Conciliation and Arbitration in Collective Labour Disputes in France

THE first French Act on conciliation and arbitration in collective labour disputes was promulgated on 27 December 1892. The Act merely organised a procedure, which it places at the disposal of the parties, furnishing them with the means of coming to an understanding, but without any compulsion. The 1892 Act is still the basis of legislation, but during the war special additional regulations were issued for factories declared to be munitions works.

Moreover, since the date of the passing of the 1892 Act, governments and parliament, feeling the need for something more, tried to introduce legislation of a compulsory character for conciliation procedure, which should apply to all industries, and even attempted to introduce compulsory arbitration for public establishments. Thus, during the last twenty years the Chamber has had before it a whole series of Bills and proposals, ending with the Bill introduced on 9 March 1920 by Messrs. Millerand and Jourdain. This Bill will shortly come up for debate.

The present article will review legislation now in force, such Bills and schemes of reform as were introduced or suggested between 1892 and 1920, and, thirdly, the 1920 Bill now before the Chamber, together with the counter-schemes which have since been put forward.

CURRENT LEGISLATION

The main features of the Act of 27 December 1892 are the following.

It imposes no obligation on the parties to have recourse to the proposed conciliation and arbitration procedure before declaring a strike.

It sets up no permanent organisation; the conciliation and arbitration committees, whose constitution and functions it determines, are essentially temporary and *ad hoc* bodies.

For directing procedure and assisting the parties in their discussions, the Act calls in the magistrate (*juge de paix*) of the canton or of one of the cantons in which the dispute has arisen, apparently on account of the permanent character of the jurisdiction exercised by such persons and of the

conciliation functions which they already carry out in the civil actions coming under them. Such magistrate cannot, however, be chosen as arbitrator himself. He may intervene in two distinct ways, either on the demand of the parties or on his own initiative, but only when a strike has actually been declared. In the first case, employers, workers or employees submit to him, together or separately, personally or through their legal representatives, a statement in writing of their intention to have recourse to conciliation or arbitration, together with :

(1) the names, descriptions, and addresses of the parties making the request or of their representatives;

(2) the subject of the dispute;

(3) the names, descriptions, and addresses of the parties to whom the proposal is to be notified;

(4) the names, descriptions, and addresses of their representatives to a number not exceeding five.

This communication is acknowledged by the magistrate, who also notifies it within twenty-four hours to the other side. A failure on their part to reply within three days is treated as refusal of the proposal to arbitrate. An acceptance, on the other hand, must state the names, descriptions, and addresses of representatives. Thereupon the magistrate calls upon the parties to meet immediately as a conciliation committee. He must himself be present at such meeting and hold himself at the disposal of the parties for the purpose of directing the discussions. If an agreement is reached , he draws up a minute, which he causes the parties to sign. If not, he calls upon them to appoint their respective arbitrators or a common arbitrator. If they agree to have recourse to arbitration, their decision in writing, duly signed, is lodged with him. Where the arbitrators themselves fail to agree, they may nominate an umpire. In default of agreement in the choice of such umpire, the president of the Civil Tribunal proceeds to nominate one on the basis of a minute which the magistrate at once transmits to him.

The Act provides for a certain amount of publicity, and also exempts the disputants from certain charges, in order to make the procedure contemplated easier and to encourage its use.

Requests for setting the conciliation procedure in motion and the rulings of the conciliation committee or of the arbitrators must be notified to the mayor of each of the communes where the dispute has arisen; they are then publicly posted by him. All pertinent documents are exempt from stamp duty and registered without fee. The magistrate is also bound to deliver without fee to each of the parties a copy of the minute of conciliation or arbitration, the original of which he retains in his registry.

	No. of strikes	Cases of recourse to conciliation or arbitration	Percentage	Strikes settled directly or indirectly by conciliation and arbitration						Strikes not settled by conciliation and arbitration
				Strikes terminated before formation of conciliation committee	Arrangement after refusal of conciliation	Strikes settled by conciliation	Strikes settled by arbitration	Strikes abandoned or settled immediately after the refusal of conciliation	Total	
1893	634	109	17.90	13	—	28	5	6	52	57
1894	391	101	25.83	8	—	31	2	7	48	53
1895	405	85	20.74	4	—	24	3	3	34	51
1896	476	104	21.86	7	—	21	1	8	37	67
1897	356	88	24.71	9	—	25	5	2	41	47
1898	368	94	25.54	2	4	18	2	4	30	64
1899	739	197	26.62	9	4	36	6	4	59	138
1900	902	234	25.94	14	10	60	18	4	106	128
1901	523	142	27.15	9	7	38	8	3	65	77
1902	512	107	20.89	6	5	32	2	2	47	60
1903	567	152	26.80	4	13	42	2	9	70	82
1904	1,026	247	24.07	4	13	108	8	8	141	106
1905	830	246	29.64	7	10	96	8	14	135	111
1906	1,309	302	23.07	13	10	94	8	5	130	172
1907	1,275	250	19.61	12	2	91	10	7	122	128
1908	1,073	182	16.96	12	15	46	3	4	80	102
1909	1,025	162	15.80	5	8	44	4	5	66	96
1910	1,502	278	18.05	14	9	112	4	4	143	135
1911	1,471	285	19.37	4	11	113	5	2	135	150
1912	1,116	169	15.14	9	5	53	2	5	74	95
1913	1,073	166	15.47	9	3	42	4	2	60	106
1914	672	103	15.32	7	—	40	5	—	52	51
Totals	18,245	3,803	20.87	181	129	1,194	115	108	1,727	2,076

Where the magistrate intervenes on his own initiative after tools have been actually downed, he must call upon the parties to acquaint him with the subject and the grounds of their dispute, and propose to them recourse to conciliation and arbitration. The disputants have three days in which to decide whether to accept the proposal. If they accept, the procedure is the same as that described above.

An enquiry into the working of the 1892 Act would seem to show that it has secured the avoidance or the termination of a certain number of strikes. In the table on the opposite page we give figures, taken from a report made by Deputy René Lafarge, on behalf of the Committee on Labour.

Apart from the procedure established by the Act, conciliation and arbitration have also been used during recent years by the initiative of the parties themselves. In the first place, in collective agreements between trade unions and employers, clauses for the setting up of permanent joint committees, to which disputes must be compulsorily submitted, have become more and more frequent. These committees are even sometimes charged with the periodic revision of wages to follow fluctuations in the cost of living. Thus, among the 301 collective agreements concluded during 1920 and analysed in the *Bulletin* of the Ministry of Labour, 48 provide for the setting up of joint committees; in addition, 45 of the agreements themselves were concluded after an already existing committee had considered the dispute. The disputants often show a preference for others than the magistrate as arbitrators. The following figures are available for 1920 :

Conciliation before a magistrate or arbitration on the basis of the Act of 27 December 1892	39	cases
Intervention by the Minister of Labour	13	"
Intervention by the Factory Inspectors	40	"
Intervention by the Prefect	6	"
Intervention by the Sub-Prefect	12	"
Intervention by the Mayor	4	"

It was stated above that during the war regulations for the prevention of collective stoppages of work in munitions factories were issued to supplement the Act. These regulations were embodied in a Decree of 17 January 1917, issued by the Minister of Munitions. They are now, so to speak, only of historical interest; they are however, the first attempt at compulsory conciliation in industry made by the public authorities in France. The principles embodied are as follows.

In each district a permanent conciliation and arbitration committee was established, consisting of at least two workers' representatives and two employers' representatives. When

to set up a workers' permanent representative body and to establish conciliation and arbitration procedure and included penal clauses. Mr. Millerand's Bill was referred to the Committee on Labour, but the Chamber dissolved before it came up for debate.

On 18 January 1917, Mr. Colliard reintroduced the report which he had presented on 27 December 1907 on behalf of the Committee on Labour, and which had never been discussed in the form of a proposed Bill. This proposal also came to nothing.

Finally, on 9 March 1920, the Prime Minister, Mr. Millerand, and the Minister of Labour, Mr. Jourdain, introduced the Bill for the amicable settlement of collective labour disputes in industry, commerce, and agriculture, which is shortly to come up for discussion in the Chamber.

The Millerand-Jourdain Bill

This Bill includes two distinct sets of provisions, for private and for public utility establishments respectively. It also provides various penalties.

Private Establishments

The Bill lays down :

(1) that workers' representative bodies shall be established in factories employing at least twenty workers;

(2) that permanent conciliation committees shall be set up, and recourse be had to the conciliation procedure established by the Act before any collective cessation of work;

(3) that it shall be open to the parties to have recourse to arbitration.

The workers' representative bodies are not in principle permanent. The explanatory Memorandum indicates that these bodies have not met with unanimous support, either from the side of the employers or of the workers, and that it was not felt desirable to incorporate provisions of too controversial a character into a Bill intended to have an immediate effect. These bodies are, therefore, only appointed *ad hoc*. The members must be at least 21 years of age and have been employed in the establishment for a year; they must not exceed five in number in any one establishment, excepting only in establishments employing over five hundred workers of different trades; here each craft may have one additional representative. They are to be nominated by the workers whenever a difference arises liable to provoke a conflict of a collective character; the conditions of their

nomination are not otherwise defined in the Bill. The explanatory Memorandum states that a system of elections would complicate and delay action, and that in practice delegates arise spontaneously without any call for election. Representatives will demand an interview with the head of the establishment, who is bound to receive them, either personally or through his agent, within twenty-four hours of being notified; he must reply to any demand made by the representatives within twenty-four hours.

While giving to those representatives, whose appointment is made obligatory, temporary functions only, the Bill nevertheless leaves the parties free to establish permanent representative bodies if they so agree, or to maintain them if they already exist. Nomination methods, duration of mandate, and the intervals at which such representatives must be received, are to be fixed by internal regulations, which must be submitted by the head of the establishment to his staff and ratified by a majority of workers of 21 years of age and over, who have been in the employ of the establishment for six months.

The initial procedure thus defined by the Bill is in a certain sense preliminary to actual conciliation, which is a process taking place inside the works. In the explanatory Memorandum the proposer of the Bill emphasises the value of these conversations between employers and workers, "the want of which has been the most frequent cause of misunderstandings and of sudden ruptures". The action of the representative bodies is limited to disputes of an internal character in a particular establishment. The intervention of the trade unions is not admitted.

It has already been stated that, where an establishment employs less than twenty workers, or, otherwise, where a dispute extends to several establishments or to a whole trade, there is no obligation to resort to conciliation through workers' representative bodies. Again, it may happen that the conversations between such bodies and the employers fail to produce an agreement. In all these cases the Bill proposes to make obligatory the conciliation procedure defined in its second Part, entitled "Conciliators and Conciliation Committees". As stated in the explanatory Memorandum, this procedure is extremely elastic. There was no desire to confine the disputants to strict regulations. On the contrary, the idea was to create a system elastic enough to suit all cases and all trades. The Bill, therefore, merely "establishes principles, fixes general rules, leaving to the disputants the option of choosing in each case the system which may seem best suited to meet the special situation or the particular conditions of their trade". The disputants are able to choose between various agents of conciliation: conciliators, joint committees nominated by themselves, conciliation committees. In some cases the Bill even allows the magistrate's

intervention, as provided for by the Act of 1892. In a word, the only obligation which it imposes is that of attempting some form of conciliation before any collective cessation of work.

With a view to furnishing the disputants with the means of coming to an understanding, it has been thought desirable to set up permanent organisations, under the name of "conciliation committees". These committees are to be created either on the demand of one or more employers' or workers' organisations, or else, failing such demand, after consultation with the parties interested, by Decree of the Minister of Labour and the other Ministers concerned. They are to include an equal number of employers and workers ; in the case of public utility undertakings they are, in addition, to include an equal number of representatives of the public interest, nominated by the Minister of Labour and any other Minister concerned. Members of these conciliation committees must be French nationals of at least 25 years of age, must have practised a trade or profession coming within the competence of the committee for at least a year, and must not have been sentenced to any penalty involving the loss of political rights. Here also the Bill limits itself to laying down general principles, leaving the method of application of such principles to particular cases to be determined by Decree. Accordingly, the Decrees establishing conciliation committees must determine :—

(*a*) their competence, whether limited to a trade, industry, branch of business, or even a single grade of workers, whether covering the whole country or limited to a district;

(*b*) methods of appointment and number of their members;

(*c*) methods of bringing disputes to their notice, periods within which, and conditions under which, the disputants or their agents shall be convened, and periods within which the committees shall deliver their decisions.

The conciliation procedure is organised as follows. The disputants may, for the purpose of composing their difference, apply to a person chosen by common agreement, or to two persons, one chosen by the employers and the other by the workers. If they cannot agree on the choice of such conciliators, they must apply to the conciliation committee, or, if no such committee exists, to the magistrate.

Whatever person or authority may be called upon to act as conciliator must, within forty-eight hours, summon the disputants or their agents, who must attend in answer to such summons, unless able to produce a valid excuse. At this stage the Bill recognises the right of the trade unions to take part in the discussion. "The parties or their agents may be assisted by the executive officers of those legally constituted employers' and workers' organisations of which they may be members ".

It may also happen that third parties are called upon to take part in conciliation proceedings. This happens when the dispute has been submitted to a committee and the members of that committee are unanimously of the opinion that the solution arrived at should be applied to all establishments carrying on the same trade in the district. The establishments which had remained outside the conflict are then invited to appoint representatives to take part in the discussions. They are afterwards bound by the solutions adopted. If an agreement is reached, this is not embodied in a simple minute, as under the Act of 1892, but in a collective agreement. If no agreement is reached, a minute is drawn up stating that no settlement was reached; the parties are then free to resume their liberty of action. At this stage a strike may be declared.

Nevertheless, the disputants are still at liberty to have recourse to arbitration under the provisions of Part III. After the minute has been drawn up, the conciliator is bound to call their attention to this fact. Should they decide to try this last means of arriving at an amicable solution, they nominate their respective arbitrators. The latter may be chosen from the members of the conciliation committee ; this is an important advance on the Act of 1892, which, as was stated above, deprived the magistrate of the right of acting as arbitrator himself. Should the arbitrators fail to agree, they nominate an umpire. Should they fail to agree on the choice of an umpire, such umpire must be nominated by the President of the Civil Tribunal, of the Court of Appeal, or of the Court of Cassation, according to the area affected by the conflict.

The arbitrators may make such enquiries, verifications, and inspections as they think proper. Valid decisions can only be given when every arbitrator is present. Arbitration awards are made public by such means as may be stipulated in the texts of the awards themselves, more especially by means of advertisement in the press and by posting on public notice boards.

Public Utility Undertakings

The Bill lays down stricter regulations for these undertakings. They are compelled to have recourse not only to conciliation, but also to arbitration, a method which leaves the parties less free. This difference between arbitration and conciliation is emphasised in the report of Mr. René Lafarge; conciliation is an arrangement reached by the agreement, and expressing the united will, of the parties in dispute; arbitration has practically the character of a judicial decision, where the matter is taken out of the hands of the disputants, who are unable to exercise any

influence on the conditions of settlement, conditions which depend solely on the arbitrators, i. e. on third parties.

Section 17 of the Bill lays down that "in undertakings engaged in meeting public requirements and whose closing down would endanger the life or health of the public or the economic or social life of the country" arbitration must be compulsory, and that, until the arbitration award has been pronounced, no collective cessation of work can take place. In order to avoid any ambiguity, the Bill enumerates precisely the undertakings subject to this obligation. These are (1) railways, tramways, and other undertakings engaged in public transport by land, sea, or inland waterways ; (2) gas and electric works ; (3) fuel-producing mines ; (4) undertakings engaged in the distribution of water, light, or motor power ; (5) hospitals and similar establishments ; (6) in towns with more than 25,000 inhabitants, funeral undertakings, undertakings engaged in the removal of domestic refuse, and other services connected with the maintenance, cleansing, and draining of streets and with the public health.

The procedure is the same as in the case of voluntary arbitration, except that the publication of the arbitration award is necessarily effected through the *Journal officiel*. In addition to the obligation to resort to arbitration, the Bill stipulates that the the employers must within six months submit for the approbation of the Minister, or set up, regulations determining the conditions of work and remuneration and pensions of their staff.

Penalties

Part IV of the Bill provides various penalties against contravention of its provisions.

In the first place, the employer who obstructs the workers' representative bodies in the carrying out of their functions is liable to a fine of from 16 to 1,000 francs. The same fine is incurred by every person, being a party to a dispute which has been submitted to compulsory conciliation or arbitration, who, without being able to state a valid excuse, fails to obey the summons of the conciliators or arbitrators.

Any person, whether employer or employee, provoking a collective cessation of work forbidden by the Act, is liable to a fine of from 16 to 10,000 francs. In the case of establishments subject to compulsory arbitration, imprisonment for a period of from six days to one month may be imposed in addition. For persons ordering a collective cessation of work the penalty is more severe, amounting to a fine of 20,000 francs where private establishments, and three months' imprisonment where public utility undertakings, are involved. In addition, the offenders are liable for damages on account of the unjustifiable breach of their employment contract.

Finally, Part V of the Bill provides a more severe penalty for cases in which, in public utility undertakings, collective cessation of work takes place before recourse to arbitration, notwithstanding the provisions of the Act. It authorises the Government in such cases to requisition the premises, material, and staff, and to adopt all such other means as may be necessary for carrying out the services furnished by such undertakings.

In addition to the provisions contained in the Bill just summarised, mention must also be made, in reference to public utility undertakings, of the special arbitration clauses included in the Bill for the organisation of the French railways, which was voted by the Chamber on 18 December 1920 and by the Senate on 9 July 1921. This Bill establishes a central body for railway administration to manage lines whose running is in the public interest; this body is a Superior Council, constituted of representatives of the railway companies, representatives of the staff, and representatives of the public interest. In addition to its general functions, this Superior Council plays the part of an arbitration tribunal for all disputes arising between one or more railway systems and their staff as to staff regulations, work regulations, wages, or pension institutions. Where arbitration is in question, the railway companies are represented on the Superior Council by their Director alone, who, like the staff representatives, has merely a consultative voice. These clauses of the railway Bill involve compulsory arbitration, and further compel the disputants to have recourse to a permanent arbitration tribunal.

The Bill was referred to the Committee on Labour, which had also to examine the proposals subsequently laid on the table of the House, the first, dated 28 April 1920, by Messrs. de Cassagnac, Forgeot, and supporters, relating to compulsory arbitration in the public services, the other, dated 20 May 1920, by Mr. Fleury Ravarin, for organising the right to strike. The first of these two proposals relates only to the public services; it reproduces the main features of the Government Bill on compulsory conciliation and arbitration in services carried on under a monopoly or concession; in public services directly carried on by the state, the Departments, or the communes, it absolutely prohibits all concerted cessation of work. But it is above all in the matter of penalties that this proposal introduces a new principle. It provides in effect, where the cessation of work has been provoked or ordered by the officers of a trade union, that such union officers shall be jointly and severally liable for the fines imposed, and that the union shall be dissolved. In addition, those of its members who are responsible for the cessation of work shall be deprived, for a period varying from three to ten years, of the right to vote or to stand for the various appointments and bodies representatives of labour, such as office in a trade union, membership of a workers' representative body, membership

of a committee of counsel *(Conseil de prud'hommes)*, of a labour council, or of other similar bodies.

Mr. Fleury Ravarin's proposal is narrower in scope, and aims simply at regulating the right to strike. It provides that a strike may only be declared as a result of a ballot by the workers, and that it may only be continued with the approval of those involved, who shall renew their decision once a week. Mr. Fleury has recently returned to this proposal in the form of an amendment to the Government Bill. He would leave the present text of the Bill untouched, but would add to it a Part III*b*.

The Committee on Labour of the Chamber considered these Bills, Mr. René Lafarge presenting his report on behalf of the Committee on 30 July 1920. The text as approved by the Committee differs slightly from the original text of the Bill. The original text made it compulsory to set up workers' representative bodies in establishments employing at least twenty workers; the text proposed by the Committee raises this minimum to fifty. It also defines the term "establishments employing at least fifty workers" as being an establishment "which during more than ten weeks in a year employs at least fifty workers or employees of all ages and of either sex."

Methods for appointing the permanent representatives are also laid down; they are to be elected on a system of proportional representation similar to that adopted in parliamentary elections. The Committee further allows the employer forty-eight hours, instead of only twenty-four, to reply to demands put forward by the representative body, and lays down the conditions under which the punitive right to requisition may be exercised.

Finally, following the proposal of Messrs. Cassagnac and Forgeot, the Committee has made an important addition to that part of the Bill which relates to penalties; any person condemned to any penalty under the proposed Act will be excluded for five years and, in the case of a second or later offence, for ten years, from the right to vote or to stand for any appointment or body representative of labour; trade union organisations may be declared civilly responsible for penalties pronounced against their representatives under this head. Further, persons provoking or ordering the non-execution of a requisition will be liable to fines varying from 16,000 to 20,000 francs and to imprisonment for a period varying from six days to six months.

The above gives in outline the proposals now before Parliament, which, if adopted, will constitute a legislative basis for industrial conciliation and arbitration in France.