinery of practically every indus-
try in the United Kingdom, and the "interference" of the state in arbitrating disputes when the state assumes no responsibility for enforcing its award. The reasons why voluntary conciliation is approved—and almost without exception employers favor it—and state arbitration is condemned are set forth more in detail in subsequent pages; here it is only necessary to say that a joint committee composed of employers and employees have not only a better understanding of conditions, but both sides usually, for their own interests, live up to an agreement, while in a state arbitration the arbitrator may have no practical knowledge of trade or business, and the greatest weakness, from the standpoint of capital, in that the state can recommend but it does not enforce obedience.

Despite the criticisms of state interference in labor disputes and the admitted imperfections of the act of 1896, it is made manifest that not only are employers not opposed in many instances to the settlement of labor disputes under legal sanction, but they are sensible that heretofore—that is, prior to the great strike of 1911—the act has been of great value in keeping the peace. Even many of the very employers who were affected by that strike expressed themselves as still believing in arbitration, provided it were not another weapon to make the workman more powerful when he made demands which the employer was compelled to resist. Most employers admit that the conciliation act has been useful and has accomplished much good, but they feel that it must be radically amended in order to serve properly its purpose—that is, to create the machinery for preventing strikes or a stoppage of work or to adjust speedily and efficaciously a dispute which is already in progress.

Whenever an attempt is made to ascertain the sentiments of a class in regard to a particular subject there is always the danger that the opinions of a few men are to be accepted as the opinions of the whole body. An investigator, no matter how conscientious and painstaking his work, can not personally interview every employer; the best he can do is to take certain men, prominent in their various industries, and assume, after inquiry, that they are fairly representative of their class. Yet, even so, allowance must be made for the personal equation—for individual idiosyncrasies, for temperament, for the point of view. There is a solidarity of capital as there is a solidarity of labor, and, broadly speaking, the interests of capital are common—especially when they are arrayed against labor—but just as there are constantly internecine differences in the ranks of labor, so there are disagreements among employers respecting their treatment of their men. It is well that this should be remembered.

Thus one of the largest employers of labor in Sheffield did not hesitate roundly to condemn his fellow employers, especially the directors and managers of the railway companies affected by the recent strike, for their refusal to recognize the trades-unions or to
deal with their members through their accredited representatives.

Said this employer:

It is taking a gross and unfair advantage of the men. The employer is of superior intelligence to the average workman; the employer can obtain the advice of lawyers and technical experts. The men know how badly handicapped they are, but they have confidence in their leaders, who are men of ability, and they feel that their interests are safe in their hands. Yet, while the masters can fully protect themselves, the men must suffer because they lack the skill properly to present their case, which is not fair play.

I have no prejudice for or against the union. I have always employed both union and nonunion men, and I should no more discharge a man because he belonged to a union than I should refuse to employ a man because he was not a member of a union; but I think it is often an advantage to the employer to be able to deal with one or two men as the representatives of a trade rather than to have to bargain with each man separately. Employers, of course, are often shortsighted and selfish. They believe that the men are only strong because of the strength of the union, and that if they can break down the union they have nothing further to fear from the men. One thing, however, we can be sure of, and that is that the union, in some form or other, will be part of our industrial system; the association of workmen for the betterment of their conditions or to resist oppression or to remedy grievances can not be prevented, nor is it desirable, in my opinion, that it should be. It is perhaps a serious question whether the law should not take cognizance of the union to the extent of requiring its recognition by an employer in the event of a dispute, but the question raised is such a large one that it would not be wise to make any offhand suggestions.

It has been said that while employers are generally in favor of some scheme of legal conciliation and arbitration, the existing act is regarded as insufficient and needing amendment. The action of Parliament will doubtless be influenced by the report of the royal commission appointed to investigate the working of the railway conciliation and arbitration scheme of 1907, but in the meantime it is interesting to give the views of some employers.

OPINION OF A PROMINENT COTTON SPINNER.

A man very prominent in cotton spinning, whose importance has been recognized by a peerage, believes that the grave defect of the present law is its failure to make any distinction between a dispute that affects only the parties engaged and that in which the general public or other workmen are affected. "Let me make this clear," this man explained. "Suppose there are five men in charge of pumping machinery to supply air to a hundred men working in a mine. Those five men have a dispute with their employer—a dispute in which the hundred men working below are not in the least concerned—and threaten to stop work. If they stop work, the men below must also stop, for they can not live without air being pumped down to them.
In a larger degree the same injury is done when there is a dispute between railway servants and a railway company. A grievance of a small number of men may prevent other men working and cause the general public very great inconvenience and much loss.

"In such a case the present law is powerless. It might be well enough not to disturb the permissive features of the law when the dispute is between a private employer and a particular class of workmen, for they alone are affected; but when the public is unwittingly drawn in and is forced to take sides against its inclination, then the law should be mandatory, and both parties should be compelled to submit the dispute to the adjudication of the Board of Trade or some other competent tribunal."

**OPINION OF THE CHAIRMAN OF THE LONDON LABOR CONCILIATION AND ARBITRATION BOARD.**

Sir Samuel Boulton, a large employer of labor, from his experience of more than 20 years as chairman of the London labor conciliation and arbitration board, believes in the principle of voluntary conciliation but not in state arbitration. These voluntary boards, composed of employers and men engaged in a single trade—"bargaining boards," he terms them—he regards as very useful, as they enable the men and their employers to come together, to talk over their affairs, and to reach a bargain; but when it is necessary to employ an outside agency, then he believes the method of the London labor board is the only one that will produce successful results.

This board grew out of the great dock strike of 1889. In view of the injury and loss which that strike entailed both on employers and employed, the London Chamber of Commerce appointed a committee to inquire whether some means could not be devised by which future disturbances could be prevented. The following is an extract from a statement issued by the chamber at that time:

It is advisable that the intentions of the chamber relative to the settlement of future labor disputes should be made public, and that the cooperation of employers of labor, and of trade-unions and other representative bodies of the working classes should be earnestly solicited. It is inevitable that from time to time readjustment of the rates of labor should take place in sympathy with the fluctuating conditions of commerce and manufactures, and the London Chamber of Commerce fully recognizes the moral as well as the legal right of both employers and employed to combine for the purpose of protecting their respective interests. But the chamber, in the interests of both classes, is most anxiously desirous that such adjustments should be brought about by amicable methods, and without the wasteful and calamitous occurrence of strikes and lockouts, which in the case of the port of London have been proved by sad experience to cause a diminution in the volume of trade, upon the continuance and increase of which the toiling masses of this metropolis depend for their daily bread.
The board is composed of 12 members representing employers who are elected annually by the council of the London Chamber of Commerce, and of 12 representatives of labor annually elected by the delegates of the trade-unions of London, all the London trade-unions being annually invited to elect these delegates. An equality of voting power to the members of the board is provided for. The methods of the board consist, firstly, on hearing of any labor dispute within the metropolitan district, of an offer of its services to both disputants, and of an invitation to a friendly conference on neutral ground; that is, in the rooms of the chamber of commerce. If the meeting takes place neither party is committed or compromised thereby to any further course, except with their own consent; but an endeavor is made by members of the board to induce the disputants, by friendly discussion, to arrive at an amicable agreement. In many if not in most cases this procedure by conciliation has proved to be successful in arriving at a settlement. Where, however, conciliation by the above method has not succeeded, a recourse to arbitration under the auspices of the board is recommended. When requested, the board proceeds to appoint arbitrators, who, without delay, give a full hearing to both parties in the presence of each other, and after due consideration issue their award. In the appointment of arbitrators the board is not bound to confine its nomination to members of its own body; but in this direction it has, after careful experiment, made a new departure which has proved eminently successful. This consists in naming a panel of arbitrators, either two or some other even number, one half of whom are employers and the other half workmen, but none of whom are concerned in the dispute under adjudication. Thus constituted, the arbitrators are practically acquainted from both sides of the question with the prevailing conditions of labor in the port of London. When this idea was first mooted, it was met in many quarters with something like derision. It was said that, as a matter of course, the workmen on the panel would all vote one way and the employers the other, and that a deadlock would thus at once ensue, and that in such a case the two orders, having an equality of votes, would never agree as to the choice of an umpire. But the plan has worked surprisingly well. In every instance when arbitrators have been appointed, drawn equally from both sides, their decisions have been unanimous; and in the 21 years the board has been in existence there has been no instance of its award not having been carried out.

Sir Samuel says he has been impressed by the spirit of thorough impartiality with which these mixed panels—the workmen equally with the masters—have approached and dealt with the questions

1 For rules see Appendix III, p. 143.
submitted to their arbitration. Since the formation of the board
there has never been an instance where the award arrived at under
arbitration, or the agreement entered into under the auspices of the
board by its methods of conciliation, has not been accepted and
lovely carried out by both parties to the dispute. After a first ex-
perience of its methods, both employers and employed in various
industries continue from time to time to bring their difficulties before
the board for adjustment.

In the opinion of Sir Samuel Boulton, one of the reasons to ex-
plain the success of the London labor board is that it confines itself
entirely to industrial disputes in the metropolitan area of London,
and that local men, familiar with trade and other conditions, are
much better qualified to deal with such matters than outsiders. For
this reason he advocates the formation of such boards in Glasgow,
Liverpool, Manchester, and all the other great industrial centers, and
he believes the results will be beneficial.

The results as given by Sir Samuel are impressive, yet there is a
feeling among many who are not unfriendly to the board, who are,
in fact, in full sympathy with it, that it has not yet proved its efficacy
in cases of really fundamental disagreement. It is pointed out that
during the 21 years in which the board has been in existence it has
settled only comparatively minor disputes, but none of the first
magnitude. Could a mixed panel of employers and workmen, it is
asked, reach a unanimous decision if the question at issue involved
what either side regarded as a vital principle, say, a demand on the
part of the men for the employment of only union labor and a firm
determination on the part of the employers not to assent to the de-
mand? It is generally conceded that in such a case the scheme would
probably break down. This does not, however, imply that the board
is not doing an important and valuable work. It is admitted that
the peaceful settlement of a trivial dispute has often prevented a
more serious one. Sir Samuel Boulton says that the difference be-
tween his board and the functions exercised by the Board of Trade
is, that whereas his board is preventive, the Board of Trade is cura-
tive, and it is in keeping with the principle of modern medicine to
preserve health rather than to seek to restore it. The good done by
an agency that can save a breach of the industrial peace is fully
recognized, but if men are determined to break the peace, no matter
what the cost, and the agent of peace can use only moral suasion,
what hope is there that the peace will not be broken?

There is very substantial agreement among employers not only
that the London board has done much good, but that all the voluntary
conciliation boards have tended to bring about better relations be-
tween employers and labor and to eliminate friction. The bringing
together of masters and men is educative, perhaps no less to the
masters than to the men; it gives both sides a better appreciation of the other and makes them have a more intimate understanding of the difficulties both have to contend with.

**OPINION OF THE SECRETARY OF THE LONDON MASTER BUILDERS' ASSOCIATION.**

Before masters and men met and endeavored to adjust their differences by conciliation Mr. Thomas Costigan, the secretary of the London Master Builders' Association, explained they were like two cats at the end of a fence. There was very little room in common between them and, perhaps, even less sympathy. Conciliation has undoubtedly brought them closer together, for it has enabled differences to be discussed calmly, grievances to be heard, explanations to be made. The Master Builders' Association has often spent in conciliation proceedings a great many pounds where the sum involved was only a few pence, but the expenditure has been considered wise, as showing the men that the masters had no desire to take any unfair advantage of them and that if they had any real grievance it would be corrected on the ascertainment of the facts. This policy has undoubtedly improved relations.

Mr. Costigan believes that whenever there is a dispute or a difference existing between masters and men an attempt should be made to settle it with the least possible delay. It has been the practice of his association to proceed as expeditiously as circumstances will permit. When a dispute arises it is taken up within a few days, usually not more than a week being permitted to lapse, and within a very short time thereafter it is possible either to reach an amicable agreement or to demonstrate that such a result is impossible. The conciliation scheme of the association being simple, no time is lost in preliminaries, nor is any expense to the men involved. The relations between employers and employees in the London building trades have been fairly harmonious for some time, and, in the opinion of the employers, much of this harmony may be attributed to the ease and speediness with which the machinery of conciliation may be set in motion, and to its cheapness.

This matter of expedition is one the importance of which can not be overestimated. One of the grievances of the railway men, which was one of the causes assigned for the strike and undoubtedly had much to do with creating discontent on the part of the men, was the long time that elapsed before a dispute came to arbitration and the heavy expense the proceedings involved. One of the labor witnesses testifying before the royal commission said that cases had dragged

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1 The constitution of the conciliation board of the London building trades provides that in the event of a deadlock application is to be made to the Board of Trade for the appointment of a conciliator with the powers of an arbitrator. Second Report on Rules of Voluntary Conciliation and Arbitration Boards and Joint Committees (1910), p. 2.
along for 18 months and that they had cost his union £30,000 ($115,995). Assuming the correctness of this statement, it is obvious that a method so extremely cumbersome and costly was bound to prove unsatisfactory and that it was necessary to devise a less complicated and cheaper way of bringing disputes to a final adjudication.

It is important to emphasize this element of time and cost so that the mistakes made in England may be avoided in the United States. Any scheme adopted, whether voluntary or as a legal enactment, should be as simple and brief as it is possible to make it without risking ambiguity of language or the clear intent of the purpose sought to be accomplished. It should be so devised that on application of either side the machinery can at once be placed in motion—for delays are dangerous and their evil effect is cumulative—and the proceedings should be conducted with the minimum of expense.

In common with most employers, builders and contractors believe in voluntary conciliation arrangements, but are opposed to state interference in labor disputes. It is sufficient to state that fact now. Later it will be explained why there is this opposition on the part of employers generally to statutory arbitration.

But here again comes in the question that has already been raised, and that is, How effective can any voluntary scheme be that can be broken at the will of either side?

A voluntary scheme, as its name implies, rests solely upon the good faith and the loyalty of the parties to the contract. It is a contract in the broad social sense, but it is not a contract in the legal sense, the provisions of which are enforceable at law or for which there is a legal remedy for breach of its provisions. In some of these schemes there is a stipulation providing for money damages in case either side violates the terms of the agreement or refuses to abide by the award of an arbitrator or umpire; but these are exceptions, and the writer believes he is correct in saying that the great majority of workmen are opposed to any such provision being included in the agreement. The observance of its terms, therefore, is solely dependent upon the good faith with which the parties to it respect their obligations and the spirit that animates them.

Until a sociological experiment has stood the trial of many years and has been subjected to every test of varying conditions, the cautious investigator will be extremely reluctant to pronounce it either a success or a failure, and even then he will hesitate before he dogmatizes. Subject to these restrictions, it is safe to say that every effort that has been made in recent years to substitute conciliation and arbitration for violence or force has been of distinct advantage to society as a whole, and especially to that portion of society immediately concerned—the workmen and their employers—and the assertion is made
on the evidence supplied both by men and employers. The benevolent idea of substituting law for anarchy has not accomplished as much as its well-wishers hoped and expected; perhaps, because it is natural to think that the latest experiment is the solution that long has been searched for; partly because in our haste for social perfection we are apt to forget that progress is slow and painful.

Yet it can not be doubted that progress has been made, and there is almost unanimous agreement to this effect. Men who are opposed to the unions, men who are not unfriendly to them, men who think that the sole function of the state is to keep the ring and see that no foul blows are struck—that a contest between capital and labor must be settled like a war between nations, by skill and strength—in a word, among the representatives of capital where there are as many opinions as there are men, there is practically no disagreement as to the benefits that have been derived from the free conference of masters and men when questions arise that might lead to a lockout on the one side or a strike on the other unless the difference was adjusted by conciliation and concession. It is the trivial dispute that affects only a few men at first and ends by involving an entire trade. It is the spark that a child's foot can stamp out, which, unchecked, destroys half a city.

**OPINION OF A PROMINENT IRONMASTER.**

"But the men may refuse to abide by the award." That was the question put to Sir Hugh Bell, Bart., one of the great ironmasters of the north of England, who has on his pay rolls the names of 6,000 men. "True," he replied, "and I regret it; I am disappointed when that happens, but I am not disheartened. There is only one remedy, and that is infinite patience; to make the men see what is fair and just and to make them understand that their demands can not be complied with, because they are impossible. Meetings of joint committees frequently seem like a waste of time, and as if the time given to talk could often be devoted to better things, and yet it is not time wasted. These meetings are in a sense educative to both sides. The men get to understand things better; we, perhaps, learn some things; both sides gain."

Although he is on the Board of Trade employers' panel as an arbitrator or umpire, Sir Hugh Bell has had practically no experience with the act of 1896, as for 40 years the ironmasters of the north of England have had their own conciliation schemes in some form or another. So far as the act of 1896 is concerned, Sir Hugh Bell regards it as a dead letter. He doubts if it will be repealed; he thinks it not unlikely that it will be amended, but he does not believe it is of very great consequence what happens.
One of the results of the present embittered relations between capital and labor—which does not hold out hope of a softening of those relations—is a tendency among employers to form associations to counteract the unions. Corporations and firms carrying on a manufacturing business on the Thames and its tributaries have formed an incorporated company known as the London Waterside Manufacturers’ Association, the purpose of which, as set forth in the articles of agreement, is to promote the mutual interests of the members, “to afford the members of the association facilities for mutual cooperation in all matters affecting their interests as London Waterside Manufacturers,” and “to indemnify any member of the association in respect of any action taken or to be taken, or liability incurred or to be incurred by him in any case in which the council of the association may consider it conducive to the mutual interests of the members of the association as London Waterside Manufacturers so to do.”

Here it will be seen is provided the means by which the association, representing in the aggregate employers giving work to many thousands of men, whose capital runs into millions of dollars and whose interests are world-wide, can give moral and financial support to one of its members in case of a labor dispute. One of the men who organized the association (it was incorporated March 14, 1905) and has always been prominent in its affairs, said that the association had worked so well that the principle would undoubtedly be extended to embrace other manufacturers, and that the power would be given to employers to fight labor with its own weapon. Labor, said this man, openly boasted that the sympathetic or general strike would always bring the masters to terms, and that if necessary to win, half the trade of the Kingdom would be dislocated. Employers could now retaliate. If there was a strike in a factory members of the association would be able to say that unless the men returned to work or consented to an arbitration every member of the association would close down and several thousand men would be thrown out of work; not that the masters had any grievances against their men, but because it was necessary for capital to stand together to resist united labor when it made unjust demands.

This attitude of organized hostility, of course, is not consistent with any belief in the efficacy of conciliatory methods, but outside of this particular association such an attitude does not seem common. Certain employers undoubtedly do object to boards of conciliation and arbitration on the ground that it is difficult to form and operate such boards without increasing the power of the unions; that in their opinion the unions are so unreasonable, so arbitrary, and so irrespon-
sible that they constitute a serious menace to the general welfare; and that therefore every measure which adds, directly or indirectly, to their strength is to be sedulously avoided. More commonly, however, the employers seem to feel that the unions have come to stay, and that, apart from the convenience of collective agreements, the existence of these large and powerful organizations renders it absolutely necessary in the interests of the public peace to provide effective machinery for the consideration and settlement of trade or industrial disputes.

ATTITUDE OF EMPLOYERS TOWARD ARBITRATION.

It has been said that employers, as a rule, are strongly opposed to what they term "interference" of the Board of Trade and the submission of a labor dispute to an "outsider"—that is, a man who has no practical knowledge of the trade; and they give several reasons why they believe this practice to be objectionable. The following statement made by a large employer of labor embodies views which are fairly representative of those held by employers as a class. This employer said:

In the first place, I think I and my men know more about our affairs than can any man who is not familiar with them either as a worker or an employer. There is in every trade what may be called "the common law" of the trade; there are certain customs, traditions, and regulations on which we fall back just as the lawyer does on the common law. There are things done in every trade, lines drawn between different classes of workmen, and different stages in the process of manufacture that would seem quite meaningless to anyone not familiar with the trade, but which to us have a reason.

Now, one of the great objections to referring a dispute to an outsider is that usually a lawyer or a judge is selected as an arbitrator or an umpire, probably because it is assumed that his training admirably qualifies him for the service, while as a matter of fact, with all due respect to several eminent lawyers who have arbitrated labor disputes, they are quite unfitted for the duty imposed upon them. A labor arbitration, except in rare instances, is not a civil contract to be enforced or a breach of the peace to be punished, it is not an appeal either to civil or criminal law; but it is an attempt, in the first place, to establish a modus vivendi, and then to make a treaty of peace so as to prevent any resort to force in the future. To do this it is necessary that the conditions governing the trade, the terms of employment, and all other circumstances shall be known. The lawyer will approach the question too much as a lawyer, and deal

1 It is proper to note here that while the great majority of employers are undoubtedly opposed to lawyers or judges as arbitrators, Lord Claud Hamilton, for 39 years a member of the directory of the Great Eastern Railway, and for the past 18 years chairman of its board, who is also a member of Parliament, testifying before the royal commission said: "An arbitrator should be a man accustomed to exercise judicial functions—a judge of the high court or some man occupying a somewhat analogous position. I do not think the railway companies would be satisfied to accept the decision of a man of lower position and less experience than a person coming within that category."—Minutes of Evidence taken before the Royal Commission appointed to investigate and report on the workings of the Railway Conciliation and Arbitration Scheme of 1907. London, 1911, q. 10084.
with it as a matter of law, which it is not, rather than as one of expediency. An employer will pay a shilling a day more in wages or reduce the working hours and not proportionately diminish the pay if he considers it expedient, but not otherwise. But the lawyer or the judge, who has been trained to decide cases on their merits and not to give consideration to expediency, is too apt to bring to the arbitration the ironclad principles of the law and to ignore other considerations of even greater weight. Both sides want a common-sense ruling rather than a legal ruling. The legal mind will seize on some point that appears to be vital, and perhaps it would be vital in a court of law, but it is only of minor consequence in an arbitral court of labor.

Another objection to the reference to an outsider is that he is too often governed by his sympathies. A case is presented to him of men getting certain wages, and it seems hard to him that a man should have to support a family on fewer shillings a week than the arbitrator pays for a pair of boots. As a theoretic proposition that may be quite true, and we may all agree that it would be better if the men got more money, and a 10 per cent increase does not seem to be very much; but it may be the difference between the employer making a small profit on his investment or doing business without making any profit at all. The employer knows this, and can not let his sympathies overturn his judgment; the outsider, who does not know the facts and can not be easily convinced and does not have to pay the bill, can afford generously to indulge his sympathies at the expense of the employer.

Still another objection—in some respects perhaps the most serious—is the constant temptation of the arbitrator to settle the difference by splitting the difference. The arbitrator, of course, wants to bring about a settlement; otherwise he has been a failure and he gets no credit out of the proceedings. In the case of men asking an increase of wages they often make their demand excessively high because they know this weakness of an arbitrator to "split the difference;" and an arbitrator really thinks he has been remarkably successful in effecting a "compromise" when he reduces the men's demands 50 per cent, which is still 25 per cent more than they really expected to get, and no alternative is left to the masters except to abide by the award.

Asked if the evils of which he complained would not be removed if instead of a lawyer or a judge a business man were appointed as the arbitrator or umpire, he replied:

No; that would not help matters. Suppose I have a dispute with my men. To appoint as arbitrator one of my associates would be to invite the criticism that of course the arbitration would go against the men, as an employer would naturally decide in favor of a fellow employer. To take an employer engaged in another line of business would, of course, be better than to select a lawyer, but it would still be far from satisfactory. He would know a great deal more about the way in which business is carried on than the lawyer, but he would not know very much more about that particular business. I know how the things I sell are made and why certain men are in charge of
certain machines, and all the rest of it, but I know very little, prac-
tically nothing, about other lines of manufacturing.

There is only one solution, and that is to let masters and men settle
their disputes among themselves without any official outside inter-
ference. If they can't agree, if they are unable to arrange their own
conciliation or arbitration machinery, then they ought to be allowed
to disagree until they come to their senses. Some inconveniences
might be caused, but in the end a settlement would be reached, and it
would be far more satisfactory to both parties and more lasting than
decisions by official arbitrators.

A further objection to the "interference" of the Board of Trade
is, some employers say, that it is apt to be political, so that the
Board of Trade is more concerned in bringing about a settlement for
the political advantage that is to be gained than it is to consider
whether the settlement meets the issues involved and therefore will
make for lasting peace.

No one who has talked to employers, whatever their political bias,
can doubt that again and again the political factor has multiplied the
difficulties of the officials.¹

On the other hand, it is proper to call attention to the expressions
of some employers. They say that, while it is true that the presi-
dent of the Board of Trade is a party man and nominally sets the
board's machinery in motion, as a matter of fact, the real work is
done by his subordinates, and they, like all English Government
officials below the rank of minister, are permanent officials, who cease
to be party men when they enter the Government service, and who
can afford to be uninfluenced by political considerations because
their tenure of office is not affected by party changes, their position
being secure, except for misconduct, until they reach the retiring or
pensionable age.

At the present time a deadlock appears to have been reached and
every scheme for the prevention of labor disputes has broken down,
unless both sides are agreed there shall be no dispute, which sounds
like a contradiction and renders unnecessary legal or other arrange-
ments. The men are no more firmly opposed to "compulsory arbi-
tration"—a misnomer, as the very essence of arbitration is a volun-
tary and not a forcible submission of a difference to a disinterested
person whose only power to enforce his award is the pledge of both
parties to abide by the decision—than the employers are to any ar-
rangement that is not self-executory or does not bind both parties
equally. Until such an arrangement is put into effect industrial
peace hangs on a hair, employers will tell you, and yet it is impossi-
ble in the present state of social and political opinion to devise the
remedy. "In theory the idea of making arbitration compulsory,"
says one writer,¹ "and depriving employers and employees of the
right either to lock out or to strike is attractive to autocratic minds.

¹ London Morning Post, Sept. 20, 1911.
In practice such a proposal must be unhesitatingly rejected, in the first place, because neither side desires or will submit to such a change in the law; in the second place, because the enforcement of any such law upon large bodies of disgruntled workmen is absolutely impracticable. To draw any analogy between the tiny disturbances of a new country such as New Zealand and the Titanic upheavals among the crowded millions of Britain's industrial workers is absurd. No government would have the courage to enforce obedience to arbitration even to the extent of imprisoning leaders."

CONCLUSION.

Despite the many cross currents that the writer has encountered in the course of the present investigation and the diverse opinions expressed, on two questions there is substantial unanimity. They are:

First, that schemes of conciliation and arbitration voluntarily entered into between employers and men by which an attempt is made to arrange disputes or to settle differences existing in their trades are productive of good, tend to ameliorate relations, and to lessen the danger of strikes and lockouts. The sentiment in favor of conciliation schemes of a voluntary character—and emphasis must be laid on the fact that they are voluntary—is undoubtedly growing, and it is safe to say that such schemes in the future will play a still larger part in the relations between employers and their men.

Second, schemes of conciliation or arbitration under state sanction are not regarded with favor by employers unless the state shall assume the responsibility of enforcing its verdict. To do this the law must be so amended as to make any breach of the provisions of the award similar to any other violation of law that is punishable by fine or imprisonment; but there is practical agreement that society is not yet prepared to sanction what in the present state of public opinion is regarded as legislation of such an extremely radical character. The consequence is that for the present, at least, state arbitration is viewed with disfavor and as defeating the very purpose for which it was designed.
ATTITUDE OF LABOR TOWARD CONCILIATION AND ARBITRATION IN GREAT BRITAIN.

BY ARTHUR E. HOLDER.

INTRODUCTION.

The use of joint committees of employers and employees, conciliation boards, arbitration boards, etc., is not a new or untried method of reaching a working agreement or of avoiding strikes or lockouts in the principal industries of Great Britain.

For years previous to the enactment by Parliament of the "Conciliation Act" of 1896, general, district, and local conciliation or wage boards had been instituted by the cooperation of employers and employees. The following list, for instance, contains a few from among the earliest of such boards with the years they were established:

1868. Nottingham Lace Trade Board of Conciliation.
1872. Cleveland Iron Masters and Blast Furnace Men's Association.
1872. Midland Iron and Steel Wage Board.
1873. Cleveland Mine Owners and Miners' Board (iron).
1875. Leicester Boot and Shoe Trade Board of Conciliation.
1875. South Wales Colliery Workmen's Sliding Scale Committee.
1879. Cumberland Coal Owners and Miners' Association.
1882. Edinburgh Plasterers' Conciliation Board.
1885. Wear Shipbuilding Trade Conciliation Board.
1890. Bristol Building Trades' Conciliation Board.

The beginning of the movement is universally credited to the work done by Mr. Mundella, in or about 1860, in the hosiery trade. His unbounded confidence in the principles of conciliation and voluntary arbitration led to their adoption as a means of settling disputes in this trade, an example soon followed by the building trades of Northampton, Mr. Kettle being the leader here. From time to time, as the distress and disorganization inflicted by periodical strikes and lockouts became apparent, the system of voluntary conciliation was adopted in other industries.

It was not, however, until after the great dockers' strikes in London and other seaports in 1889 and 1890, when many thousands of unskilled and semiskilled men stopped work in order to obtain an increase of wages, and when trade and commerce were thoroughly dislocated, that any serious consideration was given by public men
to the subject of conciliation as a means of avoiding trade disputes. It is true that Parliament had previously enacted legislation of a commendatory character, but it lacked provision for the machinery, at once adaptable, suggestive, and voluntary, provided by the terms of the act of 1896.

ATTITUDE OF GENERAL FEDERATION OF TRADE-UNIONS.

The trade-unions of England are and have been since their earliest inception committed to the doctrine of "Conciliation, mediation," etc. The General Federation of Trade-Unions, which is a national federation, as its name implies, has affiliated with it over 135 of the strongest organizations that contain the most highly skilled artisans. That large central federation has committed itself to this plank in its platform:

To promote industrial peace, and by all amicable means, such as conciliation, mediation, references, or by the establishment of permanent boards, to prevent strikes or lockouts between employers and workmen, or disputes between trades or organizations. Where differences do occur, to assist in their settlement by just and equitable methods.¹

"This declaration," said Mr. W. A. Appleton, secretary of the federation, "is a reflex of what each of the constituent organizations within the federation is committed to, and what each in its own particular field and industry has faithfully tried to establish."

This principle is also incorporated for application in the internal government of the organizations composing the federation, and has proved of inestimable value in the peaceful settlement of so-called "jurisdiction disputes" or lines of "demarcation."

Rule 9 provides the following mode of settling such internal disputes:

DIFFERENCES BETWEEN SOCIETIES.

1. In the event of any differences arising between any of the societies in the federation on demarcation of work, interchange of members, or on any question, no cessation of labor shall take place by either or any party involved, and, unless amicably arranged, by any means mutually agreed to, the differences must be referred to a board of reference or arbitration, but in no case shall the general secretary, executive, or other officials of the federation entertain any complaint or intervene in any way unless assurance is given by the societies concerned that the complainant society has applied to the other society, and efforts have been made to adjust the grievance.

REFEREES.

2. If possible, the parties affected shall agree on three disinterested referees, failing this, each party to the dispute shall appoint one arbitrator; the two arbitrators to appoint an umpire and, in the

¹ Rules General Federation of Trade-Unions, 1910, p. 5.
event of the arbitrators failing to agree, his decision shall be final and binding. The referees, arbitrators, or umpires, as the case may be, shall not be selected from any trade who may come in conflict with either of the parties to the difference.

POWERS OF THE MANAGEMENT COMMITTEE.

3. If a board of arbitration be not appointed within one month of an application being made for a reference to arbitration, the management committee shall have power to appoint either arbitrators or referees, as the case might be. The board, when formed, shall decide as to place of meeting, method of procedure, etc.; each party to pay half of the expenses unless otherwise ordered by the board.¹

The secretary of the federation (Mr. Appleton) was requested to state his opinions as an official of the federation and as a representative of labor as to the value of the conciliation act of 1896. He very kindly and clearly answered certain specific questions, as follows:

1. What was the attitude of labor in the early years of the act?
   Answer. The attitude of labor was favorable to the act when passed, and in fact, labor organizations anticipated the act and had set up national, district, and local conciliation boards many years before the act was passed by Parliament. In the lace makers’ union (of which Mr. Appleton was formerly the general secretary) the rules provided as early as 1868 for a board “to arbitrate on any question that may be referred to it from time to time by the joint consent of employer and workmen, and by conciliatory means to interpose its influence to adjust any or all disputes that may arise.”

2. What has been the attitude of labor toward the act in recent years?
   Answer. Attitude still favorable; no change noticeable.

3. Has there been any difference in the attitude of labor as between conciliation and arbitration?
   Answer. Labor has always been willing to accept voluntary conciliation, and when that fails, to accept voluntary arbitration; but it must be positively understood that no compulsion will ever be tolerated by British trade-unionists, or accepted in statutory form to interfere in trade disputes. British employers would oppose such a proposition as vigorously as would the trade-unionists.

4. Has the conciliation act operated to prevent strikes and lockouts?
   Answer. No; not directly; but the local and district boards set up under the act have in some instances, and the administration of the act has undoubtedly prevented the continuation of strikes and lockouts and prevented their extension to other closely affiliated trades.

5. What, from the labor standpoint, have been the advantages of conciliation and arbitration under the act?
   Answer. The main advantage has been to get both sides in the contest together, thus enabling them to learn each other’s viewpoints, each other’s personalities, and to open a fair opportunity to discuss their points of difference in a business way and finally come to a common and harmonious basis of agreement.

¹ Rules General Federation of Trade-Unions, pp. 20, 21.
6. Is there criticism of the methods?
Answer. There has been no serious criticism of the methods.

7. Is there criticism of the cost of proceedings?
Answer. There has been no serious criticism of the cost, except from the railway employees, and in their cases the blame has been attributed to the railway managers. The general public has never been known to complain of the cost, or at least there is no record of such a complaint that has ever been called to my attention. The British people appear to regard it very philosophically and consider the administration of the act as a necessary public duty. They naturally expect that a vigorous, industrious, assertive, and ambitious people who live by industry and commerce must naturally have disputes, and that to settle such disputes money must be spent.

8. Is there criticism of delays, or of bias in decisions?
Answer. No complaint of delays on the part of the Government officials who administer the national act. Railway employees complain of interminable delays caused by railway officials under the railway conciliation scheme of 1907. As to bias, speaking generally, no suggestion of personal bias has arisen. There are what may be called temporary ebullitions at times, but they soon subside. I have met with only one instance of definite personal bias, and that after a regular notice of complaint had been filed, that finally terminated in a reversal of the award so that an advantage to the workmen’s interest was secured.

9. Are there limitations as to the questions dealt with?
Answer. There may be limitations, but usually the terms or points of reference (subjects under dispute) to be considered are decided independently; sometimes the two parties to the dispute agree upon them; at other times they will agree upon them in the presence of the chairman, umpire, or arbitrator.

Arbitrators usually make it a rule to insist upon a specific and definite outline of points of disagreement to be considered or that are matters of dispute.

10. Are there difficulties in regard to acceptance or enforcement of awards or decisions?
Answer. Sometimes difficulties do arise; especially when decisions are not rendered with clearness, there is likely to be trouble over the interpretation of some features of the award. If the workmen refused to accept an award, the press would make quite a to-do about it. Such cases are very rare, however. It must be remembered that the old British sporting instinct and the accompanying temperament helps a great deal in such cases. Men will naturally fuss and grumble a little when they lose, maybe swear about it a bit, but they will end by “playing the game.”

11. Are there difficulties in the interpretation of agreements or awards?
Answer. Difficulties do occasionally occur in the interpretation of awards, but when such obstacles arise it is usual to continue work (even though a stoppage had originally existed) and for both parties to appeal to the boards or the arbitrators for a clearer definition of the doubtful points; after such proceedings, matters go along serenely. Again, it will be noted the matter of honor plays a most important part in our industrial troubles.
12. What changes in the act or in procedure are regarded as desirable from the employee's standpoint?

Answer. Some individual workmen have occasionally remarked that they think it would have been better if the act simply insisted upon a meeting of the parties involved in a dispute without requiring the intervention of officials to effect a decision.

13. How helpful has the act been in those industries where the workmen are not organized in trade-unions?

Answer. Our experience has shown that the full benefits of the act, or, for that matter, the beneficent effects of the principles of conciliation and voluntary arbitration can be secured only when and where the workmen are organized on definite and orderly lines. Without permanent and substantial organization the workmen do not and can not command respect. They are wholly inefficient in the formulation of grievances; they rarely have trained men able to voice their complaints in an orderly, comprehensive manner; they are deficient in the collection or presentation of comparative data, and, finally, they are wholly lacking in that militant discipline which is developed by the trade-unions that will observe and enforce the acceptance of awards.

Organization among workmen frequently renders it unnecessary to invoke the act. It has recently been said to me by the chairman of a large and powerful employers' federation, when referring to a dispute that had arisen among men in a line of industry that had only been organized a short time: "Had I known that these men were organized and affiliated to the General Federation of Trade Unions, I should have conferred with the federation officials prior to the time the men went out on strike; but I thought the men were unorganized and had no resources, and that there was no one who could or would assume responsibility or with whom I could intelligently carry on negotiations."

Many similar experiences have been encountered by myself and other officers of the federation and the constituent organizations affiliated to it.

It has been our experience that decent, fair-minded employers prefer dealing directly with the authorized representatives of a trade-union rather than allowing their industrial disputes to be submitted to outside parties, regardless of the fact whether such outside parties constitute district, local, or national conciliation boards.

This additional observation may be made with due respect to the efficacy of the conciliation act, that its influence has been chiefly invoked in cases where uprisings or revolts have occurred among unorganized men, either because a sudden impulse led the men to seek an immediate remedy for long-standing grievances or because an employer or manager had imposed new and objectionable conditions upon the workers. In either case there would be a disturbance of former industrial relations, usually accompanied by an outburst of passion and a stoppage of operations, sometimes a lockout, but as frequently a strike. Under such circumstances the good offices of the Board of Trade officials are invited through different mediums to apply the principles of conciliatory adjustment under the act of 1896.

To this extent the act has been very serviceable and really constitutes a valuable asset to society in general; not infrequently it has
been the means by which many workmen in unskilled or semiskilled occupations have more willingly lent their ears to the persuasions of our organizers and in the course of time have naturally formed compact and permanent organizations, eventually affiliating with the General Federation of Trade Unions and to a greater or less extent cooperating with it for the commonweal.

COMMENTS AND CRITICISMS OF INDIVIDUAL WORKERS AND ORGANIZATIONS.

Summaries of the opinions and criticisms herein expressed by the secretary of the General Federation of Trade Unions on the usefulness of the application of the general principles of conciliation and arbitration in the adjustment of labor disputes and the value of the conciliation act of 1896 were submitted to the membership of various labor organizations (before which the writer was courteously granted brief hearings) in the boroughs of Lewisham, Deptford, Greenwich, Blackwall, Poplar, and Woolwich in Greater London, Bristol, Taunton, Cardiff, Coventry, Birmingham, Liverpool, and Blackpool. Individual members of the rank and file were also interviewed in Foleshill, Rugby, Leicester, Warrington, Oldham, Manchester, and elsewhere. These organizations and workmen represented many highly skilled workers, such as building-trade mechanics, metal workers in engineering establishments, textile workers, miners and quarrymen, dockers, lightermen, street railway men, and rolling-mill, sheet-steel, and tinplate workers, and others. The opinions gained from them varied in some details, but generally speaking they were unanimously in favor of conciliatory methods in the adjustment of their disputes with the employers, and agreed perfectly as to the efficacy of such methods.

Many of these men grew eloquent on the part they and their organizations had taken in this direction, and a spirit of pride was frequently exhibited when reference was made to the accomplishments of local and district boards of conciliation.

The great majority very emphatically favored direct negotiation between their own duly accredited trade-union representatives and employers or the authorized representatives of employers and employers' federations. In fact, this seemed to be the goal which many organizations have attained and which the others are bending every effort to reach.

Many apt expressions were used to demonstrate their preference for direct negotiations and direct agreements, such as, “It is a better business method;” “We feel safe when our own men are in the office;” “We are better satisfied when a settlement is reached;” “The ‘gaffers’ and we know our own jobs best;” “We work with more vim when it is all over and the master gets that proportionate benefit of the outcome;” “We don’t want outsiders to meddle with our affairs; they don’t understand and can’t be made to understand
what we want, nor how we feel;” “Too many conciliations end with a compromise which looks like six of one and half a dozen of the other;” “If we are right we want to know it and get our claim, if the company is right and can prove it we will own up;” “Aye, lad! A straight-out agreement with gaffer is the thing, our chaps then stay in line and work harder;” “It’s got to come to it anyway; sooner the ‘supe’ finds that out, better all round;” “Clean cut, straightforward, cold-blooded business recognition of trade-unions is worth more than volumes of conciliation schemes;” “We like peace, we want peace, well have peace if we are bound to fight for it.”

Some local and district trade-union officials pointed with pride to the fact that their predecessors had fought so frequently and so tenaciously with the employers in their industries that the latter had been driven under the iron law of necessity to devise schemes (a favorite term to describe boards of conciliation) to adjust their troubles in order to avoid stoppages. Such enthusiasts were not backward in adding with a tinge of self-consciousness, “Our chaps did that before the Government passed any acts,” and not a few very bluntly interjected, “Oh, what do the politicians know about our affairs?” When such harsh critics were reminded that many if not most of the representatives in the Board of Trade, who had the responsibility of administering the conciliation act, were formerly honored trade-union officials, it was sharply and promptly answered in very blunt English style:

Certainly, when the Government saw our movement was growing strong enough to be an industrial and political power, or a menace to their self-interest, they took our men because they were properly trained to deal with men of affairs. They wanted the best and got them from us—and they are all right; they are doing good work, but we are not tied to the Government because they appoint some of our men to such public offices.

In a few instances men were met who did not know anything concerning the work accomplished under the conciliation act, and who frankly acknowledged that they did not know such a measure had ever been enacted, but such instances and such admissions were extremely rare. This ignorance was found only among workmen who might be described as occupying the two extremes, usually being discovered either among those who belonged to old and successful organizations which had long since reached the stage of direct negotiations with employers, or among those who had been but recently organized and had not as yet come into a conflict with their employers.

GAS WORKERS AND GENERAL LABORERS.

The general secretary of the powerful Gas Workers and General Laborers Union (Mr. J. R. Clynes), who resides in the busy textile
center of Oldham, said that the good offices of the officials at the Board of Trade who administer the working of the conciliation act had never been engaged in behalf of the members of his organization, and that he was not personally intimate with the operations of the act. By association with men engaged in the steel trades, rolling mills, and blast furnaces, he had learned it had been serviceable to them.

In my opinion the act has operated successfully to prevent strikes and lockouts in cases where employers and employees are highly organized. In such cases they reasonably recognize each other's organizations and have a corresponding amount of respect for each other's power.

In our organization we work independently of the act. When and where we can we make regular collective agreements with the employers directly, conducting the negotiations through authorized representatives of both parties. If we fail in this, we refer our case to the officials of the General Federation of Trade-Unions with which our organization is affiliated and through which such difficulties are amicably adjusted.

I am of the opinion that long terms of agreements are not conducive to the best interests of the men. One year is enough.

IRON-ORE MINERS.

The general secretary of the Cumberland Iron-Ore Miners and Kindred Trades' Association (Mr. T. Gavan Duffy) said:

We strongly believe in the general principles of conciliation and in the use of conciliation boards in the settlement of industrial disputes. To be effective, however, such boards must be organized on right lines.

The conciliation act of 1896 has been useless to the men in our occupation. Its machinery is loose and its operations perfunctory. It has not prevented strikes or lockouts in our industry. We have asked the Board of Trade people to come in, but beyond a stereotype acknowledgment of our letters we have heard nothing further from them.

As we have seen nothing of the workings of the act, we are perhaps not competent to judge its defects. We certainly know nothing of its virtues. We should not, however, favor any compulsory scheme without carefully examining all the details.

BOILER MAKERS AND SHIPWRIGHTS.

The general secretary of the Boiler Makers and Iron and Steel Shipbuilders (Mr. John Hill) and Mr. Alex. Wilkie, of the Associated Shipwrights, representatives for several years of these old and prosperous trade-unions, both with headquarters at Newcastle-upon-Tyne, were very positive as to the virtue of direct negotiations with the employers and rather reluctant to talk about the conciliation act other than to say:

Our opinion on the conciliation act of 1896 is, that so far as our differences with the employers are concerned, this act has been a dead letter. We are not interested in it or its amendments.
Our shipyard trade-unions negotiate agreements directly with the Shipbuilding Employers' Federation. These agreements provide that "The federation and the unions, recognizing that it is in the best interests of both employers and workmen that arrangements should be made whereby questions arising may be fully discussed and settled without stoppages of work: Hereby agree as follows," etc.

This agreement makes ample provision for local negotiations, preliminary conferences, grand conferences, demarcation disputes, etc., and for the appointment or selection of an independent referee to whom questions of dispute may be submitted in the event any joint committee fails to agree.

The last clause of this agreement provides that it shall continue in force for three years, and shall thereafter be subject to six months' notice in writing on either side. It is a most complete and elaborate document. Seventeen trade-unions are signatories to it, viz:

United Society of Boiler Makers, Iron and Steel Shipbuilders.
Cooperative Smiths' Society.
Associated Blacksmiths' Society.
Combined Smiths of Great Britain and Ireland.
General Union of Braziers and Sheet Metal Workers.
Ship Constructive and Shipwrights' Association.
Amalgamated Society of Drillers and Hole Cutters.
Amalgamated Society of Carpenters and Joiners.
Associated Carpenters and Joiners' Society.
General Union of Carpenters and Joiners.
Amalgamated Union of Cabinetmakers.
National Amalgamated Furnishing Trades' Association.
Amalgamated Society of Wood Cutting Machinists.
Scottish Sawmill Operatives and Wood Cutting Machinists' Society.
National Amalgamated Society of Operative House and Ship Painters and Decorators.
Scottish Amalgamated Society of House and Ship Painters.

One hundred and fourteen shipbuilding concerns are connected with the Shipbuilding Employers' Federation, comprising the largest in Great Britain. The last agreement was entered into March 9, 1909. A supplementary and subsidiary agreement was effected December 8, 1910. The full text of both are included in Appendix VI, pp. 150.

AMALGAMATED SOCIETY OF ENGINEERS.

The general secretary of the Amalgamated Society of Engineers (Mr. Jenkin Jones) very frankly stated that neither he nor the membership of the Amalgamated Society of Engineers looked upon the conciliation act or its administration with much approval, so far as its usefulness could or had been applied in the adjustment or prevention of disputes in the engineering trades.

We have observed that the act has been helpful sometimes to men who find that their conditions get steadily worse in an unorganized state and who, after establishing a union or during the time they
are occupied in such an undertaking, get into a row with their employers, finally terminating with a lockout or strike. Under such circumstances, when every home remedy has failed, the act has been applied, a compromise effected, and a new trade-union established.

The good offices of the president of the Board of Trade were extended to some of the men of our trade in 1907 while engaged in a test of strength on the northeast coast with the shipping interests. On a referendum vote (which is the rule in the Amalgamated Society of Engineers) it was twice rejected. That should demonstrate the sentiment our men have toward the act. I have never heard one of them say he was sorry for his negative vote then.

The Amalgamated Society of Engineers now contains 115,000 highly skilled mechanics, and when our books were audited, December, 1910, we had a credit balance of $2,991,290. Our members believe in peaceful settlement of industrial disputes, and our rules provide for conciliatory methods of preventing them. Up to the present, in the light of our experience, we have found these methods eminently practicable and much preferable to governmental or any other outside intervention. We believe in and insist upon “direct negotiation.” Our rule is as follows:

“Executive council: The council may enter into conference with the employers’ federation executive with a view to an amicable settlement of any dispute that may arise in any district of the society. But on no account shall they take any case from the district in which the dispute occurred to the central conference unless requested to do so by the local district committee, and then only after all local efforts have failed.

“The executive council, or anyone acting on their behalf, shall not be allowed to complete an agreement with any employer or employers concerning wages, piecework prices, or system of working unless the terms of agreement are first submitted to the district or districts affected. In all cases of disagreement between the district or districts affected and the executive council the whole case shall be submitted to and decided by the vote of the whole society, to which both sides of the question may be put by each party concerned.”

The chief virtue I see in the conciliation act is that it is purely voluntary. The engineers are willing to put up a big political fight to keep it so.

Conciliation is an inappropriate title; it should be renamed and called voluntary intervention or intervention solicited. It is a misleading appellation to call such an act “conciliation” or “arbitration” unless one of its cardinal features includes an honest examination of the books of an employer and a scrutiny of the system of bookkeeping. Arbitrators or conciliators or trade-union representatives too frequently have to take too much for granted from employers and their representatives, who make bold, blanket, cut-and-dried, stereotyped statements that “the business is not paying,” “the firm is losing money,” “trade is leaving the country,” etc., but who, when they are challenged to prove such assertions, promptly refuse. They act as though such a straightforward business proposition is offensive to them.

A former general secretary of the Amalgamated Society of Engineers, but now advanced by them to be a member of Parliament (Mr. George M. Barnes), expressed himself somewhat skeptically as to the efficacy of the conciliation act in avoiding or permanently settling labor troubles. He said:

My experience has been that the only solution in sight is to organize strong militant unions and equip them with a strong treasury; to be always prepared for a contest and to command respect by power; might makes for right; peace can be compelled easier by determination and a display of strength than by cajolery or so-called diplomacy. The British trade-unions are growing stronger every year. They are federating by industries, the modern and natural economic method. They are destined to be ultimately successful and equal to all emergencies.

In the Fifty-seventh Annual Report, for the year 1907, he submitted as part of his report as general secretary the following, which bears strongly on the important technicality of requiring accurate information as to prices and profits from employers during periods in which industrial conferences are in session:

For my part, I see no reason to alter the opinions I have often expressed, which are that the shortest possible time limit for conferences and provision for full information being given to such conferences are the two practicable things the society should keep steadily in mind. I believe that initiatory discretion of the employers in regard to minor matters is a necessary condition of any terms of agreement. Pending settlement, somebody must say what, under certain circumstances, must be done, and it seems to me that that somebody must necessarily be the employer. This means, of course, tying the hands of the union, and what is needed is to make the period during which this operates as short as possible. It should be here said in parenthesis that this does not apply to wages or hours, and that, in regard to these, both sides are tied alike and both have been tied to their advantage.

But the second point is most important. The employers, as a matter of fact, have full information now in regard to our side. They know all about wages and numbers out of work, they know as much as we do about housing and means of living generally, but we know practically nothing of their profits, very little about prices of engineering products, and as little of prospects of trade. As a result the employers have sometimes induced us to take the most gloomy view of things—they may or may not have taken it themselves—whereas subsequent events have not justified that view. The north-east coast affords an illustration of what I mean. In the year 1900 the men asked for an advance of wages, and after some months’ delay we met the employers in central conference in June of that year. The chairman of the Employers’ Federation said:

“"In the marine trade, which, personally, I have more knowledge of than others, I have no hesitation in saying that it is undoubtedly in a very rapid decline.”
Much more of a similar character was said, the record of which is before me now as I write these lines, and as a result the northeast coast men stayed their hands and practically withdrew their demand. Yet, looking back now on events, it is clearly seen that the view put to us by the employers was a biased view, induced no doubt, and perhaps unconsciously, by a sense of self-interest. As a matter of fact, during the very year in which we were led to believe that the trade was in a rapid decline, the northeast coast output in shipping was 19,000 tons more than the year before, and the output for the year after showed a further increased output amounting to no less than 74,000 tons.

From this it will be seen that there is much to be said in excuse for the present resentment of the northeast coast men. Whatever may be said as to their judgment in twice rejecting arbitration, and however wrong they may be in the present crisis, the employers have been to some extent responsible for it by past events. I submit therefore that the men in conference should be supplied with information as to prices, profits, and prospects, so that the conference as a whole should have an opportunity of making up its mind on the full facts. If there is objection to disclosing the positions of respective firms, that could be met by arrangements for such disclosures being made to accountants, or some such authority, and such authority reporting to the conference as a whole. At all events it is clear that some improvement will have to be made in that direction.

STEAM ENGINE MAKERS' SOCIETY.

The general secretary of the Steam Engine Makers’ Society (Mr. William F. Dawtry) discussed the general principles of conciliation and arbitration of industrial disputes.

The Steam Engine Makers’ Society is now in its eighty-seventh year and contained 13,401 good-standing members at the close of the books in 1910. The membership consists of fitters, turners, erectors, pattern makers, millwrights, smiths, and draftsmen engaged in the engineering trades. It had $444,990 in its treasury at that time, or an equivalent of $33 per capita, reputed to be the highest of any known trade organization. Its headquarters are at Manchester.

The Steam Engine Makers’ Society is not considered an aggressive or militant union, nor is it so pronounced by its members. It was organized in 1824 under a system of centralized management from which little or no departure has since been made.

Mr. Dawtry said:

Our methods of dealing with disputes in the trade are contained in this rule:

"Should any dispute respecting wages, hours of labor, or other trade privileges occur in any workshop where members of this society are employed the branch where such members are employed shall immediately make it known to the executive committee, who shall advise and instruct them what course to pursue to avoid further com-

1 Fifty-seventh Annual Report Amalgamated Society of Engineers, 1907, pp. iv and v.
plications, and what steps to take with a view to an amicable settlement or to prevent the same encroachment being made upon members employed by other firms. After a strike or lockout has taken place the executive committee shall be kept informed by the branch what steps are taken from time to time, and obtain their sanction or approval of engagements made with kindred societies or committees to effect a satisfactory issue of the dispute, whilst no settlement shall be effected until the executive committee have given their consent.”

If occasion warranted it, the application of the conciliation act might be used under the latitude of this rule, but up to the present our system has proven all sufficient.

These references to our system must not be construed as objections to the conciliation act or any reasonable proposition or system that can be devised by which stoppages of industrial operations can be avoided. We believe strongly in peaceful methods and exert ourselves toward that end.

I have no criticism to offer or objection to make to the Conciliation Act of 1896 or its administration. I believe it has been the means by which many grievances have been settled among those seeking relief from their burdens who have had no other resource. I do, however, think the act is deficient in that it lacks finality, so that when a conference fails to reach an agreement the matter stands in the same position from which it started. There is nothing left but the old, old struggle—a strike or a lockout. During such emergencies when a deadlock is reached I favor the authority of a chairman with a deciding vote, whose decision should be final.

I consider it should then be a matter of honor and an evidence of intelligent development for both parties to accept his award and keep the wheels of industry moving.

My experience has led me to see the superiority of centralized authority over what we call local autonomy to such an extent that I am strongly in favor of compulsory arbitration of labor disputes. My views in this respect do not add to my popularity, but nevertheless that is my conviction, and I have no hesitation in saying it.

Mr. Dawtry's faith in the virtue of peaceful methods rather than harsh ones in the prevention of labor disputes is emphasized in his annual report for the year 1910:

Referring specially to the engineering trades, although it might be said we have not been without our small domestic troubles, here and there, we have been happily free from the organized or, still worse, the unorganized strike, and while this has been the case the interests of our members have received due and full attention at both local and central conferences with the employers, by the way, showing conclusively the gains by peaceful negotiations need have no fear from comparison with the methods of force and war. In the face of a threatened reduction at Bolton and District an advance of wages was secured under favorable conditions, and covering a period of four years. Birkenhead, Bradford, Sandycroft, Rugby, and Earlestown also secured advances by means of negotiation, and last, but not least, in November, although trade was far from good, an advance of 2s. (49 cents) per week in wages, payable in two in-
stallments at a six months' interval, was secured in central conference for the northeast coast, thus bringing the wages up to 1s. (24 cents) higher than previously attained, the agreement being binding on both sides for a period of five years. We may here say this settlement alone on the northeast coast, compared with the very poor results of the "other methods," amply and fully justified the work of the conference table between responsible representatives for the year 1910. Demarcation questions, also uniform rates and conditions recognized by contractors in Government dockyards, have been subjects of discussion with the engineering and shipbuilding employers in central conference, and we trust may lead to satisfactory settlement in due course. We are also pleased to note agreements have been arrived at with numerous local employers' associations putting out-allowances and other conditions of employment upon a more satisfactory footing than hitherto. We hope to see this method of procedure more generally followed, especially in the large centers of industry and notably the northeast coast, as this would end once and for all much continuous bickering and dispute, and, after all, a genuine trade-unionist should be as anxious to avoid conflict and strife as well as have the ability to strike and strike hard when unfortunately dire necessity alone presents itself.¹

That part of the agreement entered into by the Steam Engine Makers' Society and kindred trades with the Engineering Employers' Federation for the purpose of avoiding stoppages of work is here-with shown:


The representatives of the Engineering Employers' Federation on the one hand and of the engineering trade-unions on the other having met in joint conference, and being convinced that the interests of each will be best served and the rights of each best maintained by a mutual agreement, hereby decide to adopt measures to avoid friction and stoppage of work.

It is, therefore, agreed as follows:—

**PROVISIONS FOR AVOIDING DISPUTES.**

With a view to avoid disputes, deputations of workmen shall be received by their employers, by appointment, for mutual discussion of any question in the settlement of which both parties are directly concerned; or it shall be competent for an official of the trade-union to approach the local secretary of the employers' association with regard to any such question; or it shall be competent for either party to bring the question before a local conference to be held between the local association of employers and the local representatives of the trade-unions.

In the event of either party desiring to raise any question, a local conference for this purpose may be arranged by application to the secretary of the employers' association or of the trade-union concerned, as the case may be.

Local conferences shall be held within 12 working days from the receipt of the application by the secretary of the employers' association or of the trade-union or trade-unions concerned.

Failing settlement at a local conference of any question brought before it, it shall be competent for either party to refer the matter to the executive board of the federation and the central authority of the trade-union or trade-unions concerned.

Central conferences shall be held at the earliest date which can be conveniently arranged by the secretaries of the federation and of the trade-union or trade-unions concerned.

There shall be no stoppage of work either of a partial or of a general character, but work shall proceed under the current conditions until the procedure provided for above has been carried through.

CONSTITUTION OF CONFERENCES.

An organizing delegate of the Amalgamated Society of Engineers shall be recognized as a local official entitled to take part in any local conference, but only in his own division. In case of sickness his place shall be taken by a substitute appointed by the executive council.

Any member of the executive council or the general secretary of the Amalgamated Society of Engineers may attend local conferences, provided that the member of the executive council shall attend only such conferences as are held within the division represented by him.

A member of the executive council or the general secretary of the Steam Engine Makers' Society and of the United Machine Workers' Association, respectively, may attend any local conference in which the societies or either of them are directly concerned.

Central conferences shall be composed of members of the executive board of the federation and members of the central authority of the trade-union or trade-unions concerned.

An employer who refuses to employ trade-unionists will not be eligible to sit in conferences.

COAL MINERS.

The mining industry of Great Britain seems at this time (September, 1911) to be well fortified with conciliation boards.\(^1\)

The president of the Miners' Federation of Great Britain (Mr. Enoch Edwards) and the miners' agent of the federation (Mr. W. Brace) both agreed that the application of the principles of voluntary conciliation, and at times of arbitration, had proven valuable in the coal trade.

The miners have used their boards so long and so frequently that they are no longer a novelty or an experiment. Their attitude can be summed up in a few short sentences expressed by Mr. Brace.

Our miners' boards are all voluntary. They are altogether outside of the conciliation act. They differ in the various coal fields.

\(^1\) Many other miners were conferred with, including men who dig in the mines daily and those who have been selected to represent them

\(^1\) For typical agreements in this industry, see Appendix IV, p. 144.
in business or politics. (The Miners' Federation has 15 of its members in the present Parliament.) They were practically all agreed that their conciliation system was a big improvement over their old method.

Some few were met who treated the whole subject with scorn because at times the boards had not made complete awards to the men, and practically none were willing to say that conciliation was a complete antidote for stoppages. Many laughingly said, "We have to shut 'em up once in awhile," etc. Others more sober-minded rather grimly remarked, "The owners close the pits if we get too radical." The average miner was philosophical and said, "Conciliation with a chairman to cast the deciding vote is the best scheme, it keeps the hot-heads on both sides under control."

COTTON SPINNERS.

The general secretary of the Provincial Association of Fine Cotton Spinners (Mr. A. H. Gill), with headquarters at Bolton, discussing the subject of conciliation, expressed himself as follows:

I am in favor of conciliation effected by means of mutually selected boards representing practical men engaged in the industry. I am not in favor of arbitration, because I do not think it possible for any man to render an impartial decision. The good offices of the administrators of the Conciliation Act of 1896 have been engaged several times in the textile industry. Such services have been very helpful. Their tactful assistance averted a strike among the spinners in the Oldham district that would have affected 10,000 persons directly, and an immense number of others in the industry indirectly. At another time a strike took place and lasted seven weeks, but the Board was not able to intervene. In the "George Howe" case, where the issue was partly personal, but mainly a strained definition placed upon a clause affecting the card-room workers, the Board was helpful and so credited by the textile workers.

In the early years of the act we looked upon it with some suspicion and watched its operations very keenly. It has proven useful in the settlement of small disputes where little or no organization has been established by the workmen.

Because the act has proven helpful our confidence in it has improved and the tendency to submit matters of dispute to conciliation and arbitration boards is increasing, especially through the Board of Trade "panel of arbitrators."

The administration of the act, coupled with its moral influence and its political influence, has undoubtedly operated to prevent strikes and lockouts. It has surely been the means of maintaining peace and improving working conditions.

There is not much unfavorable criticism concerning the methods under which the act is operated, and positively no complaint as to its cost.

Outside the railways there is not much complaint made as to delays and not much fault found with decisions on account of alleged bias.
Ordinarily the boards deal only with the specific questions at issue. This is as it should be, in our opinion. Sometimes difficulties arise concerning the interpretation of awards and agreements, but these are usually adjusted satisfactorily on resubmission or reconsideration. Ordinarily there is not much difficulty in effecting the acceptance of awards and decisions. Our people may grumble a bit, but they will accept a decision. The sporting proclivities of the British people make such an attitude inevitable. I have no suggestion to offer as to a change in the act or in its procedure other than a desire to see it operated more speedily in railroad complaints.

The act is of no use to the workers who are not organized, because they are not intelligent nor courageous enough to crystallize their complaints or to adopt the modern means of self-help that accompany collective action. In cases of revolt among such men, however, the act has been found useful in two ways: (1) It can be used to dispose of the trouble pending. (2) Meanwhile an opportunity is afforded our trade-union officials to spread the doctrine of organization. By this means it enables us to increase our strength numerically, and to some extent it increases our power educationally and otherwise.

A most elaborate document called the "Brooklands Agreement" governs the cotton-spinning industry.\(^1\)

After the dispute in the George Howe case, referred to by Mr. Gill, this collective agreement was amended as follows:

On September 29, 1911, at a conference of representatives of the associations concerned, viz., the Federation of Master Cotton Spinners' Associations and the Amalgamated Association of Cotton Spinners, the Amalgamated Association of Card and Blowing Room Operatives, and the Amalgamated Association of Warpers, Reelers, and Winders, which affects 150,000 workpeople in the cotton-spinning industry, the following clause (6a) was added to the agreement:

When the procedure of clause 6 has been gone through without a settlement having been effected and a strike or lockout has taken place, the dispute subcommittees of the organizations which are parties to the dispute shall, without any formal application being made by either side, meet in Manchester at the same place and hour as the last meeting prior to the strike or lockout, commencing within a period not exceeding 14 days from the commencement of the strike or lockout, and subsequent meetings shall be held in Manchester until the strike or lockout is terminated, at the same place and hour, at periods not exceeding four weeks from the date of the last meeting.

In addition, the following resolution was adopted at the conference:

That when a strike or lockout has commenced it shall be an instruction to the general secretaries of the organizations which are parties to the dispute to at once communicate by letter with the secretary of the other side, in order to fix the definite date on which, under clause 6a, the joint meeting shall be held.\(^2\)

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1 See Appendix VIII for that portion of the Brooklands Agreement that covers the machinery for the adjustment of disputes.
2 Labor Gazette, October, 1911, pp. 364 and 365.
WARPERS, WINDERS, AND WEavers.

The "Joint rules for the settlement of trade disputes in the weaving, winding, and warping departments of the North and Northeast Lancashire Cotton Spinners and Manufacturers' Association and the Amalgamated Weavers' Association" are contained in the "Uniform List of Prices," etc. This list is a marvel of detail and covers every conceivable variety of work and a multitude of operations, dealing with the direct interests of 200,000 people.

A full text of the "Joint rules" may be found in Appendix IX. Clause 5 is considered such a novelty and so adroit that it is repeated here for the sake of giving publicity to such a farsighted provision for a speedy termination of a dispute that might otherwise be unduly prolonged. As this agreement was signed in September, 1910, it will be seen that this clause antedates by more than a year the clause added to the Brooklands Agreement.

5. Whenever a settlement of any trade dispute shall not have been come to and operatives are on strike or locked out of employment in consequence thereof, then meetings shall be held periodically between representatives of the North and Northeast Lancashire Cotton Spinners' and Manufacturers' Association and of the Northern Counties Textile Trades Federation; the first of such meetings shall be held in Manchester four weeks after and at the same place and hour as the last meeting of representatives in the same dispute, and subsequent meetings shall be held at the same place and hour periodically every four weeks until the dispute be settled, and without any formal application by either party for any such meeting.²

BUILDING TRADES.

The secretary of the Building Industries Federation of London, Mr. George Dew; Mr. J. Cummings, of the National Association of Operative Plasterers; and the general chairman of the executive council of the Amalgamated Society of Carpenters and Joiners, Mr. W. T. Wilson, with headquarters in London, were questioned on the subject of conciliation and the benefits their trades had received from the act of 1896. Several local men in other branches of the industry were also conversed with in London and outside towns, and attempts made to learn their views. Very few seemed to be at all conversant with its existence and those who had knowledge of it either did not have a high appreciation of the act or, for some other reason, declined to discuss its merits or demerits.

Mr. Wilson, however, expressed himself freely. His preference was decidedly in favor of the mutual conciliation boards established among the various branches of the building trades occupations, and more especially the National Board of Conciliation, which controlled the industry generally.²

¹ Uniform List of Prices, etc., p. 93. See also Appendix IX in this Bulletin, p. 158.
Mr. Wilson explained its operation, as follows:

If a grievance arises or a proposition is submitted by either workmen or employers in a given locality, the subject is referred to the local board, which consists of equal representation from employers and workmen of each trade. Upon failure to agree, the matter is then submitted to a central board, of which there are four, viz, the Northern, the Midlands, the Southeast, and the Southern. These boards meet when occasion warrants in the place most convenient to the inquiry, which is mutually agreed upon. If these central boards fail to effect a satisfactory adjustment, the matter under dispute is then referred to the national board. If failure to adjust then occurs, strikes or lockouts may then take place in the trade or trades involved. Sympathetic strikes usually follow if nonunionists are then employed.

Even though this procedure looks tedious and cumbersome, the boards act with promptness and, in most cases, make satisfactory settlements.

We arrive at conclusions by a majority vote. The chairman has a vote, but only as a member of the board. In no case can he give a casting vote.

We are not in favor of umpires or arbitrators, because we doubt their ability to be impartial.

Our mutual boards have prevented a great many disputes which otherwise would have terminated in a stoppage of operations. Decisions must be made on the merits of the question or questions submitted. Compromises are not accepted. We have never had occasion to use the national Conciliation Act of 1896.

In cases that have come under our observation that have been submitted to arbitration, in trades other than in the building industries, we have known of arbitrators seeking first-hand information from employers. We consider such procedure very tactless, because it shakes the confidence of the workmen and creates an impression that a bias exists.

We have also observed that the awards are at times vague, failure to interpret indefinite clauses causes friction, and an endless chain of disputes follows. These are some of the reasons why we in the building trades prefer to handle our own affairs rather than permit them to go to the act of 1896.

We are also of the opinion that outside intervention or conciliation is not the most practicable, largely because conciliators or mediators are not sufficiently informed or acquainted with either the conditions or the men to be able to consciously grasp the viewpoints of the workers. In a word, they can not put themselves in the place of the workers.

TRADES-UNION CONGRESS.

No data could be obtained by the writer to show that previous to its passage the Conciliation Act of 1896 had been either urged or indorsed by the labor organizations, but there was a general opinion among the trade-union officials that the act was a result of the successful working of the local conciliation boards established between many of the organizations and employers. It was generally agreed that Parliament had passed the act without either request or opposi-
tion on the part of the labor organizations, but that the latter, while not wishing to commit themselves to an advocacy of the bill, had felt that its moral effect would be helpful and that it might aid in preventing such dislocations of commerce and industry as had been caused by the many upheavals in the early nineties, notably by the dockers' strike.

Perhaps the best exponent of the attitude of the labor organizations as a whole toward a given subject is the action of the Trades-Union Congress, which meets annually. This body has placed itself on record a number of times, both in regard to voluntary and to compulsory arbitration or conciliation. It is quite evident that a careful watch is kept upon the act of 1896, and that any alterations of the scheme are closely scrutinized lest they should prove harmful to the workers' interests.

In 1908, by way of increasing the effectiveness of the conciliation act, the Board of Trade established a court of arbitration. The plan included the appointment by the Board of Trade of three panels, one composed of "persons of eminence and impartiality" from whom chairmen should be chosen, the second of representatives of the employers, and the third of representatives of the workers. In case of any request for the services of the court, it should be formed of either two or four representatives of employers and workers chosen from these panels, with one from the chairmen's panel to preside over their deliberations and to have a casting vote.

In response to this action by the Board of Trade, and with special reference to the appointed panels of arbitrators, Mr. T. Welsh, delegate from the Vellum Bookbinders to the Forty-second Trades-Union Congress, moved the following resolution, September 5, 1909:

This congress, while accepting the conciliation scheme of the Right Hon. Winston Churchill as a stage of industrial evolution, is of the opinion that the workmen chosen to serve on the panels of arbitration ought first to be elected or selected by this congress, as arbitrary appointments are always open to the danger of being used in the interests of a political party rather than in that of the nation.

In discussing his resolution Mr. Welsh said that the resolution was the recognition of a democratic principle, and asked for the right of the organized workers to elect their own representatives. There was a great danger in the near future if they had a reactionary Government and men were appointed antagonistic to trade-unionism. Arbitrary appointments by one man might lead to political jobbery.

The resolution was formally seconded, and passed practically without debate.

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1 For constitution of court, regulations governing its procedure, etc., see pp. 141-143.
The parliamentary committee of the congress took the matter up in a formal way with the Board of Trade on March 10, 1910, and on April 5 received a reply from Mr. G. K. Askwith, of the labor department, in which he said in part:

I am directed by the Board of Trade to advert to your * * * reference to the court of arbitration and * * * the appointments on panels of arbitration. I am to say that the suggestions contained in the resolution have been carefully considered by the president, but that he is of opinion that in view of the special and delicate character of the duties to be discharged by the court of arbitration it is of the first importance that the members should be appointed in the way best calculated to insure public confidence in the impartiality of the tribunal, and he thinks that this confidence is most likely to be secured and retained by continuing the present mode of appointing the panels.1

In 1910, while the forty-third congress was in session, it was moved and carried that the parliamentary committee should be instructed "to prepare a report on the various existing forms of conciliation in industrial disputes, both British and foreign." The report was presented to the next congress. The chief significance of this action lies in the fact that it was taken with the avowed purpose of securing information "for the guidance of congress in any future discussions that might arise upon this important subject."

COMPULSORY ARBITRATION.

If the attitude of the congress toward the act of 1896 and to official machinery for conciliation in general is strictly neutral, no such term can be applied to its position in regard to compulsory arbitration, or to any compulsory dealings with labor disputes. Several efforts have been made to secure its indorsement of compulsive machinery.

During the session of the thirty-fifth congress, on September 4, 1902, Mr. J. A. Seddon, a delegate from the National Shop Assistants (retail clerks' organization), moved the following resolution:

That this congress call upon the legislature to pass an act creating courts of arbitration; such courts to be constituted by an equal number of workmen and employers' representatives, and presided over by a lord justice, who shall take evidence from the party aggrieved or their representatives. Legal experts to be in all cases debarred from acting as representatives. The power of the courts to be compulsory, provided all efforts for conciliation have failed. Conciliation courts for the various industrial centers to be formed and to be termed district courts. In all cases workmen's representatives to be selected by trade-unions as commissioners of the aforesaid courts of arbitration. For the effective dealing with disputes commissioners to be constituted for the great staple trades. This act to apply to

1 Trades-Union Congress Report, 1910, p. 75.
all industrial disputes in Great Britain and Ireland. We therefore
instruct the parliamentary committee to draft a bill for the purposes
aforesaid.¹

A spirited debate followed the presentation of this resolution; it
was ably defended by delegates from the shop assistants, dockers,
boot and shoe workers, furnishing trades, and others.

Those opposing it represented the gas workers, boiler makers, car-
penters, and others, the miners’ delegates being vehemently opposed
to any compulsory proposition, but declaring themselves as heartily
favoring voluntary conciliation boards and arbitration courts.

On a vote being taken, the proposition was rejected by a majority
of 658,000 votes; the votes being 303,000 ayes, 961,000 noes.

In 1905, during the session of the thirty-eighth annual congress,
delegate Ben Tillett, of the Dockers’ Union, presented a resolution
calling for the formation of industrial boards of conciliation and
arbitration in all large industrial centers, and making provision for
either voluntary or compulsory arbitration, according to the choice
of the organization concerned. The portion dealing with this point
was as follows:²

There shall be two sections defining: (a) Voluntary conciliation
and arbitration; (b) compulsory conciliation and arbitration, option
to be left to unions to register under either section.

Considerable discussion followed, the advocates of the motion
pointing out the advantages of compulsory action, and dwelling on
the fact that it would render possible a really authoritative inquiry
into the state of a business and the validity of an employer’s con-
tentions as to the feasibility of raising wages or the necessity for
cutting them, while the opponents emphatically refused to trust their
industrial lives and fortunes to the hands of an arbiter. The motion
was put to a vote, the results standing: For the resolution, 673,000;
against, 765,000.

During the next four years resolutions providing similar plans
for compulsory arbitration were introduced, but the feeling against
any such scheme appeared to grow steadily stronger, and the resolu-
tion of 1909 was lost by a larger majority than had been cast against
any of the earlier motions—1,000,000 votes.³

On August 17, 1911, one of the labor members of Parliament intro-
duced a drastic bill providing for the settlement of labor disputes
by compulsory means. It was ordered to be read a second time on
October 24, and to be printed. After making the usual provisions
for calling on the Board of Trade in cases of industrial disputes, and
of its appointment within 15 days from the receipt of the application

¹Thirty-fifth Trades-Union Congress, 1902, pp. 66 and 67.
²Trades-Union Congress Report, 1905, p. 128.
of a board of conciliation and investigation, consisting of three members, the bill provided in effect that—

It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike on account of any dispute before or during a reference of such dispute to a board of conciliation and investigation. Any employer declaring or causing a lockout shall be liable to a fine of not less than £20 [$97.33] nor more than £200 [$973.30] for each day or part of a day that such lockout exists. Any employee who goes on strike shall be liable to a fine of not less than £2 [$9.73] nor more than £10 [$48.67] a day.

Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike, shall be liable to a fine of not less than £10 [$48.67] or more than £200 [$973.30].

During the forty-fourth session of the Trades-Union Congress, on September 8, 1911, the subject of this bill was brought up and the following resolution was presented:

That this congress hereby protests emphatically against the action of Mr. Crooks and other members of the Labor Party in introducing a bill into the House of Commons for dealing with labor disputes without the consent or authority of either the trade-unionists of the country or the Labor Party; and we desire to make it clear that we will by every means in our power resist every attempt to prevent or hinder the right of the workers to strike at any time when they consider such action necessary in defense or furtherance of their rights.1

The resolution was warmly supported, the bill being attacked on the ground that it practically took away the right of the worker to strike at all; that the principle of compulsory arbitration was an encroachment upon the liberty of the employee; that the proposed fines discriminated grossly against the men;2 and that the whole effect of the bill would be to tie the hands of labor to an unfair and dangerous degree. The resolution was carried unanimously.

COMPULSORY CONCILIATION AND INQUIRY INTO DISPUTES.

The Trades-Union Congress has uniformly shown a strong objection to compulsive measures of any kind, even when these did not go to the length of enforcing arbitration. During the session of the fortieth congress, in 1907, Delegate Ben Turner, from the Batley weavers, moved:

That this congress requests the parliamentary committee to secure the introduction of a conciliation-board bill into Parliament, making it compulsory on both employers and employed, before a strike or lockout takes place, to submit the points in dispute to such board, with a view of, if possible, coming to terms and thus avoiding a dispute.

1 Trades-Union Congress Report, 1911, p. 229.
2 Take the case of an employer who may have 5,000 men working for him. If he locks them out he may be fined £10 ($48.67); but if the 5,000 workmen come out, they may be fined £50,000 ($243,325).—Idem, p. 230.
or lockout. Such board shall only have power to arrange a settle-
ment with the full consent in writing of both parties to such dispute
or lockout.

Mr. Turner defended this proposition by saying, in part: “Make
the parties to a dispute talk first and fight afterwards. The practice
now is to fight first and talk afterwards. Conciliation boards would
not retard trade-unionism; they would foster its growth.”

Mr. Dawtry, delegate from the steam-engine makers, said, in part :
“The strike is a broken reed. Recognition of the unions would be
obtained under the plan.”

Others, in opposition, ridiculed the proposition, saying “compul-
sory conciliation” was a worse misnomer than “compulsory arbitra-
tion.”

The motion was defeated by 85,000 votes, 655,000 votes being cast
for it and 740,000 votes against.

In the forty-first congress held in 1908, Mr. D. C. Cummings, dele-
gate from the boiler makers, moved the following resolution for the
purpose of requesting Parliament to strengthen the Conciliation Act
of 1896: 1

In view of the necessity of preventing industrial disputes involv-
ing lengthened stoppage of work, and consequent loss to all parties
concerned, this congress is of opinion that the time has now arrived
when the provisions of the Conciliation Act of 1896 should be
strengthened in the direction of conferring compulsory powers on
the Board of Trade to inquire into any industrial dispute when re-
quested by either party. Pending such inquiry and report no strike
or lockout shall take place. Congress hereby instructs the par-
liamentary committee to take whatever steps they may deem advisable
to bring the foregoing into law.

This proposition was discussed much more temperately than the
former ones above referred to, but upon a vote being taken it was
defeated by 362,000 votes, 616,000 votes being cast for it and 978,000
votes against. Old-established unions, like the shipwrights and boiler
makers, supported it; the compositors, seamen, tin-plate workers, and
weavers opposed it.

At the next congress, on September 10, 1909, Mr. Dawtry, dele-
gate from the steam-engine makers, introduced practically the same
resolution. 2 It was declared lost by a large majority, no record vote
being taken.

1 Forty-first Trades-Union Congress Report, pp. 173 and 175.
CONCILIATION, ARBITRATION, AND SANITATION IN THE CLOAK,
SUIT, AND SKIRT INDUSTRY IN NEW YORK CITY.

BY CHARLES H. WINSLOW.

INTRODUCTION.

The signing of the Protocol, or treaty of peace, in September, 1910, between the Cloak, Suit, and Skirt Manufacturers' Protective Association and the Joint Board of the Cloak and Skirt Makers' Unions of New York City not only terminated a bitterly contested strike but it established machinery of mediation and arbitration for dealing with future disputes concerning wages, hours, and working conditions, and machinery of inspection and regulation for dealing with sanitary conditions. In the year and a half of its operation the success of this machinery has been such in the peaceful adjustment of many disputes and in the betterment of sanitary conditions as to make the study of its work of special interest and value.

The most significant feature of the Protocol was its establishment of three new agencies—the preferential union shop, a scheme for the adjustment of disputes which virtually set up a system of industrial courts for the trade, and the Joint Board of Sanitary Control—which have already affected profoundly the conditions of the industry.

The device of the preferential union shop was designed to meet the situation arising from the insistence of the manufacturers upon an open and of the unions upon a closed shop. Under this preferential union shop arrangement the employer is bound to maintain union standards as to hours, etc., and to give the preference in employing and retaining help to union members. On their side the unions are bound to maintain discipline in the shop among their members, to restrain them from breaches of contract and unauthorized strikes, and to see that they live up to the conditions of the Protocol; in other words, in return for the preference shown them, the unions assume full responsibility for the conduct of their members.

The machinery for settling disputes consists of a Board of Grievances and a Board of Arbitration, on each of which the manufacturers and the unions are equally represented. A dispute between an employer and an employee over wages, hours, or conditions of work may be at once, without trouble or expense, referred to the clerks of
the Board of Grievances. Should they be unable to settle it, the Board of Grievances passes upon the matter, after which, if either disputant is still unsatisfied, the question may be carried to the Board of Arbitration. In practice, this last step has never been taken in the case of an individual dispute, and the Board of Arbitration has been called upon only to settle differences arising between the manufacturers' association on the one hand and the unions on the other. In signing the Protocol both sides bound themselves to accept the decisions of the Board of Grievances and the Board of Arbitration.

The Joint Board of Sanitary Control is designed, first, to do away with the intolerable conditions existing in some of the shops by bringing to bear against them the organized sentiment of both employers and employees, and, second, to raise the standard of sanitary requirements throughout the industry. The board, which is made up of representatives of the manufacturers, the unions, and the public, is empowered to establish standards to which the signers of the Protocol bound themselves to conform. As the unions are bound to enforce the decisions of the board wherever their members are employed, practically every shop in the city, whether or not its owner signed the Protocol, is brought under supervision and control in sanitary matters. The board has been organized a little over one year, and it has already proved to be a singularly efficient and far-reaching agency for the improvement of conditions.

Prior to the strike of 1910 conditions in the cloak, suit, and skirt industry, so far as organization was concerned, either among the employers or employees, had been for a great number of years in a disorganized and chaotic state. The manufacturers in the face of a long drawn out and bitterly contested strike made every effort to place their association on a firm basis.

Cloak, suit, and skirt makers' unions have been in existence in New York City for a period of more than 22 years. Often their ranks have been depleted to a mere handful of men with a few staunch leaders. These same leaders have as frequently seen their ranks gradually swollen to the point where it has taken all their foresight and energy to maintain discipline and prevent war measures taking the place of peace methods. This condition is largely due to the influx of immigrants seeking admission to the garment-making trades. Probably no other trade organization has to deal with this problem to the same extent as the garment workers. It is estimated that 10,000 immigrants are absorbed by this industry each year. This in itself imposes no small task, as this heterogeneous multitude of divers races and nationalities must be taught the lesson of organization.
The Manufacturers' Protective Association, which just prior to the strike represented 75 establishments, employing approximately 10,000 workers, gradually increased its membership to 123 firms at the time of signing the Protocol, thereby increasing the number of people employed by association members to 15,000.

The cloak, suit, and skirt makers' unions in May, 1910, represented a membership of 6,000, but by July 1, or a week prior to the strike, had increased their membership to 22,000. The unions continued to recruit members during the period of the strike so that, at its expiration, the membership was approximately 40,000.

**STRIKE OF 1910.**

The strike went into effect by order of the unions July 7, 1910, and terminated September 2, 1910. It was mainly against the members of the Cloak, Suit and Skirt Manufacturers' Protective Association, who were engaged in the business of manufacturing and selling ladies' cloaks, suits, or skirts of various grades in and about the city of New York. In the conduct of the business of these particular employers there were employed designers, cutters, pressers, tailors, and other help, both male and female, to the number of about 60,000 people.

Prior to the beginning of the strike the employees had not submitted their grievances or demands nor had they formulated any statement of grievances or demands. After the strike had been going on for some time the unions submitted as a statement of their main grievances and demands the following:

Low wages, unreasonable night work, work in tenement houses, the disregard of holidays and Sundays, subcontracting, discrimination against union men, the irregular payment of wages, the exacting of security, the charging for material and electricity, and the blacklisting of active union men.

To remedy these grievances it is in our opinion necessary to establish a living standard of wages, to regulate the hours of labor, to limit night work, to prevent work on holidays, to abolish all charges for electricity and appliances, to do away with tenement-house work, to prevent discrimination, to provide for the regular payment of wages in cash both by manufacturers and outside contractors, to do away with inside subcontracting, to establish a permanent board of arbitration which is to settle grievances, the unions and employers to be equally represented on the board of arbitration, the appointment of shop committees and shop delegates.

We are ready to enter into a discussion with you of these grievances, and if a satisfactory adjustment of them is reached are prepared to recommend a settlement of the strike. In the event of such settlement every employee who participated in the strike to be reinstated, the terms of any settlement which may be reached to be reduced to writing and signed by both parties through their representatives.1

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1 The Cloak Makers' Strike, issued by the Cloak, Suit, and Skirt Manufacturers' Protective Association, New York City, 1910, p. 20.
Disinterested friends of the contending sides endeavored for weeks to bring them together, but to no avail. Later, however, after much maneuvering by each side to the controversy, which required the good offices of many public-spirited men both in and out of New York, the contending groups consented to a conference. It was agreed in advance of the conference that the closed shop was a subject which could not be discussed. This conference took place in New York City, beginning Thursday, July 28, 1910, and ending August 1, 1910.

At this conference there were 10 representatives of the manufacturers, 10 of the unions, an attorney representing the manufacturers' committee, and an attorney representing the committee for the workers. A prominent attorney who had been influential in bringing about the meeting served as its chairman.

The specific grievances to be discussed, according to the agreement of counsel representing the two parties, and the order in which they should be taken up and disposed of in the conference, were as follows:

1. The question of the subject of electricity or power and materials.
2. The question of work in tenement houses.
3. The exacting of security from employees.
4. The discrimination against union men.
5. Blacklisting of active union men.
6. Overtime and night work.
7. The question of holidays and Sundays.
8. The irregular payment of wages.
10. The claim of low wages.
11. Sanitary conditions.
12. The general method of enforcing agreements between the association—the manufacturers' association—and the unions.

The committees from both sides conferred for four days and thoroughly discussed the conditions of the trade from an intimate acquaintance with the facts; but notwithstanding this, the conference was broken off at the end of this time. It was clear to all that circumstances over which no one individual had any control had led to great abuses in the industry. Ruthless competition was constantly tending to drag down the reputable manufacturer to the level of the disreputable employer, who was pushing to the wall those who would deal fairly with their employees. Insanitary conditions in the shops, long hours, and low wages of the low-standard manufacturers were becoming a menace to the industry.

PROFFER OF SETTLEMENT BY MANUFACTURERS.

At the suggestion of the chairman, just prior to adjournment at the expiration of the third day of the conference, when there was hope of a speedy settlement of differences, the committee of the manu-

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1 The Cloak Makers' Strike, issued by the Cloak, Suit, and Skirt Manufacturers' Protective Association, New York City, 1910, p. 23.
facturers was requested to reduce to writing the basis of a settlement and present it at the following session, which they did, and which reads as follows:

We are prepared to recommend to the members of our association the following:

That, so far as practicable, and within a reasonable period, electric power be installed for the operation of machines, and that no charge for power be hereafter made to employees.

We are prepared to recommend to our members that no charge be made against employees for materials, except, of course, when caused by the negligence or dishonesty of the employee.

We are not prepared to recommend the abolition of the deposit system for shuttles, bobbins, silks, and parts of machinery.

We are prepared to recommend the establishment of a uniform deposit, say, of $1, with uniform deposit receipts, and are prepared to adopt rules and regulations in our association for enforcing the prompt return of all deposits to employees entitled to the same, and in such cases where at the present time the deposits are of a larger amount than $1, we are prepared to recommend to our members that they return the larger amount.

In the case where the employee is not in sufficient funds to make the deposit, and is deserving, the deposit shall be postponed until after the first pay day.

We accept in good faith the assurance of the union representatives that they will join in the establishment of rules and regulations by which to discipline any members who shall be shown to have been guilty of theft of materials, and we shall agree not to employ anyone so disciplined by the union.

We are prepared to recommend that no work be given to employees to take home at night. We believe, however, that rigorous disciplining of workers by us in our factories and by the union in its organization will be necessary to make this regulation effective.

In view of the existing provisions in the union constitution, we will in future make no time contracts with union men. So far as union men are concerned therefore, the question of security for the performance of contracts becomes purely theoretical.

We agree to make no time contracts with any of our nonunion shop employees, excepting foremen, designers, and pattern graders.

We are prepared to recommend that if the union will cooperate, all existing contracts with union men shall be canceled and securities returned.

We know of no discrimination against union men in our ranks and no black-listing, but we are prepared to discipline rigorously any member of our association who hereafter shall be proven guilty of violating the pledge already given.

We are prepared to recommend the adoption of the 10 legal holidays suggested. We do not see how shops operating on Sunday for employees observing Saturday and operating on Saturday for employees observing Sunday can be closed entirely on either day.

We are prepared to adopt rules and regulations for the regular weekly payment of wages and to recommend the payment of wages in cash. These regulations must, however, be worked out with due regard to our bookkeeping difficulties.

We concede that no man should be deprived of pay for unfinished piecework by reason of the failure of the employer to furnish necessary material, and we concede that each pieceworker should be paid as soon as his work is inspected and approved.
We do not concede, however, that the employers in our association have been guilty of unreasonable practices in this respect, but if any exist we will do all in our power to reform these conditions.

We are prepared to recommend that all subcontracting in inside factories be abolished. We assume that if our members do abolish this system union members will insist on its abolition in nonunion shops.

We are prepared to recommend the adoption of the following hours of labor:

A working week shall consist of 53 hours in 6 working days.

The following shall be the regular hours of labor: On the first 5 working days of the week, from 8 a.m. to 12 m.; from 1 p.m. to 6 p.m. Saturday, from 8 a.m. to 12 m., and from 1 to 5 p.m., except during May, June, July, and August, Saturday half holidays to begin at 12 o'clock.

No overtime work shall be permitted between the 15th day of November and the 15th day of January, or during the months of June and July, except on samples.

No overtime work shall be permitted on Saturdays, except to workers not working on Saturdays, nor on any day for more than 2½ hours, nor before 8 a.m. nor after 8:30 p.m.

For overtime work all week workers shall receive double the usual pay.

We are prepared to recommend the following wages for week workers, the following minimum schedule of weekly wages:

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Minimum Weekly Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machine cutters</td>
<td>$25</td>
</tr>
<tr>
<td>Regular cutters</td>
<td>25</td>
</tr>
<tr>
<td>Canvas cutters</td>
<td>12</td>
</tr>
<tr>
<td>Skirt cutters</td>
<td>20</td>
</tr>
<tr>
<td>Jacket pressers</td>
<td>20</td>
</tr>
<tr>
<td>Underpressers</td>
<td>16</td>
</tr>
<tr>
<td>Skirt pressers</td>
<td>18</td>
</tr>
<tr>
<td>Skirt underpressers</td>
<td>14</td>
</tr>
<tr>
<td>Part pressers</td>
<td>10</td>
</tr>
<tr>
<td>Reefer pressers</td>
<td>16</td>
</tr>
<tr>
<td>Reefer underpressers</td>
<td>12</td>
</tr>
<tr>
<td>Sample makers</td>
<td>19</td>
</tr>
<tr>
<td>Sample skirt makers</td>
<td>19</td>
</tr>
<tr>
<td>Skirt basters</td>
<td>12</td>
</tr>
<tr>
<td>Skirt finishers</td>
<td>9</td>
</tr>
</tbody>
</table>

We believe that buttonhole makers must be divided into two classes, on account of the different grades of work. We are prepared to recommend that in class A they shall receive a minimum of $1.20 per 100 buttonholes and in class B a minimum of 80 cents per 100 buttonholes.

These week prices we are prepared to recommend on condition that the unions agree to establish at once the same standards throughout the industry. We agree that prices for operators and tailors and piece tailors when working by piecework shall be so adjusted that they shall earn a minimum equivalent to the minimum doing the same work by week work. We do not believe it is practicable to fix a standard per hour.

Upon the question of sanitation, we recommend a Joint Board of Sanitary Control, consisting of representatives from the Manufacturers' Association and representatives from the public, whose function it shall be to establish standards of sanitary conditions to which both organizations shall commit their members and be obligated to maintain to the best of their ability and to the extent of their power.¹

¹ The Cloak Makers' Strike, issued by the Cloak, Suit, and Skirt Manufacturers' Protective Association, New York City, 1910, pp. 101–103.
COUNTER PROPOSITIONS FOR SETTLEMENT BY UNIONS.

The committee representing the cloak and skirt makers' unions, after careful consideration of the propositions submitted by the committee representing the Cloak and Skirt Manufacturers' Association, returned the following:

1. That so far as (these are offered as substitutes in a measure for what you submitted) practical and by December 1, 1910, electric power be installed for the operation of the machines, and that no charge for power be hereafter demanded of employees, and that a competent machinist have charge of the machines.

2. No charge to be made against employees for material except when caused—"for loss of material" it should be—except when caused by negligence of the employee.

3. We propose that this proposition be changed to read: "That no work be given to employees to make at their homes."

4. We offer for No. 4: "That in view of the existing provisions of the union constitution in future there shall be no time contracts with any individual shop employee except foremen and designers, and all existing contracts with shop employees, other than those above excepted, shall be canceled and the securities held shall be returned."

5. We suggest and recommend that No. 5 read: "That employees shall not be required to work during the 10 legal holidays sanctioned by the laws of New York, and that no employee be permitted to work more than six days in each week, and that those employees who observe Saturday shall be permitted to work Sunday in lieu thereof."

6. That a regular weekly pay day shall be established and payment for labor shall be in cash, and that each pieceworker shall be paid for all work delivered to and accepted by the foreman.

7. We recommend that this proposition should read: "That all subcontracting in the inside factories of the firms be abolished, and we pledge that if this be done by the employers, that our union will insist upon its abolition in all union shops."

8. That a working week shall consist of 49 hours, to be performed in 6 working days, 5 of the days to consist of 9 hours each, the sixth day of 4 hours, thus establishing the Saturday half holiday.

9. Overtime to be paid for at double the usual rate. Overtime shall not be permitted during June or July or from November 15 to January 15 or at any time when all workmen in the employ of the firm or of the firm's outside contractors are not employed, nor before 8 a.m. or after 8:30 p.m., nor for more than two and one-half hours in any one day.

10. The weekly wage scale originally presented by us, we are unable to consent to any modification thereof. The union pledges itself to use its very best efforts to make the prices agreed upon uniform throughout the industry.

Following is the scale of wages for week hands:

- Cutters, not less than $26 per week.
- Skirt cutters, not less than $22 per week.
- Jacket pressers, not less than $22 per week.
- Underpressers, not less than $18 per week.
- Skirt pressers, not less than $20 per week.
- Skirt underpressers, not less than $16 per week.
- Piece pressers, not less than $14 per week.
- Reefer pressers, not less than $18 per week.
- Reefer underpressers, not less than $14 per week.
Sample makers, not less than $24 per week.
Skirt makers, not less than $24 per week.
Skirt basters, not less than $15 per week.
Skirt finishers, not less than $12 per week.
Buttonhole makers, not less than $1.10 per 100 buttonholes.

11. Upon the question of sanitation we accept the recommendation for a Joint Board of Sanitary Control, consisting of an equal number of representatives of the Manufacturers' Association and the unions, whose function it shall be to establish standards of sanitary conditions to which both organizations shall commit their members and be obligated to maintain to the best of their ability and to the full extent of their power.¹

In considering the proposition from the manufacturers and the counterproposition from the unions, the conference developed that practically every subject could be agreed upon, except the question of wages and the year-round Saturday half holiday (instead of the four summer months), both of which matters the contending sides were willing to leave to arbitration.

These facts were arrived at after nearly a full day's discussion, wherein the contending sides agreed to give and take on many minor questions.

The real issue then became the question of the "union shop." The manufacturers were unalterably opposed to what they considered the closed shop. The unions believed that notwithstanding the settlement of many of their contentions, in order to satisfy the rank and file of union members, there must be an agreement whereby the manufacturers should unionize their establishments. This was the rock on which negotiations split. The employers were willing to employ a majority of unionists, to make formal expression of sympathy with the unions, and to cooperate with the unions for the improvement of all conditions of employment, but believed this basis of peace impracticable because of the insistence on what they termed the "closed shop." The suggestion was made by the chairman of an arrangement whereby union members should be preferred to non-union workers in hiring help, but was not accepted as a basis of agreement. Thus the conference terminated.

A full month intervened before negotiations were renewed. During this time the strike was carried on with renewed vigor. Meanwhile the same disinterested agencies that were responsible for the holding of the original conference had succeeded in bringing both sides together again, the same committee agreeing to serve.

**AGREEMENT IN SETTLEMENT OF STRIKE.**

The subject of a settlement was taken up at the point where it had been abandoned a month earlier, namely, the recognition of the "union shop." Considerable discussion ensued as to methods of ending the strike, but at the suggestion of the chairman, in order to

¹ The Cloak Makers' Strike, issued by the Cloak, Suit, and Skirt Manufacturers' Protective Association, New York City, 1910, pp. 108-110.
relieve the contention of the manufacturers on the one hand for an "open shop" and of the unions on the other for a "closed shop," the "preferential union shop" idea was offered as a solution. To this both sides were willing to agree, as it was pointed out that under this plan none of the rights for which each side was contending was necessarily sacrificed.

The important features of the final settlement were: A voluntary agreement of unlimited duration for collective bargaining; a minimum wage scale; a working week of 50 hours; a Board of Grievances, constituting a trade court with a staff of adjusters or mediators of disputes; a Board of Arbitration of disinterested public men, constituting a court of appeal; a Joint Board of Sanitary Control for the regulation of sanitary conditions of factories; and the preferential union shop. The document in which these items were agreed upon was known as the Protocol. The full text of the Protocol is as follows:

TEXT OF THE PROTOCOL AGREEMENT.

Protocol of an agreement entered into this 2d day of September, 1910, between the Cloak, Suit and Skirt Manufacturers' Protective Association, herein called the manufacturers, and the following locals of the International Ladies' Garment Workers' Union, namely: Cloak Operators' Union No. 1, Cloak and Suit Tailors' No. 9, Amalgamated Ladies' Garment Cutters' Association No. 10, Cloak and Skirt Makers' Union of Brownsville No. 11, New York Reefer Makers' Union No. 17, Skirt Makers' Union No. 23, Cloak and Skirt Pressers' Union No. 35, Buttonhole Makers' Union of New York (Local No. 64), Cloak and Suit Pressers of Brownsville No. 68, hereinafter called the unions.

Whereas differences have arisen between the manufacturers and their employees who are members of the unions with regard to various matters which have resulted in a strike, and it is now desired by the parties hereto to terminate said strike and to arrive at an understanding with regard to the future relations between the manufacturers and their employees, it is therefore stipulated as follows:

First. So far as practicable, and by December 31, 1910, electric power be installed for the operation of machines, and that no charge for power be made against any of the employees of the manufacturers.

Second. No charge shall be made against any employee of the manufacturers for material except in the event of the negligence or wrongful act of the employee resulting in loss or injury to the employer.

Third. A uniform deposit system, with uniform deposit receipts, shall be adopted by the manufacturers, and the manufacturers will adopt rules and regulations for enforcing the prompt return of all deposits to employees entitled thereto. The amount of deposit shall be $1.

Fourth. No work shall be given to or taken to employees to be performed at their homes.

Fifth. In the future there shall be no time contracts with individual shop employees, except foremen, designers, and pattern graders.

Sixth. The manufacturers will discipline any member thereof proven guilty of unfair discrimination among his employees.

Seventh. Employees shall not be required to work during the 10 legal holidays as established by the laws of the State of New York; and no employee
shall be permitted to work more than 6 days in each week, those observing Saturday to be permitted to work Sunday in lieu thereof; all week workers to receive pay for legal holidays.

Eighth. The manufacturers will establish a regular weekly pay day and they will pay for labor in cash, and each pieceworker will be paid for all work delivered as soon as his work is inspected and approved, which shall be within a reasonable time.

Ninth. All subcontracting within shops shall be abolished.

Tenth. The following schedule of the standard minimum weekly scale of wages shall be observed:

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate of Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machine cutters</td>
<td>$25</td>
</tr>
<tr>
<td>Regular cutters</td>
<td>$25</td>
</tr>
<tr>
<td>Canvas cutters</td>
<td>$12</td>
</tr>
<tr>
<td>Skirt cutters</td>
<td>$21</td>
</tr>
<tr>
<td>Jacket pressers</td>
<td>$21</td>
</tr>
<tr>
<td>Underpressers</td>
<td>$18</td>
</tr>
<tr>
<td>Skirt pressers</td>
<td>$19</td>
</tr>
<tr>
<td>Skirt underpressers</td>
<td>$15</td>
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<tr>
<td>Part pressers</td>
<td>$13</td>
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<tr>
<td>Reefer pressers</td>
<td>$18</td>
</tr>
<tr>
<td>Refer underpressers</td>
<td>$14</td>
</tr>
<tr>
<td>Sample makers</td>
<td>$22</td>
</tr>
<tr>
<td>Sample skirt makers</td>
<td>$22</td>
</tr>
<tr>
<td>Skirt basters</td>
<td>$14</td>
</tr>
<tr>
<td>Skirt finishers</td>
<td>$10</td>
</tr>
<tr>
<td>Buttonhole makers, class A</td>
<td>$1.25 per 100 buttonholes</td>
</tr>
<tr>
<td>Buttonhole makers, class B</td>
<td>80 cents per 100 buttonholes</td>
</tr>
</tbody>
</table>

As to piecework, the price to be paid is to be agreed upon by a committee of the employees in each shop, and their employer. The chairman of said price committee of the employees shall act as the representative of the employees in their dealings with the employer.

The weekly hours of labor shall consist of 50 hours in 6 working days, to wit, 9 hours on all days except the sixth day, which shall consist of 5 hours only.

Eleventh. No overtime work shall be permitted between the 15th day of November and the 15th day of January or during the months of June and July, except upon samples.

Twelfth. No overtime work shall be permitted on Saturdays except to workers not working on Saturdays, nor on any day for more than two and one-half hours, nor before 8 a.m. nor after 8.30 p.m.

Thirteenth. For overtime work all week workers shall receive double the usual pay.

Fourteenth. Each member of the manufacturers is to maintain a union shop, a "union shop" being understood to refer to a shop where union standards as to working conditions, hours of labor, and rates of wages as herein stipulated prevail, and where, when hiring help, union men are preferred, it being recognized that, since there are differences in degrees of skill among those employed in the trade, employers shall have freedom of selection as between one union man and another, and shall not be confined to any list, nor bound to follow any prescribed order whatever.

It is further understood that all existing agreements and obligations of the employer, including those to present employees, shall be respected; the manufacturers, however, declare their belief in the union, and that all who desire its benefits should share in its burdens.
CONCILIATION IN CLOAK INDUSTRY IN NEW YORK CITY.

Fifteenth. The parties hereby establish a Joint Board of Sanitary Control, to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

Said board is empowered to establish standards of sanitary conditions, to which the manufacturers and the unions shall be committed, and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power.

Sixteenth. The parties hereby establish a Board of Arbitration to consist of three members, composed of one nominee of the manufacturers, one nominee of the unions, and one representative of the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

To such board shall be submitted any differences hereafter arising between the parties hereto, or between any of the members of the manufacturers and any of the members of the unions, and the decision of such Board of Arbitration shall be accepted as final and conclusive between the parties to such controversy.

Seventeenth. In the event of any dispute arising between the manufacturers and the unions, or between any members of the manufacturers and any members of the unions, the parties to this Protocol agree that there shall be no strike or lockout concerning such matters in controversy until full opportunity shall have been given for the submission of such matters to said Board of Arbitration, and in the event of a determination of said controversies by said Board of Arbitration, only in the event of a failure to accede to the determination of said board.

Eighteenth. The parties hereby establish a Committee on Grievances, consisting of four members¹ composed as follows: Two to be named by the manufacturers and two by the unions. To said committee shall be submitted all minor grievances arising in connection with the business relations between the manufacturers and their employees.

Nineteenth. In the event of any vacancy in the aforesaid boards or in the aforesaid committee, by reason of death, resignation, or disability of any of the members thereof, such vacancy in respect to any appointee by the manufacturers and unions, respectively, shall be filled by the body originally designating the person with respect to whom such vacancy shall occur. In the event that such vacancy shall occur among the representatives of the public on such boards, such vacancy shall be filled by the remaining members representing the public in the case of the Board of Sanitary Control, and in the case of the Board of Arbitration both parties shall agree on a third arbitrator, and in case of their inability to agree, said arbitrator shall be selected by the governor of the State of New York.

PARTIES TO THE AGREEMENT.

The Manufacturers’ Protective Association at the time of the signing of the Protocol had 123 firms, with 15,000 employees. By February 15, 1912, the number had increased to 196 firms, with 24,000 people.

The unions in September, 1910, had a membership of approximately 40,000. In February, 1912, the membership had increased to 50,000 people. These included practically all the workers in the trade in New York City.

¹ This number was later increased to 10 members, 5 on each side. See p. 219.
The number of establishments and the number of employees under Protocol agreements, under contract-shop agreements, and independent of any agreement, on February 15, 1912, are shown in the following table:

CONDITIONS OF EMPLOYMENT FEBRUARY 15, 1912.

UNDER PROTOCOL AGREEMENTS.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Number of Establishments</th>
<th>Number Employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturers' Protective Association</td>
<td>196</td>
<td>24,000</td>
</tr>
<tr>
<td>Subcontractors registered under the Protocol</td>
<td>270</td>
<td>6,000</td>
</tr>
<tr>
<td>Total</td>
<td>466</td>
<td>30,000</td>
</tr>
</tbody>
</table>

UNDER CONTRACT-SHOP AGREEMENTS.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Number of Establishments</th>
<th>Number Employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Association of Manufacturers</td>
<td>250</td>
<td>10,000</td>
</tr>
<tr>
<td>Independent manufacturers</td>
<td>600</td>
<td>7,000</td>
</tr>
<tr>
<td>Alteration departments in retail stores</td>
<td>400</td>
<td>2,000</td>
</tr>
<tr>
<td>Total</td>
<td>1,330</td>
<td>19,000</td>
</tr>
</tbody>
</table>

INDEPENDENT OF ANY AGREEMENT.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Number of Establishments</th>
<th>Number Employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent contractors and manufacturers</td>
<td>33</td>
<td>1,000</td>
</tr>
</tbody>
</table>

TOTAL.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Number of Establishments</th>
<th>Number Employed</th>
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</thead>
<tbody>
<tr>
<td>Under protocol conditions</td>
<td>466</td>
<td>30,000</td>
</tr>
<tr>
<td>Under contract-shop conditions</td>
<td>1,330</td>
<td>19,000</td>
</tr>
<tr>
<td>Under independent conditions</td>
<td>33</td>
<td>1,000</td>
</tr>
<tr>
<td>Total</td>
<td>1,829</td>
<td>50,000</td>
</tr>
</tbody>
</table>

The manufacturers are represented in the machinery of the agreement through the Executive Board of the Association. This board elects the five members¹ on the Board of Grievances and a clerk. The board also elects two representatives to the Joint Board of Sanitary Control and one member of the Board of Arbitration, and designates counsel to represent them before the Board of Arbitration when necessary.

The employees are represented in the machinery through the Joint Board of the Cloak and Skirt Makers' Unions, which consists of five members from each of the following unions: Cloak operators, cloak and suit tailors, garment cutters, skirt makers, reefer makers, skirt pressers, and buttonhole makers. These members are elected by the respective locals for one year. They are unpaid and correspond to the Executive Board of the Association. This joint board elects the five members¹ on the Board of Grievances and a clerk, and it also elects two representatives to the Joint Board of Sanitary Control and

¹The number was fixed at two in the Protocol, but was later changed to five. See page 219.
one member of the Board of Arbitration, and designates counsel to represent it before the Board of Arbitration when necessary.

The Joint Board of the Cloak and Skirt Makers’ Unions virtually controls the entire cloak and suit trade in the city, representing at the present time unions with not less than 50,000 members in good standing.

The work of this joint board, in so far as it affects the Protocol, is complicated by the fact that not all the workmen in the trade are under the control of the Protocol. This board legislates and determines the policy of all nonassociation shops, for the reason that the unions have individual contracts with such shops.

In all matters affecting the conditions of the men who work in association shops the action of the joint board is not final. A change in the conditions (other than provided in the Protocol) can be made only by an agreement arrived at through a joint conference between the representatives chosen by the joint board and the Executive Board of the Association.

The unique feature of the Protocol is the fact that it was not intended as a temporary agreement, but as a permanent treaty, designed to avert violent contests between the manufacturers and workers for all time.

**PREFERENTIAL UNION SHOP.**

In considering the parties to the agreement and the agencies of its enforcement, it is important to understand the position of the union. The agreement between the employers and employees is based on the “preferential union shop” principles. The fourteenth section reads as follows:

Each member of the manufacturers is to maintain a union shop, a “union shop” being understood to refer to a shop where union standards as to working conditions, hours of labor, and rates of wages as herein stipulated prevail, and where, when hiring help, union men are preferred; it being recognized that, since there are differences in degrees of skill among those employed in the trade, employers shall have freedom of selection as between one union man and another, and shall not be confined to any list nor bound to follow any prescribed order whatever.

It is further understood that all existing agreements and obligations of the employer, including those to present employees, shall be respected; the manufacturers, however, declare their belief in the union, and that all who desire its benefits should share in its burdens.

The basic assumption of the preferential union shop then is that for the good of the industry and in order to meet the requirements which it is believed should obtain under modern conditions in an industry of this kind union standards should be maintained as to hours of labor, rates of wages, and sanitary conditions, and that this in turn involves the necessity of a strong union. In exactly the same
way it involves the existence of an association of employers. It,
furthermore, implies cooperation in good faith between the union
and the association of employers, it being held that through the co­
operation in good faith of the employers and employees standards
of conditions of work and wages can be maintained.

The preferential union shop then guarantees for the workmen
the existence of the union, since the employees would not hesitate to
become members of the union when the manufacturer openly declares,
and acts on his belief, that he prefers a union man in return for the
responsibilities which the union assumes in controlling and disciplin­
ing the men in his employ. Formerly the spirit prevailing in a shop
sometimes made it impossible for an employer to control his men
without risking the serious loss involved in a strike or lockout, but
now under such circumstances the union is bound to maintain order.

In actual practice the workings of the preferential union shop
involved the solution of certain specific problems:

(1) The retention of nonunion men already employed.

(2) The method of engaging employees, and the question of the
retention of future nonunion employees.

(3) The manner of dealing with employees who decline to become
members of the union.

(4) The manner of dealing with union men who neglect to pay dues.

In regard to (1), paragraph 2 of the fourteenth section provides
"that all existing agreements and obligations of the employer, includ­
ing those to present employees, shall be respected." This was made
necessary on account of contracts made prior to the strike which the
employer had to keep inviolate; but at the expiration of the contracts
the employees became members of the unions.

In regard to (2), the problem is solved in the following way:
As the manufacturer has obligated himself to the preference of union
men, the method works out automatically, inasmuch as the union sees
to it that the supply of union men is almost never exhausted. How­
ever, it sometimes occurs that no union man is to be had and the
employer hires a nonunion man, and in such cases, if the nonunion
man desires to secure for himself the same rights under the Protocol
as the union men in the shop, he joins the union; the union must
accept him if he applies in good faith. It is the essence of the prefer­
tential union shop that an opportunity to join the union shall not be
denied any man in the trade upon the payment of a reasonable initia­
tion fee and dues.

If, after opportunity is afforded to the nonunion man so employed
to join the union, he declines or fails to do so, he takes the risk of
discharge before union men of equal skill are discharged, as the
employer must in good faith give the preference, in retaining as well
as in hiring, to union men, skill being equal.
The preferential union shop then affords the nonunion man an opportunity to secure employment, but the union is strengthened through the system of preference in employment given to its members. Thus, the man who joins the union insures for himself preference in employment.

Although no case has yet arisen, some of the manufacturers express the belief that under this clause of the Protocol they would have the right to select a nonunion man in preference to a union man on the basis of superior skill, even if both men were qualified workmen. The question of the preferential union shop in so far as it affects the engaging of new help has thus far not led to conflict. In other words, in every instance the newly-engaged employee has either joined the union or left the employ of the firm.

In regard to (3), the right of the manufacturer to retain in his employ workmen who decline to become members of the union is conceded; such exception, however, is confined to very old or superannuated employees or to members of the employer's family.

As to (4), in the matter of the neglect of the men to pay their dues, the preferential union shop works out in the following way:

After a man has been in arrears for some time, the union files a technical complaint that the firm is preferring nonunion men. The joint investigation discloses the true state of affairs, and the manufacturer uses his best efforts to have the man pay his dues. In questions of this kind, the representative of the association or the firm helps in an arrangement by which the arrears are paid up in installments. At the time this arrangement is in progress, no effort is made to justify or excuse the man for falling in arrears unless there be exceptional circumstances. On the contrary, even the representative of the association impresses upon the man the fact that payment of dues to his organization is a responsibility which he must meet, and for the shirking of which the employer will not protect him, since the Protocol states that all who desire the benefits of the union should share in its burdens.

LIMITATIONS IMPOSED BY THE PROTOCOL UPON THE MANUFACTURER.

1. He obligates himself to employ union men by preference, as long as he is not restricted in the selection of the best available union help.
2. He is pledged to pay the scale of wages adopted for the week workers in the trade.
3. He can not oblige the men to work until the piece price to be paid is agreed upon by the manufacturer and a committee of employees.
4. He is pledged to accept the decision of the Board of Grievances or the Board of Arbitration upon any complaint made by his employees.

LIMITATIONS IMPOSED BY THE PROTOCOL UPON THE UNIONS.

1. There must be an open union; admission to the labor organizations must be free to all qualified without any discrimination.
2. The right to strike is given up as long as the Protocol is in force.
3. The employees must accept the decision of the Board of Grievances or the Board of Arbitration as final.

AGENCIES OF THE PROTOCOL.

The Protocol attempted to establish efficient agencies for the orderly adjustment of all disputes which might arise between the employers and employees, without cessation of work or other serious business disturbances in the trade. The agencies so established are a Board of Grievances (first established as a Committee of Grievances) and a Board of Arbitration.

The Board of Grievances consists of 10 members,5 representing each side signing the Protocol. This board is, at least potentially, by far the most vital instrument operating under the Protocol. All complaints, grievances, and misunderstandings arising between the cloak manufacturers organized in the association and their employees are finally submitted to this board.

BOARD OF GRIEVANCES.

PLAN AND SCOPE OF WORK.

The Board of Grievances (originally Committee on Grievances) is essentially a trade court, and since it is composed of an equal number of members representing each side, occasions may arise in which the court may be equally divided, and thus fail of a decision. To prevent such deadlocks, and also to provide for a tribunal to pass upon disputed questions of interpretation of the provisions of the Protocol and the more general and important controversies between the parties to it, a Board of Arbitration was created. The Board of Arbitration consists of one nominee of the manufacturers, one nominee of the unions, and one representative of the public.

The Grievance Committee established by the Protocol was largely an experiment. The Protocol was very meager on the question of the jurisdiction of the committee, and wholly failed to provide proper rules for its procedure. The Grievance Committee thus had to evolve its own methods in the light of its experience and the exigencies of the situation as they arose from time to time. A few months after the organization of the committee, it was found neces-

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1 This number was fixed at 4 in the Protocol, but was later changed to 10.
sary to increase the number of its members and to adopt certain rules for the orderly hearing and disposition of complaints. Finally, it was attempted to formulate a complete and comprehensive set of rules of procedure for the committee, and, in that attempt, certain differences of opinion developed between counsel for the two sides.

It was therefore agreed that these differences be submitted to the Board of Arbitration to the end that definite rules and plans of procedure be established.

Upon this subject the representatives of the parties to the Protocol met and agreed upon a large number of proposed rules, among others, increasing the number of members of the committee to 10, 5 representing each side, and changing its name to "Board of Grievances." 1 The points upon which the parties failed to agree were submitted to the Board of Arbitration for settlement.

One of the differences arose over a provision, urged by the unions, which would in effect authorize the representatives of the unions upon the Board of Grievances or other persons designated by them to inspect shops even where no formal complaint had been lodged against the employer, in order to ascertain whether the provisions of the Protocol were being lived up to in such shops, and also in order to afford the unions an opportunity to investigate informal complaints so as to determine whether they should be brought before the Board of Grievances. It was urged on behalf of the unions that in the absence of such a provision, complete justice could not be done the employees for the reason that many of them would fail to present grievances even if they were thoroughly justified, for fear of being disciplined by the employer; and that, on the other hand, a preliminary investigation on the part of the unions would obviate the necessity of bringing before the Board of Grievances complaints of a trivial nature. The Manufacturers' Association objected on the ground that frequent and arbitrary visits of union representatives might stimulate fancied grievances, disturb shop routine, and cause friction between the employers and employees. The Board of Arbitration, recognizing the strength of the arguments on both sides, settled the matter by the adoption of the following rule:

The clerks shall hold office for one year or until their successors are elected. 1 Each clerk shall appoint as many deputy clerks as shall be required for the expeditious transaction of the business of the board.

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1 Board of Grievances for year of 1911:


Alternates on the part of the association: Wm. Fischman, A. E. Lefcourt, E. J. Wile. Dr. Paul Abelson and J. Zimmerman act as recording clerks for their respective sides.
Upon the written request of any member of the Board of Grievances a committee of two, consisting of members of the board or of clerks or of deputy clerks, shall visit any shop for the purpose of ascertaining whether the provisions of the Protocol are being observed, and report on the conditions of such shop to the board.

This provision to be adopted as Section IV of the rules and plan of procedure of the Board of Grievances.

Another difference arose over the methods of securing speedy action on the part of the Board of Grievances and effective execution of its decrees. The Board of Arbitration settled this difference by the adoption of Sections XVII, XVIII, and XIX of the rules and plans of procedure of the Board of Grievances.

In addition to these provisions, and in conjunction therewith, the Board of Arbitration adopted the following as a part of Section XVIII:

All names of candidates for membership in the association shall be submitted by the latter to the unions before the admission of such candidates, in order to afford the unions an opportunity to acquaint the association with the records of such candidates in respect to the condition of their factories and their treatment of employees.

As finally adopted the rules and plan of procedure of the Board of Grievances are as follows:

RULES AND PLAN OF PROCEDURE ADOPTED BY THE BOARD OF GRIEVANCES.

For brevity, the Manufacturers' Association is herein referred to as the "manufacturers," the local unions and joint board are referred to as the "unions," and where both parties are meant they are referred to as the "parties."

THE BOARD OF GRIEVANCES.

I. Immediately upon the adoption of these rules and plan of procedure, the members of the Grievance Committee, appointed pursuant to the Protocol of Peace, shall constitute themselves into a board, and shall thereafter be known as "The Board of Grievances."

Hereafter in these rules it will be referred to as the "board."

II. The board shall immediately elect two chairmen, one from each side, who shall preside alternately, for two weeks.

TERM OF OFFICE.

III. These officers shall hold office for one year, or until their successors are elected.

OFFICE OF CLERKS.

IV. The clerks shall hold office for one year or until their successors are elected. Each clerk shall appoint as many deputy clerks as shall be required for the expeditious transaction of the business of the board.

Upon the written request of any member of the Board of Grievances a committee of two, consisting of members of the board or of clerks or of deputy clerks, one representing each side, shall visit any shop for the purpose of ascertaining whether the provisions of the Protocol are being observed, and report on the conditions of such shop to the board.

V. A chairman shall preside at all meetings.
VI. The board shall consist of five members from each side. Three members from each party (the manufacturers and the unions) shall constitute a quorum of the board.

REGULAR MEETINGS.

VII. The board shall meet regularly at designated and appointed times and places once a week. Meetings may be postponed by mutual consent and records of such postponement shall be recorded on the minutes.

SPECIAL MEETINGS.

VIII. Special meetings of the board shall be called only in case of emergency, or where prompt or immediate action is necessary, and may be called by the chairman of either side.

CALENDAR.

IX. The board shall have a regular calendar at each regular meeting. The clerks shall prepare a calendar of cases to be disposed of, and such cases shall be disposed of in regular order, unless special rules be made by the board.

ORDER OF TRIAL.

X. Cases shall be placed upon the calendar in the order in which they are received, i. e., in the order of the date of the filing of the complaints.

TRIALS AND HEARINGS.

XI. No case shall be taken up by the board until a complaint is filed in writing. As soon as a complaint is filed the clerks or their deputies shall make every effort to adjust the controversies. If the clerks agree their decision shall be binding on both parties, but either party has the right to appeal to the board if dissatisfied with the decision of the clerks. If the clerks fail to agree on a verdict, the complaint, together with the reports of the clerks, setting forth their findings as to the facts, shall be presented at the next meeting of the board. If the reports of the clerks agree, the board shall then dispose of the matter. If issues are raised by the two reports, the case shall be placed upon the calendar for trial and the issues shall be the issues thus raised by the reports of the clerks. At the time of trial both sides shall be heard and both parties shall offer their proofs, and the board shall receive and consider them. The board shall refer disputed questions of fact to any Subcommittee of the board, equally constituted from both parties, who shall report their decisions in writing to the board. If both parties agree the decision shall be final; but in case any question of principle is involved in the decision, the party deeming itself aggrieved may take an appeal to the Board of Grievances, which appeal shall be heard by the Board of Grievances, as any other matter presented to them.

DECISIONS.

XII. A majority vote shall be necessary to a decision. Both sides shall have an equal number of votes. In the event of a failure to arrive at such decision, the issues undecided shall be immediately framed and presented to the Board of Arbitration, as hereinafter provided.
ORDERS AND ENTRIES OF DECISIONS.

XIII. All decisions of the board shall be reduced to writing and orders thereon shall be entered by the clerks. The filing of an order with the clerks shall constitute notice to each party.

DUPLICATE RECORDS.

XIV. All records of the board shall be kept in duplicate by the clerks, one to be filed with the manufacturers and one to be filed with the unions.

SANITARY MATTERS.

XV. The board will not consider any grievances relating to sanitary conditions. These should be addressed to the Board of Sanitary Control.

WRONGFUL DISCHARGE OF EMPLOYEE OR DISCRIMINATION.

XVI. If the grievance arises because of the wrongful discharge of an employee or because of discrimination on the part of the employer, the finding of the board in favor of the employee shall entitle him to back pay in full during the period of his nonemployment pending hearing and determination of the grievance.

SHOP STRIKE, LOCKOUT, OR GENERAL REFUSAL TO WORK.

XVII. If a grievance arises because of the general stoppage of work of a shop or department of a shop, either by direction of the employer or because of or by the concurrent action of the employees, upon complaint received, the clerks or their deputies shall immediately proceed to the shop or department where the trouble occurs. If the employer is responsible for the stoppage, he shall, upon the demand of the clerks or their deputies, immediately recall all his employees pending the adjustment by the board of any grievance he may have, and he shall thereupon frame and present his grievance. If the employees are responsible for the stoppage, notice shall be immediately given to them to return to work pending adjustment of the grievance by the board, and the chairman of the price committee shall immediately direct them to return to work.

VIOLATION OF SECTION XVII OF THE PEACE PROTOCOL.

XVIII. A violation of the provisions of Section XVII of these rules or of Section XVII of the Protocol by either employer or employee shall constitute a grievance to be presented to the Board of Grievances. If, after hearing, the board finds the defendant guilty, the order of the board shall be made the basis of prompt discipline in the association or the unions, as the case may be. Such discipline shall consist of a suitable fine or expulsion. The action so taken shall forthwith be reported in writing to the Board of Grievances.

All names of candidates for membership in the association shall be submitted by the latter to the unions before the admission of such candidates in order to afford such unions an opportunity to acquaint the association with the records of such candidates in respect to the conditions of their factories and their treatment of employees.

POSTING OF THESE NOTICES.

XIX. Copies of the three preceding paragraphs and of Section XVII of the Protocol in English and translations thereof in Italian and Yiddish shall be posted in every shop of the manufacturers and in all the meeting rooms of the unions immediately upon the adoption of this plan.
XX. (a) If the Board of Grievances shall find, after the hearing of any case before it, that it can not arrive at a decision in accordance with the rules herein provided, it shall immediately request the Board of Arbitration to convene and hear the case. Wherever practicable it shall reduce the issue to an agreed statement of facts or prepare and submit for decision specified questions. So far as practicable it shall relieve the Board of Arbitration of the necessity of taking testimony upon the disputed questions of fact.

GENERAL ABUSES OR GRIEVANCES.

(b) If the Board of Grievances shall find any general grievance or abuse which either party has failed, after due opportunity, to correct, or if either party fails adequately to discipline members found guilty by the Board of Grievances, such matters may be presented by the party aggrieved to the Board of Arbitration for redress, either through its counsel or through its officers, and the hearings thereon shall be public.

CONFERENCE OF BOTH PARTIES CALLED BY THE BOARD OF GRIEVANCES.

XXI. Whenever, in the opinion of the Board of Grievances, a general situation arises requiring adjustment by both organizations, or revision or amendments of the Protocol, it shall call a conference of both organizations by duly authorized representatives to consider and discuss such matters. If such conference fails to agree, the situation shall be presented to the Board of Arbitration for adjustment, pursuant to the terms of the Protocol.

VIOLATIONS OF THESE RULES.

XXII. Failure to observe any of the provisions of this plan and rules shall constitute a grievance to be tried before the board.

COMPLAINT TO THE BOARD OF ARBITRATION.

XXIII. Failure to respond in due course to any notice given by the clerks shall constitute a grievance to be tried before this board. Repeated violations shall be the basis of complaint to the Board of Arbitration.

FAILURE TO COMPLY WITH ORDERS OF THIS BOARD.

XXIV. Failure to comply with any decision or order of the board shall constitute a grievance against the party to be presented to the Board of Arbitration.

NEGLECT OF DUTY ON THE PART OF MEMBERS OF THE BOARD.

XXV. Neglect of duty on the part of any member on the board shall be a grievance to be presented to the Board of Arbitration.

DISQUALIFICATION OF MEMBERS.

XXVI. No member of the board interested in a case shall sit in review thereof.
XXVII. Any member of the board failing to attend a meeting of the board or refusing to vote in a case heard by him, shall furnish such explanation, or in case it shall be deemed inadequate by either party, the matter may be presented to the Board of Arbitration by the aggrieved party, either through its counsel or through its officers.

APPEALS.

XXVIII. Either party deeming itself aggrieved may appeal to the Board of Arbitration from any order or decision made by the Board of Grievances, upon giving notice thereof to the clerks within 30 days after the service of a copy of such order or decision.

ORDER OF BUSINESS.

XXIX. Until further revised, the order of business of the board shall be as follows:
2. New complaints.
3. Old complaints adjourned for answer.
4. Trials of issue presented.
5. Matters for the Board of Arbitration.

MACHINERY OF THE BOARD OF GRIEVANCES.

On the side of the unions, the machinery of the Board of Grievances consists of five members and a clerk, named by the Joint Board of the Cloak and Skirt Makers' Unions. The investigating force of deputy clerks of the Board of Grievances on the union side are not elected by the joint board; they are chosen for six months by a general election of the entire membership of the unions.

The scheme is as follows: Each one of the local unions nominates candidates. These candidates are subjected to an examination by a committee of the joint board. An eligible list is prepared on which the applicants are rated "a," "b," "c," and "d," according to their ability and experience. A general ballot with the names arranged under their respective ratings is then prepared, from which the members of the unions voting in different halls, arranged according to convenient localities, select 30 business agents for the entire trade.

The Joint Board of the Cloak and Skirt Makers' Unions selects from these 30 business agents a corps of 4 or 5 who, with a district manager chosen from among the staff of elected business agents, constitute the clerk and deputy clerks of the Board of Grievances representing the unions. Sometimes this district manager or clerk is designated by the joint board although he was not elected by the union.
On the side of the Manufacturers' Association, the machinery of the Board of Grievances consists of five members and a clerk chosen by the Executive Board of the Association. The investigating force of five deputy clerks is appointed by the clerk.

The records of the Board of Grievances are technically kept by two secretaries, one representing the unions and one the association. In practice a deputy clerk of the association acts as secretary of the Board of Grievances. He prepares the calendar for the Board of Grievances, and his minutes are submitted for acceptance to the secretary representing the unions.

The calendar of the Board of Grievances consists of the following:
1. Reports of clerks on adjusted matters.
2. Cases off the calendar for lack of jurisdiction.
3. New complaints investigated by clerks to be acted upon by the Board of Grievances. (Cases of disagreement.)
4. Old complaints adjourned for answer. (Cases laid over or cases assigned to a special committee.)
5. Reports of disciplinary actions by respective organizations.
6. Cases uninvestigated or in process of investigation.

Each shop represents a unit in the unions. The employees of the shop elect the shop chairman and the price committee. In cases under investigation representatives of the unions may enter the shop for purposes of investigation only when accompanied by a member of the association staff of investigators.

**METHOD OF PROCEDURE IN ADJUSTING DISPUTES.**

When the workmen in a shop formulate a grievance against the employer the elected representative of the men in the shop, known as the shop chairman, presents this grievance to the firm or its representative in charge of the factory. In many cases the dispute is adjusted then and there.

Sometimes the firm fails to meet the demand of the employees as voiced by the shop chairman, claiming that the action complained of does not constitute a violation of the Protocol or the rules of the Board of Grievances, or the men may feel that in seeking redress for this particular grievance they wish to have the support of their unions in the contention. In such situations the men inform the unions of their grievance. A complaint is then filed in the office of the Manufacturers' Association, stating the grievance in specific terms.

When this complaint appears to be a definitely established point on which the Board of Grievances has already ruled, the manufacturer is informed by letter by the office of the Manufacturers' Association that the complaint filed by the unions is well founded, and
the firm is instructed to comply with the decision of the Board of Grievances which covers this particular case.

When the complaint is not based on the claim of a definite or established rule, but involves a dispute of facts or interpretation of the same, then a representative of the association and a representative of the unions, acting in the capacity of clerks or deputy clerks of the Grievance Board, as the case may be, call upon the firm and present the grievance as it is formulated in the written complaint.

A similar procedure is followed in case a manufacturer finds that the men refuse to do certain things because they claim that they are within their rights to refuse the request of the manufacturer. In this case he files a complaint with the association. The association, in turn, files a complaint with the unions. It is understood, of course, that this procedure is not necessary in the case of a dispute between the manufacturer and an individual workman. The right of discharge is restricted only by the right of the workman to file a grievance if he thinks he was unjustly discriminated against. Such matter becomes a subject for investigation and adjustment.

After complaints are filed a docket is prepared, in which the cases are numbered and analyzed. By mutual agreement, cases of pressing importance are taken up first; but a charge of "stoppage of work" or "lockout" takes precedence. Next in order of importance are cases where delay would entail a monetary loss to the manufacturer.

When the representatives of the unions and the association take up this matter with the firm, they act in a threefold capacity—first, as representatives of the Board of Grievances they expound its rules and regulations; second, as representatives respectively of employer and employee they voice the position of the respective sides on the question in dispute; third, they act in the capacity of mediators, their underlying motive being to adjust the difficulty in this particular case and, at the same time, to establish a permanent feeling of peace and harmony, on the basis of the Protocol, in that particular shop.

At the time the clerks take up this matter with the firm, the shop chairman, or representative of the men in the shop, is present, and sometimes also the committee which negotiates prices on piecework. The firm and the men present their respective sides of the question to the representatives of the Grievance Board.

It is a standing rule of the Board of Grievances that, at the time of the investigation, all facts, either directly or indirectly relevant to the dispute, must be presented. If necessary, an investigation of the shop can be made to ascertain the facts, and employees and the representatives of the firm may be called upon to testify.

On the basis of the facts thus brought out, the clerks then and there render a decision either in favor of the firm or in favor of the
union, or the matter is adjusted by mutual agreement. In some cases, the dispute is dropped entirely.

When the clerks have thus rendered their decision, the firm and the employees have the right to appeal from that decision to the Board of Grievances. In actual practice, such appeal has very rarely been taken—the records show only 2 cases out of 1,418—one appeal being taken by each side.

These decisions are made a matter of record, in duplicate form, with a short abstract of the facts developed at the time of the investigation.

In accordance with the rules of the Board of Grievances, all cases adjudicated in the above manner are reported to the Board of Grievances as “adjusted cases.” By mutual consent of the members of the Board of Grievances, any one of these cases may be reopened.

In cases where the representatives of the Board of Grievances fail to agree on a decision immediately, they defer the decision pending an informal discussion concerning the merits of the case and the principles involved, and render a decision subsequently. If, after further consideration, the representatives of the Board of Grievances still fail to agree on a decision, the matter is referred to the Board of Grievances for action and decision.

When such cases are referred to the Board of Grievances, a joint report of the established facts is made, together with written statements by the respective sides of the reasons for the disagreement. The case is then discussed by the members of the Board of Grievances, and, after argument, a decision is rendered, or the Board of Grievances refers the case for further investigation to the clerks of the Grievance Board or to a special committee designated for the purpose. In such instances, special reports on the disposition of the case, if an adjustment is reached, are made to the Board of Grievances at the next session.

Inasmuch as the question of “settling prices” is the most vitally important matter with which either side has to deal, it becomes interesting to know what actually happens in the event of a failure to agree.

The tenth section of the Protocol reads in part as follows: “As to piecework, the price to be paid is to be agreed upon by a committee of the employees in each shop, and their employer. The chairman of said price committee of the employees shall act as the representative of the employees in their dealings with the employer.”

As above stated, the prices to be paid for piecework must be agreed upon by the price committee and the employer. The records show that there were 141 complaints during the first year in regard to fixing prices, or where the employer and the employees could not
agree upon a final adjustment. In a complaint of this kind, the method pursued by the deputy clerks of the Board of Grievances (one representing the employers and one representing the employees) is to bring the contending parties together immediately, usually at the office of the employer, and have them submit their differences. In such cases the deputy clerks act as experts for their respective sides.

Both employer and employees are given every opportunity of presenting evidence in support of their contentions as to the actual practice and processes of making similar garments and with modifications or additions, as the case may be, or with the possible cost of producing extreme styles or models. It, of course, must be understood that the actual basis for a comparison must be made in the light of the cost of making the “sample” shown by the “sample maker,” plus past experience.

After the testimony has been submitted to the deputy clerks of the board they render their decision, fixing the prices then and there, such decisions rarely if ever being questioned or taken to the Board of Grievances. The prices so fixed are the prices for the entire season. Violations of the scale of prices on the part of the employer are subject to discipline by the Manufacturers’ Protective Association and on the part of the employees by the unions.

Following are the rules agreed upon by the Manufacturers’ Association and the unions for the guidance of the chairman of the price committee:

**INSTRUCTIONS TO CHAIRMAN OF PRICE COMMITTEE.**

1. The duty of the chairman of the price committee is to be tactful and polite under all circumstances, whether dealing with the employer or with his fellow employees. He is to avoid all unnecessary discussions.

2. The chairman is to notify every new employee that the shop is a union shop, and that every employee is expected to join the union.

3. Pieceworkers shall not be obliged to make any new garments until the price committee and the employer have adjusted the price on such garment.

4. No work shall be made by the employee outside of the factory, and the hours of labor and the scale of wages shall be strictly observed. The hours are from 8 a.m. to 12 m., 1 to 6 p.m., and on Saturday from 8 a.m. to 1 p.m.

5. The employers shall determine what departments will work overtime and designate the evenings best suited.

6. It shall be the duty of the said chairman of the price committee to report all grievances to the employer for adjustment.

7. Grievances which can not be adjusted with the employer must be presented to the union, which will in turn present them to the Joint Grievance Committee, as per paragraph 18 of the Protocol.

8. It is the duty of the said chairman to see that none of the workmen shall stop work pending the adjustment of grievances.
9. No shop meetings can be called except by order of the union, and firms are to receive 24 hours' notice to that effect, excepting the months beginning the 15th day of November until the 15th day of January, May, June, and July.

10. Week employees can not leave their employment except at the expiration of their week. Pieceworkers must finish their work before leaving.

The above rules have been agreed upon between the members of the Cloak, Suit, and Skirt Manufacturers' Protective Association and the Cloak and Skirt Makers' Unions of Greater New York.

The method of "settling prices," in so far as pieceworkers were concerned, that prevailed prior to the general strike in 1910 was a cause of constant friction. It was customary at the beginning of each season for the employers to attempt to establish piece rates for the cost of production on each garment, oftentimes regardless of protests on the part of the employees that the rates so fixed would not permit them to earn an adequate wage. Thus the wage rates which were considered as having been "absolutely dictated" by the employer were fixed for a period of about four weeks. During this time (which is considered the slow season) the employer took advantage of his opportunity to fill as many orders as he could possibly obtain. At the expiration of this time, however, or when the season was approaching its height, conditions became reversed. Previous to this time the employees were at the mercy of the employers, but during the height of the season the employer was at the mercy of his employees.

The employees, whenever their collective strength warranted, immediately presented the employer with an option of raising wage rates to their standard or of facing a strike. It was not unusual for the employers to be obliged to resist an attempt to raise prices under the threat of strikes three or four times during the height of the season. Indeed, sometimes the strikes came before the threat and even without warning, and at other times the employers were confronted with both.

However, at the expiration of the busy season, or at the approach of what is known as the slack season, conditions again changed; wage rates were reduced from 20 to 25 per cent by the employers and usually half the working force was laid off.

This method constantly put the employers of the better class at a disadvantage, for the reason that in many cases the small manufacturer worked his employees from 60 to 70 hours per week; kept his overhead charges at the minimum by the use of foot power instead of electric or other power; paid less for labor and kept an ever-changing force of employees, so that they were always without leadership. By these means the unscrupulous employers were able to undersell the legitimate manufacturers.
The claim is made that for a period of from five to six weeks at the height of the season, under the old conditions, the employees were able to earn much more than they are now getting during a similar period.

So far as wages are concerned the advantages under the Protocol over the old scheme are that the manufacturers know at the beginning of the season what prices they will have to pay for labor on each and every garment for the entire season. In addition, the unions have used every effort to equalize conditions in small establishments to the advantage of all concerned.

CASES OF GRIEVANCES, DECEMBER 12, 1910, TO SEPTEMBER 11, 1911.

Out of a total of 1,101 grievances which came before the staff of the Board of Grievances during a period of nine months, beginning December 12, 1910, and ending September 11, 1911, 998 complaints were made by the union and 103 by the association. These 1,101 grievances may be divided into 21 classifications. An analysis of these cases shows that 66.8 per cent, or 735 cases, are included in the first 7 classifications.

NUMBER AND PER CENT OF GRIEVANCES COMPLAINED OF BY UNION AND ASSOCIATION WHICH CAME BEFORE THE STAFF OF BOARD OF GRIEVANCES, DECEMBER 12, 1910, TO SEPTEMBER 11, 1911, ACCORDING TO CLASS OF GRIEVANCE.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Alleged unjustifiable discharge</td>
<td>176</td>
<td>176</td>
<td>352</td>
<td>16.0</td>
</tr>
<tr>
<td>2. Discrimination and unequal distribution of work</td>
<td>166</td>
<td>166</td>
<td>332</td>
<td>14.5</td>
</tr>
<tr>
<td>3. Dispute in fixing prices</td>
<td>116</td>
<td>116</td>
<td>232</td>
<td>10.9</td>
</tr>
<tr>
<td>4. Claim for wages due</td>
<td>102</td>
<td>102</td>
<td>204</td>
<td>9.4</td>
</tr>
<tr>
<td>5. Paying under scale of wages</td>
<td>70</td>
<td>70</td>
<td>140</td>
<td>6.4</td>
</tr>
<tr>
<td>6. Working on garments when price is unsettled</td>
<td>59</td>
<td>59</td>
<td>118</td>
<td>5.4</td>
</tr>
<tr>
<td>7. Cessation of work</td>
<td>40</td>
<td>40</td>
<td>80</td>
<td>3.9</td>
</tr>
<tr>
<td>8. Enforced competition between pieceworkers and week workers</td>
<td>43</td>
<td>43</td>
<td>86</td>
<td>3.9</td>
</tr>
<tr>
<td>9. Interference with conduct of and discipline in factory</td>
<td>49</td>
<td>49</td>
<td>98</td>
<td>4.6</td>
</tr>
<tr>
<td>10. Non-Protocol conditions in outside shops</td>
<td>35</td>
<td>35</td>
<td>70</td>
<td>3.2</td>
</tr>
<tr>
<td>11. Nonpayment for holidays</td>
<td>33</td>
<td>33</td>
<td>66</td>
<td>3.0</td>
</tr>
<tr>
<td>12. Hours of labor and overtime</td>
<td>23</td>
<td>23</td>
<td>46</td>
<td>2.1</td>
</tr>
<tr>
<td>13. Discrimination in distribution of work in favor of outside shops</td>
<td>22</td>
<td>22</td>
<td>44</td>
<td>2.0</td>
</tr>
<tr>
<td>14. Forced reduction of settled prices</td>
<td>17</td>
<td>17</td>
<td>34</td>
<td>1.6</td>
</tr>
<tr>
<td>15. Fixing amount of deduction from wages for damaged garments</td>
<td>13</td>
<td>13</td>
<td>26</td>
<td>1.2</td>
</tr>
<tr>
<td>16. Inside contract system</td>
<td>12</td>
<td>12</td>
<td>24</td>
<td>1.1</td>
</tr>
<tr>
<td>17. Failure to install electric power</td>
<td>11</td>
<td>11</td>
<td>22</td>
<td>1.0</td>
</tr>
<tr>
<td>18. Delay in complying with terms of adjustments</td>
<td>10</td>
<td>10</td>
<td>20</td>
<td>0.9</td>
</tr>
<tr>
<td>19. Abusive treatment of employees</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>0.8</td>
</tr>
<tr>
<td>20. Discrimination in distribution of work against outside shops</td>
<td>8</td>
<td>8</td>
<td>16</td>
<td>0.7</td>
</tr>
<tr>
<td>21. Miscellaneous</td>
<td>51</td>
<td>51</td>
<td>102</td>
<td>4.6</td>
</tr>
<tr>
<td>Non-Protocol cases</td>
<td>42</td>
<td>42</td>
<td>84</td>
<td>3.8</td>
</tr>
</tbody>
</table>

Total | 998 | 103 | 1,101 | 100.0 |

The largest number of complaints under a single classification arose from alleged unjustifiable discharge, but other causes were responsible for larger numbers of complaints, grouped under different headings. Thus, discrimination in the distribution of work (classifications 2, 13,
and 20) accounts for 186 grievances, while disputes relating to the wage scale or its violation (classifications 3, 5, 6, and 14) caused 271 complaints from the workers and 4 from the employers. Withholding money the worker believed due him (classifications 4, 11, and 15) gave rise to 130 complaints, but hours of labor and overtime was a noticeably unimportant cause, only 2 per cent of the whole number of grievances being due to it. From the standpoint of the employers a cessation of work—in effect a strike—and interference with the discipline of the factory were the important causes, accounting for 99 out of 103 grievances, or 96.1 per cent.

Over three-fourths of all the cases disposed of were adjusted by the deputy clerks of the Board of Grievances without being carried to the board itself. Only four cases were carried up to the court of final appeal, the Board of Arbitration. The means of adjustment of 1,004 of the 1,101 cases brought up between December 12, 1910, and September 11, 1911, are shown in the following table:

**MEANS OF ADJUSTMENT OF GRIEVANCES, DECEMBER 12, 1910, TO SEPTEMBER 11, 1911.**

<table>
<thead>
<tr>
<th>Means of adjustment</th>
<th>Number</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>By the Board of Arbitration</td>
<td>4</td>
<td>0.4</td>
</tr>
<tr>
<td>By the Board of Grievances</td>
<td>202</td>
<td>20.1</td>
</tr>
<tr>
<td>By the deputy clerks of Board of Grievances</td>
<td>798</td>
<td>70.5</td>
</tr>
<tr>
<td>Total cases disposed of</td>
<td>1,004</td>
<td>100.0</td>
</tr>
<tr>
<td>Pending September 11</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Non-Protocol cases</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Grand total</td>
<td>1,101</td>
<td></td>
</tr>
</tbody>
</table>

**FINAL DISPOSITION OF CASES, FROM DECEMBER 12, 1910, TO SEPTEMBER 11, 1911.**

<table>
<thead>
<tr>
<th>Disposition of cases</th>
<th>Number</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted by mutual consent</td>
<td>348</td>
<td>34.7</td>
</tr>
<tr>
<td>Dropped</td>
<td>253</td>
<td>25.2</td>
</tr>
<tr>
<td>Adjusted in favor of the union</td>
<td>202</td>
<td>20.1</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>174</td>
<td>17.3</td>
</tr>
<tr>
<td>Total cases disposed of</td>
<td>1,004</td>
<td>100.0</td>
</tr>
<tr>
<td>Pending September 11</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>Non-Protocol cases</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Grand total</td>
<td>1,101</td>
<td></td>
</tr>
</tbody>
</table>

The record of the final disposition of the 1,004 adjusted cases is shown in the above table. Evidently in a large number of cases only mediation was required, for 348 were adjusted by mutual consent and 253 were voluntarily dropped, the two classes forming 59.9 per cent of the total cases disposed of.

Since fully one-third of all the grievances are occasioned by wage disputes and because of the inability of one unacquainted with the
industry to understand the method of employments, it is important to note that the industry is divided between two groups of workers, the "pieceworker" and the "week worker."

It is estimated that 80 per cent of those employed in the industry are "pieceworkers." These "pieceworkers" are divided into three groups known as "operators," "finishers," and "piece tailors." It must be understood, however, that the last-named group makes a complete garment, but during a period of from three to four months in each year the "piece tailors" are employed as sample makers on the week-work basis.

The remaining 20 per cent are "week workers" and include the following: Machine cutters, regular cutters, canvas cutters, skirt cutters, jacket pressers, underpressers, skirt pressers, skirt underpressers, piece pressers, reefer pressers, reefer underpressers, sample makers, sample skirt makers, skirt basters, and skirt finishers.

In the above groups the presser's wage is fixed at a certain minimum amount for the 50 hours which constitute a week's work. However, these employees work by the hour and are paid by the hour, viz: If a man works the full 50 hours he is entitled to the fixed wage; but if he is employed a less number of hours he is entitled to pay for only the actual hours he worked.

The "cutters" and "sample makers" are week workers. They have a fixed minimum wage for a 50-hour week and are not paid for the actual number of hours worked, as are the pressers.

The rule adopted by the Board of Grievances to govern this class of employees is as follows:

All sample makers and cutters coming to work on Monday morning or at any time during the week shall work during the entire week, or for the remainder of the week, as the case may be. If laid off during the week, they shall be paid for the entire week. Sample makers and cutters leaving their places during the week shall not be entitled to any pay for any work which they performed during any part of that week.

The above rule shall not apply to sample makers and cutters who are working in a factory for the first week; the first week shall be known as a trial week. In such a case, when a firm discharges an employee during the week, or if a man leaves his place during the week, compensation shall be paid for the actual amount of time in days or hours that the man has worked.

The following is the rule adopted by the Board of Grievances in reference to payment for holidays:

First. If a workingman is engaged to work during the week of a holiday after the holiday, he is not entitled to pay for the holiday.

Second. If a workingman is engaged during the week of a holiday, before the holiday, or if he has worked for the firm during the previous week, he is entitled to pay for the holiday in proportion to the amount of time that he worked during the week in which the holiday occurred. For instance, if the presser worked 41 hours during the week of the holiday, he is entitled to a full
week's pay if that holiday did not fall on a Saturday. If the presser worked only 30 hours during the week, he is entitled to pay for 30 hours' work plus \( 30/41 \) of 9 hours.

The weekly, daily, and hourly wage rates; in accordance with the scale of the Protocol and these rules, are as follows:

**SCALE OF WAGES.**

<table>
<thead>
<tr>
<th>Occupations</th>
<th>Weekly</th>
<th>Daily</th>
<th>Hourly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machine cutters</td>
<td>$25</td>
<td>$4.50</td>
<td>$0.50</td>
</tr>
<tr>
<td>Regular cutters</td>
<td>25</td>
<td>4.50</td>
<td>.50</td>
</tr>
<tr>
<td>Canvas cutters</td>
<td>12</td>
<td>2.16</td>
<td>.24</td>
</tr>
<tr>
<td>Skirt cutters</td>
<td>21</td>
<td>3.78</td>
<td>.42</td>
</tr>
<tr>
<td>Jacket pressers</td>
<td>21</td>
<td>3.78</td>
<td>.42</td>
</tr>
<tr>
<td>Underpressers</td>
<td>18</td>
<td>3.24</td>
<td>.36</td>
</tr>
<tr>
<td>Skirt pressers</td>
<td>19</td>
<td>3.42</td>
<td>.38</td>
</tr>
<tr>
<td>Skirt underpressers</td>
<td>15</td>
<td>2.70</td>
<td>.30</td>
</tr>
<tr>
<td>Part pressers</td>
<td>13</td>
<td>2.34</td>
<td>.28</td>
</tr>
<tr>
<td>Reefer pressers</td>
<td>18</td>
<td>3.24</td>
<td>.28</td>
</tr>
<tr>
<td>Reefer underpressers</td>
<td>14</td>
<td>2.32</td>
<td>.28</td>
</tr>
<tr>
<td>Sample makers</td>
<td>22</td>
<td>3.96</td>
<td>.44</td>
</tr>
<tr>
<td>Sample skirt makers</td>
<td>22</td>
<td>3.96</td>
<td>.44</td>
</tr>
<tr>
<td>Skirt basters</td>
<td>14</td>
<td>2.52</td>
<td>.28</td>
</tr>
<tr>
<td>Skirt finishers</td>
<td>10</td>
<td>1.80</td>
<td>.20</td>
</tr>
</tbody>
</table>

**CASES OF GRIEVANCES, SEPTEMBER 12 TO DECEMBER 11, 1911.**

The previous tables presented the number and classification of grievances, the means of adjustment, and by whom adjusted, during the first nine months of the Protocol, or from December 12, 1910, to September 11, 1911, covering a total of 1,101 grievances. The table below presents a more detailed study of the grievances for the remaining three months of the full year, or from September 12, 1911, to December 11, 1911.

The average number of grievances during the first nine months was a fraction over 122 per month, the average number during the following three months was about 106 per month, or a diminution of 16 grievances per month.

This does not accurately show the actual diminution of grievances, for the reason that the Manufacturers' Association, during the first nine months after the establishment of the Protocol, contained a membership of 123 firms, representing 15,256 people employed, but during the last three months had increased its membership to 196 firms, representing 24,000 people employed; the ratio of grievances, therefore, during the first nine months was 8 per month for every 1,000 persons employed, as against 4.4 per month for every 1,000 persons employed during the last three months.

Another important indication is the diminution of complaints by members of the association. During the first nine months there were 103 complaints by the manufacturers out of a total of 1,101, or 9.4 per cent. The number of complaints recorded by the manufacturers during the last three months were 22 out of a total of 317, or 6.9 per cent.
The following table shows for this latter period the number of grievances according to the class and source of complaint and the final disposition of the grievances:

**NUMBER AND PER CENT OF GRIEVANCES COMPLAINED OF BY UNION AND ASSOCIATION WHICH CAME BEFORE THE STAFF OF BOARD OF GRIEVANCES, SEPTEMBER 11 TO DECEMBER 11, 1911, ACCORDING TO CLASS OF GRIEVANCE.**

<table>
<thead>
<tr>
<th>Classification of grievances</th>
<th>Disposition of grievances</th>
<th>Complaints made</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Adjusted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>By mutual consent. In favor of union</td>
<td>In favor of association</td>
</tr>
<tr>
<td>1. Reinstatement for alleged unjustifiable discharge</td>
<td>10 5 3 21 1</td>
<td>40 40 12.6</td>
</tr>
<tr>
<td>2. Discrimination and unequal distribution of work</td>
<td>11 9 1 22 4</td>
<td>47 47 14.8</td>
</tr>
<tr>
<td>3. Dispute in fixing prices</td>
<td>6 2 3 9 1</td>
<td>21 21 6.6</td>
</tr>
<tr>
<td>4. Claim for wages due</td>
<td>4 22 11 4 49 49 15.5</td>
<td></td>
</tr>
<tr>
<td>5. Paying under scale of wages</td>
<td>1 4 3 3 1 11 11 3.5</td>
<td></td>
</tr>
<tr>
<td>6. Working on garments when price is unsettled</td>
<td>6 2 5 4 1 7 9 16 5.0</td>
<td></td>
</tr>
<tr>
<td>7. Cessation of work</td>
<td>4 4 10 1 15</td>
<td>15 4.7</td>
</tr>
<tr>
<td>8. Enforced competition between piece-workers and week workers</td>
<td>1 3 1</td>
<td>3 2 5 1.6</td>
</tr>
<tr>
<td>9. Interference with conduct of and discipline in factory</td>
<td>5 2</td>
<td>7 7 2.2</td>
</tr>
<tr>
<td>10. Non-Protocol conditions in outside shops</td>
<td>11 2 2 15</td>
<td>15 4.7</td>
</tr>
<tr>
<td>11. Nonpayment for holidays</td>
<td>8 3 6 1 18 18 5.7</td>
<td></td>
</tr>
<tr>
<td>12. Hours of labor and overtime</td>
<td>1 1 1 1 2 2 6.6</td>
<td></td>
</tr>
<tr>
<td>13. Discrimination in distribution of work</td>
<td>1 1 2 1 4 1 5 1.6</td>
<td></td>
</tr>
<tr>
<td>14. Forced reduction of settled prices</td>
<td>1 3 2 5 1 14 14 4.4</td>
<td></td>
</tr>
<tr>
<td>15. Fixing amount of deduction from wages for damaged garments</td>
<td>1 1 2 1 4 1 5 1.6</td>
<td></td>
</tr>
<tr>
<td>16. Inside contract system</td>
<td>1 1 1 1 2 2 6.6</td>
<td></td>
</tr>
<tr>
<td>17. Failure to install electric power</td>
<td>1 1 1 1 2 2 6.6</td>
<td></td>
</tr>
<tr>
<td>18. Delay in complying with terms of adjustments</td>
<td>2 2 2 2 6 6 1.6</td>
<td></td>
</tr>
<tr>
<td>19. Arbitrary treatment of employees</td>
<td>1 1 2 2 3 3 6 1.6</td>
<td></td>
</tr>
<tr>
<td>20. Discrimination in distribution of work against outside shops</td>
<td>1 1 2 2 3 3 6 1.6</td>
<td></td>
</tr>
<tr>
<td>21. Miscellaneous</td>
<td>42 4 14 4 24 18 34 10.7</td>
<td></td>
</tr>
<tr>
<td>Non-Protocol cases</td>
<td>12 4 14 4 24 18 34 10.7</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>63 86 41 109 16 295 22 317 100.0</td>
<td></td>
</tr>
</tbody>
</table>

A comparison between these two tables shows a considerable difference in the relative importance of the leading causes of complaint. Only 12.6 per cent of the grievances are due to alleged unjustifiable discharge. Grievances connected with the distribution of work form an almost identical proportion for the two periods—16.8 per cent in the earlier, 16.7 per cent in the later. Disputes relating to the wage scale or its violation (classifications 3, 5, 6, and 14) show a marked decrease, causing only 15.8 per cent of the complaints in the second table against 25 per cent in the first. The withholding of wages the worker considers due him (classifications 4, 11, and 15) has increased in importance, forming the basis of 69 claims—21.8 per cent—against 11.8 per cent in the earlier period. Disputes over hours of labor and...
overtime show but a slight actual decrease and a marked relative increase, giving rise to 5.7 per cent of the complaints.

The means of adjustment of the grievances during the last three months of the full year, or from September 12, 1911, to December 11, 1911, was as follows:

**MEANS OF ADJUSTMENT OF GRIEVANCES, SEPTEMBER 12 TO DECEMBER 11, 1911.**

<table>
<thead>
<tr>
<th>Means of adjustment</th>
<th>Number</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted by the Board of Grievances</td>
<td>7</td>
<td>2.2</td>
</tr>
<tr>
<td>Adjusted by the deputy clerks of the board</td>
<td>307</td>
<td>97.5</td>
</tr>
<tr>
<td>Referred to the Board of Arbitration</td>
<td>1</td>
<td>.3</td>
</tr>
<tr>
<td><strong>Total cases disposed of</strong></td>
<td>315</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Non-Protocol cases</strong></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td>317</td>
<td></td>
</tr>
</tbody>
</table>

It will be seen from this table that 97.5 per cent of the complaints disposed of in the last three months were adjusted by the deputy clerks of the Board of Grievances without being referred to the Board itself against 79.5 per cent during the first nine months.

An interesting comparison of complaints in a given area between association factories and independent factories (that is, factories outside the Protocol agreement) is made by taking the entire area from Fifty-ninth Street east and west to the Battery. In this district there are 1,413 independent establishments, employing 21,000 people. The number of complaints recorded in this district from these independent establishments during the period from January 1, 1911, to December 31, 1911, was 11,773. The number of complaints from 196 association factories, employing 24,000 people under the Protocol, during a period of 12 months, or from December 12, 1910, to December 11, 1911, was 1,418.

In the independent establishments it is necessary, in order to “attend” to the complaints, to have 30 business agents constantly employed. The complaints in the association factories under the Protocol are “attended to” by 11 deputy clerks of the Board of Grievances, 6 appointed by the Joint Board of the Cloak and Skirt Makers’ Unions and 5 by the Manufacturers’ Association.

**DESCRIPTIVE ANALYSIS OF TYPICAL INDIVIDUAL CASES.**

The following analysis and presentation of 11 actual cases purposes to show, by way of illustration, as nearly as possible, the detailed information secured in the case of each particular complaint to serve as the basis for its proper adjustment, either by the deputy clerks of the Board of Grievances or by the board itself.

The character of the complaints selected is such as to cover the most serious elements of dispute between the contending parties.
In the selection of cases, particular attention has been paid to have cases presented covering a period of 8 months during the first year of the Protocol. This has been done to show the gradual diminution of time consumed in adjustment.

For example, case No. 1, cessation of work: The complaint was registered at 9 o'clock, Tuesday, April 11, and adjusted at 5 o'clock, Friday, April 14, thereby consuming four working days in the adjustment.

Case No. 8, unequal distribution of work: Another equally serious grievance. This complaint was registered at 9 o'clock, Saturday, October 7, and adjusted at 3 o'clock on the same date, thereby consuming six hours in the adjustment.

**Case No. 1.**—**Firm:** ------------------------.

**Complaint by:** Association.
**Date of complaint:** April 11, 1911.
**Date of investigation:** April 11, 1911.
**Date of adjustment:** April 14, 1911.

**Nature of complaint:**
The association charges that there was a stoppage of work in the factory of the firm and that this stoppage was caused by the order of the shop chairman.

**Abstracts of the issue:**
(a) Contention of the association—The association contends that cessation of work is a violation of the Protocol and unjustifiable under the circumstances, and that the firm was justified in discharging the shop chairman for causing this cessation.
(b) Contention of the union—The union contends that a cessation of work was not clearly established, but that the people had simply stopped work on some numbers on which the price had not been agreed upon.

**Abstract of facts established at investigation:**
1. The shop chairman came to the skirt department and told the tailors that there was trouble in another department and that they should cease work. The men ceased work, but when shown the provisions of the Protocol regarding cessations of work they resumed work. The tailoring department did not resume work until the chairman had gone to the union and returned at 11:30, at which time the men resumed work, the chairman having left the shop at 11 o'clock.
2. The shop chairman testified that he did visit the other departments, but told them that there was trouble in another department and that it was up to them to know what to do.

**Disposition:**
The deputy clerks of the Board of Grievances could not agree and the case was referred to the board for a decision.

**Issues involved in the trial of the case before the Board of Grievances:**
(a) From the standpoint of the association—In whichever way the shop chairman put it, he was responsible to all intents and purposes for the cessation of work, and as a responsible representative of the men in the shop, such a violation of the Protocol deserves condign punishment in the form of dismissal.
(b) From the standpoint of the union—

The union took the position that, since the people ceased work only for a very, very short period of time, and since they resumed work almost immediately, justice would be served if the shop chairman would be disciplined by the union.

**Decision:**

On the basis of the foregoing facts and contentions of both sides the Board of Grievances unanimously decided that the action of the firm in discharging the shop chairman for ordering a cessation of work was justified.

**Disposition:**

The case was therefore found in favor of the association.

**Case No. 2.—Firm:**

**Complaint by:** Association.

**Date of Complaint:** June 8, 1911.

**Date of Investigation:** June 8, 1911.

**Date of Adjustment:** June 10, 1911.

**Nature of Complaint:**

Dispute in price making.

**Abstracts of the Issue:**

(a) Contention of the association—

The association contended that the employer had 16 special garments to deliver; that the price committee chosen to adjust prices on these garments were incompetent to judge of same, and that in consequence of this there was a delay of more than a week in settling the price and that the order would be canceled, entailing a loss to the firm and the men, unless the matter was adjusted immediately.

(b) Contention of the union—

The union contended that the men were reasonable in their demands and perfectly competent to judge the garments and fix prices, and that the delay was due as much to the firm as to the men.

**Abstract of Facts Established at Investigation:**

1. Sixteen garments of style No. 1148 had to be delivered within three days or the order would be canceled.

2. There were some members on the price committee who had not been in the habit of judging garments of the above style, which were in the nature of special orders.

3. The price committee and the firm had been unable to agree on fixing a price on the above number for several days.

4. The difference of opinion concerning the fixing of a price on the garment in dispute between the firm and the men involved a large proportion of the labor cost of production.

**Decision by the Deputy Clerks of the Board of Grievances:**

1. The 16 garments of the style in question were to be made at once.

2. A new price committee was to be elected at a meeting to be held by the shop on the same day (June 8).

3. The price on this garment must be agreed upon by this committee and the firm by Monday, June 12.

4. If there was no agreement on the price by the time mentioned above a representative of the union and of the association was to fix the price, which would be binding.
Disposition:
The price was mutually adjusted by the price committee and the firm to the unqualified satisfaction of both sides.

CASE NO. 3.—FIRM: ______ ______.

COMPLAINT BY: Union.
DATE OF COMPLAINT: August 3, 1911.
DATE OF INVESTIGATION: August 4, 1911.
DATE OF ADJUSTMENT: August 5, 1911.
NATURE OF COMPLAINT:
Unequal distribution of work and discrimination in favor of new workmen.

ABSTRACTS OF THE ISSUE:
(a) Contention of the union—The union contended that the firm had installed a new department, which was working in full force, while the old people were not being given work. They further contended that the two departments were doing similar work and that, therefore, there should be no discrimination.
(b) Contention of the employer—The firm absolutely denied any intent or act of discrimination, and contended that the work was equally distributed in both departments.

ABSTRACT OF FACTS ESTABLISHED AT INVESTIGATION:
1. Prior to the signing of the Protocol, the firm had engaged nonunion men on a yearly contract. Section XIV of the Protocol provided that these individual contracts shall be in force until their expiration, after which none shall be renewed. At about this time the contracts of these workers expired and the firm engaged a new set of men, creating a department of 17 operators.
2. An examination of the books of the firm showed that the 17 workmen in the new department mentioned above had been getting for the last two weeks a number of garments in exact proportion to the workmen in the old department, who were 13 in number.
3. The men in the old department who were under the impression that the new department was getting all the work were requested to select from their number any two or three workmen whose pay books would be examined. The examination of each individual book tallied with the record of the firm.

DECISION OF THE DEPUTY CLERKS OF THE BOARD OF GRIEVANCES:
On the basis of the foregoing facts the clerks were convinced that the difficulty arose because of the suspicious attitude of the employees in the old department toward the employees in the new department.

DISPOSITION:
The charge was declared unfounded and the case was found in favor of the association.

CASE NO. 4.—FIRM: ______ ______.

COMPLAINT BY: Union.
DATE OF COMPLAINT: August 14, 1911.
DATE OF INVESTIGATION: August 15, 1911.
DATE OF ADJUSTMENT: August 15, 1911.
NATURE OF COMPLAINT:
The firm was not paying cutters the scale of wages.

ABSTRACTS OF THE ISSUE:
(a) Contention of the union—
The union contended that, since the signing of the Protocol, the firm had had a staff of cutters only a very small portion of whom were getting the scale—$25 per week; the others were getting below the scale in various amounts.
(b) Contention of the employer—
The employer contended that he was paying all the regular cutters the scale and that the others were learners.

ABSTRACT OF FACTS ESTABLISHED AT INVESTIGATION:
1. There were some cutters who were getting the scale; the majority were not paid the scale.
2. While none of those cutters not receiving the scale could be considered learners, they were in no sense standard cutters or competent mechanics according to the standards of the trade.
3. Since the signing of the Protocol, the firm had had in its employ three or four of the incompetent mechanics mentioned, who were in the nature of an incubus on the establishment, being kept by the firm through business influence—buyers or salesman or relatives or other business connections.

DECISION OF THE DEPUTY CLERKS OF THE BOARD OF GRIEVANCES:
On the basis of the foregoing facts the clerks decided that on and after December 1 the firm must pay every cutter the scale of wages if it retains them in its employ.

DISPOSITION:
The case was therefore found in favor of the union.

CASE NO. 5.—FIRM: ____________________.

COMPLAINT BY: Union.
DATE OF COMPLAINT: August 19, 1911.
DATE OF INVESTIGATION: August 21, 1911.
DATE OF ADJUSTMENT: August 22, 1911.

NATURE OF COMPLAINT:
Forced reduction of settled prices.

ABSTRACTS OF THE ISSUE:
(a) Contention of the union—
The union contended that garment 221 was settled for 85 cents. Later the firm cut one sample of the same garment from cheaper material and forced a reduction of 10 cents, which the people agreed to. It was subsequently found that the coat which they expected to be cut from cheaper material was cut from the original material, and they received 75 cents.
(b) Contention of the employer—
The employer contended that they had intended producing the garment in an inferior quality of material, but found no market for it.

ABSTRACT OF FACTS ESTABLISHED AT INVESTIGATION:
The employees had worked one week on garments supposed to be of cheaper material, but in reality they had never received a garment cut from the cheaper material than the original garment, and had received 75 cents, which was a reduction of 10 cents on the original or fixed price.
Decision of the Deputy Clerks of the Board of Grievances:

On the basis of the foregoing facts it was decided by the clerks that the employees should receive 85 cents for the said garment and all garments made of this material in the future, and that they should also receive the difference due them on the garments they had made during the previous week.

Disposition.

The case was therefore decided in favor of the union.

Case No. 6.—Firm: ——— ———.

Complaint by: Union.
Date of Complaint: September 5, 1911.
Date of Investigation: September 7, 1911.
Date of Adjustment: September 8, 1911.
Nature of Complaint:
The firm was not paying the workmen in the pressing department the scale of wages.

Abstracts of the Issue:
(a) Contention of the union—
The union contended that the pressers were not receiving the scale.
(b) Contention of the employer—
The employer contended that they were and had been paying the scale of wages, as could be shown on the books and records of the office.

Abstracts of Facts Established at Investigation:
1. The pressers were getting the scale.
2. The complaint originated from one underpresser who had worked in this shop during a part of the season and who, when there was a lack of work, was laid off for comparative incompetence. Apparently for spite, this man made the claim that he was not getting the scale, and bolstered up his claim by submitting to the union the envelope of another underpresser, on which $17 was marked, the scale being $18.
3. It was established that this underpresser, who was receiving $17 every week instead of $18, was remitting to the firm, every week, $1 for a concession to vend food and other articles to the people working in the factory. This concession he has had for a number of years.

Decision of the Deputy Clerks of the Board of Grievances:

On the basis of the foregoing facts the clerks decided that the firm was paying the scale of wages in accordance with the provisions of the Protocol and that the charge was unfounded.

Disposition:

The case was therefore found in favor of the association.

Case No. 7.—Firm: ——— ———.

Complaint by: Union.
Date of Complaint: September 19, 1911.
Date of Investigation: September 20, 1911.
Date of Adjustment: September 20, 1911.
Nature of Complaint:
Work on garments on which the price had not been fixed.
Abstracts of the Issue:

(a) Contention of the union—
The union's contention was that the firm had demanded of the people that they work on garments on which the price had not been settled, and they explained that, on some numbers, there had been an understanding between the firm and the men during the months of June and July that a special price should be agreed upon for the dull season, but that now, during the busy season, the firm demanded that the people work at that price. This arrangement, the union contends, is irregular and contrary to the rules of the Board of Grievances.

(b) Contention of the employer—
The firm contended that these garments were bona fide settlements for the entire season.

Abstract of Facts Established at Investigation:
1. The issue involved concerned only one garment.
2. That style was made for a special price during the months of July and August.
3. The firm and the men had not complied with the formality of signing the price list.
4. The firm did not have the signature of the chairman of the price committee on the adjustment of this number.

Decision of the Deputy Clerks of the Board of Grievances:
On the basis of the foregoing facts the clerks decided that the adjustment on the style in question was irregular and could not be enforced in the face of a dispute by either party.

Disposition:
The case was therefore found in favor of the union.

Case No. 8.—Firm: --------------------------.

Complaint by: Union.
Date of Complaint: October 7, 1911.
Date of Investigation: October 7, 1911.
Date of Adjustment: October 7, 1911.
Nature of Complaint:
The foreman in the skirt department of the factory was playing favorites and was not distributing the piecework equally.

Abstracts of the Issue:

(a) Contention of the union—
The union contended that work should be distributed equally, as far as possible, among the pieceworkers, which is one of the established rules of the Board of Grievances, and that their demand on this point is equitable because, while a benefit to the men, it is not detrimental to the best interests of the firm.

(b) Contention of the employer—
They have no knowledge of discrimination; they assumed the distribution of work was equitable and had had no complaint from the shop chairman hitherto.

Abstract of Facts Established at Investigation:
The union submitted a table showing the wages of 18 skirt people during the past three weeks. This table, when compared with the books of the firm, showed that, after making allowances for sicknesses and absences, there had been an unequal distribution of work.
Decision of the Deputy Clerks of the Board of Grievances:

On the basis of the foregoing facts it was conceded that the complaint of the union was justifiable and the fault lay with the foreman. The firm, wishing to have no repetition of such complaints, agreed to discharge the foreman at the end of the month, when his contract expired.

Disposition:
The case was therefore found in favor of the union.

Case No. 9.—Firm: ——— ———.

Complaint by: Union.
Date of Complaint: October 17, 1911.
Date of Investigation: October 17, 1911.
Date of Reinvestigation: October 19, 1911.
Date of Adjustment: October 20, 1911.

Nature of Complaint:
The shop chairman was discharged for no other reason than that he maintained the rights of the men and contended for the Protocol conditions in the shop.

Abstracts of the Issue:

(a) Contention of the union—
The contention of the union is that the man was discharged solely for his activity as shop chairman in standing for union principles in the discharge of his duties.

(b) Contention of the employer—
The contention of the employer is that the shop chairman is overbearing and dictatorial in his manner, is hampering the firm in its dealings with the men, and is creating confusion by disputes with the people.

Abstract of Facts Established at Investigations:

1. The shop chairman had been employed by the firm for a number of years, had acted as shop chairman for a number of months, and had given satisfaction to the firm and the men.
2. The relations between the shop chairman and the member of the firm who had charge of the factory were friendly and almost cordial.
3. The shop chairman was a man of good judgment and had an understanding of what are reasonable and unreasonable demands on the part of the men.
4. In his capacity as shop chairman the man had shown strictness and a somewhat autocratic manner in making the workingmen in the shop live up to the regulations of the union in the payment of dues and assessments which had been levied. This action of the shop chairman had created a feeling of hostility on the part of some of the men in the shop toward him.
5. Prior to the difficulty under investigation the firm had been negotiating prices on certain garments with the shop chairman, and the price committee, as representing the sentiment of the shop, was not disposed to agree to the offer of the firm in the fixing of prices on one or two styles. The shop chairman was rather disposed to more than meet the firm halfway on this question of prices, and at the request of the firm called a shop meeting, where this matter was discussed. At this meeting the shop chairman took a noncommittal attitude on the subject, and the shop unanimously decided to accede to the proposition of the firm.
6. Thereafter some members of the shop who had been ill disposed toward the chairman for reasons explained in some way communicated to
the firm, through the foreman or others, that the shop chairman was the cause of the difficulty.

7. The fact that the relations between the shop chairman and the firm were cordial aggravated the feeling on the part of the firm, who felt that he was guilty of double-dealing.

8. At the same time a dispute arose between the shop chairman and the foreman in reference to the making of a special garment, which was of a greater length than the usual styles on which the prices had been fixed. In such cases it had been the custom of the shop to have the men who get such garments make same without agreeing beforehand upon the additional payment or bonus. On account of the strained relations between himself and the firm, the shop chairman refused to make the garment in question unless he get a certain additional price, which he requested should be agreed upon in advance; this price the firm felt was exorbitant. The garment was not made, and the order was canceled. Thereupon the firm told the shop chairman that his services would no longer be required after he finished out the garments he had in process.

The deputy clerks, October 18, reported a disagreement to the Grievance Board. The board thereupon ordered a reinvestigation.

**Decision of the Deputy Clerks of the Board of Grievances:**

On the basis of the foregoing facts, the clerks decided that the shop chairman was wrongfully discharged. In this decision the firm cheerfully acquiesced, being convinced from the facts established that they had acted on a misunderstanding in the situation. This man was therefore reinstated by the firm, but not as shop chairman.

**Disposition:**

The case was therefore found in favor of the union.

**Case No. 10.—Firm:** ----------------------

**Complaint by:** Union.

**Date of Complaint:** November 16, 1911.

**Date of Investigation:** November 17, 1911.

**Date of Adjustment:** November 17, 1911.

**Nature of Complaint:**

The shop chairman was discharged and the union made charges of discrimination.

**Abstracts of the Issue:**

(a) Contention of the union—

The contention of the union is that the shop chairman had been discharged at the beginning of the season because the firm did not wish him to be in control of the shop in the settlement of prices for that season.

(b) Contention of the employer—

The contention of the employer is that there was no question of discrimination involved; that they never had trouble regarding prices with their people, and that the discharge of the shop chairman was decided upon simply for the peace and order of the shop.

**Abstract of Facts Established at Investigation:**

1. The man was not shop chairman at the time of his discharge.

2. On the evening of the day on which he was told that his services would no longer be required, and he had received his pay, he kept the matter of his discharge from his fellow workmen and ran for election as shop chairman.
3. In his relations with the firm the man had shown a disposition to assume the responsibilities of shop chairman only at such times as he thought it was to his personal advantage to do so. During the busy season, when the shop chairmanship entails a loss of time, he invariably refused to act as shop chairman, while during the dull season he contrived to be elected.

4. The immediate cause of his discharge was a serious quarrel which he had with another workman who was selected to make the duplicates. That workingman had only worked for the firm during the previous season, but as his work was exceptionally good the firm selected him to make the duplicates, overlooking Mr. ---, who formerly made them.

5. It was the testimony of the shop chairman and the other members of the price committee, speaking for the shop, that the rights of the men would be as fully conserved, if not better, with the elimination of Mr. --- from the shop.

**Decision of the Deputy Clerks of the Board of Grievances:**

On the basis of the foregoing facts the clerks found that, for the welfare of all concerned, since the man was at odds with the firm and the men, he should not be reinstated.

**Disposition:**

The case was found for the association and the man's discharge upheld.

**Case No. 11.—Firm: ——— ———.**

**Complaint by:** Union.

**Date of Complaint:** December 7, 1911.

**Date of Investigation:** December 8, 1911.

**Date of Adjustment:** December 8, 1911.

**Nature of Complaint:**

Claim for wages due.

**Abstracts of the Issue:**

(a) Contention of the union—

The union contended that Presser --- worked for the firm during the week ending November 30, and that he was entitled to $22.40, but only received $13.50.

(b) Contention of the employer—

The employer contended that the employee was paid in full and that he, therefore, had no claim.

**Abstract of Facts Established at Investigation:**

1. The employer had no method of recording the time worked by the employees.
2. The man in question had worked the actual time claimed in regular hours and overtime.
3. The man worked there for a period of one week only.

**Decision of the Deputy Clerks of the Board of Grievances:**

On the basis of the foregoing facts the clerks decided that the man was entitled to the claim as presented, and the amount due him was calculated to be $8.90.

**Disposition:**

The case was, therefore, found in favor of the union.

**Advantages Growing out of the Protocol Agreement.**

The advantages gained and evils avoided by the provisions of the Protocol may be separated into two distinct groups, namely: (1)
Those which are a direct result of the signing of the Protocol; (2) those which have resulted in consequence of the machinery created and set in motion by the Protocol.

ADVANTAGES GAINED BY THE MEN AS A DIRECT RESULT OF THE PROTOCOL.

Recognition of the Principle of Collective Bargaining.—Prior to the advent of the Protocol the employers endeavored to establish prices for pieceworkers without regard to the wishes of their employees in the matter. Since the establishment of the Protocol prices are fixed by the employer and a price committee representing the employees, with right of appeal to the Board of Grievances.

Decrease in the Number of Hours of Work from 54 to 50.—This decrease in the number of hours from 54 to 50 per week represents more than it appears, as the 50 hours are now in force for those who formerly worked from 60 to 70 hours per week for subcontractors, as well as for some manufacturers.

Increase of Wages for Week Workers.—This not only accrues to week workers in Protocol shops, but has permitted an approach to a standardization of wages in shops not governed by the Protocol. The increase represents about 10 per cent.

Abolition of the Inside Contracting System.—The abolition of the contract system inside the factory avoids the evils of a padrone system and at the same time prevents unscrupulous superintendents and foremen from exploiting labor without the knowledge of the manufacturers.

Introduction of Electricity as Power and Installation of Means of Production (Sewing Machines).—Formerly many otherwise well-equipped establishments refused to introduce electricity, on the ground of economy, evidently blind to the advantage of increased efficiency through its use. This is also true regarding the ownership of the means of production. Prior to the strike a very considerable number of employees owned their sewing machines and were obliged to install them at their own expense. Because of the seasonal nature of the trade, it was not uncommon for a man to work in three or four different establishments during a year, and he was obliged, under the old system, to pay for the cartage of his sewing machine from one establishment to another. The adoption of electricity is not yet complete. In July, 1911, of 779 shops south of Houston Street only 199 used electric power. During the next six months 310 were induced to install it, leaving 270 shops still without it in January, 1912.¹

Restrictions on Overtime Work.—Prior to the present agreement overtime knew no bounds, nor was it confined to the busy season nor

¹ Bulletin No. 5 of Joint Board of Sanitary Control, Jan., 1912.
to any class of employers or employees. It was simply a question of how much work a man was able to get from his employer, and, on the part of the employer, how much work he could have finished ready for delivery in a given time to his advantage. The present method prevents excessive overwork for any individual, distributes the work more equally among the employees, lessens the strain of the rush period, and tends to shorten the dull season.

Abolition of Home Work.—The practice of taking work home, aside from the evils involved of making garments under insanitary conditions, prevented a proper or equal distribution of work. Foremen and superintendents, without the knowledge of the employers, in a great many instances gave the preference in the distribution of work to so-called favorites.

Pay to Week Workers for 10 Legal Holidays.—Payment for holidays was formerly at the discretion of the employer, there being no uniform recognition in the industry of holidays nor of the payment to week workers for such holiday. At present the 10 legal holidays as established by the laws of the State of New York are being observed almost universally in both Protocol and non-Protocol shops.

Regular Weekly Pay Day and Pay in Cash.—Prior to the strike of 1910 many employers paid their employees at will, having no regular pay day; others changed the pay day to suit their convenience, while in a great many cases payment was made in checks, much to the disadvantage of the employees.

Minimum Scale of Wages for Week Workers.—The establishment of a minimum scale of wages for week workers has not only worked to the advantage of those making the scale, but has tended to establish the same scale in the entire industry.

Double Pay for Overtime of Week Workers.—As in the case of the payment of week workers prior to the establishment of a minimum wage, payment for overtime was haphazard, but double time for overtime is becoming the established price in the industry.

Creation of Conditions for Safety and Health of Workers.—This was brought about through the establishment of the Joint Board of Sanitary Control. The result of the work of this board is presented in detail on pages 253 to 270.

Protection against the Lockout.—In accordance with section 17 of the Protocol the parties to it have agreed that there shall be no lockout until the controversy has been submitted to the Board of Grievances. In the event of a failure to adjust such grievance by that board, the controversy shall be submitted to the Board of Arbitration for adjustment. This method has proven successful and has safeguarded the interests of the employees.
Abolition of the Practice of Exacting Security from Employees.—The method of exacting security from employees prior to the strike had become a ground of serious complaint in the trade. Unscrupulous manufacturers and contractors, as well as some so-called legitimate employers, practiced this evil to a very considerable extent. Indeed, it was said that thousands of dollars of employees' money had been tied up through this process. The practice was to exact from the employees security in amounts ranging from $5 to $20 and even as high as $50 to insure their continuance with their employers.

Advantages Gained by the Manufacturers as a Direct Result of the Protocol.

Protection against Strikes.—In accordance with section 17 of the Protocol the parties to it have agreed that there shall be no strike until the controversy has been submitted to the Board of Grievances. In the event of a failure to adjust such grievance by that board the controversy shall be submitted to the Board of Arbitration for adjustment. This method has proven successful and has safeguarded the interests of the employers.

Restriction of Unfair Competition as Between One Manufacturer and Another with Reference to Cost of Labor.—The establishment of a minimum scale of wages for the week workers, who constitute about 20 per cent of all those employed at the trade, has minimized the competition in so far as week workers are concerned. The system of collective bargaining for pieceworkers, who constitute the remaining 80 per cent employed in the industry, has entirely eliminated competition in wage rates so far as members of the Manufacturers' Protective Association are concerned. To a very considerable extent manufacturers not under the Protocol are observing this method of dealing with the cost of labor. The abolishment of tenement-house work has also eliminated unfair conditions as between the unscrupulous manufacturer and employers of the better class.

Creation of Conditions Tending to Eliminate Unfair Competition Between Shops of the Better Class and the Unscrupulous Employer.—This was done by establishing standards of health and safety and sanitary conditions throughout the industry. The result of the work of the board is presented in detail on pages 253 to 270.

Advantages Gained by the Men Which Have Resulted in Consequence of the Machinery Created and Set in Motion by the Protocol.

Prompt Redress of Grievances.—This was obtained through the creation of a trade court with jurisdiction over claims for wages and acts of discrimination by foremen and superintendents. Past com-
plaints of the employees have been that for no accountable reason they were discharged. The presentation of a grievance of any kind to the foreman was sufficient cause for discharge. In the case of a summary discharge wages due for unfinished garments were withheld. Charges of inefficiency based on an unfair examination of the work of an employee made another cause of discontent. The employees now have an opportunity to present all complaints to the unions, which in turn adjust them either through the clerks of the Board of Grievances or the board itself.

**Equal Distribution of Work in so far as Possible.**—Formerly the employer depended on the foreman in each department of his factory to distribute the work as best suited him. This method, or, rather, the evils growing out of this method, constituted one of the foremost contentions of the employees. For example, the question of race in one factory decided who was to get the bulk of the work. In another it became a question of family, or, rather, how much work could be given to a particular family to the advantage of the foreman. In other instances some men were permitted to work the entire day and far into the night, while others who were reporting each day to the factory were refused employment. The present method is that the shop chairman is responsible to the men for an equal distribution of work, as it becomes his duty to report to the employer any discrimination on the part of the foreman or superintendent.

**Enforcement of the Guaranties of the Protocol.**—The guaranties of the Protocol are enforced by an association of manufacturers, which assumes collective responsibility for each member thereof. In accordance with section 6 of the Protocol the employer is liable to the Manufacturers' Association for acts of discrimination against any of his employees. The method of discipline has been invoked by the Manufacturers' Association in several instances.

ADVANTAGES GAINED BY THE MANUFACTURERS WHICH HAVE RESULTED IN CONSEQUENCE OF THE MACHINERY CREATED AND SET IN MOTION BY THE PROTOCOL.

**Security from Loss and Annoyance through Lawsuits.**—The loss of money and the annoyance entailed by lawsuits on the part of workmen and subcontractors were features of the difficulties in the industry before the signing of the Protocol. In the past manufacturers were in the habit of employing subcontractors. Unscrupulous subcontractors exacted from their employees a security in amounts ranging from $5 to $50 on the plea of security for themselves that their employees would remain with them throughout the season. Cases have been pointed out where the subcontractor not only neglected to return this security, but also neglected to pay to
his employees the wages due them. This entailed no end of annoyance through lawsuits against the manufacturers by the employees of the subcontractor. It also meant in many cases risk of loss to the manufacturer of material furnished the subcontractor.

**Protection against Exorbitant Demands of Pieceworkers.**—There had been exorbitant demands at the height of the season for an increase in prices for work on the part of pieceworkers, who form 80 per cent of those employed in the trade. By reason of the system of collective bargaining made possible by the Protocol, the manufacturer is now able to proceed with the filling of orders on the basis of a standard price for labor throughout the season on each and every garment.

**Creation of Methods of Discipline and Order in the Conduct of the Factory.**—In the maintenance of these methods the union aids and cooperates. The present method of dealing with employees who create disturbances, or who are guilty of negligence or some "wrongful act," is that the union either fines the employee or expels him from membership. This method has worked to the advantage of the employer in many cases since the establishment of the Protocol.

**Creation of Conditions which Tend to Lengthen the Season.**—The reduction of hours and the limitations on overtime tend to distribute the work throughout a longer period. This, by reducing the intense stress of the busy season, gives the manufacturer a chance to have better work done, to become better acquainted with his working force, and to establish with them relations of good faith and mutual respect which tend to diminish friction and which help both sides. At the same time, by shortening the dull season, it decreases the period through which his plant must stand idle, or only partly employed.

The consensus of opinion in the industry seems to indicate a growing stability of employment since the advent of the Protocol. It is estimated that nearly 25 per cent of all the workers in the industry are constantly employed throughout the year.

Formerly 65 per cent of the pieceworkers were unemployed during a period of five months in the year. At present, on account of the more nearly equal distribution of work, it is believed that not more than 25 per cent of the pieceworkers are unemployed during the slack season. The balance are in the factories with a prospect of earning about one-third the regular wage.

Forty-five per cent of the week workers, other than cutters, are employed the entire year. This condition has been made possible in part by a migration from one branch of the trade to another. For example, during a comparatively slack time in the cloak, suit, and...
skirt industry many of the operatives enter the ladies' tailoring and dressmaking establishments, thus making a full season out of what otherwise would have been a short season.

The continuity of employment and the wages earned in specific branches of the trade have very materially changed in the past 18 months. At present they are about as follows:

Operators: In the busy season operators earn from $30 to $40 per week. This busy season is in no way continuous—in fact, it is very much broken on account of the seasonal conditions of the trade. The average busy time for an operator is about 24 weeks during the year. The remainder of the work year of 18 weeks his average earnings are about $10 per week, leaving 10 weeks as the slack season in which he earns nothing.

Piece tailors: The piece tailor earns from $30 to $40 per week for an average period of 24 weeks during the year, but for a period of about 13 weeks he becomes a sample maker and earns $22 per week as a week worker. During the remaining 15 weeks of the year he is able to work as a piece tailor for about 5 weeks at one-third his earning capacity. This leaves him a slack season of 10 weeks without an opportunity for employment.

Pressers: Pressers earn from $21 to $28 per week during the busy season of 24 weeks and from $10 to $12 in the slack season. Their slack season, however, is for a period of 15 weeks, leaving a period of 13 weeks in which they are unemployed.

Finishers: Finishers earn $20 per week during the busy season of 24 weeks, and from $11 to $13 per week in their slack season of 18 weeks. This leaves a period of 10 weeks of unemployment.

Sample makers: Sample makers earn from $22 to $30 per week during the busy season and from $18 to $20 in the slack season.

Cutters: Cutters earn $25 per week as week workers during the period of 26 weeks. The remainder of the year they are able to earn $12 per week for about 12 weeks, leaving 14 weeks of unemployment. Fifteen per cent of the cutters, however, are employed constantly during the year at the regular scale of $25 per week.

Conditions in the industry so far as continuity of employment is concerned are still most unsatisfactory. That there has been a vast improvement in conditions, made possible through the Protocol, is conceded by both employer and employed.

Formerly the type of manufacturers making medium and low-priced merchandise were the only ones who could give their employees an average of 10 months' work during the year. This type of manufacturers produced merchandise to sell for not more than $25 per suit at retail.

These manufacturers, as a rule, produce a class of merchandise that is considered staple; thus they are able safely to extend their
work period either through making up merchandise in advance of its being sold or through taking orders at price concessions consider­ably in advance of delivery seasons.

The proprietors of establishments of the better class, those who may be called the leading style exponents, who practically control the production of high-priced suits and coats, gave their employees a very much more limited season. The combined seasons rarely lasted more than eight months out of the year.

In considering the reasons for the shorter periods in the busy season for this better class of establishments, it is important to take into consideration the fact that, even though they are style ex­ponents, they are at the mercy or whim of the consumer. The manu­facturer never knows whether a certain style or design of garmehts will become a staple for an entire season or be discarded as obsolete within a month.

BOARD OF ARBITRATION.

Section 16 of the Protocol provides for the establishment of a Board of Arbitration to serve as a final court of appeal. The section reads as follows:

The parties hereby establish a Board of Arbitration to consist of three members, composed of one nominee of the manufacturers, one nominee of the unions, and one representative of the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

To such board shall be submitted any differences hereafter arising between the parties hereto, or between any of the members of the manufacturers and any of the members of the unions, and the decision of such Board of Arbitra­tion shall be accepted as final and conclusive between the parties to such controversy.

Pursuant to the above, the following were appointed as members of the Board of Arbitration: Louis D. Brandeis, of Boston, Mass., as representing the public; Hamilton Holt, of New York City, representing the Manufacturers’ Protective Association; and Morris Hillquit, of New York City, representing the Cloak and Skirt Makers’ Unions.

The only meeting which the Board of Arbitration has thus far held took place in New York City, March 4, 1911, and continued for a period of three days. The hearings before the board were initiated by the Manufacturers’ Protective Association, but the Board of Grievances took advantage of this opportunity to present for con­firmation a plan of procedure and set rules. The rules and plans of procedure, as hereinbefore stated,1 were concurred in by the Board of Arbitration and adopted by the Board of Grievances.

1 See page 220.
The Board of Arbitration, while holding itself in readiness to adjudicate any and all disputes which the Board of Grievances has been unable to adjust, has been chiefly concerned with providing the latter board (which in reality is a trade court) with adequate machinery, the desire being to formulate such effective methods of procedure and rules to govern all disputes that recourse to the Board of Arbitration would be unnecessary save in rare cases. The object is to make it well-nigh impossible on the presentation of any complaint or dispute to postpone or prevent the application of a remedy by the Board of Grievances.

The disputes and many other important matters brought to the attention of the Board of Arbitration were indicative of what later might become concrete grievances. They arose principally from the defective operations of the Grievance Committee and its failure to adopt proper rules, together with the inadequate enforcement of the decrees upon both the manufacturers and the unions.

The Board of Arbitration heard testimony on all the important subjects submitted to it, but had time to deal only with the more immediately pressing controversies.

The following grievances and disputes were submitted to the Board of Arbitration:

On the part of the manufacturers:

1. That the unions had refused to extend the terms of the Protocol to certain new members of the Manufacturers' Association who had entered into individual contracts with the unions prior to their membership in the association.
2. That the unions had decided to abolish week work in all departments, except for cutters, pressers, and sample makers, and that they had taken such decision without consultation with the manufacturers.

On the part of the unions:

1. That certain members of the association had established and are establishing shops outside of the city of New York and are operating such shops under standards and conditions inferior to those provided by the Protocol.
2. That several members of the association were employing contractors outside of New York, who likewise operated their shops under standards and conditions inferior to those provided by the Protocol.

The time consumed in the presentation of matters submitted to the Board of Arbitration by the contending parties compelled it at its first and only session to limit its work to the following subjects:

1. The adoption of definite rules and plan of procedure for the Board of Grievances.
2. The status of new members of the association who have unexpired individual contracts with the unions.
3. The application of the terms of the Protocol to shops operated by members of the Manufacturers' Association outside of the city of New York.
DECISIONS AND OPINIONS RENDERED BY THE BOARD OF ARBITRATION.

In regard to (1) the adoption of rules, considerable testimony was submitted by both sides in support of their contentions upon all the points at issue in each case, but in all of the cases submitted the Board of Arbitration was unanimously of the opinion that with the amended rules of the Board of Grievances both employers and employees were given an effective instrument for the enforcement in the future of the terms of the Protocol.

In regard to (2) the status of new members of the association, the Board of Arbitration rendered the following decision:

That new members should be recognized by the unions in the same manner as the original members of the association, and that the operation of the Protocol is to be extended to all such members alike.

As regards (3) the maintenance of shops by the members of the Manufacturers' Association outside of the city of New York, the Board of Arbitration unanimously inclined to the belief that the parties to the agreement intended to provide for certain standards and conditions of work which would tend to raise the level of the industry, to better the lot of the employees, and to regulate the relations of employer and employees in an equitable manner. This intention could obviously not be carried on if the employers were permitted to evade their obligations under the Protocol by the expedient of establishing shops outside of the city of New York; further, that such practice would eventually prove disastrous and tend to disintegrate the association, as well as the unions, inasmuch as it would stimulate unfair competition, which would finally destroy the principal objects for which the association was formed.

The board further expressed the belief that instead of seeking to curtail the operations of the Protocol both parties to it should make every effort to extend its territory until the entire trade should be carrying on this common work under beneficent influences. The board deferred taking final action, however, preferring to permit the contending parties to settle the controversy by a voluntary agreement, but signified its readiness to resume its deliberations on the subject and render a decision.

JOINT BOARD OF SANITARY CONTROL.

The most original feature of the Protocol and one with great possibilities for good, not only for those directly interested in the industry but for those interested in all practicable means of securing higher standards of sanitation, ventilation, and safety for the thousands of workers in the factories, is the Joint Board of Sanitary Control.
The fifteenth section of the Protocol, which made it mandatory upon the parties at interest to establish a Joint Board of Sanitary Control, reads as follows:

. The parties hereby establish a Joint Board of Sanitary Control to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and in the event of their inability to agree, by Louis Marshall, Esq.

Said board is empowered to establish standards of sanitary conditions, to which the manufacturers and the unions shall be committed, and the manufacturers and the unions oblige themselves to maintain such standards to the best of their ability and to the full extent of their power.

In accordance with the above mandate, on or about October 31, 1910, the following were appointed members of the board: On behalf of the Manufacturers' Protective Association, Max Meyer and S. L. Silver; on behalf of the unions, Benjamin Schlessinger and George M. Price, M. D.; and as representatives of the public, William Jay Schieffelin, Lillian D. Wald, and Henry Moskowitz, M. D.

The board is mindful of the fact that it has no legal standing or power. For the enforcement of its standards it depends entirely upon the agreement of the signers of the Protocol "to clean up the industry." The disciplinary powers of the association and the unions have often been invoked in the pursuance of its duties.

A most interesting aspect of the workings of the Protocol is that while its originators intended to establish everlasting peace in the industry, without lockout or strike or other embroilments, they did, in fact, establish a unique, practical, militant striking machine. To this militant power is due a part of the splendid achievements of the board. From time immemorial there have been strikes for the shorter workday, for increase in wages, and against intolerable working conditions. The strike on account of the insanitary conditions of the shop is an entirely new weapon, and is unique in that it directs the full strength of the associated employers and employees alike against the offending party.

The sanitary strike is the final step in a carefully regulated procedure, which begins with the inspection of a shop by the Board of Sanitary Control, either in the course of its regular work or in response to a complaint from workers employed there. If sanitary conditions do not reach the standard agreed upon, the employer is notified, and if a second inspection shows that he has not acted upon the notice, he is visited and reasoned with. If he still continues obdurate, notice to that effect is sent to the Manufacturers' Association and to the unions. Thereafter, until he complies with the notifications of the Board of Sanitary Control, no member of a union will work for him, and no manufacturer in the association will give
out work for him to do, or handle any garment made in his shop. Practically there are only two alternatives before him—to comply or to go out of business.1 If the condition of the shop is very bad, the employer may be notified after the first inspection that it is unfit for occupation, and if he refuses to vacate it, the strike may be called without further parley.

In the eyes of the collective interests the sanitary strike is entirely justifiable, inasmuch as it is in the interest of humane conditions. Both sides agree in looking upon it as the only means of lifting the industry out of the condition to which it has been brought by the unscrupulous employer.

During the first full year since the establishment of the Board of Sanitary Control there were 27 sanitary strikes, involving about 350 people. The average duration of such strikes was a fraction over one week in each instance. None of these strikes was against any member of the Manufacturers' Association.

The association and the unions have shared equally in the burdens and responsibilities of creating sanitary conditions in the shops. Each side has eagerly responded to responsibilities, both morally and financially. As an instance of the confidence of the contributing parties in the work of the board it is only necessary to mention the request of the board to the Manufacturers' Association and the unions under date of April 18, 1911.

Just six months after the original request for finances the plan and budget committee of the board presented their scheme for permanent organization of their work. This plan and budget carried with it a request for $7,000, $3,500 to be contributed by each body. The sum was promptly contributed by the respective bodies and the board put on a permanent basis.

It is to be remembered that the Joint Board of Sanitary Control was established by a provision of the Protocol, the contributing parties being the Manufacturers' Association and the Cloak and Skirt Makers' Unions. The funds provided for the promotion of the activities of this board are contributed equally by the parties at interest. Inasmuch as the work of the board covers the entire cloak, suit, and skirt industry in New York City, it will be seen that a great number of establishments are being benefited gratuitously by its work.

WORK OF THE BOARD.

Almost immediately after the appointment of the board the work of organization began. At a meeting of the board held a month later committees previously appointed made their reports and their recommendations were adopted. Plans for a comprehensive, scien-

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1 Details of the proceedings leading up to a sanitary strike in an actual case are given on p. 264.
tific, and systematic investigation of all the shops in the industry in the city were at once undertaken for the purpose of formulating and establishing sanitary standards.

The adoption of the report of the committee on plan and budget carried with it a request to the Manufacturers' Association and the Cloak and Skirt Makers' Unions, the two contributing bodies, for the sum of $1,000 each to promote the work of the board. This sum was promptly voted the board by both parties.

The schedules prepared for the investigation were adopted only after a very thorough study of the necessities of the undertaking and of the purposes they were expected to fill. In this work the board had the voluntary cooperation and advice of a large number of the most prominent sanitary and industrial experts in the country.

The following is a copy of the schedule used in the investigation:

**INSPECTOR'S SCHEDULE, JOINT BOARD OF SANITARY CONTROL.**

| Street | Date | Firm | Shop: Dimens., ht. | F. | C. | L. | F. | C. | L. | F. | C. | L. |
|--------|------|------|-------------------|----|----|----|----|----|----|----|----|----|----|
| 1      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 2      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 3      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 4      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 5      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 6      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 7      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 8      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 9      |      |      |                   |    |    |    |    |    |    |    |    |    |
| 10     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 11     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 12     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 13     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 14     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 15     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 16     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 17     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 18     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 19     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 20     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 21     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 22     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 23     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 24     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 25     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 26     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 27     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 28     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 29     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 30     |      |      |                   |    |    |    |    |    |    |    |    |    |
| 31     |      |      |                   |    |    |    |    |    |    |    |    |    |

**Remarks.**

1. F M.
2. L M.
3. Vent.
5. San. conf.

The following is an extract from the instructions given by the chairman of the committee to the inspectors as to their behavior and work:

**INSTRUCTIONS TOinspectors.**

In the investigation of all the shops in the cloak-making industry, the Joint Board of Sanitary Control is undertaking a social-welfare work.

Recognizing the high character of the persons constituting our inspectorial force, the board hopes that they will become imbued with the spirit of our work, and will pursue their investigations less for the nominal fees which we pay them and more for the social character of the work itself.

The inspectors are reminded that they have no legal standing whatever, and no right of entry into the shops. They can enter these only with the permission of their owners or by courtesy of the union.

On entering shops, the inspectors will ask for the owner or foreman of the shop, state his official connection with the Joint Board of Sanitary Control, and request the privilege of inspecting the shop. Should permission be denied, he
will make no comments, give no arguments, but retire and report the facts to the chief inspector.

Inspectors are requested to be courteous, tactful, and polite, and to do no talking or explaining further than to state their connection with this board.

Under no circumstances should an inspector tell either the owner or the representative of the union of the results of his inspection.

The board also trusts that inspectors will refrain from using the knowledge gained by them in the course of inspection for any other purpose except that of filling out the inspection cards, and they must not divulge any information to anyone outside of our board.

Inspectors will be requested to be in the field of inspection at 9 a.m., continue work until 12 m., resume their work at 1 p.m., and continue same until 5 p.m. On Saturdays they will be expected to work from 8 a.m. until 1 p.m., and report at the office of the board at 2 p.m.

**PLAN OF WORK ADOPTED.**

The first inspection, made in February, 1911, covered 1,243 shops, of which about two-thirds were found defective either in fire protection or sanitary condition, or both. The effort to bring these shops up to the standard involved a number of reinspections, and much educational work among employers and employees alike. By July 15 the board was able to announce that of the 823 defective shops 29 had removed from their objectionable quarters, 740 had made improvements in compliance with the board's orders, and only 54 remained unimproved. Meanwhile, surveying what had been done, what must be done in the future, and the means so far found effective, the following presentation of the board's activities was prepared:

**WORK OF THE JOINT BOARD OF SANITARY CONTROL.**

**INVESTIGATION.**

<table>
<thead>
<tr>
<th>Regular</th>
<th>Special</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspection on complaints.</td>
<td>Investigation of ventilation.</td>
</tr>
<tr>
<td>Reinspection on fire protection.</td>
<td>Investigation of light and illumination.</td>
</tr>
<tr>
<td>Reinspection on sanitary conditions.</td>
<td></td>
</tr>
<tr>
<td>Regular semiannual inspections.</td>
<td></td>
</tr>
</tbody>
</table>

**ENFORCEMENT.**

<table>
<thead>
<tr>
<th>Persuasion</th>
<th>Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interview by inspectors.</td>
<td>Reference to health department.</td>
</tr>
<tr>
<td>Letters from office.</td>
<td>Reference to building department.</td>
</tr>
<tr>
<td>Telephone by executive commit-tee.</td>
<td>Reference to labor bureau.</td>
</tr>
<tr>
<td>District managers of unions.</td>
<td>Reference to M. P. A.</td>
</tr>
<tr>
<td></td>
<td>Reference to board.</td>
</tr>
<tr>
<td></td>
<td>Sanitary strike.</td>
</tr>
</tbody>
</table>
EDUCATION.

Employers.

Conferences.  
Bulletins.  
Certificates.  
Interviews with inspectors.  
Trade press.  
Exit cards.  
Standards.

Workers.

Conferences with leaders of unions.  
Bulletins.  
Interview of inspectors.  
Noon lectures.  
Sanitary shop committee.  
Lantern-slide lectures.  
Lectures before shop meetings.  
Trade press.

COST OF INSPECTIONS.

In accordance with this plan a second inspection was made in August. Greater familiarity with the situation rendered it possible to make this investigation more nearly complete than the earlier one; 1,738 shops were located and inspected, against 1,243 found in February. The following tables show the number of inspectors employed and the cost of inspection for each of the two semiannual inspections:

<table>
<thead>
<tr>
<th>Days Worked by Inspectors and Average Inspections Per Day.</th>
<th>First Inspection</th>
<th>Second Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of inspectors employed</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Number of days worked by inspectors</td>
<td>157</td>
<td>155</td>
</tr>
<tr>
<td>Average inspections per day</td>
<td>8</td>
<td>11</td>
</tr>
</tbody>
</table>

COST OF INSPECTIONS.

<table>
<thead>
<tr>
<th>Cost of Inspections.</th>
<th>First Inspection</th>
<th>Second Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total paid to inspectors</td>
<td>$628.00</td>
<td>$642.00</td>
</tr>
<tr>
<td>Total paid to chief inspector</td>
<td>$230.00</td>
<td>$230.00</td>
</tr>
<tr>
<td>Average cost of each inspection</td>
<td>$69.00</td>
<td>$642.00</td>
</tr>
<tr>
<td>Total paid to tabulating force</td>
<td>$111.00</td>
<td>$28.00</td>
</tr>
</tbody>
</table>

It will be noticed that at the second inspection the agents were able to work much more expeditiously and that the cost was strikingly less than at the first investigation.

CONDITIONS SHOWN BY INSPECTIONS.

The results of these investigations convinced the board that one of the most important problems to be solved was that of "factory safety." The majority of the establishments in the industry are no longer located on the East Side, but have gradually moved into the Fifth Avenue district. This change has secured for the workers, in the main, more light, air, and cleanliness, but has involved a loss in safety, owing to the general location of the shops in loft buildings.

1 The inspection of the Joint Board of Sanitary Control completed on Feb. 1, 1912, showed a total of 1,829 shops.
Of the 1,738 shops covered by the second inspection, 1,114 were located in loft buildings, none of which were under six stories high. Twenty-three thousand eight hundred and thirty-two employees were working above the sixth floor, nearly 2,000 of them on the twelfth floor. The difficulty of escape in case of fire from such lofty work places would, under the best of circumstances, be extreme, and, as the table ¹ shows, in a large number of cases the circumstances are distinctly bad. In some instances fire escapes are absolutely lacking; in other instances they are inadequate or of faulty construction, or access to them is blocked, or they are so out of order as to be practically useless. In 79 per cent (1,379) of the shops covered in the second inspection the doors opened inward, in direct violation of the law, and, although the lesson of the Triangle fire was only a few months old, 25 shops were found in which the doors were locked during working hours.

What makes the matter much worse is that while the chances of escape from a loft shop are not good the danger of fire is great. A loft building consists of a series of floors or lofts, each occupying the full space inclosed by the building walls, which its tenant divides according to his needs. Without exception, the floor space of the 1,414 loft shops inspected was found to be “divided and subdivided into many sections by flimsy wooden, highly inflammable partitions, offering ready material for flames and at the same time obstructing passages to exits.” ² Moreover, the floors were all of wood, often oil soaked from machine drippings. The incoming and outgoing goods were packed in huge pine boxes, shelves were piled with inflammable goods, and paper boxes were strewn about the floors. The crowding together of goods and machines, combined, with the wooden partitions, to increase the danger and diminish the chance of escape.

Some of these departments, where from 20 to 50 operatives are corralled like so many sheep, have but one small and narrow door near one end of the department. To this door some of the employees must run at least 30 to 40 feet through an aisle of 18 inches, between machines and tables, with boxes and goods piled up in the way. In one shop a 14-inch passageway was found through which 40 employees would have to pass in case of fire.³

LIGHT, VENTILATION, AND SANITARY CONDITIONS.

Other conditions found in these inspections, although less striking than the fire risks, are perhaps even more objectionable, because they operate continuously. Lack of care for the eyesight of the operatives was found to be very general. The second inspection was made in August when days are brightest, yet in 294 shops (16.9 per cent) artificial light was necessary. A more general defect is the failure to shade lights properly. In all shops artificial light is necessary during at least a part of the winter days. The lights are often placed low,

¹See table showing fire protection, p. 261.
²First Annual Report of the Joint Board of Sanitary Control, p. 94.
³Idem, p. 52.
to bring them near the work, with the result that the employees' eyes are exposed to the full glare. In about one-fourth of the shops inspected in August (466) some sort of a shade was found, but few of these answered the purpose of protection from glare.

With regard to ventilation\(^1\) all the shops inspected in August conformed to the legal requirement of 250 cubic feet of air space for each person, but as few of them used any devices for changing the air of the rooms, this compliance did not prevent very undesirable conditions. These were not so bad as would have been the case in the season of closed windows, yet "the inspectors testify that the heat and odor were very noticeable." In 1,521 shops the irons were heated by gas and the air was vitiated by the almost inevitable leakage of this gas.

Sanitary conditions ranged from excellent to intolerable. A few shops were found which went beyond the absolutely necessary requirements and added such desirable items as clean and well-kept lunch rooms, emergency or hospital rooms and the like, but a greater number were found which did not even reach the legal standard. There was a very general lack of cuspidors (found in only 16 shops), which is the more serious as tuberculosis is believed to be common among the operatives. The table on page 261, relative to sanitation, gives in detail the undesirable conditions found, but does not show one highly objectionable feature—the lack in many cases of separate accommodations for men and women.

The separation of the toilet accommodations for males and females leaves much to be desired. In some of the shops (44) the water-closets are located in the yards, and in many more (240) in the halls, and these are, as a rule, common to both males and females. Many of the water-closets which are within the shop are not properly separated, or, if so separated, the separation is not adequate. Many of the closets are divided by dwarf partitions, which are very flimsy, and no separate screening or approaches are provided for males and females.\(^2\)

The following tables\(^3\) give details as to the disposition of complaints, shops investigated, and conditions found:

### DISPOSITION OF COMPLAINTS.

<table>
<thead>
<tr>
<th>Complaints received from union and others</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints investigated</td>
<td>21</td>
<td>120</td>
</tr>
<tr>
<td>Inspections made</td>
<td>20</td>
<td>120</td>
</tr>
<tr>
<td>Complaints found no cause for complaint</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>Complaints found valid</td>
<td>15</td>
<td>99</td>
</tr>
<tr>
<td>References to health department</td>
<td>14</td>
<td>32</td>
</tr>
<tr>
<td>References to labor department</td>
<td>2</td>
<td>19</td>
</tr>
<tr>
<td>References to building department</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Shops condemned by Board of Sanitary Control</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

\(^1\) See table showing conditions as to air, ventilation, and overcrowding, p. 261.
\(^2\) First Annual Report of the Joint Board of Sanitary Control, p. 64.
\(^3\) Idem, pp. 95 and 96.
CONCILIATION IN CLOAK INDUSTRY IN NEW YORK CITY. 261

NUMBER OF PERSONS WORKING IN SHOPS INVESTIGATED.

<table>
<thead>
<tr>
<th>Shops investigated</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,300</td>
<td>1,738</td>
</tr>
</tbody>
</table>

LOCATION OF SHOPS.

<table>
<thead>
<tr>
<th>Shops inspected</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shops inspected</td>
<td>1,200</td>
<td>1,738</td>
</tr>
</tbody>
</table>

FIRE PROTECTION.

<table>
<thead>
<tr>
<th>In buildings with no fire escapes</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6</td>
<td>133</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>In buildings with more than one fire escape</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>195</td>
<td>346</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>With doors locked during day</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>112</td>
<td>160</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>With doors opening in</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,173</td>
<td>2,346</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>With no other exits</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>729</td>
<td>691</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>With fire escapes having straight ladders</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>65</td>
<td>87</td>
</tr>
</tbody>
</table>

LIGHT AND ILLUMINATION.

<table>
<thead>
<tr>
<th>Artificial light necessary in daytime</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>373</td>
<td>294</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Which have electricity</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>101</td>
<td>238</td>
</tr>
</tbody>
</table>

AIR, VENTILATION, AND OVERCROWDING.

<table>
<thead>
<tr>
<th>Height of ceiling 8 feet or less</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>38</td>
<td>135</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Having gaslight</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,023</td>
<td>1,643</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Having irons heated with gas</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,347</td>
<td>1,461</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Heated by means of stoves</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>428</td>
<td>853</td>
</tr>
</tbody>
</table>

SANITATION.

<table>
<thead>
<tr>
<th>With dirty walls, ceilings, and floors</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>144</td>
<td>247</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Having joint water-closets</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>110</td>
<td>110</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Having water-closets in halls</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>111</td>
<td>294</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Having water-closets in yards</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where ratio of water-closets is inadequate (men's less than 1 to 25 and women's less than 1 to 15)</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>142</td>
<td>73</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where separation is defective</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where water-closets in bad condition</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>413</td>
<td>345</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where flushing and water-closets are defective</th>
<th>First inspection</th>
<th>Second inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>60</td>
<td>85</td>
</tr>
</tbody>
</table>

1 Including number of shops "in rear houses."
ESTABLISHMENT OF SANITARY STANDARDS.

In accordance with section 15 of the Protocol, the Joint Board of Sanitary Control "is empowered to establish standards of sanitary conditions, * * * and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power."

The problem of establishing standards that would be just to the employers, to the employees, and to the industry, and at the same time conform to the higher ideals of sanitation and safety, required no little thought on the part of the board, inasmuch as these standards would have to be higher than those required by statute law.

Tentative plans for standardizing the work of the board were submitted to the Manufacturers' Association and to the unions, but final standards for sanitation were not adopted until July 5, 1911. Copies were then sent to every shop in the industry, with a request that they be posted in a conspicuous place.

An exact copy of the sanitary standards follows:

SANITARY STANDARDS ESTABLISHED BY JOINT BOARD OF SANITARY CONTROL.

1. No shop to be allowed in a cellar.
2. No shop to be allowed in rear houses or attic floors without special permission of the board.
3. Shops located in buildings two stories or more in height must have one or more fire escapes.
4. All fire escapes to be provided with ladders to the roof of same house or to an adjoining house; also with full-length drop ladders properly located and adjusted.
5. In all shops which are not provided with automatic sprinklers there should be kept a sufficient number of chemical extinguishers, or a sufficient number of fire buckets, properly located and filled.
6. Special caretakers to be appointed in each shop for the care of the fire buckets, and for their use in case of fire.
7. All openings and exits to fire escapes to be left unobstructed by tables, machines, boxes, partitions, and iron bars.
8. No doors to be locked during working hours.
9. No smoking to be permitted in workshop.
10. Conspicuous signs to be placed throughout the shop, marking location and direction of exits and fire escapes.
11. Fireproof receptacles, lined with tin and having a tin cover, to be provided, in sufficient numbers, for rubbish.
12. Halls and stairways leading from shops to be adequately lighted by natural or artificial light.
13. Stairs to be provided with secure handrails and safe treads.
14. Sufficient window space to be provided for each shop, so that all parts of the shop be well lighted during the hours from 9 a. m. to 4 p. m.
15. Where gas illumination is used, arc lights or incandescent mantles should be used.
16. All lights to be well shaded, to be placed above operatives, and not too near them.
17. At least 400 cubic feet of space, exclusive of bulky furniture and materials, should be provided for every person within the shop.

18. The shop should be thoroughly aired before and after work hours, and during lunch hour, by opening windows and doors.

19. No coal should be used for direct heating of irons, and whenever stoves are used for heating shops they should be surrounded by metal sheet at least 5 feet high.

20. Walls and ceilings of shops and water-closet apartments should be cleaned as often as necessary, and kept clean.

21. Floors of shops and of water-closet apartments to be scrubbed weekly, swept daily, and kept free of refuse.

22. A separate water-closet apartment shall be provided for each sex, with solid partitions to extend from floor to ceiling, and with separate vestibules and doors.

23. Water-closets to be adequately flushed and kept clean.

24. A special caretaker to be designated by the employer to the care of the shop and water-closet apartments.

25. A sufficient number of water-supplied washbasins to be provided in convenient and light locations within the shop.

26. Suitable hangers should be provided for the street clothes of the employees, and separate dressing rooms to be provided wherever women are working.

27. Water-closet apartments, dressing rooms, wash rooms, and lunch rooms to be properly lighted, illuminated, ventilated, cleaned, and kept clean.

28. All seats to have backs.

ENFORCEMENT OF SANITARY STANDARDS.

It soon became evident that without means of enforcing standards permanent improvement in sanitary conditions could not be secured.

After considerable discussion as to methods of procedure and conferences with the State commissioner of labor, city superintendent of buildings, sanitary superintendent of the health department, and a representative of the fire department, the following routine of enforcement was decided upon:

1. Defects in sanitary conditions are referred to the health department whenever conditions demand immediate action and are a menace to health. The board endeavors to remedy other sanitary defects by letters to the owners of the shops and by personal interviews.

2. The same procedure is adopted with regard to fire protection, though, while legislation has been pending, no reference has been made to any department, with the exception of the 55 cases inspected by the board's chief inspector in March and referred to the city departments for action.

3. Where flagrant violations of the labor law have been discovered, a report is sent to the labor department for action.

4. For nonconformity with the board's standards, the following method of procedure is employed:
   (a) After the first inspection a notice is sent to the owner.
   (b) After the second inspection the inspector has a personal interview with the owner, explaining the exact defects and how to remedy them.
   (c) If there is no compliance as a result of these two efforts, any shop belonging to the association is reported to that body. In case of shops outside of the association, the matter is referred to the board for action and ultimately to the unions for enforcement by them through its own member.
THE SANITARY STRIKE.

It is of special interest to note the methods employed in “cleaning up the industry.” The usual process is for the business agent of the union to report to his superior officer in the union the conditions of the establishments in his particular district. If he finds an establishment which has not been visited by the inspectors of the Board of Sanitary Control to be in an insanitary condition, a report is made in writing to the district officer in charge of the union’s affairs in that particular district; this officer in turn notifies the Board of Sanitary Control.

The Board of Sanitary Control instructs one of its inspectors to visit and report on the condition of said establishment.

The following illustrates a bona fide case:

REPORT OF THE INSPECTOR OF THE BOARD OF SANITARY CONTROL.

On investigating the shop of ---------, I beg to report the following conditions existing thereat:

(1) That the yard hopper water-closets in the first and rear yards of premises are obstructed with excreta, are not properly flushed, the pipes frozen, and the water-closet apartments overfilled with dirt.

(2) That the yard of the second rear house is dirty with offensive refuse.

(3) That the rain leaders on second and first rear houses are obstructed with ice, causing overflowing therefrom and dampness in building.

(4) That the stairs and floor of balconies of rear houses are insecure and unsafe.

(5) That the floor of shop is insecure and unsafe.

(6) That the floor of shop is littered with rubbish and offensive refuse and that walls and ceiling of shop are dirty and offensive and have not been whitewashed for more than a year.

(7) That the glass panes of windows are dim and dirty.

(8) That there are no cuspidors nor receptacles for storage of waste and refuse.

(9) That the old disused brick ironing oven in the southeast corner of the shop is broken, dilapidated, crumbling, partly full of dirt and offensive refuse, and is a source of dust and dirt.

(10) That the cast-iron sink on premises is old, corroded, and leaky.

(11) That the wooden slats of the floors of outside stair balconies are insecure and unsafe; there are no other means for escape from fire.

It is my opinion that this shop is not a fit place in which to work. I therefore recommend that this shop be vacated.

Upon receiving this report the board, after due deliberation, declared the establishment insanitary and unfit for occupancy or working purposes. The unions, the Manufacturers’ Association, and the contractor who occupied the premises were notified to that effect. The contractor was also requested to vacate the premises.

The unions then ordered a “sanitary strike” and this establishment was subsequently vacated. The contractors engaged another shop which, upon inspection by the board, proved to be in excellent condition.
REPORTS AND RECORDS OF INSPECTION.

The following actual record of an inspection will, in a measure, convey to the reader the condition of "attic shops" on the lower East Side of New York. It may be of interest to note that there are no longer "cellar shops," nor has there been any since the second inspection, the "sanitary strike" method having accomplished their elimination.

The following exhibits show the manner and process of an inspection and report: Exhibit 1 shows record of an inspection; exhibit 2 shows record of defects; exhibit 3 shows standard list of defects; exhibit 4 shows written report of inspector.

**Exhibit 1.**—Record of inspection.

**Exhibit 2.**—Record of defects.

---

**Exhibit 1.**—Record of inspection.

**Exhibit 2.**—Record of defects.
**Exhibit 3.—List of standard defects.**

1. No fire escapes.
2. **Insufficient fire escapes.**
3. Fire escapes with straight ladders.
4. No drop ladders.
5. Drop ladders too short.
6. Drop ladders improperly placed.
7. Exit to fire escapes obstructed.
8. Exits from bottom of fire escapes inadequate.
10. No fire buckets.
11. Empty fire buckets.
12. **Insufficient number of fire buckets.**
13. Doors IN.
15. Halls dark.
16. Stairs dark.
17. Treads insecure.
18. Rails insecure.
19. No dressing room.
20. Dark or improper dressing room.
22. **Insufficient washing facilities.**
23. Dirty sinks or basins.
25. No protection from glare.
27. Foot power used.
28. **Insufficient number of water closets.**
29. Improper separation.
30. Wood floor of w. c. apt.
31. Dirty walls and floor of w. c. apt.
32. Unventilated w. c. apt.
33. Dark water-closet apt.
34. Flush out of order or improper.
35. Bowl of w. c. dirty or broken.
36. Shop in cellar.
37. Shop on attic floor.
38. No receptacles for rubbish.
39. Ceiling of shop dirty.
40. Walls of shop dirty.
41. Floor of shop dirty.
42. **Windows of shop dirty.**
43. **Seats of water closets missing or broken.**

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**Exhibit 4.—Written report of inspector.**

**Dr. George M. Price,**

**Chairman, Executive Committee.**

**February 10th, 1912.**

**Dear Sir:** I have the honor to report that on February 9th, 1912, I inspected the shop of Messrs. --------- & --------, No. 61 -------- Street, and found the facts to be as follows:

The said premises consist of a two-story basement and attic converted building—the basement a plumbing shop; 1st floor a carpenter shop, occupied by lessee of building; and 3d floor occupied by Messrs. --------- & --------, as a shop to manufacture cloaks, suits and skirts.

The water-closet accommodations for --------- and -------- employees are one water-closet in hall on 2d floor for females; and one water-closet in the yard for men. As the hall on first floor leading to yard water-closet was found obstructed with lumber on this inspection, as well as on several previous inspections, the yard water-closet is not accessible for men employed in --------- & --------'s shop, with the result that both men and women use the one water-closet on the 2d floor hall. This closet and floor of water-closet apartment was in a filthy condition.

Floor and stairs in hall in a dirty condition. Handrail of stairs broken, loose and dangerous.

The fire escape of this building is an iron balcony on the 2d floor extending and connecting with premises No. 63, a similar building. This balcony, or so-called fire escape, has no drop ladders. The shop of --------- & -------- is not provided with fire buckets; and is heated by a coal stove which is not protected by a sheet-metal guard.

The floor of the shop is dirty and windows leading to fire escape are obstructed by machines.

This building is very much neglected by lessee as to sanitary conditions, and in my opinion not a fit place to manufacture cloaks, suits and skirts.

Respectfully,
SANITARY CERTIFICATES.

As a reward for compliance with the sanitary standards required by the board, a plan was adopted of furnishing "sanitary certificates" to those who have improved the general conditions of their establishments. These "sanitary certificates" are granted for a period of six months and are revocable at the pleasure of the board for a serious violation of its sanitary standards.

The demand for certificates comes from owners who would naturally be expected to keep their establishments in a superior condition, but as soon as it became generally known to the small owners that certificates would be granted, there was a very considerable demand for them.

It was pointed out to the applicants that in conforming to the requirements of the board many changes, some very radical, must be made, all of which required time and in many instances negotiations with owners of buildings. This method has proved successful inasmuch as the owners have volunteered to make such improvements as the board suggests.

In the case of refractory owners, however, the union has been able to bring them to terms through the sanitary strike.

In no instance has the union failed to bring about satisfactory results, evidently having complete control of the situation.

The number of certificates granted to date is 312, or about 17 percent of the total number of establishments inspected.

A copy of the sanitary certificate follows:

No. .......

SANITARY CERTIFICATE
OF THE
JOINT BOARD OF SANITARY CONTROL
IN THE
CLOAK, SUIT & SKIRT INDUSTRY OF NEW YORK
(Under the Protocol of September 2, 1910)

This is to certify that the shop of ...........................................................
Located at..................................Floor..................Borough of..................
has been inspected and found to conform with the
SANITARY STANDARDS OF THIS BOARD

[Seal] This certificate is good only for six months from date of issue and is revocable by the Board for cause.
In considering the number of certificates issued it must be borne in mind that to meet the fire standards of the board structural changes in buildings must be made, and these can be made only by the owner of the premises.\(^1\) Again, it must be understood that as soon as an inspection is made the board classifies the results. The classification is as follows:

**Class A.**—Establishments that are entitled to a certificate, having complied with the standards established by the board.

**Class B.**—Establishments that are candidates for a certificate when some very minor changes are made in compliance with the instructions of the board to meet the standard.

**Class C.**—Establishments that are considered considerably below Class B, which have many structural changes to make, general sanitary conditions to be improved, and lavatory and sanitary conveniences to be installed.

On February 15, 1912, the number of establishments in Class A was 312 and in Class B 508. It is confidently expected by the board that at least 400 certificates will be issued to establishments in Class B prior to March 15, 1912. The remaining 1,009 establishments, in Class C, are at a disadvantage in many cases, as structural changes must be made and official authority to make such changes must be obtained. In some cases, however, removals are anticipated, which will obviate the need not only of structural changes but of general sanitary improvements.

**EDUCATING THE EMPLOYERS.**

Apart from the educational value of the sanitary certificate, its possession has come to be regarded as a badge of honor among employers.

It was perfectly obvious that among the more than 1,600 owners of establishments in the industry there were many who did not need a board of sanitary control to enlighten them as to the necessity and value of caring for the safety and health of their employees. However, a large number were more or less indifferent to the safety and health of their employees.

To this class the board has directed its educational work by means of (a) personal interviews, (b) sanitary certificates, (c) education through trade journals, and (d) education through bulletins.

When the shop is under investigation by an inspector, personal interviews are had for the purpose of explaining the nature and character of the work of the board, tactful instruction being offered as to the value and advantage of keeping an establishment in a proper

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\(^1\) In the cases of the members of the association its counsel has already secured such changes in 15 cases out of 38, and 8 more members have, at the termination of their leases, removed to better quarters.
sanitary condition; defects are pointed out and inexpensive methods of improvement are suggested for the benefit of both employer and employees.

**EDUCATING THE EMPLOYEES.**

No inconsiderable part of the work of the Joint Board of Sanitary Control has been to educate the large mass of workers. This has been no easy task, as those engaged in the industry are very largely recent immigrants, unfamiliar not only with sanitary requirements but with the cooperative effort necessary in connection with such an agreement as the Protocol. The bulk of the workers in the industry are Russian, Galician, Roumanian, and Polish Hebrews. The greatest influx to the trade in recent years has come from the Italians, who constitute about 15 per cent of the workers in the industry, but promise to become even a larger percentage in the near future. The percentage of native-born Americans of foreign parentage has increased during the last few years.

The general average of intelligence among the workers is increasing rapidly, but never have such strides been made as during the past year and a half. This has been brought about through the workings of the Protocol, as much perhaps by the Board of Grievances as by the Joint Board of Sanitary Control.

One of the most potent factors in the educational work of the Joint Board of Sanitary Control is the bulletin, issued from time to time, setting forth the importance of sanitation. The following excerpts from Bulletin No. 2 will serve as a good illustration of this work of the board:

"**Safe and Sanitary Shops.**"

**TO THE WORKERS.**

The Joint Board of Sanitary Control in the cloak, suit, and skirt industry has been organized for the express purpose to secure and insure safety and sanitary shops for the workers in the trade.

Health is the most precious possession of man. Health is the only capital of the workingman. Without health, the workingman is of no use to his employer. Without health, life to the employee is not worth living. Therefore, the preservation of health is the most important consideration of the worker. Therefore, join in securing safe and sanitary shops, in order that your life may be prolonged and your health be preserved.

The workplace plays a most important influence upon the life and health of the worker. In his workplace, the worker spends over one-third of his life. His life and health are influenced by the construction, by safety from fire, by the light and illumination, by the air and ventilation, and by the sanitary care and cleanliness of the shop.

Insist that your shop should have a sanitary certificate from us. You will then be assured that your shop is safe and sanitary.
Workingmen have a right and duty to demand from their employers safe and sanitary shops.

But the employers have a right to demand from the workingmen themselves, that they should be clean and should help the employers to keep the shop clean.

Let the workers prove to their employers that they not only demand sanitary and clean shops, but appreciate them and will help to keep them clean.

Demand cleanliness from your employers, from your fellow workers, but demand it first of all from yourself.

**A FEW DON’TS.**

- Don’t spit on floor.
- Don’t smoke in shop.
- Don’t throw matches on floor.
- Don’t throw paper and rubbish on floor.
- Don’t eat in shop.
- Don’t be afraid of air from an open window.
- Don’t work too near the gas lamp, and don’t have the light shine in your eyes.

Have it hang over your left shoulder.

- Don’t bend too much while at work.
- Don’t deface, soil, or mark the walls.
- Don’t fail to flush the water-closets.
- Don’t fail to wash your hands before and after work.
- Don’t blame others for your own faults.
- Don’t behave in your shops otherwise than you would in your parlor.
- Don’t do anything in your shop that you would not wish your parents or children to see or do.

The Joint Board of Sanitary Control will make inspections of shops on the complaint of any worker. All you have to do is to write us a postal, which will be supplied by your shop sanitary committee.

The Joint Board of Sanitary Control will make thorough general inspections of all the shops in the city twice a year, in August and February.

The Joint Board of Sanitary Control is not a partisan body. It consists of two representatives of the unions, nominated by the joint executive board of the cloakmakers’ unions; of two representatives of the Manufacturers’ Protective Association, and three representatives of the public.

The expenses of running the office and doing the actual work are paid jointly by the unions and the Manufacturers’ Protective Association.

Let every shop chairman send us his name and those of two assistants who will constitute the “shop sanitary committee” of the shop.

Remember, workers, this is a movement not by the public, not by the manufacturers alone, but a movement—your own, in cooperation with the public and the manufacturers. If it fails, you must share the responsibility. If it succeeds (as it must, if you aid) you will share in the credit. Now is the time to show your real appreciation of what your union is trying to do for you and make your life worth living.

**APPENDIX.—CONTRACT SHOP AGREEMENT.**

The following is a copy of an agreement known as the Contract Shop Agreement, entered into by certain manufacturers and the Cloak and Skirt Makers’ Union of New York City:

**MEMORANDUM OF AGREEMENT** made by and between ——— ———, composing the firm of ——— ———, having its business at ——— ———, in the Borough of Manhattan, city of New York, party of the first part, hereinafter
CONCILIATION IN CLOAK INDUSTRY IN NEW YORK CITY.

called the Firm, and The Joint Board of the Cloak and Skirt Makers’ Union as attorney in fact for the following Locals of the International Ladies’ Garment Workers’ Union, namely: Cloak Operators’ Union, No. 1; Cloak and Suit Tailors, No. 9; Amalgamated Ladies’ Garment Cutters’ Association, No. 10; Cloak and Skirt Makers’ Union, of Brownsville, No. 11; New York Reefer Makers’ Union, No. 17; Skirt Makers’ Union, No. 23; Cloak and Skirt Pressers’ Union, No. 35; Button-Hole Makers’ Union, of New York, Local No. 64; Cloak and Suit Pressers’ of Brownsville, No. 68; party of the second part, hereinafter called the Union, to wit:

In consideration of the sum of one ($1) dollar, each to the other in hand paid before the signing of this agreement, and in consideration of the mutual promises herein made, the parties hereto agree as follows:

I. The said Firm hereby engages the Union to perform all the tailoring, operating, pressing, finishing, cutting, and buttonhole-making work required to be done by the Firm in its cloak and suit business, during the period commencing with the date of this agreement and terminating ——— ——— and the Union agrees to perform said work in a good and workmanlike manner.

II. During the continuance of this agreement operators and finishers shall be paid in accordance with the annexed price list.

The following is the scale of wages for week hands:

Cutters, not less than $25 per week.
Skirt cutters, not less than $21 per week.
Jacket pressers, not less than $21 per week.
Underpressers, not less than $18 per week.
Skirt pressers, not less than $18 per week.
Skirt underpressers, not less than $15 per week.
Part pressers, not less than $13 per week.
Reefer pressers, not less than $18 per week.
Reefer underpressers, not less than $14 per week.
Sample makers, not less than $22 per week.
Sample skirt makers, not less than $22 per week.
Skirt basters, not less than $14 per week.
Skirt finishers, not less than $10 per week.

Buttonhole makers, Class A, a minimum of $1.20 per hundred buttonholes; Class B, a minimum of 80 cents per hundred buttonholes.

III. A working week shall consist of 50 hours in 6 working days.

The following shall be the regular hours of labor: On the first 5 working days of the week, from 8 a. m. to 12 m., from 1 p. m. to 6 p. m.; Saturday, from 8 a. m. to 1 p. m.

IV. No overtime work shall be permitted between the 15th day of November and the 15th day of January and during the months of June and July. During the rest of the year employees may be required to work overtime, provided all employees of the Firm as well as all the employees of the outside contractors of the Firm are engaged to the full capacity of the factories. No overtime work shall be permitted on Saturday nor on any day for more than two and a half hours, nor before 8 a. m. or after 8 p. m. For overtime work employees shall receive double the usual pay.

V. No contracting or subcontracting shall be permitted by the Firm inside of its factory, and no operator or finisher shall employ more than one helper.

VI. No subdivision or section work shall be permitted in operating or finishing.

VII. No employee shall be required to work on any of the 10 legal holidays. All legal holidays shall be paid for. The refraining from work on the 1st of May shall not be considered a breach of this contract.
VIII. The Firm is to furnish to all employees, free of charge, sewing machines driven by electric power, which are to be in charge of competent machinists, and all requisites for work, such as needles, cotton, silk, oil, straps, etc.

IX. Cutters, pressers, sample makers, skirt basters, and skirt finishers must be paid by the week and not by the piece.

X. The Firm may employ outside contractors, provided the contractors employ members of the Union. The Firm agrees to pay the wages of any and all of the employees of its contractors should any of its contractors fail to pay said wages in full.

XI. Work shall be distributed equally between the inside employees and those working for outside contractors, and equally among the inside employees as far as practicable.

XII. At the commencement of the season, after prices have been adjusted, the Firm shall pay to its employees the difference in prices for work on new styles made prior to the adjustment. A shop committee shall, together with the Firm, adjust prices on new styles, reference to be had to previous price list.

XIII. The Union shall have the privilege to have a shop delegate selected by the persons employed in the factory, who is to act as their representative in their dealings with the Firm. A duly authorized officer or representative of the Union shall have free access to the factory for the purpose of communicating with the employees. Such visits shall not interfere with or disturb the work of the employees.

XIV. No work shall be given to employees to be done at their homes.

XV. The Union shall be credited with all the work performed by its several members, and payment to its members shall be considered payment to the Union, provided payment is made in accordance with this agreement.

XVI. Only members of the respective locals above named shall be employed by the Firm to do the said work.

XVII. In case of any dispute there shall be no stoppage of work until the matter in dispute shall have been settled by arbitration, which must take place within three days after the arising of the dispute.

XVIII. Wages shall be paid in cash to pieceworkers on each Monday for work done up to previous Saturday; to week workers on Saturdays.

XIX. The Firm is not to enter into individual agreements with any of its said employees, nor shall any cash or other form of security be accepted from them.

XX. Neither the Firm nor any of its contractors shall require any of its employees (nor shall any employee be permitted) to do work on orders placed by Firms or contractors whose employees are on strike in the city of New York or elsewhere, nor shall the Firm sell any goods to such firms.

XXI. The prices for piecework under this contract are based on the proposition that the average pieceworker shall be able to make 75 cents per hour. And shall the prices for the piecework now agreed upon fail to produce that wage to the average pieceworker the prices shall be subject to revision, in order to promote uniformity in the trade.
INDUSTRIAL COURTS IN FRANCE, GERMANY, AND SWITZERLAND.

BY HELEN L. SUMNER, PH. D.

INTRODUCTION AND SUMMARY.

Special courts for the settlement of disputes which arise by reason of labor contracts between employers and workingmen, though unknown in English-speaking countries, are common on the Continent of Europe. Their essential purpose is to settle, by conciliation whenever possible and by legal judgment when conciliation fails, but in any event cheaply, quickly, and (perhaps most important of all) by means of a court composed in part or in whole of elected representatives of the two classes, all individual legal cases which arise from the relations of employer and employed. In some countries, however, the industrial courts are also used, directly or indirectly, for the settlement of collective disputes. In such cases they serve in a double capacity—first, as legal tribunals, and, second, as boards of arbitration.

The idea of such courts originated in France, where the first council of prudhommes (conseil de prud'hommes) was formed at Lyon in 1806. The system gradually spread over France, and Germany, in annexing the left bank of the Rhine in 1815 and Alsace-Lorraine in 1872, retained the councils of prudhommes of those Provinces. It was not, however, until 1890 that Germany passed a general law providing for the establishment of industrial courts throughout the Empire. Meanwhile, as early as 1859, Belgium instituted a system very similar to that of France, and 10 years later, in 1869, Austria established a series of courts which, however, probably owing to defects in the law, have never been as successful as those of France and Germany. Geneva, which established an industrial court on the French model in 1882, was the first of the Swiss Cantons to adopt the idea. In 1910, however, there were only seven Cantons which did not have some kind of legislation upon this subject. In Italy similar courts, which are empowered to deal with collective disputes also, were established by a law of 1893, and in 1908 Spain joined the ranks of countries which provide special legal machinery for the settlement of industrial disputes.

There are, roughly speaking, three types of industrial courts—first, that of France, in which only employers and workers have a part,
the number of members being even; second, that of Germany, in which the president is neither an employer nor a worker, and the number of members is odd; and, third, that of Switzerland as exemplified by Basel and Zurich, which is a simple adaptation of the ordinary court with the addition of special advisers to the judge. This latter plan, however, is not the only one in force in Switzerland. The first industrial courts formed there were on the French model and later the German system was instituted in four Cantons—Lucerne, Bern, St. Gall, and Neuchatel. Two Cantons, Neuchatel and Solothurn, have so revised their laws within recent years as to change from the French, the first to the German and the second to the Swiss system. At the present time, indeed, only Geneva and Vaud have industrial courts based on the French model. The Geneva court, moreover, has developed along independent lines and forms a unique institution similar to the councils of prudhommes of France in its judicial functions and to the industrial courts of Germany in its relation to the formation of trade agreements and to the settlement of collective disputes.

So far as their functions as judicial tribunals are concerned the most radical difference between these courts lies in their composition. In France both sides, employers and workmen, are equally represented, and the president is chosen alternately from each, whereas in the German courts both sides are also equally represented but the president is chosen from outside, and must not belong to either class. Under the one plan the number of judges is even and under the other odd. In France the president himself represents one side, and equality is supposed to be secured by giving first one class and then the other the advantage of the presidency. In voting, however, the president stands on a par with the other judges, and in the event of a tie the case must be retried by the same court with the addition of a justice of the peace brought in to break the deadlock. In Germany, on the other hand, the president is nonpartisan. It was proposed, at the time of the revision of the French law in 1907, to make the justice of the peace a regular member of the court and its presiding officer, but this idea was vigorously combated on the ground that it gave the balance of power to the very officer whose authority in such matters the councils of prudhommes were instituted to supersede. In the debate on the German bill, however, this question of the presidency of the court, which roused hot discussion in France, was scarcely mentioned. It appears, indeed, to have been generally agreed from the beginning that the president should be neither an employer nor a workman, and that the number of

1 This report is based upon investigations made in Europe in 1910; it was completed before June 1, 1911. The discussion relates, therefore, to legislation in force in 1910, and the statistics given are the latest available in that year.
members of the court, including the president, should be odd. The French system thus yields the court up wholly to the classes concerned, while the German system gives a third party the balance of power.

The Swiss system, which originated in Basel City in 1889 and is now in force also in Fribourg, Solothurn, and Zurich, is similar to the German in that the court is composed of an employer, a worker, and a president who is neither. It differs, however, in that the president must be a judge of the ordinary civil court and that he decides cases merely with the advice of one employer and one workman assessor specially called for each separate dispute. These Swiss courts, indeed, are more closely related to the ordinary judicial system than are the French or German courts. The composition of the Geneva courts is like that of the French in that it is made up wholly of employers and workers, but is like that of the German in that the number of members is odd. The president and vice president of each group preside alternately over a court composed half of employer and half of workman prudhommes.

Industrial courts are usually divided into sections which have jurisdiction over disputes arising in certain groups or categories of trades or occupations, and a certain number of members are elected from each of these occupation groups or categories. The Paris court is divided into 5 sections and some 30 categories, the Berlin court into 8 sections, the Basel court into 10, the Zurich court into 8, and the Geneva court into 12 sections and about 90 categories. The number of members elected is usually large. The Berlin court has 420 members and that of Geneva about the same number.

The qualifications for membership are much the same in France and Germany. Members must be at least 30 years of age, must be citizens in good standing, and must be actually employed in an industrial occupation over which the court has jurisdiction. Trade-union officials who give their entire time to the work of their offices are therefore excluded. Nevertheless, in both countries and also in Switzerland many trade-union officials serve also as assessors of industrial courts, and practically all workmen members belong to labor organizations. In France, but not in Germany, former employers or workmen who have not been out of their industrial occupation for more than five years are allowed to serve. In France, moreover, but not in Germany, it is required that candidates for this office shall have lived and worked at their occupations within the district of the court for at least three years prior to the election. In Germany and in Zurich members may not refuse to serve except upon certain special and well-defined grounds, and in France members who have refused to act or have resigned are not eligible to reelection within three years thereafter. In France members are elected for
six years, in Germany for not more than six years, in Basel for three, and in Geneva for four. Members are always eligible to reelection. Women may be and sometimes are elected to membership in the French courts.

The right of voting for members is more strictly limited in France than in Germany or Switzerland. In the former country only those persons may vote who have been engaged for three years in an industry which is under the jurisdiction of the court and have lived for one year within its district. It is obvious that as workmen are much the more mobile, both in occupation and in residence, this restriction limits the franchise for them far more than it does for employers. In Germany it is only necessary that a man shall be employed in such an industry and shall live in the district at the time of the election. In Switzerland any employer or workman of an occupation included in the list of those under the jurisdiction of the court, who is a legal voter in a Canton, is usually entitled to vote in an industrial court election. Women vote in France and in Geneva, but not in Germany, in Basel, or in Zurich. No person may vote in more than one group.

Employers and workers always vote separately. The elections in France, however, are much more complicated than in Germany or Switzerland, owing to the division of the voters into categories according to the character of their occupations and to the compulsory preparation of voting lists for each one of these categories. In Germany registration of voters is not required by the law, but may be provided for by the local regulations. The proportional election system is frequently used. In Basel, Zurich, and Geneva separate voting lists are prepared for the employers and for the workers of each group of occupations.

One of the most difficult problems which arises in connection with these courts is the establishment of rules for distinguishing employers from workmen. Usually the distinction is obvious, but there are always many puzzling cases, such as that of a foreman who himself is a wage earner but at the same time hires subordinate labor. In France the performance of manual labor is made the criterion, the foreman who merely supervises and looks after machinery being classed as an employer, while the foreman who takes part in the actual labor of manufacture is classed as a worker. In Germany, on the other hand, the amount of compensation is made the criterion, foremen and directors whose yearly compensation exceeds 2,000 marks ($476) being classed as employers, while those whose yearly compensation is less than 2,000 marks are classed as workers. Neither plan seems to be entirely satisfactory, and both are very difficult of application, for neither the exact functions nor the exact compensation of a foreman are easy to ascertain. In
France, however, the third category of employees in part meets the difficulty. In Basel and Zurich the law simply provides that higher employees, such as directors, confidential clerks, foremen and overseers, shall be classed as employers. In France and Germany the members of the managing committees of joint-stock companies are also classed as employers. Home workers and small contractors may also be difficult of classification. In both France and Germany, however, it has been decided that home workers who furnish all their own materials are independent producers and are either not subject to the jurisdiction of the industrial courts or, if they employ labor, are subject as employers. In Geneva a person who is in charge of job work for another and himself employs assistance is considered as an employer and not as a worker.

The jurisdiction of the industrial courts of France and Germany extends not only over disputes between employers and workers, but also over disputes between workmen who are hired by the same employer. The latter class of disputes, however, are not mentioned in the laws of Basel, Zurich, or Geneva. In all five jurisdictions the existence of a labor contract of some kind is essential, but the idea of a contract is loosely interpreted to cover any relationship between wage givers and wage receivers. An independent worker, however, as, for example, a cobbler working for the retail trade, is not included.

In France and Germany there are special rules for the settlement of cases which would normally be brought before the industrial courts but which arise in districts where they do not exist. The Basel and Geneva courts have jurisdiction over the entire Cantons, while that of Zurich is limited to the city. In France, Germany, and Geneva the jurisdiction of other courts is entirely excluded by that of the industrial courts, but in Basel and Zurich, on the request of both parties, any industrial dispute may be tried by the ordinary courts. In Zurich, however, parties are expressly forbidden to enter into agreements in advance, to submit disputes to the ordinary instead of to the industrial tribunal.

The French courts have jurisdiction only over the particular trades mentioned in the decrees under which they are organized, whereas those of Germany, unless specially limited to certain trades, have jurisdiction over all industrial employments. In some instances courts have been established for a single occupation, as the mining courts of Germany and the court in St. Gall, Switzerland, which is formed for the famous embroidery industry of that Canton. The decree organizing a French court may extend its jurisdiction to commercial employments, but in Germany only the purely industrial workers in such businesses are included. For other employees there are special courts called mercantile courts (Kaufmannsgerichte), loosely connected with the industrial courts (Gewerbegerichte).
In Basel, Zurich, and Geneva commercial occupations form separate sections of the courts. The jurisdiction of the German courts is further limited by that of a similar system of guild courts for the settlement of disputes which arise between the members of guilds and their working people. In France and Geneva all public employees are excluded from the industrial courts, whereas in Germany only those are excluded who are under the control of the military and naval departments. In Geneva and Neuchatel, Switzerland, persons engaged in domestic service, and in Geneva persons engaged in agriculture, are included. The occupational jurisdiction of the Geneva councils of prudhommes, indeed, is wider than that of any other industrial court.

The amount in dispute sometimes limits the jurisdiction. The French councils of prudhommes may decide cases the value of which is under 1,000 francs ($193). The industrial arbitration court of Basel, however, is limited to cases in which the amount in dispute is under 300 francs ($57.90), and that of Zurich to cases in which the amount in dispute is under 200 francs ($38.60). In Vaud, Switzerland, the limit is 3,000 francs ($579) and in Fribourg 600 francs ($115.80). No such limitation, however, exists in Germany or in Geneva.

The great majority of complaints brought before the industrial courts relate to wage payments, but discharge without notice is also a frequent cause of disputes. In Berlin in 1908, for example, more than half of the complaints related to wages and about a third to alleged illegal discharge. In Basel in 1909 over a third of the disputes had to do with wages and lack of notice of discharge was the next most important cause. In Zurich in the same year wages caused about three-fourths of the complaints and discharge caused most of the other fourth, and in Geneva over 80 per cent of the cases were demands for wages or other compensation measured in money.

As the primary object of these courts is conciliation and not judgment, their procedure differs decidedly from that of ordinary judicial tribunals. In the first place, the personal appearance of parties is required except in case of sickness, absence from the city, or other hindering cause, and such hindrance must usually be proved. In France, if a party is sick or absent he may be represented by another employer, employee, or worker engaged in the same occupation, or by a lawyer. The head of a large industrial enterprise may be represented by his managing director, by an employee, or by a lawyer. The German law, on the other hand, allows parties to be represented only by persons who are themselves subject to the jurisdiction of the court—that is, by employers or workers in some industry. Secondly, the part played by lawyers in proceedings before the industrial courts is minimized or suppressed. In France parties who are unable to ap-
pear may be represented by lawyers and lawyers may always act as assistants to parties. But in Germany and in Geneva lawyers are not permitted to appear either as representatives or as assistants. In practice, however, lawyers do not appear in more than 10 per cent of the cases brought before the board of judgment in Paris and probably not in more than 5 per cent of those brought before the board of conciliation. Partly as a result of the discouragement of professional assistance and partly as a result of the duty of the president to do everything in his power to bring about a reconciliation between the parties, the proceedings are, thirdly, much less formal than those of ordinary courts and the president takes a much more active part than the ordinary presiding judge in the conduct of cases. In both France and Germany efforts at conciliation may be renewed at any stage of the proceedings.

In order to facilitate conciliation, moreover, special provision is made for preliminary hearings before only part of the court. In France all cases must come first before the board of conciliation, which is composed of the president of the court or section, assisted by a member of the opposite class. That is, if the president is an employer, he must be assisted by a workman member and vice versa. The public is excluded from the sessions of this board. In Germany the functions of a board of conciliation are practically performed by the president alone in preliminary hearings. It is left to the judgment of the president, however, whether he will hear a case alone or with the assistance of assessors. Another important point of difference between the systems of France and Germany is that whereas in France the board of conciliation may under no circumstances pronounce judgment, in Germany, if both parties agree in asking it, the president, at the close of a preliminary hearing without assessors, may issue a valid decision. The Geneva system is very similar to that of France, but the members of the boards of conciliation are specially chosen for that service and do not usually include the president of the court. The Geneva boards, moreover, are empowered, if their efforts at conciliation fail, to decide in first resort cases in which the value in dispute does not exceed 75 francs ($14.48) and in last resort cases in which the value in dispute does not exceed 20 francs ($3.86). Their sessions are private only in conciliation proceedings and not in judgment proceedings.

Neither the laws of Basel nor of Zurich, on the other hand, make any provision for special conciliation proceedings. In both Cantons, however, the president of the court may, on his own responsibility, hold hearings without the assistance of the other members. The greater and more successful use made in Zurich than in Basel of this privilege is the chief point of difference between the courts of the
two Cantons. In neither, of course, may the president pronounce judgment in such hearings.

The sessions of the full court are always public, unless the evidence is held to be dangerous to public order or morality, and in the smaller places are usually held in the evening or late afternoon so as to interfere as little as possible with the regular work of the members and of the parties. In all cases, moreover, such sessions must be participated in by an equal number of employers and of workers.

In Paris six members are usually present, in Berlin four in addition to the president, in Basel and Zurich two, and in Geneva four in addition to the president. The president maintains discipline and may sentence disobedient or disorderly persons to a fine or even to imprisonment. Witnesses are frequently heard and in some cases the testimony of experts is secured. The French courts, by reason of the fact that their members are elected according to special categories of occupations, are usually able, in case of need, to secure expert judgment from one of their own members. In the majority of cases judgment is pronounced, if no agreement is reached, at the close of the first hearing before the full court, or at the close of the first hearing to which witnesses have been summoned. In France the court often decides cases by consultation on the bench, without retiring or excluding the parties. In Germany and in the three Swiss Cantons, however, the law provides that the deliberations of the judges upon decisions shall be conducted privately. The decision is reached by majority vote except in Basel and Zurich where it is practically in the hands of the president. In France, as has already been seen, if a majority can not be otherwise secured, a justice of the peace may be added to the court. It is rarely necessary, however, to take advantage of this provision of the law.

Decisions are based both upon law and upon the customs of the trade as interpreted by the members of the court. In Germany and in Geneva trade agreements formed under the direction of the industrial courts also serve as a basis for decisions.

More than half of the cases which come before the courts are usually conciliated and a large number are withdrawn, not contested, or settled by judgments by default. The judges, therefore, are called upon to decide disputes after hearing both parties in only a small proportion of the cases which appear on the records. In France in 1906 less than 15 per cent, and in Germany in 1908 less than 17 per cent of the cases brought before the industrial courts were settled, after hearing both parties, by formal judgments. In 1908 in Paris about 17 per cent and in Berlin only about 9 per cent of all complaints were so terminated. It is said that in Switzerland about two-thirds of all cases are settled without judgment and that the existence of a
conciliation board or committee increases the number of such cases.\(^1\)

In Basel, however, in 1909, only about 2 per cent of the complaints entered were settled by the president alone and in nearly three-fourths of the total number of cases judgments were rendered. But in Zurich, where the legal provisions relating to industrial courts are practically the same as in Basel, in the same year nearly 65 per cent of the complaints were conciliated by the president alone, and in only about 10 per cent was it necessary to pronounce judgment. The Geneva court in 1909, moreover, sent only 18 per cent of all complaints entered to the tribunal and the latter pronounced judgment in only about 12 per cent of all the cases. The Geneva boards of conciliation in the same year settled only 30 of the 1,795 suits submitted to them by judgments after hearing both parties. It is evident that the judicial functions of industrial courts are decidedly subordinate to their functions as boards of conciliation.

The most conspicuous advantages of these courts are their rapidity of action and their cheapness. Every effort is made to settle cases quickly. After a complaint is entered, for example, the case is set for hearing at as early a date as possible, and thereafter only absolutely necessary delays are allowed. The French law provides that cases must be settled within four months, and in Germany in 1908 only about 1.5 per cent, even of the cases which were brought to final judgment, lasted over three months. In Zurich, moreover, in 1909, over three-fourths of the disputes settled without judgments were ended in less than eight days after the complaint had been entered and more than half of those in which judgments were pronounced lasted less than two weeks.

Fees and costs are reduced to a minimum. In France suits for less than 20 francs ($3.86) are subject to no fees whatever, and in other cases the fees range from 15 centimes, or about 3 cents, to 1.75 francs, or about 35 cents, for the different kinds of summonses, notifications, etc. In Germany no fees are collected in cases in which agreements are reached, but the actual costs, outside of the running expenses of the court, are divided between the parties. In other cases only one fee is charged, and this is graded according to the amount involved in the dispute. From 1 to 3 marks (23.8 to 71.4 cents) are collected for cases which do not exceed 100 marks ($23.80), and 3 marks for each additional 100 marks. Moreover, if the case is ended by a judgment by default, or by an acknowledgment or withdrawal of the claim, only half the regular fees are collected. Certain costs, such as the cost of summoning witnesses, are also paid in Germany. When it is considered, however, that in France there may be several separate fees in one case, it is probable that the total

\(^{1}\) Conrad und Lexis, Handwörterbuch der Staatswissenschaften, Vol. IV, p. 893.
cost of a suit is about the same in one country as in the other. The Basel court collects no fees whatever from the parties, but the Zurich court collects small fees graded according to the amount in dispute, and the Geneva court small fees for special services as in the French courts.

In so far as the expense of maintaining an industrial court is not covered by the fees, it is met by the municipality or municipalities over which the tribunal has jurisdiction, or, as in the case of the German mining courts and of the Basel and Geneva courts, which have jurisdiction over the entire Canton, by the State. Members may be compensated for their services in two different ways, by regular salaries or by fixed fees for attendance at sessions. In France it is determined in the local regulations whether prudhommes shall receive regular salaries or fees. In Paris they receive regular salaries. In Germany the president, of course, is a salaried official, but assessors are considered to hold honorary offices and receive only fees as compensation for loss of time. In both countries it is specially provided that the compensation of employers and workers shall be exactly the same, and the German law expressly forbids assessors to decline this compensation. In Basel, Zurich, and Geneva fees are paid for each session of the court attended.

Judgments of an industrial court, like other judgments, are subject to change by the usual methods. A party, for example, who has been condemned through a judgment by default, may enter opposition to such judgment if he can prove that he had a good excuse for his failure to appear. Decisions, moreover, may be revised under certain circumstances. Appeals from the decisions of an industrial court may be made in France only in cases in which the demand is indeterminate in value or is for a sum exceeding 300 francs ($57.90), and in Germany only in cases in which the amount or value in dispute exceeds 100 marks ($23.80). If the demand is not for a fixed sum, the industrial court itself determines its value. In Basel and Zurich, where the courts have jurisdiction only over minor disputes, there is no appeal except on the ground that the court lacked jurisdiction or exceeded its power. But in Geneva, as in France, appeal may be made in all cases in which the amount in dispute exceeds 300 francs ($57.90), as well as in those in which lack of jurisdiction or pendency is alleged. The time, however, within which appeal may be entered is strictly limited.

In France and Germany appeals are heard by the regular courts. In Geneva, on the other hand, cases in which the amount in dispute exceeds 300 francs ($57.90) are carried on appeal before special chambers of appeal which exist for each group, and cases which are appealed on the ground of lack of jurisdiction go to a mixed court. The chambers of appeal are formed within the court itself and have
six members, three employers and three workers, in addition to a
president and a secretary. The mixed court is composed of three
prudhommes and two judges of the court of justice.

Since, however, most of the cases which come before the industrial
courts are for small amounts, few decisions are subject to appeal.
Only a small proportion of these, moreover, are actually appealed.
In France in 1906 only about 15 per cent of the suits in which judg-
ment was pronounced, and less than 2.5 per cent of those which were
brought, were capable of being appealed. In Germany, owing to the
lower amount set, more cases are capable of appeal. In 1908, of all
the cases in which final judgment, other than judgment by default,
was entered, about 47 per cent were for over 100 marks ($23.80).
Only about 7.5 per cent of all the complaints made, however, exceeded
this sum. Moreover, whereas in France over two-thirds of the cases
which are capable of appeal are carried to the superior court, in Ger-
many only about 7 per cent of such cases are actually appealed. In
Geneva in 1909 only 14 cases were brought before chambers of appeal
and only 2 before the mixed court.

All of the courts here studied, except those of Basel and Zurich,
have, in addition to their judicial, certain administrative functions.
Opinions upon industrial questions may be demanded of the courts
of France, Germany, and Geneva by other government officers. The
German courts, moreover, are empowered to present proposals to leg-
islative bodies, and may in that way influence the formation of the
laws under which they act or by which their decisions must be guided.
The French courts, though they do not have this power, are reposi-
tories of patterns and models under the patent system and take part
in the formation of labor councils (conseils du travail), composed
of representatives of both capital and labor and organized for the
purpose of giving information and advice to the minister of labor
and to the legislature. The German courts, moreover, though not
specifically authorized so to do by the law, sometimes conduct legal
information bureaus. In four Swiss Cantons, Vaud, Neuchatel,
Fribourg, and Geneva, the industrial courts have supervision over
apprenticeship. The courts of Fribourg and Geneva also have super-
vision over the sanitary condition of workrooms and raw materials.
The councils of prudhommes of Geneva, moreover, may appoint
special committees for the investigation of industrial and commercial
questions, and regularly take part in the formation of the chamber
of labor (chambre de travail).

Collective disputes are entirely outside of the jurisdiction of the
industrial courts of France and of the Cantons of Basel and Zurich.
The settlement of strikes and the formation of trade agreements,
however, are important functions of the industrial courts of Germany
and of the councils of prudhommes of Geneva. The powers and even
the composition of an industrial court when acting as a board of arbitration, however, are quite different from those of the same court when acting as a judicial tribunal.

In Germany the industrial court may be called upon as a board of arbitration by both parties or by only one party to a dispute, or, if neither party takes such action, the president of the court may intervene and endeavor to effect a reconciliation or induce the parties to summon the board of arbitration. One of the duties of the president is to keep in touch with trade unions and employers' associations and to secure early information of strikes and lockouts which may be either threatened or declared in the trades which are under the jurisdiction of the court. The board of arbitration can be formed, however, only on the application of both parties. It is constituted of arbitrators selected in equal numbers by each side and is presided over by the president of the industrial court. The arbitrators may or may not be chosen from among the assessors of the court, but they must not themselves be concerned in the dispute. Each side appoints representatives to present its case. Witnesses and experts may also be heard. If an agreement is reached its terms are made public in a statement signed by all the members of the board of arbitration and by the representatives of both sides. Otherwise the board must issue a decision which, however, is not legally binding on the parties. But if the arbitrators divide up, all of those appointed by the employers on one side and all of those appointed by the workers on the other, the president may decline to cast the deciding vote and declare that it has been impossible to reach a decision. In any event the conclusion is made public and the chief force relied upon to secure submission to awards is public opinion.

The number of appeals to the industrial court as a board of arbitration naturally varies decidedly from year to year, but tends to increase as the system becomes familiar to and secures the confidence of employers and workmen. Roughly speaking, about three-fourths of the cases are settled by agreement and in nearly three-fourths of those which are ended by awards both parties submit to the decision. But in a considerable number of cases it has proved impossible to effect a settlement. The most important service of the industrial court in collective disputes, however, is perhaps the assistance which it has rendered in the formation of wage contracts and trade agreements. In a large number of cases which do not appear in the statistics of the work of the boards of arbitration, the presidents of industrial courts have presided over meetings of representatives of the two sides at which such agreements have been formulated.

There has been considerable discussion in Switzerland as to the relative advantages of an independent arbitration board and of a
board connected with an industrial court. Basel and Zürich have decided in favor of the former. Bern and Lucerne, on the other hand, have adopted the German plan entire and Geneva has developed a unique system of its own, which covers in one way or another all collective disputes which arise in the Canton. There the board of arbitration is composed of the 24 members of the central committee of the prudhommes and of seven or a less number of delegates from each side. The presiding officer, however, is the president of the central committee.

Disputes are brought before this board either as a result of voluntary efforts toward the formation of trade agreements or on the initiative of the State council or the central committee. It is the duty of the State council, as soon as it learns that a conflict is imminent, to make an effort at conciliation and, if this effort is unsuccessful, the case is sent to the central committee for arbitration. As in Germany, public opinion is largely relied upon to secure the enforcement of decisions. The law is more radical than that of Germany, however, in that it forbids any public call for a strike or lockout. Arbitration, indeed, is practically compulsory, though the acceptance of the award is not obligatory. In several cases the representatives of one or the other side have refused to sign the agreement. Usually, however, even in such cases, the parties tacitly accept the decision and continue or return to work. But the law does not entirely preclude the possibility of strikes and lockouts.

Under the law relating to trade agreements and collective disputes some 28 agreements were entered into between 1900 and 1910 and about 15 of these were formed through arbitration proceedings before the central committee of the prudhommes.

To sum up, the chief points of difference between these courts are as follows:

1. Under the French system the number of members of the court is always even and the president and vice president are elected from among the members. But under the German system the number of members is always odd and the president is neither an employer nor a workman. This plan is severely criticized in France upon the ground that it gives the balance of power to an official of the class whose authority the industrial courts were created to supersede. It appears, however, to work well and to be perfectly satisfactory to both sides. The system in force in Basel and Zürich is similar to that in Germany except that the president is always a regular civil court judge. Under the Geneva plan, too, the number of members of the court is odd, for the president or vice president, one an employer and the other a worker, acts with an even number of other members drawn equally from each class.

2. In France the various industrial and commercial occupations are divided into groups, each of which elects its own industrial court
members. In Germany, on the other hand, though such a division may be made, it is not customary. The members of the courts of Basel, Zürich, and Geneva, like those of France, are elected by groups of occupations.

3. The jurisdiction of the French courts extends only to those occupations specially named in the decree through which they are instituted, whereas the jurisdiction of the German and Swiss courts usually extends to all industrial occupations not provided with other similar institutions for the settlement of disputes. Commercial occupations are included in Basel, Zürich, and Geneva and may be included by decree in France. In Germany, on the other hand, there is a separate system of courts for commercial occupations and still another system for the settlement of disputes between members of guilds and their workers or employees.

4. Each council of prudhommes in France and in Geneva is divided into a board of conciliation and a board of judgment. In the industrial court of Germany there is no such division, but the same general results are attained by the provision of the law that the president of the court may hear cases without the assistance of assessors for the purpose of conciliation. The president alone, therefore, acts practically as a board of conciliation. In Basel and Zürich the president acts in such cases without special authorization in the law.

5. Lawyers may not appear as representatives of parties in the industrial courts of Germany or the Cantons of Basel, Zürich, or Geneva, but may so appear in those of France.

6. The courts of France, Basel, and Zürich have nothing to do with collective disputes, whereas those of Germany and Geneva not only act as boards of arbitration, but in other ways render valuable assistance in the formation of wage contracts and trade agreements.

All three countries, France, Germany, and Switzerland, have voluntary central unions of industrial courts. The French association publishes a journal, called Les Conseils de Prudhommes, and the German union, besides maintaining archives in which are filed reports, decisions, and trade agreements entered into under the direction of the court, publishes an official organ, Gewerbe- und Kaufmannsgerichte. In Switzerland a closer union among the courts and a uniform system of reports are greatly needed.

Though the French system of industrial courts is much older than that of Germany, the latter has spread with remarkable rapidity and is at the present time, statistically measured, decidedly the more important. In 1906 there were in France 164 councils of prudhommes, which handled 49,834 cases. In Germany in the same year there were 419 industrial courts which handled 114,187 cases. In 1908, moreover, Germany had 469 courts and 112,281 cases. The
Paris court, however, in its five sections, handled more cases than that of Berlin in its eight sections. It is evident that Germany has more small courts which handle few cases than has France. There are, however, certain special reasons for the numerical superiority of the German courts which have nothing to do with the comparative success of the two systems. In France, for example, only one council of prudhommes may exist in a district, whereas in Germany, if in a district a court exists which is restricted to certain industries, another may be formed to deal with disputes in other occupations. In Germany, moreover, every city of over 20,000 population must have an industrial court, and in other municipalities such courts may be created on the initiative of the local authorities or of the employers and workers concerned. In France, on the other hand, their establishment is entirely voluntary and must be approved though not necessarily initiated by the municipal council. Though in both countries they are State courts, control over the system is much more centralized in France than in Germany. In Basel in 1909 there were 680 complaints, in Zürich 1,085, and in Geneva, 1,795.

In France the tendency has been, in the long run, for the number of cases brought in individual courts to decrease and there is some evidence to show that, even in the few years that the German system has been in existence, the same tendency has manifested itself. In Basel, too, the number of cases has slightly decreased within recent years, but in Zürich and Geneva it has increased. There is, however, no particular significance in an increase or decrease in the number of cases. A decrease may be due to improved factory regulations by which labor relations are standardized or to a more widespread knowledge and understanding of the law. An increase, on the other hand, may be a sign of greater confidence in the industrial court as a judicial tribunal before which the poor man can obtain his rights.

The vast majority of complaints are brought by workers. In Germany in 1908 only 5,672 suits were brought by employers, as compared with 106,269 brought by workers against employers and 340 by workers against fellow workers. In Berlin of the 14,522 cases handled in the same year 702 were brought by employers and 13,820 by workers. In Basel in 1909, moreover, out of 680 complaints, 661 were brought by workers. The greater number of complaints from workers is, indeed, characteristic of the system. On the other hand it has been observed that where no such courts exist the number of complaints raised by employers is disproportionately large, because the workers fear that they will not obtain justice. Naturally, therefore, industrial courts are much more popular with workmen than with employers.

Most of the complaints, too, are for small sums. It has already been seen that comparatively few cases in France, Germany, and Geneva are for large enough amounts to be capable of appeal. In Zürich in 1909 over 80 per cent of the cases were for less than 100 francs ($19.30), while about half were for less than 50 francs ($9.65). It has been estimated that in all the courts of Switzerland about 85 per cent of the demands are for sums of less than 100 francs ($19.30).

Certain criticisms are made of both the French and the German systems. In France it is said that the ends of justice are too often defeated by the tacit acceptance on the part of the members of the court of an imperative mandate or injunction from their constituents to decide cases in favor of their side. Though this is expressly forbidden in the law under penalty of forfeiture of position, the feeling appears to prevail that the imperative mandate is not yet abolished. It is said, moreover, that the limitation of the jurisdiction of the councils of prudhommes to cases under 1,000 francs ($193) in value enables employers to enter counterclaims for larger sums and so take the case to the ordinary court, where they hope for a more favorable judgment. There is less criticism, apparently, of the German system so far as it affects individual disputes. The clauses of the law, however, which classify foremen and managers who receive over 2,000 marks ($476) yearly as employers and those who receive less than that sum as workers are frequently criticised. The radicals, moreover, desire the extension of the jurisdiction of the courts to domestic servants and other classes of workers now excluded, and the compulsory establishment of such courts in all municipalities regardless of population. The idea of an industrial court in Germany and Switzerland, indeed, is more closely related to the conception of a civil court, with a special jurisdiction, than to that of a board of experts or prudhommes.

These courts are based upon the theory, which the legislators of industrial nations tend more and more to recognize, that the labor contract is a contract of a special nature to which special rules should be applied, and that, as the relations to which it gives rise become more and more complicated, there needs to be developed for their regulation special legal machinery. To a certain extent the plan adopted is an adaptation of the jury idea. Originally called into being as a result of the need for special technical knowledge in the settlement of industrial disputes, they have come to fill also the need for close acquaintance with customs and industrial conditions and for skill in conciliation. This latter need has grown with the increase

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1 Handwörterbuch der Schweizerischen Sozialpolitik und Verwaltung, Vol. 2. Dr. E. Zürcher, Gewerbegerichte und Einigungsämter, p. 300.
in a poor, floating laboring class whose members can neither wait long nor spend much to secure their legal rights in the employment market.

Wherever established industrial courts are considered as essential parts of the machinery by which the relations between capital and labor are regulated. No other courts, it is believed, could handle the class of cases which come before them so quickly, cheaply, and easily. It is held, moreover, to be a particular advantage of these tribunals that no dispute is too small for their consideration. In Germany suits for as little as 20 pfennigs, or about 5 cents, have been brought before the industrial court. This may seem petty, but in the first place 20 pfennigs has higher purchasing power in Germany than 5 cents in America, and, in the second place, the possibility of obtaining his rights cheaply and quickly prevents many a man from being embittered by the sense of powerlessness against injustice.

These courts, however, are much more frequently used and are more successful in districts and industries where small scale production prevails than in those where the factory system exists. A large proportion of the disputes arise in such industries, for example, as building, the manufacture of clothing, and the preparation of food and drink. The conditions of labor in large establishments are so standardized as to give rise to fewer disputes than arise in small shops. Moreover, the workers employed in large establishments are sometimes afraid of being blacklisted if they bring suit against their employers and are therefore ready to endure small losses, just as is probably done in the vast majority of similar cases in the United States.

While this system of industrial courts has been growing up in Europe, England and the United States have been much more occupied with the settlement of collective than with the settlement of individual labor disputes, and, though they have developed independent systems of arbitration boards for the former, have left the latter to the ordinary courts. In England, indeed, a law passed in 1824 provided that the justice of the peace should draw up a list of arbitrators, half employers and half wage-earners, and that the parties in individual disputes might each choose one of these arbitrators to act in their case. But the procedure was long, costly, and complicated, and the law was never applied. A law of 1867, moreover, permitted the formation of industrial courts similar to those of France. No true judicial tribunal, however, was ever established under its provisions, which were applied only in so far as they related to conciliation.
In the United States the only similar law ever enacted was passed in Pennsylvania in 1883, and was perhaps suggested by a report, published four years earlier, upon arbitration and conciliation in England. This law provided that permanent tribunals for the settlement of individual labor disputes might be created upon the demand of 50 workmen or of 5 employers, each of whom had at least 10 persons working in his establishment. All decisions of these courts, however, were to be subject to the confirmation of the tribunals of common law. This legislation met with the same fate as that of England. No courts were established, and in 1893 the law was abrogated.

THE INDUSTRIAL COURTS OF FRANCE.

HISTORY.

The first industrial court (conseil de prud'hommes) was established at Lyon in 1906, and from that time until the present day the institution has grown steadily in size and power. So-called councils of prud'hommes, composed exclusively of masters, had existed in France from about 1294 until the abolition of all special courts in 1791. But the Lyon court was based upon an entirely different principle, the election by their peers of prud'hommes or experts to represent both sides of industrial disputes. This principle has been at the bottom of all subsequent legislation, and is the basic principle of the law of 1907, under which the institution has acquired a position of much greater importance than ever before in French industrial life.

The law which created the Lyon court provided further that councils of prud'hommes might be established, if deemed advisable, in all the factory cities of France. Under this provision the system was gradually extended until by 1810 there were 20 and by 1830, 53 courts in France. In 1844, when the first industrial court was established in Paris, the number had increased to 66, and all the other principal industrial cities of France were provided with courts. In Paris there were special difficulties on account of the diversity of industries and of conditions. The jurisdiction of the first court there was limited to the metal industries, but in 1847 three new courts were organized, one for textile industries, one for chemical products, and one for "diverse industries."


2 This account of the history of the industrial courts of France is based primarily upon Regaud, Les Conseils de Prud'hommes; Regnault, Les Conseils de Prud'hommes; and Gruet, Les Conseils de Prud'hommes, Revue Politique et Parlementaire, mai, 1895.
INDUSTRIAL COURTS IN FRANCE, GERMANY, AND SWITZERLAND. 291.

The following figures show the growth of the system in France by decades since 1830:

NUMBER OF COUNCILS OF PRUDHOMMES IN FRANCE AND NUMBER OF CASES DEALT WITH BY SUCH COUNCILS, BY DECADES, 1830 TO 1900 AND 1906.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of courts</th>
<th>Number of cases dealt with</th>
</tr>
</thead>
<tbody>
<tr>
<td>1830</td>
<td>5</td>
<td>11,613</td>
</tr>
<tr>
<td>1840</td>
<td>64</td>
<td>15,978</td>
</tr>
<tr>
<td>1850</td>
<td>75</td>
<td>26,429</td>
</tr>
<tr>
<td>1860</td>
<td>95</td>
<td>42,166</td>
</tr>
<tr>
<td>1870</td>
<td>109</td>
<td>80,249</td>
</tr>
<tr>
<td>1880</td>
<td>118</td>
<td>30,560</td>
</tr>
<tr>
<td>1890</td>
<td>143</td>
<td>45,005</td>
</tr>
<tr>
<td>1900</td>
<td>160</td>
<td>52,090</td>
</tr>
<tr>
<td>1906</td>
<td>164</td>
<td>45,384</td>
</tr>
</tbody>
</table>

The number of courts has increased steadily by decades, though Appendix I, Table II, shows that there have been fluctuations from year to year. In 1910 there were about 175 courts in France and Algiers. The number of cases handled shows considerable fluctuation even from decade to decade, but, upon the whole, has increased more rapidly than the number of courts. In 1830 the average number of cases to a court was about 220 and in 1906 about 280 a year. Changes in legislation and in the popularity of the institution, hereafter to be discussed, account, in part at least, for the fluctuation. Unfortunately statistics for the whole of France are not yet available for any year since the present law went into effect. The number of cases in Paris from 1906 to 1909 was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1906</td>
<td>19,262</td>
</tr>
<tr>
<td>1907</td>
<td>17,929</td>
</tr>
<tr>
<td>1908</td>
<td>15,970</td>
</tr>
<tr>
<td>1909</td>
<td>20,020</td>
</tr>
</tbody>
</table>

Within recent years there has been a tendency, except when the jurisdiction has been extended, for the number of cases introduced to decrease. There are two principal causes for this. First, both employers and wage-earners are gradually becoming educated to understand what are and what are not their rights, what will and what will not be upheld by the prudhommes, and this knowledge tends to decrease the number of actions. Often the threat of one party to bring the case before the court is sufficient to bring the other party to terms. Second, the development of large industries tends to decrease the number of cases. It is generally in communities

1 These figures are for the four Paris courts, or councils of the Department of the Seine, which were formed under the law of 1907 into sections of a single court. The section of commerce, which began its work in 1909, is omitted. In spite of this omission, the reorganization of the Paris court, which took effect on Jan. 1, 1909, in conformity with the law of 1907, obviously increased the number of cases.
where there are numerous small industries that many complaints are brought before these courts. Where factory industry predominates there are usually few cases. In one large factory district, for example, only six cases were brought before the prudhommes during 1900. In some districts, moreover, where these courts were once active, they have almost died out owing to changed industrial conditions.

It is the small shop workers primarily, and not the factory workers, who use the councils of prudhommes. The chief reasons for this are that factory workers fear the blacklist, that factory industry is so standardized that there are fewer individual causes of complaint, and that personal factors are less prominent than in home and shop work.

The causes of disputes brought before the courts show a change which confirms this theory. The statistics show that bad work, though perhaps originally the greatest cause of the disputes which the councils of prudhommes were created to settle, has diminished steadily in importance—a decrease due to the increased use of machinery in industry. Moreover, purely technical causes of dispute have decreased, while causes common to all labor contracts have increased.

The following figures show, briefly, the movement:

**CAUSES OF DISPUTES BEFORE COUNCILS OF PRUDHOMMES OF FRANCE IN SPECIFIED YEARS, 1880 TO 1906.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of disputes concerning—</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Wages</td>
</tr>
<tr>
<td>1880</td>
<td>26,170</td>
</tr>
<tr>
<td>1890</td>
<td>32,948</td>
</tr>
<tr>
<td>1895</td>
<td>32,740</td>
</tr>
<tr>
<td>1900</td>
<td>25,751</td>
</tr>
</tbody>
</table>

The legislation in regard to the councils of prudhommes has been several times revised. The first law, that of 1806, was adapted to meet the special needs of the Lyon silk industry, which was carried on by merchant manufacturers who furnished materials to contractors or heads of workshops. The latter themselves hired journeymen and apprentices. Under this system and the freedom of industry established in 1791, many difficulties of a technical character had arisen, which the ordinary courts were not competent to settle, and it was primarily to conciliate such differences that the first council of prudhommes was established. It was also authorized,

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1 Figures in regard to other causes of disputes are given in Appendix I, Tables III and V.
however, to pass judgment, if necessary, upon all cases in which the
amount in dispute did not exceed 60 francs ($11.58). To this end
two departments of the court were formed, the board of conciliation
and the board of judgment. The real workmen, however, the
journeymen, had no part in the organization of this court, which
was composed of nine members, five merchant manufacturers and
four contractors or heads of workshops. The journeymen had no
part even in the elections.

As a result of the extension of the system, it soon became necessary
to formulate more exactly the basis of the institution and to lay down
more general rules. This was done by a decree in 1809, and later by
an opinion of the conseil d'état in 1820. From time to time other
slight changes and several additions, which have remained in force,
were made. In 1810 the courts were authorized to judge in first re­sort, whatever the sum in dispute, but in last resort only on cases in­volving less than 100 francs ($19.30). The decree of the year before
had allowed journeymen who had paid for a special license to carry
on industry independently (ouvriers patentés), and who frequently
employed other journeymen, to take part in the formation of the
councils of prudhommes. But the great majority of workmen were
excluded, and the merchant manufacturers retained their preponder­ance in the composition of the courts until 1848.

In that year, under the influence of the new spirit of democracy,
four important changes were introduced. First, it was provided
that henceforth the court should be composed of an equal number
of employers and of workers, and that the total number, there­fore, should be even instead of odd as before. Second, an abso­lutely new mode of election was established, the chief feature of
which was that the employers elected the workmen members and
the workmen the employer members, each class having previously
nominated from among its own members a list of three times as many
candidates as were to be elected by the assembly of the other class.
Third, it was provided that the president of the court should be alter­nately an employer and a worker.

Fourth, the foremen, contractors, heads of workshops, and even
the licensed journeymen, who had formerly furnished the second
group in the courts, were now themselves classed as employers, and
the second group was formed of genuine wage-earners who had never
before been allowed to vote or been eligible to office. This arbitrary
classification, however, led to immediate complaints, for the class of
foremen, contractors, and heads of workshops was so large in num­bers, as compared with the genuine employers, that it could absolu­tely control the election of employers. Moreover, foremen could
so easily be reduced to the ranks of simple workmen that, if elected
as employers, they often became wage-earners soon afterwards.
Finally, the head of the workshop is the only person, under the contract system, whom the employer can hold responsible for bad work, and the very class of difficulties which had originally led to the formation of the councils of prudhommes were left practically unprovided for under this new classification. An attempt was made by a decree of June 6, 1848, to remedy the matter by creating three categories of prudhommes, employers, workers, and foremen, contractors, and heads of shops, who should compose two chambers, the one of employers and foremen and the other of employers and workers. For some reason, however, this decree was never applied.

The law of 1848, indeed, worked badly from the beginning, creating antagonism and class war instead of the spirit of conciliation and peace. The number of cases conciliated diminished, and the number of disputes introduced and of cases appealed from the decisions of the courts increased considerably.

As a result of numerous complaints a new law was passed in 1853 which, while retaining the principle of absolute equality of employers and workers, abolished the double system of elections and replaced the foremen and heads of workshops in the class of workers. Another important change was that henceforth the presidents and vice presidents were to be appointed by the Emperor. Moreover, the jurisdiction in last resort was raised to disputes involving less than 200 francs ($38.60).

From that date until 1880 the changes made applied mainly to interior regulations, matters of procedure, discipline, and other minor points. There was, however, especially after 1867, continual agitation in favor of various reforms of the system and in favor of its extension to other industries and occupations. This agitation resulted, in 1880, in the passage of a new law which, though having several excellent provisions, introduced one important change which led to continual friction in the working of the court. Incidentally, this law provided for the election of secretaries by the members of the court instead of, as before, their appointment by the administrative authority. Moreover, it abrogated the provisions of the decree of 1806, which allowed no compensation to employer members, and provided that there should be henceforth absolute equality between the two classes in this respect. It also provided that the board of conciliation, which had formerly been always presided over by an employer, should be presided over alternately by an employer and a worker.

The provision which caused trouble, however, was that which did away with the appointment of the president and vice president by the head of the State and provided that they should be elected from among the members themselves; the president to be chosen from one side and the vice president from the other. This apparently innocent
change was rendered a cause of great friction and difficulty by the fact that the clause of the law of 1853, which provided that the board of judgment should consist of an equal number of representatives of each side and the president or vice president, was still in force. This provision, which had worked fairly well when the president and vice president had been chosen from outside, began to work very badly as soon as they were elected from inside the court. Obviously the side to which the presidency belonged had the majority, and the equilibrium between the two sides was hopelessly destroyed. Complaint was constant of the preponderance of one or the other class. Employers chose the day to bring their suits when an employer presided, and wage-earners the day when a workman presided. If the court was against them one party often tried, on some pretext, to have the case postponed until the majority should be for them. It was stated at one time that two-thirds of the cases were favorable, sometimes to the employers, sometimes to the workers, according as the president was one or the other. An investigation, however, covering the decisions of four years at Paris, Lyon, Marseille, Lisle, and Bordeaux showed that the evil was very much exaggerated and that the proportion of successes of workmen and employers, under each kind of president, had been approximately the same. Nevertheless, public confidence in the courts was decidedly shaken. Moreover, the elections of presidents and vice presidents raised within the courts lively discussions and contests which were little conducive to the spirit of conciliation, amity, and peace.

In many places, indeed, especially during 1884, the feeling was so bitter that movements were entered into which amounted to strikes of one side or the other. Sometimes, in protest against the law, all the employer members and sometimes all the worker members of a court would resign or refuse to serve. In some places, too, the electors went on strike, sometimes one class and sometimes the other remaining entirely away from the polls. Whether the strike was of the members or of the electors it became impossible for the court to act. A law was therefore passed in 1885 which provided that, if two elections had been held and still, for any reason, the membership was not complete, the court could act, provided it was composed of half the number of members of which it was normally constituted. This law had the effect of putting a stop to such cases, for under its provisions a strike of one class would not prevent the court from acting, but would simply throw all its powers into the hands of the other class.

There were, however, manifest evils in the system and, to remedy these, two plans were suggested: First, that the president should be a professional magistrate, and therefore impartial and thoroughly
versed in the law; and second, that the number of judges, including the president, should be even instead of odd. Finally, at Nimes, the experiment was tried of summoning both the president and the vice president to each session of the board of judgment, making the number on each side the same. In two years it was found that no case occurred upon which it was impossible to reach a decision with this organization of the court. The prudhommes took great pride in being able to settle every case, and the spirit of conciliation apparently entered in more easily when the parties felt that there was no absolute majority either for or against them.

This latter remedy, indeed, appears always to have been the more popular in France. In its acceptance, however, there was involved still another difficulty, for, if the number of judges was to be even, it was necessary to provide some means of deciding cases in which the judges might divide, half on one side, half on the other. To meet this difficulty it was proposed that the justice of the peace be introduced in such cases—a compromise with the idea that the president should be a professional magistrate. Many persons argued, however, that this was bad in principle, because to give the justice of the peace a deciding vote would destroy the purpose for which the court was created. Another argument used against this proposal was that it would delay proceedings. Still another was that many strikes were born of disputes which first came before the councils of prudhommes and that, since the justices of the peace had arbitration functions in strikes, they ought to have nothing to do with such cases until brought before them as arbitrators. Finally, however, the solution of equal representation, in both the board of conciliation and the board of judgment, with the justice of the peace as president in case of need, was adopted by the law of 1905. This change has fundamentally transformed the character of the institution.

Other evils, the most important of which were the acceptance by the judges of an imperative mandate from their constituents, and the formation of fraudulent counterclaims for the purpose of carrying cases to a higher court, had also arisen.

The idea of the prudhomme as a representative instead of as a judge, as charged with the duty of obeying the wishes of his constituents instead of with the duty of enforcing law and equity, arose, apparently, from analogy with an arbitration board or court, upon which each side has its representative to present its case. With the growth of trade unions in France this idea spread among the working people, and, doubtless, with the growth of employers' associations, among the employers. It aggravated very greatly the difficulties due to the preponderance of one class or the other in the board of judgment and resulted in violent struggles and impas-
sioned debates within the court. The result was, naturally, to greatly diminish the power of conciliation.

Among the workers, whose methods could not be secret, this was an openly avowed policy. At Roubaix, in the election of 1895, for example, the candidates of the revolutionary socialist committee bound themselves, in the words of their own platform, “to make triumphant, under all circumstances, the claims of the workers.” Frequently the resignations of candidates were placed in the hands of their party committee for use in case the committee might desire to exercise the “recall.” Moreover, committees of surveillance were organized to follow the debates and inform themselves of the votes of every member. A rule of the committee of surveillance of Mans was that “the candidate must, on the evening before his day of audience, repair to the trade-union headquarters (bourse de travail) in order to hear the explanations of the plaintiffs and to indicate to them the best method of presenting their cases.”

Though more apparent among workers, these methods are said to have been equally prevalent, but more discreetly hidden, among employers.

Various methods have been tried to do away with this evil. At first, elections in which the candidates had only accepted an imperative mandate were annulled. But in Paris in 1889, after two such elections had been annulled, one after the other, on the third the same candidates were elected as on the other two, only this time they refrained from publicly declaring their program. The law of 1907 declared the acceptance of an imperative mandate illegal and penalized with the loss of his position and with permanent ineligibility to reelection the judge or the candidate who had been convicted of such acceptance. Nevertheless, the offense is very difficult to prove, and it is still claimed by many that candidates are practically pledged to decide cases in the interest of their own class. Such a secret understanding, however, can hardly apply to any but doubtful cases where the leaning of the judge would naturally be toward his own class. The prudhomme, however, might be, in this respect, more liable to bias than the ordinary elective judge, for he is elected or reelected by a single class.

Meanwhile appeals from the decisions of the industrial courts, which were rarely made before 1853, became frequent after 1880. From 1821 to 1853 only 10 per cent of the cases which were capable of appeal were taken to the higher courts. From 1854 to 1880 the average was 16 per cent, but from 1881 to 1890 it increased to 34 per cent, from 1891 to 1895 to 36 per cent, and from 1896 to 1900 it rose to 75 per cent.
Moreover, the employers resorted to a method by which the industrial courts could be deprived of jurisdiction over cases not normally capable of appeal. The following extract from the official report of a meeting of the employers’ association of optical instrument makers in 1900 shows the method and how frankly it was advocated: “When an employer is sued by a discharged workman who claims an indemnity, even after having known the rule of the workshop, he will do well to bring a counterclaim against the workman of more than 200 francs ($38.60), based on any reason whatsoever; for example, imperfect work. With this counterclaim he will be able to bring the affair on appeal before the tribunal of commerce.” Thus cases belonging of right to the industrial courts were practically taken out from their jurisdiction and placed under that of a court whose judges were elected by employers alone. In Paris, before the passage of the law of 1907, out of 703 such countersuits only 3 were recognized as well founded.

The recent law raised the jurisdiction in last resort of the industrial courts to cases involving up to 300 francs ($57.90) and decided that appeals should be brought before the civil tribunal instead of the tribunal of commerce. At the same time attention was called to the fact that the common law provided legal punishment for parties who appealed cases merely to escape the jurisdiction of the court. This proceeding, however, raised into a system, is not easily suppressed. Some pretext, such as bad work or waste of materials, can often be found for a countersuit for damages, and the whole litigation be thus transferred to another court. The plan may be used, moreover, to tire out adversaries who are in need of a prompt solution of their difficulties. As late as March, 1910, abuses of the privilege of introducing countersuits were the subject of complaint, and it was said that the legal remedy for such cases was not sufficiently well known.

In spite of these difficulties, however, an active agitation was carried on for many years to extend the jurisdiction of the industrial courts to new classes of wage-earners, especially to miners and to commercial employees. It was argued that councils of prudhommes were especially needed for the mining industry, because miners show a greater spirit of solidarity than other workers, and individual disputes more often lead to collective disputes. At the same time, however, it was recognized that in the case of mining it was especially difficult to constitute such a court, because there were few employers and the employer judges must often be parties to the dispute. It was recognized, moreover, that if the jurisdiction of the courts were extended to commercial employees, the theory of the special technical competence of the prudhomme must be abandoned. On the other hand, it was argued that even for commercial disputes

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knowledge of customs was needed, and that there was a certain lack of confidence in the commercial courts, before which such cases were regularly tried, as was shown in the comparatively small number of cases brought before these tribunals as compared with the number brought before the councils of prudhommes. The extension to commercial employees was long and vigorously fought, but the opposition was slowly overcome.

The new law of 1905, in which several radical changes were made, some of which have been already mentioned, was followed two years later by the law of March 27, 1907,1 which codified the previous legislation upon the subject, greatly extended the jurisdiction of the courts and introduced other desirable changes. The jurisdiction was extended not only to many occupations not formerly included, especially to commercial pursuits, but also to disputes between workers by reason of their work.

Many difficulties, it is evident, have arisen, but the system has been generally recognized as important and, on the whole, beneficent. It has long had its enemies, however, as well as its friends, and has as a rule been more popular among working people than among employers. Its enemies have declared that the union of employers and workers as judges is derogatory to the judicial principle of unity; that special tribunals are objectionable; that the judges, even when they do not accept an imperative mandate, inevitably listen more favorably to their own electors than to the other side; and that politics enter into the elections, and incapable agitators, unfamiliar with law, are chosen judges by the workers.

Its advocates, on the other hand, have claimed that theoretical objections are more than counterbalanced by practical advantages; that these courts give a cheap and rapid method of settling labor disputes; that special technical knowledge is necessary in the settlement of many such disputes; and that this special tribunal is justified by the social necessity of maintaining harmony between employers and workers and of facilitating conciliation in their differences. The prudhommes, it is said, can conciliate cases much more readily than ordinary judges, first, because the fact that both sides are represented by persons of their own trade inspires confidence; second, because their technical knowledge makes it possible for both parties to explain their grievances in their ordinary shop language without the mediation of an attorney and with the certainty of being understood; third, because this same technical knowledge makes it more difficult for the parties to make before these judges exaggerated statements or claims; fourth, because their informal character and lack of pomp and display put the parties comparatively at their ease; fifth, because parties are obliged to appear in person; and sixth, because con-

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1 See Appendix II for the text of this law.
conciliation is the chief purpose of the court, and every effort is made at every stage of the proceedings, in the board of judgment as well as in the board of conciliation, to induce the parties to come voluntarily to an agreement. In short, it has been long and widely recognized as not only desirable, but necessary, that these two great forces of labor and capital should be called to meet face to face before a democratic tribunal composed of both classes, the primary duty of which is to induce them to conciliate their differences.

Since the passage of the law of 1907, moreover, the system has decidedly increased in popularity. Trade unions have taken a much more active part within recent years, and employers, though they generally believe that cases brought before the civil tribunals would more often be decided in their favor, appreciate the quickness of the decision and the small cost, important objects to them as well as to workmen, and are well enough contented.

METHODS OF CREATION AND OF DISSOLUTION.

Councils of prudhommes may be created in France in either one of two ways—upon the initiative of the Government or upon the demand of a municipal council supported by the advice of various commercial and industrial bodies. In the former case the Government consults these bodies, but is not obliged to abide by their decision; in the latter it is legally obliged to yield to the demand. Any private organization may ask for the creation of a court, but the demand must first be brought before the municipal council, for the municipality must bear the expense of the institution. When the municipal council has acted favorably upon the proposition the next step is to draw up a table indicating the industries and occupations to be included, the proposed division of occupations into groups, the number of prudhommes of each group to be elected, which is determined by the probable number of cases in that group, and the number of employers, workers, and employees in each occupation. The final classification of occupations, however, and the final determination of the number of members to be elected, is made by the minister of labor, who submits the proposition to the minister of justice. When the details have been agreed upon between these two departments the decree creating the court is submitted to the conseil d'etat and is finally signed by the President of the Republic.

The decree determines, (1) the territorial jurisdiction of the court, (2) the occupations over which it shall have authority, (3) the classification of these occupations, and (4) the number of prudhommes in each group. Only one court can exist in a city and it therefore becomes necessary, if the number of persons to be placed under its jurisdiction is large, to divide it into sections. This division, also, must be made in the decree.
The territorial and occupational questions have already been sufficiently considered. But, once the occupations are determined, the question of classification arises. The court may be divided into sections, separating large groups of occupations under practically independent tribunals. The council of prudhommes of Paris, for example, is divided into five such sections—one of the building trades, one of chemical products, one of textile industries, one of metals and various industries, and one of commerce. Whether or not this division into sections is made, however, each court or section must be divided into categories. That is, it must contain representatives of both employers and employed from different kinds of industry. There must be at least 12 members, but there may be as many more as are demanded by the exigencies of classification. In any case, there must be the same number of employers and of workers in each section and in each category. It is explicitly stated that workers and employees must be separately classified. The decree determines, moreover, the number of members to be elected in each category, which must be at least two employers and two workers or employees.

Reorganization of the industrial courts may be effected on the initiative of the Government, or on the demand of the persons interested, by decrees similar to those creating these bodies.

An industrial court may be dissolved, also by decree, on the initiative of the minister of justice, if it appears to the Government to work unsatisfactorily. It may be dissolved, moreover, if, by reason of resignations or other causes, less than half of the total number of members of which it should legally be composed remain in office. In case of dissolution, new elections must be held within two months from the date of issue of the decree. Meanwhile, cases over which it would have jurisdiction are brought before the justice of the peace.

Industrial courts may even be completely suppressed at the instance of the minister of justice and of the minister of labor. Or, if the number of cases no longer justifies the existence of a court, or internal difficulties render the normal and satisfactory exercise of its functions impossible, it may be either provisionally dissolved or completely suppressed by decree of the President of the Republic.

The chief causes which may bring about the dissolution or suppression of an industrial court are (1) the demand of the communes which are responsible for its expenses, (2) the ineligibility or resignation of the members elected, when their replacement does not appear possible, (3) the refusal of the majority of members either to be installed or to act, and (4) the fact that the existence of the court has become unnecessary.

Councils of prudhommes may be established under this law, or by decree with certain modifications of the law, in the French colonies.
other than Algiers. The law itself provides for certain modifications to be introduced in Algiers, where the institution has existed since 1881. The chief change is the inclusion of a new element, native or Mohammedan members. The number of these native members is determined by decree, according to the needs of the native population, and they are taken in equal numbers from among the employers and from among the employees or workers. Whenever a case comes up which concerns one or more Mohammedans who do not enjoy the rights of French citizenship, two of these members, one an employer and the other a wage-earner, are added to the court, where they have the same rights as other members, except that they can not be elected president or vice president. They are elected by Mohammedans who are not French citizens but are inscribed on the municipal electoral lists, and fulfill the general conditions of age, of practice of the occupation, and of residence. They must be able to read and write either French or their native language and to speak French. Interpreters, too, appointed in the same way as secretaries, may be attached to the Algerian courts.

ELECTIONS.

The members of the councils of prudhommes are elected for six years, half of each class being replaced every three years. When a new court is created the members draw lots, after the election, to determine which shall be replaced at the end of the first three years. The elections are somewhat complicated, owing to the number of different groups into which it is necessary to divide the voters. In the first place there is the division between employers and workers or employees. This makes three different voting lists, and different qualifications for entry upon each. Each one of these lists, moreover, must be divided into as many parts as there are groups of occupations. Women, as well as men, have the right to vote under conditions which, though necessarily differently expressed, are substantially the same.

QUALIFICATIONS OF VOTERS.

There are certain general qualifications for voting and, in addition, special qualifications for workers, employees, and employers. The first general qualification is registration upon the regular political poll books, or, in case of women, all conditions, except that of sex, necessary for such registration. The most important of these conditions are that the women must be French and must not have incurred any of the disqualifications which would prevent a man from voting, such as conviction of crime, etc. In the case of men, as well as of women, the idea seems to be that the prudhomme electors should satisfy the conditions of the regular electorate, and there
is some doubt as to whether actual registration upon the regular political poll books is essential, even in the case of men.\footnote{M. Cluzel (Traité Pratique des Conseils de Prud'hommes, p. 8) believes that actual registration on these books is necessary, but further on (p. 16) he states that, after the completion of the regular lists, electors are invited to present themselves for registration upon the prudhomme lists. M. Strauss (Code Manuel des Conseils de Prud'hommes, p. 11) also states that actual registration is necessary. M. Malnoury (Manuel Pratique du Conseiller Prud'homme, p. 11), on the other hand, believes that in this provision the legislature had less in mind the actual fact of such registration than the right to be so registered, and thinks a person not registered on the regular books may still be registered as a prudhomme elector.} The second general qualification is that voters must be at least 25 years old. There is, moreover, a third qualification which strikingly differentiates a prudhomme electoral list from an ordinary electoral list. This is the condition that a prudhomme elector shall have exercised, regularly and continuously for at least three years, one of the occupations mentioned in the decree instituting the council. The theory is that the elector should be personally subject to the jurisdiction of the industrial court. The period of apprenticeship may be included in these three years, but in any case they must be the three years immediately preceding registration. A man may have worked at an occupation for 20 years, and yet if he has not been engaged in that occupation during all of the preceding three years, he can not vote in a prudhomme election. Moreover, if he has worked at several occupations during these three years he is disqualified from voting. The question has arisen and been much discussed whether the secretary of a trade-union (bourse de travail) has the right to vote at these elections, and it has been decided that he has the right only if his employment as secretary does not occupy enough of his time to prevent him from working regularly at his trade. An unemployed wage-earner, however, a wage-earner on strike, retains his right to vote. The fourth general qualification, however, is that a voter must have lived for at least one year immediately preceding within the jurisdiction of the court for which he wishes to vote. This seems to imply that it is not necessary that all three years' work at his special occupation shall have been within that jurisdiction.

The special qualifications of workers relate primarily to their position in the establishment. As has already been seen, there has always been difficulty in deciding who were workers and who were employers. The present law provides that workers, gang foremen, overseers who themselves take actual part in the manual labor, and foremen of home shops who work themselves on their own account and not for another, are to be classed under the general heading of workers. On the other hand, foremen in factories who have only supervisory functions, or who only repair machinery in addition to their supervisory functions, and who are the immediate representatives of the employers, are classed for voting purposes as employers.
The performance of manual labor, indeed, appears to be the criterion. This distinction has decidedly simplified the division. But there are still many puzzling questions. For example, a taskmaster or pace setter may receive wages, which would place him as an elector in the ranks of workers, or he may receive a percentage upon the work done by others, which would place his economic position nearer that of the employer. Questions of fact and of theory are both involved, and the matter is complicated by the fact that the functions of a foreman are often different in different industries.

The difficulty is met in part by classifying wage-earners in industrial enterprises who do not come under the definition of workers or manual laborers, with wage-earners in commercial enterprises, as employees. The employee electors, then, include not only persons employed in commerce, in the sale and distribution of merchandise, but also persons employed in industrial enterprises who do not themselves take part in the manual labor. Foremen who merely direct and overlook work are classed as employees. Even if one of their duties is to attend to machinery, they are still employees.

Employer electors are defined as persons who employ on their own account one or several wage-earners. It is not sufficient to be interested in an enterprise as a shareholder or money lender. The employer elector must be in direct control of the enterprise and have direct or indirect relations with the wage-earners, relations from which the kind of differences may arise which the industrial courts are formed to settle. Merchants who contract out work, however, are considered as employers, for, though they may not employ a single wage-earner in their own store or workshop, they have indirect relations with wage earners which frequently give rise to the class of disputes in question. Partners, moreover, carrying on a business mentioned in the decree are all employer electors, and are jointly and individually liable before the industrial courts for the acts of the firm. Managers and directors of any industrial or commercial enterprise are considered as direct representatives of the real employers, whether the latter be individuals or joint-stock companies, and as such are classed for voting purposes as employers. If for no other reason, such classification is necessary in view of the fact that it is generally against them that actions are brought for violation of factory and other labor laws. Presidents and members of administrative councils of joint-stock companies, engineers in charge of works, and, in general, heads of commercial, industrial, and mining enterprises are also and for the same reason classed as employers.

Other important points relating to the qualifications of voters are that all persons engaged in any occupation included in the decree establishing a council of prudhommes must be eligibile to entry upon one or other of these electoral lists, and that no one shall be eligible
to be entered upon more than one list. An employer, for example, who is both a merchant and a manufacturer, is not allowed to vote for prudhommes in both the commercial and industrial sections of the court. He can, however, make his choice as to which section he wishes to belong to for voting purposes. But the council as a whole is considered as one court, and the principle of "one man one vote" governs the elections. It appears, however, that if the amount of business to be done by the court is not considered sufficient to justify the creation of a commercial section, the wage-earners who are classed as employees have no vote. In that case, however, they are not under the jurisdiction of the council of prudhommes. The general principle prevails that all persons who are amenable to the tribunal have the right to vote for its members.

QUALIFICATIONS OF CANDIDATES.

The qualifications of candidates are in some respects more rigorous, and in other respects less so, than the qualifications of electors. Electors who are at least 30 years of age, have lived for at least three years within the jurisdiction of the court, and can read and write, are eligible. It is believed that a judge who has not resided for a considerable time in a neighborhood is not competent to properly understand and apply the customs of that locality. In this case it is distinctly stated in the law that it is not necessary that candidates be actually registered upon the regular political poll books, but only that they be eligible to such registration. Obviously, they must have worked at their occupation for the preceding three years or they would not be electors. In one case which occurred in 1900 a man who had been secretary of a trade-union (bourse de travail) since 1898 resigned and worked for two weeks at his trade before becoming a candidate for the position of prudhomme. He was declared ineligible. Often, however, labor-union officials who are still engaged in their trades are elected members of industrial courts, and it is said that unions often contrive to this end, for the reason that they can then pay their officers smaller salaries, the compensation of a prudhomme acting as a supplement to the amount received from the organization. Thus an economy is effected for the union. Formerly the labor unions took little interest in the councils, but within recent years they have been very favorable to the institution.

Former electors, moreover, who have not been out of the occupation for more than 5 years and who have worked at it for at least 5 years within the jurisdiction are eligible as candidates, though not electors. In other respects such persons must fulfill the requirements of electors. The object of this provision is to make it possible
to secure as members of the courts retired employers and wage-earners who, by reason of their knowledge, are thoroughly competent and, by reason of their independent position, are disinterested. Under this rule the secretaries of trade-unions or of employers' associations are eligible for 5 years after they have abandoned their industrial or commercial occupation. But if a member of a council who was elected as a wage-earner becomes, during the course of his term, an employer, or vice versa, he is obliged to announce that fact and to resign his position.

To determine the group of occupations in which a candidate is eligible it is necessary to consider not the list upon which he is entered as an elector, but the occupation in which he is actually engaged. An elector who is engaged in two occupations belonging to different groups may choose the one in which he wishes to vote, but this choice does not prevent him from being eligible to election as a prudhomme in the other group.

Since 1908 women have been eligible as candidates, and in 1910 two women were serving, one of them in Paris.

By decree of April 20, 1840, relatives, either by blood or in law, up to the degree of uncle and nephew, can not be members of the same court even if the relationship has been brought about after the election.

Prudhommes whose terms have expired are eligible to reelection, but prudhommes who have been removed from their positions for any reason are never again eligible. Any candidate, especially, who has been convicted of having accepted an imperative mandate is no longer eligible to election. Those who have refused to exercise their functions, moreover, and those who have voluntarily resigned are not eligible for three years thereafter.

PROCEDURE.

The provisions of the law dealing with the conduct of elections may be divided into those relating to (1) the preparation of the voting lists, (2) protests against the lists, (3) the formalities of the election, (4) protests against the election, and (5) supplementary elections.

The registration lists for elections to the councils of prudhommes are made up every year within 20 days after the completion of the regular political registration lists, regardless of whether or not a triennial election is to take place that year. At least two lists must be prepared—one of employers and one of workers. In case the court is to have jurisdiction over commercial as well as industrial enterprises, however, it is necessary to add a list of commercial employers and one of employees, making four in all. These lists, moreover, are
subdivided according to groups of occupations. The regular polit­ical poll books, with their classified information as to occupations, furnish the basis. The classification into employers, employees, and workers is made by a commission composed of the mayor of the com­mune, one worker elector, one employer elector, and one employee elector. These three electors are appointed by the municipal council, In case the court is not to have jurisdiction over employees, the em­ployee elector is, of course, omitted. The function of the electors on this commission is mainly to give information in regard to persons eligible who are not on the lists, persons on the list who are no longer eligible, and other matters. When the commission has done its work, the prefect divides each group of electors into subgroups ac­cording to the categories of occupations in the decree instituting the court. He then has copies of these lists deposited in the office of the secretary of the court and in the town hall of each commune, where they can be examined. Women, who by reason of their civil disabil­ities are not entered in the regular poll books, must make special re­quest to be registered and must present evidence of their eligibility. Other persons are also invited to present themselves for entry on the prudhomme lists. Such persons must, if requested, furnish proof of their right to be electors.

Protests against the omission or inclusion of names may be brought before the justice of the peace, and finally before the court of ap­peals. No expense is attached to this proceeding, and it is not neces­sary to employ a lawyer. Any elector may make such a protest. An employer, for example, may protest against the inclusion of the name of a worker and vice versa. Electors of one section, moreover, may protest against the inclusion of names in another section, upon the ground that the sections unite for the formation of common rules and for the election of the president general of the court. In case of the exclusion of a name, however, only the person directly con­cerned can protest. No public authority has the right to make such protests after the lists are published.

Elections for the industrial courts are governed in most respects by the same rules that govern regular municipal elections. They always take place, however, on Sundays, and employers and wage­earners have separate polling places. If there is a commercial sec­tion, there must be four polling places for (1) commercial employers, (2) industrial employers, (3) employees, and (4) workers. At each polling place there must be separate ballot boxes for each group of occupations. The prefect, who fixes the day and the place of the elections, may fix more than one place, in order to prevent the electors from having to travel long and costly distances.

On the first ballot no election is valid unless the candidates have obtained an absolute majority of the votes and this majority is equal
to a fourth of the registered electors. On the second ballot, however, a plurality is sufficient, and, if the result is a tie, the oldest candidate is declared elected. This second vote, if needed, must take place the Sunday following the first, and is only a supplementary vote to complete the first, and never a new election. The fixing of the minimum number of votes necessary for an election at one-fourth of the registered electors is due to the fact that, as a rule, little interest is taken in the elections. Before this provision was introduced in the law prudhommes were often elected by a very small proportion of the voters. Even in Paris, where a good deal of interest is usually taken, only a small proportion of those registered vote. As a rule, it is the organized workers who take an interest and control the elections. The unorganized workers are without leaders and pay little or no attention, while the trade unions put up and elect their own candidates. In the same way it is the employers’ associations who elect the representatives of the employers.

Protests against an election may be brought within five days after the announcement of the result, by the attorney general or by any elector. The candidate whose election is challenged has five days to reply. The court of appeals of the jurisdiction decides such cases. Four causes of protest are admitted, (1) that the forms prescribed for the election have not been followed, (2) that there have been frauds in the election, (3) that a candidate elected is not eligible under the law, and (4) that a candidate has accepted an imperative mandate. But an employer elector can not contest the election of a worker or employee, and vice versa. As in the case of protests against the registration lists, no expenses are attached to the legal formalities required and the services of a lawyer are not necessary.

In case of vacancies in the court, whether through the annulment of the first election, the resignation of members or any other cause, new elections are held within one month of the creation of the vacancy, unless a regular election would normally occur within three months. The terms of office of members so elected expire at the same time that the terms of those whom they replace would have expired.

It is provided that, if supplementary elections have been held with the same results as the first elections, or if any other cause of vacancies arises, no further elections shall be held, but the court shall act as it is constituted until the next triennial election, provided that the number of members of the council or of the section is not less than half of the total number of members of which it should regularly be composed. In case a court is composed of only one class, employers or wage-earners, it still has all the attributes and privileges of a regularly organized council.

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ORGANIZATION, EXPENSES, AND DISCIPLINE.

COMPOSITION OF THE COURT.

When the members are elected and the time allowed for protests has expired they still have two formalities to go through with before they proceed to the exercise of their duties. First, they are summoned before the civil tribunal to take the oath of office, which is as follows: "I swear to perform my duties with zeal and integrity and to preserve secrecy as to matters under deliberation." This oath must be taken individually, and a member reelected must take it over again. No proceedings of the court are legal in which a member who has not taken the oath of office has had part.

Second, the members must be formally installed, a ceremony which is presided over by the outgoing general president of the court, or, in case of a newly organized body, by the oldest member. The essential feature of the installation is the reading of the official report from the civil tribunal stating that the elected members have taken the oath of office. In practice, the retiring members also take part in this function, and the president congratulates the newly elected members in a short speech, which is replied to by the oldest among them. An official report of the ceremony, drawn up by the secretary, is then signed by all the members. Finally, after a momentary adjournment, the new court proceeds to business.

As at all sessions, however, the members, before entering upon their duties, must put on, not the judicial robes of other French law courts, but a simple silver badge, attached to a ribbon, which is worn on the left side of the breast. It is said that, while it is desirable to have as little pomp as possible in the sessions of the industrial courts, in order that simple people may not be overawed and may be able to present their own cases simply and naturally, this little insignia of office aids in maintaining discipline and a proper respect for the dignity of the court.

The law provides that the members who are to be replaced shall remain in office until the installation of their successors. No difficulty arises in the application of this clause when there are no election contests or when the elections of both the representatives of one class and of one group of occupations are protested. In the former case the installation takes place shortly after the election and can not legally be delayed. In the latter, both the old members remain in office until the final settlement of the contests. But if the election of only one of the two representatives of one class and of one group is contested, there is no way to determine which of the members in office shall remain and which shall give place to the successor whose election is not contested. One authority¹ thinks that in such cases

¹ Cluzel, Traité Pratique des Conseils de Prud'hommes, p. 45.
both of the members in office should retire at the time of the installation of the candidate who has been definitely elected.

The chief purposes of the general assemblies of the councils of prudhommes are (1) to make or to revise rules for the administration of their internal affairs; (2) to elect presidents and vice presidents; (3) to nominate or revoke the nomination of secretaries; (4) to exercise their disciplinary power over members or secretaries, and (5) to formulate opinions upon questions submitted to them by the administration. Opinions of this kind are most often demanded upon questions which arise in the preparation of social or economic legislation. The general assemblies also choose the bailiffs.

General assemblies do not convene regularly, but may be called by the president, by a majority of the members, by the minister of justice, or by the minister of labor. If there are several sections, the general assembly includes the members of all. But there may also be general assemblies of a section. Except in cases in which only an opinion is to be given, the actions of these assemblies are not binding unless the majority of the members are present. The sessions are always private and the deliberations secret, and no question not officially on the program may be discussed. Official reports of these meeting, however, are sent to the minister of justice and, if deemed necessary, to the minister of labor.

The rules for internal administration to be adopted by these general assemblies relate to the days and hours of the sessions of both bureaus, to the rotation of service or the order in which the members shall act, to the method of choosing the presidents and vice presidents of the bureaus, to questions of order, to the hours of opening and closing the office of the secretaries, and to the functions of the assistant secretaries. The rules for internal administration must be approved by the minister of justice and, in so far as they deal with administrative functions or with consultations, they must also be approved by the minister of labor.

On the same day that the members are installed the court proceeds to the election of a president and a vice president. If the court is not divided into sections, only one president and one vice president are elected. The president must be taken alternately from the ranks of the employers and from the ranks of the workers or employees. In newly organized courts the two sides draw lots to see which shall have the first presidency. If the president is an employer, then the vice president must be a worker or employee, and vice versa. Both are elected for one year by secret ballot and by an absolute majority of the votes, or, in case two ballots have been taken and no candidate has received an absolute majority, by a plurality on the third ballot. In case there is still no decision, the member who has been longest in continuous service, or, if two or more have served the same
length of time, the oldest is declared elected. Former presidents and
vice presidents are eligible to reelection. For example, one man may
be one year president, the next vice president, the next president
again, and so on. Vacancies in the court do not affect the elections.

If the court is divided into sections, the proceeding is somewhat
different, but the same principles apply. In that case each section
elects its own president and vice president just as if it were an inde­
pendent body. Then the presidents and vice presidents so elected
meet together and elect the president general of the court, who must
be chosen from among the presidents of the sections. It may happen,
as a result of this rule, that the president general may be of one
class, employers, for example, for a number of years.

Elections of presidents and vice presidents may be challenged in
the same way as elections of members.

The duties of the president, when there is only one section, are to
preside, alternately with the vice president, over the board of judg­
ment, to convocate and preside over the general assemblies, to watch
over the general administration and the judicial functions of the
court, to draw up the budget, to carry on the relations with other
public authorities, and especially to inform these authorities of
vacancies which may occur in the court, to take necessary measures to
secure discipline, and to superintend the different provisions for
internal regulation and for the work of the secretary's office. The
vice president presides, alternately with the president, over the
board of judgment. He also supplies the place of the president,
whenever necessary, in all his duties.

If the council contains more than one section, the president of each
has the same duties for his section that he would have for an inde­
pendent court. In that case the president general, as such, has only
to superintend the general discipline, to draw up the general budget,
etc. He has no right to interfere in the internal management of any
section other than his own, unless, on account of the failure or in­
capacity of the president of the other section, such interference may
be absolutely necessary. He is charged, however, with the external
administration of the affairs of the industrial court.

The other officers of the councils of prudhommes are secretaries,
assistant secretaries, and bailiffs. A council which is not divided
into sections has only one secretary. In one which is divided into
sections, on the other hand, each section may have its own secretary,
or they may have only one secretary among them. In Paris each of
the five sections has its own secretary and assistant secretary. The
bailiff is selected from among the bailiffs already in office in the place
where the court sits, and is assigned the usual duties of such a court
officer.
The secretary and assistant secretary are appointed by the President of the Republic on the recommendation of the minister of justice, who makes his selection from a list of three candidates decided upon in general assembly of the court. The three candidates are voted upon separately by the members and must receive a majority of the votes of the whole court, not merely a majority of the members present. If no candidates receive a majority, the Government is free to make the appointment without such recommendation. If the three candidates are all, in the opinion of the minister of justice, incapable or unworthy, he may ask for a new list, or, if that is refused, may either dissolve the court or appoint the secretary and then revoke the appointment. The minister of justice, indeed, has the privilege of revoking the appointment of a secretary at his discretion, and the duty of revoking it upon the demand of two-thirds of the prudhommes. No term of office is fixed by the law for secretaries, and usually they remain in office for considerable periods of time.

No conditions of age or of capacity are laid down for the post of secretary. The duties are such, however, that no minor could be given the appointment. Moreover, no relative of any member of the court may be secretary without special permission of the President of the Republic. Obviously the secretary can not be subject to the jurisdiction of the court, and he is usually chosen from outside the occupations mentioned in the decree. The secretary takes, before the civil tribunal, the same oath as the clerk of a court. Like the clerk of a civil court, moreover, he may be replaced provisionally by any citizen who knows how to read and write and has been previously sworn. The secretary's salary, which in such case goes to his substitute, is fixed by decree. He is also entitled, as will be seen later, to certain fees.

The functions of the secretary are similar to those of the clerk of an ordinary court. Though he has no vote in the decisions, he is an essential factor in the council and no judgment is valid unless he has taken part. On the other hand, he can not act in any case in which he is even indirectly interested. His chief duties, and in case of his absence, the duties of the assistant secretary, are to write up the records of the hearings of the board of conciliation and of the board of judgment and the proceedings of the general assemblies, to send summonses to members, experts, arbitrators, etc., and to receive the deposits of patterns and models provided for by articles 14 to 19 of the law of 1806. He is in charge of the archives of the court and keeps a register of the cases on hand. He must keep his office open every day except Sundays and holidays, at hours which are determined by the special internal regulations of the council. He is legally responsible only for the duties assigned to him by the law or the regulations, and is under the direction of the president of
the court. It follows that he can not be sued for any act necessary in carrying out his legal duties or the instructions of the president.

EXPENSES, FEES, AND COSTS.

The running expenses of the industrial courts are borne by the communes belonging to their jurisdiction, but offices and court rooms are furnished by the city governments. The usual expenses which are divided among the communes are those of (1) first establishment, (2) purchase of insignia, (3) heat, (4) light and minor necessities, (5) elections, and (6) the remuneration of secretaries and of assistant secretaries. The municipal councils of the communes may also, by vote, assume other expenses. They may, for instance, increase the salaries of the secretaries, if they deem insufficient the amount fixed by the decree of organization.

Another optional expense which is frequently assumed is the payment of the prudhommes themselves for their services. Before 1880 only the wage-earning members of the court were paid, but by a law of that year it became obligatory to treat both employers and workers alike. The payment may be in the form of a monthly salary or of a fee for each hearing attended. It is not by any means always sufficient in amount to make it unnecessary for the members to work at their trade or occupation. Certain municipalities, however, appoint wage-earner members of the industrial courts on municipal commissions and thus indirectly grant them special compensation for their services. Up to 1871 the prudhommes of Paris received no compensation whatever, but since that date they have been granted, first, a fee of 5 francs (97 cents), later raised to 10 francs ($1.98), for each session attended, and afterwards a salary of 1,200 francs ($231.60) per year, which was raised to 1,800 francs ($347.40) in 1891.

The proportion of the expenses borne by each commune depends upon the number of prudhomme electors which it possesses. Financial reports and budgets are drawn up every December by the secretary, and are sent by the president of the court to the prefect of the department for approval.

The principle prevails, in the industrial as in other courts, that the party who is defeated shall be condemned to pay the expenses. The court expenses, however, as will be seen by reference to articles 58 and 59 of the law of March 27, 1907, are very light. The various fees range, under ordinary circumstances, from 15 centimes, or about 3 cents, for a summons by simple letter before the board of conciliation, to 1.75 francs, or about 35 cents, for the notice of a judgment delivered by the bailiff. If the distance is considerable, somewhat

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1 See Appendix II.
higher fees are allowed, in proportion to the distance, but in any case the expenses are small. Moreover, if the object of the contest is less than 20 francs ($3.86), all the acts of procedure are free of cost, while in no case are the parties obliged to advance the fees.

Furthermore, if a person who is party to a suit can produce a certificate from the tax collector of his place of residence showing that he has no assessable property, and also a certificate from the mayor of his commune showing that he is not able to pay the expenses of a suit, he can secure from an office established for that purpose legal assistance, which means not simply exemption from payments to the court, but also the services of a lawyer, if required. Legal assistance may be received in any action before the industrial courts or appealed from their decision. It is not, however, peculiar to such proceedings, but is a regular French institution. As a matter of fact, legal assistance is not often obtained in cases before the prudhommes, partly because the necessary expenses are so small and the services of a lawyer so rarely needed and partly because it is important in such cases to obtain a rapid solution of the difficulty, and legal assistance can not be granted without formalities which are necessarily slow.

**DISCIPLINE.**

Members of industrial courts, like other magistrates, are subject to various penalties in case of failure or fraud of any kind in the performance of their duties. A member is rendered ineligible for reelection for three years if he refuses to be installed, tenders his resignation, or refuses without legitimate reasons to perform the service to which he is summoned. In the latter case he may be declared by the civil tribunal to have resigned. If a member seriously neglects his duties formal proceedings are entered into before the council or the section, during which he is summoned to appear in his own defense, and he is subject to reprimand, suspension, or dismissal according to the gravity of the offense. If, for example, a member brusquely leaves a hearing before its adjournment in order to avoid taking part in the judgment or for any other reason, or if he provokes an altercation with his colleagues or manifests audibly his opinion of the parties or of the justice of the peace who may be presiding, he renders himself liable to reprimand or suspension. Reprimand carries with it no further punishment. Suspension can not be pronounced for a longer period than six months, and is ended if the member is reelected during that period. The member, however, whose offenses entail dismissal is never again eligible to election.

The only offense specifically mentioned in the law, however, the punishment for which is dismissal, is the acceptance of an impera-
The imperative mandate (mandat impératif). The following statement in regard to the imperative mandate was made by M. Groussier, in a report to the Chamber of Deputies, in 1907: "What is forbidden is the pledge that a candidate or a prudhomme councilor takes to render his decision always in favor of the class to which he belongs, even if he knows that such a decision is wrong. It is evident that this pledge can not be reconciled with the practice of justice, which must always depend upon a free conscience. But the pledge to judge according to equity, for example, can not be forbidden, for that would be the acceptance of a mandate which would be imperative, not only by reason of an act of the electors, but by reason of the law itself. Article 51 can not be applied, moreover, to the pledge which every councilor makes to take into the greatest consideration the usages of the profession, not to let them fall into disuse, and to demand respect for the conventions of the profession. In this he conforms again to the spirit of all legislation relative to the labor contract."

This illegal imperative mandate may take various forms. For example, it has been declared illegal for a candidate to pledge himself to uphold a minimum rate of wages and to condemn the employer in all cases in which this rate has not been paid. It has also been declared illegal for a candidate to pledge himself to apply workshop regulations only if they have been approved by a trade union, without regard to whether they have been recognized and accepted by the parties. In fact, the member of an industrial court is not considered as a representative, but as a judge.

Other offenses, of a civil and criminal nature, are subject to the regulations laid down in the civil and criminal code for all magistrates.

Like all magistrates, moreover, the members of an industrial court must live in the chief town of the jurisdiction, and must not be absent, at least on the days when sessions of the court are held, without permission from the president. They must, moreover, assist at all the sessions to which they are called by reason of the rotation of service established by the general assembly. These rules, however, are not applied with great severity. In case of short absences it is sufficient if the president and secretary be notified so that the work of the court shall not suffer.

**JUDICIAL FUNCTIONS.**

**JURISDICTION.**

The judicial functions of the councils of prudhommes are essential to their fundamental purpose, while their administrative functions...
are merely accessory to that purpose. In all matters concerning their judicial functions they are dependent upon the ministry of justice, but in matters concerning their administrative functions they are dependent upon the ministry of labor, or, in their patent-office functions, on the ministry of commerce. Their fundamental purpose, according to article 1 of the law of 1907, is "to terminate by means of conciliation differences which may arise by reason of labor contracts, in commerce and in industry, between employers and their representatives and the employees, workers and apprentices of either sex whom they employ." These bodies are, indeed, special courts instituted in order to conciliate, if possible, and, if not, to pass judgment upon individual labor disputes.

The jurisdiction of the industrial courts now extends over practically all classes of wage-earners engaged in commerce and industry, except farm laborers, sailors, and domestic servants. Before the passage of the law of 1907 their jurisdiction was limited to manufacturing industries, but that law may be applied to a large variety of occupations; for example, to miners, quarrymen, railroad employees, carriage and omnibus drivers, street-car employees, boatmen, bank clerks, commercial travelers, agents, warehouse porters, salesmen and saleswomen, theater employees, musicians, and many other wage-earners. Occupations, however, which are not carried on for profit, and those in which merely personal service is rendered, are excluded. Even a manufacturing industry which is not carried on for profit is excluded. Surgeon dentists, for example, are not amenable to this jurisdiction when they do not speculate in the articles sold to their patients, even though these articles are manufactured by them. Ostensibly upon the ground that public industries are not run for profit, moreover, public employees are excluded from the jurisdiction of the councils of prud'hommes.

Any individual court, however, has jurisdiction only over the special occupations named in its decree of organization or of reorganization. In determining whether a particular case comes under the jurisdiction of a court the principle is adopted that the occupations of both parties must be mentioned in the decree. It is possible, therefore, for one worker engaged in an occupation identical with that of another worker in another establishment to be excluded while the second worker is included, because the particular industry carried on by the employer of the first is not mentioned in the decree.

Two kinds of individual labor disputes are within the province of the industrial courts, those which arise between employers and wage-earners by reason of labor contracts, and those which arise between wage-earners by reason of their work. Disputes between employers come before the commercial courts. The law does not specifically state that disputes between employees shall be subject to the prud-
homes, but it does so state for disputes between workers, and the intention was probably to include all wage-earners. In disputes between wage-earners, however, it must be shown that the trouble was actually occasioned by their work. Claims for compensation in case of accidents, however, are specifically exempted from the jurisdiction of these courts.

In the first class of disputes it is necessary that between the two parties there shall be a wage contract of some sort which places the one in the relation of a subordinate to the other. A written contract, however, is not necessary and the method of wage payment has no significance. If one man employs another at wage labor, the relationship is supposed to imply a contract, the terms of which may be proved by witnesses or by interpretation of the customs of the trade. In general, the idea of contract is broadly interpreted. It has been decided, for example, that when all workers in an establishment are obliged to belong to a benefit society the obligatory retention of a portion of their wages for dues, etc., is part of their labor contract. The contract, however, must be actually in force at the time of the dispute. It has been decided by the court of appeals, for example, that a suit brought by a striker, who had broken his wage contract to go on strike, for reinstatement after the strike, was not within the jurisdiction of the industrial court, because no labor contract was then in force. On the other hand, an employer who, under threat of a strike, dismisses a wage-earner may be condemned to pay damages.

An interesting distinction is made, moreover, between certain conditions of work. Persons who labor on their own premises, furnish all their own materials, and receive payment by the piece are not considered as parties to a labor contract. Artists, for example, who invent and execute patterns on their own premises, furnishing all their own materials, are not subject to the jurisdiction of the councils of prud'hommes. But it is not necessary that the worker or employee labor under the direct supervision of the employer. The head of a home workshop, for example, is a worker in the employ of the manu-

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2 Both Strauss (Code Manuel des Conseils de Prud'hommes, p. 88) and Cluzel (Traité Pratique des Conseils de Prud'hommes, p. 69) maintain that, because of the wording of the law, disputes between employees by reason of their work are not within the jurisdiction of the industrial court. But Malnouy (Manual Pratique du Conseiller Prud'homme, p. 67) upholds the view here given that the intention of the legislature was to include all wage-earners, and that, therefore, not only disputes between employees but also disputes between a worker and an employee are within the jurisdiction of the industrial courts.

The distinction here made between workers and employees is drawn in the letter of the French law, and is followed throughout this discussion. A worker is an industrial wage-earner pure and simple, while an employee is either a wage-earner engaged in a commercial employment or a foreman or the head of a workshop in an industrial enterprise.

3 This doctrine, however, has been vigorously criticized as confusing the legal existence of a contract and its execution. (Cluzel, Traité Pratique des Conseils de Prud'hommes, p. 150.)
facturer who furnishes him materials, and their relations are supposed to be governed by a labor contract.

The provisions of the laws governing labor contracts and labor conditions, as well as the specific terms of the contract in dispute, furnish the basis for the decisions of the industrial courts. The usual conditions necessary for the validity of contracts—(1) free consent, (2) competency, (3) the rendering of services on the one hand and the payment for services on the other, and (4) legality in the object of the contract—are, of course, basic. Apprenticeship contracts are upon the same footing as labor contracts. The principal labor laws governing the decisions of the councils of prud'hommes relate to apprenticeship, employment certificates, the labor contract, garnishment of salaries and wages, military service, and the wages of married women. It has sometimes been urged that factory inspectors should bring their cases before these courts, but this idea has gained little ground, because such cases are not generally based upon labor contracts.

The customs of the trade and locality are used to fill out the details of verbal or understood contracts, and even of written contracts, unless the custom is specifically repudiated. Custom, indeed, is en-throned beside law in the councils of prud'hommes, and it is because they are supposed to be intimately acquainted with the customs, as well as the technical points involved, that the prud'hommes have been given jurisdiction over this special class of cases. As a result, however, a large variety of decisions may be rendered in similar cases, based upon differences in circumstances or in local usages, and some of these decisions may even be contradictory. One interesting function of the councils of prud'hommes, in this connection, is to determine rates of wages in cases in which no formal agreement has been entered into between the parties. It has no right, of course, to interfere with formal agreements, but in their absence it has the duty of fixing wages according to the customs of the trade and of the locality. In exceptional cases this function is left to the arbitration of a third party. If this third party can not or does not wish to decide, the wages will be regulated by experts chosen by the parties, and in default of agreement between these experts, by the industrial court.

Two other classes of cases which come under the jurisdiction of the industrial courts are those which arise through the formation, by the plaintiff, during the trial, of additional claims, and those which arise through the formation, by the defendant, of counter-claims. The councils of prud'hommes have charge of all such cases as come naturally within their jurisdiction, but they must all be united in a single suit when they are between the same parties and when their cause existed before the introduction of the principal claims. Even when, under the latter exception, cases are brought
separately, the court can reserve decision upon one until the other is up for judgment, in order to join them and pronounce upon all the points at the same time. If it can be shown, however, that the object of a counterclaim was merely to raise the amount in dispute so as to allow of appeal, and is manifestly improper, the defendant renders himself liable to be condemned by the court of appeal to pay damages to the plaintiff. But he can not be so condemned if the appeal court decides that his contention was even in part justified.

The amount in dispute also affects the jurisdiction. In differences between employers and employees the councils of prudhommes may consider only cases in which the principal claim does not exceed 1,000 francs (§193). Counterclaims may exceed this amount only if they rest exclusively on the pricipal claim. In disputes between employers and workers, however, there is no limit to the amount which may be in dispute. But in both cases the amount involved determines whether the court can decide the case with or without appeal. A case in which the total amount does not exceed 300 francs (§57.90) can not be appealed except upon the ground of lack of jurisdiction. In suits instituted by a number of wage-earners against an employer the decision is without right of appeal if each one of the wage-earners claims less than 300 francs (§57.90).

As for its territorial jurisdiction, a council of prudhommes has charge of all cases arising in establishments located within a certain territorial area, regardless of the places of residence of the parties. In case the work is not done in any establishment the province of the court is determined by the place where the engagement or labor contract was entered into.

The territorial jurisdiction may be extended, however, under the code of civil procedure, to cover cases not arising within its normal limits. In the same way, upon the request of both the employer and the employee, the court may decide a suit, in which the amount involved is over 1,000 francs (§193). The jurisdiction of the court can not be extended over cases of a different nature from those already described as belonging within its power, but the prudhommes may be called upon by agreement between the two parties to act as arbitrators in cases of any kind.

When there are two or more sections of a court the character of the work, and not the nature of the establishment, determines which section has jurisdiction over the dispute.

The general character of the disputes which come before the council of prudhommes, and the relative frequency of the different causes of disputes, are shown in Appendix I, Tables III and V. Wages, discharges, and apprenticeship are much the most frequent sources of trouble. Bad work, in the beginning perhaps the most important of all, is now relatively unimportant. Other causes of disputes are
claims for indemnity for unemployment or loss of time, incompetence, controversies over traveling and removal expenses, fines, delayed and unfinished work, the retention of wages for insurance funds, and failure to execute agreements.

In the absence of an industrial court, or of a section, its functions devolve upon the justices of the peace and the civil courts. Formerly this led to many anomalies, for proceedings before a justice of the peace could be carried on only under the ordinary rules of a civil court. Judgments upon exactly similar cases, for example, were subject to wholly different rules of appeal according to whether they were issued in a place where there was or in one where there was not a council of prudhommes. A law of November 13, 1908, however, extended the rules of procedure of the law of March 27, 1907, to cases between employers, workers, and employees brought, in default of an industrial court, before the justice of the peace of the civil courts.

GENERAL RULES OF PROCEDURE.

Certain general rules of procedure are applicable to cases brought before both the board of conciliation and the board of judgment. It is provided, for example, that both parties must appear in person upon the day and at the hour fixed by the summons. Two exceptions, however, are allowed to this rule. First, if a party is sick or absent he may be represented by another employer, employee, or worker, engaged in the same occupation, or by a lawyer. Second, the heads of large industrial or commercial enterprises may be represented by their managing director, by an employee, or by a lawyer.

In practice lawyers rarely appear before the councils of prudhommes except as the representatives of these large industrial and commercial enterprises. They take part, as a rule, in only about 10 per cent of the cases which come before the board of judgment and probably in an even smaller proportion of cases before the board of conciliation. It is maintained, however, that the workers especially need the right of being represented by a lawyer, because they are less instructed and less able to defend themselves than the employers. On the other hand, it is contended that persons who make a profession of appearing in legal cases are not likely to aid conciliation.

When the parties appear in person, as they generally do, they may be accompanied by an employer, employee, or worker engaged in the same occupation, or by a lawyer, who may assist them in the presentation of their cases. A wage-earner, for example, may be assisted by the secretary of his union; or, if he so desires, he may be assisted by an employer of his trade. It is quite common for wage-earners to be accompanied by older or more experienced comrades in proceedings before the industrial courts. Wives, too, may
be assisted by their husbands, and minors by their parents or guardians.

Owing to the legal disabilities of married women in France, the legislature in 1907 introduced a clause allowing industrial courts, in case the husband was absent, or was hindered from giving or even refused his authorization, to themselves authorize married women to enter into proceedings before them. Another law of the same year, however, on the subject of the wages of married women gave them free control over the products of their labor and the right to appear without authorization, in contests relative to their wages, in any court. This latter law, therefore, makes unnecessary the special authorization of the councils of prudhommes in most cases brought before them by married women.

Minors, too, under similar conditions, may be authorized by industrial courts to enter into legal proceedings before them.

The rules of procedure of these courts are such that their action is comparatively rapid. Most of the cases which come before them are ended in a week and nearly all within a fortnight.

**BOARD OF CONCILIATION.**

In each court, or, if there are sections, in each section, there is a board of conciliation and a board of judgment. The board of conciliation is composed of two members, one employer and one worker or employee, who preside by turns, according to the provisions of the rules adopted for the internal administration of the court or of the section. It must have hearings at least once a week, at which the secretary assists. All cases, except such as depend upon or are countersuits to others which have already been taken to the board of judgment, come first before the board of conciliation.

The procedure of the board of conciliation is very simple, but, as conciliation is the chief object of the councils of prudhommes, is of the first importance.

Cases may be brought directly, without any formality or delay, by the simple appearance of the parties before the board of conciliation on one of the days and at one of the hours fixed for its sessions. Usually, however, the defendant is summoned by a simple letter from the secretary containing the name, occupation, and residence of the plaintiff, the object of the complaint, and the day and hour fixed for the appearance. This letter enjoys the postal franchise. It may, however, be delivered by the plaintiff, if he so desires. This privilege is given for the express purpose of offering an opportunity for the parties to conciliate their difficulty before it is brought before the court, and this purpose is often accomplished. Contests relative to the delivery of the summons by the plaintiff,
moreover, are extremely rare. If such a contest arises before the board of judgment, however, the parties may be sent back before the board of conciliation, upon the demand of one of them; otherwise the board of judgment may proceed as though the summons to the board of conciliation had been regularly delivered.

The proceedings are informal, the first duty of the prud’hommes being to attempt to reconcile the two parties by any legal and possible means. Nothing must be neglected to that end, but the methods to be employed are left to the judgment of the prud’hommes. Naturally they, unlike other judges whose main object is to decide the case and not to conciliate it, take an active part in drawing out the stories of both parties.

No one is allowed to be present at the hearings except the two councilors, the secretary, and the parties and their assistants. An outsider can not be admitted, even with the express consent of both parties. It is argued that this privacy facilitates conciliation by insuring sincerity and avoiding outside pressure in the decisions of the two parties upon concessions proposed, and it is rigidly observed. On the other hand, many persons maintain that public hearings are a form of education for those who are waiting their turn, and that the sessions of the board of conciliation should be public.

Cases brought before the board of conciliation may take four courses. Both parties may appear and be conciliated; they may both appear, but not be conciliated; the defendant may not respond to the summons; or the plaintiff may not appear. In the first case the proceedings are comparatively simple. As soon as the definite agreement has been reached, an official report of the case and of the conditions of the agreement is drawn up and signed by the president, the secretary, and the two parties. This agreement has the force of a private obligation.

In the second case, a simple report is drawn up stating why conciliation has not been effected, and the affair is assigned to the next hearing of the board of judgment. If one of the parties refuses to take the oath, when requested to do so by the other, before the board of conciliation, or if one of them challenges, for any reason, the right of one or more of the members of the board to act, this course is considered as a refusal to conciliate, and the matter is immediately transferred to the board of judgment. The plaintiff, however, has a perfect right to explain, and even to increase his claim, and the defendant has the right to form counterclaims.

If the defendant fails to appear, the secretary of the council reports that fact and the matter is assigned to the next hearing of the board of judgment. But if the plaintiff fails to appear, the situation is different. In that case the affair is dropped from the rolls, and the plaintiff can not have it again brought before the board of
conciliation until after the expiration of a week. It much more frequently happens, however, that the defendant fails to appear. During 1906, out of 45,665 cases brought before the boards of conciliation of all the industrial courts of France, there were 8,495 in which the defendant failed to appear. Many other cases, moreover—9,371 during 1906—were withdrawn before action was taken upon them by the boards. In Paris in 1909, out of 24,662 cases brought before the boards of conciliation, 5,890 were withdrawn before action was taken.\(^1\)

More than half the cases brought before the industrial courts of France are conciliated. In the early years of the institution, however, this proportion was very much higher than it is at present. From 1831 to 1835 conciliation was effected in 97 per cent of the cases, but this proportion fell steadily until within recent years. From 1901 to 1903 conciliation was effected in only 51 per cent of the cases. From 1904 to 1906, however, the proportion rose again to 53 per cent. The accompanying table shows briefly the movement:

\[\begin{array}{l|c}
\text{Per cent of cases conciliated, for specified periods, 1831 to 1908.} \\
\hline
\text{Period} & \text{Per cent of cases conciliated} \\
\hline
1831-1848 & 91 \\
1849-1853 & 86 \\
1854-1860 & 76 \\
1861-1866 & 62 \\
1867-1870 & 57 \\
1871-1875 & 51 \\
1876-1880 & 53 \\
1881-1885 & 61 \\
1886-1890 & 55 \\
1891-1895 & 49 \\
1896-1897 & 45 \\
1898-1900 & 42 \\
1901-1903 & 51 \\
1904-1906 & 53 \\
\hline
\end{array}\]

Unfortunately, no statistics later than those for 1906 are yet available for the whole of France. In Paris, however, in 1907, only 41 per cent of the cases which were laid before the board of conciliation were finally brought before the board of judgment. In 1908, moreover, 38 per cent, and in 1909, 39 per cent, of the cases laid before the board of conciliation were afterwards taken to the board of judgment.\(^2\)

**Board of Judgment.**

The board of judgment is composed of an equal number of employer members and of worker or employee members, including the president or vice president. There must be at least two representatives of each class. The president and vice president preside alternately, and in their absence the presidency falls to the member who

\(^1\) See Appendix I, Table IV. For similar figures for the whole of France in 1906, by cities, see Table I.

\(^2\) For statistics for the whole of France see Appendix I, Table I, and for those of Paris see Appendix I, Table IV.
has been longest in office, or, in case of equality in length of service, to the oldest. In the absence of the president, for example, he is not replaced by the vice president, as would be the case in other assemblies, but by the longest in service, or the oldest member of his own class. If for any reason one of the members summoned fails to appear, the member of the other class who has been the shortest time in office must also retire, unless it is possible to fill the place of the missing member by another member belonging to his class. The board of judgment is, then, organized essentially upon the basis of equality of representation. As in the board of conciliation, the members serve in rotation, regardless of the categories in which they were elected. A suit between a master weaver and his worker, for example, may therefore come before a board composed of a master mason and a wage-earning blacksmith.

Cases come before the board of judgment through three different channels. As before the board of conciliation, differences may be submitted directly by the two parties upon any day when regular hearings are held, even, if necessary, upon the same day that they have been brought before the board of conciliation. Under such circumstances the secretary must enter the case on the roll, and the court can not refuse to hear it immediately.

If the defendant does not consent to this voluntary action, he must be summoned, and for this two methods are provided: First, registered letters with notice of their reception sent by the secretary; and second, summons by the bailiff, at the request of the plaintiff. In either case the summons must contain the date, the name, occupation, and residence of the plaintiff, the object of his claim, and a brief indication of its grounds. If letters are used to summon parties, they are never intrusted to the plaintiffs, as in the case of letters summoning defendants to appear before the board of conciliation. On the contrary, the plaintiff himself receives a summons to appear before the board of judgment. In case the notice of reception of the registered letter is returned but the party does not appear, judgment may be rendered against him by default. But if the notice of reception is not returned, then a new summons must be sent, this time by the bailiff.

As one of the chief purposes of the industrial courts is to settle difficulties promptly, the law provides for the least possible delay consistent with fairness in pushing disputes through to final judgment. One full day, however, must intervene between the summons and the appearance before the court, and neither the day of the summons nor the day of the appearance can be counted as part of that day. Moreover, if the distance between the place where the parties must appear and the place where the summons must be delivered is
considerable, the intervening time is increased in proportion to the
distance.

Certain circumstances or methods may enable the defendant to
arrest the progress of cases before the board of judgment. As has
already been seen, the jurisdiction of the prudhommes may be
denied. This may be done in either a written or a verbal declaration.
If the court then decides that it is incompetent to act in the affair,
the case before it is, of course, ended. On the other hand, if the
court decides that the affair is within its jurisdiction, the defendant
may either accept the decision and proceed with the case, or refuse
to plead the case and await the judicial notice of the decision in order
to appeal.

It may happen, moreover, that when a case comes before the court
it has already been brought before another tribunal, another council,
or even another section of the same council in which it is then pend-
ing. Or there may be pending before another tribunal, or council, or
section an intimately related case. Under such circumstances the
defendant may demand that the second case be referred to the same
court before which the first is pending.

Under certain circumstances, moreover, individual members of the
board of judgment may be challenged. The grounds for such chal-
lenge are five: (1) That the member has a personal interest, either
direct or indirect, in the contest; (2) that he is related by blood or
by marriage as closely as first cousin to one of the parties; (3) that
during the year preceding the challenge there has been a lawsuit,
either criminal or civil, between him and one of the parties; (4)
that he has already given a written opinion in the case; and (5)
that he is an employer, employee, or worker of one of the parties.
It is obvious that these provisions are all designed to place the deci-
sions of the board above suspicion of partiality. If the plaintiff is a
society of which a member of the board is a member the latter can not
act in the case. On the other hand, he can not be successfully chal-
lenged on the ground that he has a personal interest because he has an
identical dispute before the court. In the case of relationship, how-
ever, the challenge is not invalidated by the fact that the member
is also related, even more closely, to the other party. The third
ground of challenge is admitted because of the fear that the previous
suit may have engendered bitterness which might interfere with the
impartiality of the judge. But it is necessary that the previous ac-
tion shall have been entered upon before the case submitted to the
council. Otherwise, it would be easy to disqualify a member by
bringing suit against him. In the case of previously expressed opin-
ions, it is necessary that such opinions shall have been written, and
it is not sufficient that they shall have been given in an absolutely
parallel suit. They may have been merely written in a letter, however. This rule is extended to cover cases in which a member has given advice to one of the parties. In connection with the last ground of challenge it must be remembered that managers, directors, members of administrative councils, etc., are all considered as employers.

The procedure of challenge is very simple. The party looks over the roll, which is usually posted in the secretary's office and gives the names of the members who serve on each day of audience. If he wishes to challenge one of these members he then makes a verbal or written declaration to that effect to the secretary of the court. This declaration is communicated to the member challenged, who must reply to it within two days. If he accepts the challenge, he is simply excluded from acting in that case. If he refuses to accept it, or fails to reply, the matter is sent to the civil court, which must render a decision within a week. If the challenge is sustained the case may not be proceeded with until the president of the court has secured another member to act upon the board of judgment.

Cases may also be prematurely ended by nonsuit or relinquishment of the case, by acquiescence, express or tacit, in a preliminary decision and consent to its execution, or by compromise. Of 13,679 cases brought before the boards of judgment in France in 1906, 7,019 were withdrawn before the decision. In Paris in 1909, out of 9,666 such affairs, 4,631 were retired.1

The proceedings before the board of judgment are public, except in cases which may cause scandal. Such cases, however, rarely come before the industrial courts. The president or vice president is officially in charge of the hearing, and other members may question the parties only with his consent. Each party presents his own case and is allowed an opportunity to reply to the arguments of his adversary. The president and often other members, however, endeavor by questions to draw out all possible information. But the members must be careful not to show in any way their attitude or their opinions. As before the board of conciliation either party may request the other to take oath, or the president of the board may demand the oath. The party who refuses to take oath loses his case. The secretary assists in the audiences of the board of judgment and may also assist, with the president's authorization, in the private deliberations in chambers.

Incidental claims may be made by either party at any point in the proceedings before the board has finally ended the arguments—that is, the plaintiff may explain, increase, or decrease his demand, but he can not introduce any new claim unrelated to that contained in the summons, for such surprises at the last hour can not be allowed.

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1 See Appendix I, Tables I and IV.
The defendant, in the same way, may form a demand in reply to that of the plaintiff; but if such a demand exceeds in value the amount set as the limit of final jurisdiction of the industrial courts, it renders the judgment susceptible of appeal. These demands may be made verbally or in writing. If they are presented at the last moment and the adversary has not had time to reply to them, it is customary either to adjourn the case to another hearing or else to hear both parties again on the new points introduced. If, for any reason, it is necessary to adjourn the case, either one of the parties may make a provisional demand upon some one point which could be immediately decided, and this point may be settled without waiting for final decision on the entire case. The board of judgment, and even the board of conciliation, moreover, may prescribe whatever provisional measures it may deem necessary to insure the preservation and safety of objects in dispute.

Provision is made for bringing third parties into suits under similar conditions to those under which they could be brought into ordinary civil suits. Creditors, for example, or sureties, may be brought into cases before the industrial courts, either voluntarily or involuntarily. If, however, any question arises of the validity of documents introduced as evidence, involving charges of forgery, the industrial court can not pass upon the case, but must send it to the proper tribunal.

The board of judgment is directed, by application of an article of the code of civil procedure, to decide cases at the first hearing, but this rule is subject to the requirement that full knowledge of the case has been secured. The board can always, therefore, order the deposit of documents, etc., in its office, and take the case under advisement for decision at another hearing. The board can, furthermore, order an inquiry, to which witnesses are summoned, can call for the report of an expert or of experts, can itself visit the premises, or can otherwise take measures to secure the necessary information.

Inquiries are frequently necessary, for labor contracts are rarely in writing, and, if the customs of the trade as regards wages and other matters are not clearly defined, witnesses are necessary for proof. These witnesses may appear voluntarily and be heard immediately or they may be summoned, on the demand of one of the parties or of both, or officially by the board. They are summoned in the same way and under the same conditions of time as the defendant, and are obliged to appear and give their testimony under oath. They receive an indemnity. Not more than five witnesses may be heard on any one point. Supplementary hearings are at the expense of the party who has instigated them. If the decision in the case is not subject to appeal, the secretary merely takes notes of the statements of witnesses. The judgment, however, must mention the oath,
summarize the general declarations of the parties, and give the sense of the depositions. But if the decision can be appealed, the secretary must draw up a careful report of the testimony, which must be signed by the witnesses and by the president and secretary of the board, to be transmitted to the court of appeal. Witnesses may be challenged orally or in writing before the deposition, or in writing afterwards. If the board considers the objections well founded the witness is not heard. In general, relatives and persons who have an interest in the case may be challenged as witnesses before the prud-hommes as before other civil magistrates. If the court considers it desirable, the hearing of witnesses may take place in the place where the dispute arose.

Another method of securing information, which may be employed by the industrial courts, is to appoint one or three experts to make a special study of and report upon the case. If necessary, these experts may be appointed from outside the court, but it is customary to appoint one of the members who is engaged in the same occupation as the parties. The primary purpose, indeed, of the division of members into categories according to occupations is to have within the court representatives of all the industries in which many disputes arise, who may be called upon in such cases. The expert has the right to convocate the parties, hear their explanations and demands, and decide upon them. His report is placed at the disposition of the parties, at the office of the secretary of the court, some days before the hearing at which it is read. If it is necessary to appoint an expert from outside the court, the board alone is responsible for its choice, though it may receive recommendations from the parties. In any event, the board is never bound by the conclusions of its experts.

The board may also visit, or delegate one of its members to visit, the premises where a dispute has arisen, in order to obtain information or proof of statements. This method is especially adapted for the study of damage suits. It must, however, fix the date and time of such visit and notify the parties. If the entire board goes, it may render its judgment immediately or postpone it until another hearing. As in all cases in which special information is obtained, complete reports must be drawn up by the secretary if the case is susceptible of appeal.

In all cases, however, judgment must be rendered within four months. If judgment is not rendered within that time and the case is thus barred by limitation through the fault of the board, the members may be sued for damages. But cases may be prolonged beyond four months with the consent of the parties. It rarely occurs, however, that judgment is not given within a couple of weeks at most, and the great majority of cases are settled at the first hearing.

Various kinds of judgments may be rendered by the board, ac-
cording to the status of the case. For example, there may be a provisional judgment to settle the provisional demands already mentioned. Or there may be an interlocutory judgment, either ordering or refusing the various methods of obtaining information already discussed. Judgments which are rendered merely for further examination of the case and tend to put it in condition for the final or decisive judgment are called preparatory judgments. Judgments are, moreover, in either first or last resort, according to whether appeal can or cannot be made. Ordinarily about three-fourths of the cases acted upon are decided in last resort—that is, without the privilege of appeal.

A judgment may grant the condemned party time to pay, but, if so, it must give the reasons for the delay. Such delay, moreover, can not be granted if it is likely to prevent the recovery of the debt, as, for example, if the goods of the debtor are likely to be sold at the request of other creditors.

Judgments are determined upon either in open audience on the bench or in the chambers of the court. In simple cases where little consultation is necessary the first method is quicker and perfectly satisfactory. If there are papers to be examined, however, the members usually retire to their chambers. Decisions are rendered by an absolute majority of the members present, the votes of presidents and vice presidents having exactly the same weight as those of ordinary members. No member who has not been present at all the hearings of the case, however, or has not had the arguments repeated to him by the parties can participate in the judgment. It is especially necessary that all shall be present at the examination of witnesses. Judgments must be pronounced in public, even if the debates have been conducted privately.

It is further provided, however, that if it is impossible to reach a decision, either because half the members vote one way and half another, or because too many different views are held, the affair shall be sent back, with as little delay as possible, to the same tribunal presided over by the justice of the peace of the jurisdiction or by one of his deputies. In this way an uneven number of judges is secured and the deadlock is broken. This justice of the peace may be challenged in the same way and for the same reasons as a regular member of the court. If the justice of the peace is brought in the case must

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1 See Appendix I, Tables I, II, and IV.

2 M. Cluzel, (Traité Pratique des Conseils de Prud’hommes, p. 97) states that no member can take part in the judgment who has not been present at all the hearings. M. Malnoury, however (Manuel Pratique du Conseiller Prud’hommes, p. 121), criticises the practice of allowing a member to take part in the judgment who has merely been briefly informed of the arguments by the parties, on the ground that he may fail to hear important facts and considerations, and that he is placed in a position of inferiority to the other members and is influenced by them. He advises the parties in such cases to send the member a circumstantial statement of their arguments.

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be argued all over again before him. He then hears the arguments of the prudhommes in chambers. It is rarely necessary, however, to call upon a justice of the peace.

In the judgments it must always be stated exactly what motives have led to their formation. Since, however, the debates before the court are very often entirely oral, and the judgments must be rendered immediately, the president of the board, who officially draws up the decision, is allowed afterwards to modify its wording in order to make the points clearer, provided he does not change in any way its tenor. A board can also interpret its judgments and repair material errors. Each judgment is signed by the members present and countersigned by the secretary.

Judgments can not usually be put into execution until after the time allowed for the various methods of appeal has expired. In urgent cases, however, provisional execution may be ordered. Such provisional execution, however, is at the risk of the applicant, who incurs liability for damages in case the judgment should be later amended. Security must be given if the provisional execution involves a sum over 100 francs ($19.30). If provisional execution has not been ordered by the lower court, when it could have been ordered, it may be demanded of the tribunal of appeal before the decision on appeal. But the civil court can not stop a provisional execution ordered by the board of judgment, except in cases in which the order has been issued contrary to law.

The councils of prudhommes have no power to enforce their own judgments. This is left to the civil courts. They can, however, decide whether their judgments rendered by default have been executed or are barred by limitation, as is the case if they have not been executed within six months.

Official notification of the judgment must be given both parties, and, in the case of judgments by default, the bailiff or one of the prudhommes from the neighborhood of the defendant must serve the notice. Minutes of the judgments are also kept by the secretary of the court.

METHODS OF APPEAL.

The party against whom judgment is rendered still has open to him one or more of four different methods of obtaining a decision more favorable to his interests, (1) opposition, (2) appeal, (3) petition for annulment, and (4) civil petition. Opposition is the means open in certain cases in which judgment has been pronounced by default. Appeal, as has already been seen, is the means open in cases in which the demand is indeterminate or is over 300 francs ($57.90), or in which questions of jurisdiction are involved. A petition for annulment is available in special cases which have been decided in
last resort by the councils of prudhommes, or, on appeal from the industrial court, by the civil tribunal. Civil petition is another means of redress in certain cases decided by the industrial courts in last resort. In no case are the services of a lawyer obligatory.

It is obvious that judgments by default may not always be just, for they are rendered in the absence of one of the parties. The supposition is that this absence is voluntary and is due to the conviction of the party that his case is hopelessly weak before a court of law. But it is always possible that the absence may be involuntary, that for some reason the summons may have failed to reach the party or that he may have been prevented by unforeseen circumstances, an accident, for example, from appearing. It is, therefore, provided that the bailiff must personally give notice of all judgments by default, whether rendered against the plaintiff or against the defendant. The party, usually the defendant in such cases, is then allowed three days in which to enter objections to the judgment. These three days, moreover, may be extended by the court if it is shown, or if the court has good reason to believe, either that the notification, though perhaps delivered at the residence of the defendant, has not reached him personally, or that some unforeseen obstacle has prevented him from appearing. If he was not allowed sufficient time, as required by law, between his notification and his appearance, he must be resumoned at the expense of the plaintiff. Even when the board has not extended the time and the three days have expired, if the condemned party can show that illness, absence, or any other good cause has prevented him, either from presenting himself at the first hearing or from forming his plea within the time allowed by the law, he may be given back, by a decision of the board, his power of opposition. If a party, however, allows his case to be judged a second time by default, he can not again have recourse to opposition.

The procedure of opposition is much like that originally employed in the suit. The opponent is notified by the bailiff and is again summoned to appear before the board at a specified time. If the opposition is regular the case is then reopened, without regard to the judgment already rendered. It is not, however, a new case, but a continuation of the old. Appeals from judgments which are susceptible of opposition can not be received during the time allowed for the opposition, or during the course of the proceedings in opposition. But appeal may be taken immediately after a judgment rejecting opposition.

When opposition is resorted to the case is reconsidered by the same tribunal which rendered the original judgment, but when an appeal is taken it is considered anew by a wholly different and, officially, a superior court, the civil tribunal of the judicial district. Cases
which are subject to appeal, as has already been seen, are strictly limited. Moreover, appeal can be made only by one of the parties to the suit, by his legal heirs in case of his decease, or by the legal representative, the husband or guardian, of a married woman or of a minor. Married women and minors, however, may appeal their own cases, with the permission of the court.

Appeal can not be made within 3 days nor after 10 days dating from the notification of the judgment. This provision allows time for reflection upon the merits of the case, prevents hasty action due to anger, and at the same time provides for the final settlement of the suit within a reasonable time. In cases of judgment by default the appeal can not be received until after the expiration of the time allowed for opposition. Preparatory judgments, moreover, can be appealed only after final judgment has been rendered and then only conjointly with the final judgment. The effect of appeal is to suspend the execution of the judgment pronounced by the lower court and to transfer the case from the board of judgment of the prudhommes to the higher court. This appeal tribunal takes into consideration both questions of fact and questions of law, but can act only on the points brought up in the appeal, for a party may appeal on some points and not on others. Moreover, both parties may appeal on points which have been decided against them. But no new demand may be formed on appeal. Appeals must be decided within three months, and, if an appeal is found to be wholly without reason, the winning party may bring action for damages. This is the remedy for the counterclaims already mentioned which are often brought by employers merely for the purpose of taking the case, on appeal, to a superior court.

There has been much discussion as to the kind of tribunal which ought to act upon cases appealed from the decisions of the industrial courts. For many years the tribunal of commerce heard such appeals, but this was considered unfair to the workers, for the judges of that court are elected by employers. Many persons maintained that a special appeal tribunal should be formed of employers and workers, similar to that of Geneva, some advocating that this tribunal be formed from within the court itself, excluding only those members who had acted upon the case appealed, and others advocating an entirely independent court. The law of 1907, however, adopted a third solution, that appeals should be taken before the civil courts, with their appointed judges.¹

Petitions for annulment of decisions are allowed only in certain clearly defined cases in which judgment in last resort has been pronounced, either by the prudhommes or by the civil court acting on an

¹ For the number of appeals in various years see Appendix I, Table II.
appeal. The parties have the right to enter such petitions, however, only upon the ground that the inferior court has exceeded its power or violated the law. For example, if an industrial court has disregarded in its decision the known local customs in regard to the labor contract or has attempted to establish new customs by sanctioning them in a judgment, such judgment may be attacked upon the ground that the court has exceeded its powers. In cases in which violation of the law is charged, the court of appeals does not inquire further into the facts in the case, but considers only the decision together with the alleged facts there set forth. Such petitions must be entered within five days after the notification of the judgment, and the decision must be rendered within a month. If the judgment of the lower court is overthrown, the case is sent to another tribunal of the same order, the nearest to that whose decision has been annulled.

The fourth method of appeal is by civil petition. This method, like that of opposition, is allowed in certain cases in order to permit the retraction, by the court which has rendered it, of a decision in last resort. A civil petition is not admissible against a judgment in first resort which has not been appealed, but it is possible against a judgment by default to which opposition has not been made.

Civil petitions may be formed upon nine different grounds. First, they are possible if the judgment attacked has been obtained by means of deceitful measures which were of a nature to influence the court and were not discovered by the condemned party until after the judgment—for example, perjury. The deceit must be proved before the petition is formed. Second, they are possible in case of violation of the rules of procedure legally prescribed on penalty of making the action void. Third, a civil petition may be entered if the court has passed judgment upon matters which were not contained in the complaint, or, fourth, has adjudged more than the parties demanded. If a demand is made for restitution of objects, for example, and the court condemns the defendant to repay the value of the objects, it is considered that the court has passed upon matters not strictly up for decision. The fifth ground of civil petition is the converse of this, the case in which the court has omitted to pass upon one or more of the principal points in the complaint, in accessory or in counter demands. Sixth, if in the same court the same parties have obtained two conflicting judgments which are irreconcilable and incapable of simultaneous execution, the remedy is the civil petition. It is not necessary that the two decisions shall have been rendered by the same section, but only by the same council. The seventh ground is similar, contradictions between the terms of the same decision. The eighth case in which civil petition is allowable is that in which the judgment has been
rendered on false documents or other material evidence, the production of which has influenced the decision of the court. This falsity must be proved, by the confession of the party or by affidavit, after the decision attacked was rendered and before the civil petition is entered. On the other hand, and ninthly, if the party who has lost his case discovers, after the judgment, documents which would necessarily lead to a different decision, documents which were retained fraudulently by the adversary, he has the right of civil petition.

This civil petition is necessarily brought before the section of the council which has rendered the judgment attacked, and must ordinarily be made within two months after that judgment is rendered. In case, however, of deceit, retention of documents, etc., the two months begin only on the date when the deceit is discovered, and, in case of contradictory judgments, upon the date when the second judgment is pronounced. The procedure is subject to special rules; First the favorable opinion of three lawyers who have practiced for at least 10 years in the jurisdiction must be secured. Then, after the deposit of a penalty of 75 francs ($14.48) and 35.50 francs ($6.85) for damages, the plaintiff presents his case. If the board of judgment approves his grounds of appeal, or one of them, it annuls the judgment and the affair is reopened for argument like any other case. If, on the other hand, the petition is rejected and the original judgment sustained, the plaintiff is condemned to pay the penalty and damages.

One other kind of appeal is possible, that of a third person, not a party to the suit, on account of injury to his personal interests. This appeal is allowable against all decisions in first or in last resort, but the appellant must show that the judgment has done him appreciable injury. It can not be made by a person who, though summoned, failed to appear as a defendant in the case, nor by one who expressly or tacitly accepted the decision, nor by one who was represented at the trial, unless his representative exceeded his powers, nor by legal heirs of the party against whom the judgment was rendered. This third-party appeal is brought ordinarily before the section of the council which decided the case, and may be made any time within 30 years. Its effect is immediately to stop the execution of the judgment until the case can be retried. All the persons originally concerned are again brought into the retrial. The third party who loses his case, however, is condemned to pay the expenses, at least 50 francs ($9.65) penalty and, if necessary, damages to the other parties.

**Administrative Functions.**

The administrative functions of the French industrial courts are of four varieties. First, they are charged with the preservation of
ownership in patterns and models. Second, they are charged with certain functions connected with the enforcement of labor laws. Third, they intervene in the settlement of accounts between heads of workshops and merchant manufacturers. Fourth and lastly, they take part in the formation of the conseil supérieur du travail.

The use of the councils of prudhommes as a sort of patent office arose naturally from the circumstances of their foundation. Organized originally to settle labor disputes in the silk industry of Lyon, they were naturally empowered from the first to regulate the use of patterns and designs, one of the chief causes at that time of such disputes. The law of 1806, therefore, provided in general terms that the council of prudhommes should take measures to preserve ownership in patterns and designs. In 1825, moreover, an ordinance extended this power of the courts, which at first had been limited to the silk industry of Lyon, to all sorts of patterns and models used in manufacturing industries. Finally, an elaborate law of July 14, 1909, confirmed this function and greatly strengthened the provisions of previous legislation. The only points which need be noted here are that patterns and models are deposited in the office of the secretary of the court, that the secretary gives a certificate of deposit, and that in case of a contest in regard to proprietorship the patterns and models deposited, as well as the secretary's records, are used as evidence in the case.

As has already been seen, labor laws furnish, in part, the basis of decisions of the councils of prudhommes, and it has sometimes been proposed that cases brought by factory inspectors for infractions of these laws should be tried before the industrial courts. These courts already have, however, under the law, certain administrative functions in the enforcement of labor laws, such as the duty of proving such infractions, as well as the duty of proving the theft by contractors or others of raw materials—functions which are practically a dead letter.\footnote{Formerly the councils of prudhommes had also certain repressive functions. They were, for instance, charged with punishing disorder in workshops and factories and serious faults of apprentices, and they could condemn persons to as much as three days in prison. This function, however, was suppressed in the law of 1907.} In order to procure proof in such cases the prudhommes are empowered, at least two at a time, one an employer and the other a wage-earner, to visit manufacturers, workers, and employees. But they must be accompanied by a public officer, and can make their visits only upon complaint and request from the interested parties. The law allows them even to seize the objects needed as evidence and deposit them, along with their report, in the office of the court, to be sent to the clerk's office of the proper tribunal. This whole power of inspection, however, long ago fell into disuse. Among the labor laws infractions of which may, at least theoreti-
cally, be complained of before the councils of prudhommes, are laws forbidding workers at forges from ceasing their labor to go into another part of the works while the fires are burning, child and woman labor laws, laws regulating hours, night work, and underground work, laws relating to hygiene and safety, and laws relating to accidents.

The function of the industrial courts in the matter of regulating the keeping of accounts between heads of workshops and merchants also arose naturally from the circumstances of their original foundation. The silk industry of Lyon was carried on by contractors or heads of workshops, in the employ of merchant manufacturers who furnished the materials and paid for the product by the piece, and the first council of prudhommes was organized to settle disputes between these two classes, and not between the workers and the heads of shops or contractors. The method of keeping account of materials furnished and work performed was naturally, under this system, a matter of first importance. The provisions of the law of 1806 upon this point are still in force, but have little practical significance to-day.

The fourth and last administrative function of the councils of prudhommes is to take part in the formation of the labor councils (conseils du travail). The superior labor council (conseil supérieur du travail) was originally organized by a decree of January 22, 1891, and has been several times reorganized, the last time by a decree of June 24, 1907. Its object is to give advice and information to the minister of labor and to the legislature relative to labor questions and their solution.

The superior labor council is composed of 67 members, 27 of whom are appointed by the employers and 27 by the wage-earners. The remaining 13 include 3 senators, 5 deputies, and 5 members of public or semipublic bodies. Of the 27 employers 8 are employer members and of the 27 wage-earners 8 are wage-earner members of industrial courts. In each case 2 are elected from Paris, 3 from the cities outside of Paris having at least 40,000 inhabitants, and 3 from other cities and towns. In Paris the employer and wage-earner members each elect their own representatives. As for the other towns, lots are drawn to see which ones shall have the right of representation, and when that is decided the representatives are elected as in Paris. All members are elected for three years. These representatives are entitled, if they live outside of the Department of the Seine, to traveling expenses and to 12 francs ($2.32) a day during the sessions of the council which they attend, and if they live in the Department of the Seine to 10 francs ($1.93) a day. Moreover, wherever their residence may be, members receive 5 francs (97 cents) for each session of the permanent commission, or general executive committee.
COLLECTIVE DISPUTES.

The industrial courts of France have, in practice, no direct function in collective disputes or strike cases. There is nothing in the law to prevent such cases from being brought before them, and sometimes suits come up in which a number of persons are concerned as plaintiffs or defendants. Both before and after strikes, moreover, they often have cases directly or indirectly connected with the causes of dispute leading up to the strike, or with the strike itself and its consequences. If, for example, a union goes on strike and the men have not been paid all the wages due them, the demand for back wages is often brought before the industrial courts. But their function is essentially the settlement of individual disputes, and other provision is made, through the committees of conciliation (comités de conciliation) and boards of arbitration (conseils d'arbitrage), the creation of which was authorized by the law of December 27, 1892, for the settlement of collective disputes.

It has sometimes been proposed definitely to extend, in one way or another, the jurisdiction of the industrial courts to collective disputes, but the proposition has met with little favor, partly because of the feeling that these courts already have a large enough field, and partly because of the fear that their functions in collective disputes might in some way interfere with or cause loss of confidence in them as judicial tribunals for the settlement of individual grievances.

There is, moreover, a theoretical objection in the fact that collective disputes generally have to do with future labor contracts, and not with the interpretation of present contracts, and are therefore of an entirely different character from the cases which the councils of prudhommes were created to settle. Furthermore, the two kinds of contracts are different in that decisions rendered in cases involving future labor contracts can not be legally enforced as can those concerning present labor contracts. It is sometimes said, too, that so many trades are grouped together in even a single category of the councils that the members are not competent to decide rates of future wages. A mason, for example, can not decide what will be fair wages for a marble cutter. In practice, though collective and individual disputes are very closely related, the industrial courts of France have dealt only with the one class, individual disputes.

THE INDUSTRIAL COURTS OF GERMANY.

HISTORY.

Though the industrial courts (Gewerbegerichte) of Germany, in their present form, are comparatively new, dating only from 1890, special courts for the settlement of industrial disputes have existed
in that country since early in the nineteenth century. As in France, there is a certain loose resemblance between these courts and the early guild tribunals. The industrial court, however, is no more a descendant of the guild system than is the trade union. It is, indeed, an institution which has grown up by gradual stages to meet the need, not only for special knowledge and experience in the settlement of industrial disputes, but also for quick and cheap action in such cases. Moreover, though industrial courts were first introduced into Germany from France, the German industrial court, as it has finally developed into a national institution, differs materially from the council of prudhommes.

The earliest industrial courts in Germany\(^1\) were formed in the Rhine provinces under the Napoleonic code during the French possession. In 1808 such courts were instituted at Aix-la-Chapelle and Burtscheid and in 1811 at Krefeld and Cologne. After these provinces reverted to Prussia, in 1815, an effort was made to extend the system to other parts of the country. Councils of prudhommes were formed on the French model in eight other places before 1844, and in 1846 these courts were recognized by an order in council which empowered them to deal with all disputes between manufacturers and their employees, including home workers. The Cologne court, indeed, had extended its jurisdiction to home workers as early as 1830.

These courts, though they varied in details, were alike in their general features. The members were elected by factory owners, overseers, master mechanics, and independent workers, who paid at least 3 thalers ($2.14) in taxes. The different industries were proportionately represented. There was one more member from the employer class than from the worker class. All members were confirmed by the royal Government, and they themselves elected from their own number a president, a vice president, and a secretary. The parties appeared personally, and the proceedings, as in the French courts, were divided into two stages—one before a board of conciliation and the other before a board of judgment.

These, however, were not the only industrial courts early established in Germany. That country, indeed, has been remarkable for its complicated judicial organization and its numerous tribunals having jurisdiction over labor disputes. As early as 1815 a special factory court was formed at Berlin, and in 1829 several similar courts were established in Westphalia. These dealt exclusively with disputes between factory owners and their employees, and do not appear

to have been eminently successful. The first general provisions for the settlement of industrial disputes, however, were contained in the Prussian Industrial Code of 1845, which left undisturbed the existing courts, and further provided that disputes between guild members and their journeymen and apprentices should be settled by the guild officers under the presidency of a communal official. All other industrial disputes, however, were relegated to the ordinary tribunals, and no provision was made for the establishment of new industrial courts.

This arrangement was not satisfactory to the workmen, and soon afterwards there began an agitation in favor of the general establishment of industrial courts similar to those in the Rhine provinces. The year 1848, in which the revolutionary ideas of the time reached, perhaps, their culmination, was rich in demands for a system of special courts to deal with labor disputes. In this movement the handworkers appear to have been especially prominent. One petition, for example, was signed by 321 master mechanics of Bonn. Various congresses, both of employers and of workers, also passed resolutions asking for industrial courts. As a result of this agitation the Government, after careful preparation, after consultation with a special committee of employers and workers called to Berlin for the purpose, and after hearing committees of various organizations, early in 1849 passed a law designed to extend the system existing in the Rhine provinces over the whole of Prussia. But, although these courts had flourished on the Rhine, the plan was not successful in any other part of Germany—was, indeed, as one writer says, a complete fiasco.¹

Only 11 courts were established from 1850 to 1853, and in the latter year the movement came to a standstill. After 1854, indeed, there was not a single industrial court of this type to be found in Germany outside of the Rhine provinces. Their failure is attributed to two principal causes. First, the cost of proceedings was too high and too unequally divided. In so far as fees and similar payments did not cover expenses they were met by assessments which were levied equally upon the employer and the worker, upon the large employer and upon the small. As a result there was a general effort to avoid the jurisdiction of the court, and complaint was general. Second, they were not properly managed and became rather sources of arbitrary judgments than means of conciliation.

Other laws were enacted from time to time. The State of Saxe-Gotha made an unsuccessful effort toward the establishment of industrial courts in 1849. And in Saxony a general law was passed in 1861, under which, however, only one court was formed.

The first law for the entire German Empire was contained in the Industrial Code of 1869. The provision relating to industrial courts read as follows:

Disputes between independent industrial employers and their workmen respecting the commencement, continuation, or termination of the labor contract, their mutual obligations under it, and the granting or contents of certificates must be submitted to specially appointed authorities in so far as such exist. Where such authorities do not exist, the matter must come before the regular communal authorities, against whose decision an appeal can be made at law. By local statutory regulations courts of arbitration may be instituted by the communal authorities for the settlement of such disputes, the members of these courts being chosen from among the employers and the employed in equal numbers.

A year later, on October 4, 1870, and again on July 31, 1871, the Prussian minister of commerce addressed circular letters to the local authorities, urging them to establish such arbitration courts. This general permission, however, accompanied by no provisions regulating procedure and by only the most general directions regarding composition and functions, was not calculated to meet the need. Not only did it fail to secure the establishment of a sufficient number of courts, but it led to profound differences in the organization, procedure, and jurisdiction of those that were established. In 1869 one court was formed, in 1870 four, and in 1871 and 1872, perhaps under the stimulus of the circular letters of the minister of commerce, 19 and 21, respectively. In 1873, however, the number fell to 7 and in 1874 to 4. By the end of 1889 only 74 industrial courts had been created, and only 14 of these had been formed since 1880. Some of those nominally created, moreover, had never been definitely organized owing to lack of business. At the same time many of the larger cities were without courts because of the great difficulties encountered in the election of members.

These courts differed widely. The Industrial Code provided that they should be composed of an equal number of employers and employed, and all were agreed that some legal training was necessary for the office of president. But the number of members varied decidedly, as did also the jurisdiction. Their decisions, moreover, were all subject to appeal within 10 days to the regular courts, so that, if the parties did not voluntarily submit, judgments were not enforceable. It appears to have been contemplated in the law that these courts should settle collective as well as individual disputes, but in most cases their statutes empowered them to deal only with the latter. In Leipzig, Frankfort, and Berlin, however, they were directed to "intervene as a board of conciliation whenever a strike was threatened or had already been declared, or whenever difficulties arose with regard to proposed wages or other conditions of labor." The Berlin
court could act on the request of one party, and the Leipzig and Frankfort courts only on the request of both parties to a dispute. It does not appear, however, that such intervention ever actually took place under the provisions of these statutes.

Of the courts established under the Industrial Code of 1869, the most successful was that of Stuttgart, which, in 1889, settled 413, or 77.6 per cent, of the 532 disputes brought before it without passing definite judgment; that is, by conciliation. In 202 of these cases a compromise was effected, in 89 the complaint with withdrawn, and in 122 the difficulties were otherwise adjusted. Of the cases on which it was necessary to pass judgment, in 15 judgment by default was rendered and in 86 both parties were heard. Eighteen other cases were heard before specially appointed experts. The subjects of complaint were: "Commencement, continuation, or termination of the labor contract in 53 cases; wages or other payments connected with the labor contract in 428 cases; questions relating to certificates and workmen's pass books in 30 cases; repayment of sick-fund contributions levied in excess in 9 cases; continuation and termination of apprenticeship in 5 cases; and payments connected with apprenticeship in 7 cases. In 176 cases the complaint was settled on the first day, in 139 on the second, in 86 on the third, and in 45 on the fourth. In the matter of the election of assessors, the workmen showed far greater interest and activity than the employers." Though this record compares very favorably with that of the most successful of the French councils of prud'hommes, the industrial courts formed under this law in Germany for the most part failed to meet the need.

Meanwhile, provision was made in 1881, through an amendment to the Industrial Code, for the establishment within the guilds of courts of arbitration for the settlement of disputes between members and their journeymen or apprentices. These guild courts, which still exist, are composed of a president and at least two members, one representing and elected by the masters, and one representing and elected by the journeymen. An amendment to the law in 1887, moreover, extended their jurisdiction in some cases to nonmembers. If their activity is confined to the regulation of apprenticeship and if they have been successful in this, they may be authorized by the local authorities, when appealed to by either party, to settle a dispute between a master and an apprentice even though the master is not a member of the guild. There were, in 1908, 422 of these guild arbitration courts.

Still another provision for the settlement of industrial disputes was in force before 1890. The insurance laws of 1883 and 1884 provided for arbitration by municipal authorities in disputes over

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1 Amtliche-Mitteilungen aus den Jahres-Berichten der Fabrik-Aufsichts-Beamten, 1889, pp. 145, 146.
contributions to the sick funds and over compensation due under the accident insurance law. This function was afterwards turned over to the industrial courts.

By 1890, indeed, the greatest confusion prevailed in the legal methods for the settlement of industrial disputes. The 74 courts established under the provisions of the Industrial Code of 1869 were working under local regulations of many different varieties. In addition to the courts on the French model in the other Rhine provinces, moreover, there were councils of prudhommes of the same type in the annexed provinces of Alsace-Lorraine. Guild courts had jurisdiction over certain cases, and municipal officers over others. Finally, the regular courts decided cases not otherwise provided for.

In spite of or perhaps because of this variety of legislation the judicial machinery for the settlement of industrial disputes was decidedly unsatisfactory. Agitation for a new law began soon after the Industrial Code of 1869 went into effect, and was carried on continuously until the passage, in 1890, of the first general and sufficiently detailed law providing for the establishment of industrial courts. Many bills were introduced during these years in the Reichstag, among them the Government bills of 1873, 1874, and 1878. Gradually, through the discussions on the subject, there was developed the idea of a democratic, but at the same time carefully guarded, system of industrial courts. At first the agitation was complicated by the demand from many quarters that the breaking of a labor contract should be considered a criminal offense. There was also a strong demand that the members of the courts should be appointed and not elected. Many legislators, too, objected to the idea of central control over or regulation of the courts, and frankly wished them to retain a purely local character. The confirmation by general governmental authorities of appointments to the position of judge was especially opposed. Still another point of disagreement was furnished by the question as to whether the employer and worker members of the court should receive the same compensation for loss of time.

After the failure of these bills there was a period of comparative rest. In 1886, however, upon the initiative of the social democrats, the Reichstag passed a resolution requesting “the chancellor of the Empire to introduce a bill for the compulsory establishment of industrial courts, with the condition that the assessors in such courts shall be elected in equal numbers by employers and employed separately, and by ballot.” Three years later, in 1889, a similar resolution, omitting the word “compulsory,” was passed, but the Government paid no attention to either request.
The next year, however, partly at least as a result of the political upheaval which followed the great Westphalian miners' strike, the Government resolved to bring forward again a general bill for the establishment of industrial courts. The bill introduced was similar to the one which had failed in 1878, but it added a new feature, the provision for calling upon the court as a board of arbitration in strike cases. After careful consideration and discussion, and after the adoption of several changes, this bill was finally passed and went into effect on April 1, 1891.

Through this law order and harmony were for the first time introduced in the system of judicial settlement of industrial disputes in Germany. The guild courts were not interfered with, but all other existing industrial tribunals were called upon to revise their statutes in accordance with certain provisions of the new law. These essential provisions were that half of the assessors should be elected by employers and half by workmen, by direct and secret ballot, and that lawyers should not be allowed to appear in proceedings. Otherwise the earlier established courts were allowed to continue to regulate their own affairs. It was even permitted that their presidents should still be chosen, as in the Rhine courts, from among the assessors. The courts which existed before 1890, therefore, still form an independent, though a diminishing group. Many of them have been entirely reorganized under the new law, and in 1908 there were only 21 operating under the special clause introduced for their benefit.

The provisions of the law of 1890 are so similar to those now in force that they need not be here discussed. It is of interest, however, to note some of the points that roused the greatest amount of discussion during the debate upon the bill. One of these was the relation of the industrial courts to the guild courts. Here the friends of the guilds and of the general principle of encouragement of handicrafts won the day. Another point which was vigorously discussed was whether or not the establishment of industrial courts should be made compulsory. It was finally decided to make them voluntary institutions, but in 1901, when this question was again earnestly debated, an amendment to the law was passed which made their establishment compulsory in cities of over 20,000 population. As in France, the classification of home workers proved a difficult matter, and the age requirement for eligibility to membership in the court led to considerable discussion. There was also division of opinion as to whether the ballot should be secret and as to whether women should be allowed to vote. The secret ballot was easily won, but, though it was recognized that many industries almost exclusively carried on by women were under the jurisdiction of the industrial court, they were finally debarred from participation in the election
of assessors. There were interesting contests, finally, over the details of the provisions for appeal from the decisions of the industrial courts.

The law of 1890, in so far as the functions of the court as a tribunal for the settlement of individual disputes were concerned, was decidedly successful. In 1899, however, a revision of the law for the purpose of introducing certain improvements was proposed by the Social Democrats and others. Nothing was done at that session, but the question was again brought up in November, 1900, and finally, in the spring of 1901, the present law was passed. As has already been seen, this new law made the establishment of industrial courts compulsory in cities which have over 20,000 inhabitants. At the time it went into effect this clause applied to 54 cities, but some of these appear to have placed themselves under the jurisdiction of already existing courts in their neighborhoods. About 40 new courts, however, were established as a result of this provision. Otherwise only minor changes were made in the portions of the law which dealt with the functions of the court in the settlement of individual disputes. It was provided, for instance, that the proportional election system might be used in the election of assessors, and a provision that only those persons who had lived or worked in the neighborhood for at least one year before the election could vote was stricken out. Another improvement was the clause permitting industrial courts to introduce proposals, not only before the local officials but also before the legislative bodies of the federated States and of the Empire.

In its provisions for the settlement of collective disputes, however, the law of 1890 was not so successful, and it was in the portions of the law which dealt with the industrial court as a board of arbitration that the most radical changes were made in 1901. The appointment of arbitrators, for example, was taken out of the hands of the president and placed in the hands of the parties concerned, who were empowered to appoint not only regular assessors of the court but any man in whom they had confidence. Perhaps the most important change, however, was the introduction of the provision for the compulsory appearance of parties to a collective dispute.

Three years after these changes were made in the law relating to industrial courts, in 1904, another law was passed establishing a system of similar mercantile courts (Kaufmannsgerichte) for the settlement of disputes between merchants and their employees. In principle and in all essential features these courts are like the industrial courts. For this reason, as well as because the present study deals primarily with the settlement of disputes between workers in purely industrial occupations and their employers, no special description is here given of these mercantile courts. It may be of
interest, however, to note that in 1908 there were in the German Empire 262 mercantile courts, 221 of which were connected with previously existing industrial courts, and that there were brought before these courts 22,116 cases, of which 20,703 were introduced by employees, helpers, or apprentices. These courts, like the industrial courts, are empowered to act as boards of arbitration, but in 1908 only two collective disputes were brought before them.

The system of industrial courts, meanwhile, under the law of 1891 and the amendments of 1901, has grown steadily and rapidly. By 1896 there were in Germany 284 such courts, and the number of cases brought before them was 68,798. In 1900 there were 316 courts and 84,164 cases; in 1904, 415 courts and 100,769 cases; and in 1908, 469 courts and 112,281 cases.

The number of cases, as well as the number of courts, though fluctuating somewhat, has, upon the whole, steadily increased. The period, however, is too short for this movement to have any particular significance. As in France, the industrial courts are most used, not by factory operatives, but by home and small shop workers and by artisans engaged in the various skilled trades, such as those of the building industry. Where manufacturing is centralized in large establishments the terms of employment are more standardized and fewer complaints arise, while workmen doubtless often fear to enter against the big employer complaints which they would not hesitate to enter against the petty employer.

The number of cases brought before the Berlin court has, naturally, varied much less than the number brought before all the courts of the Empire. In 1893 there were 12,947 cases handled in Berlin, and in 1908 the number was 14,928. Although this indicates a total increase of over 1,000 cases, the movement has not been regular. The smallest number of cases, indeed, 10,702, was in 1901, and the largest, 14,208, in 1907. There is considerable variation, moreover, in the number of cases handled by each section of the Berlin court.

As a judicial tribunal the industrial court has been, upon the whole, eminently successful. At first there were loud complaints of the decisions, especially, if not exclusively, from the side of the employers. Even the defenders of the courts, indeed, acknowledge that in some cases decisions have been made which are not in accord with law and equity. Such cases, however, and also instances in which pressure has been brought to bear by the parties upon the assessors

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2 See Appendix I, Table VII.
3 See statistics of the activity of the industrial courts in the different cities and districts of Germany in 1908 see Appendix I, Table VI.
4 A total of 14,522 cases were brought before the Berlin court in 1908, but 494 of these were withdrawn before action was taken.
5 See Appendix I, Tables VIII and IX.
of their side, have been rare. Assessors, it is said, have generally been actuated by a desire to settle the dispute by amicable measures, and, when a judgment has been necessary, have willingly recognized the law as the basis for their decision.\textsuperscript{1} The opposition, therefore, has practically died out. But it is said that, though practically all small employers have accepted the system and are content with it, it is still unpopular with large employers.

The industrial court has been successful, moreover, in the settlement of many collective disputes. The usual complaint against the proceedings of boards of arbitration, of course, is often made, that the effort is to induce one side or the other to give in, regardless of the justice of its cause, and that this policy, while it may end a strike, does not render justice and therefore often leads to further trouble. In general, however, the system appears to be increasing in popularity. The workmen, who were at first distrustful, are now usually ready to appear, and the employers, who were at first distinctly unfriendly, now generally submit. The success varies greatly, however, with the locality and with the character of the president. In mining districts the courts have not been very successful in any respect, and have been especially weak in this phase of activity. There is, moreover, a great difference in presidents, some of whom have little success in the handling of collective disputes, while others, like the general president of the Berlin court, enjoy the confidence of both employers and workmen, and are therefore eminently successful in such work.

Considerable difference of opinion exists, however, as to the advisability, judged by results, of the experiment of uniting the functions of a judicial tribunal with those of an arbitration board in an institution like the industrial court. On the one hand it is argued that the system is too complicated, is inconvenient,\textsuperscript{2} and tends to emphasize the political struggle in the election of assessors. The latter objection, however, has been practically met by the provision of the new law allowing the parties to choose arbitrators from outside the ranks of the regular assessors. But as strikes and other labor disturbances have tended to become national instead of merely local in scope—as, for example, in the case of the recent shipbuilders' strike in Hamburg, Bremen, and other ports—it has been found that the industrial courts do not have wide enough jurisdiction to meet the need. There is, therefore, a bill before the Reichstag which provides for the establishment of an arbitration board for the entire German Empire to deal with collective disputes which extend to more than one city. This bill does not interfere, however, with the present function of the industrial court in local disputes.

\textsuperscript{1} Conrad and Lexis, Handwörterbuch der Staatswissenschaften, Vol. IV, p. 887.

\textsuperscript{2} Gisi, Eingungsamt und Schiedsgericht, p. 107.
On the other hand, this combination of functions is said to be a peculiar advantage to the court acting as an arbitration board, because both employers and workers come to have confidence in it as a judicial tribunal for the settlement of individual disputes, and are therefore more easily persuaded to avail themselves of its services for the settlement of collective disputes. It is also argued that the experience obtained by the president and assessors in the course of their labors as conciliators between individuals is of great value when they endeavor to act as conciliators between hostile organizations.

The most interesting phase of the work of the industrial court as a board of arbitration, however, and one which is intimately connected with its work as a judicial tribunal, is the formation of trade agreements. Early in the history of the court the need for fixed labor contracts to serve as a basis for decisions was felt. Every collective dispute, moreover, has emphasized the need for a labor contract as a guarantee of industrial peace. As a result of these two needs, one of the court itself and the other of the parties, it has become common to call upon the industrial court as a board of arbitration for the formation of trade agreements even in cases where no active conflict has broken forth. In such cases arbitrators or assessors are frequently not summoned, but the agreement is concluded before the president of the court by the representatives of the two parties. This method has been especially successful in Berlin. The archives of the union of German industrial courts in that city are stored with trade agreements and wage contracts, many of them formed with the assistance of the court. Most of the latter provide for an arbitration commission composed of an equal number of employers and workers under the presidency of a trade judge or of an assessor of the industrial court not personally interested, which is empowered to settle future differences and to draw up future wage contracts. Usually it is provided that, if this commission can not settle a dispute, it shall be taken directly before the court. The agreements drawn up before the president of an industrial court, it is said, are much more faithfully kept than the agreements drawn up before other arbitrators or without arbitrators. Indirect outgrowths of this movement are the three national boards or commissions which regulate wages for the whole German Empire in the printing, woodworking, and painting trades.

By its friends, indeed, the industrial court law is considered as the Magna Charta of the German workman. In this court, says one writer, the labor world of Germany has for the first time found an effective instrument for the prevention of wage reductions and other violations of the labor contract. There is no State institution, he adds, to which the workmen cling with more love or with warmer admiration.

METHODS OF CREATION.

The creation of the industrial court for the settlement of industrial disputes may be either compulsory or voluntary. Since 1901 it has been compulsory for every city which had at the last census over 20,000 inhabitants. In case the municipal authorities of such a city, upon the request of the central government, do not take the initial measures, the latter body itself, without the necessity of consulting the parties concerned, establishes the court. In case, however, a municipality with over 20,000 inhabitants is already within the jurisdiction of an industrial court which has its seat in a neighboring city, it is not necessary to establish a new court. Thus if the jurisdiction of the industrial court of a large city extends over an outlying municipality it is not necessary for the latter, even though it has over 20,000 inhabitants, to create a separate court. In the same way one court suffices for any union of cities, even though the population of several of them may exceed 20,000. Moreover, it has been declared sufficient if any kind of industrial court exists in the city, even though its jurisdiction may be limited to particular industries or to a special part of the district.1 In 1908 there were 187 courts established for municipalities with more than 20,000 inhabitants.2

The voluntary creation of an industrial court may take place in one of two ways, either upon the initiative of the local authorities or upon the initiative of employers or workers concerned. In the former case the court may be established through a municipal ordinance, through the united action of several municipalities, or through regulations adopted for the district of a communal union. In any case both employers and workers of the principal industries of the municipality or district must be consulted. If a court is established by a communal union, its jurisdiction is limited by either the earlier or the later establishment of another industrial court having jurisdiction over one or more municipalities of the same union. There were, in 1908, 448 courts established under this clause, including 330 which had jurisdiction each over a single municipality, 45 which had jurisdiction over several municipalities or parts of such, and 68 which had jurisdiction over several communal unions or parts of such. There were, moreover, 16 courts which had jurisdiction only over certain kinds of industries or factories.

Sometimes, however, it may happen that the local authorities are not sufficiently responsive to the needs of the industrial population. Especially when, owing to local industrial conditions, it is a question of cooperation between several municipalities or of the action of a

1 M. v. Schulz, Gewerbegerichtsgesetz in der Fassung der Bekanntmachung von 29 September, 1901, p. 31.
The idea of communal union, the authorities may be slow to take the necessary steps. In case the local authorities have paid no attention to their request, it is, therefore, made possible for either employers or workmen to apply to the central authorities of the State for the establishment of an industrial court. Even in cities of less than 20,000 population, then, outside authority may intervene to create an industrial court, under two conditions—first, that such intervention has been requested by employees or workers concerned; and, second, that the local authorities are unwilling or unable to act in the matter.

Finally, industrial courts for the mining industry, for salt works, and for certain other kinds of industry, such as underground work on bridges, may be established by the central authorities at their discretion without regard to the local authorities and without the necessity of a request from employers or workers. These courts, however, differ in certain minor respects from ordinary industrial courts. The principal points of difference are that their jurisdiction can not be extended over other industries, and that their cost is borne by the State. The jurisdiction, however, of other existing or even later established industrial courts is limited by that of these special courts. The clause allowing their creation, moreover, does not prevent municipalities or communal unions from themselves establishing industrial tribunals either for mining alone or for mining as well as other industries. The idea was simply to make it possible to erect industrial courts in districts where, on account of the dominance of one great industry under the control of a limited number of persons, their voluntary establishment would not be possible. Moreover, courts so created have an advantage in that they can cut through all limitations of political divisions in order to reach a particular industry wherever it extends. In 1908 there were only eight of these courts in Germany, five of them in Prussia, two in Bavaria, and one in Brunswick. The latter court serves also for the workers in the neighboring peat bogs.

The local regulations of the court are determined by the body through which it is created. In forming these regulations as many employers and workmen of the district as it seems desirable must be heard. Even in case of the compulsory establishment of the court it is considered necessary to hear the opinions of employers and workers upon the special provisions to be adopted in its regulations. If the court is established voluntarily by a municipality or group of municipalities, moreover, these regulations are subject to ratification within six months by the higher authorities.

No provision is made in the law for the dissolution of an industrial court. Even in case the population of a city, in which a court has been formed by reason of the provision that every municipality having over 20,000 inhabitants must be under the jurisdiction of such a
court, falls below that figure, the court can not for that reason be dissolved. In some cases, however, courts in small places die, either from lack of business or for other reasons. Between 1896 and 1900, for example, 12 small courts disappeared. During the same period, however, 44 new courts were organized.1

ELECTIONS.

The assessors of the court are elected half from among the employers and half from among the workers of the jurisdiction. The employers elect the employer members and the workers the workmen members. According to the provisions of the law, elections may take place at intervals of from one to six years, but no term of office can be longer than six years. The local regulations of the Berlin court provide that members shall be elected for a term of six years, but that every two years a third of each category shall be replaced.

QUALIFICATIONS OF VOTERS.

The general qualifications for voting in industrial court elections are the same for employers and for workers. The elector must be at least 25 years of age and must, at the time of the election, have his residence or employment within the district of the court. The law of 1890 provided that he must have lived or been employed in the district for at least a year, but in 1901 this requirement was stricken out as difficult of enforcement and an unnecessary limitation of the right of suffrage. By the wording of the law there is nothing to prevent a person who has his residence and his place of employment in two different districts from voting in both.2 Neither foreigners nor women may vote.

Persons, moreover, who are ineligible to the office of a kind of juryman who assists the judge in certain minor courts are not entitled to vote in elections for assessors of industrial courts. Three classes of men are incapable of holding this office: First, those who have lost their privilege as the result of criminal sentence; second, those against whom proceedings have been brought on account of crime or misdemeanor which may entail the deprivation of the general right of suffrage; and, third, those who, by legal measures, have been deprived of control over their property.

There are also three other restrictions which are designed to limit the right of voting to persons who are subject to the jurisdiction of the industrial court. First is the provision that if the jurisdiction of the court is limited to special industries only the employers and

2 M. v. Schulz, Gewerbegerichtsgesetz in der Fassung der Bekanntmachung von 29 September, 1901, p. 57.
workers in those industries can take part in the election or are eligible as members. Second is the further provision that the members of a guild for which, under a special provision of the industrial code, an arbitration court has been established, and their workers or employees are not entitled to vote nor are they eligible for office in industrial-court elections. Third, the employees of industrial establishments under the military or naval authorities and persons who by the law are placed under the jurisdiction of the mercantile courts (Kaufmannsgerichte) cannot vote for or hold the office of assessor of an industrial court.

All other men engaged in any given industry, however, have the right to vote, either as workers or as employers. The class of workers includes journeymen, helpers, factory operatives, and apprentices. Moreover, all the managing officers, foremen, and employees intrusted with the rendering of higher technical services, whose yearly compensation does not exceed 2,000 marks ($476), are considered as workers for the purposes of this law. Persons temporarily out of employment are also entitled to vote.

The class of employers includes all persons who employ at least one worker regularly throughout the year or at certain times of the year, and all managing officers, heads of departments, and foremen whose yearly compensation exceeds 2,000 marks ($476). Employers engaged in seasonal trades are thus included. Those persons who act as direct representatives of the employers, too, are considered as belonging to the employing class. Managing directors of joint-stock and cooperative societies are also included. Multiple voting is allowed in case an employer conducts or represents more than one business.

Whether home workers or house manufacturers shall vote as employers or as workers, is decided by the local regulations. The statutes of the Berlin court provide that those house manufacturers are to be considered as employers who employ at least one worker regularly throughout the year, or at certain times of the year, and have reported their independent business in accordance with the provisions of the industrial code. All other house manufacturers are considered as workers.

It should be noted that, whereas the definition of a worker given in the law is for all the purposes of the act, the definition of an employer applies only to the provisions in regard to elections.

QUALIFICATIONS OF CANDIDATES.

To be eligible as an assessor of an industrial court it is necessary that a man shall be at least 30 years of age, that he shall have lived or been employed in the district for at least two years, and that, during the year preceding the election, he shall not have accepted poor
relief from any public authority for himself or his family, or shall have returned any amount so received. Persons who for any reason are disqualified for voting are also disqualified for holding office. Outgoing members are eligible to reelection. As only actual workmen or employers may serve, professional officials of trade unions, unless they are really or supposedly working at their trades, are not eligible. The officers of small unions, however, are often elected as industrial-court assessors.

Persons who are ineligible for office by reason of age, the acceptance of poor relief, or length of residence or employment, if elected in spite of their disqualification, may lawfully exercise their judicial functions, and their so doing does not invalidate the actions of the court. But their election may be successfully contested, or they may themselves, upon the ground of their ineligibility, refuse to perform the duties of the office. The law provides, moreover, that they shall be relieved from duty. If, however, persons who are ineligible by reason of causes which disqualify them for the office of juryman take part in the proceedings of the industrial court, those proceedings are unlawful, and the judgments rendered can be annulled. In all such cases action is taken by the higher government authorities after hearing the parties concerned. This rule is also applicable to presidents of an industrial court. An assessor who, after his election, becomes a member of a guild which has its own industrial court, or goes to work for a member of such a guild, is not, however, thereby subject to removal, but remains in office until the next election. But if an assessor who was elected as a worker becomes an employer, or vice versa, he must resign, and if he fails to do so he is removed from his position. Proceedings in which he takes part, however, are not thereby invalidated.

The office of assessor is an honorary office and can not be declined except for reasons which make it possible to decline an unsalaried municipal position, or, if no legal regulations exist concerning the declination of such a place, the office of a guardian or trustee. In the six eastern provinces of Prussia the acceptance of an unsalaried municipal office may be declined in case of chronic sickness, an age of more than 60 years, an employment which necessitates frequent or long absences, the practice of medicine or surgery, the holding of another public office, the administration within three years preceding of an unsalaried place, or any other special conditions which may be fixed by the municipal authorities. The office of a guardian or trustee may be declined in Germany by a woman, a person over 60 years of age, one who has more than four minor children, who can not perform the duties involved through sickness or infirmity, who lives a considerable distance from the court, who can not produce security, who is appointed with another person for the common
exercise of the office, or who already holds more than one guardianship or trusteeship.

It is further specifically provided in the industrial-court law that a person who has been an assessor for six years may decline the office during the next six years. A person, however, who has been an assessor for less than six years may decline reelection for only three years thereafter. A declination of the office is to be considered only if, after the assessor concerned has been notified of his election, the reasons for refusal to serve are presented in writing to the municipal or communal authorities, by whom the president and vice president of the court are elected. As no period is fixed for the presentation of such a written notice, the provisions for declination are also applicable to resignation of the office. As long, however, as the declination or resignation has not been favorably acted upon, the assessor must continue to perform his duties.

PROCEDURE.

The elections of employers and of workmen are conducted separately and are direct and secret. The two classes may or may not be again divided into special industrial groups for the election each of one or more assessors, and the proceedings may or may not be conducted upon the principle of proportional representation. These points are decided by the local regulations. The provision permitting proportional representation was introduced in 1901 and has been taken advantage of in a considerable number of instances. The law further specifies that if the local regulations direct the municipal authorities to draw up election lists of employers and workers, the police and sickness-insurance officials shall aid them by permitting the inspection of their records concerning occupations. It is left to the local authorities, however, to decide whether lists shall be prepared or whether some other means, existing or to be specially created, shall be used to insure the proper legal conduct of the election.

The local regulations of the industrial court of Berlin provide that elections shall take place in October or November, according to election districts, and under the direction of a special board, consisting of a director, a recording clerk, and from three to six assessors. Special election lists of employers are drawn up by the municipal council and these lists are made public at least four weeks before the election. Protests against omissions from the lists may be entered within a week after their publication, and must be decided upon by the municipal council within two weeks. For workers no special lists are drawn up,
but they are obliged to present certificates from their employers or from the police authorities showing that they live or are employed at the time of the election within the district of the court. Special formulas are provided for these certificates. The proceedings of election are otherwise carefully regulated, but the only other feature of special interest is the provision that in case one or more of the persons elected is declared ineligible or declines upon legal grounds to serve, the person or persons who received in the election the next highest number of votes shall be declared elected.

The names and addresses of the members of the court are made public in accordance with special provisions of the local statutes. In Berlin the names and addresses of all members, together with the sections to which they are assigned, are published in the official newspapers.

Contests against the validity of elections may be made within one month and are to be decided upon by the higher authorities. Any person concerned may enter such a complaint. If no protest is entered, however, within the period allowed, the persons elected are legal members of the court, even though causes exist by reason of which the election could have been successfully contested.

In case elections are not held or are repeatedly declared invalid, the higher authorities may either order a new election or empower the municipal council or other representative body of the district over which the court has jurisdiction to elect assessors. If this body also fails to elect, the higher authorities may themselves appoint members.

The local regulations of the Berlin court further provide that if for any reason more than one-fourth of the assessors of one category or of one section withdraw or are removed from office, the municipal council must order a supplementary election to fill their places until the next regular election.

The elections of workmen assessors are sometimes exciting affairs. There is, indeed, a considerable amount of interest, and if the contest is close a lively struggle follows. In Berlin, in 1893, 2,130 employers and 25,761 workmen voted, which was 73 per cent of the registered employers and 77 per cent of the registered workmen. In 1908, the first year in which the proportional election system was used, 7,118 employers, or 71 per cent of those registered, and 83,221 workmen voted. In 1902 registration lists for workmen were abandoned, so the percentage of registered workmen who voted can not be given. In practice the workmen assessors are always trade-unionists, and usually Socialists. In the first court elected in Berlin, for example, in 1893, all the workers and 9 of the employers were Socialists, giving that party 219 votes out of a total of 420.
The president and vice president of an industrial court are chosen for at least one year by the municipal council, or, if there is no such council, by other municipal or communal representatives. Their election must be ratified by the higher administrative authorities of the district in which the court is located. Such ratification is unnecessary only in case the person elected already holds an office by virtue of the appointment or ratification of such authorities. Protests may be entered against their election in the same way as against the election of assessors. In case, moreover, the municipal council or other representative body fails to choose the president and vice president, the higher administrative authorities are empowered to make the appointments.

The presidents and vice presidents of industrial courts can not, under the law, be either employers or workmen, and they are usually chosen from the class of public officials. The possession of a legal education, however, or of the qualifications needed for the office of a judge, is not required by the law. It was believed by the legislature that, although as a rule persons of legal training should be selected, still there might be circumstances under which it would be better to appoint a man more thoroughly acquainted with industrial life. The local regulations, however, often provide that only public officials possessing special legal qualifications can hold the office of president. There is such a provision, for example, in the regulations of the Berlin court.

In order to facilitate the appointment of public officials to this office, moreover, the law carefully omits from the list of requirements for the presidency the demand for two years' residence or employment in the district, for such persons are subject to frequent changes by reason of promotions, rearrangements of the service, or other causes. Otherwise the presidents and vice presidents must fulfill the general requirements for membership, that is, they must be at least 30 years of age and must not have accepted poor relief during the preceding year. It should be noted, however, that the mayor and those officers who are directly in charge of manufacturing industries conducted by the city are usually considered as representatives of the municipality in its capacity as an employer and are therefore ineligible to the office of president or vice president of an industrial court.

The term of office of presidents and vice presidents is fixed by the local statutes and may be for life. They can be reelected any number of times. In Berlin the term is from one to three years. Their compensation is also fixed by the local regulations.
Each industrial court must have a president, one or more vice presidents or deputies, and at least four assessors. For courts in which there is a considerable volume of business it is customary to have several vice presidents. In Leipzig, for example, there are three. The number of assessors to be elected, as well as the number of vice presidents, is fixed by the local statutes, and varies, not only with the amount of business but with other local conditions. It is supposed to be fixed in such a way that the business can be despatched promptly without making excessive demands upon the time of the members. Berlin, with its 2,000,000 inhabitants, has 420 assessors. Dortmund, with a population of only 516,996, has only 200, and Leipzig, with a population of 503,672, has 90 assessors and 30 deputy assessors. Charlottenburg, on the other hand, a residence suburb of Berlin with 239,632 inhabitants, has only 36 assessors. Only a few small villages have the minimum number of assessors but in many places there are only 6. The majority of local regulations provide for the election of from 12 to 50 assessors.\(^1\)

The local authorities also decide upon the formation of sections. The court may be divided into sections according to districts, according to groups of industries, or according to any other objective characteristic. The business may even be divided alphabetically among different sections. If the court is divided each section has its own president, and from their number the general president is chosen. About 75 of the 485 courts existing in Germany in 1910 were divided and some fifty of them had more than two sections. In Berlin there are eight sections: (1) the tailoring and sewing trades; (2) the textile, leather, and trimming industries; (3) the building industries; (4) the woodworking and carving industries; (5) the metal industries; (6) occupations concerned with furnishing food and lodging; (7) commercial and transportation industries; and (8) general industries. Each section has its own president, and one of these is appointed by the municipal council as first president and has the general direction of the entire court. Another section president is appointed as his deputy.

The assignment of the individual assessors to the various sections and also the order in which they are to be summoned to serve is fixed in the local regulations or by the local officers. Such assignment, in Berlin, is made by the municipal council, upon the recommendation of the first president, with a view to the occupations of

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the assessors and to the occupations over which the section has juris­diction. In all cases employers and workers must not only be elected, but be called to serve at sessions of the court, in equal num­bers. At least two assessors must be summoned to each hearing, but the local statutes may provide that more shall be summoned, either generally or for special disputes. In cases of more than ordinary importance, for example, as where amounts or values over a certain sum are in dispute, more assessors may be called. In a considerable number of courts, as in that of Berlin, four assessors, two employers and two workers, are regularly summoned, but if the president and two assessors, an employer and a worker, are present the court can proceed to business. If three assessors appear, one of the class which is doubly represented may withdraw. In Berlin the section presidents notify the assessors of their assignment to the respective sections, and also of the day and hour of the sittings at which they are to serve.

The order in which assessors are called upon differs decidedly in different courts, but an effort is made in all cases to even up the work, and, with this idea in view, it is provided that they can be summoned only in a fixed order. In some cases this order is alphabetical, in others it is determined by length of service, and in others, as in Berlin, is fixed by the section presidents.

Before entering into office all the members of an industrial court must bind themselves upon oath to the fulfillment of their duties. The presidents and vice presidents are sworn in before officials design­ated by the higher Government authorities, and the assessors take oath before the president. If any member of the court has not taken oath, the decisions in which he participates may be appealed or an­nulled. Documentary proof of the taking of the oath must, there­fore, be kept. In case, however, members have been transferred from some other branch of the public service where they have taken oath, or have already been sworn as members of an industrial court, it is suf­ficient to refer to the earlier oath.

There is also attached to every industrial court a secretary or clerk of the court, whose appointment and duties are regulated by the local statutes. This secretary is subject to the same disciplinary measures as a municipal officer, and in Prussia he takes the oath of office, like an assessor, before the president. Other persons, as needed, may be employed in the office of the secretary, but it is specifically provided in the law that an industrial court in issuing a summons, may make use of a municipal officer instead of a bailiff. In Berlin the munici­pal letter carrier delivers summonses within the city limits, unless the president orders otherwise. The secretary is present at all hear­ings, but not usually at the private deliberations of the court over decisions.
EXPENSES, FEES, AND COSTS.

The expenses of establishing and maintaining an industrial court, so far as they are not covered by its own revenue, are borne by the municipality or by the communal union over which it has jurisdiction. If its jurisdiction is not coextensive with any such political division, as in case it has been established by several municipalities not in a union, the proportion of the expense to be borne by each individual district is fixed by the statutes at the time of its establishment. In general, even if the court has been established upon the initiative of the central authorities of the Empire, the municipality or union must bear its expenses. There is, however, one exception to this rule in the case of the mining courts, the expenses of which are borne by the State. Prussia appropriates yearly for its five mining courts about 58,500 marks ($13,923). The general president of the court is usually required to make yearly reports of its financial affairs.

All the persons connected with an industrial court except the assessors are salaried officers. The latter are considered as holding honorary offices and therefore do not receive any salary for their work. The law provides, however, that they shall receive traveling expenses and compensation for loss of time for each sitting which they attend. The amount of such remuneration is fixed by the local regulations. In Berlin each assessor receives 6 marks ($1.43), which must be paid immediately, for every meeting of the court at which he has appeared. The law forbids the refusal of the compensation for loss of time. Traveling expenses, however, may be declined. This remuneration, which is theoretically merely an equivalent for expenses incurred, is not considered as part of the costs of individual suits but as a maintenance expense, and therefore falls, not upon the parties, but upon the municipalities or unions.

The revenue of an industrial court consists of those fees, costs, and fines which are provided for in the law, and which are fixed with a view, on the one hand, to making the administration of justice as cheap as possible, and on the other hand to preventing the bringing of frivolous complaints and to protecting the municipality from excessive burdens. The local statutes, however, of an industrial court, established voluntarily by a municipality or communal union or by agreement between several municipalities not in a union, may provide for a reduction of these fees or for their entire abrogation. But this can not be done in case the industrial court has been established by the central authorities of the Empire. Under this provision nearly a hundred courts have reduced the legal fees one-half, and some 20

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have entirely abolished them. In no case, however, can the fees be increased above the amounts specified in the law.

Only one fee can be collected, and its amount is determined by the amount in dispute. If the value of the subject of the dispute is 20 marks ($4.76) or under, the fee is 1 mark (23.8 cents); if from 20 to 50 marks ($4.76 to $11.90), the fee is 1.50 marks (35.7 cents); and if from 50 to 100 marks ($11.90 to $23.80), the fee is 3 marks (71.4 cents). For every additional 100 marks ($23.80) in dispute the fee is increased by 3 marks (71.4 cents), but is never more than 30 marks ($7.14). As nearly half of the cases which come before the industrial courts are for less than 20 marks, and more than 90 per cent under 100 marks, from 1 to 3 marks (23.8 to 71.4 cents) is the usual fee.

In many cases, moreover, no fees whatever are collected. If the suit is ended by a judgment by default, by an acknowledgment on the part of the defendant, or by a withdrawal on the part of the plaintiff of the complaint, without argument, only half of the regular fee is collected. Finally, in order to keep the question of fees from preventing a reconciliation, it is provided that if the parties are otherwise conciliated and an agreement is drawn up no fee whatever shall be collected, even if the case has been argued before the court. The actual costs of drawing up such an agreement, however, and the fees of witnesses and experts which have been incurred in the course of the proceedings are divided equally between the parties, unless they agree upon another arrangement. Only one fee is collected, even if several complaints are joined together in one hearing and for one common judgment. But if several claims joined together come up for deliberation as separate cases a fee is collected for each such case.

Certain costs are also paid by the parties, among them compensation to the winning party for loss of time, the cost of summoning and the fees of witnesses and experts, and the daily allowances and traveling expenses of court officials employed outside of the place where the court sits. Only under exceptional circumstances, however, can compensation to the winning party for expenses incurred for legal or other assistance be considered as one of the costs. The fees for witnesses and experts are the same in an industrial as in an ordinary court, and all these costs are fixed by the president. No special fees for copying documents or for summonses can be collected in any case.

The costs of compulsory execution and of appeal are fixed by ordinary courts in accordance with their own regulations.

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The fees and costs of an action before an industrial court, as before a regular court, are paid by the party on whom they are imposed by the decision, by the party who has assumed them by declaration before the court, or in default of such decision or assumption, by the party who has brought the suit. The court may require a deposit from parties before summoning witnesses or experts to testify in their behalf. The defeated party must eventually pay this deposit.

**DISCIPLINE OF MEMBERS.**

Various disciplinary measures are authorized by the law. Assessors, for example, who do not appear promptly for the sitting to which they are summoned or who evade their obligations in any other way, if they can produce no sufficient excuse, may be condemned to pay a fine of as much as 300 marks ($71.40) and the resulting costs. Assessors who are merely late in appearing are as liable to this fine as assessors who remain away entirely. This provision is also applicable in case an assessor refuses to take the oath of office or to take part in a judgment. Presence at general assemblies of the court and at committee meetings is enforced in the same manner. The sentence is pronounced by the president, and may be revoked if a satisfactory excuse is later given. Appeal against such a sentence, moreover, may be brought in the county court.

The regulations of the industrial court of Berlin provide that assessors who are prevented from appearing must give the reasons for their failure as soon as possible to the court. In case of a change of residence, moreover, assessors must notify the court within a week under penalty of a fine of from 1 to 5 marks (23.8 cents to $1.19).

Any member of an industrial court, president, vice president, or assessor, who is guilty of a serious violation of his official duty, may be removed from office. The proceedings in such cases take place in and according to the rules of the county court. The law even allows imprisonment as a punishment for especially grave offenses, such as demanding or receiving presents or other benefits for favorable judgments, or violating the law in a decision. Further than this, the law makes no special provision against the acceptance from constituents of an imperative mandate. This provision, however, is doubtless sufficient, for there is no evidence that the imperative mandate has ever been used in the election of members of any industrial court in Germany. Such a thing is, indeed, practically unknown in that country.

**JUDICIAL FUNCTIONS.**

The functions of the industrial court are of three kinds: First, its judicial functions as a court for the settlement by conciliation or by legal decision of individual industrial disputes; second, its administrative functions as a source of expert opinion and advice for public
officials and legislative bodies; and, third, its functions as a board of arbitration in collective disputes. Its primary purpose, however, is to serve as an industrial court for the settlement of disputes between individual employers and workmen and between coworkers for the same employer. The other functions, though of great importance, are secondary to this fundamental purpose.

JURISDICTION.¹

The industrial courts of Germany were formed for the purpose of settling disputes which arise between employers and workers and between workers hired by the same employer. Journeymen, helpers, factory operatives, and apprentices are considered as workers, as are also managing officers, foremen, and employees intrusted with the higher technical services whose total yearly compensation does not exceed 2,000 marks ($476). The law in treating of the jurisdiction of the courts purposely refrains from defining the term employer, leaving the determination of who is the employer to the court itself. The clause allowing the establishment of special industrial courts for mining and other similar industries, however, provides that the national officers by whom the court is established shall decide to what extent deputies shall be considered as employers. This furnishes an especially difficult problem in such courts, because of the small number of employers and the large number of minor employees who are in charge of certain parts of the work and often hire their own helpers.

In practice most of the cases which come before the industrial courts are brought by workers against their employers. In the whole of Germany in 1908 only 340 disputes were between persons working for the same employer, and only 5,672 were complaints of employers against workmen, whereas there were entered 106,269 complaints of workmen against their employers. The number of suits brought by employers, however, appears to be subject to considerable variation. In 1906, for example, there were 10,655, or nearly double the number appearing in 1908.² In Berlin, in 1908, there were 14,522 cases brought before the court, of which 13,820 were bought by workers and only 702 by employers. Since the organization of the Berlin court, indeed, there has been no year in which the number of suits brought by employers exceeded 5.75 per cent of the total number of complaints.³

² See Appendix I, Table VII.
³ Verwaltungsbericht des Magistrats zu Berlin für das Etatsjahr 1908, No. 31, Bericht über das Gewerbegericht zu Berlin.

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Home workers or other persons who are employed outside of the workshop of the employer, if the latter furnishes them raw material or partly manufactured articles, are also, as industrial workers, under the jurisdiction of the industrial court. The local statutes determine to what extent persons employed outside of such workshops who furnish their own raw material shall be under this jurisdiction. In Berlin all outside workers are included, regardless of whether the employer or the worker furnishes the raw material. It was not considered desirable or just, however, to make this the general rule, for in some parts of Germany industries flourish in which, under the old domestic system of labor, outside workers who furnish their own raw material may themselves employ as many as 60 or 80 journeymen, and are therefore more nearly in the position of employers than in that of workers. In such cases the court has jurisdiction, but the home or domestic manufacturer is considered as an employer. Home workers, however, who do not work for a limited number of employers, but have a varying custom, are entirely excluded from the jurisdiction of the industrial courts. A shoemaker, for example, who buys his own leather and makes shoes to order is excluded, as are also custom tailors. In 1908, out of the 13,820 complaints brought by workers in Berlin, only 508 were from home workers. Many home workers, however, come under the jurisdiction, not of the industrial, but of the guild courts.

The jurisdiction of the industrial court, in general, extends over all industrial occupations. It is not always easy, however, to define clearly an industrial occupation and there are, moreover, several exceptions. Doubtful cases have been decided as they arose, not always with perfect uniformity. Domestic servants are excluded, but employees of a hotel, restaurant, or drinking hall are considered as industrial workers. The minor employees of theaters, moreover, are under the jurisdiction of the industrial court. The most important question which has arisen, however, relates to railroad and street railway employees, and upon this question the decisions are conflicting. Usually, however, a distinction has been made between those who work in shops and those who work directly on the road, and only the former have been considered as engaged in industrial employments. A wheelwright in a railway repair shop, for example, but not a motorman on an electric street railway, is usually considered to be under the jurisdiction of the industrial court. Decisions of different courts upon such cases, however, have differed.

The competence of the industrial court, moreover, is specifically limited in certain directions. First, the provisions of the law are not applicable to assistants and apprentices in apothecary shops and commercial businesses or to workers employed in industries under the military or naval authorities. Commercial employees, except
those who perform technical labor, like engineers and draftsmen, or whose work requires no special knowledge or skill, like warehouse employees, drivers, packers, etc., are not subject to the jurisdiction of the industrial court, but to that of the mercantile court (Kaufmannsgericht). It was, moreover, considered undesirable that the managers of military or naval industries, who must maintain the strictest discipline among their employees, should be subject to a court in which their own subordinates had a part. At the time this provision was adopted the Government proposed to exclude also the workers in State and national printing offices, the employees of the mint, and all the industries under the State railway officials, but this proposition was defeated in the Reichstag. Public employees, therefore, not under the direction of the military or naval departments, are subject to the jurisdiction of the industrial court.

The competence of the industrial court is limited, secondly, by that of the guild arbitration courts. Employers who are members of a guild for which an arbitration court has been established and their workers are subject to the jurisdiction of the latter. Even if a guild has no arbitration court, moreover, it is authorized to settle disputes between its members and their apprentices. These guild courts, however, are constituted in practically the same way as the industrial courts—half of employers and half of journeymen, with a nonpartisan president; and the proceedings must be carried on in essentially the same manner as before an industrial court. The competence of an industrial court is limited not only by that of a previously existing but also by that of a later established guild arbitration court.

On the other hand, the jurisdiction of the regular courts is limited by that of the industrial courts. Arbitration agreements, moreover, can shut out appeals to the industrial courts in future disputes only if, in accordance with the agreement, employers and workers are to act in equal numbers, under a president who is neither one nor the other, in the decision of such disputes. Thus there is secured under the agreement itself a court of arbitration similar to the industrial court.

Thirdly, the jurisdiction of an industrial court may be limited by local statute to particular kinds of industrial occupations. This provision makes it possible to establish several independent courts in a single district with a view to the manifold differences between handwork and large-scale production and between special groups of industries, and also to the special conditions in large cities and their environs. It also makes it possible to limit the jurisdiction of a court to those industries where real need for it exists. An industrial court may be established, for example, for the business of shoe-making or for factory employment in a special branch of industry.
It can not, however, be created for a single establishment. This provision, moreover, applies only to municipal courts and not to those created by several municipalities or by a communal union. In case the central authorities have limited the jurisdiction of an industrial court established by them the same body may afterwards extend its competence.

As has been stated above, the law authorizes the establishment of special industrial courts for mining districts, salt works, and certain other industries. As a rule, however, those pursuits which are concerned with the production or extraction of raw materials, such as fishing, cattle raising, gardening, and wine growing, are not considered as industrial and are therefore not subject to the jurisdiction of the industrial court.

The geographical as well as the industrial limits of jurisdiction are established by the local statutes. Under the law, however, that court is competent in whose district the obligation in dispute is to be fulfilled or the industrial establishment of the employer or the residences of both parties are located. A court even which is incompetent by reason of location may be made competent in a particular case by the express or tacit consent of both parties. Moreover, if there are several competent industrial courts the plaintiff has his choice. Counterclaims must be brought before the same court as the principal suit.

As for the class of cases, individual courts, without regard to the value of the claim, are competent to decide disputes concerning the commencement, continuation, or dissolution of labor relations, including terms of notice on both sides, the various employment books, certificates, etc., required of the German workman or of woman or child laborers, the execution of labor contracts, the return of documents, tools, etc., claims for compensation on account of nonfulfillment or unsatisfactory fulfillment of duties, fines for imperfect work, etc., sickness-insurance contributions, and claims which may arise by reason of the undertaking of work in common by fellow employees. In short, their jurisdiction extends over disputes which result entirely or mainly from the relations of employer and employed.

These courts have no jurisdiction, however, over disputes concerning penalties agreed upon in case the worker, after the termination of the labor contract, shall enter into a similar contract for another employer or shall go into business for himself. They are also incompetent to decide demands for damages on account of the noncompletion of a labor contract, or on account of the placing of a name on the blacklist of an employers' association. Their jurisdiction is not usually held to extend, moreover, to cases in which, after the termination of the labor relations, the employer de-
mands redress on account of a mistake in payment of wages. Nor
does it extend to disputes over sickness insurance contributions of
any other persons than those specifically designated as industrial
workers.

In order to come before an industrial court, indeed, a dispute
must have grown out of the special relations existing between bona
fide employers and workers by reason of their industrial labor. The
work, moreover, which is the subject of the dispute, must be carried
on in connection with the industry which is the special business of
the employer. If an employer sets one of his employees to work in
some occupation entirely separate from his regular business, disputes
which may arise in connection with such employment are not sub­ject
to the jurisdiction of the industrial court. There must be, more­ver,
some kind of a labor contract as a basis. Relatives of a manu­facturer,
a son or daughter for example, who aid in the industry
only by reason of their family connection, are not considered as
industrial workers. It does not matter, however, whether the labor
contract was for a long or a short period, for a year or a day, or
whether time or piece wages were paid.

Women and minors are subject to the jurisdiction of the indus­trial
court in exactly the same way as adult men. In Berlin in
1908, out of 13,820 complaints brought by workers, 3,103 were entered
by women and girls, 80 by apprentices, and 135 by errand and other
working boys. In 1909 women were concerned in 26 per cent of all
the cases brought before the industrial courts of Breslau and of Dres­den, in 23 per cent of those brought in Chemnitz and in 14 per cent
of those brought in Cologne.\footnote{Gewerbe- und Kaufmannsgericht, Monatsschrift des Verbandes Deutscher Gewerbe­und Kaufmannsgerichte, 15, p. 636.}

In all cases the court must examine into and prove its own juris­diction before proceeding to the examination of the facts involved
in the suit. The status of its decisions, and also of the decisions
of other courts, upon its jurisdiction, is determined by the Civil
Code.

The two most common causes of disputes brought before the indus­trial court are demands for arrears of wages and for compensation
on account of discharge without notice. In Berlin in 1908 consider­ably more than half of the plaintiffs asked for the payment of
back wages, and more than a third complained of discharge without
notice. In many of these cases, however, other complaints were
joined with these. Out of 10,666 causes of disputes, 878 were de­mands
for the return of working papers and 495 were complaints
against employers for refusal to give testimonials or recommenda­tions, so necessary to the German workman, who must be always
provided with an official record of his past employment. On the
other hand, in 840 cases demands were made for compensation for damages, the most general cause of suits brought by employers. Comparatively few cases were due to other causes. The relative importance of the various causes, moreover, changed little from 1895 to 1908.¹

The industrial-court law itself provides that disputes of the kind which would come under the jurisdiction of such courts, but which arise where there is no competent industrial court, may be brought before certain local officials. The central authorities, moreover, may provide for the appointment, in place of these administrative officers, of special officials for the settlement of such cases. In Prussia, for example, there are official arbitrators for this purpose. The mayor or other local officer, moreover, who is given this duty may turn it over to a deputy. In any event the official in charge of the case endeavors to conciliate the parties, and, if no agreement is reached, issues a decision in writing, which if it is not protested in the regular court within 10 days, becomes binding. Any such decision, however, regardless of the amount in dispute or other considerations, is subject to appeal within 10 days in the regular court. Moreover, it is not compulsory that disputes of this kind be taken before these local officers. Such cases may also be brought directly in the regular court.

RULES OF PROCEDURE.

Proceedings before the industrial court are carried on, in general, according to the provisions of the civil code for proceedings before minor courts. So far as possible, however, recognition has been given to the fact that most of the disputes which come before these courts are comparatively simple in character, are over relatively small amounts and values, and need to be promptly settled. It is also recognized that, although many of the parties concerned possess a very small degree of business sagacity, it is, in general, neither practicable nor desirable that they should be aided by legal representatives or assistants. The chief point of difference between the proceedings before the industrial court and those before other courts of the same grade, indeed, is that in the former the court itself manages officially all the various transactions.

Though the court is not divided into two boards, there are usually two stages in the proceedings roughly similar to those represented by the board of conciliation and the board of judgment in France. The law provides that on the first day appointed for proceedings in a case the assistance of the assessors may be dispensed with and the president alone may undertake to bring about a settlement. The president decides, indeed, on his own judgment, whether

¹ See Appendix I, Table X.
on the first day of appearance he will hear a case with or without the assistance of assessors. In simple suits a hearing by the president alone often suffices to clear up the difficulty, and the more expeditious conclusion that can be thus reached is often a great advantage. In Berlin in 1908 there were 699 such sittings, which handled on an average about 23 cases each, whereas in the 502 sittings with assessors only an average of less than 12 cases each were handled. In that year, indeed, only about one-fourth of the cases were transacted with the assistance of assessors. In Solingen in 1909, out of 1,115 cases 717 were settled in the “conciliation board,”¹ and in Duisburg in 1907, 44 per cent; in 1906, 52 per cent; and in 1905, 58 per cent of the cases were so settled. The record of Leipzig is even better. There, in 1909, out of 3,289 cases, 2,845, and in 1908, out of 3,458 cases, 2,969 were settled without the assistance of assessors.²

In proceedings without assessors, if only one of the parties appears the president, on the proposal of the party present, gives a judgment by default. If both appear he endeavors to persuade them to reach an agreement, and, if he is successful, the terms of the agreement are entered in the court records and then read aloud to the parties, who either accept them or state their objections. If the complaint is withdrawn by the plaintiff, or if its justice is acknowledged by the defendant, the president proclaims the resulting judgment. If no agreement of any kind is reached the president may make a decision only on the proposal of both parties. Decisions of the president alone, however, have exactly the same legal standing as industrial court decisions reached with the assistance of assessors. But if the parties do not agree in asking for such a decision, a new day must be fixed immediately for the hearing of the case, and assessors must be summoned to this second sitting, where all the arguments are repeated. Moreover, if the president considers it necessary to take the testimony of witnesses or experts they are summoned to appear at the new hearing. Witnesses can not be examined in proceedings before the president alone. When, however, a successful appeal is made against a judgment by default, the first hearing thereafter may be before the president alone, for the case is considered as reopened at the beginning. The clerk of the court assists at hearings without assessors just as at hearings with assessors.

Like other judges, the members of an industrial court—president, vice president, assessors, or secretary—may be challenged under certain circumstances. A member, for example, is not competent to act in cases in which he is himself a party or is otherwise interested, in which any near relative of his is a party, or in which he is to be heard as a witness or expert. Indeed, if there is any ground to believe

¹Jahresbericht des Königlichen Gewerbegerichts zu Solingen für das Jahr 1909.
²Bericht des Gewerbegerichts der Stadt Leipzig für das Amtsjaehr 1909.
that a member is prejudiced in the case he may be prevented from acting. The court itself decides whether a member is or is not competent in cases for which he has been challenged. The court also decides upon the competence of a member who has himself made declaration of facts which would cast doubt upon or exclude his right to act in a case. If the challenge is brought before the beginning of oral arguments the decision is made by the president or vice president alone. In that case, if the president is challenged, he may adjourn the case. If the challenge is made later the decision is reached by the full court with the exception of the member in question, but at least three members must take part. If necessary, when the president is challenged, the vice president, and when an assessor, another assessor may be called in to participate in the decision. If a challenge is sustained no appeal is possible, but if it is not sustained the decision may be appealed in the county court. Meanwhile, however, the case is proceeded with promptly and judgment is pronounced, subject to nullification in case the appeal is sustained.

The parties to a dispute before an industrial court must appear in person or be represented by persons who are competent to bring suit, such as business colleagues, acquaintances, or employees of either sex. Only two exceptions to this rule are permitted—first, in the case of parties not competent to sue or incapable of binding themselves by contract, and, second, in the case of bankrupt businesses. These are the only instances, indeed, in which third persons, who are neither employers nor workmen, may appear as parties to a dispute brought before an industrial court. Lawyers and persons who make a business of court proceedings are expressly forbidden to appear, not only as agents, but even as assistants of parties. The secretaries of labor unions under this rule may act as representatives of workers only if such action is not made a part of their regular duties.

Parties not competent to sue are usually apprentices or minors who have not been given their freedom to act or work in special ways or occupations by their parents or guardians. Married women are capable of making binding contracts and therefore competent to bring suit. Fathers, mothers, guardians, and trustees, as the legal representatives of parties not competent, often appear in industrial court proceedings.

Parties not qualified and without legal representatives may have such representatives appointed for them by the president of the court until the appearance of their natural representatives. In case the latter live a considerable distance away, the law specially enjoins such appointment. Such parties are heard, on their own demand, in cases in which they are concerned, but such hearings are not necessary and the party need not even be present.
The other case in which a third party, who is neither an employer nor a worker, may appear before an industrial court is that of a bankrupt business. The administrator in bankruptcy may appear before the court as the representative of the whole body of creditors in disputes over arrears of wages and claims for compensation connected with the labor relations which are brought forward after the beginning of the bankruptcy proceedings. Even a lawyer who is the administrator of a bankrupt business may so appear.

The serving of summonses and other notifications in proceedings before the industrial court is brought about officially by the court. Municipal officers may be employed for this purpose, however, instead of bailiffs. In Berlin, for example, the local statutes provide that unless the president of the court orders otherwise, all such notices shall be delivered by the municipal letter carrier. The clerk of the court prepares all notifications and turns them over to the bailiff or other municipal officer in sealed envelopes bearing the name and address of the party to whom they are to be delivered, and the number of the case. The bailiff or municipal officer must report the place and time of delivery of this envelope, and, if it is not delivered to the person to whom it is addressed, the reason therefor. No fees are collected for the serving of summonses, writs, or other notifications.

The regular courts must give the same assistance to the industrial court as to each other. Other courts within the district of an industrial court, however, are not obliged to give it such assistance. In case of need, moreover, an industrial court of one district calls upon the regular court and not upon the industrial court of another district.

When a complaint has been filed with the clerk of an industrial court, the president, within 24 hours, fixes the day for the hearing, which must be as early as possible, and the parties are summoned by the clerk to appear. Summons through the parties is not permitted. But if the day of appearance has been announced in the presence of a party, or has been otherwise communicated to him in the course of the proceedings connected with bringing the complaint, it is not necessary to serve a special summons. Otherwise, the summons must be served at latest on the day before the hearing. These rules apply not only to the first but to all hearings.

It is possible, however, for cases to be brought before the industrial court directly, without summoning either party, by the simple appearance of both disputants on any regular court day. If such cases are not settled at the hearing at which they are presented, the complaint is entered on the court records for future action.

In proceedings before the full court, as in those without the assistance of assessors, if the plaintiff fails to appear on the day fixed,
judgment by default is given to the defendant. If, on the other hand, the defendant fails to appear, the facts alleged in the complaint are considered to be acknowledged as true and, if these facts justify the demands, judgment by default is given to the plaintiff. Otherwise the demands are rejected. Judgments by default are given, however, only on the motion of one of the parties. If neither party appears, the case goes over until another day is appointed for its hearing.

When both parties appear, the court proceeds to hear the arguments in the case. The law provides that these hearings and the decisions of the court must be public, and, if this provision is violated, the whole transaction is invalidated. The court may, however, if the arguments or a part of them in a particular case are considered dangerous to public order or morality, direct that they shall be heard privately. During 1908 the Berlin court excluded the public from 7 cases. For the same reasons the court may decree that the decision or a part of it shall be pronounced privately. Even in such cases, however, the court may permit the presence of special persons.

From the beginning of the proceedings the court is enjoined to do everything possible to bring about an amicable settlement. It may recommence attempts at conciliation at any stage and must make a final effort in the presence of the parties at the close of the arguments. If these efforts are successful and an agreement is reached, the substance of this agreement is entered in the court records. Its terms, as worded, are then read aloud to the parties, when it may be accepted by both parties or objections may be raised. If the court records show that the agreement has been read aloud to and accepted by the parties, their signature is not necessary. It appears that, even when the jurisdiction of the court does not properly extend over the case, an agreement reached in this way is legally binding.

If an agreement is not reached, the case takes the course of an ordinary lawsuit. The president has the management of the proceedings and endeavors to draw out from the parties complete statements of the facts, accompanying circumstances, means of proof for assertions, and pertinent propositions. On the request of an assessor he allows the latter to put questions to the parties. The proceedings are quite informal and in many courts the assessors address the parties freely with the tacit approval of the president. For the most part, however, the case is conducted by the president, who questions closely both the parties and the witnesses. Parties, however, are rarely sworn. In Bremen, for example, in 1909, only 9 plaintiffs and 28 defendants in 693 cases were asked to take oath. In Berlin in 1908 the oath was taken by one of the parties in only 22 cases out of a total of 14,028, 3,549 of which were heard with the
assistance of assessors.\(^1\) The president may at any time order the personal appearance of the parties and threaten them with a fine of not more than 100 marks ($23.80) in case of nonappearance. This applies both to cases in which parties have sent legal representatives and also to cases in which it is necessary to appoint a new hearing for the taking of evidence. Complaint against such a fine, however, may be made in the county court, and the fine can not be imposed if a judgment by default is issued as a result of the nonappearance.

If, for any reason, the case is postponed, the date of the new hearing must be immediately announced, and if on that date the parties or one of them do not appear, the case is dropped or judgment by default is rendered.

The taking of evidence is usually before the whole court, but the president alone or, on request, another court, may under certain circumstances take evidence in a case. The principal causes which may lead to the taking of evidence before the president alone or before another court are, first, the desirability of examining witnesses in a special place, and second, serious difficulties in the way of examining them before the court itself. They may reside, for example, at a considerable distance or it may be physically impossible for them to appear in the court room. The members of noble families, and certain high public officials, moreover, have the right of being heard in their own dwellings or offices. In case evidence is taken before the whole court, the day appointed for that purpose is also appointed for the continuation of the arguments. The court may hear evidence even if both parties are not present, but not arguments.

Witnesses and experts whom the court has decided to hear, if not brought by the parties, are summoned officially by the clerk. The summoning of an expert, however, may be dispensed with if only a formal, written opinion is required. Witnesses and experts are sworn only if the court considers it necessary or if it is demanded by one of the parties. This rule is in accordance with the informal character of the industrial-court proceedings and is due to the desirability of limiting as much as possible the taking of oaths in insignificant cases.

Material evidence of other kinds is also frequently introduced. Manufactured or partly manufactured articles, for example, are often produced for the inspection of the president and the assessors.

Counterclaims or countersuits may be entered in the industrial court, and the original demand may be increased. The court may order that several claims raised in one complaint may be heard as separate cases. Partial judgments may then be issued upon the various points. If, through a countersuit or a change in the original

\(^1\) See Appendix I, Table IX.
claim, there is formed a case which belongs to the jurisdiction of the county court, and if either party proposes it, the industrial court must declare itself incompetent and transfer the entire litigation to the county court.

Minutes of the proceedings are kept by the clerk of the court, and are signed by the clerk and by the president. The minutes must contain the place and date of the hearing, the names of the members of the court, of the clerk, and of the interpreter, if there is one, the designation of the case, the names of the parties and their legal representatives and assistants, and the declaration that the proceedings were public or that publicity was forbidden. The progress of the proceedings is given only in general outline, but the minutes must contain any acknowledgements or renunciations of claims, agreements entered into, proposals and declarations ordered recorded, statements of witnesses and experts, results of investigations that may be made, and decisions of all kinds given by the court together with the statement of their proclamation. The statements of witnesses and experts may be omitted if the examination takes place before the entire court and if the decision is not subject to appeal.

Immediately after the public hearing of each case the members of the court retire to deliberate and vote upon the decision. It is not legal for the court to hear several cases and then proceed to the determination of judgments. The law, moreover, provides that only the judges and those officers of the court who are specially invited by the president may be present at such deliberations. In practice the clerk of the court is not usually asked to assist. The president leads the discussion, puts the question, and collects the votes. No member of the court can refuse to vote, and the decision is determined by absolute majority. If there are more than two opinions, none of which has a majority, in regard to the amount of a decision, the votes for the highest sum are counted for the next lower until a majority is reached. The vote is taken in the order of length of service, the president voting last. It is said that judgments are usually rendered unanimously by the whole court, both sides agreeing in the decision. Often, however, the employers are on one side and the workers on the other, the president casting the deciding vote. Sometimes, too, the president himself is in the minority. In all cases a majority vote is final.

Judgments are usually pronounced on the day on which the proceedings are ended. The law provides that, if this is not possible, the proclamation of the judgment must take place on a day which is immediately set and which can not be placed more than three days after the close of the proceedings. It is not necessary that either the parties or the assessors be present when the judgment is pronounced. After the pronouncing of a judgment, moreover, a week
is allowed, if necessary, for placing it in its final form in the court records. Judgments are signed by the president and must contain the names of the members of the court and of the parties, a brief summary of the case and of the reasons for the decision, and finally the verdict of the court upon the main points at issue and also upon the payment of the costs. The president alone fixes the amount of the costs.

As regards execution, judgments are of two kinds. First are those which have immediately the force of law and second are those which, by reason of the right to appeal, are only provisionally executory. A judgment may not ordinarily be made provisionally executory if there are grounds for believing that it may cause irreparable harm to the loser; even in such a case, however, provisional execution may be allowed, dependent on a previous deposit of security for damages. Compulsory execution is allowed for final judgments and also for agreements concluded before the court or after entering the complaint. It can not take place, however, until after the parties have been informed of the judgment, and may not be authorized before a certain date fixed by the court.

Compulsory execution, however, is not permitted in cases in which a party is condemned to the performance of services. It is provided, however, in place of such execution, that, on motion of the winning party, the court may condemn the defendant to the payment of an indemnity if he does not obey the decision within a certain time. The amount of such indemnity is determined by the court. In such cases a fine is practically the only certain means of redress. By this article of the law, however, it becomes unnecessary to bring a separate suit for the imposition of the fine. In all cases in which, on the proposal of the plaintiff, such an indemnity is fixed, compulsory execution is expressly forbidden.

All judgments and even decrees or orders against which legal measures of appeal are allowable must be officially communicated to the parties, unless they were present when such judgments or orders were issued. In the official notification, or, if both parties are present, in the announcement of the decision, it must be stated what measures of appeal are possible and within what time appeal may be entered. This provision applies especially to judgments by default.

Nearly half of the complaints which come before the industrial courts are settled by conciliation or agreement, and in less than one-fifth is the court obliged to hear the parties and pass judgment. In 1908, for example, out of 112,281 cases brought in the entire Empire, 47,595 were settled by agreement, the vast majority probably without the assistance of assessors. Judgments by default, moreover, ended 11,374, while in 2,799 the claim was withdrawn, and in 1,541 its jus-
tice was acknowledged. In only 18,221 were judgments issued after hearing the parties.¹

In Berlin in the same year, out of 14,028 cases, 5,992 were settled by agreement and in only 3,549 was the assistance of assessors needed. Moreover, only about one-third, or 1,260, even of those heard before assessors, were terminated by arbitrary judgments.² This was less than one-tenth of the total number of cases. Of these 40 were complaints made by employers, and 21 of them, or 52.5 per cent, were won, whereas 1,220 were complaints made by workers and 660, or 54.1 per cent, of them were won. In Ludwigshafen, on the other hand, in 1907, of the 79 cases that came to final judgment after argument, 68 per cent were decided in favor of the employer, 13 per cent in favor of the worker, and 19 per cent partly in favor of each. Among these cases was one in which 20 workers were pitted against an employer.³ Probably the record of all cases, however, including those settled by agreement, would be much more favorable to the workmen. In Duisburg in 1907, out of 745 complaints, 723 of which were brought by workers against employers, 47.5 per cent were partly or wholly successful. In 1906 the percentage of partly or wholly successful cases was 58.8. In general, it appears that usually from 40 to 60 per cent of the suits are successful.

One of the great advantages of these courts is that cases are settled quickly. When the complaint is withdrawn or acknowledged, when judgment is rendered by default, and in fully half of the cases in which an agreement is reached, only one hearing is necessary. But even in cases where final judgment is issued, there is little delay. Out of 18,221 such cases in the entire Empire in 1908, for example, in 5,472 the proceedings lasted less than one week, in 5,428 from one to two weeks, and in 4,887 from two weeks to one month. In only 267 did they last three months or over.⁴ In Berlin in the same year nearly half of the cases in which final judgment was rendered after hearing the parties were settled in from two weeks to one month, and less than 5 per cent took longer than three months. In Bremen in 1909, out of 693 cases, 21 were settled without even fixing a day of appearance and 571 were settled at the first hearing.

METHODS OF APPEAL.

The decisions of industrial courts are subject to change by three methods—first, opposition, which takes place before the same court

¹ See Appendix I, Table VII. For the record of the courts of the German Empire by geographical divisions, see Appendix I, Table VI.
² See Appendix I, Table VIII. For the record of the Berlin court by sections from 1906 to 1908, see Appendix I, Table IX.
³ Geschäftsbericht des Gewerbe- und des Kaufmannsgerichts, Ludwigshafen am Rhein, für das Jahr, 1907.
⁴ See Appendix I, Table VI.
which issued the judgment; second, appeal, which may be entered in
certain cases in the county court of the district in which the industrial
court has its seat; and, third, complaint, which is similar to the
French petition for annulment, and is also brought in the county
court. Revision, which is another method provided for by the Civil
Code, is not allowed in suits brought before the industrial court. The
decision of the county court is, therefore, final in such cases.

Opposition is the legal remedy for judgments by default. A party
against whom such a judgment has been pronounced may enter pro­
test within three days after his notification of the judgment. This
notification, indeed, must state in what form and within what time
the opposition may be begun. The party must prove that he had a
good excuse for remaining away from the hearing. Misunder­
standing of the day fixed is not sufficient. If the ground of opposition is
considered valid, the judgment by default is nullified and the case is
restored to its original status. If, however, the party who has en­
tered opposition against the judgment by default fails to appear on
the day appointed, the opposition is considered as canceled.

Appeal is possible only when the amount involved in the dispute
exceeds 100 marks ($23.80). When the suit is not for a fixed sum,
as in cases concerning employment books and certificates and appren­
ticeship contracts, the value is determined by the judgment of the
court. Complaint, however, may be made against the fixing of a
valuation in such a case.¹ Damages, costs, and all other similar ex­
penses which may arise during the course of the trial are not con­
sidered in reckoning the value of the subject in dispute. But there
is a difference of opinion as to the effect of changes in the suit itself.
On the one hand, it is maintained that if a claim is raised or lowered,
if two or more cases are united or separated, or if decisions are issued
on part of a dispute, such changes should have no effect, but the right
of appeal should be determined solely by the value of the subject of
the original complaint. On the other hand, the more general opinion
appears to be that all such changes should be considered and that the
right of appeal should be determined by the value of the subject in
dispute at the time of the final judgment. The value of a claim
and of a counterclaim in the same suit, however, according to most
authorities, can not be added together in fixing the total value in dis­
pute. It has been maintained, however, that if the counterclaim does
not concern the same subject as the original claim the value of both
should be added in deciding the right of appeal.² Lawyers must
appear in appealed cases.

¹ M. v. Schulz, op. cit., p. 145. The courts, however, are not unanimous upon this
point. See Baum, op. cit., p. 87.
² Upon this subject see M. v. Schulz, op. cit., pp. 145, 146; Baum, op. cit., pp. 80–83;
Under this clause of the law less than 10 per cent of the cases brought before the industrial court are capable of appeal. The proportion varies somewhat from place to place and from year to year, but is practically always well under 10 per cent. In the calendar year 1908, in the entire German Empire, only 8,574 out of a total of 112,281 cases were valued at over 100 marks ($23.80). Only 587 of these, moreover, were actually appealed, so that the percentage of appealed cases was only about one-half of 1 per cent. In Berlin in the fiscal year 1908, 1,164, or 8 per cent of the cases, were capable of appeal, but only 81 were actually appealed. The proportion in Berlin has increased, however, from 4.5 per cent in 1898. Nearly half of the cases not subject to appeal are valued at less than 20 marks ($4.76). Of the 81 cases which were appealed in Berlin in 1908 the decision of the industrial court was upheld in 21, changed in 9, and annulled in 13, while in 8 the appeal was withdrawn, in 2 an agreement was reached, and 28 remained unsettled at the end of the year.

As in France, it is usually the employer who endeavors to bring the case before the appeal court, and the decisions of that court are said to be generally against the workman. In one instance a whole series of cases were all decided for the workmen by an industrial court, but this decision was reversed for the entire series by the regular court.

Complaint against a decision of the industrial court may be made without regard to the value of the subject in dispute, but only under special conditions. Complaint is allowed in the same cases and under the same conditions as in the ordinary courts, but it is specially provided that it may be entered by a member of the court against the imposition of a fine for absence or tardiness. It is not necessary to have lawyers in complaint cases.

Decisions in regard to costs are not subject to appeal. They may, however, be changed if, on appeal, the decision in the case itself is changed.

The decisions of an industrial court can not be contested on the ground of defects in the proceedings by which the assessors were elected or of circumstances which debar an assessor from eligibility, unless such circumstances would disqualify him for the office of juryman. This provision was added in the law of 1901 in order to do away with the inconveniences which had previously arisen on account of many such contests.

1 See Appendix I, Table VI.
2 Verwaltungsbericht des Magistrats zu Berlin für das Etatsjahr, 1908. No. 31, Bericht über das Gewerbegericht zu Berlin.
ADMINISTRATIVE FUNCTIONS.

In addition to acting as judicial tribunals and as boards of arbitration, the industrial courts formulate opinions and advice upon industrial questions for the benefit of the authorities of their respective districts. The preparation of opinions is obligatory upon request from the local officers. The chief of police, for example, may ask the industrial court to give its opinion as to the industries and conditions in which exceptions to the Sunday rest law may be allowed.

This function appears to have originated in the similar powers of the courts established upon the French model in the Rhine Provinces. Although in some parts of Germany there are boards of trade which also give opinions upon such subjects, these boards are composed only of employers, and their opinions, therefore, do not meet the same need as those of the industrial court, which represent both employers and workers. The opinions of the latter body, indeed, are considered of special value just because they are the result of argument between the two sides under the leadership of an impartial third party.

The giving of advice in the form of proposals laid before legislative bodies, on the other hand, is voluntary. Under the law of 1890 such advice could be given only to local bodies, but the law of 1901 extended this power to include the legislatures of the State and of the Nation. No subjects are specified upon which such advice may be given, but purely political questions and questions which do not concern the occupations which are under the jurisdiction of the industrial court are naturally excluded. The proposals in question relate, indeed, to the work of the court, especially to desirable changes in the laws and regulations which govern its administration and its decisions. Labor legislation of various kinds is frequently made the subject of proposals from industrial courts. This power is regarded as a corollary of the duty of giving opinions in industrial matters, and is held to be of special advantage to the laboring class by allowing them to present their desires and needs to the lawmakers.

The law provides that a committee must be formed within each court for the purpose of framing opinions and proposals, and that these committees, so far as they deal with matters which concern both sides, must be composed in equal numbers of employers and of workers. Under no condition, however, can any influence over the verdicts of the court be given to such committees. Their work, indeed, is entirely separate from the judicial functions of the court.

The local statutes fix the details of procedure. The regulations of the Berlin court, for example, provide for a committee of 10 employers and 10 workers under the direction of the first president of the industrial court. This committee is elected for two years, the employers by the employer assessors and the workers by the worker
assessors, each class from among its own members. A substitute is also elected for each member, and if, for any reason, a member with draws before the expiration of the two years his substitute steps into his place. The president gives notice at least a week in advance of the election, which takes place, if no objection is raised, by acclamation. If one of the assessors objects to this method, a secret ballot is taken. In case of a tie the president draws the lot.

Meetings of the Berlin committee must be called if an opinion is requested by the local officials or if it is proposed by at least 30 assessors of the court that a question designated by them shall be made the subject of a proposal to a legislative body. The sessions are presided over by the first president. The presidents of the various sections, however, may take part in the deliberations. The committee, moreover, may summon to individual sittings other assessors who are specially expert in the subjects under discussion. The substitutes are regularly invited to the meetings as listeners. If a member is unable to appear, he must communicate that fact as early as practicable to his substitute and also to the president, and the former must take active part in the sitting in his place. Six employers and six workers, however, in addition to the president, constitute a quorum.

Minutes are kept of the proceedings, and it is specially provided that it shall be recorded which opinions were held by the employers and which by the workers. A copy of the minutes is to be handed in with each opinion or proposal. Even if the committee is unable to reach a conclusion in regard to a subject upon which its opinion has been asked, the minutes of its proceedings are handed in to the officers who asked for the opinion. The votes of employers and of workers must be separately recorded. No matter how many are present of either side, only the same number of employers and of workers may take part in decisions. If, under this provision, some members can not vote, the youngest are excluded. A majority is necessary for the passage of a resolution. The president has the deciding vote.

This function is comparatively unimportant. In 1908, for example, only 33 opinions were given by the 469 courts of Germany and only one by the Berlin court. In the same year 48 proposals were made by the industrial courts of Germany, 2 of them by the Berlin court.¹

Some of the courts have voluntarily added to their administrative functions the conduct of legal information bureaus, which have been much used. In the bureau created by the industrial court of Solingen, for example, in 1909 there were 2,400 applicants for information in 3,158 cases. Of the applicants, 509 were independent manufacturers, 9 of them women; 1,101 were workers, 132 of them women, and 790

were other persons.\footnote{Jahresbericht des Königlichen Gewerbegerichts zu Solingen für das Jahr 1909.} In Solingen the public-employment bureau is also joined to the industrial court, under the same president and with assessors chosen from the latter as its directors.

\textbf{FUNCTIONS IN COLLECTIVE DISPUTES.}

The industrial court also has an important part to play as a board of arbitration for the settlement of collective disputes.\footnote{The industrial courts of Alsace-Lorraine, however, do not act as boards of arbitration.} This function is entirely separate from its work as a judicial tribunal and also from its work as an advisory body. As a board of arbitration it can not compel parties to bring their disputes before it, and it has no legal power to put its judgments into execution. Even when the decisions of a court acting as a board of arbitration affect the relations of individual employers and workers they do not have the force of legal verdicts. The very composition of the industrial court acting as a board of arbitration, moreover, differs from its composition as a judicial tribunal. The president, indeed, is the only essential connecting link. Although as judicial tribunals for the settlement of individual disputes the industrial courts of Germany have no prototype in English-speaking lands, as boards of arbitration they are closely related to similar institutions in all countries which have attained a high degree of industrial development.

The law provides that an industrial court may be called upon as a board of arbitration in disputes between employers and workers over the terms of their labor relations. The definitions of employers and of workers and the provisions relative to geographical jurisdiction which regulate the court as a judicial tribunal also regulate it as a board of arbitration. It may be called upon, however, to act in disputes which are not limited to its own district. Disputes which arise between members of a guild which has a similar board of arbitration and their employers may be adjusted by the board of an industrial court upon the request of both parties. Such requests, however, are rare. In general, if both parties desire its intervention the jurisdiction of the industrial court is loosely construed.

The expenses of arbitration proceedings before an industrial court are borne by the municipality or communal union, or, in the case of the mining court, by the State.

The work of the industrial court in the settlement of collective disputes is threefold. First is its action in cases in which both parties ask for its intervention. There is then constituted, under the direction of the president of the court, a formal board of arbitration. In many cases, however, only one side applies. The efforts
of the president are then directed toward securing the cooperation of the second party. To this end he must immediately notify the other side, or its representatives, of the action of its opponents in calling for the board of arbitration, and must do everything possible to induce it to join in the call. In securing the cooperation of the other side the assistance of the regular assessors of the court, as has been demonstrated in the experience of the Berlin court, is often very helpful. If this effort is successful the case becomes the subject of the first kind of action, the constitution of a board for conciliation, and, if necessary, for arbitration. In 1908, however, there were 140 disputes in the Empire and 2 in Berlin, in which only one party requested the intervention of the industrial court. But even in such cases the president of the court, as will be seen, has certain powers of investigation, and may institute proceedings which bring the affair to public attention.

The third type of action is in cases in which neither party applies for the formation of a board of arbitration. The president is directed, whenever a collective dispute which might be adjusted by the industrial court is brought to his attention, to endeavor to induce the parties to call upon it to act as a board of arbitration. This provision of the law is meant primarily to allow the court to intervene with a view to settling strikes and lockouts, but enables the president to act as a conciliator or to preside over joint conferences for the drawing up of agreements in many cases in which no board of arbitration is actually formed. In Berlin the president of the court keeps informed of movements in all trades by means of newspaper clippings, principally from the "Vorwärts." If a strike or lockout appears to be threatened in any trade a special inquiry is begun, and an effort is made to get into touch with the parties concerned before the breaking out of active hostilities.

This phase of the activity of the industrial court, centering as it has upon the formation of wage contracts and trade agreements, has grown to be of great importance. Twelve such cases were handled by the Berlin court in 1908 and 15 in 1907. In many other cities in which the industrial court may have been called upon to act as a board of arbitration in few or no cases in any given year, and in which, therefore, the statistics show little or no activity in collective disputes, the president of the court has acted as a mediator in more than one such case.

The formal action of the industrial court in collective disputes, however, is as a board of arbitration. If both parties call upon the court in this capacity and appoint representatives to appear for them in the proceedings, the request must be granted. The representatives, however, must have certain qualifications. In all cases they must be citizens whose control over their own property is not
for any reason legally restricted. They must, moreover, in general, be over 25 years of age, and be chosen from among the parties concerned. It is specially provided, however, that if there can not be found among the workers concerned enough persons over 25 years of age, younger representatives will be allowed to appear. The provision, moreover, that the representatives must be concerned in the dispute is not very strictly interpreted. In Berlin, for example, in large strikes, the president of the central labor union of the trade has often appeared with the best results as a representative of the strikers before the board of arbitration.

Three representatives are usually appointed on each side. If not more than three employers are concerned they do not appoint representatives, but appear in person or by deputy. In some cases, however, if, for example, more than three different branches of industry are involved, it may be considered desirable to have more than three representatives on each side. The arbitration board itself, therefore, is empowered to allow a larger number.

On account of the diversity of conditions as regards trade organization and other matters, no special proceedings are laid down for the appointment of these representatives. The parties themselves determine how such appointment shall be made. Where unions of employers or workers exist such unions, of course, regulate the appointment of representatives. Where no such union exists, however, difficulties sometimes arise. For this reason the arbitration board is given the duty of deciding upon the credentials of representatives. If it does not consider the representatives who appear to be sufficiently well accredited, it may refuse to act. The Berlin court, however, follows the rule that representatives are to be accepted without further inquiry if they are expressly or tacitly recognized as authorized agents by the opposing side. The opponent, on the other hand, may contest the credentials even if the arbitration board has accepted them, and may refuse to act with a representative whom he does not consider sufficiently well accredited, even if his refusal frustrates the efforts of a board which he has himself called into the case. If, however, he enters into proceedings and an agreement is reached, he can not later contest the validity of such an agreement on the ground of defects in the credentials of a representative.¹

The arbitration board consists of the president, who has general charge of proceedings, and of arbitrators chosen in equal numbers by the employers and by the workers. In Berlin, where the industrial court is divided into sections, each having its own president, the regulations provide that one of these presidents, who must be chosen unanimously by the parties, shall preside over the board of arbitrators. ¹

arbitration. If no such choice is made, the first president presides. The number of arbitrators is to be agreed upon between the parties, but, if an agreement is not reached upon this point, the president fixes the number at not less than two for each side. Moreover, if the parties fail to name their own arbitrators, the president may make the appointments. No person can be appointed as an arbitrator who is himself concerned in the dispute. The president may also call in as assessors with consultative powers one or two other persons who are not concerned; but before such assessors are called the advice of both parties must be taken as to the choice. Persons called in as arbitrators, even if they are regular assessors of the court, can not be obliged to serve, and are not subject to the disciplinary measures of the industrial court as a judicial tribunal.

The law of 1901 has practically reversed the position of the arbitrators appointed by the parties and the assessors appointed by the president. Under the law of 1890 the essential elements in the construction of the court were 4 assessors, 2 employers and 2 workers, appointed by the president. Representatives of the parties might be added, and it was provided that they must be added if demanded by the representatives of both sides. Under the old law, therefore, the regular assessors of the industrial court had a much more essential part in the arbitration board than they have to-day. Even now, however, the arbitrators may be and frequently are chosen from among the assessors.

This change in the law was made in order to bring the arbitration board more closely in touch with the concrete needs of each case. Under the old system it was possible for persons to act as assessors who were not thoroughly familiar with the industry in which the dispute had arisen and who did not possess to a sufficient degree the confidence of the persons concerned. For example, if it was a question of a strike in a branch of some great industry there might not be among the regular assessors of the court, who are generally employers or workers in small industries, a single person who would be thoroughly enough acquainted with conditions and would possess sufficiently the confidence of the parties to act successfully as an arbitrator. The parties had, indeed, the privilege of appointing arbitrators in addition to the assessors, but, when the board had already five members, it was not possible to add many more without unduly increasing its size and thereby hampering its action. The new law, therefore, did away with the nucleus of four assessors and allowed the parties themselves to choose arbitrators. Thus the essential element of the board is now, not assessors elected primarily for quite a different purpose and from quite a different point of view, but arbitrators specially chosen by the parties for their own particular case. It should be remarked, however, that even under the old
law ways of choosing assessors other than by the president might be designated in the local regulations. In Berlin, for example, the choice of assessors was always left to the parties. The new provision, moreover, is sometimes criticized as sacrificing the benefits of the experience possessed by the assessors and as allowing each side to select, not its best conciliators, but its best fighters. This, it is said, sometimes prevents the possibility of an agreement.

The provision of the law of 1901 under which the president may introduce one or two persons as assessors with consultative voice was designed to meet the need for mediation between the opposing points of view of the arbitrators chosen by the parties. Though this was not specifically stated in the law, the idea was that such assessors would usually be impartial persons, neither employers nor workers, who would strengthen the position of the president as the neutral element of the board. The provision, however, makes it possible to call in any person who possesses the confidence of both sides, and who, by reason of his practical experience as an arbitrator, may enjoy a certain special authority. The assistance of such men has often been decidedly helpful.

In the case of special courts established for the mining industry the provision that the arbitrators and assessors shall not be chosen from among the parties concerned is abrogated. Since these courts are limited to this one kind of industry, and since strikes or lockouts among miners frequently extend over the whole district of a court, it would often be impossible, in such cases, to secure arbitrators who were not themselves concerned.

Parties to a collective dispute for the settlement of which the industrial court has been asked to act as a board of arbitration by both parties, or even by only one party, if summoned by the president, must appear in person or be subject to a fine of not more than 100 marks ($23.80). Complaint against such a fine, however, may be made in the county court in accordance with the provisions of the civil code. In case of need, moreover, parties may be represented by deputies, persons possessing power of attorney, or business managers.

This provision for the compulsory appearance of parties was not contained in the law of 1890, but was added in 1901, when it attracted more attention in the discussions than any other proposed change and was bitterly fought by several employers' associations. The original proposition at that time presented was that the president could compel the appearance of parties to any collective dispute, regardless of whether either side had asked for the interference of the court. This was modified, however, to cover only cases in which the industrial court had been called by one or both parties to act as a board of arbitration. It was held that to allow a president who was unable to inspire in either side a sufficient degree of confidence
to bring about an appeal to the court to compel the appearance of parties could lead to no good results. This was evidently too near an approach to compulsory arbitration. There had been, however, a sufficient number of cases in which one of the parties had shunned the industrial court, either because they had something to conceal or because they were simply ill disposed toward the institution, to demonstrate the need for a clause in the law providing for compulsory appearance in such cases.\footnote{M. v. Schulz, "Die Gewerbegerichts Novelle," Archiv für Soziale Gesetzgebung und Statistik, vol. 16, 1901, pp. 682-688.} The parties, of course, are not obliged to arbitrate their dispute, or even to join in the call for the board, but they must appear before the president. Even before 1901, however, most of the employers of Berlin were accustomed to obey the summons of the court and any aversion to the industrial court as a board of arbitration had practically disappeared.

The proceedings before the board of arbitration are divided into three stages—first, the settling of the points in dispute through the hearing of the two sides separately; second, the hearing of arguments of both together; and, third, the attempt to conciliate the parties. The board of arbitration or, if only one party has applied to it, the president of the industrial court, is empowered to summon, not only parties to the dispute, but also experts, to aid in explaining the facts and circumstances under consideration. There is no fine, however, for the nonappearance of experts. The board also hears, of course, the representatives of both sides. In the hearings arbitrators or assessors, through the president, have the right to address questions to the parties, the experts, and the representatives. The president, however, may allow arbitrators and assessors to address their questions directly to these persons.

After the hearing of evidence opportunity is given the representatives of each party to discuss the statements of the other side and the testimony of the experts. The case then proceeds to its third stage, the endeavor to conciliate the contending parties. The law does not provide how this shall be done. Usually, however, the board itself formulates propositions and presents them to the parties separately. It is sometimes complained that often the representatives do not have sufficient power, and that the necessity of submitting the terms of the agreement to meetings of the parties themselves delays the proceedings and renders it more difficult to end the dispute amicably.

The proceedings are usually public, though the law does not require publicity and they can be made so only on the proposal of both parties. The presence of a recording secretary, moreover, is not required by the law. It is recognized, however, as urgently necessary that a record should be kept of the essential facts and of the
testimony of the experts. The Berlin court takes care always to have
minutes kept of the preliminary as well as of the main proceedings,
and has a stenographic record made of all transactions in connection
with extensive strikes in which there are numerous points in dispute.

If the efforts to conciliate the parties are successful an agreement
is drawn up and its terms are made public through a notification
signed by all the members of the board of arbitration and by the
representatives of both sides. No special form is prescribed for this
notification, but it is supposed to be issued in such a way that it will,
as nearly as possible, reach all the parties concerned.

If no agreement is effected the board must proceed to the deter­mination of an award which shall cover all the questions in dispute.
The decision is reached by a simple majority, but if the votes of all
the arbitrators appointed by the workers are on one side and those
of all the arbitrators appointed by the employers on the other, the
president may abstain from voting and decide that no award can be
given. As the acceptance of the decision is not compulsory, it was
considered useless, in case of such a tie, to oblige the president to
cast the deciding ballot. But if a tie results from an arbitrator of
one side voting with the other while an arbitrator of the latter side
votes with the former, the president is not excused from making a
choice. The arbitrators themselves, however, may in any case refrain
from voting, in which event it is impossible to reach a decision.

When an arbitration award is made both sides are notified and
are called upon to declare within a certain time whether or not they
will abide by the decision. If they fail to make such a declaration
they are considered to have refused acceptance. At the end of the
time fixed for the official statement of acquiescence in the decision
the arbitration board must publish the records of its action, the
award, and the declarations of acceptance or refusal made by the
parties.

An award is binding only if both parties have previously agreed
that it shall be so, but publicity brings to bear a certain moral influ­ence, especially over the leaders, on both sides. Publicity, indeed, is
the chief force relied upon, and it is expressly stipulated that, if
neither an agreement nor an award is reached, the facts are to be
made public by the president of the board.

The action of the industrial court of Bremen in a strike of cabinet­
makers and woodworkers in 1908–9 ¹ may be taken as an example
of this phase of its activity. The wage contract in the cabinetmak­ing
and woodworking industries expired on October 1, 1908, and, in
spite of efforts at mediation on the part of the court, it was im­
possible to avoid a struggle. The court, however, remained in

¹ Bericht über die Geschäftstätigkeit des Gewerbegerichts in Bremen im Jahre 1909, p. 9.
touch with the parties, and on December 22 arbitrators appointed by
the parties met with the president of the industrial court and formed
a board of arbitration which drew up a new wage contract. This
was immediately accepted by the workmen, but some objections were
raised by the employers. On January 5, therefore, the arbitration
board held another session. It decided, however, not to undertake a
revision of the contract previously formed. The employers there­upon accepted this contract and work was resumed on January 11,
1909. The new contract provided for an increase in wages on April
1, 1909, of 1 pfennig (0.238 cent) an hour, a further increase on
July 1, 1909, of 1 pfennig an hour, and a shortening, after February
12, 1910, of the weekly labor time by one hour without loss of wages.

The number of applications to the industrial court as a board of
arbitration, though not by any means equal to the number of col­lective disputes in the German Empire, is significant of a considerable
degree of confidence in the institution. During the entire period
from 1902 to 1908, inclusive, there were 1,260 applications from both
sides, and 1,134 from only one side. Of these, 778 were settled by
agreement and 193 by an arbitration award. In 130 of the latter
both sides accepted the award. In the other cases the proceedings
were without result, in many of them because the president declined
to cast the deciding vote.

The number of applications, moreover, tends to increase. In 1902
there were in all Germany 144, and in 1908 there were 181 applica­tions from both sides. The number, however, varies decidedly from
year to year, depending primarily upon the industrial conditions
which produce strikes. In 1906, for example, there were 253 appli­cations from both sides, more than in either 1902 or in 1908.

In Berlin the industrial court was not called upon as a board of
arbitration until 1895, but between September 14 of that year and
March 31, 1896, it was applied to by both parties in 11, and by only
one party in 7 cases. In 26 other collective disputes, moreover, it
entered into negotiations with the parties with a view to aiding in a
settlement. During the seven years from 1895 to 1901, inclusive, it
was called upon by both sides in 47 cases, by only one side in 39; and
in 63 it conducted negotiations with the parties. During the follow­ing
seven years, however, from 1902 to 1908, inclusive, the court was
appealed to by both sides in 164 and by only one side in 60 instances.¹

It is evident that, upon the whole, the number of applications has
decidedly increased in Berlin. There are, however, many fluctua­tions from year to year. During 1902, for example, there were 17

¹The figures used in this discussion are from the Verwaltungsberichte des Magistrats
zu Berlin. No. 31. Berichte über das Gewerbegericht zu Berlin, 1903-1908. The sta­tistics for 1902 to 1908 are given in Appendix I, Table XI. The figures for 1895 to
1902 are also given in Schulz und Schalhorn, Das Gewerbegericht Berlin, pp. 319, 320.
applications from both sides and 10 from only one side, whereas in 1908 there were 12 from both sides and 2 from only one side. In every year between 1902 and 1908, however, there were over 20 applications, 32 in 1903, 31 in 1906, and 24 in 1907. The numbers are too small for a falling off in a single year to have any particular significance. Such a decrease, moreover, might be due to any one of a number of different causes, as to industrial conditions which produced few collective disputes or to the growth of the trade agreement movement as a substitute for strikes.

The statistics show that workmen are more eager than employers to avail themselves of the services of the industrial court as a board of arbitration. Most of the applications from only one side, indeed, are from the workers. In 1908, for example, out of 140 such applications in the Empire, 134 were from workmen and only 6 from employers. In Berlin no case has ever occurred in which the workmen have refused to concur with the employers in a request for intervention. The number of cases in which Berlin employers have refused has, however, upon the whole, decidedly decreased. Workmen, moreover, have shown themselves more willing than employers to submit to the award, when such has been made. Both of these differences are in part due to the fact that employers are usually not as well organized as workmen and that, therefore, where many employers are concerned it is more difficult for them to get together.

Many of the strikes settled by the industrial court have involved a large number of workers. In Berlin, where most of the large strikes have been handled, the records of the court contain accounts of one case in 1896 affecting about 2,000 workers, one in 1899 affecting about 4,000 workers, and three in 1900 affecting, respectively, about 7,750, 5,000, and 2,000 workers. In many cases the number of persons concerned is not given, but it is simply stated that the dispute was between the union, as, for example, the bricklayers' union of Berlin and vicinity, and their employers.

The industrial court appears to have been, upon the whole, fairly successful in settling the collective disputes which have been submitted to it. It has already been seen that in all Germany from 1902 to 1908, inclusive, out of 1,260 disputes submitted by both parties, 908 were settled either by agreements or by awards accepted by both parties. In 1908 alone agreements were brought about in 151 cases, and 35 arbitration awards were made, 26 of which were accepted by both parties. In 76 cases, however, the board was unable to reach a decision. It appears, moreover, that the court has been most successful in settling disputes in which no strike has occurred—that is, in preventing strikes—for out of 1,347 strikes which occurred in Germany in 1908 only 63, or 6.6 per cent, were settled by the industrial courts. Of the 1,347 strikes, moreover, 958, or 71.1 per cent,
were settled by negotiations carried on directly between the parties or through trade associations or third persons.\(^1\)

In Berlin, of the 47 cases in which, during the seven years from 1895 to 1901, inclusive, the board was called upon by both parties, in 33 agreements were reached, in 13 arbitration awards were given, and in one the arbitrators divided up evenly, and the president declared that no decision could be reached. During the next seven years, from 1902 to 1908, inclusive, of the 164 cases in which application was made from both sides, in 52 agreements were reached, and in 65 arbitration awards, 50 of which were accepted by both parties, were issued. In the others no decision was made. Of the 12 cases in Berlin in 1908, 3 ended in this way, and only 1 was settled by agreement. Of the 8 awards, however, 6 were accepted by both sides. In 1906, on the other hand, out of 31 cases which came before the Berlin court, agreements were reached in 11, and 20 decisions were given, 18 of which were accepted by both parties. The proportion of cases brought to a successful issue appears to have declined, but on the other hand the total number of such cases has increased. Naturally, with the increase in the number of applications, more difficult cases have been referred to the court, and more knotty problems have been encountered.

**INDUSTRIAL ARBITRATION COURTS OF BASEL, SWITZERLAND.**

**HISTORY AND METHOD OF CREATION.**

One of the earliest of the Swiss Cantons to establish an industrial court system and the first to develop a plan differing essentially from both the French and the German models was the city of Basel. The first court was established there under a law of April 29, 1889. This law was revised on May 26, 1898, but only slight changes were made. The system, therefore, has been in operation for over 20 years, and has been such a success that it has been copied in a number of other Cantons, notably Zurich.

The Basel court, or system of courts, was created directly by the law for the purpose of settling disputes between the proprietors of industrial, commercial, and factory establishments and the journeymen, apprentices, and other workers employed by them. The law provides, however, not only that the jurisdiction of these courts shall be limited to cases in which the amount in question does not exceed 300 francs ($57.90), but also that, upon the request of both parties, any industrial dispute may be brought before the ordinary courts. In practice, however, the industrial arbitration courts settle practically all such cases, for the workmen usually prefer to have their

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suits against their employers decided by a tribunal in which they have representation.

The essential feature of the Basel plan are its close connection with the regular judicial system, the decision of cases by a judge with the advice and assistance of assessors, and the division into groups, for each of which there is constituted, in essence, a separate court. These groups are based upon the character of the occupations included, and their number and composition are determined by the Government council. From the beginning there have been ten groups—(1) textile industries, (2) building industries, (3) woodworking, (4) metal working, (5) the manufacture of clothing and ornaments, (6) the preparation of articles of food and drink, (7) paper and polygraphic industries, (8) chemical industries, (9) transportation industries, and (10) commerce and other kinds of business.

Within recent years the number of cases brought before the industrial courts of Basel has tended to decrease. In 1906 there were 939 complaints, of which 22 were brought by employers and 917 by workers, and in 1909 there were only 680 complaints, of which 19 were brought by employers and 661 by workers. The number of sittings meanwhile decreased from 482 in 1906 to 445 in 1909. The number of sittings, however, does not always correspond to the number of cases. In 1908, for example, there were required for 719 cases as many as 504 sittings of the court.1

Upon the whole the system has been fairly, but not eminently, successful. There is, however, some complaint of injustice in the decisions, and the greater formality of the proceedings, together with the closer connection with the regular judicial system, appear to have militated somewhat against the popularity of the institution as compared with the industrial courts of France and Germany.

ELECTIONS.

The members of industrial arbitration courts, except the president, are elected by groups for three years, and are eligible for reelection at the expiration of their terms of office. The president is chosen from the regular civil court presidents, and is simply assigned to this work as part of his official duties.

In the election of members all employers and workers engaged in industrial, commercial, and factory employments, who are residents of the Canton and are entitled to vote in its affairs, according to the provisions of the constitution, are electors. Each person may vote, however, only in the group to which he is assigned by reason of the character of his work, and no one can belong to more than one group.

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1 See Appendix I, Table XII.

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INDUSTRIAL COURTS IN FRANCE, GERMANY, AND SWITZERLAND.
group. The police department decides upon the enrollment of the electors in the different groups and on the different election lists. If a man is engaged in a kind of work not specifically enumerated in the list of occupations to be included under each group, as formed by the Government council, he is assigned by the police department to that group to which, by the nature of his employment, he appears to belong. Appeals from the classification of the police department may be made, however, to the Government council. Business directors are classified as employers.

The qualifications for membership are the same as those necessary for voting except that the law specifically mentions that members must be at least 24 years of age. Women are not electors and are not eligible to office. It has been estimated that of all the workpeople of both sexes who are subject to the jurisdiction of these courts only about one-third are qualified voters for its members or are themselves eligible to membership.

Elections of industrial court members are conducted, in general, in the same way and under the same legal regulations as elections for membership in the grand council. For each group, however, it is necessary to prepare two election lists, on one of which are entered the names of employers and on the other the names of workmen. Six members are selected by the employers and six by the workmen in each group, making 120 in all. In case of necessity special elections may be ordered by the Government council to fill vacancies. The actual number of members, however, is often less than the number provided for in the law. At the beginning of 1909, for example, there were only 109 members, and during that year 1 died and 2 resigned, so that at the end there were only 106.

**ORGANIZATION, EXPENSES, AND DISCIPLINE.**

**COMPOSITION OF THE COURT.**

For each sitting the court is composed of the president and two assessors, one an employer and the other a workman. The assessors are chosen by the president for the individual cases from among the members of the group to which the parties belong. The law further provides that in summoning assessors the president shall consider as much as possible the special nature of the case in dispute. In making his selections, however, he must also plan to distribute the work as equitably as possible among the members. The civil court clerk or a deputy also assists as secretary.

The law specially provides that there shall be no court vacation. If the president is unable for any reason to act, his place is taken by another civil court president.
The president of the court is, of course, a regular salaried official. Assessors, however, are entitled merely to a compensation of 2 francs (38.6 cents) for each sitting. This fee appears low as compared, for instance, with the compensation for loss of time given in Berlin, which is 6 marks ($1.43) for each hearing attended. It must be remembered, however, that in Berlin the assessors serve throughout an entire sitting, which may last four or five hours, whereas in Basel they often assist in only one case, which may take only a few minutes. In Basel, moreover, the hearings are set at a time of the day which will interfere as little as possible with the regular work both of the assessors and of the parties.

In 1909 the total cost of maintaining the court, exclusive of the salaries of the president and clerk and of the necessary postage, was about 1,870 francs ($360.91), 1,700 francs ($328.10) of which were paid to the members as fees for attendance.1

No fees whatever are collected for cases brought before the industrial arbitration court of Basel. Actual expenses, however, such as the compensation of witnesses and experts, are imposed on the defeated party.

**DISCIPLINE OF MEMBERS.**

The law establishing industrial courts makes no special provision for the discipline of its members. Before their entrance into office, however, the assessors take oath to perform their duties faithfully and honestly. A violation of this oath, of course, subjects them to the usual disciplinary measures provided for such cases. A member who moves out of the Canton or changes his employment to one in which he is not eligible is considered to have resigned his position. The same rule applies to an employer member who becomes a worker, or vice versa.

A notice, moreover, issued to the members of the court by the president, lays down certain rules for their guidance. It is provided, for example, that if a member is prevented from attending a sitting to which he has been summoned he must notify the clerk’s office as early as possible, so that another assessor may be summoned in time. Members are also required to notify the clerk’s office of all changes in residence or in place of employment.

**JUDICIAL FUNCTIONS.**

**JURISDICTION.**

The industrial arbitration court of Basel has jurisdiction over disputes between employers and workers provided the amount claimed

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1 Gewerbliche Schiedsgerichte des Kantons Basel-Stadt, Bericht über das Jahr, 1909.
does not exceed 300 francs ($57.90). The relation between the parties, however, must be based on a contract or agreement for the performance of services, and not merely for the execution of a certain piece of work. A dispute between an independent cobbler, for example, and a master carpenter, for whom he has contracted to make shoes, does not come under the jurisdiction of the industrial court. In the same way disputes in regard to commissions are excluded.

The jurisdiction extends to both industrial and commercial employments. Persons engaged in agriculture and domestic servants are excluded. But on the other hand, persons engaged in banking, in the insurance business, in commercial offices, in legal business, and in literary, artistic, and scientific employments are included.

In any case, however, the law provides that, if both parties desire, suit may be brought before the ordinary court instead of before the industrial arbitration court.

As has been seen, most of the cases which come before the industrial arbitration court are brought by workers. In 1909 only 19 suits were entered by employers, and of these 11 related to contracts, 6 of them to apprenticeship contracts, and 2 to deductions in wages. Over a third, or 253 out of 661, of all the complaints brought by workers were caused by disputes in regard to wages. The next most important cause of complaints from the side of the workers was unjustified discharge, which accounted for 128 cases. In 83 cases, moreover, wages and unjustified discharge were combined as causes of complaint. In 55 cases liability for accidents, in 36 the keeping of labor contracts, in 25 commissions, and in 22 apprenticeship contracts caused disputes.\(^1\)

**RULES OF PROCEDURE.**

Except as otherwise provided and as modified by the nature of the case, the procedure is the same as before the ordinary courts. No member may act in a case in which he is personally interested or in which any near relative or connection by marriage of his is concerned. Moreover, no member may act in a case in which a person for whom he is guardian or trustee is interested, or in a case involving a corporation, institution, or establishment of which he is a member. In the latter event, however, the parties, by mutual agreement, may renounce the privilege of challenging the member. On the other hand, if there is any other reason to question their partiality, parties may challenge the president, an assessor, or the clerk of the court.

The law makes no special provision for conciliation proceedings, but the president of the court, on his own discretion, may endeavor

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\(^1\) See Appendix I, Table XIV.
to effect a reconciliation between the parties without the assistance of assessors. In 1909, however, out of 680 complaints, only 14 were settled by the president alone. Within recent years, moreover, the proportion of cases settled by the president alone has remained approximately the same, about 2 per cent of the total number of suits entered.¹

On the demand of the plaintiff, addressed either orally or in writing to the president, or at the office of the clerk of the civil court, the parties are served with a summons to appear. This summons contains a short account of the complaint and its cause, and also notice that, if one or the other party fails to appear, judgment will nevertheless be pronounced. The proceedings may be set for a nearer or farther date, according to the urgency of the case. Parties must appear in person, except in case of sickness, absence, or other sufficient reason. If a party is obliged to be represented, moreover, the costs of such representation can under no circumstances be imposed on his opponent.

The sittings must be held, according to the law, at a time of the day when they will interfere the least with the regular work of the parties and of the assessors. They are usually held at 5 o'clock in the afternoon. Several cases are usually taken up at each hearing, but as a rule different assessors serve for each case, only the president and the secretary remaining unchanged throughout a sitting.

If one of the parties fails to appear he is considered to have no objection to make to the arguments of his opponent and the court may immediately pass judgment. As usual, however, opposition is allowed to such judgments by default.

The hearings, though more formal than in the industrial courts of France and Germany, are public, and are conducted orally. The president directs the proceedings and is enjoined to induce each party, by suitable questions, not only to explain clearly and completely his own side of the case, but to make definite statements in regard to any important facts brought out by his opponent. The assessors, with the permission of the president, may also put questions to the parties or to the witnesses. The clerk of the court, or his deputy, keeps minutes of the proceedings. Order is maintained by the president, who may impose fines or imprisonment upon parties, witnesses, or representatives, for breach of discipline, as in the ordinary courts. In 1909, however, only one such fine was imposed.

Various methods of proof of the facts in the case may be employed. The president may order the parties to take oath, or to present documents. Witnesses, too, may be brought by the parties or summoned

¹ See Appendix I, Table XII. For the figures for 1909 by groups of industries, see Appendix I, Table XIII.
by the president, and may be fined for nonappearance, or for refusal to answer questions. They may be challenged on the usual grounds. Witnesses are examined by the president, and, instead of taking oath, give him their solemn promise, while clasping his hand, to answer all questions fully according to their best knowledge and belief. The assessors also question them, and the parties themselves may suggest questions which they would like to have put. In case of need, the court may make a personal inspection of the premises where the dispute has originated. Whenever such personal inspections are made, the parties must be summoned to assist and furnish the necessary explanations. Experts may also be required to give testimony, or to make investigations.

Countercharges may be brought, but can not prevent or delay judgment on the original complaint. Even if such a countersuit does not fall within its jurisdiction the arbitration court must, nevertheless, give a decision on the main issue. The execution of a judgment pronounced in such a case, however, is delayed until after the competent tribunal has decided the countersuit. If a counterclaim is contested, the judge must allow the defendant a short period to prove his contention; but if no use is made of this delay the judgment can be executed without further ceremony.

After hearing the parties the president is authorized to make an attempt to bring about a reconciliation, and the assessors must assist in such conciliation proceedings. If an agreement is reached, it is signed by both parties and has the force of a legal judgment. In 1909, out of 680 complaints 96 were settled by agreement or acknowledgment of the claim. The proportion of agreements, however, has increased decidedly within recent years.

If the attempt at conciliation is fruitless, the court usually proceeds immediately to judgment proceedings. But in exceptional cases the parties may be summoned to appear again, in a short time, at a second hearing. In 1909, however, only 93 cases out of a total of 680 required more than 1 hearing. Usually, indeed, judgment is pronounced immediately.

When the court is ready to decide a case, the parties and the witnesses are ordered to retire, and the members proceed to deliberate upon the verdict. These deliberations are not public. Even members of the court who are not acting in the particular case under consideration are excluded. After examination of the documents or other evidence presented, the president asks the assessors to express their opinions on the case. If the plaintiff is a worker, the employer member gives his verdict first; and if the plaintiff is an employer, the worker member speaks first. After the assessors have expressed themselves, the secretary, who has deliberative voice, gives his opinion, and lastly the president, on the basis of the advice of all three,
but on his own responsibility as a civil-court judge, passes judgment.
All members are pledged to secrecy concerning these proceedings.

The judgment is pronounced orally and in public, and is accom-
panied by a short statement of the reasons for its terms. If it is
not given immediately at the close of the proceedings, the parties are
later summoned to hear it. If the president considers that a suit has
been brought merely out of malevolence or for trivial reasons, he
may impose a fine upon the plaintiff.

It is interesting to note, however, that within recent years the
number of decisions given in favor of the defendant has decreased.
In 1906 over 40 per cent and in 1909 only about 35 per cent of the
judgments were in favor of the defendant. In 1906, moreover, only
about 25 per cent and in 1909 over 35 per cent of the judgments were
wholly in favor of the plaintiff. The remainder were partly in
favor of the plaintiff. These figures would tend to indicate that as
the law becomes better known fewer unjustified complaints are
brought before the court.

To sum up, cases are settled by the president alone, by agreement
or acknowledgment of the claim before the full court, or by formal
judgment. In 1909 out of 680 complaints 14 were settled by the
president alone, 96 by agreement or acknowledgment, and 73 by other
means. But in 497 cases, nearly three-fourths of the total number,
judgments were rendered.1 It is evident that a much smaller pro-
portion of the disputes are settled without judgment than is usual
in the industrial courts of other places.

METHODS OF APPEAL.

Judgments of the industrial arbitration courts are subject to
change through the legal measures of opposition, complaint, and
revision. Proceedings in such cases are the same as for the judg-
ments of other inferior courts.

Opposition is allowed within 3 months in cases in which a judg-
ment by default has been rendered, and is justified if the party
who failed to appear can show that, without any fault on his part,
the summons had not been brought to his knowledge, or that it was
impossible for him to appear or be represented. If the grounds of
opposition are held to be valid, the judgment is annulled and a new
hearing is ordered. On the other hand, malicious and unfounded
demands for the dissolution of a judgment may be punished by a
fine of not less than 30 francs ($5.79).

Complaints may be made against judgments of the industrial
arbitration court on two grounds; first, if there have been essential

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1 See Appendix I, Table XII. For the figures for 1909, by groups of occupations, see
Appendix I, Table XIII.
defects in the proceedings which have been to the legal damage of the appellant, and, second, if questions of jurisdiction are involved. Complaints must be presented in writing within 10 days after the judgment is issued, to the president of the court of appeals. If the complaint is found by that court to be justified, the decision is annulled and the case is sent back to the industrial arbitration court.

Revision is allowed if the decision has been influenced by the violation of an oath, later established by a penal sentence, or if a party has discovered decisive documents which he could not produce in the earlier suit. Revision petitions must be brought within a month after the passing of the penal sentence or the discovery of the documents. In the first case, however, they are allowed for 10 years, and in the second for 5 years after the passage of the original judgment. Such petitions are presented in writing to the industrial arbitration court. If found to be justified, the former judgment is annulled and a new one pronounced.

OTHER FUNCTIONS.

The Basel court has no administrative functions and is not empowered to deal in any way with collective disputes. In 1907, it is true, a proposition was made to extend its jurisdiction to collective disputes. But the council rejected the proposal on the ground that the electoral body for the industrial court was too small and not sufficiently representative. Hundreds of employers and thousands of workers, it was said, who might be concerned in strikes or other collective disputes, had no voice in the composition of the industrial court. Some of these were foreigners, some women, some agriculturists, some persons who did not live, but were employed, in the city of Basel, and some persons who had not lived there long enough to be voters. A whole series of industries and kinds of employment, it was said, either had no representation or insufficient representation in the membership of the industrial court. It was therefore considered necessary to provide a separate arbitration tribunal to deal with collective disputes.

INDUSTRIAL ARBITRATION COURT OF ZURICH, SWITZERLAND.

HISTORY.

The industrial arbitration court of Zurich was not actually established until the beginning of 1899, about 10 years after that of Basel. Since 1866, however, provision had been made in the law for the rapid handling of industrial disputes before the ordinary courts. In 1889, moreover, there was begun an attempt to settle disputes between employers and workers through private courts organized by agreement between certain labor unions and employers' asso-
ciations. Such courts were formed by the joiners, stonecutters, masons, cabinetmakers, tinners, and painters, and existed for about two years. But, owing to their lack of real authority, they were only partially successful; and, finally, largely as a result of the hostile spirit between the two classes, they fell into disuse. They were applicable, moreover, to only about 215 employers and 660 workers, who agreed voluntarily through their associations to submit to the decisions.

Late in 1895, however, a law was passed providing for the establishment of industrial courts as part of the legal machinery of the Canton. This law was permissive—that is, it provided that such courts might be established for one or more municipalities by decree of the council of the Canton. It was not, accordingly, until 1898 that such a decree was issued and the tribunal was authorized which began its activity, with jurisdiction over the municipality of Zurich, early in 1899.

The Zurich court is under the control of the supreme court, to which yearly reports of its work must be rendered. The supreme court, moreover, issues in the form of decrees any special regulations which may be considered necessary to govern its proceedings. It is divided into eight sections or groups. These sections are, respectively, for (1) building industries, (2) woodworking industries, (3) metalworking industries, (4) textile and clothing industries, (5) the preparation of food and drinks, (6) graphic industries, (7) occupations connected with traffic or transportation, and (8) commercial employments.

The tendency within recent years has been, upon the whole, for the number of cases brought before the industrial courts of Zurich to increase slightly. This movement, however, has not been regular. In 1905 the total number of complaints was 975 and in 1909 it was 1,085. But in 1906 only 878 complaints were entered. Meanwhile the number of sittings has increased from 880 in 1905 to 941 in 1909.1

The Zurich law, though simple in its provisions and in all essential respects similar to that of Basel, has been very successfully administered; and under it a system has grown up the results of which, especially in the matter of conciliation, are much more nearly comparable to those of the German court than to those of the earlier Swiss courts, with the exception of the tribunals formed on the French model. It is said that both employers and workers are very well satisfied with the system.

ELECTIONS.

The president is elected by the county court from among its own members and for one year. The clerk of the court, too, is appointed

1 See Appendix I, Table XV.
from among the officials of the county court. The arbitration judges, on the other hand, are elected by groups, the employers and workers voting separately. Originally each group elected 20 members of the court; but in 1904 the number was reduced to 16 in groups 4 and 8, to 12 in group 7, and to 10 in group 6. This distribution corresponds roughly to the amount of business in each group. If the number of members elected to any one group falls below half the number provided for in the law, a new election must be held.

Those persons are entitled to vote and are eligible to office who belong to one of the employments over which the court has jurisdiction and who are entitled, under the constitution, to vote in other elections. No person can vote in more than one group. The higher employees of industry and commerce such as directors, confidential clerks, foreman, and overseers are classed as employers.

Voting lists are prepared and kept in the office of the registrar of population, but the police department is intrusted with the task of assigning employers and workers to their respective groups. Persons whose special employments are not mentioned in the regulations of the court are assigned to the groups which most nearly correspond to the nature of their work. Persons who are employed in more than one group, moreover, are assigned to the one to which their most important occupation belongs. Protests against the assignment may be brought before the city council. Electors are required, on pain of a fine of not more than 15 francs ($2.90), to notify the official in charge of the register, within eight days, of all changes of residence or of employment which might affect their voting district or the group of employments to which they have been assigned. In other respects the provisions of the general-election law are applicable to elections for members of the industrial court.

There is considerable complaint of the election system on the ground that it is too complicated, and a provision is pending for its simplification.

As in Germany, election to membership in the industrial arbitration court can not be declined except upon certain well-defined grounds. A person, however, who is over 60 years of age or who, on account of sickness or infirmity, is not in a condition to fulfill the duties involved, may refuse to serve. Moreover, a person who was on the last list of judges and has assisted at one sitting, may decline reelection. In practice the workmen assessors are usually trade unionists, because the members of trade unions take much more interest in the elections than do unorganized workers. Frequent changes are made, however, through elections, in the workmen's representatives, whereas few such changes are made in the representatives of the employers.
ORGANIZATION, EXPENSES, AND DISCIPLINE.

COMPOSITION OF THE COURT.

The court consists of the president and two arbitration judges called in for each sitting in a fixed order. One of these judges must be an employer and the other a worker of the group of occupations to which the parties belong. There is no court vacation.

EXPENSES, FEES, AND COSTS.

The municipality furnishes the rooms necessary for the proceedings of the industrial arbitration court, and the president is a salaried judge of a civil tribunal. The clerk, too, is a regular salaried official. The arbitration judges, on the other hand, do not receive a salary, but are entitled to a fee for each sitting of 2 francs (38.6 cents), or of 3 francs (57.9 cents) in case the sitting lasts more than two hours. These fees and the other incidental expenses of the court are paid by the Canton.

Regular fees are paid by the parties for the settlement of cases. These fees range from 1 to 20 francs (19.3 cents to $3.86), according to the amount in dispute. Special fees, however, for the writing of documents in the case, for the issuing of summonses, etc., can not be separately calculated.

DISCIPLINE OF MEMBERS.

Members are subject to the same disciplinary measures as other court officers. They are obliged, moreover, to notify the clerk's office as early as possible in case they are unable to appear at a hearing to which they have been summoned, and if they are absent without sufficient excuse they may be condemned to the payment of a fine, to damages to the parties, and to the costs of the proceedings. They must also notify the clerk's office of all changes in residence, in employment, and in their economic status as employers or workers. Finally, if a member knows of any reason why he can not legally act or is liable to challenge in a particular case he must announce that fact seasonably, and if he fails to do so is liable to a fine and to the payment of damages.

JUDICIAL FUNCTIONS.

JURISDICTION.

The jurisdiction of the industrial arbitration court of Zurich extends over all civil disputes which grow out of the relations of employers who are proprietors of industrial, commercial, or factory establishments, and their employees, journeymen, workers, or ap-
prentices, if the amount in dispute does not exceed 200 francs
($38.60) in value. In practice over 80 per cent of the cases brought
are for 100 francs ($19.30) or less, and about half are for 50 francs
($9.65) or less.

As in Basel, the relations between the parties must rest upon an
agreement to render services and not merely to perform certain work,
which may be entirely apart from the main business of the employer
or in which the worker may be acting independently.1

As regards occupations, the jurisdiction of the industrial arbitra-
tion court of Zurich is practically the same as that of Basel, extend-
ing to commercial industries but not to persons engaged in agricul-
tural employments or in domestic service. Disputes between the
proprietors and employees of hotels and restaurants, however, come
before the industrial court. Women as well as men, of course, are
subject to its jurisdiction, and in 1909 out of 1,053 cases 203 were
brought by women.

If, however, both parties agree, disputes over which the industrial
court has jurisdiction may be brought before the ordinary court.
The law specially provides that in such cases the defendant must
make a binding declaration that he will submit to the judgment of
the ordinary court. Moreover, agreements in advance to take cases
before the ordinary instead of the industrial court are specifically
forbidden.

As usual, wage disputes lead to many more suits than any other
single cause. In 1909, out of the 1,053 cases settled, 724 were caused
by disputes over wages, and 207 were demands for compensation
for damages on account of discharge. Of the remainder, 73 were
liability claims.2

RULES OF PROCEDURE.

The procedure is, in general, the same as before other courts.
Complaints, however, are brought directly and not, as in the ordinary
courts, through a justice of the peace. A complaint may be entered
either orally or in writing.

As in Basel, the law leaves the holding of conciliation proceedings
entirely to the judgment of the president of the court. In practice,
however, there is a preliminary hearing without the assistance of
assessors in practically all cases, and the president has been very
successful in settling disputes. In 1909, out of 1,053 cases settled
during the year, 680, or nearly 65 per cent, were conciliated by the
president alone. In 1905 an even larger proportion, nearly 73 per
cent of the cases, were settled by the president.3

1 Häfner, Meisterrecht und Arbeiterrecht, pp. 153–155.
2 See Appendix I, Table XVII.
3 See Appendix I, Table XV. For the figures for 1909 by groups of occupations see
Appendix I, Table XVI.
If efforts at conciliation are unsuccessful, either because one or both parties fail to appear or because they refuse to be reconciled, the case is set for hearing before the full court on a date usually four or five days distant. The parties are summoned and must, in general, appear in person. Employers, however, may be represented by higher employees, such as directors, confidential clerks, foremen, or overseers. Either party, moreover, may be represented if he is prevented from appearing by some authenticated cause, such as sickness, a death in the family, absence, or military service. Parties may not in any case be assisted. The sittings are held at an hour which interferes the least with the regular work of the parties and of the members of the court, usually at 4 or 5 o'clock in the afternoon.

Several cases are taken up at one hearing, but the judges change with each change in the group of occupations to which the parties belong. Neither the president nor an assessor may act in a case in which he himself or any close relative or ward of his is a party. Any member of the court, moreover, may be challenged if any appreciable advantage or disadvantage can accrue to himself or any relative or ward of his through the decision, if an organization or official body of which he is a member is concerned, if he is an expert or witness in the case, if he is a special friend or enemy or otherwise connected by interest with one of the parties, or if other special reasons exist for doubting his judgment.

The president maintains order and may impose fines when necessary. In 1909 there were 37 fines inflicted on parties and 1 on a witness. The president also directs the proceedings, and, if the parties do not explain their cases clearly, completely, and exactly, asks questions calculated to bring out the necessary facts. The secretary or clerk keeps minutes of all proceedings and takes an active part in questioning the parties and the witnesses. The assessors, too, address the parties and witnesses directly.

In case of the nonappearance of one of the parties a second hearing may be ordered. In 1909 such second hearings were held in 47 cases. If the same party fails twice, after proper summons, to appear, he may be condemned to the payment of the costs and of damages to his opponent.

Evidence is received and witnesses are heard as in the ordinary courts. Moreover, whenever the president deems such action necessary for the full understanding and proof of a case, he may order special proceedings for the taking of evidence. In 1909 such proceedings were ordered in 38 cases. Evidence can be presented, however, only on important points which are contested or on local rights as established by custom. Each party designates the persons whom he wishes to have summoned as witnesses and states the points upon
which they can give testimony. Witnesses are obliged to appear when summoned, upon pain of a fine and of condemnation to the costs. They may be challenged upon the usual grounds. Experts, too, may be called in, either upon the proposal of one of the parties or on the initiative of the court itself. No one, however, can serve as an expert in a case in which he would not be competent to act as a judge.

Counterclaims must, as a rule, be connected with the answer to the principal suit and can not be introduced after the rejoinder has been made. If the amount demanded in the counterclaim exceeds 200 francs ($88.60) such claim must be decided by the county court. The industrial court, indeed, may even refuse to hear a case, on the ground of lack of jurisdiction, if the counterclaim exceeds 200 francs ($88.60) in value. As a rule, however, all pleas entered in opposition to the original complaint are decided at the same time as that complaint and in one judgment.

Judgments are pronounced orally and are accompanied by a short statement of the arguments upon which they are based. The fees and costs are also fixed in the decision. They are determined upon in secret session of the judges, in practically the same manner as in the Basel court. That is, if the plaintiff is a worker the employer judge, and if the plaintiff is an employer the worker judge, first expresses his opinion upon the dispute. This opinion may be given at whatever length the importance of the case may require. After both judges have spoken the secretary reads his record of the proceedings and of the points brought out in the hearing of the parties and of the witnesses. Finally, the president sums up the case. Assessors, even after the president has expressed his opinion, are allowed to present additional points or to ask questions of the secretary as to the exact testimony. They are obliged to take part in the formation of all decisions. The president, however, as in Basel, is the final judge. If both assessors should vote against him, therefore, the decision would not be reached by the absolute majority but by the president alone. Such cases, however, rarely or never occur. Usually the decision is easily reached.

In the final judgments usually less than a third of the complaints are wholly approved. A larger number, however, are upheld in part. In 1905, for example, out of 112 cases settled by court decisions, in 34 the complaint was wholly and in 43 partly approved, while in 35 cases it was entirely rejected. In one year, however, 1907, only 19 complaints were wholly approved, 51 being approved in part and 40 rejected.

The Zurich court has been much more successful than that of Basel in settling cases without final judgment. In 1909, out of 1,053 cases,
461 were settled by agreement and 162 by acknowledgment, while 302 were withdrawn and 16 were not taken in hand, so that a total of 941 were settled without judgment, and in only 112 cases, or about 10 per cent of the total number, was it necessary to pronounce sentence. In 1905, moreover, only about 9 per cent of the cases required judgments.

Whenever possible, judgments are pronounced immediately. In any event, cases are quickly settled. Of the 941 disputes settled without a judgment in 1909, 768 were ended in less than 8 days after the complaint was entered. More than half, or 69 of the 112 cases in which judgment was pronounced, moreover, were ended in less than 14 days.\(^1\)

**METHODS OF APPEAL.**

Judgments by default may be contested upon the usual grounds and reversal or revision complaints are allowed. Reversal complaints must be presented within 10 days after the judgment, at the appeal office of the supreme court. But only six such complaints were entered in 1909, and of these one was withdrawn, one was upheld, and four were declared unfounded by the supreme court. All of these methods, however, have the effect of merely reopening the case in the industrial arbitration court. Appeals which would take a suit, decided by that tribunal, before a superior court are not permitted. It must be remembered in this connection, however, that no case comes before the industrial court in which the amount in dispute exceeds 200 francs ($38.60). In France no case can be appealed in which the amount in dispute is under 300 francs ($57.90).

**OTHER FUNCTIONS.**

The industrial arbitration court of Zurich has no other function than that of a judicial tribunal. Zurich has, however, a special law providing for arbitration in collective disputes.

**INDUSTRIAL COURTS OF GENEVA, SWITZERLAND.**

**HISTORY, CREATION, AND DIVISIONS.**

Geneva was the first of the Swiss Cantons to establish an industrial court. In 1882 a law was passed in the Canton providing for the establishment of councils of prudhommes (conseils de prud'hommes) on the French model. Eight years earlier, moreover, in 1874, a law had been passed which gave to the justice of the peace, assisted by two arbitration judges designated by the parties, jurisdiction over disputes between employers and workers, and also between masters and servants. This law was modified in 1879, and its provisions were done

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\(^1\)The foregoing figures, and others upon the same points but in greater detail, are contained in Appendix I, Tables XV, XVI, and XVII.
away with by the law of 1882, which substituted permanently elected judges for arbitrators chosen for each special case.

The constitutional law of October 29, 1882, was further amplified by the organization law of October 3, 1883, and on January 1, 1884, the first industrial court began its work, with jurisdiction over all industrial and commercial employments in the entire Canton. In 1888 the constitutional law was revised, and in 1890 further changes were made, the most important of which were the establishment of a mixed court for the final settlement of cases appealed on the ground of lack of jurisdiction, and the extension of jurisdiction over agricultural laborers and domestic servants. Finally, on May 12, 1897, a new law, based upon the old system, but with several improvements, was passed, and it is this law which now governs the institution.

The Geneva system, though similar to that of France so far as the functions of the council of prudhommes as a judicial tribunal are concerned, differs radically from the French system in three respects: First, the occupational jurisdiction of the industrial courts of Geneva has been almost indefinitely extended. Second, the appeal tribunal for cases decided in first resort is constituted from within the court itself and upon the same plan of class representation. Third, the court is also provided with machinery for the settlement of collective disputes, in which function it has been very successful.

The Geneva court, or system of courts, is instituted by the State council for the entire Canton. It is divided into 12 groups, the first 10 of which form one division and the last 2 another. The first division comprises persons engaged in industrial and commercial employments and the second agriculturists and private individuals. The groups in the first division are further divided into subgroups, according to the exact character of the employment. There are, in all, about 90 of these subgroups. In some of them the most diverse occupations are included. The last two groups, which constitute the second division, are upon a geographical basis. The first includes the city and its suburbs and the second the outlying communes. The latter is divided into two districts, the one made up of the communes on the left and the other of the communes on the right bank of the river. Each district has its own council of prudhommes. There is, moreover, a further subdivision into circles of conciliation, the district on the left bank having eight and that on the right bank six such circles. The legal provisions for the election of members and for the court procedure in this last group differ somewhat from those which regulate the first 11 groups.

The council of prudhommes of each group is itself divided into two or more boards of conciliation, a tribunal, a court of appeal, and a committee of surveillance of apprenticeship and of the sanitation
of work places. There is also for the entire system a mixed court, composed of three prudhommes and two judges of the court of justice, and a central committee, which is in general charge of the execution of the law and handles also collective disputes.

The system, though quite complicated, has been very successful, in the settlement of both the individual and the collective disputes. In 1898 the court, in all its different groups, handled 1,645 individual disputes; in 1904, 1,508, and in 1909, 1,795. Moreover, from 1900 to 1907, inclusive, the central committee settled 11 of the 21 collective disputes which occurred in the Canton.

That the system has grown in popularity is shown by the fact that whereas the law of 1882 was passed on referendum by a popular majority of only 839, the majority for the revised law of 1888 was 2,256. In 1907, when the present law was passed, no request was made for a popular vote on the subject, and the law therefore went into force without being submitted to a referendum. "It is not too much to say," declares one writer,1 "that the hopes of the promoters of the councils have been altogether realized. Far from having fostered ill feeling and provoked disputes between employers and employed, they have made industrial relationships more amicable, have removed many misunderstandings and defects in relation thereto, and have promoted the formation of organizations on both sides for the friendly readjustment and regulation of the conditions of labor."

**ELECTIONS.**

The members of the industrial courts are elected by employers and by workers and employees separately, and by groups of occupations. In the whole of the first division, which includes the 10 groups of industrial and commercial employments, and in group 11, which includes agriculturists and private individuals in the city and its immediate suburbs, each group elects 30 prudhommes, 15 employers and 15 workers or employees. The law further provides that the different subgroups or categories which form each of the first 9 groups must, as far as possible, be represented. Members are elected for four years and are immediately eligible to re-election.

The members of group 12, which includes agriculturists and private individuals in the outlying communes and is divided into two districts, are elected by circles. Each of the eight circles in the district on the left bank of the river and each of the six in the district on the right elects as many employer prudhommes and as many workmen prudhommes as it has communes. But in those circles which include only one commune the electors name four instead of two members. As a result, the council of the one district has in all 62 and that of the other 30 members.

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1 Dawson, Social Switzerland, p. 117.
The qualifications necessary for voting and for eligibility to office are the same, but differ slightly for the two divisions of the court, that of persons engaged in industrial and commercial employments and that of agriculturists and private individuals. In both divisions, however, voters and candidates must be residents of the Canton and must enjoy its political rights. The first division includes all native Swiss employers, manufacturers, merchants, workers, and employees engaged in industry or commerce. Directors and managers of companies are considered as employers, and foremen as workers. The second division includes employers, masters, employees, workers, and domestics, who are engaged in agriculture or in the liberal professions, or who are not inscribed on the registration lists of any industrial or commercial group in the first division. No one can belong to more than one group. Women, by an amendment to the law adopted by referendum on February 27, 1910, are entitled to vote for and to hold office as industrial court members.

Two electoral lists are prepared under the supervision of the state council. On one are inscribed the names of employers and on the other the names of workers and employees. These lists are revised within the three months which precede each general election, and are posted up according to the provisions of the election law. For the decision of complaints against them the state council appoints a committee of 48 members, chosen in equal numbers from each of the 12 groups, half from among the employers and half from among the workmen. This committee is presided over by a delegate of the council, who has deliberative voice, and its proceedings are regulated by the election law. Complaints may be brought before it by the regularly constituted syndicalist bodies, trade unions, or employers' associations.

The State council is in general charge of the elections, which take place on the first Saturday of December. It issues the announcement, designates the polling places, and at least 15 days in advance appoints a president and a vice president for the election of the employers and a president and a vice president for the election of the workers. Moreover, it appoints from each of the first 11 groups (the 10 groups of industrial and commercial employments and the first group of the second division, which includes the city and its suburbs) 2 employer and 2 worker delegates, who together form the election boards, the 22 employers constituting the election board for the employers and the 22 workers the election board for the workers. In case of disagreement the president casts the deciding vote. Each board chooses two secretaries from its membership.

In the elections for membership in the first 11 groups the polls open at 5 o'clock in the morning and do not close until 10 o'clock in the evening. The vote is secret and is for a list of candidates. As
soon as the ballot boxes are closed the votes are counted, and the persons who receive a plurality are declared elected. A delegate of the department of the interior assists in order to record the results and receive the official report.

In group 12 elections are by mail. The department of the interior sends to each voter, at least 24 hours before the election, an official envelope and a blank list on which is indicated the number of candidates to be elected. The elector fills out the list and returns it on the first Saturday in December or, at latest, the Sunday following, to the department of the interior. On the following Monday the votes are counted under the direction of the councillor of state in charge of this department, assisted by members of the electoral committee belonging to group 12. The result is recorded by districts and by circles and the official report is signed by the councillor of state and by all the members present. The candidates are declared elected in each circle who have received a plurality of the votes.

Supplementary elections are held for a group if, more than a year before a regular election, the number of employer or worker prud-hommes in that group is diminished, through resignation or death, by more than one-fifth of its regular membership. That is, if more than three employer members or more than three worker members of a group die or resign more than a year before a regular election is to occur their places must be filled by special election. As soon as such need arises in a group its officers must notify the state council and within a month after such notification the special election must be held. At these special elections the polls remain open for only two consecutive hours.

ORGANIZATION, EXPENSES, AND DISCIPLINE.

COMPOSITION OF THE COURT.

The entire court is composed of 13 separate councils, 1 for each of the first 11 groups and 2 (1 in each district) for the twelfth group. It has, in all, over 400 members, 30 in each of the first 11 groups and 92 in group 12—half employers and half workmen. All members take the same oath of office as judges.

Within a week after the election the members of each council meet in a general assembly of the group for the purpose of choosing officers and members of the boards of conciliation, the tribunal, and the chamber of appeals. The chief functions of the general assemblies of a group are, indeed, to receive the reports of its presidents at the expiration of their terms of office, to elect officers, and to fix the special work to be done by each of its members. The president, vice president, secretary, and assistant secretary are elected for one year from among the members of the group, by secret ballot and by a two-thirds majority. If, however, two ballots have been taken without
result, the candidate who has received the absolute majority is declared elected. The president must be alternately an employer and a worker, and the vice president must always belong to the opposite class from that of the president. In the same way the secretary must be alternately an employer and a worker, and the assistant secretary can not belong to the same class as the secretary. Obviously, officers are not immediately eligible to reelection.

All of the first 11 groups are further divided into two boards of conciliation, each composed of an employer and a worker or employee; a tribunal, composed of a president, of 2 employer and of 2 worker prudhommes; a chamber of appeal, composed of a president, a secretary, 3 employer and 3 worker prudhommes; and a committee of surveillance over apprenticeship and over the sanitary conditions of labor. This committee is composed of 4 employers or masters and of 4 workers or employees.

Of the 30 members of a group, therefore, 4 are officers; 4 are members of the conciliation boards; 4, in addition to the president or vice president, are members of the tribunal; 6, in addition to the officers, are members of the chamber of appeal; and 8 are members of the special committee on apprenticeship and sanitation. The remaining 4 members may be called upon as substitutes. Under the law of 1890 there were 3 employers and 3 workmen in the tribunal and 5 of each class in the chamber of appeal. The law specially provides that there shall not serve on the same board of conciliation, tribunal, chamber of appeal, or committee on apprenticeship both an employer and his workmen or both a master and his domestic.

For the entire system there is also a mixed court, a central clerk's office, and a central committee. The mixed court is for the settlement of jurisdiction questions and is composed of two judges of the court of justice and three prudhommes chosen from the chambers of appeal of all the groups.

The central clerk's office serves for all the groups, and the clerk of the court and his assistant are appointed by the state council. The latter also assigns to the clerk's office any other assistants who may be needed. The clerk of the court does not act as secretary, but he receives the complaints, sends out notifications and summonses, and calls together the members for the hearings, not only of the board of conciliation, the tribunal, and the chamber of appeal, but also of the mixed court. He has charge of registers, official reports of hearings, resolutions of the general assembly, and, indeed, of all the documents and archives of the councils of prudhommes. He makes drafts of the judgments and has them served on the parties.

The central committee of the councils of prudhommes is composed of two members, one employer and one worker, from each group. These are chosen from among the members of the special committees
of surveillance, are designated by them, serve for two years, and are immediately eligible to reelection. Each year this committee elects its president, vice president, secretary, and assistant secretary. If the president is an employer, the vice president must be a worker, and vice versa. In the same way, if the secretary is an employer the assistant secretary must be a worker, and vice versa. The committee meets, as a rule, once a month and at least once every three months.

This central committee is the general administrative body of the court, represents it before the state council, receives instructions and communications from the latter, passes them on to the different groups through their presidents, transmits to the state council communications or requests from itself or from the different groups, and makes to that body a yearly report of its work. Its officers transact current business and arrange the programs for sessions. This committee also exercises a general surveillance over the clerk's office and over the groups, and, in general, watches over the enforcement of the law. Its most conspicuous function, however, is the formation of trade agreements and the settlement of collective disputes.

EXPENSES, FEES, AND COSTS.

The expenses of the court, in so far as they are not covered by fees and costs paid by the parties, are borne by the Canton. The chief expenses are for the salaries of the court officers and the fees of the members. The clerk of the court receives 3,600 francs ($694.80) and his assistant from 2,000 to 2,500 francs ($386 to $482.50) per year. They are not entitled, however, to any perquisites. All papers connected with court proceedings enjoy the postal franchise.

The prudhommes receive fees, as compensation for loss of time and for expenses of transportation, for each session of the court at which they assist. The regular fee is 3 francs (57.9 cents) per sitting, but the president and secretary each receive a supplementary fee of 2 francs (38.6 cents) per sitting. The members of the twelfth group, moreover, are entitled to a further compensation to cover traveling expenses for each session of their tribunals, the meetings of which are regularly held in the Palace of Justice at Geneva. For each meeting of the committee of surveillance its members receive 3 francs (57.9 cents). The members of the central committee, moreover, receive for its sittings the regular fees allowed prudhommes for attendance at hearings.

There are no fees whatever connected with the administrative work of the councils of prudhommes or with their functions in collective disputes. In individual disputes, moreover, no fees are collected from the parties until a conciliation agreement is signed or
judgment is pronounced. The expenses of an expert inquiry, how­ever, must be advanced by the party who desires such inquiry. If a judgment by default, moreover, has been pronounced, and the de­feated party wishes to enter a plea in opposition to such judgment, he must advance a sum of from 10 to 25 francs ($1.93 to $4.83) for costs. When judgment is necessary, all fees and costs, including the fees of witnesses and experts, and if documents need to be registered, the costs of such registration, must be paid by the losing party. Expenses are collected in accordance with the provisions of the fed­eral law on proceedings for debt and bankruptcy.

The fees are uniform, depending not primarily on the amount in dispute but on the character of the service and of the settlement. For a copy of an agreement or of a judgment in last resort there is collected a fee of 1 franc (19.3 cents). The same amount is due for the notification of an agreement or judgment in last resort. For a copy of a judgment in first resort or of a judgment of the chamber of appeal the fee is 2 francs (38.6 cents), and the same for the notifi­cation of such a judgment. A fee of 10 francs ($1.93), moreover, is charged for entering an appeal to the federal tribunal. These payments include the cost of copies of all other documents connected with suits. The bailiff, however, who is in charge of serving notifi­cations of judgments, is entitled to a small fee for his services.

DISCIPLINE OF MEMBERS.

For failure to keep their oath of office, members of the councils of prudhommes are, of course, liable to the same penalties as other judges. Like other judges, too, they are obliged not to give any opinion before the close of the discussions in a case, nor to take into consideration any facts which may come to their knowledge outside of the hearing. A fine, moreover, of as much as 20 francs ($3.86) may be imposed on a member who, without legitimate excuse, fails to appear at a hearing to which he has been regularly summoned. Excuses may be presented to the officers of the group, who decide in private and in last resort on their validity.

A member of an industrial court is considered to have forfeited his position, first, if he ceases for a year to exercise his trade; second, if he changes his class, i. e., if an employer becomes a worker or vice versa; third, if he has fallen into bankruptcy or if his insolvency has been established in a legal action; and fourth, if he has left and no longer has his residence in the Canton.

JUDICIAL FUNCTIONS.

JURISDICTION.

The jurisdiction of the councils of prudhommes extends over the entire Canton, is not in any way limited by the amount in dispute, and is in other respects more extensive than that of any other indus-
trial court. Through its jurisdiction, moreover, that of other courts
is entirely excluded.

Only two conditions are necessary for a suit to come before the
prudhommes. First the dispute must be between employers or mas­ters and employees, workers, apprentices, or domestics. Not only
persons engaged in domestic service, but also persons engaged in
agriculture are included. Public employees, however, do not come
under the jurisdiction of this court. A person, moreover, who is in
charge of job work for another and himself employs one or more
workers, is considered as a taskmaster and not as a worker. The
council of prudhommes is also incompetent to decide a dispute be­tween a commercial house and its representative who does not receive
a salary and is not exclusively in its service.

The second condition is that the dispute shall relate to the hiring
of service, the execution of labor or the contract of apprenticeship.
A person who merely commissions an independent workman to do
a certain piece of work does not thereby become an industrial or com­mercial employer. Neither a contract to deliver over a completed
piece of work, therefore, nor a contract which is in the nature of a
commission comes under the jurisdiction of the industrial court. A
contract, moreover, entered into by an employee not to compete with
his employer during a fixed time or not to enter the service of a
similar establishment, comes under the jurisdiction of the ordinary
courts. In the same way an action for the payment of damages for
unemployment resulting from an injury received in the course of
work can not come before a council on the plea that the conditions
of labor under which the injury was received were involved in the
labor contract. The industrial courts are also incompetent to decide
cases in which the grounds of dispute arose after the labor contract
was ended.¹

By far the largest number of disputes brought before the indus­trial arbitration courts of Geneva are demands for wages or other
compensation measured in money. In 1909, out of 1,795 complaints
entered, 1,457 were of this character, 109 were suits on account of
discharge without sufficient notice, 189 were suits on account of
quitting without sufficient notice, 20 were due to the breakage of
apprenticeship contracts, and 20 were connected with the giving of
certificates.² It is interesting to note, moreover, that in 528 cases the
sum reclaimed was only from 5 to 25 francs (96.5 cents to $4.83), in
334 from 26 to 50 francs ($5.02 to $9.65), and in 297 from 61 to 100
francs ($9.84 to $19.30). In 1,159 cases, then, or nearly 65 per cent
of all brought before the courts, the sum demanded was under 100
francs.

¹ Auberson et Schneeberger, Guide à l'Usage des Membres des Conseils de Prud' hommes, pp. 17–20, contains a discussion of the jurisdiction question.
² See Appendix I, Table XX.
GENERAL RULES OF PROCEDURE.¹

There are certain general rules which apply to proceedings before any branch of the prudhommes, the board of conciliation, tribunal, chamber of appeal, or mixed court. The law provides, for example, that a prudhomme is liable to challenge if he has a personal interest in the contest, if he is closely related to one of the parties, if during the preceding year there has been a criminal suit between him and one of the parties or a close relative of one of the parties, if there is pending a civil suit between him and one of the parties or the husband or wife of one of the parties, or if he has previously given an opinion on the subject of the dispute. The challenge is made and decided in the hearing.

Parties summoned before any branch of the councils of prudhommes, moreover, must appear in person on the day and at the hour fixed in the summons. The assistance of a third party is not permitted. If, however, a litigant is unable to appear on account of sickness, absence, or any other cause, he may be represented by a member of his family or by a duly authorized colleague belonging to the same group of occupations. The inability to appear, however, must be proved by a medical certificate, an affidavit from a public officer, or some other similar document. An employer may also be represented by his overseer or by one of his employees. The representative must bring a special power of attorney for the particular case. Married women, in all matters affecting their personal interests, can sue and be sued directly and without the assistance of their husbands. Minors, however, are assisted by their legal representatives or, if it is impossible for the latter to appear, by a special representative appointed by the attorney general. Lawyers, however, are entirely debarred, in their professional capacity, from the industrial courts.

In event of the nonappearance of one of the parties, judgment is usually given by default to his opponent. In special instances, however, if the court considers the complaint to be badly grounded, it may refuse to give a judgment by default. In such cases, and in any other cases in which the court deems such action desirable, it may order a second summons to be issued. The court may, moreover, impose on the party who has failed to appear a fine of not more than 10 francs ($1.93). If both parties fail to appear and have not notified the clerk’s office before noon of the day of the hearing, the case is stricken from the roll and can be reintroduced only on payment of a fine of 10 francs ($1.93) by the complainant.

¹ In Auberson et Schneeberger, Guide à l’Usage des Membres des Conseils de Prud’hommes, Geneva, 1906, the proceedings are fully described and the formulas used are given.
In the first 11 groups all cases must be submitted within two days, and in the twelfth group within eight days after the complaint has been entered, to one of the boards of conciliation. These boards have two functions: First, the conciliation judges must make an effort to bring about an agreement. Second, if this effort is unsuccessful, and if the amount in dispute does not exceed 75 francs ($14.48), the board constitutes itself a tribunal and judges the case. If the amount in dispute, or the difference between two amounts in dispute in a claim and a counterclaim, is not greater than 20 francs ($3.86), the judgment of the board of conciliation is without appeal. If the sum in litigation is more than 20 but less than 75 francs, the board of conciliation may judge the case subject to appeal to the tribunal. In all cases, however, in which the conciliation board is empowered to issue a decision, if it considers that it does not have the necessary information, or if its two members are unable to agree, the dispute may be referred to the regular tribunal.

The parties are summoned to appear by registered letters issued by the clerk's office. In the twelfth group a clerk is appointed by the prudhommes of each circle, whose chief duties are to receive complaints, to issue summonses, and to communicate both, within 24 hours, to the central clerk's office. For this work he is allowed an indemnity of 5 francs (96.5 cents) per sitting. The summons itself informs the parties of certain provisions of the law in regard to procedure. The first of these provisions is that witnesses may be called directly by the parties, but that the latter have the right to have them summoned by the clerk. Second is the provision that, in cases in which a written statement or account is needed, each of the parties, on pain of a fine of from 1 to 5 francs (19.3 to 96.5 cents), must present such a statement or account to the court. Third, the parties are informed in the summons of the penalties connected with nonappearance at the hearing.

There are two boards of conciliation which act in turn, each for a month at a time, in all of the first 11 groups, and in the twelfth the prudhommes in each circle serve in turn, each for six months. The boards are composed of only two members, an employer and a worker or employee prudhomme, who preside alternately, beginning with the oldest. The sessions take place either in the evening or on Saturday afternoon. The hearings of the boards of conciliation of the twelfth group are held in the chief villages in the circle, which are designated for the purpose in the law.

The proceedings of the board of conciliation are private when it is attempting to effect a reconciliation, but are public when it is acting as a court. The members are obliged to use their best efforts to prevent the case from having to be sent to the tribunal, and to this end they endeavor to induce the parties to make any concession.
which does not entail too great a sacrifice. Sometimes, in order to facilitate concessions, each party is heard alone. The parties, however, must always be heard at least once in argument.

If it deems expert testimony necessary for the elucidation of a case or of a point in dispute the board of conciliation is empowered to appoint one or more experts. Furthermore, if one of the parties demands it the board must appoint experts.

When an agreement is reached it is immediately drawn up in writing and read to the parties. It is then signed both by the parties and by the prudhommes conciliators and becomes as binding as a judgment. If one of the parties can not sign his name that fact is mentioned in the written agreement. In the twelfth group, if conciliation is effected, an official report of the agreement must be sent within 24 hours by the clerk of the circle to the central clerk's office.

When an agreement is not reached, if the amount in dispute does not exceed 75 francs ($14.48), the board resolves itself into a judicial tribunal and the clerk of the court calls the case. The parties must then repeat their claims and their defense publicly. Finally the prudhommes proceed to the decision of the case.

The great majority of disputes are settled by the boards of conciliation. In 1909, out of 1,795 complaints entered, only 324, or about 18 per cent, were sent to the tribunal. Of the remainder, 861 were conciliated, 282 were dropped or withdrawn, 150 were settled by judgments by default, and 30 by other judgments, 10 of them in first resort and 20 in last resort. Of the 10 cases judged in first resort only 2 were appealed to the tribunal. In 14 cases the court was held to have no jurisdiction, and for 134, of which 121 required more than one hearing, the final result is not stated. In all 580 hearings were held.¹

There is a tendency, however, for the proportion of cases sent to the tribunal to increase. In 1904 less than 8 per cent of the cases entered failed of settlement in the boards of conciliation. In 1905 this proportion rose to over 11 and in 1906 to over 13 per cent. In 1907 it fell again to about 11 per cent, but in 1908 rose to over 14 and in 1909 to about 18 per cent. There has been, indeed, a falling off in the proportion of cases conciliated and a greater falling off in the proportion of cases settled by judgments of the boards of conciliation. In 1904, of all the cases entered, about 55 per cent and in 1909, of all the cases entered, only about 48 per cent were settled by conciliation. Meanwhile, however, in spite of an increase in the number of complaints entered, not only the proportion but the number of judgments has decreased. In 1904, out of 1,503 cases, 165 were settled by judgments by default, 24 by judgments in first and 39 by judgments in last resort. In 1909, with 1,795 complaints, these numbers fell to 150, 10, and 20, respectively.²

¹ See Appendix I, Tables XVIII and XIX. ² See Appendix I, Table XVIII.
Disputes which can not be settled by the boards of conciliation are sent before the tribunal, which is also a court of appeal for cases judged by the conciliation prudhommes in first resort, i. e., in which the amount in dispute is between 20 and 75 francs ($3.86 and $14.48). It is possible, moreover, for disputes to be brought by the parties directly before the tribunal without previous hearing by a board of conciliation. This method, however, was used in only one instance in 1909.

Each group has its own tribunal, composed of the president or vice president of the council, of two employers, and of two workers or employees. The president and vice president preside alternately, and the minutes are kept alternately by the secretary and the assistant secretary of the group. The secretary, however, does not have deliberative voice. If one of the regular members is unable to be present the clerk of the court summons the substitute who is most competent to act upon the case in question. In the twelfth group, in urgent cases, the clerk may call to sit in a district tribunal, to replace a prudhomme who is unable to appear, a member of the similar group in the city. It may be provided, moreover, in the regulations of any council that in special cases the president or vice president may replace two regular members by two other prudhommes who belong to the trade in question. The regulations, which also relate to the days and hours of the sessions and to the order of service, are posted up in the audience chamber.

When a complaint has been entered the case is set for hearing at the next session of the tribunal, provided there is a day intervening, or two days if the parties reside in the outlying communes of the Canton. Parties may be summoned on even shorter notice in case of need. In group 12 if it is necessary to send a case before the tribunal of the district, the clerk of the circle must notify the central clerk’s office of that fact within 24 hours after the session of the board of conciliation at which the case has been heard. The latter office summons the judges and the parties for the hearing, which must take place within eight days after notification has been received at the central clerk’s office. In all groups the forms are employed which are in use for citations before a civil justice of the peace.

If the parties belong to different groups, they are summoned before the tribunal which is qualified to act upon the special case in litigation.

The hearings are public. In the first 11 groups they take place at 8 o’clock in the evening and in the twelfth group on Saturdays at 9 o’clock in the morning in the Palace of Justice at Geneva.
The president calls the sessions to order and the bailiff calls the cases. In each case, when the president has been informed of the names of the parties present, he asks them if they have witnesses to be heard. If so, the bailiff introduces them into the hall reserved for witnesses. The president then asks the plaintiff to make known his complaint, stating precisely the conditions of his employment, the date of his beginning and the date of his quitting work, and, if necessary, the motives for quitting. The defendant must reply in the same way, with clearness and precision. The president sees that the parties express themselves with moderation and conduct themselves respectfully. He takes care not to allow the debate to wander and represses interruptions, recriminations, and useless allusions. He may cause the arrest and imprisonment for 24 hours of any person who disturbs the order of a hearing. The other judges do not put questions directly either to the parties or to the witnesses, but always through the president.

Each party in the hearing presents his own statement or account, showing the balance which he claims or has offered. Parties may change, reduce, or increase the amount of their demands or introduce new ones, but if one of the parties fails to appear, the tribunal can not decide upon a new demand of which the absent party has no knowledge. In cases the value of which exceeds 2,000 francs ($386) the parties are authorized to present a written memorandum. In any case they may be required to take oath.

If testimony is needed, the parties are free to bring their own witnesses or to have them cited by the clerk. Witnesses who have been officially cited are obliged to appear unless they can produce satisfactory excuse, on penalty of a fine of not more than 30 francs ($5.79). They can be challenged, however, on the usual grounds, and relatives can not be heard except to give information. The law specially provides that witnesses shall not be present when the parties are heard and that they shall give their testimony separately. They give their names, occupations, ages, and residences, state whether they are employers or employees of the parties, and take oath to tell the truth. Each party has the right to put questions to them through the president. A party, however, who interrupts a witness may be condemned to a fine of not more than 25 francs ($4.83). For a second offense the fine may be doubled and the party excluded from the room. In all cases which are susceptible of appeal the secretary draws up an official report of the testimony, and this is read to each witness.

At the close of his deposition the witness is asked to state whether he desires to be compensated. If so, the amount of the compensation is fixed by the president, with a view to the position and occupation of the witness, as well as to the distance from his residence and the time consumed in the inquiry. Usually the fee is from 1.50 to 2
francs (29.0 to 38.6 cents) for the city, from 2 to 2.50 francs (38.6 to 48.3 cents) for the suburbs, and from 3 to 5 francs (57.9 to 96.5 cents) for the rest of the Canton, according to the distance and the expense of transportation.

Experts may be appointed whenever necessary. In 1909 such assistance was summoned in five cases. Either one or three experts are appointed by the tribunal, which defines their duties and authorizes them to summon the parties, to examine evidence, and, if possible, to bring about an agreement. Female experts may be chosen if the occupation in question is almost exclusively followed by women. Experts are subject to challenge on the same grounds as prudhommes, and take oath to perform faithfully the duties assigned them. Their remuneration is fixed by the tribunal, to which they submit a written report of their work.

An official record of the proceedings is kept by the secretary, who does not have deliberative voice. If a case is susceptible of appeal he makes note of all statements of the parties and of the debates, and these notes furnish the documents in the case. Interpreters may be employed when necessary. They take oath and receive a fee for their services.

When the parties and witnesses have been heard and all evidence and arguments have been presented, the president suspends the hearing and the tribunal retires to deliberate as to its decision. These deliberations are secret and must not be revealed even after the judgment has been pronounced. All judgments contain the names of the parties, a summary of the complaint and of the defense, the motives for the decision, and the signatures of the president and of the clerk of the court.

Judgments are pronounced immediately and are subject to appeal only on questions of jurisdiction, or if the value involved in the dispute exceeds 300 francs ($57.90). If opposition is not entered or the case is not appealed within five days after the parties have been notified, the judgment may be executed. Judgments by default become null and void if they are not executed within three months, and other judgments if they are not executed within 10 years. Contests relative to the execution of judgments are sent to the civil tribunal, which decides them without appeal. If the parties have appeared and argued the case, even though they have retired before the judgment is pronounced, the decision is not subject to opposition.

Decisions are based upon both law and custom. If there is no law covering the point in dispute, as is generally the case when the contest relates to wage payments, and if the parties have not entered into any formal agreement, the labor contract is held to be regulated by the customs of the trade. These customs, as will be seen when collective disputes are considered, have been in many trades crystallized.
Most of the cases sent to the tribunal are settled by formal judgments after hearing both parties. In 1909, of the 324 cases handled by the tribunal, 222 were ended in this manner. Judgments by default, however, were rendered in 24 cases, 17 were dropped or withdrawn, and 53 were conciliated in the hearing. In all, 192 sessions were held, and 26 cases required more than one hearing.

The proportion of cases which it is necessary to settle by formal judgment after hearing both parties varies considerably from year to year. In 1904, when less than 8 per cent of the complaints entered were sent to the tribunal, 80 per cent of those sent required formal judgments, and only 8 per cent were conciliated in the hearing; and in 1909, when about 18 per cent of the cases went to the tribunal, only 68 per cent of these required formal judgments and 16 per cent were conciliated in the hearing. The following table gives the percentages for each year from 1904 to 1909, inclusive:

<table>
<thead>
<tr>
<th>Year</th>
<th>Per cent of all complaints entered which were handled in the tribunal</th>
<th>Per cent of cases handled in the tribunal which were settled by judgments after hearing both parties</th>
<th>Per cent of cases handled in the tribunal which were conciliated in the hearing</th>
</tr>
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<tbody>
<tr>
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<tr>
<td>1909</td>
<td>15</td>
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<td>16</td>
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</table>

It is evident that the proportion of cases conciliated in the hearings of the tribunal has risen with the rise in the proportion of cases which have failed of settlement in the boards of conciliation. There appears to be a tendency, however, for the proportion of all cases entered which require formal judgments to increase. In 1904, of all the complaints entered, only 6 per cent, and in 1909 about 12 per cent, were settled by judgment after hearing both parties. In none of the intermediate years, however, did this percentage rise above 10.1

**METHODS OF APPEAL.**

Judgments may be attacked by opposition or appeal. A judgment by default is subject to an opposition complaint within three days after the defeated party has been notified of it by registered letter. Opposition is brought before the same prudhommes who pronounced the judgment. A sum of from 10 to 25 francs ($1.93 to $4.83) for

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1 These and the preceding percentages are based on figures given in Table XVIII, Appendix I. Similar statistics are given by groups in Appendix I, Table XIX.
costs must be advanced by the party at the time that he enters his demand in opposition. The tribunal may also, if it deems such action expedient, impose upon a party all or part of the expenses of the hearing at which he failed to appear. If a party allows a case to go a second time by default, the judgment is not again subject to opposition. In 1909 opposition was made to judgments by default issued by the boards of conciliation in 13 cases and by the tribunal in 7 cases.1

Decisions of the tribunal may be appealed in two classes of cases: First, those involving sums of over 300 francs ($57.90), and, second, those involving questions of jurisdiction or pendency, regardless of the amount in dispute. For the first class of cases there is a special chamber of appeal in each council and for the second a mixed court.

The chambers of appeal are each composed of a president, a secretary, who does not have deliberative voice, three employer prudhommes, and three worker prudhommes. If one of the regular members is obliged to be absent, the clerk summons as a substitute the prudhomme who is considered most competent to understand the particular case. No one, however, can sit as a member of the chamber of appeal who has acted on the case in conciliation proceedings or as a member of the tribunal. If the president of the group presided over the tribunal, the vice president acts as president of the chamber of appeal, and vice versa. In the same way, if the secretary of the group served in the tribunal, the assistant secretary acts in the chamber of appeal, and vice versa.

Appeals must be entered within five days after the notification of the judgment. Hearings of the chamber of appeal are public, and take place in the evening. The proceedings are conducted in the same way as those before the tribunal. Notifications of judgments, moreover, are served in the same way, and decisions become executory five days after such notification.

Few cases, however, are appealed. In 1909 only 14 cases were brought before the chamber of appeal, and the number has not risen above 30 in any one year since 1904. Usually more hearings are required than the number of appeals. In 1909, for example, 17 hearings were held for the 14 cases appealed.2

Another series of cases which may be brought before the chamber of appeal are those in which questions of jurisdiction or of pendency before another court are involved. The tribunal of prudhommes before which a case is brought involving such a dispute first decides the question of its own jurisdiction and, if it declares itself competent, may legally proceed immediately to the decision of the suit itself. All such judgments, however, in so far as they are affected

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1 See Appendix I, Tables XVIII and XIX.
2 See Appendix I, Table XVIII. For the figures for 1909 by groups, see Appendix I, Table XIX.
by these questions, are susceptible of appeal, whatever be the sum in litigation.

In such cases, moreover, a second appeal from the decision of the chamber of appeal itself is allowed on all matters affected by the decision upon the jurisdiction question. This second appeal is brought before a special mixed court, composed of two judges of the court of justice, named by it, and of three prudhommes, chosen by the presidents and vice presidents of all the groups, from the chambers of appeal of the industrial courts. Judgments rendered by the ordinary civil courts, moreover, in cases in which one or other party has maintained that the dispute was under the jurisdiction of or was pending in the council of prudhommes, may also be appealed to this court.

The mixed court is elected in January of each year. Three substitutes are chosen for the two judges and five for the three prudhommes. The members elect from among their own number a president, to serve for one year. He must be alternately a judge and a prudhomme, and has deliberative voice. The clerk of the councils of prudhommes acts as clerk of this court.

Appeals to the mixed court must be made within 48 hours after the notice of the judgment of the chamber of appeals has been served. Upon the filing of such an appeal the clerk convokes the court, and the dispute is submitted to it within three days. The parties are summoned by registered letter. The procedure is the same as before the tribunal, but judgments are final and without appeal, except to the federal tribunal. A party who, without serious reason, has appealed a case to the mixed court, may be condemned to a fine of not more than 100 francs ($19.30).

The mixed court, however, is little used. From 1904 to 1909, inclusive, it acted upon only nine cases, not more than two in any one year.1

**ADMINISTRATIVE FUNCTIONS.**

The chief administrative function of the councils of prudhommes of Geneva is the supervision of apprenticeship, and of the sanitation of workshops and factories. For this purpose, as has already been seen, each group appoints a committee of eight, which serves for two years, and meets at least once every three months. Four of the members are employers or masters, and four employees or workers. Moreover, if the number of apprentices in any one group is too large for the committee on apprenticeship to supervise effectively, the central committee may add to it other persons of Swiss nationality. These additional members act with the others, attend the meetings, and receive the same fees for such attendance.

The duties of this committee of surveillance are to watch over the strict execution of apprenticeship contracts and the professional

1 See Appendix I, Table XVIII.
instruction of apprentices, and over the sanitary condition of working places and of raw materials. It sees that apprentices are taught, gradually and completely, the trade to which they are apprenticed. At the same time it sees that they are not employed in work which is unhealthful or beyond their strength. In the execution of its duties it may make inspections and investigations. It immediately informs the central committee of any abuses, bad treatment, or other serious evils which may be discovered. The latter examines the matter and, if necessary, informs the department competent to deal with the case. If the intervention of the committee is not effective in bringing about a change which it has proposed, moreover, it may bring the affair before the tribunal of prudhommes to be decided.

This committee, in connection with the department of commerce and industry, is in charge of the annual apprenticeship examinations. The committee of surveillance of each group recommends to the central committee of the prudhommes a list of members to constitute the juries of examination for their trades, and this recommendation is transmitted by the central committee, with any changes it may deem desirable, to the department of commerce and industry, which makes the appointments. The committee of surveillance is also authorized to enter into other arrangements with the department of commerce and industry in order to organize the supervision of apprenticeship and to enforce the apprenticeship law. The delegate of that department who is in charge of such matters may be present at all meetings of the central committee except those for the settlement of collective disputes, but does not have deliberative voice.

The functions of this committee in regard to health matters are exercised under the provisions of the federal law on work in factories. Another function of the councils of prudhommes of Geneva which is important, though not continuously exercised like the supervision of apprenticeship and of sanitary matters, is the deliberation on questions which affect industry or commerce. For this purpose the councils of prudhommes, on the demand of the State council or of the majority of the presidents and vice presidents of all the groups, meet in general assembly, presided over by the oldest president of a group. The central committee is in charge of organizing these assemblies and of communicating to them the matters to be discussed.

The central committee, moreover, on the demand of the State council, on its own initiative or on the demand of one or more groups of prudhommes, appoints special committees composed of members of the different groups or even of outsiders, for the study of industrial or commercial questions. It is further intrusted with the general execution of the article of the law which provides that each group

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1 The legal provisions relating to this function are contained in the Law on the Work of Minors, of Nov. 25, 1899, and the Regulations on the Examination of Apprentices of Jan. 28, 1908.
shall make a collection of documents showing the local usages in all of the different occupations of which it is composed. The selected information furnished by the groups is gathered together by the central committee, which may take as coadjutors in this work members of the mixed court. This information furnishes the basis for the decisions of the councils of prudhommes.

The industrial courts also take part in the formation of the chambre de travail. Each group, indeed, appoints a workman delegate, who serves for four years as a member of that body.

COLLECTIVE DISPUTES.

One of the most important and interesting functions of the councils of prudhommes of Geneva is the execution of the law which provides for the formation of trade agreements and the settlement of collective disputes. The first law of this kind was passed on February 10, 1900, and the first dispute handled was that of the blacksmiths, which was settled in January, 1901. The law was revised and some slight changes were made in 1904, but the system, in all its essential characteristics, has been in operation for over 10 years.

The law is designed primarily to facilitate the formation of binding wage scales, but one article specifically states that its provisions are applicable to any complaint or conflict between employers and workers of a nature to cause a general or partial suspension of work. Under its provisions trade agreements may be formed voluntarily by regularly chosen delegates of the employers and workmen. They may be brought about through efforts at conciliation between these delegates made by the state council, or they may be the result of arbitration through the central committee of the prudhommes.

The power of appointing delegates to form trade agreements rests either with associations of employers and of workers, or, if there are no such associations, with the employers and workers of the trade in question who have been regularly established in the Canton for more than three months and who reply to a call issued for each particular case by the state council. For associations to be capable of acting in the matter they must be regularly inscribed on the register of commerce and their statutes must have been approved by the State council. In order to be inscribed on the register of commerce they must have sent to the registration bureau a copy of their statutes, signed by all the members of their committee and containing the name and object of the society, the date of the statutes, the conditions of admission and exclusion of members, the formation of the committee, the form of the society's publications, the method of representation, and the provisions relating to the property of the society and to the liability of its members. Four conditions are necessary to the approval of the statutes—first, that they shall not contain anything contrary to law and especially to the freedom of labor; second, that all persons
employed in the trade shall be eligible to membership except for general conditions of admission and of exclusion, which shall not be arbitrary in their character; third, that the committee shall be elected by the majority of the members present in general assembly; and fourth, that the statutes shall be capable of revision on demand of the majority of members.

The method by which delegates are chosen is carefully regulated in the law. When there are associations of employers and of workers they call together their members by means of placards posted up at least three days before the meeting is to be held. The expenses of these placards are borne by the State, and they must be submitted, before being printed, to the department of commerce and industry in order that the latter may see that they conform to the law. The department also decides upon the number of placards to be posted. If there is more than one association of the same class qualified to appoint delegates, each has the right to a number of representatives proportionate to its membership. The department of commerce and industry decides upon the apportionment of representation and also upon the general right of associations to appoint delegates.

When there is no association, or an association only of one class, the council of state, on the written demand of a fifth of the electors of the occupation and class, or, in urgent cases, on its own initiative, calls the meeting. First, however, it is authorized to issue placards or insert notices in the newspapers asking the employers and workers of the trade to register at the department of commerce and industry. In registering each elector must give his name, residence, nationality, date of birth, date of regular establishment at Geneva, and occupation, together with the time during which at any period he has worked at that occupation in the Canton. Persons are not registered who have not been regularly established in Geneva for at least three months. The date of establishment and the time of work at the occupation in the Canton are proved by documents, such as permits, certificates, or testimonials. The employers and workers so registered receive a card which gives them a right to take part in the meeting at which the delegates are chosen.

Registration, however, may be dispensed with if the number of persons engaged in the occupation is small and if other circumstances allow of exercising sufficient control over the qualifications of electors at the entrance of the place where the meeting is to be held. Even if the electors are registered, this entrance is guarded by persons appointed for that purpose by the department of commerce and industry, and if a person is admitted who is not entitled to be present he may be ordered out by the president.

The department of commerce and industry appoints in advance a president and a vice president for the assembly. The president, also in advance, chooses a secretary. Two tellers are elected by the
meeting itself to count the ballots. A representative of the state council assists in order to see that the law, the regulations, and the decrees relating to such proceedings are strictly enforced. His decisions in regard to the execution of the law are mandatory. When the number of persons concerned is less than 10, or when more, if they ask it, the meeting for the selection of representatives may be presided over by a State official.

Seven delegates are elected by secret ballot from each side, unless there is an agreement for a smaller number. In any case the same number is chosen from each class. If there are six or seven delegates, three substitutes are also elected. If there are three or four delegates, the number of substitutes is two, and if only one or two there is only one substitute. The delegates and substitutes must have worked at the trade in question for at least 12 months, in one or more periods, in the Canton of Geneva. Ordinarily, a majority from each side must be citizens of Switzerland. If, however, the number of citizens qualified to represent the trade or occupation is insufficient, more than half, or even, if necessary, all of the delegates may be foreigners.

Representatives are chosen by plurality vote. If one candidate drops out, either because he refuses to serve or is not eligible, a new ballot is taken, and this process is repeated until the requisite number is attained. In case of a tie the oldest is declared elected.

An official report is drawn up at the close of the meeting, and this must be read to and approved by the assembly. It is then signed by the president, the vice president, and the secretary, and is sent, the day after the meeting, together with the ballots in a sealed envelope, to the department of commerce and industry. Every private person called upon to assist in the preliminary work of organizing assemblies summoned by the department is entitled to an indemnity of 3 francs (57.9 cents) per day. State officials and employees receive this sum only if their assistance is demanded outside of their regular hours of work.

The department of commerce and industry informs the delegates of each side, by registered letter, of the names of the representatives chosen on the other side. The mandate of delegates and substitutes does not expire until the dispute is settled.

As soon as possible after the delegates are elected they must meet at some neutral place for business. They are summoned by one of their own members, and elect a president and a secretary by a plurality of the votes cast. Their decisions, however, can be reached only by a three-fourths majority. Decisions are recorded in an official report, of which four copies are made and signed by the representatives who accept them. One copy remains in the hands of the delegates of the employers and one in the hands of the delegates of the workers. The third is deposited in the office of the clerk of the prudhommes, and the fourth in that of the department of commerce and industry. Both of these latter may be consulted by the persons interested.
If an agreement can not be reached by a three-fourths majority, an official report, which states that fact and gives the names and residences of the representatives, the conditions of their election, and the subject of the dispute, is immediately sent to the state council with a request for an effort at conciliation. The latter body then empowers one or more of its members to act in the case. The member or members so delegated, assisted by a secretary appointed by the department and not himself concerned in the dispute, call together, as soon as possible, the representatives of the employers and of the workers and seek to obtain the requisite majority for a decision. If these efforts are successful, four copies of the agreement are made, and these are distributed just as if it had been drawn up at the first meeting of the delegates. On the other hand, if these efforts are unsuccessful, an official report of that fact is drawn up and sent immediately to the central committee of the prudhommes.

Moreover, whenever a collective dispute arises in a group of occupations, the state council is empowered by the law immediately to attempt conciliation and to invite the persons interested to name delegates in the manner already described. If one of the parties, however, under any of the preceding circumstances, refuses to choose representatives, or if a difficulty arises in regard to such choice or the division of delegates among similar associations, the delegates of the state council have no further power, but can only report the fact to the central committee of the prudhommes.

Within six days after the receipt of a report to the effect that the State council has been unable to conciliate the parties to a collective dispute, the central committee must meet and summon in its turn the representatives to act with its members as an arbitration board. If one of the parties still refuses to choose delegates, or if the difficulty over their choice has not been settled, the central committee officially appoints such representatives. The members of the central committee, the delegates, and their substitutes are all summoned by registered letter signed by the president of the committee.

The president of the central committee presides over the hearings and the secretary keeps the minutes. If one or more of the members of that committee belong to the trade in which the dispute is to be decided, the other members take as coadjutors the necessary number of prudhommes chosen from the same group and class. Each arbitrator is entitled to the same fee as for attendance on a hearing of the tribunal, and is liable, in case of unjustifiable absence, to a fine of 50 francs ($9.65). A member who is unable to appear on account of serious illness, an infirmity, or any other important cause, must immediately notify the president of the committee. The arbitration hearings are public.
The decision is reached by secret vote and must have a majority, not a mere plurality of the votes. The arbitrators, however, can not decree that a wage scale shall be put into effect in an occupation where none has previously existed until at least six months after their decision, unless the parties accept by common agreement a shorter delay. As in the case of agreements reached by other methods, four copies of collective contracts concluded by the central committee of the prudhommes are made. One of these remains in the hands of that committee and the other three are sent, within three days after the meeting, one to the representative of the employers, one to the representative of the workers, and one to the department of commerce and industry. Each copy is signed by the officers of the central committee and by the delegates of the employers and workers who accept its terms.

Trade agreements reached in any one of these three ways remain in force for the length of time stipulated, but this can not exceed five years. They expire at the end of a civil year unless some other period is fixed by common agreement, and are renewed tacitly from year to year unless, at least one year before their expiration, they have been denounced by one or the other side. By mutual agreement, however, between the delegates of the employers and of the workers, the duration of the wage rates agreed upon and of the period within which complaint may be entered against them can be less than one year. It is common, for example, to agree that such complaints must be made three or six months before the expiration of a contract. The old rate is in force until a new one is adopted. If, however, there is occasion to demand a change in a rate of wages in force on account of the introduction of a new method of production, the procedure must be the same as for the drawing up of a complete wage scale.

As has been seen, the law specifically provides that, in default of special contracts, labor conditions shall be regulated by custom, and that agreements entered into under its provisions shall have the force of custom. These agreements, therefore, serve as a basis for the decisions of the prudhommes in individual disputes.

No general suspension of work can be decreed, either by the employers or the workers, for the purpose of modifying a wage rate in force or of violating an agreement reached upon other conditions of labor. The law further provides that no public appeal can be made for a partial or general suspension of work before an effort has been made under its provisions to settle the dispute, during the progress of such proceedings, or after an agreement has been reached as a result of conciliation or arbitration. Penalties are invoked for a violation of this provision. The editor and the printer of such an appeal are subject to the same penalties as the parties by whom it is issued. No penalty, however, is provided for simple nonacceptance of the arbitration award, either by the representatives or the parties.
Under this law, between 1900 and 1910, some 28 trade agreements regulating not only wages but hours and other labor conditions, were recorded. These agreements were formed by potters, electric-railway employees, glaziers, tinners, masons, dyers, blacksmiths, upholsterers, brass founders, cabinetmakers, confectioners, bakers, hairdressers, tailors, chain makers, plasterers, carpenters, joiners, and others. In three or four cases second contracts were entered into to replace earlier agreements which had expired.\textsuperscript{1}

Out of 23 collective disputes which occurred in Geneva from 1900 to 1907, inclusive, 2 were settled by voluntary agreement, 10 by conciliation, and 11 by arbitration through the central committee of the prudhommes. Of these the largest and most important was that of the masons, excavators, and cement workers in 1903, in which 60 employers were involved and 1,500 workmen went on strike for some 10 days. This was finally settled by arbitration. All but 5 of these 23 disputes, however, were settled without any cessation of work, and all but 6 lasted less than a month. Two other collective disputes were settled by the central committee of the prudhommes in 1908 and three in 1909.

The agreement established by the arbitration committee for the upholsterers' trade on January 13, 1909, may be taken as an example. This agreement has 12 articles which relate to wages, apprenticeship, hours, overtime, insurance contributions, traveling expenses, tools, the period of notice of discharge or of leaving, and defective work. In case of disputes over the last question the parties agree to abide by the decisions of a mixed committee named in equal numbers by the associations of employers and of workers. This agreement went into effect on February 1, 1909, to hold until December 31, 1913. It was provided that it should be renewed from year to year by tacit agreement unless specifically repudiated six months in advance. It is signed by seven employers, seven workers, and the four officers of the central committee of the prudhommes.

This method of settling collective disputes, though it has met with considerable opposition from both employers and workmen, has increased in popularity as both sides have recognized its efficiency and fairness. It is said that the benefits of the law have become plainly evident and that there is now a tendency for associations, both of employers and of workers, to ask spontaneously and with confidence for the mediation of public officials rather than to endeavor to avoid the application of the law. It is observable, moreover, that within recent years the tendency has been for disputes to go finally to the central committee of the prudhommes for settlement.

\textsuperscript{1} Tarifs des Salaires et Usages des Professions établis en conformité de la loi fixant le mode d'établissement des tarifs d'usage entre ouvriers et patrons et régulant les conflits collectifs pouvant naître entre eux, du 10 février 1900, revisée le 26 mars 1904.
### APPENDIX I.

**Table I—Statistics of the Work of the Councils**

[From Compte général de l'administration de la justice]

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civile et commerciale pendent l'année, 1906, pp. 136-139.]

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OF PRUDHOMMES OF FRANCE IN 1906, BY CITIES—Concluded.

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<tr>
<td>8,495</td>
<td>133</td>
<td>13,679</td>
<td>7,019</td>
<td>2,041</td>
<td>3,506</td>
<td>533</td>
</tr>
</tbody>
</table>
BULLETIN OF THE BUREAU OF LABOR,

tin
fig

STICS OF THE WORK OF THE COUNCILS OF PRUDHOMM1
FRANCE, 1830 TO 1906.
o 1903 are taken from Compterendu des f6 tes du centenaire de laprud’homir
The figures for 1904, 1905, and 1906 are from the yearly reports given in 1
avail of 1908 and 1910. While there are some apparent discrepancies in the
in the original reports.]
Cases brought before board
of conciliation.

Yi

1830.
1831.
1832.
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1892.
1893.
1894.

ia

Cases
with­
drawn
before
Settled
final
con­ action.*
Total. by con­ Not
ciliation. ciliated.

Cases settled by board of
judgment.
Total.

Terminated by
decision in—
First
resort.

Last
resort.

11,613 11,056
457
215
342
106
236
9,314
9,581
267
116
161
59
102
11,486 11,113
373
99
274
84
190
14,626 14,097
559
77
452
185
267
13,246 12,750
503
36
460
220
240
14,456 14,052
404
1
403
165
238
19,254 15,729
525
525
213
312
12,961 11,480 1,481
176
395
175
220
15,421 14,069 1,352
932
420
138
282
16,149 14,659 1,490 1,084
406
143
263
15,578 13,664
791 1,446
468
171
297
11,635 9,064
542 2,267
304
74
230
18,571 14,851
1,082 3,152
578
171
297
16,823 11,804 1,764 4,590
429
219
210
18,876 13,040 1,837
5,347
489
136
353
21,155 15,779 1,947
4,848
528
183
345
21,251 16,140 1,762 4,586
525
214
311
19,721 15,222 1,420 3,970
529
203
320
18,241 16,659
1,582
945
637
227
410
21,465 19,009 2,207
4,735
721
249
472
28,429 20,586 2,831
6,802
1,041
274
767
33,059 24,031
4,279 7,512 1,516
391 1,125
40,258 28,458
5,176 10,118
497 1,185
44,236 30,969 5,736 11,413 1,642
1,854
507 1,347
42,499 29,721
5,644 12,935
1,843
348
1,495
43,426 28,099 6,358 13,186 2,141
358 1,783
49,057 31,910 7,216 14,896 2,251
397
1,854
49,137 29,431
8,793 17,114 2,592
576 2,076
43,389 26,013 7,622 14,498 2,878
514
2,364
43,089 25,863
7,535 14,494 2,732
515 2,217
42,166 24,667 7,164 14,857 2,642
483 2,159
44,470 25,611
8,214 15,426 3,133
558 2,575
43,325 25,970 8,445 14,258 3,097
622 2,475
42,293 25,383 7,217 13,962 2,916
656
2,260
43,662 25,461
7,525 15,027
786 2,388
42,978 24,092 8,259 17,761 3,174
663
3,225
2,562
44,320 25,577 8,404 15,445 3,298
657 2,641
44,817 26,203 8,500 14,964 3,650
687 2,768
45,001 26,365 8,852 14,838 3,798
669 3,129
43,807 25,793
8,813 14,193 3,821
854 2,967
30,249 17,828 6,155 9,489 2,932
737 2,195
22,629 14,305
4,190 6,793
324 1,207
1,531.
30,789 18,477 6,050 9,870 2,442
688
1,754
29,219 17,391
6,445 10,099 2,429
566 1,863
31,244 18,319 6,450 11,672 2,353
500 1,853
33,907 19,771
7,204 1 1 ,6 8 6
665 1,885
34,774 19,607 6,925 12,533 2,550
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2,093
35,046 18,415
7,419 13,904 2,727
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35,860 18,334
7,210 14,740 2,786
494 2,292
35,448 19,029
7,449 13,269 3,150
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2,150
39,560 20,784 10,083 14,938 3,838
720 3,118
42,529 19,849 12,823 18,131
4,549
943
3,606
44,021 20,439 11,698 18,359 5,223
1,064 4,159
42,478 18,591 14,545 18,481
1,142 4,266
5,406
41,316 16,497 16,396 19,218 5,601
1,108 4,493
39,878 16,254 15,470 18,066 5,558
1,046 4,512
41,899 16,409 16,469 19,519 5,971
1,052 4,919
41,738 17,659 15,656 18,126 5,953
981 4,972
41,031 16,795 16,219 18,942 5,294
830 4,464
42,906 18,543 16,178 18,757 5,606
794 4,812
45,005 19,182 14,240 14,903 5,862
987 4,875
49,837 19,966 19,914 22,985
6 ,8 8 6
1,409
5,477
50,646 2 1,10 1 19,057 2 2 ,8 6 6
1,143
6,679
5,536
52,729 22,149 19,843 24,551
6,029
1,255
5,774
43,946 20,677 19,027 17,237 6,032
1,255
5,777
ies cases withdrawn before action by the board of conciliation and cases
, but withdrawn before a decision was given by that board.

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Federal Reserve Bank of St. Louis

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100
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285,
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293
332
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364
447
464
I to


### Table II—Statistics of the Work of the Councils of Prudhommes of France, 1830 to 1906—Concluded.

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of councils</th>
<th>Cases brought before board of conciliation</th>
<th>Cases settled by board of judgment</th>
<th>Appeals taken</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>Settled by conciliation</td>
<td>Not conciliated</td>
</tr>
<tr>
<td>1885</td>
<td>154</td>
<td>51,460</td>
<td>21,889</td>
<td>20,172</td>
</tr>
<tr>
<td>1896</td>
<td>157</td>
<td>51,683</td>
<td>21,317</td>
<td>19,117</td>
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<tr>
<td>1897</td>
<td>157</td>
<td>51,326</td>
<td>21,104</td>
<td>18,392</td>
</tr>
<tr>
<td>1898</td>
<td>159</td>
<td>50,823</td>
<td>22,180</td>
<td>17,637</td>
</tr>
<tr>
<td>1900</td>
<td>100</td>
<td>50,803</td>
<td>21,345</td>
<td>19,236</td>
</tr>
<tr>
<td>1901</td>
<td>153</td>
<td>45,327</td>
<td>19,255</td>
<td>16,214</td>
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<tr>
<td>1902</td>
<td>154</td>
<td>50,212</td>
<td>21,456</td>
<td>14,823</td>
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<td>1903</td>
<td>157</td>
<td>43,832</td>
<td>18,591</td>
<td>15,118</td>
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<tr>
<td>1904</td>
<td>154</td>
<td>44,983</td>
<td>19,019</td>
<td>16,994</td>
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<tr>
<td>1905</td>
<td>155</td>
<td>43,599</td>
<td>17,731</td>
<td>15,678</td>
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<tr>
<td>1906</td>
<td>104</td>
<td>45,884</td>
<td>19,894</td>
<td>17,221</td>
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</tbody>
</table>

1 This column includes cases withdrawn before action by the board of conciliation and cases referred to the board of judgment, but withdrawn before a decision was given by that board.
<table>
<thead>
<tr>
<th>Causes of disputes</th>
<th>Number of cases</th>
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<tr>
<td></td>
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<tr>
<td>Apprenticeship</td>
<td>678</td>
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<tr>
<td>Discharges</td>
<td>10,369</td>
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<td>Wages</td>
<td>26,124</td>
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<tr>
<td>Bad work</td>
<td>2,476</td>
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<tr>
<td>Indemnity for unemployment and loss of time</td>
<td>866</td>
</tr>
<tr>
<td>Hiring and execution of agreements</td>
<td>733</td>
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<tr>
<td>Questions of incompetence</td>
<td>521</td>
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<tr>
<td>Traveling and removal expenses</td>
<td>436</td>
</tr>
<tr>
<td>Employment books and certificates</td>
<td>445</td>
</tr>
<tr>
<td>Valuation of work</td>
<td>288</td>
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<tr>
<td>Desertion or absence from the workshop</td>
<td>286</td>
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<tr>
<td>Improper discharge</td>
<td>208</td>
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<tr>
<td>Demands for and retention of tools</td>
<td>186</td>
</tr>
<tr>
<td>Retention of wages for insurance funds</td>
<td>190</td>
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<td>Fines</td>
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<td>Account books of weaving</td>
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<tr>
<td>Other causes</td>
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<tr>
<td>Total</td>
<td>44,983</td>
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TABLE IV.—DISPUTES BEFORE THE BOARD OF CONCILIATION AND THE BOARD OF JUDGMENT, COUNCIL OF PRUD'OMMES, PARIS, DURING THE YEARS 1907, 1908, AND 1909, BY INDUSTRY GROUPS.

<table>
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<th>Condition of cases and industry groups</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
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<td>Cases remaining to be acted upon Jan. 1:</td>
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</tr>
<tr>
<td>Building trades</td>
<td>18</td>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td>Chemical products</td>
<td>44</td>
<td>56</td>
<td>11</td>
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<tr>
<td>Textile industries</td>
<td>20</td>
<td>23</td>
<td>40</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>80</td>
<td>94</td>
<td>16</td>
</tr>
<tr>
<td>Commerce</td>
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</tr>
<tr>
<td>Total</td>
<td>121</td>
<td>131</td>
<td>50</td>
</tr>
<tr>
<td>Cases brought during the year:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>5,670</td>
<td>4,727</td>
<td>4,819</td>
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<tr>
<td>Chemical products</td>
<td>4,397</td>
<td>3,764</td>
<td>3,411</td>
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<tr>
<td>Textile industries</td>
<td>3,726</td>
<td>3,546</td>
<td>4,971</td>
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<tr>
<td>Metals and various industries</td>
<td>4,138</td>
<td>3,633</td>
<td>6,825</td>
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<tr>
<td>Commerce</td>
<td></td>
<td></td>
<td>4,636</td>
</tr>
<tr>
<td>Total</td>
<td>17,929</td>
<td>15,970</td>
<td>24,662</td>
</tr>
<tr>
<td>Cases settled by conciliation:</td>
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</tr>
<tr>
<td>Building trades</td>
<td>949</td>
<td>782</td>
<td>796</td>
</tr>
<tr>
<td>Chemical products</td>
<td>1,385</td>
<td>1,259</td>
<td>983</td>
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<tr>
<td>Textile industries</td>
<td>1,062</td>
<td>1,085</td>
<td>1,643</td>
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<tr>
<td>Metals and various industries</td>
<td>1,164</td>
<td>973</td>
<td>1,780</td>
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<tr>
<td>Commerce</td>
<td></td>
<td></td>
<td>1,471</td>
</tr>
<tr>
<td>Total</td>
<td>4,560</td>
<td>4,067</td>
<td>6,689</td>
</tr>
<tr>
<td>Cases withdrawn by the parties before the board acted:</td>
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<tr>
<td>Building trades</td>
<td>1,407</td>
<td>1,127</td>
<td>1,222</td>
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<tr>
<td>Chemical products</td>
<td>1,296</td>
<td>1,426</td>
<td>1,382</td>
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<tr>
<td>Textile industries</td>
<td>1,000</td>
<td>817</td>
<td>1,039</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>977</td>
<td>769</td>
<td>1,400</td>
</tr>
<tr>
<td>Commerce</td>
<td></td>
<td></td>
<td>847</td>
</tr>
<tr>
<td>Total</td>
<td>4,860</td>
<td>4,209</td>
<td>5,890</td>
</tr>
<tr>
<td>Cases not conciliated and referred to the board of judgment:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>2,920</td>
<td>1,948</td>
<td>1,923</td>
</tr>
<tr>
<td>Chemical products</td>
<td>1,658</td>
<td>1,008</td>
<td>990</td>
</tr>
<tr>
<td>Textile industries</td>
<td>1,442</td>
<td>1,786</td>
<td>2,065</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>1,474</td>
<td>1,331</td>
<td>2,034</td>
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<tr>
<td>Commerce</td>
<td></td>
<td></td>
<td>2,089</td>
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<tr>
<td>Total</td>
<td>7,343</td>
<td>6,088</td>
<td>9,667</td>
</tr>
<tr>
<td>Cases not conciliated and not referred to the board of judgment:</td>
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<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>592</td>
<td>905</td>
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<tr>
<td>Chemical products</td>
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<td>54</td>
</tr>
<tr>
<td>Textile industries</td>
<td>212</td>
<td>173</td>
<td>267</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>629</td>
<td>578</td>
<td>1,025</td>
</tr>
<tr>
<td>Commerce</td>
<td></td>
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</tr>
<tr>
<td>Total</td>
<td>1,986</td>
<td>1,677</td>
<td>2,344</td>
</tr>
<tr>
<td>Cases remaining to be acted upon Dec. 31:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>48</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Chemical products</td>
<td>56</td>
<td>11</td>
<td>33</td>
</tr>
<tr>
<td>Textile industries</td>
<td>29</td>
<td>10</td>
<td>51</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>34</td>
<td>16</td>
<td>32</td>
</tr>
<tr>
<td>Commerce</td>
<td></td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>161</td>
<td>80</td>
<td>152</td>
</tr>
<tr>
<td>Cases not conciliated because of the nonappearance of the defendants:</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>1,496</td>
<td>1,308</td>
<td>2,241</td>
</tr>
</tbody>
</table>

1 In other industries cases of this kind are included in the two classes of cases not conciliated shown above.
TABLE IV.—DISPUTES BEFORE THE BOARD OF CONCILIATION AND THE BOARD OF JUDGMENT, COUNCIL OF PRUDHOMMES, PARIS, DURING THE YEARS 1907, 1908, AND 1909, BY INDUSTRY GROUPS—Concluded.

<table>
<thead>
<tr>
<th>Condition of cases and industry groups.</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases remaining to be decided Jan. 1:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>102</td>
<td>141</td>
<td>32</td>
</tr>
<tr>
<td>Chemical products</td>
<td>16</td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>Textile industries</td>
<td>8</td>
<td>29</td>
<td>16</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>127</td>
<td>187</td>
<td>73</td>
</tr>
<tr>
<td>Cases brought during the year:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>2,802</td>
<td>1,948</td>
<td>1,928</td>
</tr>
<tr>
<td>Chemical products</td>
<td>1,538</td>
<td>1,003</td>
<td>990</td>
</tr>
<tr>
<td>Textile industries</td>
<td>1,454</td>
<td>1,757</td>
<td>2,095</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>1,470</td>
<td>1,331</td>
<td>2,633</td>
</tr>
<tr>
<td>Commerce</td>
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<tr>
<td>Total</td>
<td>7,334</td>
<td>6,039</td>
<td>9,666</td>
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<td>Cases withdrawn before decision:</td>
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<td></td>
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<td>Building trades</td>
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<td>1,213</td>
<td>727</td>
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<td>Chemical products</td>
<td>924</td>
<td>446</td>
<td>428</td>
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<td>Textile industries</td>
<td>740</td>
<td>944</td>
<td>1,122</td>
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<tr>
<td>Metals and various industries</td>
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<td>503</td>
<td>1,382</td>
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<tr>
<td>Commerce</td>
<td></td>
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<td>215</td>
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<tr>
<td>Total</td>
<td>3,378</td>
<td>3,108</td>
<td>4,631</td>
</tr>
<tr>
<td>Cases decided in last resort:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>1,494</td>
<td>583</td>
<td>1,086</td>
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<td>337</td>
<td>305</td>
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<td>Textile industries</td>
<td>582</td>
<td>657</td>
<td>744</td>
</tr>
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<td>Metals and various industries</td>
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<td>322</td>
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<tr>
<td>Commerce</td>
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<td></td>
<td>707</td>
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<tr>
<td>Total</td>
<td>3,200</td>
<td>2,332</td>
<td>3,167</td>
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<tr>
<td>Cases in which judgment susceptible of appeal was rendered:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>162</td>
<td>261</td>
<td>112</td>
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<td>Chemical products</td>
<td>243</td>
<td>161</td>
<td>203</td>
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<td>Textile industries</td>
<td>91</td>
<td>139</td>
<td>116</td>
</tr>
<tr>
<td>Metals and various industries</td>
<td>200</td>
<td>233</td>
<td>833</td>
</tr>
<tr>
<td>Commerce</td>
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<td></td>
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<td>Total</td>
<td>696</td>
<td>703</td>
<td>1,711</td>
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<tr>
<td>Cases remaining to be decided Dec. 31:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Building trades</td>
<td>141</td>
<td>32</td>
<td>35</td>
</tr>
<tr>
<td>Chemical products</td>
<td>17</td>
<td>24</td>
<td>21</td>
</tr>
<tr>
<td>Textile industries</td>
<td>29</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td>Metals and various industries</td>
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<tr>
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<tr>
<td>Total</td>
<td>187</td>
<td>73</td>
<td>230</td>
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<tr>
<td>Cases in which judgment susceptible of appeal as a result of the introduction of counter suits was rendered:</td>
<td></td>
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<tr>
<td>Metals and various industries</td>
<td></td>
<td></td>
<td>139</td>
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* For other industries cases of this kind are included in other classifications.
## Table V.—Causes of Disputes Brought Before the Council of Prudhommes of Paris in 1909, by Industry Groups.

<table>
<thead>
<tr>
<th>Causes of disputes</th>
<th>Building trades</th>
<th>Chemical products</th>
<th>Textile industries</th>
<th>Metals and various industries</th>
<th>Commerce</th>
</tr>
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<tbody>
<tr>
<td>Apprenticeship</td>
<td>13</td>
<td>13</td>
<td>37</td>
<td>132</td>
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<tr>
<td>Discharges</td>
<td>179</td>
<td>1,545</td>
<td>2,307</td>
<td>4,223</td>
<td>1,819</td>
</tr>
<tr>
<td>Wages</td>
<td>3,903</td>
<td>1,420</td>
<td>1,554</td>
<td>1,637</td>
<td>1,037</td>
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<tr>
<td>Discharge or absence from the workshop</td>
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<td>1</td>
<td>60</td>
<td>50</td>
<td></td>
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<tr>
<td>Repayment for advances made</td>
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<td>1</td>
<td>4</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Indemnity for laundry</td>
<td>187</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refusal of or demand for certificates</td>
<td>19</td>
<td>38</td>
<td>66</td>
<td>112</td>
<td>115</td>
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<tr>
<td>Traveling and removal expenses</td>
<td>64</td>
<td>4</td>
<td>6</td>
<td>14</td>
<td>63</td>
</tr>
<tr>
<td>Engagements and refusal to work after hiring</td>
<td>51</td>
<td>17</td>
<td>170</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>Employment books</td>
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<td>4</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Bad and damaged work</td>
<td>7</td>
<td>9</td>
<td>68</td>
<td>5</td>
<td></td>
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<tr>
<td>Retention of and demands for tools and property</td>
<td>31</td>
<td>9</td>
<td>43</td>
<td>28</td>
<td>30</td>
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<td>345</td>
<td></td>
<td>217</td>
<td>12</td>
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<tr>
<td>Discharge after a period of military service</td>
<td>23</td>
<td></td>
<td>17</td>
<td></td>
<td></td>
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<tr>
<td>Retention of wages for insurance funds</td>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Piece and job work</td>
<td>43</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delayed and unfinished work</td>
<td>20</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Fines</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repayment of security</td>
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<td></td>
<td></td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Execution of agreements</td>
<td>23</td>
<td>58</td>
<td>32</td>
<td>8</td>
<td></td>
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<tr>
<td>Failure to execute agreements</td>
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<td></td>
<td></td>
<td>285</td>
<td></td>
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<tr>
<td>New Year's gifts, gratuities, and tips</td>
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<td>19</td>
<td>9</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Valuation of work and arbitration</td>
<td>114</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Questions of incompetence</td>
<td>10</td>
<td></td>
<td></td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Weekly rest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indemnity for loss of time</td>
<td>80</td>
<td>85</td>
<td>64</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>Retention of and demands for wages</td>
<td>4</td>
<td>7</td>
<td>16</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td>Indemnity for unemployment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Receipt of materials</td>
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<td></td>
<td></td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>Price of making</td>
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<td></td>
<td></td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>Regulation of accounts</td>
<td>14</td>
<td></td>
<td></td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Supplementary work</td>
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<td></td>
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<td>14</td>
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<td>Restoration of patterns</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Commissions and interest</td>
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<td></td>
<td></td>
<td>424</td>
<td></td>
</tr>
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<td>Indemnity for share of custom</td>
<td></td>
<td></td>
<td></td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Repayment for drawings</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Repayment for breakage</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Deferment of material</td>
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<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Pro rates commission on sales</td>
<td></td>
<td></td>
<td></td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>Indemnity for lodging</td>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Indemnity for board</td>
<td></td>
<td></td>
<td></td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Indemnity for refusal of payment</td>
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<td></td>
<td></td>
<td>40</td>
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</tr>
<tr>
<td>Cancellation of contract</td>
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<td></td>
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<td>116</td>
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<tr>
<td>Indemnity for money overpaid</td>
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<td></td>
<td></td>
<td>6</td>
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</tbody>
</table>

31326°—Bull. 98—12—29
**Table VI.—Statistics of the Work of the Industrial Jurisdiction**

From the Reichs-Arbeitsblatt,

<table>
<thead>
<tr>
<th>Geographical divisions</th>
<th>Cases of disputes between workmen and employers</th>
<th>Cases of disputes between workmen of the same employer</th>
<th>Cases settled by—</th>
<th>Other final judgments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Brought on complaint of workmen</td>
<td>Brought on complaint of employer</td>
<td>Agreement</td>
<td>Remuneration of claim</td>
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<tr>
<td><strong>FRUSSIA.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communal industrial courts:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Königberg</td>
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<td>47</td>
<td>1</td>
<td>588</td>
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<tr>
<td>Gumbinnen</td>
<td>339</td>
<td>19</td>
<td>1</td>
<td>157</td>
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<td>Allenstein</td>
<td>76</td>
<td>4</td>
<td>5</td>
<td>45</td>
</tr>
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<td>Danzig</td>
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<td>25</td>
<td>1</td>
<td>424</td>
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<tr>
<td>Marktschwerder</td>
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<td>1</td>
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<td>Potsdam</td>
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<td>79</td>
<td>2,243</td>
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<td>14,997</td>
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<td>60</td>
<td>5,918</td>
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<td>4</td>
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<td>5</td>
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<td>188</td>
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<td>Breslau</td>
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<td>2</td>
<td>771</td>
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<td>Liegnitz</td>
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<td>Minden</td>
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<td>5</td>
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<td>Cassel</td>
<td>890</td>
<td>41</td>
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<td>386</td>
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<td>Wiesbaden</td>
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<td>1,757</td>
</tr>
<tr>
<td>Coblenz</td>
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<td>29</td>
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<td>170</td>
</tr>
<tr>
<td>Düsseldorf</td>
<td>4,629</td>
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<td>41</td>
<td>4,871</td>
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<td>Cologne</td>
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<td>Treves</td>
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<td>302</td>
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<td>371</td>
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<td>Total</td>
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<td>22,912</td>
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<td><strong>Mining industrial courts:</strong></td>
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<td>Breslau</td>
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<td>71</td>
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<td>Bonn</td>
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<td>Dortmund</td>
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</tr>
<tr>
<td>Cologne</td>
<td>4,509</td>
<td>157</td>
<td>15</td>
<td>2,465</td>
</tr>
<tr>
<td>Total</td>
<td>11,655</td>
<td>715</td>
<td>17</td>
<td>6,166</td>
</tr>
<tr>
<td><strong>Total for Prussia.</strong></td>
<td>70,577</td>
<td>3,192</td>
<td>247</td>
<td>29,402</td>
</tr>
<tr>
<td><strong>Bavaria:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communal industrial courts:</td>
<td>6,501</td>
<td>433</td>
<td>12</td>
<td>3,268</td>
</tr>
<tr>
<td>Mining industrial courts:</td>
<td>34</td>
<td>2</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>6,535</td>
<td>433</td>
<td>12</td>
<td>3,270</td>
</tr>
<tr>
<td><strong>Saxony:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Communal industrial court.</td>
<td>12,291</td>
<td>848</td>
<td>59</td>
<td>6,699</td>
</tr>
<tr>
<td><strong>Württemberg:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2,707</td>
<td>201</td>
<td>3</td>
<td>1,228</td>
<td>38</td>
</tr>
<tr>
<td><strong>Baden:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3,150</td>
<td>219</td>
<td>3</td>
<td>1,294</td>
<td>32</td>
</tr>
<tr>
<td><strong>Hesse:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,939</td>
<td>144</td>
<td>2</td>
<td>1,008</td>
<td>60</td>
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<tr>
<td><strong>Mecklenburg-Schwerin:</strong></td>
<td>140</td>
<td>10</td>
<td>48</td>
<td></td>
</tr>
</tbody>
</table>

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### Cases of other final judgment in which proceedings lasted

<table>
<thead>
<tr>
<th>Less than 1 week</th>
<th>1 to 2 weeks</th>
<th>2 weeks to 1 month</th>
<th>1 to 3 months</th>
<th>3 months and over</th>
<th>Over 20 marks ($4.76) and under.</th>
<th>Over 20 marks ($4.76) to 50 marks ($11.90)</th>
<th>Over 50 marks ($11.90) to 100 marks ($23.80)</th>
<th>Over 100 marks ($23.80).</th>
</tr>
</thead>
</table>
| Cases in which appeal was filed.
| 57 | 77 | 43 | 24 | 6 | 713 | 346 | 28 | 8 |
| 59 | 34 | 14 | 1 | 2 | 154 | 122 | 36 | 28 |
| 135 | 55 | 84 | 41 | 5 | 590 | 335 | 140 | 99 |
| 39 | 36 | 31 | 5 | 8 | 197 | 120 | 40 | 44 |
| 185 | 26 | 98 | 24 | 27 | 2,427 | 1,587 | 1,210 | 789 |
| 50 | 60 | 50 | 15 | 2 | 304 | 255 | 83 | 58 |
| 21 | 97 | 608 | 461 | 5 | 6,215 | 4,570 | 2,578 | 1,205 |
| 29 | 70 | 63 | 22 | 3 | 456 | 255 | 110 | 72 |
| 3 | 7 | 14 | 8 | 2 | 121 | 60 | 23 | 27 |
| 8 | 12 | 3 | 2 | 6 | 56 | 36 | 5 | 3 |
| 21 | 47 | 9 | 2 | 2 | 601 | 397 | 94 | 56 |
| 11 | 18 | 39 | 14 | 2 | 230 | 123 | 45 | 42 |
| 26 | 86 | 85 | 28 | 5 | 839 | 470 | 233 | 173 |
| 77 | 17 | 37 | 11 | 5 | 447 | 270 | 84 | 72 |
| 532 | 150 | 120 | 67 | 15 | 985 | 794 | 415 | 147 |
| 100 | 59 | 40 | 11 | 2 | 837 | 343 | 130 | 77 |
| 58 | 54 | 55 | 21 | 1 | 474 | 403 | 108 | 61 |
| 105 | 135 | 91 | 10 | 3 | 633 | 490 | 312 | 175 |
| 38 | 37 | 107 | 81 | 3 | 436 | 360 | 199 | 105 |
| 14 | 4 | 4 | 2 | 1 | 95 | 91 | 22 | 19 |
| 31 | 29 | 22 | 2 | 2 | 215 | 141 | 65 | 33 |
| 17 | 19 | 4 | 2 | 1 | 84 | 63 | 37 | 18 |
| 28 | 30 | 13 | 1 | 1 | 124 | 56 | 27 | 23 |
| 8 | 6 | 8 | 4 | 2 | 78 | 48 | 19 | 22 |
| 36 | 96 | 100 | 44 | 5 | 419 | 314 | 154 | 116 |
| 2 | 24 | 17 | 37 | 7 | 230 | 256 | 115 | 72 |
| 422 | 417 | 410 | 194 | 30 | 2,837 | 2,064 | 924 | 405 |
| 26 | 33 | 37 | 11 | 2 | 372 | 304 | 163 | 76 |
| 132 | 132 | 97 | 16 | 1 | 1,308 | 1,232 | 506 | 253 |
| 41 | 48 | 41 | 23 | 1 | 174 | 1,02 | 72 | 42 |
| 433 | 373 | 378 | 138 | 13 | 1,965 | 1,432 | 989 | 490 |
| 74 | 52 | 13 | 3 | 1 | 74 | 115 | 63 | 32 |
| 75 | 68 | 25 | 6 | 2 | 282 | 261 | 148 | 56 |
| 55 | 64 | 36 | 16 | 2 | 371 | 227 | 129 | 60 |
| 2,581 | 2,892 | 2,994 | 1,478 | 194 | 25,218 | 18,403 | 9,876 | 4,954 |

### Cases in which the amount involved was

<table>
<thead>
<tr>
<th>Cases in which the amount involved was.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 20 marks ($4.76) and under.</td>
</tr>
<tr>
<td>2,581</td>
</tr>
</tbody>
</table>

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### Table VI.—Statistics of the Work of the Industrial Geographical Divisions

<table>
<thead>
<tr>
<th>Geographical divisions</th>
<th>Cases of disputes between workmen and employers.</th>
<th>Cases of disputes between workmen of the same employer.</th>
<th>Cases settled by—</th>
<th>Other final judgments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grothenzugstum Sachsen</td>
<td>532</td>
<td>85</td>
<td>262</td>
<td>63</td>
</tr>
<tr>
<td>Oldenburg 1</td>
<td>133</td>
<td>133</td>
<td>94</td>
<td>22</td>
</tr>
<tr>
<td>Brunswick 1</td>
<td>604</td>
<td>45</td>
<td>280</td>
<td>11</td>
</tr>
<tr>
<td>Saxe-Meiningen 1</td>
<td>156</td>
<td>12</td>
<td>93</td>
<td>5</td>
</tr>
<tr>
<td>Saxe-Altenburg 1</td>
<td>123</td>
<td>11</td>
<td>84</td>
<td>1</td>
</tr>
<tr>
<td>Saxe-Coburg-Gotha 1</td>
<td>230</td>
<td>53</td>
<td>129</td>
<td>8</td>
</tr>
<tr>
<td>Hanburg 1</td>
<td>293</td>
<td>28</td>
<td>127</td>
<td>14</td>
</tr>
<tr>
<td>Schwarzburg-Sondershausen</td>
<td>36</td>
<td>9</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Schwarzburg-Rudolstadt 1</td>
<td>23</td>
<td>3</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Reuss-Gretz 1</td>
<td>102</td>
<td>14</td>
<td>51</td>
<td>4</td>
</tr>
<tr>
<td>Reuss-Gera 1</td>
<td>183</td>
<td>6</td>
<td>53</td>
<td>3</td>
</tr>
<tr>
<td>Lippe 1</td>
<td>107</td>
<td>9</td>
<td>55</td>
<td>5</td>
</tr>
<tr>
<td>Lubeck 1</td>
<td>223</td>
<td>12</td>
<td>84</td>
<td>8</td>
</tr>
<tr>
<td>Bremen:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communal industrial courts</td>
<td>119</td>
<td>2</td>
<td>1</td>
<td>53</td>
</tr>
<tr>
<td>Courts established under section 85</td>
<td>859</td>
<td>31</td>
<td>368</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>778</td>
<td>33</td>
<td>1</td>
<td>356</td>
</tr>
<tr>
<td>Hamburg:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communal industrial courts</td>
<td>22</td>
<td></td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Courts established under section 85</td>
<td>4,502</td>
<td>91</td>
<td>5</td>
<td>2,708</td>
</tr>
<tr>
<td>Total</td>
<td>4,524</td>
<td>91</td>
<td>5</td>
<td>2,723</td>
</tr>
<tr>
<td>Alsatia-Lorraine 1</td>
<td>1,384</td>
<td>15</td>
<td>1</td>
<td>434</td>
</tr>
<tr>
<td>Total for German Empire</td>
<td>106,269</td>
<td>5,672</td>
<td>346</td>
<td>47,595</td>
</tr>
<tr>
<td>Total cases carried over from 1897 1</td>
<td>3,581</td>
<td>206</td>
<td>18</td>
<td>1,256</td>
</tr>
</tbody>
</table>

1. Communal industrial court.
2. Industrial court established under section 85 of the law.
3. These cases are not included in the figures given above.
## TABLE

<table>
<thead>
<tr>
<th>Cases of other final judgments in which proceedings lasted—</th>
<th>Cases in which the amount involved was—</th>
<th>Cases in which appeal was filed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 week.</td>
<td>1 to 2 weeks.</td>
<td>2 weeks to 1 month.</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>45</td>
<td>29</td>
<td>22</td>
</tr>
<tr>
<td>42</td>
<td>20</td>
<td>11</td>
</tr>
<tr>
<td>6</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>16</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>35</td>
<td>20</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>15</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>1</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>15</td>
<td>17</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>60</td>
<td>59</td>
<td>6</td>
</tr>
<tr>
<td>69</td>
<td>72</td>
<td>14</td>
</tr>
<tr>
<td>189</td>
<td>230</td>
<td>224</td>
</tr>
<tr>
<td>189</td>
<td>233</td>
<td>233</td>
</tr>
<tr>
<td>61</td>
<td>42</td>
<td>24</td>
</tr>
<tr>
<td>5,472</td>
<td>5,428</td>
<td>4,857</td>
</tr>
<tr>
<td>29</td>
<td>122</td>
<td>273</td>
</tr>
</tbody>
</table>
TABLE VII.—STATISTICS OF THE WORK OF THE INDUSTRIAL COURTS OF GERMANY, BY YEARS, 1896 AND 1900 TO 1908.

(The figures in this table, except where otherwise stated, are from the Reichs-Arbeitsblatt, Vols. I to VII.)

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of courts</th>
<th>Num­ber of cases of disputes between workmen and employers.</th>
<th>Num­ber of cases of disputes between workmen of the same employer.</th>
<th>Agreement.</th>
<th>Renun­ciation of claim.</th>
<th>Acknowl­edgment of justice of claim.</th>
<th>Judg­ment by default.</th>
<th>Other final judg­ments.</th>
<th>Cases in which appeal was taken.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1896</td>
<td>284</td>
<td>63,462</td>
<td>5,176</td>
<td>160</td>
<td>30,798</td>
<td>775</td>
<td>5,207</td>
<td>14,291</td>
<td>272</td>
</tr>
<tr>
<td>1900</td>
<td>316</td>
<td>75,761</td>
<td>8,068</td>
<td>335</td>
<td>30,255</td>
<td>22,927</td>
<td>1,012</td>
<td>6,318</td>
<td>15,379</td>
</tr>
<tr>
<td>1906</td>
<td>311</td>
<td>70,709</td>
<td>274</td>
<td>29,797</td>
<td>15,348</td>
<td>968</td>
<td>5,540</td>
<td>13,236</td>
<td>215</td>
</tr>
<tr>
<td>1907</td>
<td>315</td>
<td>80,043</td>
<td>5,461</td>
<td>411</td>
<td>35,898</td>
<td>4,181</td>
<td>1,600</td>
<td>8,200</td>
<td>15,332</td>
</tr>
<tr>
<td>1908</td>
<td>405</td>
<td>87,429</td>
<td>7,038</td>
<td>454</td>
<td>42,155</td>
<td>2,656</td>
<td>1,020</td>
<td>8,232</td>
<td>15,250</td>
</tr>
<tr>
<td>1909</td>
<td>415</td>
<td>88,680</td>
<td>6,574</td>
<td>355</td>
<td>27,654</td>
<td>2,564</td>
<td>1,276</td>
<td>10,306</td>
<td>16,220</td>
</tr>
<tr>
<td>1910</td>
<td>411</td>
<td>99,763</td>
<td>7,572</td>
<td>382</td>
<td>47,143</td>
<td>2,737</td>
<td>1,796</td>
<td>10,424</td>
<td>17,105</td>
</tr>
<tr>
<td>1911</td>
<td>410</td>
<td>103,532</td>
<td>10,555</td>
<td>348</td>
<td>45,029</td>
<td>2,436</td>
<td>1,845</td>
<td>11,658</td>
<td>18,831</td>
</tr>
<tr>
<td>1912</td>
<td>445</td>
<td>102,674</td>
<td>9,473</td>
<td>337</td>
<td>47,373</td>
<td>2,946</td>
<td>1,541</td>
<td>11,374</td>
<td>18,196</td>
</tr>
<tr>
<td>1913</td>
<td>469</td>
<td>106,269</td>
<td>5,072</td>
<td>340</td>
<td>47,976</td>
<td>2,799</td>
<td>1,361</td>
<td>11,874</td>
<td>19,221</td>
</tr>
</tbody>
</table>

1 The figures are from Jastrow, Sozialpolitik und Verwaltungswissenschaft, Vol. I, pp. 422, 448, 449.
2 Statistics for number of cases brought by employers and by workers not separately given.
3 Figures are for two classes of settlement, withdrawal of complaint and renunciation of claim, combined.

TABLE VIII.—STATISTICS OF THE WORK OF THE INDUSTRIAL COURT OF BERLIN, 1893 TO 1908.

[From Verwaltungsbericht des Magistrats zu Berlin für das Etatsjahr, 1908, No. 31, Bericht über das Gewerbegericht zu Berlin.]

<table>
<thead>
<tr>
<th>Years</th>
<th>Total number of cases handled with assessors.</th>
<th>Cases settled by—</th>
<th>Remained unsettled at end of year.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1893</td>
<td>12,947</td>
<td>Agreement</td>
<td>2,512</td>
</tr>
<tr>
<td>1894</td>
<td>12,373</td>
<td>4,258</td>
<td>2,512</td>
</tr>
<tr>
<td>1895</td>
<td>11,895</td>
<td>5,213</td>
<td>2,512</td>
</tr>
<tr>
<td>1896</td>
<td>12,572</td>
<td>5,097</td>
<td>2,512</td>
</tr>
<tr>
<td>1897</td>
<td>12,827</td>
<td>5,842</td>
<td>2,512</td>
</tr>
<tr>
<td>1898</td>
<td>12,209</td>
<td>5,085</td>
<td>2,512</td>
</tr>
<tr>
<td>1899</td>
<td>12,119</td>
<td>6,457</td>
<td>2,512</td>
</tr>
<tr>
<td>1900</td>
<td>11,036</td>
<td>5,980</td>
<td>2,512</td>
</tr>
<tr>
<td>1901</td>
<td>10,702</td>
<td>5,967</td>
<td>2,512</td>
</tr>
<tr>
<td>1902</td>
<td>11,054</td>
<td>6,006</td>
<td>2,512</td>
</tr>
<tr>
<td>1903</td>
<td>12,069</td>
<td>6,487</td>
<td>2,512</td>
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<tr>
<td>1904</td>
<td>12,827</td>
<td>5,907</td>
<td>2,512</td>
</tr>
<tr>
<td>1905</td>
<td>12,209</td>
<td>5,842</td>
<td>2,512</td>
</tr>
<tr>
<td>1906</td>
<td>12,119</td>
<td>6,457</td>
<td>2,512</td>
</tr>
<tr>
<td>1907</td>
<td>11,036</td>
<td>5,980</td>
<td>2,512</td>
</tr>
<tr>
<td>1908</td>
<td>10,702</td>
<td>5,967</td>
<td>2,512</td>
</tr>
</tbody>
</table>

1 Permits to 1902 cases of this kind were included among those withdrawn.
2 Previous to 1905 the cases which remained unsettled at the end of the year were distributed according to the final method of their settlement.
## Table IX—Statistics of the Work of the Industrial Court of Berlin During 1906, 1907, and 1908, by Industry Groups.

[From Verwaltungsberichte des Magistrats zu Berlin, 1906, 1907, 1908, No. 31, Bericht über das Gewerbege richt zu Berlin.]

<table>
<thead>
<tr>
<th>Industry groups or sections</th>
<th>Total number of cases</th>
<th>Number of cases handled with assessors</th>
<th>Number of cases settled by—</th>
<th>Number remaining unsettled at end of year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Agreement</td>
<td>Reimbursement of claim</td>
<td>Withdrawal of complaint</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total cases handled with assessors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tailoring and sewing trades:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>2,515</td>
<td>641</td>
<td>1,100</td>
<td>432</td>
</tr>
<tr>
<td>1907</td>
<td>2,830</td>
<td>733</td>
<td>1,324</td>
<td>513</td>
</tr>
<tr>
<td>1908</td>
<td>2,965</td>
<td>637</td>
<td>1,290</td>
<td>601</td>
</tr>
<tr>
<td>Textile, leather, and trimming industries:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>741</td>
<td>249</td>
<td>364</td>
<td>146</td>
</tr>
<tr>
<td>1907</td>
<td>706</td>
<td>198</td>
<td>323</td>
<td>111</td>
</tr>
<tr>
<td>1908</td>
<td>747</td>
<td>229</td>
<td>354</td>
<td>171</td>
</tr>
<tr>
<td>Building industry:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>1,840</td>
<td>671</td>
<td>665</td>
<td>504</td>
</tr>
<tr>
<td>1907</td>
<td>2,185</td>
<td>672</td>
<td>570</td>
<td>538</td>
</tr>
<tr>
<td>1908</td>
<td>1,909</td>
<td>471</td>
<td>745</td>
<td>619</td>
</tr>
<tr>
<td>Woodworking and carving industries:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>766</td>
<td>281</td>
<td>325</td>
<td>134</td>
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<tr>
<td>1907</td>
<td>789</td>
<td>299</td>
<td>263</td>
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<td>1908</td>
<td>841</td>
<td>257</td>
<td>280</td>
<td>207</td>
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<tr>
<td>Metals:</td>
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<tr>
<td>1906</td>
<td>1,765</td>
<td>523</td>
<td>741</td>
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<td>1907</td>
<td>1,767</td>
<td>410</td>
<td>538</td>
<td>335</td>
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<tr>
<td>1908</td>
<td>1,540</td>
<td>459</td>
<td>561</td>
<td>373</td>
</tr>
<tr>
<td>Food and lodging industries:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>2,580</td>
<td>456</td>
<td>1,040</td>
<td>782</td>
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<tr>
<td>1907</td>
<td>2,937</td>
<td>530</td>
<td>1,415</td>
<td>435</td>
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<td>1908</td>
<td>3,061</td>
<td>311</td>
<td>1,574</td>
<td>871</td>
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<tr>
<td>Commercial and transportation industries:</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>1,573</td>
<td>646</td>
<td>921</td>
<td>393</td>
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<tr>
<td>1907</td>
<td>1,764</td>
<td>774</td>
<td>621</td>
<td>442</td>
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<tr>
<td>1908</td>
<td>1,714</td>
<td>578</td>
<td>875</td>
<td>488</td>
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<td>General industries:</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>1906</td>
<td>1,169</td>
<td>392</td>
<td>596</td>
<td>279</td>
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<td>1907</td>
<td>1,239</td>
<td>611</td>
<td>445</td>
<td>150</td>
</tr>
<tr>
<td>1908</td>
<td>1,221</td>
<td>607</td>
<td>454</td>
<td>275</td>
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<tr>
<td>All industries:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1906</td>
<td>13,262</td>
<td>3,809</td>
<td>5,762</td>
<td>3,230</td>
</tr>
<tr>
<td>1907</td>
<td>14,208</td>
<td>4,117</td>
<td>6,576</td>
<td>3,892</td>
</tr>
<tr>
<td>1908</td>
<td>14,028</td>
<td>3,549</td>
<td>5,992</td>
<td>2,465</td>
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</tbody>
</table>
Table X.—CAUSES OF DISPUTES BROUGHT BEFORE THE INDUSTRIAL COURTS OF BERLIN, 1895 TO 1908.

[These figures are taken from the Verwaltungsberichte des Magistrats zu Berlin, No. 31. Berichte über das Gewerbegericht zu Berlin. The fact that more causes of disputes are here given than there were individual cases in these years is explained by the fact that in many cases two or more causes of complaint were united in one suit.]

<table>
<thead>
<tr>
<th>Causes of disputes</th>
<th>1893</th>
<th>1894</th>
<th>1895</th>
<th>1896</th>
<th>1897</th>
<th>1898</th>
<th>1899</th>
<th>1900</th>
<th>1901</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of back wages</td>
<td>6,816</td>
<td>7,488</td>
<td>7,449</td>
<td>7,291</td>
<td>6,845</td>
<td>6,721</td>
<td>6,106</td>
<td>6,106</td>
<td>6,106</td>
</tr>
<tr>
<td>Dissolution and continuation of apprenticeship</td>
<td>14</td>
<td>12</td>
<td>10</td>
<td>7</td>
<td>9</td>
<td>11</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division of wages</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions to the sick-insurance fund</td>
<td>239</td>
<td>277</td>
<td>347</td>
<td>347</td>
<td>350</td>
<td>325</td>
<td>315</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fines</td>
<td>64</td>
<td>59</td>
<td>79</td>
<td>74</td>
<td>75</td>
<td>49</td>
<td>63</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of security</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resumption of work</td>
<td>19</td>
<td>22</td>
<td>5</td>
<td>18</td>
<td>5</td>
<td>27</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Giving back of labor papers, books, etc.</td>
<td>193</td>
<td>328</td>
<td>344</td>
<td>269</td>
<td>283</td>
<td>304</td>
<td>266</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of money for expenses and wage advances</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other causes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>12,074</td>
<td>13,964</td>
<td>14,221</td>
<td>13,239</td>
<td>13,298</td>
<td>12,880</td>
<td>12,116</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Causes of disputes</th>
<th>1902</th>
<th>1903</th>
<th>1904</th>
<th>1905</th>
<th>1906</th>
<th>1907</th>
<th>1908</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of back wages</td>
<td>6,841</td>
<td>7,494</td>
<td>7,702</td>
<td>8,483</td>
<td>8,155</td>
<td>8,746</td>
<td>8,619</td>
</tr>
<tr>
<td>Contributions to the sick-insurance fund</td>
<td>450</td>
<td>387</td>
<td>461</td>
<td>545</td>
<td>531</td>
<td>568</td>
<td>495</td>
</tr>
<tr>
<td>Fines</td>
<td>53</td>
<td>80</td>
<td>58</td>
<td>60</td>
<td>79</td>
<td>89</td>
<td>61</td>
</tr>
<tr>
<td>Compensation for discharge without notice</td>
<td>10</td>
<td>17</td>
<td>12</td>
<td>19</td>
<td>44</td>
<td>24</td>
<td>19</td>
</tr>
<tr>
<td>Giving back of labor papers, books, etc.</td>
<td>505</td>
<td>756</td>
<td>1,226</td>
<td>1,537</td>
<td>1,663</td>
<td>1,612</td>
<td>840</td>
</tr>
<tr>
<td>Resumption of work</td>
<td>63</td>
<td>82</td>
<td>95</td>
<td>55</td>
<td>32</td>
<td>42</td>
<td>61</td>
</tr>
<tr>
<td>Payment of money for expenses and wage advances</td>
<td>39</td>
<td>34</td>
<td>70</td>
<td>77</td>
<td>84</td>
<td>55</td>
<td>70</td>
</tr>
<tr>
<td>Other causes</td>
<td>51</td>
<td>26</td>
<td>28</td>
<td>21</td>
<td>14</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>13,599</td>
<td>14,371</td>
<td>15,203</td>
<td>16,333</td>
<td>15,830</td>
<td>17,554</td>
<td>16,666</td>
</tr>
</tbody>
</table>
## Table XI—Statistics of the Work of the Industrial Courts of Germany and of Berlin as Boards of Arbitration in Collective Disputes, 1902 to 1908.

[From the Reichs-Arbeitsblatt, Vols. I to VII.]

### Germany

<table>
<thead>
<tr>
<th>Years</th>
<th>Applications for board of arbitration from—</th>
<th>Cases resulting in—</th>
<th>Cases in which the arbitration award was accepted by—</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Both sides</td>
<td>Employers only</td>
<td>Employees only</td>
</tr>
<tr>
<td>1902</td>
<td>144 (7)</td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>1903</td>
<td>174 (7)</td>
<td>155</td>
<td>54</td>
</tr>
<tr>
<td>1904</td>
<td>163 (7)</td>
<td>156</td>
<td>80</td>
</tr>
<tr>
<td>1905</td>
<td>165</td>
<td>175</td>
<td>128</td>
</tr>
<tr>
<td>1906</td>
<td>233</td>
<td>224</td>
<td>185</td>
</tr>
<tr>
<td>1907</td>
<td>180</td>
<td>9</td>
<td>150</td>
</tr>
<tr>
<td>1908</td>
<td>181</td>
<td>9</td>
<td>134</td>
</tr>
</tbody>
</table>

### Berlin

<table>
<thead>
<tr>
<th>Years</th>
<th>Applications for board of arbitration from—</th>
<th>Cases resulting in—</th>
<th>Cases in which the arbitration award was accepted by—</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Both sides</td>
<td>Employers only</td>
<td>Employees only</td>
</tr>
<tr>
<td>1902</td>
<td>17 (7)</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1903</td>
<td>32 (7)</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>1904</td>
<td>22 (7)</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>1905</td>
<td>31</td>
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<td>13</td>
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<td>1906</td>
<td>31</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>1907</td>
<td>24</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>1908</td>
<td>12</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

1. Including cases only in which efforts at conciliation were actually made by the court.
2. Not separately reported.
3. Applications "from one side only"; employers and employees not separately reported.

## Table XII—Statistics of the Work of the Industrial Arbitration Court of Basel, 1906 to 1909.

[From Gewerbliche Schiedsgerichte des Kantons Basel-Stadt, Berichte, 1906 to 1909.]

<table>
<thead>
<tr>
<th></th>
<th>1906</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints brought by employers</td>
<td>22</td>
<td>36</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Complaints brought by employees</td>
<td>917</td>
<td>791</td>
<td>700</td>
<td>661</td>
</tr>
<tr>
<td>Total complaints</td>
<td>939</td>
<td>827</td>
<td>719</td>
<td>680</td>
</tr>
</tbody>
</table>

### Method of Settlement

<table>
<thead>
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<th>1906</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judgments wholly in favor of complainant</td>
<td>206</td>
<td>158</td>
<td>105</td>
<td>178</td>
</tr>
<tr>
<td>Judgments partly in favor of complainant</td>
<td>247</td>
<td>233</td>
<td>250</td>
<td>145</td>
</tr>
<tr>
<td>Judgments in favor of defendant</td>
<td>232</td>
<td>252</td>
<td>170</td>
<td>178</td>
</tr>
<tr>
<td>Total</td>
<td>775</td>
<td>645</td>
<td>564</td>
<td>497</td>
</tr>
<tr>
<td>Agreement or acknowledgment</td>
<td>50</td>
<td>106</td>
<td>15</td>
<td>99</td>
</tr>
<tr>
<td>Settled by president alone</td>
<td>22</td>
<td>25</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>Other settlement</td>
<td>94</td>
<td>51</td>
<td>135</td>
<td>73</td>
</tr>
<tr>
<td>Number of sittings</td>
<td>482</td>
<td>466</td>
<td>504</td>
<td>445</td>
</tr>
</tbody>
</table>

[From Gewerbliche Schiedsgerichte des Kantons Basel-Stadt, Bericht über das Jahr, 1909.]

<table>
<thead>
<tr>
<th>Industry Groups or Sections</th>
<th>Total Number of Complaints Brought by</th>
<th>Judgment in Favor of—</th>
<th>Agreement or Acknowledgment</th>
<th>President Alone</th>
<th>Other Settlement</th>
<th>President Alone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employers</td>
<td>Employees</td>
<td>Complainant (Wholly)</td>
<td>Complainant (Partly)</td>
<td>Defendant</td>
<td>Total</td>
</tr>
<tr>
<td>Textile Industries</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Building Industries</td>
<td>112</td>
<td>112</td>
<td>29</td>
<td>20</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>Woodwork</td>
<td>51</td>
<td>51</td>
<td>11</td>
<td>7</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Metalwork</td>
<td>69</td>
<td>68</td>
<td>20</td>
<td>10</td>
<td>16</td>
<td>46</td>
</tr>
<tr>
<td>Clothing and Leather</td>
<td>55</td>
<td>55</td>
<td>13</td>
<td>10</td>
<td>12</td>
<td>35</td>
</tr>
<tr>
<td>Food and Drink</td>
<td>138</td>
<td>138</td>
<td>20</td>
<td>10</td>
<td>23</td>
<td>19</td>
</tr>
<tr>
<td>Vapor and Polygraphic</td>
<td>32</td>
<td>32</td>
<td>10</td>
<td>9</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>Industries</td>
<td>53</td>
<td>53</td>
<td>15</td>
<td>17</td>
<td>27</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>680</td>
<td>681</td>
<td>178</td>
<td>145</td>
<td>176</td>
<td>497</td>
</tr>
</tbody>
</table>

# Table XIV—Causes of Disputes Brought Before the Industrial Arbitration Court of Basel in 1909.

[From Gewerbliche Schiedsgerichte des Kantons Basel-Stadt, Bericht über das Jahr, 1909.]

<table>
<thead>
<tr>
<th>Causes</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Brought by Employers</td>
<td></td>
</tr>
<tr>
<td>Keeping of labor contracts</td>
<td>5</td>
</tr>
<tr>
<td>Apprenticeship contracts</td>
<td>6</td>
</tr>
<tr>
<td>Deductions</td>
<td>2</td>
</tr>
<tr>
<td>Sundry causes</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
</tr>
<tr>
<td>Complaints Brought by Employees</td>
<td></td>
</tr>
<tr>
<td>Wages</td>
<td>253</td>
</tr>
<tr>
<td>Commissions</td>
<td>25</td>
</tr>
<tr>
<td>Gratuities (tips)</td>
<td>2</td>
</tr>
<tr>
<td>Stall rent</td>
<td>20</td>
</tr>
<tr>
<td>Compensation for expenses</td>
<td>3</td>
</tr>
<tr>
<td>Wages and unjustified discharges</td>
<td>83</td>
</tr>
<tr>
<td>Unjustified discharges</td>
<td>128</td>
</tr>
<tr>
<td>Unjustified suspensions from work</td>
<td>4</td>
</tr>
<tr>
<td>Keeping of labor contracts</td>
<td>36</td>
</tr>
<tr>
<td>Apprenticeship contracts</td>
<td>22</td>
</tr>
<tr>
<td>Giving back of tools, papers, etc.</td>
<td>7</td>
</tr>
<tr>
<td>Drawing of labor certificates</td>
<td>10</td>
</tr>
<tr>
<td>Liability for accidents</td>
<td>55</td>
</tr>
<tr>
<td>Sickness money</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>661</td>
</tr>
</tbody>
</table>
### Table XV.—Statistics of the Work of the Industrial Arbitration Court of Zurich, 1905 to 1909.

<table>
<thead>
<tr>
<th></th>
<th>1905</th>
<th>1906</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints carried over from previous year</td>
<td>29</td>
<td>8</td>
<td>33</td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>Complaints newly introduced</td>
<td>946</td>
<td>870</td>
<td>910</td>
<td>1,049</td>
<td>1,061</td>
</tr>
<tr>
<td>Total</td>
<td>975</td>
<td>878</td>
<td>943</td>
<td>1,066</td>
<td>1,085</td>
</tr>
<tr>
<td>Settlements after court proceedings</td>
<td>296</td>
<td>275</td>
<td>344</td>
<td>429</td>
<td>373</td>
</tr>
<tr>
<td>Settlements by the president alone</td>
<td>702</td>
<td>570</td>
<td>555</td>
<td>613</td>
<td>680</td>
</tr>
<tr>
<td>Total</td>
<td>998</td>
<td>845</td>
<td>901</td>
<td>1,042</td>
<td>1,053</td>
</tr>
<tr>
<td>Settlements pending at the end of the year</td>
<td>9</td>
<td>17</td>
<td>17</td>
<td>24</td>
<td>32</td>
</tr>
</tbody>
</table>

#### Methods of Settlement.

<table>
<thead>
<tr>
<th></th>
<th>1905</th>
<th>1906</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved (wholly)</td>
<td>29</td>
<td>30</td>
<td>19</td>
<td>27</td>
<td>34</td>
</tr>
<tr>
<td>Approved (partly)</td>
<td>26</td>
<td>51</td>
<td>51</td>
<td>52</td>
<td>43</td>
</tr>
<tr>
<td>Rejected</td>
<td>32</td>
<td>22</td>
<td>40</td>
<td>40</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>87</td>
<td>103</td>
<td>110</td>
<td>119</td>
<td>112</td>
</tr>
<tr>
<td>Complaints which were settled without judgment through—</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withdrawal</td>
<td>225</td>
<td>192</td>
<td>191</td>
<td>276</td>
<td>302</td>
</tr>
<tr>
<td>Acknowledgment</td>
<td>118</td>
<td>87</td>
<td>103</td>
<td>114</td>
<td>102</td>
</tr>
<tr>
<td>Agreement</td>
<td>535</td>
<td>449</td>
<td>504</td>
<td>501</td>
<td>461</td>
</tr>
<tr>
<td>Not taken in hand</td>
<td>13</td>
<td>14</td>
<td>18</td>
<td>32</td>
<td>52</td>
</tr>
<tr>
<td>Total</td>
<td>880</td>
<td>742</td>
<td>816</td>
<td>923</td>
<td>941</td>
</tr>
</tbody>
</table>

### Table XVI.—Statistics of the Work of the Industrial Arbitration Court of Zurich in 1909, by Industry Groups.

<table>
<thead>
<tr>
<th>Industry groups or sections</th>
<th>Number of complaints</th>
<th>Number of settlements</th>
<th>Pending at the end of the year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1905</td>
<td>1906</td>
<td>1907</td>
</tr>
<tr>
<td></td>
<td>Carried over from previous year</td>
<td>Newly introduced</td>
<td>Total</td>
</tr>
<tr>
<td>Building industries</td>
<td>5</td>
<td>248</td>
<td>253</td>
</tr>
<tr>
<td>Woodworking industries</td>
<td>3</td>
<td>111</td>
<td>114</td>
</tr>
<tr>
<td>Metal-working industries</td>
<td>3</td>
<td>117</td>
<td>120</td>
</tr>
<tr>
<td>Textile and clothing industries</td>
<td>3</td>
<td>106</td>
<td>109</td>
</tr>
<tr>
<td>Food and drink industries</td>
<td>4</td>
<td>270</td>
<td>274</td>
</tr>
<tr>
<td>Graphic industries</td>
<td>1</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Traffic employments</td>
<td>3</td>
<td>84</td>
<td>87</td>
</tr>
<tr>
<td>Commercial pursuits</td>
<td>2</td>
<td>102</td>
<td>104</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>1,061</td>
<td>1,085</td>
</tr>
</tbody>
</table>

#### Complaints settled by specified method.

<table>
<thead>
<tr>
<th>Industry groups or sections</th>
<th>Approved whole</th>
<th>Approved in part</th>
<th>Rejected</th>
<th>Total</th>
<th>Withdrawal</th>
<th>Acknowledgment</th>
<th>Agreement</th>
<th>Not taken in hand</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building industries</td>
<td>13</td>
<td>7</td>
<td>11</td>
<td>31</td>
<td>69</td>
<td>78</td>
<td>69</td>
<td>1</td>
<td>217</td>
</tr>
<tr>
<td>Woodworking industries</td>
<td>7</td>
<td>7</td>
<td>2</td>
<td>10</td>
<td>23</td>
<td>30</td>
<td>43</td>
<td>6</td>
<td>97</td>
</tr>
<tr>
<td>Metal-working industries</td>
<td>8</td>
<td>4</td>
<td>4</td>
<td>13</td>
<td>28</td>
<td>15</td>
<td>56</td>
<td>3</td>
<td>100</td>
</tr>
<tr>
<td>Textile and clothing industries</td>
<td>4</td>
<td>6</td>
<td>3</td>
<td>13</td>
<td>27</td>
<td>13</td>
<td>52</td>
<td>1</td>
<td>93</td>
</tr>
<tr>
<td>Food and drink industries</td>
<td>6</td>
<td>6</td>
<td>9</td>
<td>21</td>
<td>73</td>
<td>23</td>
<td>149</td>
<td>1</td>
<td>245</td>
</tr>
<tr>
<td>Graphic industries</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>11</td>
<td>2</td>
<td>9</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>Traffic employments</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>8</td>
<td>27</td>
<td>5</td>
<td>43</td>
<td>1</td>
<td>76</td>
</tr>
<tr>
<td>Commercial pursuits</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>8</td>
<td>39</td>
<td>8</td>
<td>40</td>
<td>4</td>
<td>91</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
<td>43</td>
<td>35</td>
<td>112</td>
<td>302</td>
<td>162</td>
<td>461</td>
<td>16</td>
<td>941</td>
</tr>
</tbody>
</table>
TABLE XVII.—CAUSES AND LENGTH OF TIME TAKEN FOR SETTLEMENT OF DISPUTES BROUGHT BEFORE THE INDUSTRIAL ARBITRATION COURT OF ZURICH IN 1909, BY INDUSTRY GROUPS.

[From Gewerbliches Schiedsgericht der Stadt Zurich, Elfter Geschäftsbericht fur das Jahr 1909.]

<table>
<thead>
<tr>
<th>CAUSES OF DISPUTES</th>
<th>Number of cases in—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>180</td>
</tr>
<tr>
<td>Liability claims</td>
<td>46</td>
</tr>
<tr>
<td>Compensation for damages on account of discharge</td>
<td>16</td>
</tr>
<tr>
<td>Other claims for damages</td>
<td>4</td>
</tr>
<tr>
<td>Apprenticeship contracts</td>
<td>2</td>
</tr>
<tr>
<td>Various causes</td>
<td></td>
</tr>
</tbody>
</table>

LENGTH OF TIME TAKEN FOR SETTLEMENT OF DISPUTES.

| Cases settled through judgment in—       |                      |
|                                          | Less than 14 days.   | More than 14 days.   |
|                                          | 20                   | 13                   |
| More than 14 days                        | 11                   | 8                    |
| Cases settled without judgment in—       |                      |
|                                          | Less than 8 days.    | More than 8 days.    |
|                                          | 171                  | 72                   |
| More than 8 days                         | 46                   | 25                   |

TABLE XVIII.—STATISTICS OF THE WORK OF THE COUNCILS OF PRUDHOMMES OF GENEVA, 1904 TO 1909.

[From Opérations du Tribunal des Prudhommes, 1904 to 1909.]

<table>
<thead>
<tr>
<th>BOARD OF CONCILIATION.</th>
<th>1904</th>
<th>1905</th>
<th>1906</th>
<th>1907</th>
<th>1908</th>
<th>1909</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases dropped or withdrawn.</td>
<td>206</td>
<td>299</td>
<td>276</td>
<td>257</td>
<td>247</td>
<td>252</td>
</tr>
<tr>
<td>Defaults</td>
<td>165</td>
<td>150</td>
<td>166</td>
<td>159</td>
<td>132</td>
<td>150</td>
</tr>
<tr>
<td>Judgments in first resort.</td>
<td>24</td>
<td>28</td>
<td>30</td>
<td>14</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Judgments in last resort.</td>
<td>39</td>
<td>33</td>
<td>25</td>
<td>22</td>
<td>38</td>
<td>20</td>
</tr>
<tr>
<td>Cases requiring more than one hearing.</td>
<td>89</td>
<td>112</td>
<td>97</td>
<td>84</td>
<td>93</td>
<td>121</td>
</tr>
<tr>
<td>Lack of jurisdiction.</td>
<td>10</td>
<td>9</td>
<td>4</td>
<td>14</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>Oppositions.</td>
<td>29</td>
<td>11</td>
<td>10</td>
<td>5</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>Conciliated</td>
<td>831</td>
<td>902</td>
<td>887</td>
<td>841</td>
<td>765</td>
<td>861</td>
</tr>
<tr>
<td>Sent to tribunal</td>
<td>110</td>
<td>192</td>
<td>227</td>
<td>178</td>
<td>223</td>
<td>324</td>
</tr>
<tr>
<td>Total cases entered</td>
<td>1,503</td>
<td>1,702</td>
<td>1,712</td>
<td>1,576</td>
<td>1,543</td>
<td>1,755</td>
</tr>
</tbody>
</table>

Number of hearings                        | 630  | 497  | 579  | 545  | 564  | 589  |

Appeals of conciliation judgments          | 5     | 4     | 3     | 3     | 2     |      |

TRIBUNAL.

| Judgments, after hearing both parties     | 88    | 114  | 159  | 119  | 139  | 222  |
| Defaults                                 | 12    | 36   | 26   | 17   | 30   | 24   |
| Dropped or withdrawn.                    | 2     | 21   | 17   | 16   | 16   | 17   |
| Conciliated in the hearing.              | 9     | 14   | 22   | 23   | 25   | 53   |
| Lack of jurisdiction.                    | 2     | 3    | 6    | 4    | 12   | 8    |
| Oppositions.                            | 4     | 5    | 4    | 3    | 12   | 5    |
| Expert investigations.                  | 1     | 1    | 1    | 1    | 1    |      |
| Cases requiring more than one hearing.   | 13    | 12   | 15   | 14   | 31   | 26   |
| Petitions for revision                   | 1     | 1    | 1    | 1    | 1    |      |
| Cases brought directly to the tribunal.  | 92    | 129  | 135  | 132  | 155  | 192  |

| Number of hearings                        | 14    | 25   | 30   | 22   | 19   | 14   |

MIXED COURT.

| Cases                                      | 1     | 2    | 2    | 1    | 2    | 1    |

1 Not separately given.

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### Table XIX—Statistics of the Work of the Councils of Prudhommes of Geneva in 1909, by Industry Groups.

*From Opérations du Tribunal des Prudhommes en 1909.*

<table>
<thead>
<tr>
<th>Industry groups or sections</th>
<th>Cases entered</th>
<th>Board of conciliation</th>
<th>Tribunal</th>
<th>Appeals</th>
<th>Mixed court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Drop-</td>
<td>Judgments in-</td>
<td>Cases requiring more than one hearing</td>
<td>Lack of jurisdiction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ped or re-</td>
<td>First re-</td>
<td>Last re-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>tired.</td>
<td>sort.</td>
<td>sort.</td>
<td></td>
</tr>
<tr>
<td>Watch and clock making</td>
<td>27</td>
<td>6</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Jewelry industry</td>
<td>17</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Building industries</td>
<td>133</td>
<td>23</td>
<td>17</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Woodworking industries</td>
<td>94</td>
<td>25</td>
<td>10</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Metal-working industries</td>
<td>243</td>
<td>20</td>
<td>18</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Clothing industries</td>
<td>158</td>
<td>29</td>
<td>19</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Food and drink industries</td>
<td>354</td>
<td>64</td>
<td>37</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Printing industries</td>
<td>22</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Traffic employments</td>
<td>95</td>
<td>15</td>
<td>9</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Commercial pursuits</td>
<td>1288</td>
<td>49</td>
<td>14</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Domestic service</td>
<td>2209</td>
<td>30</td>
<td>19</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Agricultural pursuits</td>
<td>135</td>
<td>14</td>
<td>12</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>1,795</td>
<td>282</td>
<td>150</td>
<td>10</td>
<td>20</td>
</tr>
</tbody>
</table>

1. One case remained pending in the tribunal at the end of the year.
2. Two cases were heard on complaints in revision.
**APPENDIX II.—LAW OF MARCH 27, 1907, CONCERNING COUNCILS OF PRUDHOMMES—FRANCE.**

(Amended and supplemented by the acts of November 13 and 15, 1908.)

**TITLE I.—POWERS—INSTITUTION AND ORGANIZATION OF COUNCILS OF PRUDHOMMES.**

**ARTICLE 1.** The councils of prudhommes are instituted for the purpose of terminating, by means of conciliation, differences which may arise on account of the labor contract in commerce and industry between the employers, or their representatives, and the employees, workmen, or apprentices of both sexes whom they employ.

Subject to the conditions of competency determined by articles 32, 33, 34, and 35 of the present law, they shall decide controversies in regard to which conciliation has been unavailing.

Their mission, as conciliators and as judges, is equally applicable to disputes originating between workmen in reference to labor.

Nevertheless they shall not take cognizance of actions for damages based upon accidents of which workmen, employees, or apprentices have been the victims.

They must give their advice on questions submitted to them by the administrative authority.

They shall, moreover, exercise the functions which are entrusted to them by special legislative acts.

**ART. 2.** The councils of prudhommes are instituted by decrees rendered in the form of rules of public administration on the recommendation of the minister of justice and the minister of labor and social providence, after a hearing of the chambers of commerce and the advisory chambers of arts and manufactures, as well as of the municipal councils of the interested communes, in cities where the importance of industry or commerce demonstrates their necessity.

The creation of a council of prudhommes is obligatory when it is demanded by the municipal council of the commune where it is to be established, in accordance with the favorable opinion of the chambers of commerce and the advisory chambers of arts and manufactures, of the general council of the department, of either of the district council or councils in the jurisdiction indicated, and of the majority of the municipal councils of the communes which will compose the projected district.

**ART. 3.** The decree of institution defines the jurisdiction of the council, the number of categories into which the trades and industries subject to its juris-
dication are divided, and the number of prudhommes apportioned to each category, in such manner that the total number of the members of the council be not uneven or less than 12. The laborers and employees are classed in separate categories.

The decree determines, if there is occasion, the divisions of the councils and the constituent membership.

Amendments to the decree of establishment may be made in the same manner.

Art. 4. Members of the councils of prudhommes are chosen for six years. Every three years one-half of the number are retired and replaced by new members. However, they continue to serve until the installation of their successors.

Art. 5. Conditions of eligibility: (1) Registration in the public voting lists; (2) full age of 25 years; (3) to have pursued for three years, including apprenticeship, a trade specified in the decree instituting the council, and to have resided in the jurisdiction of the council for one year.

Laborer electors: The workmen, the gang bosses or foremen taking part in the actual performance of industrial labor, and the chiefs of domiciliary workshops who themselves participate in the handicraft.

Employee electors (other than laborers): The employees of commerce and industry not engaged in manual labor and foremen exercising only the functions of supervision or direction.

Employer electors: Proprietors employing on their own account one or more workmen or employees, partners in a firm, those who carry on or manage for others a factory, a mill, a workshop, a store, a mine, or in general any industrial or commercial enterprise whatever, the presidents and members of the administrative boards, the engineers and superintendents in mining enterprises, as well as in divers industries.

In accordance with the foregoing distinction there are also registered in the electoral lists women of French citizenship having the qualification as to age, exercise of a trade, and of residence, and not having incurred any of the disabilities specified in articles 15 and 16 of the organic decree of February 2, 1852.

Art. 6 (modified by the law of Nov. 15, 1908). There are eligible, on condition of having been domiciled for three years in the jurisdiction of the council: First. The electors 30 years of age, able to read and write, registered in the special electoral lists, or fulfilling the conditions requisite for registration. Second. Former electors who have relinquished the trade within a period not exceeding five years and who have worked at it for five years in the jurisdiction.

Art. 7. The councils of prudhommes are composed of an equal number of workmen or employees and of employers in each category. There must be at least two employer prudhommes and two workmen or employee prudhommes in each category.

Art. 8. Workman or employee prudhommes are chosen by the workman or employee electors, the employer prudhommes by the employer electors, meeting in separate assemblies, each presided over by the justice of the peace or one of his deputies.

In a case where, for convenience of voting, there have been established several polling places, the prefect may designate in his decree a mayor or a deputy to preside at one or several polling places.

Art. 9. Elections are conducted by ballot for a list and by categories.

An election will not be valid on the first ballot if the candidates do not receive an absolute majority of the votes cast, and if this majority is not equal to one-fourth of the registered electors; a plurality of voters suffices on the second ballot.

In case of a tie at the second ballot, the senior candidate shall be declared elected.

Art. 10. Every year, within 20 days subsequent to the revision of the public voting lists, the mayor of each commune of the jurisdiction, assisted by a workman elector, an employee elector, and an employer elector designated by the municipal council, registers in the different lists the name, trade, and domicile of the workman, employee, and employer electors.

During the same period the female electors shall be entered in the registration lists, and declarations of the employees shall be taken concerning the kind of commerce or industry in which they are engaged.

These lists are transmitted to the prefect, who arranges and proclaims the list of each category of electors.
The lists are deposited at the office of both the secretary of the council of prudhommes and the secretary of each of the communes of the jurisdiction. The electors are notified of the deposit by posters affixed to the doors of the town hall. In the fortnight following the publication protests may be filed against the make-up of the lists. These are taken before the justice of the peace of the township (canton), examined, and adjudicated in conformity with articles 5 and 6 of the law of December 8, 1883, respecting consular elections [for the election of judges (juges consulaires) of the local commerce courts].

Corrections are effected agreeably to article 7 of the same law.

Art. 11. The triennial retirement provision must be applied to one-half of the total number of workmen or employee members and to one-half of the employer members comprised in each category of the council. In each of these categories the designation of the prudhommes that are first to be replaced is determined by lot. The retiring prudhommes are reeligible.

Art. 12. When there is occasion for holding elections the prefect convokes the electors, indicating the day and place of their meeting at least 20 days in advance. He fixes the hours for the opening and close of every ballot. There may be several voting sections.

Elections are always held on a Sunday. The second ballot will be taken the following Sunday.

Art. 13. The rules established by articles 13, 18 to 25, and 26, paragraphs 1 and 3 and 27 to 29 of the law of April 5, 1884, relating to municipal elections, are applicable to electoral procedures for the council of prudhommes.

Within three days after the receipt of the official report of the elections the prefect shall transmit certified copies of this official report to the attorney general and to the secretary of the council of prudhommes.

The protests against the elections are filed, examined, and adjudicated conformably to article 11, paragraphs 5, 6, and 7, and article 12 of the law of December 8, 1883. Notice of the judgment is given to the prefect.

Art. 14. Within two weeks from the receipt of the formal report, if there has been no protest, or within two weeks following a final decision, the State's attorney invites the members elect to present themselves at a session of the civil court, which proceeds publicly to grant them admission and enters detailed reports in its records.

In the course of this ceremony of admission the members elect individually take the following oath:

"I swear to perform my duties with zeal and integrity and preserve secrecy as to matters under deliberation."

On the day of the public installation of the council of prudhommes the official report of the formalities of admission is read.

Art. 15. In case one or more vacancies should occur in the council in consequence of death, resignation, annulment of the first ballot, or from any other cause, it is in order to hold elections for the purpose of filling the vacancies within the interval of a month, dating from the occurrence which gave rise to the necessity, unless the period intervening between the occurrence and the time of the next triennial election is not more than three months.

Any member elected under these conditions remains in office only during the unexpired term of his predecessor.

Every workman or employee prudhomme councilor who becomes employer, and, conversely, every employer who becomes a workman or employee, must notify the State's attorney and the president of the council that he has lost the qualification by virtue of which he was elected. This declaration necessarily has the effect of a resignation.

In default of such declaration the general meeting is put in possession of the facts in question by its president or by the State's attorney. The member of the council to whom the case relates is summoned to this meeting to give his explanation of the delinquency.

Within a week the official report is transmitted by the president to the State's attorney, and by the latter within a like interval to the president of the civil court.

In view of the official report, the resignation is proclaimed, if there is occasion, by the civil court in the council chamber, except in case of appeal to the appellate court. Notice of the decision is given to the prefect by the State's attorney, and, in case of appeal, by the attorney general.
Art. 16. If it is necessary to proceed to supplementary elections, either because the first ballots have not given satisfactory results in constituting or completing the quota of the council, or because one or more prudhommes-elect should decline to be installed, have resigned, or been forced to resign by the operation of article 44, and if one of these several circumstances recurs, no provision is made for vacancies which may result except at the time of the next triennial election, and the council or the section officiates, whatever be the qualification of the regularly elected or acting members: Provided, That their number be at least equal to one-half of the total number of members of which it should be composed.

The same provision is applicable to cases where one or several elections may be annulled by reason of the inability of the members chosen.

Art. 17. The prudhommes, meeting in general assembly of the sections under the presidency of the senior member, shall elect a president and a vice president from their number by secret ballot and an absolute majority of the members present.

After two ballottings in which none of the candidates has received an absolute majority of the votes of the members present, if, on the third ballot, there is still no decisive vote, the councilor longest in office shall be declared elected. If the two candidates have had an equal term of service, the preference shall be given to the senior in years; it will be the same in case of the organization of a new council.

Art. 18. When the president is chosen from the ranks of workman or employee prudhommes, the vice president can be selected only among the employers, and vice versa.

The president shall be alternately a workman or employee or an employer.

It shall be decided by lot whether an employer or a workman or employee is to be the first president.

Exceptionally, in cases provided for by article 16, the president and the vice president may both be chosen either among the workman or employee prudhommes, or among the employer prudhommes, if the council happens to be composed exclusively of either element.

Protests against the election of members of the bureau are submitted to the appellate court, subject to the provisions of the penultimate paragraph of article 13; these protests must be made within a fortnight.

Art. 19. The president and the vice president are elected for one year. They are eligible for reelection, subject to the condition of alternation, as stated in the preceding article.

They remain on duty until the installation of their successors.

Art. 20. Each section of the councils of prudhommes includes: (1) A board of conciliation (bureau de conciliation); (2) a judgment board (bureau de jugement).

Art. 21. The board of conciliation is composed of a workman or employee prudhomme and an employer prudhomme; the presidency belongs alternately to the workman or employee and the employer, according to a rotation established by the special regulation of each section.

Which of the two shall be the first president of the board is determined by lot.

Exceptionally, and in the cases mentioned in article 16, the two members composing the board may both be chosen among the workman or employee prudhommes or among the employer prudhommes, if the section is found to consist of but a single class.

Art. 22. The sessions of the board of conciliation are held at least once a week. They are not public.

Art. 23. The judgment board is always composed of an equal number of employer prudhommes and of workman or employee prudhommes, and includes the president or the vice president, presiding alternately. This number comprises at least two employers and two workmen or employees. In the absence of the president or of the vice president, the presidency devolves upon the councilor who is oldest in the service, or if there is equality in length of official tenure, upon the eldest in years.

Exceptionally, in the cases provided for by article 16, the judgment board may validly hold deliberations with an even number of members present—at least as many as four—even though it shall not be made up of an equal number of workmen or employees and of employers.

The conclusions of the judgment board are determined by an absolute majority of the members present.
In case of disagreement the matter is referred back, after a very brief interval, to the same judgment board, presided over by the justice of the peace of the district or one of his deputies.

If the district of the council includes the justices' courts of several cantons or departments, the justice of the peace summoned to become a party of the judgment board and preside at its sittings shall be the senior justice in office or in age, as aforesaid, with reference to the presidency.

However, the president of the civil court in whose jurisdiction the council of prudhommes holds its sessions must, in a case where it shall be so ordered by the minister of justice, institute among the justices of the peace in the district of the council a system of rotation in terms of service according to which they shall perform the official duties, each in his turn, during a definite period.

The justices of the peace in cantons outside of whose limits the seat of the council is fixed shall, at their own request, be excused from attendance.

The sittings of the judgment board are public. If the discussions are of such a character as to lead to scandal, the council may order a secret session. Judgment shall always be pronounced in open court.

Art. 24. To every council there shall be attached one or more secretaries and, if there is need, one or more assistant secretaries, appointed by a decree issued at the instance of the minister of justice from a list of three candidates determined upon by an absolute majority in general meeting. They must take the oath of office before the civil court. Their remuneration is fixed for the councils already existing by a rule of public administration and for the councils which shall be formed in the future by decree.

The secretary is present and acts as clerk at the hearings of the boards of conciliation and of judgment. The secretaries and assistant secretaries can not be deprived of their positions except by a decree issued at the suggestion of the minister of justice, either in his official capacity or under a decision approved by two-thirds of the prudhommes meeting in general assembly.

Art. 25. In any city there can be but one council of prudhommes. The council may be divided into sections. The categories of workmen and the categories of employees are classed in separate sections. Each section is autonomous. The presidents and vice presidents of the sections shall meet every year to choose from among the former, in the manner provided in article 17, the president of the council of prudhommes, who is responsible for the relations with the administration, and, among the sections, for the internal administration and the general discipline.

TITLE II.—CONCERNING PROCEDURE BEFORE THE COUNCILS OF PRUDHOMMES.

Art. 26. The parties are bound to present themselves in person, on the day and at the hour designated, before the board of conciliation or the judgment board.

They may have assistance, and, in case of absence or illness, may be represented by a workman or employee or by an employer engaged in the same occupation.

Heads of industrial or commercial enterprises may always be represented by the managing director or by an employee of their establishment.

The proxy must exhibit a power of attorney, on unstamped paper, which may be given below on the original or the copy of the writ. The parties may present their depositions in writing; they can not submit any pleas. The parties should be present or be represented by a regularly registered solicitor of the bar or by an attorney practicing before the civil court of the district. The solicitor and the attorney shall be excused from presenting a power of attorney.

Art. 27. The defendant is summoned before the board of conciliation by a simple letter of the secretary, who shall enjoy the postal-franking privilege. The letter must designate the day, month, and year, the name, trade, and domicile of the plaintiff, the subject of the complaint, and the day and hour of the appearance. It is either mailed by the secretary or delivered by the plaintiff, at the option of the latter.

Art. 28. The parties may always appear voluntarily before the board of conciliation, and in that case the procedure in reference to them is the same as if the matter had been introduced by a direct complaint.
Art. 29. If the plaintiff does not appear on the day fixed by the secretary's letter, the cause is canceled from the list and cannot be taken up again until after the interval of a week.

If the defendant does not appear, nor any person entitled to represent him, or if conciliation cannot be effected, the matter is referred to the next session of the judgment board.

The secretary then summons the parties, either by registered letter, with return receipt, or by the agency of the bailiff.

In case of summons by registered letter the defendant, in default of acknowledgment of receipt, is cited to appear by the bailiff. The citation contains the specifications prescribed as requisite for the letter by article 27.

In both cases there shall be an interval of one full day before the date of appearance. If the summons takes place by means of registered letter, the interval shall be reckoned beginning with the date of transmittal shown on the receipt form.

Witnesses shall be summoned in the same manner and with the same interval before appearance.

Art. 30. In cases where conciliation cannot be effected, the cause, instead of being postponed to a future hearing, may be immediately decided by the judgment board if both parties consent.

Art. 31. If one of the parties fails to appear on the appointed day, the case is decided by default.

Art. 32. The decisions of the councils of prudhommes are final and without appeal, except on the score of competence, whenever the amount of the claim does not exceed 300 francs.

Differences between employees and their employers are within the jurisdiction of the ordinary courts when the amount of the demand exceeds a thousand francs. This limitation does not apply to controversies between workmen and their employers.

Art. 33. The councils of prudhommes take cognizance of all counterclaims or demands for compensation which, from their nature, come within their jurisdiction.

When all of the demands, original, counterclaim, or compensatory, are within the limits of the council's jurisdiction in the last resort there can be no opportunity for appeal against its decision.

If one of these demands can be adjudicated only on appeal, the council shall give judgment only on matters of primary jurisdiction. Nevertheless, it shall decide in the last resort, if the counterclaim for damages alone, based exclusively on the original claim, exceeds its competence in the first instance.

In controversies between employees and their employers, if the original claim exceeds the competence of the council in the last resort, it shall order an appeal in the case of the counterclaim for damages based exclusively on the original claim, even if it is more than a thousand francs.

All claims arising from the labor contract between the same parties must be made the subject of only one suit, under pain of being declared inadmissible, unless the plaintiff shows that the causes of the new claims do not give rise to his profit, or that they were not known to him until subsequently to the presentation of the original claim.

Judgments subject to appeal may be provisionally declared executory with exemption from bond to the amount of one-fourth of the sum, unless this one-fourth shall exceed 100 francs. For the remainder the provision execution may be ordered on condition that the plaintiff furnish bond.

Art. 34. If the claim amounts to more than 300 francs appeal may be taken from the decisions of the councils of prudhommes to the civil court.

The appeal shall not be entertained prior to the third day subsequent to that on which judgment is pronounced, unless there is occasion for provisional execution, nor after 10 days following the legal notice.

The appeal shall be examined and adjudged as a business affair without the obligatory attendance of an attorney. If the interested parties do not appear in person they may be represented in like manner as under the conditions pointed out in article 26. They may be especially represented and defended before the civil court either by an attorney of the said court or by a solicitor enrolled at the bar. In that case a power of attorney shall not be required.

The civil court shall render a decision within three months from the date of the appeal.

Art. 35. The judgments rendered as final by the councils of prudhommes may be attacked, by means of an appeal, as ultra vires or in violation of the law.
Appeals shall be taken at the latest by the fifth day from the date of the legal notice of the judgment, by a declaration at the office of the secretary of the council, and notification shall be given in the course of a week, on pain of forfeiture of the claim. Within the fortnight from the date of the legal notice the papers shall be sent to the supreme court; no deposit shall be made; the services of a solicitor are not obligatory.

The appeal shall be taken directly before the civil chamber. The appellate court shall render its decision within the month following the receipt of the papers.

Decisions of civil courts, which have acted on appeal by virtue of article 34 of the present law, may be attacked by way of appeal for incompetency, transcending authority, or violation of the law. Appeals against these judgments are subject to the rules prescribed in the second, third, fourth, and fifth paragraphs of the present article. But the declaration of appeal shall be made at the court clerk's office.

Art. 36. The council, in case of the absence, objection, or refusal of authorization of the husband, may empower a married woman to demand conciliation, and to prosecute or defend a suit before it.

Art. 37. Minors who can not be assisted by their father or guardian may be authorized by the council to demand conciliation and to appear before it in the capacity of plaintiff or defendant.

Art. 38. Members of the councils of prudhommes may be challenged: First, when they have a personal interest in the controversy; second, when they are related by birth or marriage to one of the parties to the action, including cousins-german and all intermediate degrees of kinship; third, if, within a year preceding the challenge there has been any action at law, either criminal or civil, between them and one of the parties, or his wife, or his relatives by blood or affinity in a direct line; fourth, if they have given a written opinion in regard to the matter; fifth, if they are employers, workmen, or employees of one of the parties to the cause.

The party who desires to challenge a prudhomme is required to formulate the challenge prior to any pleadings, and to make known his motives in a declaration bearing his signature and transmitted to the secretary of the council of prudhommes, or made orally to the secretary himself. An acknowledgment of its receipt is to be delivered to the sender.

Within an interval of two days the challenged prudhomme shall be required to give, below the declaration, his answer in writing, conveying either his acquiescence in or opposition to the challenge, with his observations concerning the pleas of the challenge.

Within three days after the answer of the prudhomme who refuses to acquiesce in the challenge, or in default of an answer by him, a copy of the declaration of challenge and of the observations of the prudhomme, if he makes any, shall be sent by the president of the council to the president of the civil court of the territory in which the council is situated. The challenge shall there be finally adjudicated within a week, unless it is necessary to summon the parties. Notice of the decision shall be immediately given to the president of the council through the medium of the State's attorney.

Art. 39. The functions of the prudhommes are wholly gratuitous so far as the parties are concerned; they are entitled to no fees from the parties for services performed by them.

Art. 40. The records of procedure, the decisions, and the documents necessary for their execution are drawn up on paper bearing the official stamp and registered. The indorsement by the official stamp is placed on the original at the time of its registration. Exceptionally, the formal reports, decisions, and documents will be registered gratuitously whenever they shall show that the object at stake does not exceed in value the amount of 20 francs. These provisions are applicable to causes carried up on appeal or taken before the appellate court.

The defeated party is required to pay into the treasury the costs of the suit. The preceding paragraphs are applicable to all causes that come within the competence of the councils of prudhommes and of which the justices of the peace take cognizance in localities where these councils are not established; all this in conformity with article 27 of the law of January 22, 1851.

Legal assistance may be accorded before the councils of prudhommes under the same forms of procedure and conditions as before the justices of the peace.
The legally assisted party may secure from the president of the bar association the appointment of an attorney to present his pleas before the judgment board of the council of prudhommes.

[The article is completed as follows by the law of November 13, 1908:]
The questions which are within the competence of the councils of prudhommes and of which the justices of the peace take cognizance in places where these councils are not established, are formulated, examined, and determined, both in case of jurisdiction in the first instance and before the appellate judges or the supreme court, agreeably to rules established by the provisions of the present title.

Art. 41. The competence of the councils of prudhommes is determined, with reference to the labor in an establishment, by the situation of this establishment; and, with respect to labor outside of any establishment, by the locality where the labor engagement is ratified. When the council is divided into sections, the competent section is determined by the kind of labor, whatever may be the character of the establishment.

Art. 42. In urgent cases the councils of prudhommes may institute such measures as shall be deemed necessary to prevent the removal, displacement, or deterioration of the objects which give rise to a claim.

Art. 43. Articles 5, 7, 10, 11, 12, 13, 14, 15, 18, 20, 21, 22, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 54, 55, 73, 130, 131, 156, 168, 169, 170, 171, 172, 442, 452, 453, 454, 455, 456, 457, 458, 459, 460, 474, 480, and 1033 of the Code of Civil Procedure, 63 of the decree of April 20, 1810, and 17 of the law of August 30, 1883, are applicable to the jurisdiction of the prudhommes in every respect when they do not conflict with the present law.

TITLE III.—CONCERNING THE DISCIPLINE OF THE COUNCILS OF PRUDHOMMES.

Art. 44. Every member of a council of prudhommes who, without legitimate motives and after demand in due form of law, shall refuse to perform the service to which he is summoned, may be declared to have resigned his office.

Art. 45. The president establishes the refusal of service by means of an official report containing the advice of the council or the section, the prudhomme having been previously heard or duly summoned.

If the council or the section does not give its advice within the interval of a month of the date of convocation, the president makes mention of this fact in the report which he transmits to the State's attorney, who brings the same to the attention of the civil tribunal.

Art. 46. In view of the official report, the resignation is declared by the tribunal in chambers, whether the council of prudhommes has considered the matter or not. In case of protest it is passed upon by the appellate court. The protest must be made within two weeks from the time when the decision is rendered. The interested party must be summoned before the tribunal as well as before the appellate court.

Art. 47. Every member of a council of prudhommes who shall seriously neglect his duties in the exercise of his functions shall be summoned to give an explanation of the charges brought against him.

The initiative in this appeal belongs to the president of the council of prudhommes and to the State's attorney.

Within the interval of a month from the date of convocation, the official report of attendance at the session is sent by the president of the council of prudhommes to the State's attorney.

This report is transmitted by the State's attorney, with his advice, to the minister of justice. The following penalties may be pronounced, according to the circumstances in the several cases:

Reprimand.
Suspension for a period not exceeding six months.
Dismissal.

Art. 48. Reprimand and suspension may be declared by order of the minister of justice. Dismissal is announced by decree.

Art. 49. Every prudhomme-elect who refuses to be installed, tenders his resignation, or is declared to have resigned in virtue of article 44 is ineligible for reelection until after the lapse of three years from the date of his refusal, his resignation, or from the decision of the tribunal that declares his resignation to have taken effect.
Art. 50. Any prudhomme against whom a decree of dismissal has been pronounced can never be reelect to the same office.

Art. 51. The acceptance of an imperative mandate (mandat imperatif), at whatever time and under whatever form it may take place, constitutes on the part of a prudhomme councilor a grave dereliction of duty.

If the fact is known to the judges charged with the determination of the validity of electoral proceedings, there is involved by plain implication the annulment of the election of the culpable party.

If the evidence is not reported until subsequently the method of procedure must be conformable to the provisions of articles 47 and 48.

The acceptance of an imperative mandate thus made known has, as a necessary consequence, in the first case, ineligibility; in the second, dismissal.

Art. 52. In case a complaint of deceit is preferred against members of the councils of prudhommes proceedings shall be instituted against them under the form prescribed with reference to judges by article 483 of the Code of Criminal Procedure.

Art. 53. Articles 4 and 5 of the Civil Code, 505 to 508, 510 to 516 of the Code of Civil Procedure, and 126, 127, and 185 of the Penal Code are applicable to the councils of prudhommes and to their members individually.

Complaints affecting the prudhommes personally shall be brought before the court of appeals.

Art. 54. Councils of prudhommes or their sections may be dissolved by a decree rendered at the instance of the minister of justice.

In that case the general elections must be held within a period of two months from the date of the decree of dissolution.

Until the installation of the new council or the new section litigation shall be conducted before the justice of the peace of the domicile of the defendant.

Councils of prudhommes may be suppressed also by decree issued in the form of regulations of public administration at the suggestion of the minister of justice and of the minister of labor and social providence.

TITLE IV.—GENERAL PROVISIONS.

Art. 55. Every council of prudhommes prepares in general meeting a set of regulations for its internal administration.

These regulations are not to be carried into effect until after their approval by the minister of justice and the minister of labor and social providence in so far as they relate to the administrative and advisory functions of the council.

Art. 56. The councils of prudhommes meet in general meeting at all times when required by higher authority to do so, by a majority of one on ballot of the members in service, or when the president deems it expedient. Within a fortnight the report of each general meeting is transmitted by the president to the minister of justice, and, if it is necessary, to the minister of labor and social providence.

Art. 57. At hearings, as well as at public ceremonies, the members of the councils of prudhommes wear, on the left breast, a silver badge, fastened by a ribbon, in token of their official character.

A ministerial decree shall prescribe the size and device of the badge, as well as the color of the ribbon.

Art. 58. There are paid to the secretaries of the council of prudhommes, in addition to their salaries, the following fees:

For a summons before the board of conciliation by simple letter, 15 centimes.
For a summons before the judgment board by a registered letter, with return receipt, 75 centimes.
For every abstract of judgment delivered at the record office, 25 centimes.
For every copy of documents furnished which contains 20 lines to a page and an average of 12 syllables to the line, 40 centimes.
For a copy, if it is required, of the official report of the failure of conciliation, containing only the summary statement that the parties are unable to agree, 80 centimes.
For drawing up and copying the official report of each deposit of designs or models, 1 franc.

1 An imperative mandate is the instruction given to a member by his constituency to vote in a certain way.
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Cost of paper—for registration, copying, or other purposes—shall be at the expense of the secretary, with the exception of revenue stamps for the reports and copies referred to in the preceding paragraph.

The secretary draws directly from the parties the fees allowed to him, even those originating in the service of copies.

There is granted to the bailiff: For every summons, 1 franc and 25 centimes; for the legal notice of a judgment, 1 franc and 75 centimes.

If there is a distance of more than 5,000 meters between the abode of the bailiff and the place where the summons and the legal notice must be delivered, he shall be paid per 10,000 meters and fractional part thereof over and above that distance, going and returning; for the summons, 1 franc and 75 centimes; for the legal notice, 2 francs.

For each copy of the items which are given with the decisions rendered, there shall be allowed, for every copy of 20 lines to a page and 12 syllables to the line, 20 centimes.

Art. 59. There is allowed to witnesses heard by the councils of prud'hommes, when they make the demand, the sum of 2 francs as an indemnity for loss of time. Witnesses whose domiciles are outside of the canton, at a distance of more than 25,000 meters and less than 50,000, shall receive 4 francs; if upwards of 50,000 meters, they receive 4 francs for every 50,000 meters or fraction thereof.

Art. 60. Every secretary of a council of prud'hommes convicted of having demanded a fee in excess of what the law allows is punishable as an extortioner.

TITLE V.—EXPENSES OF THE COUNCILS OF PRUDHOMMES.

Art. 61. The office rooms necessary for the councils of prud'hommes are furnished by the city where they are established.

Art. 62. The following expenses for the communes comprised in the district of a council of prud'hommes are obligatory: (1) The first cost of establishment; (2) the purchase of insignia; (3) heating; (4) lighting and incidental expenses; (5) cost of election; (6) compensation of one or several secretaries and one or several assistant secretaries attached to the council.

Art. 63. The president of each council of prud'hommes submits, during the month of December in every year, a statement of the expenditures designated in the preceding article to the prefect of the department for his approval.

TITLE VI.—COUNCILS OF PRUDHOMMES IN THE COLONIES AND IN ALGERIA.

[Articles 64 to 72, inclusive, are omitted.]

TITLE VII.—SPECIAL PROVISIONS.

Art. 73. Repealed are (1) articles 1 to 9, 29 et sequentia of the law of March 18, 1806; (2) the decree of June 11, 1809; (3) the decree of August 3, 1810; (4) the decrees of May 27 and June 6, 1848; (5) the law of August 7, 1850, with the exception of its application to controversies specified in article 27, paragraph 2, of the law of January 22, 1851; (6) article 18, first paragraph of the law of February 22, 1851; (7) the law of June 1, 1853; (8) the law of June 4, 1864; (9) the law of February 7, 1880; (10) the law of February 23, 1881; (11) the law of November 24, 1885; (12) the law of December 10, 1894; (13) the law of July 15, 1905; and, in general, all provisions contrary to the present law.

TITLE VIII.—PROVISIONAL ARRANGEMENT.

Art. 74. The secretaries and deputy secretaries in service at the time of the promulgation of the present law shall continue in the exercise of their functions with the titles of secretaries and assistant secretaries, respectively.

The present law, deliberated and adopted by the Senate and the Chamber of Deputies, shall be executed as a law of the State.

Done at Paris, March 27, 1907.
VIOLATIONS OF LAWS AND ORDINANCES.

Art. 10. From complaints which may be addressed to that body, the council of prudhommes shall be specially commissioned to determine the existence of violations of the laws and ordinances either recently enacted or put in force.

Art. 11. These official reports, prepared by the prudhommes to prove these violations, shall be transmitted to the competent tribunals, as well as the objects seized.

Art. 12. The council of prudhommes shall also determine, on the basis of complaints brought before it, the thefts of raw material which may be committed by workmen, to the injury of manufacturers, and acts of unfaithfulness on the part of dyers.

Art. 13. The prudhommes in the foregoing cases—at least two in number, one a manufacturer and one a shop foreman—on oral or written requisition of the parties may, accompanied by a public officer, visit manufacturers, foremen of shops, workmen, and journeymen.

The official reports proving the thefts or acts of unfaithfulness shall be addressed to the general bureau of the prudhommes and transmitted, together with the articles forming evidences of guilt, to the competent tribunals.

1 Article 14, charging the council of prudhommes with taking measures for the protection of pattern rights, and articles 20 to 28, relating to regulations of the accounts and the contracts between masters of workshops and merchants, are still in force. Articles 15 to 19, relating to procedure in securing pattern rights, were repealed by the law of July 14, 1909.
 DECISIONS OF COURTS AFFECTING LABOR.

[Except in cases of special interest, the decisions here presented are restricted to those rendered by the Federal courts and the higher courts of the States and Territories. Only material portions of such decisions are reproduced, introductory and explanatory matter being given in the words of the editor.]

DECISIONS UNDER STATUTE LAW.

Assignments of Wages—Rates of Interest—Police Power—Constitutionality of Statute—King et al. v. State, Supreme Court of Georgia (August 19, 1911), 71 Southeastern Reporter, page 1093.—Sections 3444 and 3445 of the Civil Code of Georgia, 1910, make it a crime to reserve, charge, or take an amount of interest in excess of 5 per cent per month, "either directly or indirectly, by way of commission for advances, discount, exchange, the purchase of salary or wages, by notarial or other fees or by any contract or contrivance or device whatever." The statute is a general one prohibiting usurious transactions in the classes of cases covered, but since it specifies the purchase of salary or wages, and the question of its constitutionality was involved in the action, it may be briefly noticed here. Various questions were raised as of the equal protection of persons, due process of law, special legislation, the interference with the right to buy or sell property, and a technical question going simply to the form of the statute. Judge Holden, who spoke for the court, sustained the law against all the objections, quoting from a decision of the Supreme Court of the United States to the effect that "it is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of the State for the use of money loaned within the jurisdiction of the State is one within the police power of such State." (Griffith v. Connecticut, 218 U. S. 563; 31 Sup. Ct. 132.) Judge Holden also cited cases supporting the special treatment of cases of usury involving rates higher than those prohibited in the general usury law; also sustaining the ground that "all property and, indeed, all rights of natural persons or corporations are subject to the exercise of the police power of the State," so that the right to contract itself is not absolute, but is subject to the reasonable exercise of such power. (Atlantic Coast Line R. Co. v. State, 135 Ga. 545; 69 S. E. 725.) The designation of certain forms of violation does not exclude from the penalties other forms of violation, since the law prohibits the
The right to purchase the salary or wages of another, and the right
of the latter to sell the same, and the right to make the charges re-
ferred to, are not affected by any of the provisions of the act, except
as stated. The act never intended to interfere with the right of the
citizen to make a bona fide contract for such purchases or sales or
charges, save as a part of a usurious transaction, and there is noth-
ing in the act authorizing a construction that the right to make such
contracts is thereby impaired. The legislature has the power to pro-
hibit usury from being charged, directly or indirectly, through any
scheme or device. This act deals with such a situation where the
charge exceeds 5 per cent per month.

Having therefore answered all objections to the law it was sus-
tained as constitutional.

Contracts of Employment—Advances—Intent to Defraud—
Involuntary Servitude—Constitutionality of Statute—Latson v.
Wells, Supreme Court of Georgia (August 17, 1911), 71 Southeastern
Reporter, page 1052.—Lawrence Latson had been arrested on a charge
of violating section 715 of the Penal Code of Georgia of 1910, and
pleaded guilty. This section of the code makes it a misdemeanor for
a person to “contract with another to perform for him services of
any kind, with intent to procure money or other thing of value there-
by and not to perform the service contracted for, to the loss and
damage of the hirer.” On his plea of guilty Latson was sentenced
by the judge of the superior court of Dooly County to the payment
of a fine or to serve 12 months on the chain gang in each of two
cases. Latson’s wife tried to procure the discharge of her husband
on a writ of habeas corpus, and on the judge’s refusing to order his
release the case was brought to the supreme court on a writ of error.
The point in question was the constitutionality of the statute in view
of the provisions of the thirteenth amendment to the Constitution of
the United States, prohibiting slavery and involuntary servitude ex-
cept as a punishment for crime. Judge Holden, speaking for the
court, sustained in his opinion the constitutionality of the law in
question and affirmed the judgment of the court below. The grounds
for this conclusion are set forth in the following portion of the
opinion as delivered by Judge Holden:

The act under review does not seek to punish one for the mere
breach of a contract, or the mere failure to pay a debt. The pro-
visions of the act are aimed at the fraudulent practices therein
referred to. It is the intent to defraud and the actual defrauding
of another by virtue of such intent being carried out that the act
makes a crime. The section above quoted is not susceptible of the
construction that it seeks to punish one because of a failure to per-
form a contractual obligation, or to pay a debt, but the gist of the
crime referred to in the act is the fraudulent intent with which one
obtains "money or other thing of value" from another, who is
defrauded by the former by reason of the carrying out of such intent.
We fail to see any constitutional objection to a statute making it a
crime for one willfully and knowingly to defraud another. If one
knowingly and willfully defrauds another "of money or other thing
of value," as set forth in the statute above quoted, it is no less a
wrong than if he defrauds him in some other way. We have several
statutes making fraudulent practices whereby one defrauds another
a crime. (See Pen. Code 1910, sec. 703 et seq.) The legislative de-
partment of the Government is not without authority to make an
act of fraud, whereby another sustains loss because of the commission
of the fraud, a crime.

The mere fact that the party committing the fraud after its com-
mission is left under an obligation to the party defrauded to pay
him a debt, or to perform a contract made with him, which were in-
volved in the transaction in which the fraud was committed, does
not make the act denouncing the fraud unconstitutional on the
ground that it seeks to punish one for failure to pay a debt, or to
perform a contract. (Banks v. State, 124 Ga. 15; 52 S. E. 74. Town-
send v. State, 124 Ga. 69; 52 S. E. 293. Lamar v. State, 120 Ga. 312;
47 S. E. 958. Lamar v. Prosser, 121 Ga. 153; 48 S. E. 977. Mulkey
State, 158 Ala. 18, 24; 48 South. 498, 499, the court in a decision in-
volving an act similar to the one above referred to said: "In ex parte
Riley, 94 Ala. 82, 83; 10 South. 528, 529*, it was said, 'As the intent
is the design, purpose, resolve, or determination in the mind of the
accused, it can rarely be proved by direct evidence, but must be ascer-
tained by means of inferences from the facts and circumstances de-
veloped by the proof. In the absence, however, of evidence from
which such inferences may be drawn, the jury are not justified in in-
dulging in mere unsupported conjectures, speculations, or suspicions
as to the intentions which were not disclosed by any visible or tangible
act, expression, or circumstance.' It is no doubt true that the diffi-
culty in proving the intent made patent by that decision, suggested
the amendment of 1903 (Gen. Acts, 1903, p. 345) to the statute,
which provides that the refusal or failure of a person who enters
into such contract to perform such act or service, or refund such
money, or pay for such property, without just cause, shall be prima
facie evidence of the intent to injure or defraud his employer."

Counsel for the plaintiff in error rely on the decision of the
Supreme Court of the United States in the case of Bailey v. Alabama,
(219 U. S. 219; 31 Sup. Ct. 145 [Bull. No. 93, p. 634]). In that
case the court had under consideration the Alabama statute re-
ferred to in the case from which we have just quoted, and which, as
stated, is similar to the Georgia statute, and summarized it as fol-
 lows (219 U. S. p. 227; 31 Sup. Ct. 146): "The section of the code
as it stood before the amendments provided that any person who
with intent to injure or defraud his employer entered into a writ-
ten contract for service and thereby obtained from his employer
money or other personal property, and with like intent and with-
out just cause, and without refunding the money or paying for
the property refused to perform the service, should be punished as
if he had stolen it.” This section of the Alabama Code (sec. 4730, Code 1896) was amended by the legislature of that State in 1903 and 1907, by which amendments there was added thereto a provision that “the refusal or failure of any person, who enters into such contract, to perform such act or service or to cultivate such land, or refund such money, or pay for such property, without just cause, shall be prima facie evidence of the intent to injure his employer or landlord or defraud him.” Our interpretation of the decision of the Supreme Court of the United States is that it only decides that the above-quoted provisions of the Alabama law, contained in the amendments of 1903 and 1907 (Acts 1907, p. 636) to section 4730 of the Code of Alabama of 1896, are unconstitutional. In the concluding portion of the opinion (219 U. S. p. 245; 31 Sup. Ct. p. 153), Mr. Justice Hughes states: “The act of Congress deprives of effect all legislative measures of any State through which directly or indirectly the prohibited thing, to wit, compulsory service to secure the payment of a debt, may be established or maintained; and we conclude that section 4730, as amended, of the Code of Alabama, in so far as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property received, prima facie evidence of the commission of the crime which the section defines, is in conflict with the thirteenth amendment and the legislation authorized by that amendment, and is therefore invalid.” We do not understand that the Supreme Court of the United States decided, or intended to decide, that the provisions in section 4730 of the Code of Alabama of 1896, as this section stood before the amendments thereto of 1903 and 1907, which provisions are similar to those in Penal Code 1910, section 715, of this State, were unconstitutional. We have been requested to review and overrule the decisions in the cases of Lamar v. State, Banks v. State, and Lamar v. Prosser, supra. Under the view we take of the case, as expounded in the subsequent division of the opinion, the question as to whether or not these decisions should be overruled in so far as they hold the provisions of Penal Code 1910, section 716, are unconstitutional, is not one for decision under the record before us. In so far as these decisions hold the provisions of Penal Code 1910, section 716, constitutional, we decline to overrule them.

EMPLOYERS’ LIABILITY—“ACT OF SUPERINTENDENT”—American Manufacturing Co. v. Bigelow, United States Circuit Court of Appeals, Second Circuit (May 8, 1911), 188 Federal Reporter, page 34.—This was a case which came before the United States Circuit Court for the Eastern District of New York under the employers’ liability act, Consolidated Laws of New York, chapter 31, section 200. The plaintiff, Clara Bigelow, was employed as a back tender at a spinning frame, and was injured by the act, as was alleged, of the superintendent, one Devine, in starting up her machine while she was at the back of it cleaning it from fluff and dirt after it had been
stopped for that purpose. When stopped the machine could be started only by moving a bar at the front. It was in evidence and accepted by the jury that Devine found the machine stopped and complained about the delay and walked around to the front of the machine, which thereupon immediately started up, no one else being in the immediate vicinity. Judgment was in favor of the plaintiff in the court below, whereupon the company appealed, offering as error several assignments based on the admission of evidence, the refusal of instructions, etc. Each of these assignments was overruled, and the judgment of the court below was affirmed. The point of principal interest was the construction of the provision of the employers' liability act relative to the liability of employers for the acts of "any person in the service of the employer intrusted with and exercising superintendence." On this point Judge Lacombe, speaking for the court, said:

It is next contended that, even if Devine did start the machine, his doing so was not an act of superintendence, but was mere manual labor. Reliance is placed on Guilmartin v. Solway Process Co. (189 N. Y. 490; 82 N. E. 725). The cases are not parallel. Devine was not engaged in a manual detail of work as an incident or result of which the machine started. He, if he did what plaintiff contends he did, determined as a matter of superintendence that at that precise time that particular machine should be set going, and, having thus determined, it is immaterial whether it was actually started by the hand of a subordinate obeying his spoken order or by his own hand obeying the exercise of his own will.

Employers' Liability—Railroad Companies—Federal Statutes—Injuries Causing Death—Persons Entitled to Sue—Fithian et al. v. St. Louis & San Francisco Railway Co., United States Circuit Court, Western District of Arkansas (June 22, 1911), 188 Federal Reporter, page 842.—This case arose under the Employers' Liability Act of April 2, 1908 (35 Stat. 65), the action being brought by Jessie Fithian, the widow of one Floyd Fithian, who had been killed while in the employment of the company named by the negligence, as alleged, of his fellow servants. The defendant company demurred to the complaint on the ground that Mrs. Fithian was not entitled to sue under the act, which gives a right of action "in case of the death of such employee to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, etc." The company claimed that under this provision of the law only a personal representative could sue, and not the widow herself, without appointment to the position of representative of the deceased person. This view was sustained by the
court in an opinion delivered by Judge Trieber, who, having discussed the provisions and terms of the law briefly, said:

The language of the act is clear and unambiguous, and, in the opinion of the court, leaves no room for construction. The personal representative of the deceased, and no one else, is authorized to maintain the action. The only reported case on this question is Thompson v. Wabash Railway Co. (C. C.), 184 Fed. 554 [Bulletin No. 95, p. 303], and it was there held that none but the personal representative can maintain the action; the same conclusion [is] reached by this court.

Employers' Liability—Railroad Companies—Federal Statute—Power of Congress—Effect of Federal on State Laws—Jurisdiction of State Courts—Constitutionality of Statute—Mondou v. New York, New Haven & Hartford R. R. Co., Supreme Court of the United States (January 15, 1912), 32 Supreme Court Reporter, page 169.—An act of Congress of April 22, 1908 (35 Stat., 65), provided for the recovery of damages by employees of common carriers engaged in interstate commerce for injuries received by them in the course of their employment, restricting the defense of assumed risks, and providing for the admeasurement of damages where the negligence of the injured person contributed to produce the injury. The right of action for an injury resulting in death survives to the personal representative. The act was amended in some points by an act of April 5, 1910 (36 Stat. 291), but the present action, as well as the two cases joined with it, were based on the act in its unamended form. The act is given in full in Bulletin No. 77, pages 413, 414, and the amendment in Bulletin No. 91, page 1155.

The action giving title to the case was brought by Edward Mondou in the courts of Connecticut to recover damages for injuries received by him by reason of the negligence of his fellow servants while he was employed as a locomotive fireman on the railroad named. Judgment was rendered against Mondou on the ground that the act was unconstitutional on account of conflict with provisions of the Constitution of the United States, and that even if valid a right of action thereunder could not be enforced in the courts of the State, on the authority of Hoxie v. R. R. Co., 82 Conn. 352, 73 Atl. 754; see Bulletin No. 86, page 322.

Joined with the above was a case which was tried in the United States District Court for the District of Minnesota, the accident having occurred in the State of Montana. In this case also the injured person was a locomotive fireman whose death was caused by the negligence of fellow servants, the question being as to the exclusive effect of the Federal statute which provided for recovery for the exclusive benefit of the widow as against a sister who would, under the statutes of Montana, be entitled to a portion of the damages.
recovered. The third case was a suit in the Circuit Court of the United States for the district of Massachusetts for a death occurring in Connecticut, where the negligence of fellow servants was claimed to be the proximate cause of the death of an employee of the New York, New Haven & Hartford Railroad Co., the contentions of the defendant company being that the act was unconstitutional and alleging also that the deceased person contributed by his own negligence to the injury which resulted in his death. In both the latter cases the plaintiff had secured a judgment for damages, though in the case last referred to judgment had been for the company on certain counts, by reason of which the plaintiff had made a cross appeal, though stipulating that if the judgment for damages as awarded in the district court should be affirmed in the Supreme Court her objections to the judgment on the other counts would be waived.

Inasmuch as the questions involved were the same for the most part in all the cases, they were combined and considered together in the Supreme Court, the judgment for plaintiffs in the two circuit courts being sustained and the judgment of the supreme court of errors of Connecticut in the Mondou case being reversed. Justice Van Devanter delivered the opinion of the court, which was concurred in by all members, and is reproduced in full.

The principal questions presented in these cases as discussed at the bar and in the briefs are: 1. May Congress, in the exertion of its power over interstate commerce, regulate the relations of common carriers by railroad and their employees while both are engaged in such commerce? 2. Has Congress exceeded its power in that regard by prescribing the regulations which are embodied in the act in question? 3. Do these regulations supersede the laws of the States in so far as the latter cover the same field? 4. May rights arising under those regulations be enforced, as of right, in the courts of the States when their jurisdiction, as fixed by local laws, is adequate to the occasion?

The clauses in the Constitution (Art. I, sec. 8, clauses 3 and 18) which confer upon Congress the power "to regulate commerce * * * among the several States" and "to make all laws which shall be necessary and proper " for the purpose, have been considered by this court so often and in such varied connections that some propositions bearing upon the extent and nature of this power have come to be so firmly settled as no longer to be open to dispute, among them being these:

1. The term "commerce" comprehends more than the mere exchange of goods. It embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

2. The phrase "among the several States" marks the distinction, for the purpose of governmental regulation, between commerce which concerns two or more States and commerce which is confined to a single State and does not affect other States, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the States severally.
3. "To regulate," in the sense intended, is to foster, protect, control, and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.

4. This power over commerce among the States, so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce.

5. Among the instruments and agents to which the power extends are the railroads over which transportation from one State to another is conducted, the engines and cars by which such transportation is effected, and all who are in anywise engaged in such transportation, whether as common carriers or as their employees.

6. The duties of common carriers in respect of the safety of their employees, while both are engaged in commerce among the States, and the liability of the former for injuries sustained by the latter, while both are so engaged, have a real or substantial relation to such commerce, and therefore are within the range of this power. [Cases cited.]

As is well said in the brief prepared by the late Solicitor General: "Interstate commerce—if not always, at any rate when the commerce is transportation—is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable, or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical, and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

In view of these settled propositions, it does not admit of doubt that the answer to the first of the questions before stated must be that Congress, in the exertion of its power over interstate commerce, may regulate the relations of common carriers by railroad and their employees, while both are engaged in such commerce, subject always to the limitations prescribed in the Constitution, and to the qualification that the particulars in which those relations are regulated must
have a real or substantial connection with the interstate commerce in which the carriers and their employees are engaged.

We come, then, to inquire whether Congress has exceeded its power in that regard by prescribing the regulations embodied in the present act. It is objected that it has, (1) because the abrogation of the fellow-servant rule, the extension of the carrier's liability to cases of death, and the restriction of the defenses of contributory negligence and assumption of risk have no tendency to promote the safety of the employees or to advance the commerce in which they are engaged; (2) because the liability imposed for injuries sustained by one employee through the negligence of another, although confined to instances where the injured employee is engaged in interstate commerce, is not confined to instances where both employees are so engaged; and (3) because the act offends against the fifth amendment to the Constitution (a) by unwarrantably interfering with the liberty of contract and (b) by arbitrarily placing all employers engaged in interstate commerce by railroad in a disfavored class and all their employees engaged in such commerce in a favored class.

Briefly stated, the departures from the common law made by the portions of the act against which the first objection is leveled are these: (a) The rule that the negligence of one employee resulting in injury to another was not to be attributed to their common employer, is displaced by a rule imposing upon the employer responsibility for such an injury, as was done at common law when the injured person was not an employee; (b) the rule exonerating an employer from liability for injury sustained by an employee through the concurring negligence of the employer and the employee is abrogated in all instances where the employer's violation of a statute enacted for the safety of his employees contributes to the injury, and in other instances is displaced by the rule of comparative negligence, whereby the exoneration is only from a proportional part of the damages corresponding to the amount of negligence attributable to the employee; (c) the rule that an employee was deemed to assume the risk of injury, even if due to the employer's negligence, where the employee voluntarily entered or remained in the service with an actual or presumed knowledge of the conditions out of which the risk arose, is abrogated in all instances where the employer's violation of a statute enacted for the safety of his employees contributed to the injury; and (d) the rule denying a right of action for the death of one person caused by the wrongful act or neglect of another is displaced by a rule vesting such a right of action in the personal representatives of the deceased for the benefit of designated relatives.

Of the objection to these changes it is enough to observe:

First. "A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law can not be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will . . . of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances." (Munn v. Illinois, 94 U. S. 113, 134; Martin v. Pittsburg & Lake Erie R. R. Co., 203 U. S. 284, 31323—Bull. 98—12——31
Second. The natural tendency of the changes described is to impel the carriers to avoid or prevent the negligent acts and omissions which are made the bases of the rights of recovery which the statute creates and defines; and, as whatever makes for that end tends to promote the safety of the employees and to advance the commerce in which they are engaged, we entertain no doubt that in making those changes Congress acted within the limits of the discretion confided to it by the Constitution. (Lottery Case, 188 U. S. 321, 353, 355; Atlantic Coast Line R. R. Co. v. Riverside Mills, 219 U. S. 186, 203.)

We are not unmindful that that end was being measurably attained through the remedial legislation of the several States, but that legislation has been far from uniform, and it undoubtedly rested with Congress to determine whether a national law, operating uniformly in all the States upon all carriers by railroad engaged in interstate commerce, would better subserve the needs of that commerce. (The Lottawanna, 21 Wall. 558, 581-582; Baltimore & Ohio R. R. v. Baugh, 149 U. S. 368, 378-379.)

The second objection proceeds upon the theory that, even although Congress has power to regulate the liability of a carrier for injuries sustained by one employee through the negligence of another where all are engaged in interstate commerce, that power does not embrace instances where the negligent employee is engaged in intrastate commerce. But this is a mistaken theory, in that it treats the source of the injury, rather than its effect upon interstate commerce, as the criterion of congressional power. As was said in Southern Railway Co. v. United States, 222 U. S. 20, 27 [see this Bulletin, p. 485], that power is plenary and competently may be exerted to secure the safety of interstate transportation and of those who are employed therein, no matter what the source of the dangers which threaten it. The present act, unlike the one condemned in Employers' Liability Cases, 207 U. S. 463 [Bulletin No. 74, p. 216], deals only with the liability of a carrier engaged in interstate commerce for injuries sustained by its employees while engaged in such commerce. And this being so, it is not a valid objection that the act embraces instances where the casual negligence is that of an employee engaged in intrastate commerce; for such negligence, when operating injuriously upon an employee engaged in interstate commerce, has the same effect upon that commerce as if the negligent employee were also engaged therein.

Next in order is the objection that the provision in section 5 declaring void any contract, rule, regulation, or device, the purpose or intent of which is to enable a carrier to exempt itself from the liability which the act creates, is repugnant to the fifth amendment to the Constitution as an unwarranted interference with the liberty of contract. But of this it suffices to say, in view of our recent decisions in Chicago, Burlington & Quincy Railroad Co. v. McGuire, 219 U. S. 549 [Bulletin No. 93, p. 644]; Atlantic Coast Line Railroad Co. v. Riverside Mills, id. 186, and Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission, 221 U. S. 612 [Bulletin No. 96, p. 857], that if Congress possesses the power to impose that liability, which we here hold that it does, it also possesses the power to insure
its efficacy by prohibiting any contract, rule, regulation, or device in evasion of it.

Coming to the question of classification, it is true that the liability which the act creates is imposed only on interstate carriers by railroad, although there are other interstate carriers, and is imposed for the benefit of all employees of such carriers by railroad who are employed in interstate commerce, although some are not subjected to the peculiar hazards incident to the operation of trains or to hazards that differ from those to which other employees in such commerce, not within the act, are exposed. But it does not follow that this classification is violative of the "due process of law" clause of the fifth amendment. Even if it be assumed that that clause is equivalent to the "equal protection of the laws" clause of the fourteenth amendment, which is the most that can be claimed for it here, it does not take from Congress the power to classify, nor does it condemn exertions of that power merely because they occasion some inequalities. On the contrary, it admits of the exercise of a wide discretion in classifying according to general, rather than minute, distinctions, and condemns what is done only when it is without any reasonable basis, and therefore is purely arbitrary. (Lindsley v. Carbonic Acid Gas Co., 220 U. S. 61, 78.) Tested by these standards, this classification is not objectionable. Like classifications of railroad carriers and employees for like purposes, when assailed under the equal protection clause, have been sustained by repeated decisions of this court. (Missouri Pacific Railway Co. v. Mackey, 127 U. S. 205; Louisville & Nashville Railroad Co. v. Melton, 218 U. S. 36 [Bulletin No. 90, p. 848]; Mobile, Jackson & Kansas City Railroad Co. v. Turnipseed, 219 U. S. 35 [Bulletin No. 93, p. 641].)

It follows that the answer to the second of the questions before stated must be that Congress has not exceeded its power by prescribing the regulations embodied in the present act.

The third question, whether those regulations supersede the laws of the States in so far as the latter cover the same field, finds its answer in the following extracts from the opinion of Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316:

(P. 405) "If any one proposition could command the universal assent of mankind, we might expect it would be this—that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The Nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it, by saying, 'this Constitution and the laws of the United States, which shall be made in pursuance thereof, * * * shall be the supreme law of the land,' and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, 'anything in the constitution or laws of any State to the contrary notwithstanding.'
(P. 426) "This great principle is, that the Constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and can not be controlled by them."

And particularly apposite is the repetition of that principle in Smith v. Alabama, 124 U. S. 465, 473:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."

True, prior to the present act the laws of the several States were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employees while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police power of the States in the absence of action by Congress. (Sherlock v. Alling, 93 U. S. 99; Smith v. Alabama, 124 U. S. 465, 473, 480, 482; Nashville &c. Railway v. Alabama, 128 U. S. 96, 99; Reid v. Colorado, 187 U. S. 137, 146.) The inaction of Congress, however, in no wise affected its power over the subject. (The Lottawanna, 21 Wall. 558, 581; Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196, 215.) And now that Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is. (Gulf, Colorado & Santa Fe Railway Co. v. Heffley, 158 U. S. 98, 104; Southern Railway Co. v. Reid, No. 487, ante; Northern Pacific Railway Co. v. Washington, No. 136, ante.)

We come next to consider whether rights arising under the congressional act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion. The first of the cases now before us was begun in one of the superior courts of the State of Connecticut, and in that case the supreme court of errors of the State answered the question in the negative. That, however, was not because the ordinary jurisdiction of the superior courts of the State of Connecticut, and in that case the supreme court of errors of the State answered the question in the negative. That, however, was not because the ordinary jurisdiction of the superior courts, as defined by the constitution and laws of the State, was deemed inadequate or not adapted to the adjudication of such a case, but because the supreme court of errors was of opinion (1) that the congressional act impliedly restricts the enforcement of the rights which it creates to the Federal Courts, and (2) that, if this be not so, the superior courts are at liberty to decline cognizance of actions to enforce rights arising under that act, because (a) the policy manifested by it is not in accord with the policy of the State respecting the liability of employers to employees for injuries received by the latter while in the service of the former, and (b) it would be inconvenient and confusing for the same court, in dealing with cases of the same general class, to apply in some the standards of right established by the congressional act and in others the different standards recognized by the laws of the State.
We are quite unable to assent to the view that the enforcement of the rights which the congressional act creates was originally intended to be restricted to the Federal courts. The act contains nothing which is suggestive of such a restriction, and in this situation the intention of Congress was reflected by the provision in the general jurisdictional act, "That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000, and arising under the Constitution or laws of the United States." (25 Stat. 433, c. 866, sec. 1; Robb v. Connolly, 111 U. S. 624, 637; United States v. Barnes, —, ante.)

This is emphasized by the amendment ingrafted upon the original act in 1910, to the effect that "The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several States, and no case arising under this act and brought in any State court of competent jurisdiction shall be removed to any court of the United States." The amendment, as appears by its language, instead of granting jurisdiction to the State courts, presupposes that they already possessed it.

Because of some general observations in the opinion of the supreme court of errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of State courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the supreme court of errors that the superior courts of the State are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where the right of action arose under the laws of that State, but also in cases where it arose in another State, under its laws, and in circumstances in which the laws of Connecticut give no right of recovery, as where the casual negligence was that of a fellow servant.

The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. As was said by this court in Claflin v. Houseman, 93 U. S. 130, 136, 137:

"The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereign as regards
the several States, but is a concurrent, and, within its jurisdiction, paramount sovereign. . . . If an act of Congress gives a penalty [meaning civil and remedial] to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. . . . It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, as was so clearly shown by Chief Justice Taney, in the case of Ableman v. Booth, 21 How. 506; and hence the State courts have no power to revise the action of the Federal courts, nor the Federal the State, except where the Federal Constitution or laws are involved. But this is no reason why the State courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied."

We are not disposed to believe that the exercise of jurisdiction by the State courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication. Besides, it is neither new nor unusual in judicial proceedings to apply different rules of law to different situations and subjects, even although possessing some elements of similarity, as where the liability of a public carrier for personal injuries turns upon whether the injured person was a passenger, an employee, or a stranger. But it never has been supposed that courts are at liberty to decline cognizance of cases of a particular class merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.

We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

In No. 289 several rulings in the progress of the cause, not covered by what already has been said, are called in question, but we find no reversible error in them.

In Nos. 170, 289, and 290 the judgments are affirmed, and in No. 120 the judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

**Employers' Liability—Railroads—Hours of Labor—Violation as Negligence—St. Louis, Iron Mountain & Southern Railroad Co. v. McWhirter, Court of Appeals of Kentucky (Nov. 17, 1911), 149 Southwestern Reporter, page 672.**—This was an action to recover
damages for the death of one McWhirter while employed as a flagman by the company named. The death occurred after McWhirter had been in service for more than 16 consecutive hours, in violation of the act of Congress of March 4, 1907 (34 Stat. 1416). Judgment was given for the plaintiff in the circuit court of Hickman County and the company appealed, the appeal resulting in the judgment of the lower court being affirmed. It was in evidence that the engineer operating the locomotive which ran over McWhirter was negligent, but the point of particular interest is the construction given by the court to the 16-hour law. This is set forth in a paragraph of the opinion of the court which was delivered by Judge Settle, as follows:

In thus requiring of the intestate more than 16 consecutive hours of service, albeit the excess of service over the 16 hours was but 5 or 7 minutes, appellant violated the statute, supra; and, as the death of the intestate from the act of its engineer complained of occurred while he was engaged in the required continuous service, and after the expiration of the 16 consecutive hours allowed by the statute, there seems to be no escape from the conclusion that the act of appellant in thus extending his service beyond the statutory limit was negligence per se, to which the intestate's death must, as a matter of law, be attributed, and, if so, the right of appellee to maintain this action can not be questioned.

EMPLOYMENT OF LABOR—EMPLOYMENT OF ALIENS BY CORPORATIONS—EQUAL PROTECTION OF THE LAW—CONSTITUTIONALITY OF STATUTE—Ex parte Case, Supreme Court of Idaho (June 28, 1911), 116 Pacific Reporter, page 1037.—Xura Case, a superintendent of a private corporation engaged in the paving of streets in Boise City, Idaho, was convicted of employing an alien as a laborer in contravention of section 1458, Revised Codes of Idaho. This section makes it unlawful for any corporation, municipal or private, doing business in the State of Idaho to give employment in any way to any alien who has failed, neglected, or refused, prior to the time of such employment, to become naturalized or to declare his intention to become a citizen of the United States. There was no question as to the facts, the employer being a corporation and the employee being a citizen of the Kingdom of Greece who had not applied for naturalization papers in the United States. Case was convicted as the agent of the corporation and ordered to pay a fine of $75; in default of payment a jail sentence was to be served at the rate of one day's imprisonment for every $2 of the fine. He refused to pay the fine and was committed to the county jail, whereupon he applied for a writ of habeas corpus asking for restoration of his liberty on the ground that the statute was unconstitutional and the action of the court unauthorized. On application to the supreme court of the State, the con-
tention of Case was upheld, the law being declared unconstitu-
tional, and his discharge was ordered.

Having stated the facts as above, Judge Sullivan, who delivered
the opinion of the court, said:

The leading cases which hold that all persons within the territorial
jurisdiction of the United States are within the protection of the
fourteenth amendment of the Constitution, without regard to differ-
ences of race, color, or nationality, are Yick Wo v. Hopkins, sheriff,
118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220; Fraser v. McConway
& Torley Co. (C. C.), 82 Fed. 257; In re Tiburcio Parrott (C. C.),
1 Fed. 481.

In the Parrott case the court had under consideration section 2 of
article 19 of the constitution of the State of California, which pro-
vided that no corporation formed under the laws of that State shall
directly or indirectly employ in any capacity any Chinese or Mongo-
lions, and required the legislature to pass such laws as might be
necessary to enforce that provision. The legislature by an act of
February 13, 1880, made it an offense for any officer, director, agent,
etc., of a corporation to employ Chinese, and the court held that said
section of the constitution and statute were in conflict with the provi-
sions of the fourteenth amendment to the Federal Constitution and
void, and the court there held that to deprive a person of the right to
labor deprived him of both liberty and property, and that a person's
right to liberty and property is a constitutional right wholly inde-
dependent of treaty stipulations and exists without them.

A State legislature by legislative enactment or otherwise has no
authority to deprive a person of the right to labor at any legitimate
business or to deny any person within the jurisdiction of the United
States the equal protection of the laws, or to prohibit a corporation
that has a right to do business in the State to employ any person,
whether alien or native, in the prosecution of any legitimate business.

It is suggested that a corporation is not a "person" within the
meaning of that word as used in said fourteenth amendment to the
Constitution, and that, as corporations are organized under the laws
of a State, the State may enact such laws as it may deem best for the
control of such corporations and has full authority to deprive them
of the right to employ aliens. Those contentions are fully met by
the decision of the Supreme Court of the United States in Gulf, C.
& S. F. R. Co. v. Ellis (165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666),
in which case it is held that corporations are "persons" within the
provisions of said fourteenth amendment, and that a State has no
more power to deny to them the equal protection of the law than it
has to deny it to individual citizens.

That being the law, the State courts must conform their decisions
in the interpretation of the Federal Constitution and statutes to the
construction placed upon them by the Federal courts, and a corpora-
tion is a "person" within the provisions of said fourteenth amend-
ment to the Federal Constitution.

Under the authority of the cases above cited, said section 1458,
Revised Codes, is repugnant to the Constitution and laws of the
United States and void, and petitioner is entitled to be discharged,
and it is so ordered.
INJUNCTIONS—BOYCOTTS—CONSPIRACY—JURISDICTION—LABOR ORGANIZATIONS—LIABILITY OF MEMBERS—Loewe et al. v. California State Federation of Labor et al., United States Circuit Court, Northern District of California (July 25, 1911), 189 Federal Reporter, page 714.—This was a proceeding in equity to secure an order from the court making permanent an injunction secured by the petitioners against the federation and its officers and members to restrain boycotts against the goods of the complainants. (See 139 Fed. 71, and Bul. No. 61, p. 1067.) The facts on which the original injunction was based were set forth in the opinion when the temporary injunction was granted and are not restated in this case. The complainants were manufacturers of hats residing in Connecticut, distributing their products through merchants in the several States of the Union, and on account of the failure of the manufacturers to unionize their establishment dealers purchasing their hats in the State of California and elsewhere had been boycotted and the sale of their hats diminished. The request to make the temporary injunction permanent was granted on this hearing, as appears from the following opinion of the court as delivered by Judge Van Fleet:

A careful review of the record submitted on final hearing discloses that the facts as there stated are in all material respects fully sustained by the evidence taken before the master; and, under those circumstances, it must be held, as contended by complainants, that the principles announced in that opinion as the basis of the order granting the preliminary injunction become the law of the case in this court, and fix the right of the complainants to have the injunction made perpetual. That ruling was not, as claimed by respondents, a purely tentative one, like an ex parte order granting a temporary restraining order. It was a ruling made in response to an order to show cause and after a full hearing of the prima facie case made by the sworn bill and the affidavits of both parties; and the showing then made being fully sustained by the evidence on the final hearing, the ruling becomes conclusive, excepting only on review by an appellate court.

The proposition, now for the first time advanced by respondents, that under the facts stated in the bill this court never had jurisdiction to enjoin the respondents, is based upon an erroneous conception of the law. That proposition is, in substance, that while the case was properly brought in this court, by reason of diversity of citizenship of the parties, no Federal question is involved or stated, and that the court is therefore simply administering the laws of the State; that under the decisions of the supreme court of this State the acts for which respondents are sought to be enjoined are held to be within the legal rights of labor organizations, and are not subject to be restrained by the courts; and, consequently, that the temporary injunction issued herein was without right and void from the beginning.

Assuming that this objection can be said in any proper sense, to raise a question of jurisdiction, and without conceding that the decisions of the State court are to the effect stated, the fallacy of
respondents' proposition lies in the fact that in the administration of their equitable jurisdiction the Federal courts are not, as assumed, excepting so far as affected by local statutes, administering the laws of the State in which they sit, but are administering the law as applicable to all the States. And in applying the general principles of equity, such as alone are involved in this controversy, they determine for themselves what those principles are, untrammeled by differing decisions of the State tribunals. While the reasoning of a State court in determining such a question is always to be regarded with respect, and will be followed, if persuasive of a correct statement of the law, it is in no sense conclusive or binding upon a Federal court.

The opinion of Judge Morrow in granting the preliminary injunction in this case will be found to be fully in accord, in so far as pertinent, with the principles announced by the Supreme Court in the case of Loewe v. Lawlor (208 U. S. 274; 28 Sup. Ct. 301 [Bul. No. 75, p. 622]), a case originating out of the same labor controversy which gave rise to the present suit and involving largely the same essential facts; the bill, in fact, being almost an exact replica of the one filed in this case. While that was an action, in form, to invoke the protection of the antitrust act of July 2, 1890, chapter 647 (26 Stat. 209, c. 647 [U. S. Comp. St. 1901, p. 3200]), known as the Sherman Act, many of the general considerations there stated have application to the present case; and it is conceded in respondents' brief that if the court has jurisdiction here the language of that case is broad enough to cover the acts here involved.

Lastly, if the suggestions of counsel at the oral argument were intended to advance the idea that the individual defendants are protected from the consequences of their acts by the fact that they were acting strictly within the rules and regulations of their organization, the obvious answer is that the Constitution and laws of the country are still paramount to the rules of any private aggregation of men, and it is to those laws that we must look in determining whether the rights of one citizen have been violated by the acts of another.

It follows from these considerations that the complainant is entitled to a final decree making the temporary injunction heretofore granted permanent; and a decree to that effect may be prepared, granting a perpetual injunction against the defendants included within the preliminary writ.

MECHANICS’ LIENS—RANK—MORTGAGES FOR MONEY ADVANCED—CONSTITUTIONALITY OF STATUTE—Page v. Carr et al., Supreme Court of Pennsylvania (July 6, 1911), 81 Atlantic Reporter, page 430.—This case involved the constitutionality of a provision of the mechanics’ lien law of the State of Pennsylvania, act of June 4, 1901 (P. L. 437), section 13, which gives to mechanics’ liens priority over mortgages for advanced money. This provision of the law had been held to be unconstitutional in the court of common pleas of Philadelphia County, and an appeal therefrom was taken, resulting in the affirmation of the judgment of the lower court. The constitution of the
State provides, in article 3, section 7, that "the general assembly shall not pass any general or special law * * * providing or changing methods for the collection of debts or the enforcing of judgments or prescribing the effect of judicial sales or real estate." The constitution containing this provision was adopted in 1874. It was urged by the appellants that the provision of the act of 1901 now in question was substantially a reenactment of a similar act of 1881, and that by the lapse of time and previous acceptance it should be accepted as valid. As to this, the court, speaking by Judge Potter, said, "If a statute is plainly in conflict with the organic law, mere lapse of time can not cure the defect."

In discussing the relation of the statute to the provision of the constitution above cited, Judge Potter said:

The scope of this provision with respect to various sections of this statute of 1901 has been so thoroughly discussed in several late opinions of this court that little remains to be said by way of amplification. Thus the twenty-eighth section, which gave to a subcontractor or material man the right to issue an attachment execution against the owner or other party indebted to the contractor for labor or materials furnished, was held unconstitutional in Vulcanite Cement Co. v. Allison (220 Pa. 382, 69 Atl. 855). Section 36, which provided for the enforcement of the judgment on the lien by a special fieri facias under the act of April 7, 1870 (P. L. 58), was, in Vulcanite Paving Co. v. Transit Co. (220 Pa. 603, 69 Atl. 1117, 17 L. R. A. (N. S.) 884), held to violate the constitution. Section 38, which permitted mechanics' liens to be filed against a building, without reference to the land, and provided for the sale and removal of the building for the benefit of lien holders, was held to be within the ban in the opinion in the case of Henry Taylor Lumber Co. v. Carnegie Institute (225 Pa. 486, 74 Atl. 357). Section 35, which gave the right to enter a personal judgment against a contractor who has been served with the original scire facias, or any scire facias to revive, was held to violate the same provision of the constitution in Sterling Bronze Co. v. Improvement Association (226 Pa. 475, 75 Atl. 668).

Turning to the question now before us it appears that prior to the constitution of 1874 advance-money mortgages had priority over mechanic's liens. In Henry Taylor Lumber Co. v. Carnegie Institute (225 Pa. 486, 493, 74 Atl. 357, 359), this court said: "The whole act of 1901 is legislation for a special class of creditors, some of the provisions of which are permissible because the constitution of 1874 did not intend to wipe out the system to which they relate; but those providing special methods or changing old ones for the collection of debts due the special class of creditors, or for the enforcement of judgments recovered by them, are prohibited by the organic law."

The result of the decisions above noted is to make it clear that any provision of the act of 1901 which is clearly divergent from and is an advance upon the law as it stood prior to the constitution of 1874 is to be regarded as invalid. As the effect of section 13 is to grant to mechanics' liens a preference, and to give to them a priority of payment that they did not have, and to which they were not entitled prior to the present constitution, it must be held invalid.
Mechanics' Liens—Waiver by Contractors—Rights of Subcontractors—Constitutionality of Statute—Kelly et al v. Johnson et al, Supreme Court of Illinois (Oct. 11, 1911), 95 Northeastern Reporter, page 1068.—This was an action involving the rights of various contractors and subcontractors to a lien on a building and its premises in the city of Chicago. Various points were involved which are not of particular interest, but in the course of the trial it became necessary to consider the constitutionality of a provision of the mechanics'-lien statute of 1903. (Hurd's Rev. Stat. 1906, c. 82). Section 21 of this statute authorizes mechanics, workmen, and persons furnishing materials, etc., to file a lien on the property even though the original contractor may have been without a right to such a lien, either by his contract to that effect or by his conduct in the matter. This provision of the law was declared by the supreme court to be unconstitutional, as appears from the following extract from the opinion of the court which was delivered by Judge Hand:

The lien of a subcontractor can only exist by virtue of the original contract; and, in case the original contract provides there shall be no lien on the improved property for material and labor furnished by the original contractor, such contract is binding upon a subcontractor, and a subcontractor, when a lien has been waived in the original contract, has no lien for material or labor. (Williams v. Rittenhouse & Embree Co., 198 Ill. 602, 64 N. E. 995; Von Platen v. Winterbotham, 203 Ill. 198, 67 N. E. 843.) The section of the statute heretofore referred to, we think, in so far as it attempts to give a subcontractor a lien when the original contract waives all liens or all liens have been thereafter released by the contractor, is clearly unconstitutional, as its enforcement against an owner, where the original contractor has waived all liens, or all liens have been released subsequent to the date of the contract, would be to deprive the owner of his property without due process of law, as it would prevent the owner from making such contract with reference to his property as he might see fit.

The right to contract is clearly a property right; and, if the legislature should pass a statute which would provide that the owner of land should be powerless to make a contract for the erection of a building thereon which should be relieved from all liens for the material and labor which the original contractor should put into the building in its erection, the effect of such act would be to deprive the owner of the right to contract with reference to the erection of such building upon such terms as he might deem to be for his best interests; that is, of the right to make a contract for the erection of a building whereby a contractor would agree to look solely to the individual responsibility of the owner for his pay, which would be, in part, to deprive the owner of full dominion over his property. [Cases cited.] It is true in some instances the right to contract may be restrained; but that is in cases where the morals, comfort, health, or welfare of the public is involved, and such cases fall within the police power of the State, which power is not here involved. Permitting the owner of real estate to retain the right to contract with reference to his property when making improvements
thereon does no injustice to the subcontractor, as such contractor can fully protect himself from loss by informing himself of the terms of the contract which exists between the original contractor and the owner of the property to be improved before he contracts with the original contractor, and, if the terms of the contract are not satisfactory to the subcontractor, he may refuse to contract with the original contractor to furnish material or to perform labor in the improvement of the property.

Railroads—Safety Appliance Law—Interstate Commerce—Cars Used in Intrastate Traffic—Power of Congress—Southern Railway Company v. United States, United States Supreme Court (Oct. 30, 1911), 32 Supreme Court Reporter, page 2.—This case was before the Supreme Court to review a judgment in favor of the United States in an action to recover penalties from the railway company named for violations of the safety-appliance act. (164 Fed. 347.) The statute in question (27 Stat. 531, U. S. Comp. Stat. p. 3174) was originally enacted March 2, 1893, and required every common carrier engaged in interstate commerce by railroad to provide its trains, locomotives, and cars engaged in moving interstate traffic with specified safety appliances; it was forbidden to haul or move any car "used in moving interstate traffic" without the prescribed equipment. A later act (32 Stat. 943), approved March 2, 1903, amended the earlier law, enlarging its scope so as to make it "applicable to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce." The railroad company had had in its use five cars, the couplers of which were defective and inoperative, hauling them over a part of its railroad, which was a through highway, in the month of February, 1907. Two of the cars were used at the time in moving interstate traffic and the other three in moving intrastate traffic; it does not appear that the use of the latter three was in any connection with any car used in interstate commerce. As the penalty was for each separate car used the company claimed that it was not liable to penalty for the hauling of the three cars used only in intrastate commerce, even though on a railroad over which traffic was continually being moved from one State to another, since the power of Congress did not reach to the enactment of a law of such effect. This view was rejected by the court below, which ruling was assigned by the railroad company as error, and the case was before the Supreme Court for a decision on this point. The judgment of the court below was affirmed.

The opinion of the court, as delivered by Justice Van Devanter, omitting the statement of facts as above, is as follows:

The real controversy is over the true significance of the words "on any railroad engaged" in the first clause of the amendatory provision. But for them the true test of the application of that clause
to a locomotive, car, or similar vehicle would be, as it was under the original act, the use of the vehicle in moving interstate traffic. On the other hand, when they are given their natural signification, as presumptively they should be, the scope of the clause is such that the true test of its application is the use of the vehicle on a railroad which is a highway of interstate commerce, and not its use in moving interstate traffic. And so certain is this that we think there would be no contention to the contrary were it not for the presence in the amendatory provision of the third clause, "and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." In this there is a suggestion that what precedes does not cover the entire field, but at most it is only a suggestion, and gives no warrant for disregarding the plain words, "on any railroad engaged," in the first clause. True, if they were rejected, the two clauses, in the instance of a train composed of many cars, some moving interstate traffic and others moving intrastate traffic, would, by their concurrent operation, bring the entire train within the statute. But it is not necessary to reject them to accomplish this result, for the first clause, with those words in it, does even more; that is to say, it embraces every train on a railroad which is a highway of interstate commerce, without regard to the class of traffic which the cars are moving. The two clauses are in no wise antagonistic, but, at most, only redundant; and we perceive no reason for believing that Congress intended that less than full effect should be given to the more comprehensive one, but, on the contrary, good reason for believing otherwise. As between the two opposing views, one rejecting the words "on any railroad engaged," in the first clause, and the other treating the third clause, as redundant, the latter is to be preferred, first, because it is in accord with the manifest purpose, shown throughout the amendatory act, to enlarge the scope of the earlier one and to make it more effective, and, second, because the words which it would be necessary to reject to give effect to the other view were not originally in the amendatory act, but were inserted in it by way of amendment while it was in process of adoption (Cong. Rec., 57th Cong., 1st sess., vol. 35, pt. 7, p. 7300; id., 2d sess., vol. 36, pt. 3, p. 2268), thus making it certain that without them the act would not express the will of Congress.

For these reasons it must be held that the original act, as enlarged by the amendatory one, is intended to embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce.

We come, then, to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic, and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movements? Or, stating it in another way, Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety
of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary, and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car, and when this is not the case, the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent; for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train, but to others.

These practical considerations make it plain, as we think, that the questions before stated must be answered in the affirmative.

**DECISIONS UNDER COMMON LAW.**

**Contract of Employment—Breach—Grounds for Discharge—Rate of Wages**—Haag v. Rogers, Court of Appeals of Georgia (Sept. 11, 1911), 72 Southeastern Reporter, page 46.—This case involved the construction of a contract of employment between one Rogers and E. Haag, the proprietor of a circus. The contract was a detailed one, but the points in interest are that Rogers’s services were to be paid for at the rate of $10 per month, or if he remained in Haag’s employment until the end of the year payment should be at the rate of $18 per month, “but under no circumstances, if party of the second part fail to remain until said close of season, shall he be paid over the rate of $10 per month.” Rogers agreed to abide by all rules made by his employer, and for any violation of said rules to be liable to a fine of one week’s salary or dismissal. A special provi-
sion stipulated that a fine of $5 should be paid for each fight on the show grounds, or "for each drunk on or around show grounds." After working until the 2d of November Rogers had a fight on the show grounds and was discharged, the manager tendering him $2.25 in full settlement of the balance due. At the rate of $10 per month this was the correct balance, but Rogers maintained that he should be paid at the rate of $18 per month, since he had not himself broken the contract of employment. This view was taken in the lower courts and judgment was given Rogers in the amount of $30.25, the balance due at the rate of $18 per month wages. From this judgment Haag appealed, the appeal resulting in the judgment being affirmed. The principles involved are indicated in the following extract from the opinion of the court as delivered by Judge Powell:

It is pointed out that there is an express provision in the contract that it was to continue only "so long as mutually agreeable to both parties," and that, therefore, the defendant had the right to terminate the employment at his will, either with or without cause. "The law will not construe a contract so as to give the debtor the right to destroy it by a simple refusal to comply with it, unless the terms of the contract are so clear and unambiguous as to make irresistible the conclusion that no other result could possibly be reached, and that such was the intention of the parties." (Civ. Code 1895, sec. 3675, par. 4; Civ. Code 1910, sec. 4268.) Nor will a contract be so construed as to authorize one of the parties to take advantage of his own wrong, unless it be plain and manifest that such was the intention of the parties." (Finlay v. Ludden & B. Co., 105 Ga. 264, 31 S. E. 180; Milledgeville Cotton Co. v. Cary, 9 Ga. App. —; 71 S. E. 503.)

Applying the rule just quoted, we are of the opinion that the proper construction to give the contract before us is that either party might terminate it at will; that if the plaintiff terminated it prior to the close of the season, or caused it to be terminated by such conduct on his part as would ordinarily authorize a discharge, he forfeited all claim to compensation beyond $10 per month; that, if the defendant terminated it voluntarily and without the plaintiff having first given adequate cause, he would be liable not only for the $10 per month, but for the additional $8 per month which was being held back as a guaranty against the plaintiff quitting the employment before the close of the season. It is frequently the case that an employer is willing to pay a higher rate of wages to a servant who will bind himself to remain in the employment for a definite period, or so long as the employer may desire to keep him, than to one who may quit at a time when his services are most needed. It is entirely legitimate for an employer to contract that the employee shall have so much wages for his services generally, and so much additional if he does not quit prior to a named date. It is also legitimate (when the terms of the contract so permit) for the employer to hold back the extra pay until lapse of time has demonstrated that the employee has done his part. But in such a case, unless the language of the contract is too clear to admit of any other reasonable interpretation, the employer can not
capriciously terminate the contract himself so as to avoid liability for the wages at the higher rate. Here the season was nearly over. To construe the contract as allowing the defendant then to terminate it without sufficient cause, and thereby to deprive the plaintiff of the extra compensation which was being held back as a guaranty against his quitting, would be to give the contract an oppressive and unnatural effect, which can hardly be said to have been within the fair contemplation of the parties. If he could thus terminate and forfeit the plaintiff's extra compensation in November, why not in late December, say on the day before the set time would have expired?

The plaintiff in error makes also the point that the agreement to pay the extra compensation of $8 per month is unenforceable because nudum pactum. He relies on the case of Davis v. Morgan, 117 Ga. 504, 43 S. E. 732, 61 L. R. A. 148, 97 Am. St. Rep. 171. That decision holds that "where a contract of employment is made for one year at a stipulated salary per month, an agreement during the term to receive less, or to pay more, than the contract price is void, unless supported by some change in place, hours, character of employment, or other consideration." The distinction is plain. In that case the agreement for the extra compensation was not made as a part of the original contract, so as to be based on the consideration of mutual promises by which the contract as a whole was supported, but in the present case it was. In that case the extra compensation was purely a promised gift or bonus. In this case the extra compensation was a part of the wages promised, though it was only conditionally promised.

**Contract of Employment—Term—Grounds for Discharge—Satisfactory Service—Measure of Damages—Action before Expiration of Term—Single Recovery—Bridgeford & Co. v. Meagher, Court of Appeals of Kentucky (Sept. 21, 1911), 139 Southwestern Reporter, page 750.—Louis Meagher had sued the company named to recover damages for a breach of contract of employment effective January 1, 1909, and providing for employment "for a term of three years or as long as he performs his duties in a successful or satisfactory manner, provided Bridgeford & Co. are in existence, at a salary of not less than $22.50 per week, payable weekly, said Louis L. Meagher to give his entire time and attention to Bridgeford & Co." Meagher had occupied his position for a number of years, but at this date the company announced its purpose of running a nonunion shop, which led Meagher to desire some arrangement of sufficient permanence to be satisfactory under the new conditions. After less than 11 months of service the company discharged Meagher, who thereupon brought suit for damages for the breach of contract, alleging that he had been unable to obtain other employment, although he had diligently endeavored to do so, and fixing the amount of his damages at $2,460. The company denied that they had agreed to give him employment for three years and also averred
that they had discharged him because he failed to perform his work in a satisfactory or successful manner. A jury trial was had, resulting in a verdict in Meagher's favor in the sum of $2,000, and from the judgment entered upon this verdict the company appealed. The appeal resulted in the judgment of the lower court being affirmed, Judge Carroll delivering the opinion of the court.

Taking up first the question as to the nature of the contract, Judge Carroll said:

In support of this assignment, the argument is made that the contract was not for three years, but for an indefinite term, and therefore either party had the right to terminate it at any time without cause; and, further, that the undertakings of the contract were not mutual, as there was no obligation upon the part of appellee to render service to appellant under the contract for any length of time. We do not think either of these objections are well taken. The contract was for a term of three years, but could be terminated before the expiration of that period if appellee failed to perform his duties in a successful or satisfactory manner, or it went out of existence. But if he performed his duties in a successful or satisfactory manner, and it continued in business, it did not have the right to discharge him until the end of the term. Nor is the contract wanting in mutuality. Appellee in undertaking to give his entire time and attention to the service of appellant, clearly obliged himself to render this service for the term of three years at the price stipulated in the contract. He was as much bound by the terms of the contract to render service for the time specified as appellant was to employ him for that time. The contract imposed upon each of the parties mutual and reciprocal obligations, and a breach of the terms by either gave to the other a cause of action. The case of L. & N. R. R. Co. v. Offutt (99 Ky. 427; 36 S. W. 181), relied on by counsel for appellant, is not in point. The court in that case expressly ruled that the contract sought to be enforced was a contract indefinite as to the time or term of employment or service, and was therefore subject to be terminated at any time, at the discretion of either party to it." In that case the contract did not fix any term of employment. In this case it did. (Yellow Poplar Lumber Co. v. Rule, 106 Ky. 455; 50 S. W. 685.)

The next point considered was an objection to the instructions of the judge in the court below as to the meaning of the phrase in the contract relating to the performance of duty "in a successful or satisfactory manner." On this point Judge Carroll said:

It will be observed that the trial court instructed the jury that these words meant that appellee was "to perform his work as foreman in a good, efficient, and workmanlike manner," and, if he did so, it had no right to dismiss him; while it is the contention of counsel for appellant that under the contract it was the sole judge as to whether appellee performed his work in a successful or satisfactory manner, and it had the right to determine in good faith this question for itself, and to discharge appellee without reference to whether the service rendered by him was efficient and workmanlike or not. There
is a line of cases holding that, where the master reserves the right to discharge the servant if his services are not "satisfactory," he may do so without any other cause or reason than the mere fact that he is not satisfied with him or his service. Other cases hold that under such a contract the master in discharging the servant before the term ends must in good faith be dissatisfied, and that, if he is in good faith dissatisfied with the services of the employee, he may discharge him before the contract term has expired, although, in fact, no valid ground for the discharge exists. In the note to Corgan v. George L. Lee Coal Co. (218 Pa. 386; 67 Atl. 655; 120 Am. St. Rep. 891; reported in 11 Am. & Eng. Ann. Cas. 841) the authorities upon this question are collected, and a number of cases cited holding, in the language of the editor of the note, that: "Under a contract of employment for a definite term provided the duties of the employment are satisfactorily performed, the services must be performed by the employee to the satisfaction of the employer, and that the employer has the absolute right whenever he becomes in good faith dissatisfied with the services of the employee to discharge him."

But in nearly all of the cases where the right of the employer to discharge the employee if his services are not satisfactory is recognized, the contracts of employment expressly and unconditionally conferred upon the employer this power; and there was no language in the contracts limiting this arbitrary authority or manifesting a purpose to protect the employee during the term, if he was capable and trustworthy, and performed his duties in an efficient and workmanlike manner. And, if this contract read that appellant reserved the right to discharge appellee whenever his services were not satisfactory to it, or when he did not give satisfaction, there could be found ample authority to support the proposition that appellant might have discharged appellee before the expiration of the term if it was not in good faith satisfied with the manner in which he performed his duties, although he may have discharged them in an efficient or workmanlike manner. (Wood on Master & Servant (2d ed.), sec. 109; Koehler v. Ruhl, 94 Mich. 496, 54 N. W. 157.) But this rule, although well established and supported by the great weight of authority, ought not to be extended to embrace contracts that do not fall strictly within its scope. And, as this contract may by its terms be taken out of the class to which other contracts giving to the employer the right to discharge without cause belongs, we are not disposed to hold it applicable.

The situation of the parties at the time it was entered into may also be looked to in arriving at their intention as expressed in the contract, and, when the conditions surrounding them are considered, it is manifest that it was not contemplated by either that one might arbitrarily and without good cause terminate the contract. Appellee wanted his position secured for a definite term, and appellant desired his services for a certain period, and with these mutual purposes in view the contract was entered into. To allow appellant to terminate at its pleasure a contract made under these circumstances would do violence to the intention of the parties when it was executed, and to the language employed to express their engagement. Having this view as to the proper construction of the contract, we think the trial court correctly instructed the jury.
Of the other points considered, but one will be noted, involving the question of the recovery of damages for the entire contract, in view of the fact that the trial took place in November, 1910, more than 13 months before the date at which the three-year term of the contract expired. As to this Judge Carroll spoke as follows:

It is the settled law in this State, and has been so ruled by virtually all the courts, that in actions like this there can be only one recovery, and that one must include all past as well as future damage that has been or may be sustained by reason of the breach of contract on the part of the employer. The action to recover this damage may be brought as soon as the contract is broken, or at any time before the expiration of the term for which the employment was made, or the employee may, if he so elects, wait until the end of the term; but, whenever he brings the suit, he must in that suit recover all of his damage past and future growing out of the breach of the contract.

It is also the general rule that the measure of damage is the difference between the contract price and any sum earned by, or that by the exercise of reasonable diligence, could have been earned by, the employee after his discharge. To illustrate: If under the contract the employee was to receive $100 a month, and immediately after his discharge he obtained employment that paid him $50 a month, the measure of his damage, assuming that he had a right to recover, would be $50 a month, and this would be all that he could recover, although he was not actually employed at $50 a month; provided it appeared that he could by the exercise of reasonable diligence have procured employment that would have paid him this sum. So that, if the trial should take place after the expiration of the contract, there would not be much difficulty in determining by the application of this rule the amount of damage to which the injured employee was entitled; but, if the trial is had before the contract expires, it is apparent that the sum he would earn or that he might earn by the exercise of reasonable diligence between the date of the trial and the expiration of the contract is necessarily involved in great uncertainty, and this has induced some courts to reject the right to recover any damages after the date of the trial if it takes place before the expiration of the contract. (McMullan v. Dickinson, 60 Minn. 156, 62 N. W. 120, 27 L. R. A. 409, 51 Am. St. Rep. 511.) But the great weight of authority supports the rule prevailing in this State, that the action may be brought before the expiration of the term; and, if it is, damages may be recovered in this action for loss that will be sustained for the whole of the term, although the trial may be had before the term expires. In Pierce v. Tenn., etc., Coal Co. (178 U. S. 1, 19 Sup. Ct. 335, 43 L. Ed. 591), the Supreme Court of the United States, in considering this question, said: “The defendant committed an absolute breach of the contract at a time when the plaintiff was entitled to require performance. The plaintiff was not bound to wait to see if the defendant would change its decision and take him back into its service, or to resort to successive actions for damages from time to time, or to leave the whole of his damages to be recovered by his personal representative after his death. But he had the right to elect to treat the contract as absolutely and finally broken by the defendant; to maintain this action
once for all, as for a total breach of the entire contract; and to re-
cover all that he would have received in the future as well as in the
past if the contract had been kept. In so doing he would simply
recover the value of the contract to him at the time of a breach, in-
cluding all the damages past or future resulting from the total breach
of the contract. The difficulty and uncertainty of estimating damages
that the plaintiff may suffer in the future is no greater in this action
of contract than they would have been if he had sued the defendant
in an action of tort to recover damages for personal injuries sustained
in its service, instead of settling and releasing those damages by the
contract now sued on." The same rule was announced in John C.
Lewis Co. v. Scott, 95 Ky. 484, 26 S. W. 192; Forked Deer Pants Co.
71 Md. 385, 18 Atl. 704; Hamilton v. Love, 152 Ind. 361, 53 N. E.
181, 54 N. E. 487; Smith v. Cashie, etc., Co., 142 N. C. 26, 54 S. E.
Going, etc., Co., 24 Wash. 88, 64 Pac. 135.

And concluding:

We have noticed all the material grounds for reversal pointed out
by counsel, and upon the whole case find no reversible error.

Wherefore the judgment is affirmed.

EMPLOYERS' LIABILITY—SAFE PLACE—SCOPE OF EMPLOYMENT—
QUESTIONS FOR JURY—Williamson v. Berlin Mills Company, United
States Circuit Court of Appeals, First Circuit (Sept. 5, 1911), 190
Federal Reporter, page 1.—Maria Williamson sued the company
named as administratrix to recover damages for the death of William
Williamson, which occurred while he was in the employment of the
company as an oiler. The exact manner in which Williamson's death
occurred was not known, except that it was caused by his clothing
becoming entangled in some way on a revolving shaft or collar,
resulting in fatal injuries. While there was no witness of the imme-
diate accident, Williamson had been seen near the place where his
injury occurred a short time before the happening of the same, en-
gaging in conversation on matters not connected with his employ-
ment, and without any implements of work in his hands. While
he was in a place in which he might properly have been in the course
of his employment, on account of the apparent lack of necessity for
his presence there at the time the company contended that he was
not at that particular time required to be present nor was he engaged
in the duties of his employment when the injury occurred. The jury
was instructed that if they found that Williamson was in this place
merely for a purpose of his own and not in the performance of his
duties there could be no recovery for his death, and on this point
the jury found that his presence in the place of danger at that time
was not required for the performance of his duties, so that no recovery
could be had. An appeal was taken to the circuit court of appeals on the ground that this instruction was erroneous, the plaintiff contending that there was no evidence upon which the finding complained of could have been made. The circuit court of appeals affirmed the judgment of the court below on grounds which appear in the following quotations from the opinion of the court, which was delivered by Judge Dodge. Having stated the facts, Judge Dodge said:

The question was rightly left to the jury, unless it can be said, as a matter of law, that there was no evidence upon which the latter finding could have been made. The instruction to that effect, which the plaintiff requested, could have been justified only upon the plaintiff's theory that Williamson could not have been outside the line of his duty so long as he was "around the filters" with which his duties in that part of the room were concerned.

We can not accept this theory as sound. Though in a place where his duty requires him to be, a servant may nevertheless so conduct himself as to be outside the scope of his employment, as, for example, if he undertakes, while there, work different from that which he is hired to do, without orders or permission from his employer. It may be admitted that actual performance of work at the given moment need not be shown, and that, had nothing else appeared, except that Williamson was "around the filters" subject to orders and ready for any work incumbent upon him at any time, there would have been nothing tending to show him outside the line of his duties. (Harvey v. Texas, etc., Co., 166 Fed. 385, 398, 92 C. C. A. 237.) We think, however, that what did further appear as to his position and occupation at the given moment forbade the instruction requested by the plaintiff and required the course taken by the learned presiding judge. The question is one for the jury in most cases. (Labatt, Master and Servant, sec. 634.)

The third and fourth assignments of error relate to the instructions which were given in submitting the question to the jury. In substance these instructions were that, if Williamson went down into or toward the vat and stepped on the edge of the storage tank to discuss the result of the decision in the Thaw case, and in going there went where it was not his duty to go, and for a purpose not contemplated as part of nor incidental to the discharge of his duty, he went at his own risk and could not recover, and that if Williamson was through with his work, and went down into this place for a purpose in no sense connected with his duty, he went there at his own risk, and, if injured, his administratrix could not recover, because he was not injured while in the line of his duty.

These instructions are objected to on the alleged ground that they amounted to laying down the doctrine that in order to be in the line of his duty a servant must at the very time of the accident be actively performing some service. But the jury were also instructed that if Williamson was going along by the vat in the performance of his duty, and if his stop at the vat was an incidental side-step or momentary halt for the purpose of making a little talk about the Thaw trial, it would not be such a complete departure as to prevent recovery.
as matter of law. In view of this instruction, we can not suppose the jury to have been misled in the direction suggested.

The same instructions are further objected to on the alleged ground that, instead of the question submitted, the jury should have been required to say whether or not the master, in the exercise of ordinary care, ought to have anticipated that the servant would go to the place of injury; if yes, whether or not that place was reasonably safe. But these were questions which the jury could have been required to determine only upon the assumption that the servant was in the line of his duties when injured. We have already held that they were rightly left to decide whether he was so or not.

The judgment of the circuit court is affirmed, and the defendant in error recovers its costs of appeal.

LABOR ORGANIZATIONS—INTERFERENCE WITH INTERSTATE COMMERCE—TRESPASS—INJUNCTION—Illinois Central Railroad Co. v. International Association of Machinists et al., United States Circuit Court, Eastern District of Illinois (Oct. 23, 1911), 190 Federal Reporter, page 910.—This was a suit in equity by the company named to restrain the association and its members from trespassing on its property and interfering with its business as an interstate carrier. No facts are given except as they appear in the opinion granting the injunction. The opinion was delivered by Judge Wright and is as follows:

In this motion by the complainant for a temporary injunction, as prayed in the bill of complaint, there is no substantial dispute as to the facts. That the private property of the complainant has been and is being trespassed upon, that its business of an interstate carrier, the carriage of the United States mail, its obedience of the law to provide and keep in repair the safety devices commanded by the Government has been and is being interrupted to the irreparable injury of the complainant, as well as the public, is undisputed—in truth, is undisputable. All of this is due, directly or indirectly, to the effort to make effective the strike ordered by the heads of the labor unions involved.

Although due notice of this motion has been given, none have appeared in this court in an endeavor to refute the plain case of the complainant, as it has been briefly stated, save alone members of the union at Centralia, who, being represented by counsel, have appeared and endeavored to show to the court that they personally and as members of the unions have obeyed the law, and have counseled and endeavored to persuade others to do likewise, and for such reason such of the defendants as reside there should be excepted from this injunction. Against this contention it is again undisputed that much trouble, agitation, trespassing, and undue interference with complainant’s business occurred and is occurring at this place, notwithstanding the alleged good offices and intentions of these respondents.
I greatly sympathize with these men in their futile attempt to stay the tide of ruthless aggression initiated by the order of the heads of unions, and kept alive by the effort to make the strike effective, in fanning the flames of zeal supposed to have its repository in the minds of the common members. These good-intentioned men voluntarily joined the union, and thus submitted to its authority to such an extent that they felt for the time being morally bound to obey and respect its resolutions. They joined by their suffrages in electing the heads of unions, who thereafter became, were, and are their agents in producing the conditions that now surround them. Of these conditions they now repent, and seek to evade the consequences of them, while at the same time they are unable to control the agencies they have personally assisted in creating, that produce such a situation of unlawful combination and aggressive force, requiring the interposition of the courts of justice to protect private and public property and rights from irreparable loss and injury.

Defendants so situated have voluntarily placed themselves between two fires, as it were, and now, being unable to escape, must bear the heat of both. Being unable to control the agencies they aided in creating, they must now answer for the conduct of their own agents, and be alike held as principals with them for the unlawful combinations and conduct described in the complainant's bill of complaint, and supported by the numerous affidavits read upon the hearing of this cause.

So far as the law of the case is concerned, it is of the most elementary character, and is of the fireside variety. Every person is entitled to the enjoyment of his private property without interference or trespass by others. No one has the right to walk across the yard lot, or farm of another against the objection of the owner, without being subject to a fine for so doing under the criminal code of our State. Every person is entitled to conduct his own lawful business without the interference of others by force, intimidation, threats of violence or injury, or by combinations and conspiracies to unlawfully injure, impede, or coerce such person in any manner. In other words, the right to life, liberty, and the pursuit of happiness is the foundation of all enlightened civilization, and, when this is taken away or unprotected by the Government nothing is left worth maintaining.

The complainant, the railroad company, in this case is entitled to the same rights, no more, no less, than individual persons. Courts administer justice without respect to persons and do equal right to the poor and the rich. In addition to its private rights being entitled to respect and protection under the law, the complainant, the railroad company, has certain duties to perform of a public nature, and in which all the people are interested. It is bound to carry the United States mail with safety and dispatch. It is bound to carry interstate passengers and freight in conformity to the laws of the United States. It is bound to keep its cars, engines, and safety devices in good order, in obedience to the laws of the United States. And, this being an absolute duty, nothing can be interposed as a defense for a failure in that regard, and the penalties of the law thereby be avoided.

The right of the complainant to the injunction prayed for is clear, and founded upon the most elementary principles of the law; and it is ordered that it issue.
Labor Organizations—Restoration of Membership—Boycott—Injunction—Restrainting Orders—Dissolution—Allman et al. v. United Brotherhood of Carpenters and Joiners of America et al., Court of Chancery of New Jersey (Sept. 15, 1911), 81 Atlantic Reporter, page 116.—This was a bill by Michael Allman and others, members of a local union of carpenters and joiners, asking for a decree restoring the complainants to full membership in the national organization, alleging an illegal suspension therefrom. The bill also asked for an injunction restraining the national organization from boycotting any of the complainants or any person employing or intending to employ them or any of them, or from blacklisting them or referring to them as nonunion or unfair and from procuring their dismissal from employment. This bill was duly filed and an order issued commanding the defendants to appear and show cause why the injunction prayed for should not issue. An ad interim restraining order was issued to run until the day set for showing cause in the matter of the issue of the injunction restraining the defendants as above prayed for. The day of this hearing was set forward from time to time until it came to hearing on bill and affidavits on behalf of the defendants in the presence of representatives of both parties. One of the contentions in behalf of the defendant organization was that no injunction should be awarded and the bill should be dismissed because no subpoena directing their appearance to reply had been served upon them, although four weeks had elapsed since the filing of the bill. On this point the court ruled that such a writ is a necessity, and unless it be taken out and returned into court within the time prescribed any preliminary injunction would be dissolved on the defendant’s motion. The distinction between a restraining order to operate until the hearing to determine the issue of a preliminary injunction and such preliminary injunction was set forth by the court, no subpoena being necessary in connection with the restraining order, while the contrary would be the case if an injunction should issue on the filing of a bill without the appearance of an opposing party as it sometimes does. In the case at hand, various questions were raised, a number of which were not considered by the court, it appearing that the parties were properly present for a determination of their rights as to the issue or refusal of the preliminary injunction prayed for by Allman and his associates. Vice Chancellor Walker delivered the opinion of the court, and set forth the grounds for refusing the injunction in the following portion of his opinion:

In the first place, let it be stated that there is neither allegation nor proof that the defendants have printed or distributed any magazine or document asserting that Local Union 1787 or its members are nonunion, unfair, or scabs, and in that respect the restraining order is
too broad, and it would, therefore, in this respect have to be modified:
All that the defendants did in this regard was to publish in their
official journal, "The Carpenter," in the April number, 1911, "that
Local Union 1787, by orders of the G. E. B. (general executive board)
has been and at this moment stands suspended from our organiza-
tion." It was not proved that there is any threat or intention of
repeating even this assertion. In this situation a preliminary in-
junction should be refused. (Penna. R. R. Co.v. National Docks Ry.
Co., 52 N. J. Eq. 555; 30 Atl. 580.) The other part of the case
refers to the alleged unlawful suspension of Local Union 1787 from
the national body and the prayer for restoration to membership, and
of attempts of the defendants to prevent the complainants from
obtaining employment by means of the boycott, threats, etc. As to
this, the denials of the defendants under oath are as explicit as the
sworn assertions of the complainants, and put the facts relied upon
for the injunction in such a state of equipoise or doubt as, under the
well-known rule, to forbid the issuance of a preliminary injunc-
tion. It is perfectly well settled that, whenever the complainant's
case is doubtful on the law or the facts, a preliminary injunction will
not issue. To doubt is to deny.

To justify the issuing of an interlocutory injunction the case made
by the complainant must exhibit a right free from doubt or reason-
able dispute. (Roberts v. Scull, 53 N. J. Eq. 396; 43 Atl. 583.)

As to restoration to membership on account of the alleged illegal
suspension from the national body of Local Union 1787, a mandatory
injunction would be required and such writs are rarely granted be-
fore final hearing and are, as a general rule, strictly confined to cases
where the remedy at law is plainly inadequate. (Lord's Exrs. v.
Carbon, Iron Mfg. Co., 38 N. J. Eq. 452.) It was conceded on the
argument that this case did not fall within the exception to the rule,
therefore no mandatory injunction may preliminarily issue for the
restoration of the local to the general body.

RELIEF DEPARTMENTS—SICK BENEFITS—COLOR BLINDNESS OF RAIL-
ROAD EMPLOYEE AS SICKNESS—EVIDENCE—Kane v. Chicago, Burling-
ton & Quincy Railroad Co. et al., Supreme Court of Nebraska (Oct.
21, 1911), 132 Northwestern Reporter, page 920.—John Kane was
employed as a switchman by the railroad company named, becoming
also a member of its relief department. After 16 years of service he
was discharged, as he contended, on account of color blindness, and
brought an action in the district court of Douglas County to recover
benefits from the relief fund on the ground that the cause of his dis-
charge was sickness within the provisions of the relief department.
It was stipulated by the company that the plaintiff should recover
a definite sum if its liability should be determined by the courts, so
that the only question is as to the nature of the claim and the evidence
supporting it. Judgment had been in Kane's favor in the court below
and the company appealed, having requested from that court a di-
rected verdict in its behalf, which was refused. The appeal resulted in the judgment of the lower court being affirmed, the opinion being delivered by Judge Root. Having stated the facts as above, Judge Root said:

There is sufficient evidence to sustain findings to the effect that the plaintiff became color blind while in the defendant's employ; that he was discharged because of that defect; and that his condition incapacitated him from following his vocation or any other equally as remunerative. The by-laws of the relief department, among other things, provide: "Whenever used in these regulations the word 'disability' shall be held to mean physical inability to work by reason of sickness or accidental injury, and the word 'disabled' shall apply to members thus physically unable to work"; and "to establish a claim for sick benefits there must be positive evidence of acute or constitutional disease sufficient to cause disability." In Keith, Admx., v. Chicago, B. & Q. R. Co. (82 Neb. 12, 116 N. W. 957), following Chicago, B. & Q. R. Co. v. Olsen (70 Neb. 559, 97 N. W. 831), it was held that, as used in these by-laws, the words "physical inability to work" mean "inability to perform manual labor which would enable the injured member to earn wages equal to what he would have earned in the employment in which he was engaged at the time he was injured." As we have said, the evidence establishes that condition. If, therefore, this condition was the result of sickness within the meaning of the by-laws the plaintiff was entitled to recover. "Sickness" is defined in the Century Dictionary as: "(1) The state of being sick or suffering from disease; a diseased condition of the system; illness; ill health. (2) A disease; a malady; a particular kind of disorder. * * * (4) A disordered, distracted or enfeebled state of anything." In the same book we find a definition of color blindness as "incapacity for perceiving colors, or certain colors."

In commenting upon that condition the author says: "It is not a mere incapacity for distinguishing colors (for this might be due to want of training), but an absence or great weakness of the sensations upon which the power of distinguishing colors must be founded." There is no direct evidence concerning the cause of this defect in the plaintiff's vision, and the defendant's counsel argue that the court can not take judicial notice that color blindness uniformly is caused by sickness, and that, without evidence to explain the cause of the plaintiff's condition, the jury could not lawfully or logically find that cause to have been sickness. Counsel say that this defect may have resulted from the plaintiff's advancing years; and, if so, the defendant is not liable. It does appear, however, that the plaintiff became color blind while in the defendant's employ. There is little, if any, evidence to justify a finding that this color blindness is the result of acute sickness; but could not the jury lawfully have found that it was caused by constitutional disease? The by-laws, as we have seen, recognize constitutional, as well as acute, disease as a satisfactory cause for a disability which will entitle the employee to the benefits of the relief department. We may take judicial notice of the fact that this defect in vision occurs in about 5 per cent of all human males in civilized countries, and that it is discovered in every period of life from infancy to advanced senility.
The jury knew these facts, and were justified in finding that the plaintiff's optical weakness was inbred, but for some reason did not become evident during his earlier years. We do not doubt that the learned trial judge exhaustively and clearly instructed the jury concerning these phases of the case.

Incurable blindness has been judicially determined to be sickness. (Regina v. Inhabitants of Bucknell, 28 Eng. L. and Eq. 176.) The plaintiff for the purposes of his vocation is blind, and, being blind, he is sick, within the meaning of the defendant's regulations. We conclude, therefore, that the verdict is sustained by sufficient evidence.

The defendant attempted to prove by its train master at Wymore, where the plaintiff worked, that if the department's medical examiner had found from an examination of the plaintiff that he was color blind, the witness would have received that report. In this there was no error. Argument and citation are not necessary to emphasize that fact. The court also refused to permit this witness to testify that, had the plaintiff offered to work, he would have been given his usual employment. The plaintiff was not requested to return to work, nor was work offered to him by the defendant. It is taxing the credulity of the court to argue that the defendant would have continued the plaintiff as a night switchman with full knowledge that he was color blind. No such criminal carelessness will be imputed to the defendant or to its train master.

It is customary for the defendant's superintendent of its employment department to issue a service letter upon the request of an employee. In response to the plaintiff's request such a letter was sent to him. This document contained a statement that the plaintiff had resigned, and was excluded when offered in evidence by the defendant. The evident purpose of this proof was to sustain a contention that the plaintiff had not been discharged or suspended. There is no evidence that the letter was a copy of any record kept by the defendant, or that the plaintiff was responsible for the statement of alleged facts. The document was timeserving and under the circumstances of this case was properly excluded. Some incompetent evidence was received, but we do not believe it could, or did, mislead the jury. There is no conflict in the evidence that the plaintiff is color blind, and the incompetent evidence had no bearing on the disputed issue as to whether the plaintiff voluntarily or involuntarily ceased working for the defendant.