INTERNATIONAL LABOUR REVIEW

VOL. XXIX, No. 4. APRIL 1934

The New German Act for the Organisation of National Labour

On 1 May of this year the German Act for the organisation of national labour, which was promulgated on 20 January last, will come into operation. The object of the following article is to show the structure of the system instituted by this Act, in particular by indicating the principal points of divergence between the new regulations and the former system.

THE object of the German Act of 20 January 1934 for the organisation of national labour [1] is to give social legislation in Germany a new basis and a new direction. In order that its provisions may be generally understood, it is necessary first to show its relation to the law hitherto prevailing, and secondly, to bring out its new and characteristic features. For this purpose a brief account must first be given of the principles on which German labour law has hitherto been based, as laid down in the Federal Constitution of 11 August 1919 and in some important Acts.

Under the Constitution, labour was placed under the special protection of the Federal Republic, which was explicitly required to institute a uniform body of labour law (Article 157). Freedom of association for the purpose of protecting and improving conditions of employment and economic conditions was guaranteed to every person and in every occupation (Article 159). Workers and employees were required to co-operate with their employers in regulating wages and conditions of employment and in furthering the general economic development of productive forces. The organisations of both parties and the agreements concluded by them were recognised, and to safeguard their social and economic interests wage-earning and salaried employees were granted a

[1] Gesetz zur Ordnung der nationalen Arbeit (*Reichsgesetzblatt*, I, 1934, No. 7, p. 45). Cf. INTERNATIONAL LABOUR OFFICE : *Legislative Series*, 1934, Ger. 1 .

legal right to representation through the medium of works councils (Article 165).

The right of association secured by these far-reaching statutory guarantees was thus a fundamental feature of the system, and the freely formed and powerful organisations of employers and workers may be regarded as both the creators and the upholders of the system of labour legislation built up in Germany from 1918 onwards. Its whole development may indeed be traced to the basic agreements concluded on 15 November 1918 between the central organisations of the employers' associations and of the three trade union groups of any practical importance (the Free, Christian, and Hirsch-Duncker unions).[1] Around these organisations, which played a preponderant part in their formation and activities, all the social institutions of Germany were subsequently built up. A Decree of 23 November 1918 laid down regulations for the collective agreements concluded between them, prohibiting contracting out by means of individual contracts of employment and providing that the conditions they prescribed for the workers whom they covered might be declared binding on whole occupations or industries. On this basis a network of collective agreements was gradually established throughout the country. The later Conciliation Orders of 30 October and 29 December 1923 set up conciliation and arbitration authorities composed of a representative of the State assisted by equal numbers of representatives of the organisations of both parties. The parties to proceedings before these authorities were the organisations. The awards had the force of collective agreements if accepted by the parties, or if, although rejected by the parties, they were declared binding by the competent authorities.

The Works Councils were instituted by the Act of 4 February 1920 "to protect the common economic interests of wage-earning and salaried employees in relation to their employers, and to support employers in furthering the purposes of their undertakings." Other subsidiary measures were subsequently enacted to ensure its application, in particular the Act of 15 February 1922 respecting the appointment of members of the works council to the control board of the undertaking. In practice, the operations of the works councils were largely controlled by the trade unions.

[1] Cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. III, Chapter I, § 2, p. 55. Studies and Reports, Series A, No. 30. Geneva, 1928.

Lastly, the Labour Courts Act of 23 December 1926 instituted tribunals and procedure for the settlement of disputes in the domain of labour law.

It is impossible within the scope of these pages to examine more closely how these enactments—of which only the most important have been mentioned—worked out in practice, how official intervention in conciliation and arbitration procedure gradually prevailed over freely concluded agreements, how the practice of the labour courts influenced the development of the law, and finally, how the depression and unemployment created a situation which this legislation was not designed to meet. It is important to note, however, that in spite of many cross-currents of opinion the underlying principles of German labour law remained inviolate until the advent of National-Socialism to power in 1933. [1]

Once this was an established fact, however, radical changes were inevitable. The first decisive breach in the existing system was made on 2 May 1933, when the dissolution of the trade unions was initiated and partly carried out. The German Labour Front, which was inaugurated at that time and absorbed the former trade union organisations of all tendencies, is a new phenomenon both in its essence and in its functions. Although its novel characteristics were not immediately obvious, certain principles were evolved during the remainder of the year which were ultimately formulated as follows :

> The German Labour Front is the organisation of all persons engaged in labour without distinction of economic or social position. In it the worker and the employer are ranged side by side, instead of being separated by organisations for the defence of particular economic or social classes and interests. . . . The Labour Front is not the place where the material questions of the daily life of labour are decided. . . . The true object of the Labour Front is the education of all labouring Germans in the spirit of the National-Socialist State. [2]

Thus this new organisation also removed the justification for the existence of the employers' associations, which dissolved themselves at the end of the year.

In view of the wide extension of the collective agreement system, the dissolution of the trade unions made it imperative to

---

[1] Cf. *I.L.O. Year Book*, 1931, pp. 486 et seq., and 1932, p. 288.

[2] *Aufruf an alle schaffenden Deutschen*, issued on 27 November 1933 by Dr. LEY, Leader of the German Labour Front, Mr. SELDTE, Federal Minister of Labour, Dr. SCHMITT, Federal Minister of Economic Affairs, and Mr. KEPPLER, Commissioner for Economic Problems.

institute some authority to deal with the maintenance, termination, and revision of collective agreements and, where necessary, their replacement by a new form of regulation. This need was met by the Act of 19 May 1933, under which new authorities, the "labour trustees" *(Treuhänder der Arbeit),* were set up as a development of and substitute for the authorities provided for by the Conciliation Orders. The Act provided for the appointment of Federal authorities known as "labour trustees", who were to be responsible for the maintenance of industrial peace. To this end they were vested with the power, formerly resting with the parties themselves (i.e. the associations), to terminate, revise, or prolong collective agreements by unilateral decisions, which were to be binding on all members of the associations. As before, these agreements might also be declared generally binding. This device enabled the carefully constructed system of collective agreements to be maintained in its essentials. As the new National Labour Act shows, however, this transitional arrangement was of fundamental importance. On this point Dr. Mansfeld, Ministerial Director in the Federal Ministry of Labour, makes the following statement [1]:

It would have been easy to continue along the old lines, replacing the former trade associations permanently by the National-Socialist "establishment cell" organisation [2], in order to retain the old system of collective agreements which was based on these associations. But apart from the risk which this course would have involved of weighting the economic scales in favour of the employers, whose associations would have been the stronger because the young establishment cell organisation, hitherto engaged mainly in political activities, would have lacked the necessary experience to steer safely through the difficult waters of wage negotiations, its adoption would have meant persisting in the old Marxist forms of the class war, which are totally incompatible with the principles of victorious National-Socialism. Hence the functions of the former trade associations of both parties in the domain of wage fixing were transferred to Federal commissioners, a solution which temporarily preserved at least the outward semblance of the old collective agreements, although at the price of certain fictions, while at the same time laying the foundations of straightforward national fellowship in social life.

These transitional arrangements were terminated by the Act of 20 January 1934, the main provisions of which are to come into force on 1 May 1934. Through this measure, in conformity with Article 157 of the 1919 Constitution and with the added

[1] Dr. MANSFELD: "Das Gesetz zur Ordnung der nationalen Arbeit", in *Deutsches Arbeitsrecht*", No. 2, 2nd Year, Feb. 1934, p. 34.

[2] A National-Socialist workers' organisation with political objects.

determination inherent in the principles of the political revolution, the Federal Government is vigorously pursuing its appointed task of creating a uniform body of labour law. In contrast to the former legislation, however, which rested on democratic principles and took as its starting point the opposition between the interests of worker and employer, the new Act is based on the principle of " leadership ", which also governs the political order, and on the conception of the " works community " (*Betriebsgemeinschaft*), both these principles being subordinate to the notion of social responsibility. This is expressed in the Act as follows :

Section 1. In each establishment the owner of the undertaking as the leader (*Führer*) of the establishment and the salaried and wage-earning employees as his followers (*Gefolgschaft*) shall work together for the furtherance of the purposes of the establishment and for the benefit of the nation and the State in general.

Section 2. (1) The leader of the establishment shall make decisions for his followers in all matters affecting the establishment in so far as they are governed by this Act.

(2) He shall promote the welfare of his followers. The latter shall be loyal to him as fellow members of the works community.

. . . . . .

Section 35. Every member of a works community shall be responsible for the conscientious performance of the duties incumbent upon him in consequence of his position in the said community. He shall conduct himself in such a manner as to show himself worthy of the respect due to his position in the works community. In particular, he shall devote all his powers to the service of the establishment and subserve the common good, always bearing in mind his responsibility.

These basic principles strike the key-note of the whole system introduced by the Act.

Earlier Acts and Orders which are contrary to these principles are repealed (section 65); these include the Works Councils Act [1] and the Orders and Regulations issued under it, the Act of 15 February 1922 respecting the appointment of members of works councils to the control board [2], the Collective Contracts Order [3], the Orders of 30 October and 29 December 1923 respecting conciliation [4], the Order of 8 November 1920 respecting measures against the closing and suspension of undertakings, and all relevant Acts and Orders issued by the new German Government

[1] *Legislative Series*, 1920, Ger. 1 and 2.
[2] *Idem*, 1922, Ger. 1.
[3] *Idem*, 1928, Ger. 2 B.
[4] *Idem*, 1923, Ger. 6.

as provisional measures. Nevertheless, it is evident on closer inspection that the new system "has not entirely jettisoned all the fruits of the decades of effort in German social legislation before 1933. Much is retained for further use, but in a different place, a different relation, and therefore with a different significance."[1]

The most important provisions of the new Act are summarised below.

The Owner of the Undertaking and the Staff

The new spirit embodied in the Act is evident from the terminology it employs. The terms "employer" (*Arbeitgeber*) and "worker" (*Arbeitnehmer*) are no longer used; the employer is now described as the "leader" (*Führer*) of the undertaking and the employed (*Beschäftigten*) as his "followers" (*Gefolgschaft*), both parties being fellow-members of the "works community" (*Betriebsgemeinschaft*). In incorporated associations the statutory representatives are the leaders of the undertaking. The owner or his statutory representatives may appoint a person taking a responsible part in the management to represent them, and must do so where they do not themselves manage the undertaking. This provision is intended not only to clear up any ambiguity as to the identity of the leader, a point which might cause difficulties in large undertakings, but also to emphasise the personal responsibility of the leader whatever the legal form of the undertaking.

The owner of the undertaking as leader is in principle solely responsible for making decisions on all social questions affecting the undertaking for his followers, who are bound to loyalty to him. "The principle of the leader's responsibility for the welfare of his followers, which is explicitly specified in section 2 of the Act, and the corresponding duty of loyalty incumbent on his followers will henceforth govern the whole system of German labour law, form the basis of the labours of the works community, and bring about a complete transformation of the law on social contracts."[2] The Act itself does not regulate the individual contract of employment; but it may safely be assumed that the personal relation between the parties, which was stressed

[1] Werner Bohnstedt: "Grundzüge der neuen Sozialverfassung", in *Soziale Praxis*, 1934, pp. 99 et seq.

[2] Mansfeld: *Op. cit.*, p. 35.

as the basic feature of the contract of employment by legal theory and practice up to 1933, will be given even greater prominence under the influence of the new Act.

It is also noteworthy that the Act requires members of the works community to work together " for the benefit of the nation and the State in general " and " to subserve the common good ". Thus a public duty is laid even on private undertakings. In consequence of this, although the head of a private undertaking is in principle its leader, under certain conditions and by a special form of procedure (to be described in detail later) he may be disqualified for this position and another leader appointed in his place (section 3 (3)). Similarly, a worker or employee may be removed from his post without regard to the terms of his contract of employment (section 38).

The Act provides (section 5) that " in establishments which as a rule employ at least 20 persons, ' confidential men ' (*Vertrauensmänner*) shall be appointed from among the followers to advise the leader. Together with him and under his presidency they shall constitute the ' confidential council ' (*Vertrauensrat*) of the establishment ". This institution, while undoubtedly derived from the works councils of the former legislation, is definitely opposed to them, both in its constitution and in its functions, in conformity with the general principles of the new Act. The old works council was a representative body of the workers in an undertaking, formed to protect their common economic interests in relation to the employer and to support the employer in furthering the purposes of the undertaking. The new " confidential council " comprises not only " confidential men " appointed from among the followers but also the head of the undertaking ; it is under the latter's presidency and is convened by him.[1] Its chief duty is " to strengthen mutual confidence within the works community " (section 6 (1)).

The members of the works councils were elected directly by the wage-earning and salaried employees of the undertaking from among themselves, by secret ballot and on the system of proportional representation, from lists drawn up by the staff or sections of the staff. The lists of candidates for the new " confidential council " are to be drawn up by the head of the undertaking in agreement with the chairman of the National-Socialist

[1] The head of the undertaking must convene the council if half the confidential men so request.

establishment cell organisation, and the staff will then decide for or against the list by ballot. If the leader of the undertaking and the chairman of the cell organisation fail to agree, or if the followers fail to approve the list, the members of the council are appointed by the labour trustee.[1]

The object of these provisions is to ensure that in future a confidential council shall in fact be set up in all undertakings covered by the Act, while under the old system it often happened that in practice no works councils were formed in certain undertakings.

The personal conditions which every member of the confidential council must fulfil are that he must have belonged to the establishment or undertaking for at least one year and have worked in the same or a related branch of employment or industry for at least two years ; that he must be a member of the German Labour Front, be characterised by exemplary human qualities, and guarantee to devote himself unreservedly at all times to the service of the National State (section 8).

Although the functions of the confidential council coincide largely with those formerly exercised by the works council, there is between the two bodies the fundamental distinction that the duties of the confidential council are largely advisory, whereas the works council had administrative, deliberative, and supervisory functions as well.[2]

The functions of the confidential council as specified in section 6 (2) of the new Act are to give advice respecting all measures directed towards the increase of efficiency, the formulation and carrying out of the general conditions of employment (especially the establishment rules), the carrying out and promotion of industrial safety measures, the strengthening of the ties which bind the various members of the establishment to one another and to the establishment, and the welfare of all members of the community. It must also endeavour to settle all disputes within the works community, and its views must be heard before penalties are imposed under the establishment rules.

An entirely new feature of the Act is that on National Labour Day (1 May) the members of the council must take a solemn oath before the followers " to perform the duties of their office

---

[1] The procedure is settled by administrative regulations.

[2] Cf. *International Labour Review*, Vol. XI, No. 2, Feb. 1925, pp. 169-179 : " The Legal Nature and Economic Significance of the German Works Councils ", by Hermann DERSCH.

exclusively for the benefit of the establishment and of the nation as a whole, setting aside all private interests, and to set an example to the members of the establishment by the life which they lead and the way in which they perform their duties" (section 10).

As regards the protection of members of the council in relation to the leader of the undertaking, the provisions formerly applying to members of works councils have been substantially maintained. The head of the undertaking may not dismiss a member of the council except for grave reasons or where dismissal is necessitated by the closing of an establishment or department (section 14 (1)). But whereas formerly dismissal on any other ground and termination of individual membership of a works council required the approval of the labour court, the labour trustee has now the power to "remove a confidential man from office". He may, however, only do so "on account of his unsuitability in circumstances or person" (section 14 (2)). This provision makes it impossible, in the event of an extensive reduction of staff which is not due to the closing down of an establishment or department, to dismiss a member of the confidential council before other workers who are in less favourable economic circumstances, a reason for which the labour courts have frequently approved dismissals in recent years in order to prevent "undue hardship" to other members of the staff in the sense of section 84 (4) of the Works Councils Act.[1]

Protection against Dismissal

Individual Dismissals

The very thorough system of protection against dismissal under an individual contract of employment provided for by section 84 and the following sections of the Works Councils Act has been maintained in the new Act, with some alterations in procedure and some restrictions. Instead of the four (in some cases five) grounds for dismissal specified in section 84 of the Act, No. 4 alone, the only one which had any practical significance, has been retained (section 56 of the new Act). The worker may lodge a complaint with the labour court if his dismissal

[1] Cf. International Labour Office: *International Survey of Legal Decisions on Labour Law*, 1927, Germany, No. 16; and 1932, Germany, No. 23.

" constitutes an undue hardship and is not necessitated by conditions in the establishment ".

A substantial improvement on the old regulations from the worker's standpoint is that he is now entitled to lodge a complaint against his dismissal provided that at least ten persons are employed in the undertaking, whereas formerly this right existed only in undertakings possessing a representative body (a workers' or employees' council), i.e. employing not less than twenty persons.

On two other points, however, the worker is at a disadvantage as compared with the old legislation. In the first place, he may now appeal for the revocation of his dismissal only if he has been employed for at least a year in the same " establishment " or "undertaking" (that is, irrespective of any change of the occupier or leader of the establishment), a restriction which did not previously exist. Secondly, the compensation to which he is entitled if the employer refuses to reinstate him after a successful appeal is now limited to a maximum of four-twelfths of his last annual earnings (section 58), instead of six-twelfths as before.

There have also been some changes in procedure. A worker must lodge his complaint with the labour court within a fortnight of receiving notice of his dismissal. In establishments in which there is a confidential council the complaint must be accompanied by a certificate stating that the continuance of the worker's employment has been unsuccessfully raised in the council. The production of this certificate may however be waived if the worker can prove that he appealed to the council within five days of receiving notice of dismissal but that it failed to issue a certificate within five days of his appeal.

The most important innovation of the new Act, however, lies not in these altered time limits but in the fact that the dismissed worker is now entitled to appeal to the labour court whether the approval of the confidential council is granted or not. In the past the right of appeal depended on the approval of the works council ; if it rejected the complaint, on any grounds whatever, the dismissed worker was not entitled to proceed.[1]

It may be noted in passing that section 59 and the following sections of the Act provide a statutory solution for a number of problems which may arise when the court orders the revocation

[1] It may be recalled that the 1923 Bill on the contract of employment had already proposed a more liberal procedure than that of the Works Councils Act.

of a worker's dismissal. These problems, familiar to the practician, have led to much difficulty in similar cases in the past, and have never been satisfactorily settled. Besides the very important section 60, the relevant provisions include section 61, which defines the legal situation created by unjustified dismissal without notice, and provides that in the proceedings for establishing the nullity of this dismissal (within a specified time limit), the worker may apply for its revocation, as a precaution in case the dismissal without notice should be maintained as an ordinary dismissal taking effect at a later date (as the German interpretation of the law allows).

Collective Dismissals

In the second part of the Act, which deals with the labour trustees, section 20 lays down the conditions in which collective dismissals are permissible and may become operative in the event of the stoppage of part or the whole of the undertaking. These provisions disregard the motive of dismissal (the stoppage of the undertaking) and concentrate on the number of workers dismissed, a change which will undoubtedly simplify the practical application of the law.[1] If a specified percentage of the staff are to be dismissed, either at a single date or within a given period, the owner of the undertaking must notify the labour trustee. The notice of dismissal may not become operative without the approval of the trustee until four weeks after the sending to him of the notice ; his approval may be granted retroactively, or may be for a longer period of notice. If the owner is not able to observe the period of notice prescribed by the labour trustee, the latter may authorise him to reduce hours of work in his undertaking for this period, with a proportionate reduction of wages or salaries.

It may be noted in conclusion that in undertakings in which establishment rules are in force—i.e. undertakings employing at least twenty persons—the statutory grounds on which a worker's employment may be terminated without notice may not be extended in scope or increased in number by a contract of employment beyond the provisions of these rules (section 27 (1), No. 5, and section 28 (4)).

---

[1] For the practice hitherto prevailing, cf. *International Survey of Legal Decisions on Labour Law*, 1931, Germany, No. 14.

Labour Trustees

Before turning to the important question of the collective regulation of conditions of employment, some account must be given of the " labour trustees ". These organs of the State, who have already been mentioned several times, were instituted by the Act of 19 May 1933, and their position is finally established under the second division of the new Act.

Labour trustees are to be appointed for large economic areas, the boundaries of which are fixed by the Federal Minister of Labour in agreement with the Federal Ministers of Economic Affairs and of the Interior. They are Federal officials under the service supervision of the Federal Minister of Labour, and are bound to observe the principles and instructions laid down by the Federal Government (section 18).[1] It is the duty of the labour trustees to ensure the maintenance of industrial peace. The tasks incumbent upon them for this purpose are specified in the Act (section 19). Some of these have already been mentioned in the foregoing pages and they will be dealt with in greater detail below, but it may be noted here that the labour trustees are the Federal agents chiefly responsible for the drafting, administration, and supervision of labour legislation in Germany, that they are required to keep the Federal Government supplied with information respecting developments in social policy (section 19 (8)), and that the Federal Ministers of Labour and Economic Affairs may assign them further tasks within the scope of the law (section 18, subsection (2)). This last provision is deliberately designed to leave room for a wider development of this important office.

For consultation on questions of a general nature or involving a principle, the labour trustees must appoint an advisory council of experts from the various branches of industry in their territory. Three-fourths of these experts must be chosen from lists of candidates nominated by the German Labour Front, which must put forward in the first instance a considerable number of suitable members of the confidential councils of the undertakings in the district of the labour trustee in question, with due regard to the various occupational groups and branches of industry. The lists must include leaders of undertakings and other members of the councils in approximately equal numbers. The trustee may

[1] Thirteen labour trustees have been appointed.

appoint one-fourth of the experts from among persons in his district who are otherwise suitable (section 23).

This advisory council of experts opens up the possibility of adjustment to an organic form of economic organisation. It will be easy to transform it into an economic chamber when the time comes for the transition to complete economic self-government. [1]

The labour trustees may also appoint a committee of experts to advise them in individual cases, thus (to continue the previous quotation) " gradually laying the foundations of conciliation authorities or trade chambers ". [2]

The Act studiously avoids any excess of detail in the regulations. Subject to the sovereignty and right of decision of the State, it allows any kind of organisation which takes due account of reasonable practical requirements. One thing alone it makes impossible—a return to an organisation of opposing interests. It lays down a compulsion to work in common, but the widest possible latitude is allowed as to the method by which this principle is carried out. [3]

Any person who repeatedly and wilfully contravenes general instructions issued by the labour trustee in writing is liable to a fine, which in particularly serious cases may be replaced or supplemented by imprisonment.

Collective Regulation of Conditions of Employment

It was pointed out at the beginning of this article that the system of German labour legislation built up since 1918 rested mainly on the trade organisations and the collective agreements they concluded. During this period, however, certain contrary tendencies were also developing, which have now found dominant expression in the new Act. In the former law the notion of the " undertaking " (*Betrieb*) had already acquired a certain importance as a legal concept peculiar to labour law, not only in the Works Councils Act but also in connection with the position of the individual worker in relation to his employer. By many writers the incorporation of the workers in the undertaking was looked upon as the essential feature of the contract of employment. The Federal Court and, following its example, the Federal Labour Court had resorted to this

[1] Mansfeld : *Op. cit.*, p. 36.
[2] *Ibid.*
[3] *Ibid.*

notion of the "works community" when seeking to solve the question of who is required to bear the risk of lost time (*Betriebsrisiko*), i.e. whether the worker is entitled to wages in the event of a stoppage of work in the undertaking owing to circumstances beyond the control of either the employer or the worker.[1] Another disruptive tendency was the revolt against the "monopoly" exercised by the three big groups of trade unions and the demand that the "labour associations" and the Fatherland Workers and Works Associations should be granted equality of status with them[2], a movement to which the Act of 4 April 1933, issued soon after the political changes of 1933, made partial concessions. Lastly, from the employers' side there came complaints of the rigidity of collective agreements and the demand for their replacement by a system of regulating conditions of employment on the basis of the individual undertaking.[3] In accordance with its guiding principles, the Act of 20 January 1934, in its third division, entitled "Establishment rules and collective rules", places the emphasis in respect of the collective regulation of conditions of employment on the individual undertaking. At the same time, however, through the agency of the labour trustees and the institution of a system of social honour courts, the State has reserved for itself certain special functions. "As recourse to militant methods in industrial warfare is naturally forbidden in the National-Socialist State, the State itself must necessarily intervene as a decisive force in the regulation of wages."[4]

The Act provides three graduated instruments for the regulation of conditions of employment and, in particular, of wages. In the first place, they may be fixed by the individual contract of employment; this method applies especially to small undertakings. In undertakings employing at least twenty wage-earning and salaried employees, however, "establishment rules"

---

[1] Cf. *International Survey of Legal Decisions on Labour Law*, 1926, Germany, No. 20; 1928, Germany, No. 23; and 1929, Germany, No. 20.

[2] *Idem*, 1928, Germany, No. 8 and Note.

[3] Cf. *I.L.O. Year Book*, 1931, p. 487.

[4] MANSFELD: *Op. cit.*, p. 37. Section 152 of the Industrial Code, suspending the prohibitions and penal provisions in respect of agreements and conventions for the purpose of obtaining more favourable wage and employment conditions, in particular by the stoppage of work or the dismissal of workers, is repealed. For an estimate of the importance of this section in the legislation hitherto in force, cf. *Freedom of Association*, Vol. III, Germany, Chapter II, § 1.

(*Betriebsordnung*) in writing are compulsory (section 27).[1] These take the place of the old rules of employment (*Arbeitsordnung*) ; but they are issued by the leader of the undertaking (although it may be recalled that the confidential council has advisory functions in this respect (section 6), whereas the rules of employment were formerly drawn up by agreement between the works council and the employer (sections 60 (5), 78 (3), and 80 of the Works Councils Act).

The confidential council may appeal against the establishment rules to the labour trustee (section 16), who may cancel the rules and issue others to replace them (section 19 (3)).

In addition to the items set out in the preceding footnote, which are compulsory, the establishment rules may also contain provisions respecting the amount of remuneration and other conditions of employment (section 27 (3)). Where the remuneration of workers and employees is fixed in the rules, minimum rates must be adopted which allow scope for the remuneration of individual members of the undertaking according to their efficiency. The possibility of a suitable reward for special efficiency must also be taken into account in other ways (section 29). The provisions of the rules are legally binding as minimum conditions for members of the undertaking (section 30), that is to say, they prevail over any conflicting conditions agreed upon in individual contracts of employment. To this extent, therefore, the unilateral decision of the employer overrides the provisions of the contract of employment.

The labour trustee is responsible for supervising the application of the establishment rules.

The labour trustee, after consulting a committee of experts[2], may also lay down guiding principles for establishment rules and

[1] Under section 27 the establishment rules must include the following conditions of employment : " 1. the beginning and end of the normal daily hours of work and of the breaks ; 2. the times for the payment of remuneration and the nature thereof ; 3. the principles for the calculation of jobbing or bargain work, if work is done on a job or bargain basis in the establishment ; 4. regulations for the nature, amount and collection of fines if provision is made for them ; 5. the grounds on which an employment can be terminated without notice in cases where this does not rest upon statutory grounds ; 6. the utilisation of remuneration forfeited by the unlawful termination of an employment in cases where the said forfeiture is prescribed in the establishment rules or contract of employment in pursuance of statutory provisions. In so far as the provisions contained in other Acts or Decrees respecting the compulsory contents of rules of employment are more far-reaching than those contained in this Act, they remain in force. "

[2] See above, p. 465.

individual contracts of employment (section 32 (1)), "thus exercising his influence, though without definite compulsion, over the social policy of the undertakings in his area as a whole or of those in certain branches of industry or certain districts only."[1]

In addition to these, however, the labour trustee has still more comprehensive functions. If the laying down of minimum conditions of employment is urgently needed for the protection of the persons employed in a group of undertakings within a labour trustee's area, the trustee, after considering the matter in a committee of experts, may issue collective rules (*Tarifordnung*) in writing (section 32 (2)). If the undertakings concerned are situated in the areas of several labour trustees, a special trustee must be appointed for the purpose.

Here we have the first appearance of a form of regulation which, as its name implies, is a substitute for the old collective agreement, no longer recognised by the law. A feature which the two have in common is that the conditions they prescribe are minimum standards; any provisions of establishment rules or individual contracts of employment which fall short of these standards are void and are replaced by the collective rules. But the collective rules differ essentially from the old collective agreements: they represent not an agreement between certain parties, but an authoritative act of the State. Their provisions are therefore legally binding for the employment conditions they cover, and no formal declaration is needed to make them generally binding. Like the establishment rules, they must leave scope for the remuneration of individual members of the undertaking according to their efficiency, and must also take into account the possibility of a suitable reward for special efficiency in other ways. The provision of section 32 that the issue of such rules should depend on their being "urgently needed" points to the conclusion that "*ultimately at least*[2] the issue of collective rules is to constitute an exception."[3] Thus the intention is that the regulation of conditions of employment on the basis of the individual undertaking shall now represent the norm, whereas in the past the collective agreement extending beyond the scope of the single undertaking was the general rule.

---

[1] MANSFELD: *Op. cit.*, p. 37.
[2] Italics not in the original.
[3] MANSFELD: *Op. cit.*, p. 37.

The labour trustee is responsible for supervising the application of the guiding principles and the collective rules.

Lastly, it may be once more recalled that the labour trustee is bound by the instructions of the Federal Government, while on the other hand the workers and employees can also legally bring some influence to bear on the head of the undertaking in respect of the fixing of conditions of employment, through the confidential council in the case of establishment rules and through the committee of experts in the case of collective rules.

Social Honour Courts

A characteristic feature of the Act is the institution of social honour courts to deal with " gross breaches of the social duties based on the works community as offences against social honour " (section 36 (1)). These courts are intended to uphold by special sanctions the statutory principle of social responsibility. [1]

This new judicial system comprises honour courts of first instance and a Federal Honour Court in Berlin. The honour courts consist of an official of the judiciary, who acts as chairman, appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour, and one leader of an undertaking and one " confidential man " selected by the chairman of the court from lists of candidates drawn up by the German Labour Front, in the order in which they stand on the list. The Federal Honour Court consists of two higher officials of the justiciary appointed by the Federal Minister of Justice in agreement with the Federal Minister of Labour, one person nominated by the Federal Government, and one leader of an undertaking and one " confidential man ", appointed in accordance with the provisions applying to the courts of first instance (sections 41 (2) and 50).

Appeals to an honour court must be made by the labour trustee. If the chairman of the court finds that the application is justified, he may impose the penalty of a warning, a reprimand, or a disciplinary fine not exceeding 100 marks. If the application is disallowed, the labour trustee may apply for the fixing of a date for trial in the honour court. The chairman must also

[1] The details of the new organisation and judicial procedure are settled by administrative regulations.

appoint a day for oral proceedings in the honour court if he does not himself give the decision (sections 45, 46 (1), and 47 (1)).

The chairman and the court may make all necessary investigations and examine witnesses on oath either before or during the principal proceedings (sections 44 and 47 (2)). Otherwise the rules of the Code of Penal Procedure are applicable (section 40).

If the chairman has himself given a decision, an objection to it may be lodged with the honour court (section 46). Appeals to the Federal Honour Court against decisions of a court of first instance may be lodged by the labour trustee in any case, and by the defendant only if he is sentenced to a penalty other than a warning, reprimand or fine of not more than 100 marks.

The honour court is competent to deal with cases when the owner of an undertaking, the leader of an establishment or any other person in a position of supervision abuses his authority in the establishment by maliciously exploiting the labour of his followers or wounding their sense of honour ; when a follower endangers industrial peace in the establishment by maliciously provoking other followers ; when a confidential man interferes unduly in the conduct of the establishment or maliciously disturbs the community spirit in the undertaking ; when a member of the works community repeatedly makes frivolous and unjustifiable complaints to the labour trustee or obstinately disobeys his instructions ; and lastly, when a member of the confidential council reveals without authority any confidential information or technical or business secrets which have become known to him in the performance of his duties (section 36). The penalties are warning, reprimand, a disciplinary fine not exceeding 10,000 marks, disqualification for the position of leader of an undertaking or for holding the office of confidential man, and removal of the offender from his post, the court having power in this case to prescribe a term of notice different from that fixed by law or agreement.

Scope

With the exception of sections 32 and 33 relating to guiding principles and collective rules, the provisions of the Act do not apply to craft engaged in maritime, inland, and aerial navigation. No part of the Act applies to workers and salaried employees in the public services, for whom a special Act is to issued.

The Act in relation to Other Social Legislation

The purpose of the Act is to establish a new labour constitution. It leaves in force the existing measures of social protection (e.g. those governing hours of work, minimum wages, safety measures, etc.) and the Social Insurance Acts, though their application is affected in some details by the new institutions, and especially by the disappearance of the trade associations and the substitution of collective rules for collective agreements. These points cannot be examined in detail in this general survey of the Act, especially as the Act itself provides for the revision of many of the measures concerned.

The Home Work Act will be amended, as home workers have now been brought within the scope of the general law as regards the fixing of their remuneration and the institution of confidential councils (sections 5 (2) and 34). As home workers are now subject to the authority of the labour trustee, the trade committees have been abolished and the penal provisions repealed.[1]

The essential provisions of the Labour Courts Act remain in force, subject, evidently, to the repeal of the provisions governing the application of collective agreements, the application of the Works Councils Act, proceedings arising out of labour disputes, and questions connected with the right of association. The rules for the appointment of assessors and the rules for representation before the courts are also amended to conform with the new order of affairs.

Conclusion

In the preceding pages an attempt has been made to bring out the principles governing the future course of German labour legislation, and, as far as is possible at the present juncture, to indicate certain features that the new system still has in common with the old one. In the statements accompanying the promulgation of the Act in Germany it was repeatedly emphasised that care had been taken to avoid laying down rigid and detailed provisions, and that the Act had deliberately been left flexible enough to give scope for future developments. These developments must therefore be awaited in order to form a more accurate picture of the real scope and effects of the National Labour Act.

[1] A new Home Work Act was promulgated in March and will also come into operation on 1 May 1934.